MICHAEL RICHARDSON

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

MICHAEL RICHARDSON, Petitioner, vs. ROB BONTA In His Official Capacities As Attorney General Of The State Of California, Respondent.	**PETITIONER'S COMPLAINT FOR DECLARATORY AND PERMANENT INJUNCTIVE RELIEF** Courtroom: Judge: Trial Date:

TABLE OF CONTENTS

INTRODUCTION

1. Petitioner's Complaint for Declaratory and Injunctive relief is an as-applied challenge to the constitutionality of: (1) California's Sex Offender Registration Act (SORA) (Cal. Penal Code § 290, *et seq.)*; (2) California's Megan's Law Internet Website (Cal. Penal Code § 290.46).

2. In 1947, California became the first state in the nation to enact a sex offender registration law that required offenders convicted of specified offenses to register with their local law enforcement agency. This practice is still in place today and is known as the California Sex Offender Registration Act (SORA), and the California Sex and Arson Registry (CSAR) serves as the statewide repository for information on registered sex offenders. Today, the number of people required to comply with the California Sex Offender Registry Act continues to explode with the registration of over 120,000 Californians. A total of 780,407 people were listed on state sex offender registries as of May 2021.

3. In 2004, in enacting California's Megan's Law, the Legislature specified that the California Department of Justice Department (DOJ), and the Office of the Attorney General (Respondent), are required to "make available information concerning persons who are required to register pursuant to Cal. Penal Code (P.C.) § 290 to the public via an Internet Web site." The Respondent provides a wide range of services that support California's SORA. These services include maintaining and providing information to the public via the California Megan's Law Internet Web site.

4. In 2017, the California Legislature passed, and the Governor signed into law Senate Bill 384. This bill, which took effect on January 1, 2021, transformed California's lifetime sex offender registry into a tiered system that permits some individuals required to register as a sex offender ("**Registrants**") to petition the Superior Court of the county in which they reside to terminate their registration requirement after 10 or 20 years, depending on the tier to which the law assigns them. (Sen. Bill No. 384 (2017-2018 Reg. Sess.) §§ 1-2

[hereinafter, "**SB 384**" or the "**Tiered Registry Law**"].)

5. A person assigned to Tier 3, such as Petitioner, suffers the greatest burdens imposed by the tiered system, including the disclosure of their home address on the public Megan's Law Website, which is not required for persons assigned to Tiers 1 and 2. (Cal. P.C. § 290.46. (b)(1), § 290.46. (c)(1), and § 290.46. (d)(1), respectively.

6. SB 384 was an apparent attempt to improve a regulatory regime that has been costly, unnecessary, and completely ineffective. Unfortunately, regardless of SB 384, California's SORA continues to impose life-altering burdens without any individualized actuarial risk assessment or review. This is because SORA treats all registrants—regardless of the circumstances of their offense, the passage of time, their age, their rehabilitation, their health, or their cognitive and physical abilities—as if they pose a high and irremediable risk to public safety.

7. Because SORA brands all registrants as dangerous, without any determination of risk or consideration of individual circumstances, by placing nearly all of them on the public registry, the inevitable and predictable results are that they lose housing and employment opportunities, their properties are vandalized, they are verbally harassed, tormented, or physically attacked by people in their own communities. Not surprisingly, Registrants are also routinely and systematically targeted and physically attacked or murdered by vigilantes that locate them using the information found on the Megan's Law Website. This is not only inhumane and dangerous for registrants and their families, but as detailed in this complaint, it also violates three of Petitioner's fundamental constitutional rights.

JURISDICTION AND VENUE

8. As a court of unlimited jurisdiction, the Sacramento County Superior Court has jurisdiction over this action for declaratory and injunctive relief pursuant to California Code of Civil Procedure sections 1084, *et seq*. and 1060, as well as California Government Code section 11350(a).

9. Venue is proper within the Sacramento County Superior Court pursuant to California Code of Civil Procedure section 395.

10. Injunctive relief is proper under California Code, Civil Code - CIV § 52.1 *et seq*.

PARTIES

PETITIONER

11. Petitioner resides in Sacramento, California. Petitioner is 54 years old and has 4 grandchildren, he is a father of a 27-year-old man and has a 36-year-old stepdaughter. He has a wide variety of family members, close friends, and social support systems, has maintained stable housing and transportation, is currently in college and has recently completed degrees in math, science, and geology and is working to earn a master's degree in geology.

12. Petitioner was convicted of non-violent, non-contact offenses for violating Cal. P.C. §§ 664/288(a), 288.2(2), and § 647.6(a)(1) for incidents that occurred in April 2004. These violations of sections 288.2(2) and 647.6(a)(1) stem from a conversation Petitioner engaged in over the Internet with a teenage girl, while the violation of section 664/288(a) derived from a separate conversation over the Internet with a girl's father that led to Petitioner's arrest. Petitioner was convicted in a trial and was sentenced to serve 5 years and 4 months in a California State Prison, which he completed with complete compliance in October 2008. Petitioner has also completed state parole supervision with complete compliance in 2011.

13. Petitioner has been fully compliant with SORA's onerous registration requirements for nearly 14 years since his release from custody and has not committed, or been accused of, any previous or subsequent sexual offense.

RESPONDENT

14. Respondent Rob Bonta is the Attorney General of the State of California, and the highest official within the California Department of Justice, and as such is responsible for the implementation and enforcement of the California's Sex Offender Registration Act (SORA, Cal. P.C. § 290 *et seq*.), Megan's Law Internet Website (Cal. P.C. § 290.46 *et seq*.), and the California Sex and Arson Registration (CSAR) data base. In his official capacity, as set forth in Article 5, Section 13 of the California Constitution, Respondent Bonta is the "chief law officer of the State" with a duty "to see that the laws of the state are uniformly and adequately enforced." Respondent Bonta "has charge . . . of all legal matters in which the State is interested." (Cal. Gov. Code § 12511.) Respondent Bonta is sued in his official capacity only.

STANDARD OF REVEIW

STRICT SCRUTINY APPLIES BECAUSE CALIFORNIA'S SORA VIOLATES PETITIONER'S SUBSTANTIVE DUE PROCESS RIGHTS

15. There are various fundamental liberty interests grounded in the California Constitution that are

relevant to the analysis of the constitutionality of California's Sex Offender Registration Act (SORA). Some of these include Petitioner's explicit fundamental rights under the California Constitution to privacy (First Claim); pursuing and obtaining safety (Second Claim); to be free from unreasonable, arbitrary, and oppressive official action (Third Claim).

16. Appropriately, this is a substantive due process challenge claiming that California's SORA violates Petitioner's fundamental rights to privacy, pursuing and obtaining safety, and to be free from unreasonable, arbitrary laws, pursuant to California's Constitution.

17. In *Conn. Dep't of Pub. Safety v. Doe*, the United States (U.S.) Supreme Court, while reserving the possibility that a substantive due process claim may be successful, stated,

> Unless respondent can show that the *substantive* rule of law is defective (by conflicting with a provision of the Constitution), any hearing on current dangerousness is a bootless exercise." The opinion goes on to note that *Doe* made no *substantive* due process argument - only a procedural one - in complaining that the act offered no chance at a hearing. The Court concluded that the substantive due process issue was not properly before the Court and expressed no opinion on whether the Connecticut law passed constitutional muster on this point.

18. Although the decision was unanimous in upholding the law on procedural due process grounds pursuant to the U.S. Constitution, several Justices wrote separately to express their views. In his concurring Opinion, Justice Scalia agreed with the Court's reservation of the possibility of a successful substantive due process challenge to these laws. Justice Ginsburg joined Justice Souter in a concurring Opinion that the notification laws may be susceptible to a substantive due process challenge.

19. Certainly, if the U.S. Supreme Court left open a plausible substantive due process claim under the Federal United States Constitution, then the California Constitution's explicit inalienable rights to privacy, pursuing and obtaining safety, and broader protections weigh heavy in favor for Petitioner in this case. Since Petitioner's fundamental rights are being violated under the California Constitution substantive due process applies and requires strict scrutiny in all three claims.

FACTUAL ALLEGATIONS

I. FIRST CLAIM

PETITIONER HAS A SUBSTANTIVE DUE PROCESS RIGHT TO PRIVACY

20. The California Constitution states, "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and

protecting property, and pursuing and obtaining safety, happiness, and privacy."

21. California's SORA violates substantive due process by infringing on Petitioner's fundamental privacy rights. California's Constitution encompasses and makes explicit that "pursuing and obtaining safety," "privacy," and "happiness" are inalienable rights. Such explicit rights are clearly fundamental in California. Although these rights are not absolute it requires strict scrutiny if the government wishes to encroach upon them in any significant manner.

22. Similarly addressing the constitutional fundamental right to privacy issue concerning its State's ASORA, the Alaska Supreme Court in *Doe v. Alaska Dep't of Pub. Safety* stated,

> We believe that strict scrutiny applies in the present case because the right to privacy is an explicitly enumerated right under the Alaska Constitution and thus should generally be considered fundamental.

23. Petitioner's California Constitutional right to privacy is being violated by Cal. P.C. § 290 *et seq*. and most importantly § 290.46 (a)(1). The information on the State's Megan's Law Website includes a plethora of information as described in the statute, "On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, the address at which the person resides, and any other information that the Department of Justice deems relevant."

24. The Megan's Law Website provides nearly instantaneous access to sex offender registration information over the Internet that includes a plethora of Petitioner's personal and privileged information. This information is not only available nationally but worldwide via the Megan's Law Website. Because of this the privacy issue ties directly into California's SORA, and Respondent.

25. Unlike in any other case brought before the California courts, Petitioner asserts it is not his identity, arrest/conviction information, court documents, any other statutorily limited criminal history information related to his conviction, or even the requirement that he register with the State, which violates his right to privacy.

26. It is this continuous updating and public notification of Petitioner's personal and private information on the Megan's Law Website, coupled with the sex offender designation, all in a compilation of thousands of

other registered offenders (which doubtlessly projects and creates the public perception that Petitioner is an inherently dangerous individual), along with the inevitable and predictable consequences of Megan's Law, including the vandalism, verbal harassment, and real danger to Petitioner's, and his family member's, physical safety as documented and detailed below in **Claim Two,** that violates Petitioner's fundamental right to privacy. This also includes the fact that the recently implemented SORA tiered registration system is unreasonable and arbitrary as extensively outlined in **Claim Three**.

27. The Respondent is not merely or only publishing easily accessible public information. The Respondent is creating new records out of statutorily limited records such as criminal history information and court documents from a conviction and case that occurred over 15 years ago, combined with constantly updated non-public records that includes Petitioner's current name and known aliases, photograph, physical description, including gender and race, date of birth, the address at which he resides, and any other information that the DOJ deems relevant.

28. Respondent is using these records and compiling them into a searchable Internet website data base (Megan's Law Website) that labels and displays Petitioner as an inherently dangerous sex offender. This goes something far beyond simply releasing rap sheets, arrest records or court documents.

29. When this information is compiled and given to random members of the public (and to the entire world) over the Internet with the sex offender designation, on its face this personal information becomes far less "public" and carries a poignantly stigmatic meaning.

As the Alaska Supreme Court states in *Doe v. Alaska Dept. of Pub. Safety*,

> As to the first, the challenged publication here is not the public court file that shows a conviction, but rather the internet publication of both the conviction and personal information in a compilation of sex offenders. Second, an offender's address and employment information, when included in such a compilation, is sensitive information because its publication can lead to serious negative consequences that the right to privacy is meant to protect against.
>
> With respect to the latter point, information concerning an offender's home address and place of employment are not necessarily in the public domain. Revealing a sex offender's home address potentially subjects him to harassment and physical attack. Revealing the offender's place of employment carries the same potential, plus it may discourage potential employers from hiring sex offenders because of the possible loss of business.
>
> Returning to the first point, we recognized in *Doe 08* that "[t]here is a significant distinction between retaining public paper records of a conviction in state file drawers and posting the same information on a state-sponsored website; this posting has not merely improved public access but has broadly disseminated the registrant's information." Similarly, we stated that "the harmful effects of ASORA stem not just from the conviction but from the registration, disclosure, and dissemination provisions." The Supreme Court of the United States has recognized this distinction in a freedom of information case: ""Plainly there is a vast difference

> between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.""

30. When considering California's Constitutionally fundamental right to privacy this compilation of information, coupled with the amalgamation of consequences and issues that Petitioner must endure because his information is available on the Megan's Law Website as described, surely rises to a substantive due process violation.

The Alaska Supreme Court in *Doe v. Alaska Dep't of Pub. Safety* also states,

> Sex offenders are among the most despised people in our society. Widespread publication of their conviction and personal details subjects them to community scorn and leaves them vulnerable to harassment and economic and physical reprisals. These serious consequences squarely fall within the evils that the right to privacy was meant to guard against." 444 P.3d 116, 128 (Alaska 2019).
>
> For these reasons we conclude that a sex offender may hold a legitimate and objectively reasonable privacy expectation that his conviction and personal information will not be disseminated as it is under ASORA.

PETITIONER'S PRIVATE INFORMATION IS NOT EASILY ACCESSIBLE PUBLIC INFORMATION

31. Additionally, Petitioner's name (Petitioner can change his name at any point in life), current photograph, current physical description, including gender and race, date of birth, and current home address (Petitioner could easily have a post office box and completely conceal his home address) can certainly be kept from the public eye if so desired. There are also myriad online companies that can remove or hide such information as well.

32. Even Petitioner's criminal history information, in many instances as described below, is statutorily limited.

33. According to the California Department of Justice, Office of the Attorney General official website, authorized disclosure of Petitioner's criminal history information is statutorily limited, "in California, state and local summary criminal history information is confidential and access is strictly regulated by statute. Penal Code section 11105 expressly authorizes the DOJ to disclose state summary criminal history information to law enforcement agencies for law enforcement purposes only, to certain employers or regulatory agencies, or to the person who is the subject of the record."

34. This careful and statutorily limited pattern of authorized disclosure of Petitioner's criminal history

information surely fits the dictionary definition of privacy as stated by the United States Supreme Court in *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press,*

> Finally, the FBI's exchange of rap-sheet information "is subject to cancellation if dissemination is made outside the receiving departments or related agencies." 28 U.S.C. § 534(b). This careful and limited pattern of authorized rap-sheet disclosure fits the dictionary definition of privacy as involving a restriction of information "to the use of a particular person or group or class of persons.

35. Criminal history information and records are further protected and limited under California's Investigative Consumer Reporting Agencies Act (ICRAA) which follows the Federal Consumer Reporting Act's seven-year rule as the limit for reporting most negative information on an employment or housing background check.

36. According to Cal. P.C. § 290.46 (l)(1), "A person is authorized to use information disclosed pursuant to this section only to protect a person at risk." This section unconstitutionally permits Investigative Consumer Reporting Agencies (ICRA), government or private employers and housing authorities, or anyone, to use registry information "to protect a person at risk." This is both vague and subjective and leaves anyone with unfettered discretion to use the registry to deny Petitioner such things as employment and housing for the rest of his life, solely because he is required to register as a sex offender.

37. With Petitioner's lifetime registration, unlike any crime that does not trigger registration, his charges will always show on the Megan's Law Website, which can be used against him even though it has been over the seven-year threshold under the ICRAA. A 2010 survey by the Society for Human Resource Management (SHRM) revealed that a whopping 92% of responding employers conducted criminal records checks on at least some job candidates, and most said that they conducted criminal records checks on all candidates. In fact, an estimated 73% of employers conduct these checks on all potential employees.

38. Although arrest records and Appellant or Supreme Court decisions are published and freely available to the public, since these documents fade into obscurity after time, an individual must know myriad specific details about a person and their crimes to locate such records and decisions. This limitation surely reduces the possibility that the public, without such specific details about a person and their crimes, can easily access such public records.

39. Furthermore, it cannot be claimed that local and/or Superior Court records in California are easily accessible public records. Once again, the DOJ Website state's, "the DOJ does not maintain or provide certified

copies of California Local and/or Superior Court Records and as such, does not provide these source documents. To obtain a transcript, you will need to contact the court with jurisdiction over your particular case (s) for certified documents."

THIRD-PARTY CONDUCT CAN CONSTITUTE STATE ACTION THAT VIOLATES PETITIONER'S CONSTITUTIONAL RIGHTS

40. Third-party websites such as Homefacts.com and City-data.com also use the Megan's Law Website information to publish their own sex offender list that are similarly providing nearly instantaneous access to Petitioner's criminal history, sex offender designation, and other personal identifying information. Homefacts.com, "On our website, you can search the national sex offender registry by state, county, city, zip code, address and first or last name. In the search results, you can view the location of each registered offender on a map, as well as click through to their individual profiles to see a photo and offense or statute details." City-data.com, "According to our research of California and other state lists, there were 2,188 registered sex offenders living in Sacramento as of February 13, 2022."

41. Simply doing a Google.com search containing Petitioner's name, along with the general location (city, county, or zip code), and the words sex offender, instantly returns these sites with all this information. Billions of people use Google.com, "Google now processes over 40,000 search queries every second on average, which translates to over 3.5 billion searches per day and 1.2 trillion searches per year worldwide."

42. Even the tech giant Facebook.com and other social media sites use the registry information to delete registrant's accounts, ""Convicted sex offenders aren't allowed to use Facebook." "Once we're able to confirm someone's status as a sex offender, we will immediately disable their account."" In fact, Facebook has deleted Petitioner's account long ago. Facebook.com alone has over 2.9 billion users.

43. Over 4.4 billion people have social media sites., "Since its inception in 1996, social media has managed to infiltrate half of the 7.7 billion people in the world. Social network platforms almost tripled their total user base in the last decade, from 970 million in 2010 to the number passing 4.48 billion users in July 2021."

44. As the U.S. Supreme Court states in *Packingham v North Carolina*,

> [S]even in ten American adults use at least one Internet social networking service" *Id*. at 1735. Indeed, Justice Kennedy, writing for the Court, described the Cyber Age as "a revolution of historic proportions," the dimensions of which "we cannot appreciate yet," noting that it has "vast potential to alter how we think, express ourselves, and define who we want to be." *Id.* at 1736. A person with an Internet connection can, Justice Kennedy said, "become a town crier

> with a voice that resonates farther than it could from any soapbox." *Id*. at 1737, citing *Reno v ACLU*.

45. The Court noted that,

> By prohibiting sex offenders from using those websites, North Carolina with one broad stroke bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.

46. This also includes communicating with Petitioner's family and friends, his school related staff and functions, and much more.

47. Petitioner utilizes no social media sites not only because he is banned from many but also because of Petitioner's fear of disclosure as a registered sex offender (which few would know except his information is listed on the Megan's Law Website), which in and of itself chills his speech. If Petitioner's status as a registered sex offender is exposed, his speech, even on topics of public importance, could subject Petitioner to further harassment, retaliation, and intimidation.

48. This conduct by these third-party sites that explicitly use the Megan's Law Website to retrieve this information that would not otherwise be easily available to them and can constitute state action that deprives an individual of their constitutional rights.

49. As an example, the U.S. Supreme Court stated in *Wittner v. Banner Health*,

> [P]rivate parties' conduct constitutes state action under Section 1983 where private parties (a) are coerced by the State, (b) act in a public function, **or** (c) act in concert with the State to deprive someone of a constitutional right.

50. Although concerning the U.S. code section 1983, Petitioner believes this is apropos because this is similarly occurring in this case. These Third-party entities are "act[ing] in a public function" and in "concert with the State to deprive someone [Petitioner] of a constitutional right." If Petitioner's information is not included on the Megan's Law Website, then these third-party sites would not have access to this information or be able to continuously update it.

51. If Petitioner's information was not displayed on the Megan's Law Website, as previously noted, he could easily have the information removed, updated, or suppressed using resources such as online reputation management firms. Such online management firms state that "a good online reputation management firm can remove almost anything from the internet, including Consumer reviews and complaints, News articles, Blogs, Websites, Discussion forums, Videos and other media, Pictures, including mugshots, Criminal records." Look

for a company or law firm, like Minc Law, that has no restrictions in the type of content they will help you remove.””

PETITIONER’S INTEREST V. STATE’S INTEREST

52. Proponents of SORA laws claim that the State’s interest in protecting the public from dangerous sex offenders outweighs the privacy rights of these individuals. This argument may have been able to pass muster in the past, but today it lacks merit. The necessity and success of community notification measures in preventing re-offense (which is the corner stone of the registration scheme) has been refuted with decades of empirical academic and governmental studies, reports, and real data. This is discussed in extraordinary detail *infra* in **Claim Three**.

53. In fact, there is consensus among highly credible authorities in the government, as well as the academic sector, that registries have no effect on public safety and do not prevent recidivism. Even the legislatively created and/or appointed committees that were created to study, supervise, and manage registered sex offenders, including reporting to the legislature their findings and recommendations, all agree that these laws are not effective and are in fact counterproductive.

54. The state's interest in the mere perception of public safety must be outweighed by the severe and widespread governmental infringement on Petitioner’s substantive due process rights. The rights are far too weighty to render SORA constitutional based on the state's mere assertion with no supporting authorities or documented facts that SORA laws, as-applied to Petitioner, are needed, justified or effective in protecting the public.

55. It must be kept in mind that Petitioner completed his sentence and was released into the public domain. Because Petitioner has already served his sentence and because of the highly intrusive and stigmatic nature of the personal information disseminated, California's SORA creates continuous violations of Petitioner’s privacy rights, despite any lowered expectation of privacy due to a criminal conviction for a registerable offense.

56. Furthermore, public perception of the state's interest in crime prevention versus public perception of a convicted sex offender's privacy rights fall on opposite ends of the spectrum. However, public perception must not set in motion a judicial decision that transgresses constitutional precedent.

57. Indeed, as Justice Frankfurter stated in *United States v. Rabinowitz*,

[I]t is a fair summary of history to say that the safeguards of liberty have frequently been forged

in controversies involving not very nice people.

58. Petitioner may or may not have a lessened legitimate privacy interest in his conviction because he was convicted of a registerable offense, but this does not necessarily mean that any and every intrusion into Petitioner's fundamental rights is acceptable, or that Petitioner's expectations to privacy and other fundamental rights are completely extinguished.

59. It is also in the State's interest to protect Petitioner's fundamental freedoms and constitutional liberties.

60. The 9th Circuit Court of Appeals recognized this interest in *Melendres v. Arpaio*,

> We agreed in *Sammartano v. First Judicial District Court*,303 F.3d 959 (9th Cir.2002), that "'it is always in the public interest to prevent the violation of a party's constitutional rights.'" *Id*. at 974, quoting *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*,23 F.3d 1071, 1079 (6th Cir.1994).

61. As Clarence Darrow famously said, "You can only protect your liberties in this world by protecting the other man's freedom. You can only be free if I am free." Protecting the constitutional rights of everyone, even those convicted of sex offenses, is of the upmost importance for protecting all our freedoms.

62. Even though the legislature has the prerogative to enact laws, classify criminal offences, and proscribe penalties for violations, this does not give the Legislature unfettered discrepancy to enact any law that significantly infringes upon fundamental constitutional rights unless the law is justified, necessary, effective, and narrowly tailored to be the least restrictive possible.

REMEDY FOR VIOLATION OF PETITIONER'S FUNDAMENTAL RIGHT TO PRIVACY

63. California's SORA violates substantive due process by severely infringing upon Petitioner's explicit privacy rights as outlined above. This is especially true in combination with the fact that, as detailed below in Petitioner's **Second Claim,** SORA also serves to endanger not only his personal safety, but also that of his family's and as detailed in **Claim Three**, SORA is also unreasonable and arbitrary.

64. The only cure to this substantive due process violation concerning Petitioner's fundamental right to privacy is order Respondent to remove Petitioner's information from the publicly accessible Megan's Law Website and CSAR data base.

II. SECOND CLAIM

PETITIONER HAS A SUBSTANTIVE DUE PROCESS RIGHT TO PURSUE AND OBTAIN SAFETY

65. The California State Constitution states, “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”

66. The Respondent through SORA is undoubtedly putting Petitioner in dangerous situations by publicly disseminating Petitioner’s current address information along with Petitioner’s name, current photo, and physical description, all with the sex offender designation, on the Megan’s Law Website. This makes Petitioner and his family members fear for their safety on a regular basis, this violates substantive due process by infringing Petitioner’s fundamental right to pursue and obtain safety.

67. Petitioner, and his family members, have experienced vandalism, verbal harassment, and physical assaults from individuals who find Petitioner’s information on the Megan’s Law Website, as documented and detailed below in Petitioner’s affidavits, and in multiple affidavits from credible witnesses. Affidavits (Exhibits. A-E).

68. The right to personal safety is a historic liberty interest. The use of the term "historic" certainly is accurate, as Blackstone in 1765 wrote that the right to personal security is "one of three 'primary' categories of absolute rights that imprisonment or other infirmities did not extinguish.'"

69. Just because Petitioner has been convicted of a registerable offense his explicit safety rights are not extinguished. Even when in custody Petitioner retained this nearly unfettered inalienable right. Here, Petitioner is not supposed to be under any state supervision since he has completed both the sentence and supervision phase of his convictions and is a free citizen. Petitioner should be afforded the State’s full constitutional protections for his safety.

70. Additionally, it is inevitable that this will continue to occur in the future from not only the public and his neighbors, but from any future neighbors that move into his proximity, or the new community if he wishes to relocate, and even in the digital social media world. Petitioner, and his family members, also face real potential from targeted acts of violence no matter where Petitioner decides to relocate and will follow him everywhere if his information remains posted on the Megan’s Law Website. Such instances of targeted brutal attacks have been happening across the country and have become common place, as documented extensively *infra*.

71. Petitioner has not moved in over ten years, not because he likes where he lives, he does not, but

because he is afraid of even worse inevitable vandalism, verbal harassment, or vigilantism targeted against himself, and his family members, from any new community and neighbors in which he moves, and rightly so.

72. Also, as detailed *infra*, California is the gatekeeper to its SORA, if Petitioner is required to register in his state, Petitioner falls under International Megan's Law (IML) which makes him fear any international travel because he could be detained or killed in a foreign country based on what our government tells the destination country and the sex offender mark on his passport stating that "The bearer was convicted of a sex offense against a minor and is a covered sex offender pursuant to 22 United States Code Section 212b(c)(l)."

DOCUMENTED VIGILANTISM CAUSING GREAT BODILY INJURY AND DEATH

73. Vigilantism against-sex offenders causing great bodily injury and even death following community notification is well-documented. The following are just a small sample of examples of targeted vigilantism against registered sex offenders by perpetrators that used the Megan's Law Website to identify and locate their victims.

- **From Oxygen.com**. "Nebraska Vigilante Faces Life Sentence for Killing Neighborhood Sex Offender. James Fairbanks claimed that he wanted to stop Mattieo Condoluci, a twice-convicted sex offender, from striking again, but prosecutors claimed that he specifically searched for a sex offender to kill."
- **Omaha Man Gets Prison for Fatal Shooting of Sex Offender.** "Omaha Man Gets Prison for Fatal Shooting of Sex Offender. A 44-year-old Omaha man who police say was "hunting" sex offenders when he fatally shot a man last year in a vigilante killing has been sentenced to up to 70 years in prison.
- **The Daily Breeze**. "3 men receive 15 years to life for killing registered sex offender in Redondo Beach."
- **San Bernardino Sun.** "In April 2010, a man trolling the Megan's Law database, later identified by police as 24-year-old David Jordan Griffin, obtained the home addresses of Lindsay and another sex offender off the Megan's Law [W]ebsite and paid a visit to their homes, according to Lindsay and published news reports. Lindsay said he returned home to find Griffin standing in his dining room, a framing hammer in one hand and a 3-pound sledge hammer in the other. Griffin attacked Lindsay, who backed out his front door and tumbled backward over a stair railing during the struggle. Lindsay said he shielded Griffin's blows with his hand until a neighbor came to his aid and scared Griffin off."
- **The Daily Telegram**. "Trial in double murder of sex offenders in Adrian delayed until May. A trial in

the case of a Morenci man who is accused of shooting to death two registered sex offenders and committing other crimes almost a year ago has been delayed again."

- **The Santa Rosa Press Democrat**. "A Lake County man was sentenced Wednesday to 32-years-to-life in prison for killing a neighbor he mistook for a convicted child molester. Ivan Oliver, 34, was convicted two weeks ago by a jury of first-degree murder for stabbing Michael Dodele 65 times at a Lakeport mobile home park."
- **The Atlantic.** The Vigilante of Clallam County Patrick Drum "was tired of seeing sex offenders hurt children. So, he decided to kill them. As far as Drum was concerned, he had been protecting the community's children when he murdered Paul Ray's son and Leslie Blanton's husband. He may have killed two sex offenders in June of that year, but he had set out to kill sixty more."
- **NPR News. "**In Washington state, a man has admitted killing two sex offenders in the town of Bellingham last month. Thirty-six-year-old Michael Mullen turned himself in on Labor Day. Especially disturbing for the authorities is the fact that Mullen apparently picked his victims using the sheriff department's community notification Web site."
- **The Bangor Daily News**. "In 2006 two men listed on Maine's sex offender registry were targeted and murdered by a Canadian man "who found the offenders' personal information on Maine's online registry which prompted Maine authorities to briefly remove the state's online sex-offender registry because of concerns that such websites may encourage vigilante-style justice"
- **The New York Post.** "Husband and wife 'vigilante' team kill two—"planned to work their way through sex offender registry 'hit list'" Detailed *infra* at xii b).
- **All News Nation.** "According to Alfred NG of NY Daily News, using Anchorage's public online sex offender registry to locate up to three offenders, Jason Vukovich allegedly broke into his victims' homes and bashed in their heads with a hammer in June." Detailed *infra* at xii e).
- **Prison Legal News**. Vigilantes Assault, Rob and Murder Registered Sex Offenders.

"*PLN* believes these incidents are more widespread and occur with greater frequency than reported in the mainstream media. [See, e.g.: *PLN*, Sept. 2016, p.49; June 2015, p.63; Feb. 2013, p.50; April 2007, p.18].

- **In August 2011**, John Joseph Huffmaster, 29, of Hazelwood, Missouri, was charged with assaulting his 74-year-old neighbor with a hammer because the neighbor was on a sex offender registry. Huffmaster, who entered the victim's home by asking for a cup of sugar, called police after the attack to claim he was "doing God's work." Police found the victim, semi-conscious and bleeding, with multiple skull and facial fractures.
- **On July 21, 2013**, Jeremy and Christine Moody, husband and wife, murdered Charles "Butch" Parker, 59, and Gretchen Parker, 51, in South Carolina. Charles was a registered sex offender; both he and Gretchen had been shot and stabbed multiple times. The Moodys were identified from the Parkers' home surveillance video. The video recorded Jeremy Moody telling Charles, "I'm not here to rob you. I'm here to kill you because you're a child molester."

  Christine Moody told TV reporters that Charles Parker was a "pedophile" and a "demon." Jeremy Moody confessed to deputies that he had killed Charles because he was a registered sex offender, and murdered Gretchen because she lived with him. He admitted to targeting other registered sex offenders and said he would have killed another on his "hit list" a few days later had he not been arrested. The Moodys pleaded guilty and received consecutive life sentences.
- **David Ray Mills**, 36, his l6-year-old daughter and Andre Edwin Dickerson, 20, were charged in a January 2013 attack on Miguel Esteban Cruz, 21, whom the daughter accused of raping her. They allegedly lured Cruz to a park in Temecula, California, where Dickerson beat him with a baseball bat while the others watched. Cruz suffered skull fractures, broken bones, missing teeth, and a lung injury. The three assailants were charged with attempted murder and mayhem and held on $1 million bail each. Cruz had been charged with sodomy with a minor; he allegedly had sex with the girl after she passed out drunk on his couch.
- **In July 2015**, Nebraska registered sex offender Phillip McDaniel lost his appeal seeking workers compensation for an attack that had occurred two years earlier at the Western Sugar Cooperative, when a co-worker assaulted him with a brass hammer while calling him a "chimo" – slang for "child molester."

  The co-worker, Jason Bates, had become enraged after discovering that McDaniel was a registered sex offender. McDaniel suffered injuries to his nose, clavicle, and left shoulder. He applied

for workers compensation but was denied; after he appealed, the Nebraska Court of Appeals upheld the denial, finding that the attack was due to personal reasons even if the only relationship between the two was as co-workers. See: *McDaniel v. Western Sugar Coop.,* 23 Neb. App. 35, 867 N.W.2d 302 (Neb. Ct. App. 2015).

- **On June 25, 2016**, Anchorage, Alaska police arrested Jason Vukovich, 41, for assaulting three registered sex offenders. The first victim, Charles Albee, told police a man with "shoulder-length hair and a black leather jacket" broke into his apartment, assaulted him and robbed him. The man knew his name and told him he was there because Albee was on the registry. He also showed Albee a notebook with a list of additional potential victims.

  Two days later, a man matching the same description and carrying a hammer attacked registered sex offender Andres Barbosa. Barbosa said two women accompanied the man, who said he was there because of Barbosa's "past crimes."

  Then on June 29, 2016, Wesley Demarest and Stanley Brown reported a man had broken into their home and attacked Demarest with a hammer, severely injuring him.

  Vukovich was arrested after a traffic stop near the last crime scene. Police discovered a notebook with other victims' names and items stolen from their homes in his car; he was charged with multiple felonies and faces up to 35 years in prison.

  The details of the assault on Demarest are chilling. At one o'clock in the morning, Brown awakened to the sound of glass shattering in the entryway of his home. He ran to Demarest's room to tell him someone was breaking in, but Vukovich was right behind him. Vukovich told Demarest to confirm his name and that he was a registered sex offender – for a crime for which he had served nine months, ten years earlier.

  "He told me to lay down on my bed and I said 'no.' He said 'get on your knees' and I said 'no.' He said, 'I am an avenging angel, I'm going to mete out justice for the people you hurt,'" Demarest stated.

  Then Vukovich hit him in the head with the hammer four or five times before Demarest lost consciousness. Vukovich fled and Brown called 911. Weeks later, Demarest was still recovering from a fractured skull and unable to return to work.

- **In January 2017**, police in Macon County, Illinois finally caught up with Samuel Henson, 19, who is a

suspect in the 2015 beating of a 53-year-old registered sex offender. Henson, who was a student at Lincoln College of Technology in Indianapolis, is accused of committing the assault with two other teenagers. His bond was set at $10,000. “He acknowledged knowing that the [victim] was a sex offender,” police said, “and that the three subjects involved had discussed battering him when they saw him walking down the street.”

- **In Great Falls, Montana**, Tracy Lynn Bossie was charged with one count of assault with a weapon, a felony, for the 2016 stabbing of relative Wallace Bossie, Jr., who had been charged with four felony sex crimes involving other relatives, all minors. Police reported multiple confrontations between the two adult Bossies in the weeks before the stabbing.

AFFIDAVITS DOCUMENTING VANDALISM, VERBAL HARASSMENT AND THREATS OF VIOLENCE TOWARDS PETITIONER AND HIS FAMILY MEMBERS

74. Indeed, acts of vandalism, verbal harassment, and threats of violence have already occurred to Petitioner and his family members. The following are just some samples of what has occurred to Petitioner and his family members, as stated in Petitioner’s affidavit, the majority of which are collaborated by credible sources in their sworn affidavits. *Id*.

- **“On August l3, 20l1,** my wife and I were verbally and physically threatened when an older male, Michael Jenkins, proceeded to verbally assault my wife as she was exiting her vehicle. My wife came into our apartment in tears and apparent extreme stress/fear and told me that some guy was harassing her son and her when they were exiting her vehicle. I went out on my front porch to see who it was and what they were doing in relation to our vehicles (since our vehicles have been vandalized on several occasions) and to tell Jenkins to leave her alone only to have Mr. Jenkins screaming at me that *I was or Megan's Law' so " I must be some kind of 'expletives'" and if I come down the stairs he was going to physically attack me, I told him please do not harass my wife (then finance) and to stop yelling my business to the entire complex. He then asked me to come downstairs and talk about it like men, so I went downstairs, at which point he continued to scream that I was on Megan's Law and other expletive and pace around the parking lot all the while asking me to "make a move" and that he would "let his dogs lose (referring to his fist)". I told my wife to call the police and after nearly 30 minutes of Mr. Jenkins screaming at me the police finally arrived. The officer informed my wife and I that he warned

Jenkins to stop harassing us (my wife and I) or he would "get in trouble" and informed Jenkins that he had to leave the complex that was all he could do and left. Mr. Jenkins proceeded to pace back and forth in an extremely agitated state espousing more expletives, including the fact that I was on Megan's Law before leaving the complex. Mr. Jenkin's, I assume what are his relatives or friends, live adjacent from me so this harassment continued for several months before he finally stopped coming around."

- **"On or around March 2012**, I was being verbally harassed by another male that moved into an apartment across the parking lot from me. For several months and on multiple occasions, when I exited my residence, the assailant would pace around on his porch and state "expletives", and that I was on "Megan's Lau/' and that I *should watch my back". On another occasion the assailant threw a glass bottle at me. I did not call the police since the police did nothing the previous incident and stated, "we can't do anything" and I did not inform my wife since I did not want to put my wife's health at risk by stressing her even worse than she was already being subjected to. I had to check on her for months every time she left or returned to our residence until the guy finally moved out to be sure the guy did not harm or harass her."
- **"On or around June 2014**, I was verbally harassed by a male that moved into the apartment directly across from mine. The day he moved in he was out in the parking lot yelling out of the blue that'1hink god there are no 290's (registrant penal code number) living here' and "no one from Megan's Law better be living here". I brought it to the attention of the Homeowners Association (HOA) property management who proceeded to have words with the guy whom stopped yelling in the parking lot. The perpetrator then proceeded to yell at me from his porch on several different occasions that I "need to move" and that this was his hood now and all Megan's Law and 290's have to go" before finally moving out after several months."
- **"On October 20, 2014**, my wife and I were verbally harassed and had what I would consider hate speech and threats written on our porch and staircase that stated, "sex offender" with an arrow pointing at the stairs at my apartment, and "child molester" (which I proceeded to erase before my neighbor could see it) and other expletives and threats against my wife on our porch. We called the police and the police informed us that they talked to who they stated they believed were the culprits and told them and their parents (since as far as I know they were all teenagers) to stop harassing us and that was all we can do.

This verbal harassment continued for several months until the perpetrators, I presume finally moved."

- **"On or around November 2015,** I was being verbally harassed by two young girls (which I believed to be approximately eight to twelve years old) whom which were dancing around in the parking lot singing "pedophile, pedophile' and "you're on Megan's law, you're on Megan's Law" for several days almost every time I saw them in my parking lot. Only after repeatedly telling them to stop when one of my friends heard them when I was exiting my apartment and entering my vehicle did I inform the HOA property manager, and his roommate, that these kids were harassing me, at which point the property manager went and talked to what I presumed were the adult relatives in order to make them stop. This continued on sporadic occasions for several months and eventually stopped completely after they to finally moved."
- **"On or around June 2016**, I was verbally attacked and physically threatened when a young male approximately eighteen to twenty years old (at least I assumed he was approximately that age by his appearance) began yelling at me that I was "on Megan's Law' and that I was an expletive" several times and told me that I better watch my back" once again and that he and his "homey's" will "beat the expletive" out of me if they catch me alone in the dark". I really do not walk around outside of my apartment because of these specific reasons so I chose to just ignore this guy and after about six times of this same type of scenario occurred the guy finally stopped coming around our apartment complex."

75. Petitioner has been hit with a rock in the chest (for which he sought medical care), has endured multiple more incidents where he was verbally harassed and physically threatened, has repeatably had his vehicles vandalized and Petitioner will swear under oath detailing these other incidents if the Court so desires. Petitioner can detail numerous other incidents revolving around his registration status but has since stopped documenting them as these have become so routine and commonplace. Petitioner should not have to wait until he or his family members are subjected to great bodily injury or death to get relief from this real and present danger.

PLANTIFF'S FAMILY MEMBERS WILL CONTINUE TO EXPERIENCE VANDALISM, VERBAL HARASSMENT OR PHYSICAL ASSAULTS

76. SORA's public notification creates dangerous situations for his family members as well. Family members living with an RSO are more likely to experience threats and harassment by neighbors. Children of

RSOs experienced adverse consequences including stigmatization and differential treatment by teachers and classmates. More than half had experienced ridicule, teasing, depression, anxiety, fear, or anger. Unintended consequences can impact family members' ability to support RSOs in their efforts to avoid recidivism and successfully reintegrate.

CLEAR NEXUS BETWEEN THE MEGAN'S LAW WEBSITE AND TARGETED VIGILANTISM

77. There is a clear nexus between the State's dissemination of Petitioner's information and the potential for vigilantism and retaliation against him, as demonstrated and documented above. Undoubtedly, if the State did not compile and disseminate Petitioner's sex offender label or status, address, and other personal identifying information, over the Internet on the Megan's Law Website few would know of Petitioner's status, location, or description thereby decreasing the opportunity for public retaliation against him.

78. Once again, the nexus to the danger Petitioner, and his family members, is exposed to is undeniably established and directly linked to the Respondent's actions through the California Megan's Law Website.

LACK OF ADEQUATE PROTECTIONS FROM ACTS OF VANDALISM, VERBAL HARASSMENT AND VIGILANTISM

79. Public notification and warnings practically beg for acts of retaliation from a community that fails to understand the offender's mental state or risk to society (if any) and fails to acknowledge the fact that offenders have been living in their communities and neighborhoods for years.

80. These laws do not provide offenders adequate protection from acts of vigilantism that is happening because of the State's continuous public notification of Petitioner's information. The only measure the California legislature has employed to combat acts of vigilantism against sex offenders is on its sex offender notification website. On this website, the following disclaimer appears:

> The information on this web site is made available solely to protect the public.
> Anyone who uses this information to commit a crime or to harass an offender or
> his or her family is subject to criminal prosecution and civil liability.

81. This disclaimer argument is devoid of merit. For one, surely this disclaimer will not deter an individual from committing an act of violence against an offender if that individual truly desires to do so, as is happening all over the country. Moreover, this disclaimer illustrates that the State knows a risk to registrants exist and that vigilantes are likely to use that information to locate and to harm those particular individuals.

82. Although the disclaimer solves nothing, it does bring into question whether the Respondent is acting

with “deliberate indifference” and “reckless disregard” in the publication of Petitioner’s home address information, current photo, and physical description, along with the stigmatization of being labeled an inherently dangerous sex offender on the Government run Megan’s Law Website knowing that there is a real, present, and nearly inevitable potential for vigilantism that can result in serious bodily injury or even death.

83. Petitioner obviously cannot pursue or obtain safety for himself, or his family members, when the state is putting his information out there on the Internet Website and projecting a level of inherent dangerousness to the public, online and worldwide, along with all the information needed to harass or inflict harm to him and his family members.

84. This violation of Petitioner’s fundamental right to pursue and obtain safety undoubtedly requires strict scrutiny, which SORA fails to withstand. This substantive due process violation will continue to occur unless this Court grants Petitioner relief.

REMENDY FOR VIOLATION OF PETITIONER’S FUNDAMENTAL RIGHT TO PURSUE AND OBTAIN SAFETY

85. The California Constitution explicitly states there is a fundamental right in “pursuing and obtaining safety.”

86. The only cure to this substantive due process violation is order Respondent to remove Petitioner’s information from the publicly accessible Megan’s Law Website and CSAR data base. The State’s interest can never outweigh the Petitioner’s interest in “pursuing and obtaining safety” except under very narrowly defined instances such as the application of the death penalty.

III. THIRD CLAIM

PLANITIFF HAS A SUBSTANTIVE DUE PROCESS RIGHT TO BE FREE FROM OPPRESSIVE, UNREASONABLE AND ARBITRARY OFFICIAL ACTION

87. Although it is admittedly an impossibly high bar to clear Petitioner can, and is, demonstrating hereinafter with the government’s own authorities and data, as well as authorities in the judiciary and academic communities, that California’s new SORA Laws are oppressive, unreasonable, and arbitrary.

88. SORA is oppressive because of the severe collateral consequences, as described below and in **Claim One** and **Two**, and creates affirmative disabilities and direct restraints as discussed hereinafter.

89. SORA is unreasonable because the justification for these SORA laws is based on the unsupported

conclusions that sex offenders have recidivism rates as high as 80%, and that these individuals pose a frightening and high risk to public safety, which has been conclusively refuted.

90. SORA is arbitrary because SORA is not only oppressive and unreasonable, also because there is consensus that the necessity, justification, and effectiveness are not supported by reality.

91. Sex offender registration laws have been around for decades. Courts have assumed that it is rational to apply SORA to individuals convicted of a sexual offense because of the serious nature of the offenses, because sex offenders pose a frightening and high risk of re-offense, and that SORA furthers the states interest in public safety. The problem is, as explained hereinafter, these assumptions are subjective and not supported by reality.

92. California's SORA as-applied to Petitioner cannot survive constitutional scrutiny, especially strict scrutiny, which Petitioner contends applies in this case because of the significant violations of Petitioner's fundamental rights as discussed above in **Claim One** and **Two,** and hereinafter.

SEVERE COLLATERAL CONSEQUENCES, AS DESCRIBED ABOVE IN CLAIM ONE AND TWO, AND BELOW

THE ALASKA AND HAWAII SUPREME COURTS

93. The Alaska Supreme Court, when considering its State's similar ASORA, in *Doe v. Alaska Dept. of Pub. Safety* states,

> Our case law has identified the serious harms that can result from internet publication of information concerning a sex offender. In *Doe v. State, Dep't of Pub. Safety*, (*Doe 04*) we noted that the consequences flowing from registration were "potentially destructive" and included: loss of employment, being forced to move, threats of violence and actual violence, difficulty locating places to reside and work, and being "subjected to protests and group actions designed to force [offenders] out of their jobs and homes." 92 P.3d 398, 410 (Alaska 2004).

> In Doe 08 we noted our agreement with the observation that ASORA "exposes registrants, through aggressive public notification of their crimes, to profound humiliation and community-wide ostracism." 189 P.3d 999, 1009 (Alaska 2008). We also endorsed the observation that "by posting registrants' names, addresses, and employer addresses on the internet, the Act subjects registrants to community obloquy and scorn that damage them personally and professionally," and that "the practical effect of this dissemination is that it leaves open the possibility that the registrant will be denied employment and housing opportunities as a result of community hostility." Id. at 1009–10 (alterations omitted) (first quoting *Doe I v. Otte* , 259 F.3d 979, 987 (9th Cir. 2001), rev'd sub nom. *Smith v. Doe* , 538 U.S. 84, 123, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003) ; then citing id. at 988)

> We stated in *Doe 08* that "[o]utside Alaska, there have been reports of incidents of suicide by

and vigilantism against offenders on state registries." 189 P.3d at 1010. Subsequent to the publication of *Doe 08*, there have been reports that registrants in Alaska have been targeted for home invasion, robbery, and beating. See Tegan Hanlon, Man Charged with Assaulting 3 in Anchorage After Finding Addresses on SexOffender Registry, Anchorage Daily News (July 27, 2016), https://www.adn.com/alaska-news/crime-courts/2016/07/27/man-charged-with-assaulting-3-people-in-anchorage/.

94. The consequences Petitioner similarly endures was stated well in *State v. Bani*,

First, Bani has demonstrated that the public notification provisions of HRS chapter 846E will likely cause harm to his reputation. The statute effectively brands Bani a "sex offender," i.e., a public danger, for life. See *Doe v. Pataki*, 3 F.Supp.2d 456, 467 (S.D.N.Y.1998) [hereinafter *Pataki III*]; *Doe v. Attorney General*, 426 Mass. 136, 686 N.E.2d 1007, 1013 (1997) [hereinafter *Doe II*]; see also *Bohn v. County of Dakota*, 772 F.2d 1433, 1436 n. 4 (8th Cir.1985), cert. denied, 475 U.S. 1014, 106 S. Ct. 1192, 89 L.Ed.2d 307 (1986).

Specifically, HRS chapter 846E's public notification provisions imply that Bani is potentially dangerous, thereby undermining his reputation and standing in the community. *Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367, 419 (1995); cf. *Neal v. Shimoda*, 131 F.3d 818, 829 (9th Cir.1997) (noting that "[o]ne need only look to the increasingly popular 'Megan's laws,' whereby states require sex offenders to register with law enforcement officials who are then authorized to release information about the sex offender to the public, to comprehend the stigmatizing consequences of being labeled a sex offender"). Indeed, public notification that Bani is a convicted sex offender implicitly announces that, in the eyes of the State, Bani presents a risk of committing another sex offense. *Doe II*, 686 N.E.2d at 1013.

Second, Bani will foreseeably suffer serious harm to other "tangible interests" as a result of registration as a sex offender. Potential employers and landlords will foreseeably be reluctant to employ or rent to Bani once they learn of his status as a "sex offender." See *Pataki III*, 3 F.Supp.2d at 468; *W.P. v. Poritz*, 931 F.Supp. 1199, 1219 (D.N.J.1996), rev'd, 119 F.3d 1077 (3d Cir.1997), cert. denied, 522 U.S. 1110, 118 S.Ct. 1039, 140 L.Ed.2d 105 (1998) [hereinafter *Verniero*]; see also *In re Reed*, 33 Cal.3d 914, 191 Cal.Rptr. 658, 663 P.2d 216 (1983) (quoting *In re Birch*, 10 Cal.3d 314, 110 Cal.Rptr. 212, 515 P.2d 12 (1973)).[8] Indeed, the public disclosure provisions of HRS chapter 846E can adversely affect an offender's personal and professional life, employability, associations with neighbors, and choice of housing. *Noble v. Board of Parole and Post-Prison Supervision*, 327 Or. 485, 964 P.2d 990, 995-96 (1998); *State v. Myers*, 260 Kan. 669, 923 P.2d 1024, 1041 (1996), cert. denied, 521 U.S. 1118, 117 S.Ct. 2508, 138 L.Ed.2d 1012 (1997); *Rowe v. Burton*, 884 F.Supp. 1372, 1378 (D.Alaska 1994), appeal dismissed, 85 F.3d 635, 1996 WL 252825 (9th Cir.1996) (personal and professional lives); *Artway v. Attorney General*, 876 F.Supp. 666, 668 (D.N.J.1995), aff'd in part and vacated in part, 81 F.3d 1235 (3d Cir.), reh'g denied, 83 F.3d 594 (1996) (employability and associations with neighbors); Robin L. Deems, Comment, California's Sex Offender Notification Statute: A Constitutional Analysis, 33 San Diego L.Rev. 1195 (1996) (citing Jenny A. Montana, Note, An Ineffective Weapon in the Fight Against Child Sexual Abuse: New Jersey's Megan's Law, 3 J.L. & Pol'y 569, 580-81 (1995)) (choice of housing). In addition, public disclosure may encourage vigilantism and may expose the offender to possible physical violence.[9] See, e.g., *Poritz*, 662 A.2d at 430-31 (Stein, J., dissenting); *Pataki I*, 940 F.Supp. 603, 608-11 (S.D.N.Y.1996); *Doe v. Gregoire*, 960 F.Supp. 1478, 1485 (W.D.Wash.1997).

Indeed,[w]hen a government agency focuses its machinery on the task of determining whether a person should be labeled publicly as having a certain undesirable characteristic or belonging to a certain undesirable group, and that agency must by law gather and synthesize evidence outside

the public record in making that determination, the interest of the person to be labeled goes beyond mere reputation. [I]t is an interest in avoiding the social ostracism, loss of employment opportunities, and significant likelihood of verbal and, perhaps, even physical harassment likely to follow from designation.

PETITIONER MUST INVOLUNTARILY COMPLY WITH SORA'S REQUIREMENTS, RULES, OR OTHER STATE OR FEDERAL STATUTES

95. Petitioner is subject to federal and state statutes that requires him to involuntarily provide an extensive list of private and personal information at innumerable, frequent, and onerous in-person reporting for a plethora reasons to not only local law enforcement at a secured location, but also to the federal government, and to multiple private entities.

State statutes,

96. Per California's SORA, Petitioner is required to report in-person a plethora of information once a year 5 days before or after his birthday, and within 5 days of any change in this information

Cal. P.C. § 290.012. (a) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subdivision (b) of Section 290. At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 290.015. The registering agency shall give the registrant a copy of the registration requirements from the Department of Justice form.

Cal. P.C. § 290.015.

(a) A person who is subject to the act shall register, or reregister if the person has previously registered, upon release from incarceration, placement, commitment, or release on probation pursuant to subdivision (b) of Section 290. This section shall not apply to a person who is incarcerated for less than 30 days if he or she has registered as required by the act, he or she returns after incarceration to the last registered address, and the annual update of registration that is required to occur within five working days of his or her birthday, pursuant to subdivision (a) of Section 290.012, did not fall within that incarceration period. The registration shall consist of all of the following:

(1) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(2) The fingerprints and a current photograph of the person taken by the registering official.

(3) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(4) A list of any and all Internet identifiers established or used by the person.

(5) A list of any and all Internet service providers used by the person.

97. **SORA's required information per the Department of Justice form,**

- Full name of registrant-Last First Middle Suffix-Aliases.
- Date of birth.
- Driver's license number-State-Expiration date.
- Social security number.
- Sex, Race, Hair color, Eye color; Height, Place of birth.
- New or modified scars-marks-tattoos-and other characteristics not in CSAR-Location-description-picture-text.

- Phone number, Work phone number, Cellular phone number.
- Address-Street Number and Name Apt./Unit Number-City-State-Zip code-Dwelling type-Single Family Residence Apartment / Condominium Hotel / Motel/Other.
- Licensed facility-facility type-location(s)-frequented by transient.
- Additional registration address-Residence-Campus Employment-Street Number and Name-Apt./Unit Number-city-state-zip code-dwelling type-Single Family Residence Apartment / Condominium Hotel / Motel.
- Other-Attending Employed Volunteer-Campus name/address-street number and name-city-state-zip code.
- Related address (e.g., Mailing, Emergency Contact)-date related address-Street Number and Name-Apt./Unit Number-City-Zip Code-Related address type (Mailing Emergency GPS Charging Location).
- Emergency contact-Relationship to contact (e.g., Mother, Father) Related address (e.g., Mailing, Emergency Contact)-Street Number and Name-Apt./Unit Number-City-Zip Code.
- Occupation-Employer's address-Street Number and Name-Suite/Unit Number-City-Zip Code.

- Work address (If different than Employer's Address)-Street Number and Name-Suite/Unit Number-City-Zip Code.

- Vehicles owned-registered-or regularly driven-Identification number (VIN)-License plate number-Type-Year of expiration-vehicle year make model-Style/color.

98. Since Petitioner is a Grandfather of school age children ranging in age of 4-14 years-old he is subject to Cal. P.C. 626.81.

99. **Petitioner must notify and get permission before entering school grounds,**

Cal. P.C. 626.81.

(a) A person who is required to register as a sex offender pursuant to Section 290, who comes into any school building or upon any school ground without lawful business thereon and written permission indicating the date or dates and times for which permission has been granted from the chief administrative official of that school, is guilty of a misdemeanor.

(b) (1) The chief administrative official of a school may grant a person who is subject to this section and not a family member of a pupil who attends that school, permission to come into a school building or upon the school grounds to volunteer at the school, provided that, notwithstanding subdivisions (a) and (c) of Section 290.45, at least 14 days prior to the first date for which permission has been granted, the chief administrative official notifies or causes to be notified the parent or guardian of each child attending the school that a person who is required to register as a sex offender pursuant to Section 290 has been granted permission to come into a school building or upon school grounds, the date or dates and times for which permission has been granted, and his or her right to obtain information regarding the person from a designated law enforcement entity pursuant to Section 290.45. The notice required by this paragraph shall be provided by one of the methods identified in Section 48981 of the Education Code.

(2) Any chief administrative official or school employee who in good faith disseminates the notification and information as required by paragraph (1) shall be immune from civil liability for action taken in accordance with that paragraph.

100. Since Petitioner's health is not the greatest, he will inevitably be admitted to a community care facility in the foreseeable future, Petitioner will predictably be negatively affected by similar collateral consequences related to SORA and Health & Saf. Code, § 1522.01.

101. **Registrants Must Disclose Status as Registrant to Community Care Facility**

Health & Saf. Code, § 1522.01.

(a) Any person required to be registered as a sex offender under Section 290 of the Penal Code shall disclose this fact to the licensee of a community care facility before becoming a client of that facility. A community care facility client who fails to disclose to the licensee his or her status as a registered sex offender shall be guilty of a misdemeanor punishable pursuant to subdivision (a) of Section 1540. The community care facility licensee shall not be liable if the client who is required to register as a sex offender fails to disclose this fact to the community care facility licensee. However, this immunity does not apply if the community care facility licensee knew that the client was required to register as a sex offender.

(b) Any person or persons operating, pursuant to this chapter, a community care facility that accepts as a client an individual who is required to be registered as a sex offender under Section 290 of the Penal Code shall confirm or deny whether any client of the facility is a registered sex offender in response to any person who inquires whether any client of the facility is a registered sex offender and who meets any of the following criteria:

(1) The person is the parent, family member, or guardian of a child residing within a one-mile radius of the facility.

(2) The person occupies a personal residence within a one-mile radius of the facility.

(3) The person operates a business within a one-mile radius of the facility.

(4) The person is currently a client within the facility or a family member of a client within the facility.

(5) The person is applying for placement in the facility, or placement of a family member in the facility.

(6) The person is arranging for a client to be placed in the facility.

(7) The person is a law enforcement officer.

If the community care facility licensee indicates a client is a registered sex offender, the interested person may describe physical characteristics of a client and the facility shall disclose that client's name upon request, if the physical description matches the client. The facility shall also advise the interested person that information about registered sex offenders is available to the public via the Internet Web site maintained by the Department of Justice pursuant to Section 290.46 of the Penal Code.

BECAUSE PETITIONER IS REQUIRED TO REGISTER IN CALIFORNIA PURSUANT TO SORA,

HE IS ALSO REQUIRED TO COMPLY WITH FEDERAL STATUTES

Federal Statutes,

102. The Sex Offender Registration and Notification Act ("SORNA"), which is title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, 34 U.S.C. 20901 *et seq*.,

34 U.S.C §20913. Registry requirements for sex offenders

(a) In general

A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

(b) Initial registration

The sex offender shall initially register—

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

(2) not later than 3 business days after being sentenced for that offense if the sex offender is not sentenced to a term of imprisonment.

(c) Keeping the registration current

A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

(e) State penalty for failure to comply

Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply

with the requirements of this subchapter.

§20914. Information required in registration

(a) Provided by the offender

The sex offender shall provide the following information to the appropriate official for inclusion in the sex offender registry:

(1) The name of the sex offender (including any alias used by the individual).

(2) The Social Security number of the sex offender.

(3) The address of each residence at which the sex offender resides or will reside.

(4) The name and address of any place where the sex offender is an employee or will be an employee.

(5) The name and address of any place where the sex offender is a student or will be a student.

(6) The license plate number and a description of any vehicle owned or operated by the sex offender.

(7) Information relating to intended travel of the sex offender outside the United States, including any anticipated dates and places of departure, arrival, or return, carrier and flight numbers for air travel, destination country and address or other contact information therein, means and purpose of travel, and any other itinerary or other travel-related information required by the Attorney General.

(8) Any other information required by the Attorney General.

(b) Provided by the jurisdiction

The jurisdiction in which the sex offender registers shall ensure that the following information is included in the registry for that sex offender:

(1) A physical description of the sex offender.

(2) The text of the provision of law defining the criminal offense for which the sex offender is registered.

(3) The criminal history of the sex offender, including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender.

(4) A current photograph of the sex offender.

(5) A set of fingerprints and palm prints of the sex offender.

(6) A DNA sample of the sex offender.

(7) A photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.

(8) Any other information required by the Attorney General.

§20916. Direction to the Attorney General

(a) Requirement that sex offenders provide certain Internet related information to sex offender registries

The Attorney General, using the authority provided in section 114(a)(7) [1] of the Sex Offender Registration and Notification Act [34 U.S.C. 20914(a)(7)], shall require that each sex offender provide to the sex offender registry those Internet identifiers the sex offender uses or will use of any type that the Attorney General determines to be appropriate under that Act [34 U.S.C. 20901 et seq.]. These records of Internet identifiers shall be subject to the Privacy Act (5 U.S.C. 552a) to the same extent as the other records in the National Sex Offender Registry.

§20918. Periodic in person verification

A sex offender shall appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that offender is required to be registered not less frequently than—

(1) each year if the offender is a tier I sex offender;

(2) every 6 months, if the offender is a tier II sex offender; and

(3) every 3 months, if the offender is a tier III sex offender.

103. International Megan’s Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders (IML).

104. As explained by the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering,

and Tracking, Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), requires that registered sex offenders inform registry officials of any intended travel outside of the United States at least 21 days prior to the start of that travel.

105. **The following is just some of the information required by IML**

- Identifying Information: Full name, Alias(es) (if applicable), Date of Birth, Sex, FBI number (for Domestic Law Enforcement use only), Citizenship, Passport number and country.
- Travel information: Destination(s): Dates/places of departure, arrival, and return (if applicable), including the name of the city/town that is the point of departure from each country.
- Means of travel (air, train, ship), Itinerary details (when available), including the name of the airport/train station/port, the flight/train/ship number, the time of departure, the time of arrival and information about any intermediate stops.
- Purpose(s) of Travel, Business, Deportation, Military, Relocation, Other (specify).
- Criminal Record, Date and city, state or jurisdiction of conviction(s), Offense(s) of conviction requiring registration, Victim information: age/gender/relationship, Registration jurisdiction(s) (state, tribe or territory).
- Other, Contact information within destination country, Notifying agency and contact information.

IF RESPONDENT DID NOT REQUIRE PETITIONER TO REGISTER IN CALIFORNIA,

PETITIONER WOULD HAVE AN AFFIRMATIVE DEFENSE FOR ANY FAILURE TO REGISTER

PURSUANT TO FEDERAL SORNA OR IML

106. **Federal SORNA is dependent upon Petitioner Registering in California,**

Title 28 Code of Federal Regulations (CFR) Section 72.8(a)(1)(iii)

A sex offender may have an affirmative defense to liability, as provided in 18 U.S.C. 2250(c), if uncontrollable circumstances prevented the sex offender from complying with SORNA, where the sex offender did not contribute to the creation of those circumstances in reckless disregard of the requirement to comply and complied as soon as the circumstances preventing compliance ceased to exist.

107. **IML is also dependent upon Petitioner Registering in California**

18 U.S.C. §2250. Failure to register

(a) In General—Whoever—

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

(2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

(B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act;

shall be fined under this title or imprisoned not more than 10 years, or both.

(b) International Travel Reporting Violations—Whoever—

(1) is required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.);

(2) knowingly fails to provide information required by the Sex Offender Registration and Notification

Act relating to intended travel in foreign commerce; and

(3) engages or attempts to engage in the intended travel in foreign commerce;

shall be fined under this title, imprisoned not more than 10 years, or both.

(c) Affirmative Defense—In a prosecution for a violation under subsection (a) or (b), it is an affirmative defense that—

(1) uncontrollable circumstances prevented the individual from complying;

(2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and

(3) the individual complied as soon as such circumstances ceased to exist.

OTHER FEDERAL STATUTES DEPENDANT UPON PETITIONER'S REGISTRATION IN CALIFORNIA

108. The United States Equal Employment Opportunity Commission's (EEOC), web site specifically lists government registries like the Sex Offender Registry as valid research tools to deny employment.

109. U.S. Department of Housing and Urban Development (HUD), "requires that all Public Housing Authorities (PHAs) establish lifetime bans on the admission to the Public Housing and Housing Choice Voucher (Tenant-Based Section 8) programs for: Sex offenders subject to a lifetime registration requirement under a State sex offender registration program Pursuant 42 U.S.C. § 13663 - Ineligibility of dangerous sex offenders for admission to public housing (a) In general Notwithstanding any other provision of law, an owner of federally assisted housing shall prohibit admission to such housing for any household that includes any individual who is subject to a lifetime registration requirement under a State sex offender registration program."

110. None of these federal laws are statutorily dependent upon Petitioner's criminal convictions but are instead based solely upon Petitioner's lifetime registration requirements and inclusion of Petitioner's information on the State's Megan's Law Website and CSAR data base. Petitioner is suffering actual injury as well as threatened injury from these state and federal statutes and regulations that are directly traceable to Respondent through the Megan's Law Website and CSAR data base.

111. Even the Federal Dru Sjodin National Sex Offender Public Website (NSOPW) relies solely on and uses the state's Megan's Law Website and CSAR data base for its information which is provided by the jurisdictions of each state.

112. As explained *supra* and below, these statutes, rules, or regulations that target registrants such as Petitioner violate his substantive due process rights for myriad reasons.

AFFIRMATIVE DISABILITIES AND DIRECT RESTRAINTS

113. Petitioner has not traveled intrastate or interstate, where he would be required to stay away from his

home for more than 5 days, in nearly 14 years because of these onerous reporting requirements. Nor has he traveled internationally for the same reasons including because of the passport identifier that not only causes shame and embarrassment when presented, but also for fear for his and his families' safety.

114. Besides just restricting Petitioner's travel plans, Petitioner has had to register with a police officer, in-person and at a secured facility, at least 26 times in just the last six years. Petitioner might not be shackled or handcuffed but he is directly restrained when he is at or in secure police setting for 2-4 hours or more every time he must report. This 2-4 hours does not include the amount of time, financial burden, and direct restraint Petitioner endures in traveling while complying with these in-person reporting requirements

115. Which none of these in-person reporting requirements are supported by any credible authorities, government data, empirical evidence or showing that the Law's requirements are necessary, related to an increase in public safety, or related to an increase in the efficacy of the SORA regime.

116. As the Court in the 6th Circuit stated in *Doe v. Snyder*,

> A regulatory regime that severely restricts where people can live, work, and loiter, that categorizes them into tiers ostensibly corresponding to present dangerousness without any individualized assessment thereof, and that requires time-consuming and cumbersome in-person reporting, all supported by—at best—scant evidence that such restrictions serve the professed purpose of keeping Michigan communities safe, is something altogether different from and more troubling than Alaska's first-generation registry law." "The requirement that registrants make frequent, in-person appearances before law enforcement, moreover, appears to have no relationship to public safety at all." *Id*. "These are direct restraints on personal conduct." *Ibid*. Because of the in-person reporting requirements to law enforcement for a plethora of reasons, there is indeed direct restraint on activity…for no apparent relationship to public safety.

117. Petitioner's conduct is more than just directly restrained; Petitioner is effectively under state supervision and lives in fear of facing lengthy and life devastating prison terms for any violation of SORA, for the rest of his life. This is well after his punishment phase and post punishment state parole supervision has been completed.

118. This is evident and explicitly stated in the rules for the "management" and "supervision" of "all significant aspects of the lives of sex offenders," which is codified in the Penal Code Part 3. of Imprisonment and the Death Penalty [2000-10007], Title 9. Punishment Options [8000-9003], Chapter 3. Section 9000 *et seq*. The relevant section is 9000 (e) which states ""***Supervision***" ***means a specialized approach to the process of overseeing, insofar as authority to do so is granted to the supervising agency, all significant aspects of the lives of sex offenders who are being managed [supervised]***." (emphasis added).

119. Petitioner lives under the thumb of the state and lives in fear of facing lengthy and life devastating

prison terms for any omission of the plethora of required personal information that the State demands at these onerous in-person reporting requirements at the local police or sheriff's departments, for the rest of his life in Petitioner's case. Petitioner would serve at minimum 16 months to 3 years in the state penitentiary for even a minor violation of SORA.

120. Threat of imprisonment, and prisons themselves is and are terrifying consequences that Petitioner never wants to have to endure again. The application and severity of these lengthy prison sentences for anyone with a failure to register (FTR), or any sexually related offense, may possibly be life threatening with the California Department of Correction and Rehabilitation (CDCR) discontinuing Sensitive Needs Yards (SNY) or Protective Custody (PC) in prisons.

121. It is virtually a death sentence at worst, and at minimum a tortuous, inhume, and truly a draconian sentence, to re-enter prison in California under these conditions at this point. Harassment, extortion, mayhem, and death were common even with SNY yards, without SNY or PC yards this is predictable and inevitable, as recently documented.

- **From the Silicon Valley Debug**. "THE MAYHEM OF MERGED YARDS. How a California Prison Policy is Terrorizing the Incarcerated and Their Families. The Non-Designated Programming Facility (NDPF) is a program in which Sensitive Needs Yard (SNY), previously known as Protective Custody (PC) and General Population (GP) inmates are forced to cohabitate and program on a Non-Designated Yard together. Non-Designated programming facilities have been [first] implemented in the fiscal year of 2018-2019."
- **From ABC News**. "Prison Is 'Living Hell' for Pedophiles [any child offender is considered a pedophile as far as the general prison population is concerned]. "Once their crime has become known, they usually don't make it" without protective custody, said Lt. Ken Lewis, a corrections officer and spokesman at California's Los Angeles County State Prison."
- **From 89.3 KPCC Member-supported news for Southern California**. CRIME & JUSTICE. "Sex offenders are known targets of other inmates in prison. And this death is at least the third such apparent homicide of a sex offender in a California prison this month and at least the sixth this year."
- **From Bakersfield.com**. Wasco State Prison: Sex offender killed in cell. Wasco State Prison officials reported a convicted sex offender was killed in his cell on Tuesday, according to a news release from the

California Department of Corrections and Rehabilitation. Scott Gunter, 59, is believed to be the victim of a homicide, according to the release, after he was found unresponsive in his cell shortly after 5 p.m. Prison officials identified his cellmate Eugene Stroud, 44, as the suspect. Gunter, who came to Wasco from San Diego County, began serving a two-year sentence Feb. 23 for failing to register as a sex offender, according to a CDCR news release.

122. Prison was the most horrific and life devastating experience that Petitioner has ever endured. Petitioner absolutely learned his lesson the hardest way possible and will never purposely commit another offense of any kind that can land him back in prison, as he has demonstrated over the past nearly 14 years since release in the community and nearly two decades since his committed offense. Prisons should be reserved for parole violators and those that are committing serious crimes that they either have not been apprehended for or are currently committing, and for people that are a real and imminent threat to public safety. Petitioner is none of these.

123. Neither Petitioner, nor anyone else, should live terrified and in fear of lengthy imprisonment in draconian, hostile, and dangerous environments from their own government every day for the rest of his life for inadvertently omitting personal information that is demanded by the government that must be delivered in-person for a plethora of reasons to a police officer in secured police settings at arbitrary intervals, all because of the commission of a serious criminal offense.in the way distant past.

124. No other ex-offenders, or any other citizen, which are not on local, state, or federal supervision face these types of onerous reporting requirements, severe criminal penalties for even minor violations of, or extreme collateral consequences, because of a so-called regulatory regime.

124. This is especially true since SORA requires Petitioner involuntarily comply without in some way previously opting in, such as obtaining driver’s licenses, home ownership, working thereby paying taxes, banking, commerce, or any other kind of regulated activity.

125. Petitioner also does not attend school functions related to his grandchildren because of the effects it would have on them, as well as Petitioner’s son and daughter, they would become pariahs and be outcast themselves; including being verbally harassed if not physically assaulted. These are not hyperbolic or unreasonable antidotal possibilities but are truly inevitable situations as documented and detailed extensively by countless incidents already detailed and described in the next section.

126. As described *supra*, Petitioner has not moved because of the consequences of threats and violence from his new community. He cannot move in with his son, stepdaughter, sister, brother or any of his family or friends because of the stigma and collateral consequences that flow from being registered, which would in turn be directed to those family members and friends.

127. Just because there are no statutory rules or restrictions in the state of California preventing Petitioner from residing where he wishes, and with whom he wishes, does not mean that these are not direct effects of being on a public registry.

128. Petitioner avoids being outside his residence because of the verbal harassment or physical violence, dreads even leaving and returning home for the same reasons.

129. As already discussed, Petitioner does not use any social media sites.

130. All the above are severe direct restraints and are undeniably, and solely, a direct result of Petitioner's information being included on the Megan's Law Website and in the CSAR data base.

CALIFORNIA SORA ALONE AFFECTS OVER 100,000 REGISTERED INDIVIDUALS AND INUMERABLE FAMILY MEMBERS AND FREINDS

131. California has by far the most registered sex offenders in the nation at 106, 216, according to Worldatlas.com. These laws have affected not just the nearly million registered individuals across the country but is compounded by the injustices endured by the millions more family members and friends that are affected directly, as explained in the American Journal of Criminal Justice, "Family members living with an RSO were more likely to experience threats and harassment by neighbors. Children of RSOs experience adverse consequences including stigmatization and differential treatment by teachers and classmates. More than half had experienced ridicule, teasing, depression, anxiety, fear, or anger. Unintended consequences can impact family members' ability to support RSOs in their efforts to avoid recidivism and successfully reintegrate."

THE UNITED STATES SUPREME COURT'S CRUCIAL MISTAKE ABOUT SEX CRIME STATISTICS

132. Challenges to the registration requirement, and the consequences that flow from it, are usually turned back by federal courts and politicians who often quote Justice Kennedy's dramatic language from the U.S. Supreme Court decision in *McKune v. Lile* describing the recidivism rate for sex offenders as "frightening and high" "as high as 80%."

When convicted sex offenders reenter society, they are much more likely than any other type of

> offender to be rearrested for a new rape or sexual assault. See *id.*, at 27; U. S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997). States thus have a vital interest in rehabilitating convicted sex offenders. [] See U. S. Dept. of Justice, Nat. Institute of Corrections, A Practitioner's Guide to Treating the Incarcerated Male Sex Offender xiii (1988) ("[T]the rate of recidivism of treated sex offenders is fairly consistently estimated to be around 15%," whereas the rate of recidivism of untreated offenders has been estimated to be as high as 80%." "This gives inmates a basis to understand why they are being punished and to identify the traits that cause such a frightening and high risk of recidivism.

133. A Lexis search of legal materials found that phrase "frightening and high" in 91 judicial opinions, as well as briefs in 101 cases.

134. With all due respect to Justice Kennedy, those infamous words from *McKune* stating sex offender recidivism rates are "frightening and high" and as "high as 80%" is used as the factual basis and premise for nearly every SORA law that has been upheld by any court. If those statements were true for the majority of registered offenders, it would be an enormous public safety issue. Fortunately for society, it is demonstrably, overwhelmingly, and patently false.

135. In the landmark decision by the U.S. Supreme Court in *Smith v. Doe,* the Court furthered the false narrative that all released sex offenders pose an extraordinarily high-risk to the public and cited *McKune's* dramatic language,

> Alaska could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism. The legislature's findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. The risk of recidivism posed by sex offenders is "frightening and high." *McKune v. Lile,* 536 U. S. 24, 34 (2002).

136. Unfortunately, proponents, and most importantly the courts, have being associating these horrifying statistics to all sex offenders as a class and have been using this false narrative to justify these ever-expanding SORA laws, all while valid studies by scientists went and continue to go unnoticed, or are completely ignored by both the courts and the legislature.

137. The Supreme Court has been using those false statistics and unconfirmed conclusions, assumptions, or statements to justify law and policy for two decades that significantly affects over 800,000 registrants, and their millions of family members.

- **Ellman, Ira Mark and Ellman, Tara**, ""Frightening and High": The Supreme Court's Crucial Mistake About Sex Crime Statistics" (2015). Constitutional Commentary. 419.""
- **Melissa Hamilton**, "Briefing the Supreme Court: Promoting Science or Myth?," 67 Emory L. J. Online 2021 (2017). "The United States Supreme Court recently ruled in *Packingham v. North Carolina* that

the state's law banning registered sex offenders from using social networking sites was unconstitutional on First Amendment grounds. An issue that has arisen in the case is the state's justification for the ban. North Carolina and thirteen other states represented in a friend of the court brief make three claims concerning the risk of registered sex offenders: (1) sex offenders have a notoriously high rate of sexual recidivism; (2) sex offenders are typically crossover offenders in having both adult and child victims; and (3) sexual predators commonly use social networking sites to lure children for sexual exploitation purposes. The collective states contend that these three claims are supported by scientific evidence and common sense. This Essay outlines how the states misconstrue, and at times misrepresent, the scientific evidence they cite regarding such risk-based claims."

- **From Slate.com** "The Supreme Court's Sex-Offender Jurisprudence Is Based on a Lie. The Supreme Court believes most sex offenders will keep committing sex crimes. Justice Anthony Kennedy found that the state had a compelling interest in regulating sex offenders because the recidivism rate of untreated offenders "has been estimated to be as high as 80 percent." "According to Justice Kennedy, this "frightening and high" recidivism rate, justified conduct by the state that might otherwise fail constitutional muster. The problem is this: The recidivism statistics the court cites are dead wrong as a matter of social scientific fact. The data suggests otherwise." Despite the questionable provenance of the numbers, Justice Kennedy's false declaration in Smith about the "frightening and high" recidivism rates has made its way into the heart of our sex-offender jurisprudence. Lower courts have cited it in nearly a hundred different judicial decisions, justifying everything from requiring offenders to live more than 1,000 feet from schools or playgrounds to banning them from entering any city, county, or state park."
- **The New York Times**, "Did the Supreme Court Base a Ruling on a Myth? The Supreme Court has indeed said the risk that sex offenders will commit new crimes is "frightening and high." That phrase, in a 2003 decision upholding Alaska's sex offender registration law, has been exceptionally influential. It has appeared in more than 100 lower-court opinions, and it has helped justify laws that effectively banish registered sex offenders from many aspects of everyday life. But there is vanishingly little evidence for the Supreme Court's assertion that convicted sex offenders commit new offenses at very high rates."
- **Just Future Project**. "When Junk Science About People Labeled "Sex Offenders" Infects the Supreme

Court | NYT Op-Doc. Indeed, a study by the California Department of Corrections concluded that 91 percent of sex offenders returned to California prisons were returned for these technical violations, while only 1.8 percent were returned as a result of having committed a new sex crime. In short, the entire scheme of registration and restriction that the Supreme Court condoned 15 years ago in *McKune v. Lile* has done enormous violence to a huge number of Americans now branded forever as sex offenders." "More than 800,000 Americans have needlessly suffered humiliation, ostracism, banishment re-incarceration and civil commitment thanks to a judicial opinion grounded in an unsourced, unscientific study."

138. There is no doubt that these laws are in fact based on the false assumption that all released sex offenders pose an extremely significant risk to public safety and that recidivism rates for these individuals are "frightening and high" as high as "80%" As discussed and demonstrated above and below those assumptions and statistics were and are erroneous by order of magnitude.

139. For example, sex offender recidivism rates are around 1% in their first year of release according to the state's own authorities.

THE REAL FACTS AND DATA ON SEX OFFENDER RECIDIVISM

- **California Department of Corrections and Rehabilitation 2017 Outcome Evaluation Report:** An

Examination of Offenders Released in Fiscal Year 2012-13. "Of the 3,313 sex-registrants in the FY

2012-13 release cohort, 1.2%, of the total released were convicted of a new sex offense. [p. 41]."

- **California Department of Corrections and Rehabilitation 2016 Outcome Evaluation Report:** An

Examination of Offenders Released in Fiscal Year 2011-12. “Of the 7,217 offenders required to register as sex offenders and released during FY 2011-12, 1.2% were convicted of a new sex offense. [p. 35].”

- **California Department of Corrections 2015 Outcome Evaluation Report**; An Examination of Offenders Released in Fiscal Year 2010-11**.** “Of the total 8,989 released offenders, 0.34% were reconvicted of a new sex crime. [pp. 30-31 Table 13-14].”

140. Even though re-arrest rates are irrelevant as only reconviction rates are and should be the determinate or relevant factor here, even those re-arrest rates were exaggerated by order of magnitude and are just 2.2% within 3 years from release.

- **From Patrick A. Langan et al.**; Recidivism of Sex Offenders Released from Prison in 1994; BUREAU OF JUSTICE STATISTICS (2003): Re-arrest “Within the first 3 years following release from prison in 1994, [] The rate for all 9,691 sex offenders (a category that includes the 4,295 child molesters) was 2.2%.” [p. 1].

RISK OF RECIDIVISM FOR THE MAJORITY OF SEX OFFENDERS DECREASES EXPONENTIALLY AFTER AS LITTLE AS 10-14 YEARS, EVENTUALLY THEY ARE LESS LIKELY TO REOFFEND THAN A NON-SEXUAL OFFENDER IS TO COMMIT AN OUT OF THE BLUE SEXUAL OFFENSE

141. Any risk an offender poses decreases for a variety of reasons year after year. According to the State's own authorities, sexual offenders are less likely to re-offend than any other offenders and eventually exhibit no more danger to the public than that of the background rate of the public.

- **From the California Sex Offender Management Boards' (CASOMB) own leading authority Dr. Karl Hanson's Declaration in United States District Court for the Northern District of California**. Civil Case No. C 12 5713. Filed 11-7-12: "Research also contradicts the popular notion that sexual offenders remain at risk of re-offending through their lifespan. Most sex offenders do not re-offend. Hanson Dec. 19-25; Abbott Dec. 13-15. The longer offenders remain offense-free in the community, the less likely they are to re-offend sexually. Hanson Dec. 7-13, 22, 26-38; Abbott Dec. 16. On average, the likelihood of re-offending drops by 50% every five years that an offender remains in the community without a new arrest for a sex offense. Hanson Dec. 27. Eventually, persons convicted of sex offenses are less likely to re-offend than a non-sexual offender is to commit an "out of the blue" sexual offence. See id. 28, 31-33. For example, offenders who are classified as "low-risk" pose no more risk of recidivism than do individuals who have never been arrested for a sex-related offense but have been arrested for some other crimes. See id. 30. After 10 to 14 years in the community without committing a sex offense, medium-risk offenders pose no more risk of recidivism than individuals who have never been arrested for a sex-related offense but have been arrested for some other crimes. See id. 30, 34. The same is true for high-risk offenders after 17 years without a new arrest for a sex-related offense. See id. 35. Ex-offenders who remain free of any arrests following their release should present an even lower risk. See id. 39. Importantly, post-release factors such as cooperation with supervision, treatment, can dramatically reduce recidivism, and monitoring these factors can be highly predictive. See id. 23, 39-40; Abbott Dec. 17-18. Based on this research, criminal justice and recidivism experts recommend that "rather than considering all sexual offenders as continuous, lifelong threats, society will be better served when legislation and policies consider the cost/benefit break point after which resources spent tracking and supervising low-risk sexual offenders are better re-directed toward the management of high-risk sexual offenders, crime prevention, and victim services."
- **From the California Sex Offender Management Board (CASOMB);** "After about eight to nine years

offense-free in the community, people who have committed sexual offenses and are assessed as average or above-average risk to re-offend pose no greater risk of committing a new sex offense than any other type of offender." [p. 9].

- **CASOMB Educational Pamphle**t WHAT YOU MAY NOT KNOW About CALIFORNIA's SEX OFFENDER REGISTRY Other Hard Facts, Data, and Visuals; "Criminal offenders with no prior sex offense history are rearrested for a subsequent sex crime more often than low-risk convicted sex offenders. Expenditures of registry programs include: [] local law enforcement efforts to register offenders including paperwork and computer entry of records [] compliance efforts to verify residence addresses of registrants [] prosecution for registration violations [] technological improvements to build and maintain online registries [] updating and connecting registry systems with other databases[] When quantifiable costs are summed, they are estimated to range from $10 billion to $40 billion nationally per year. These costs could be reduced if the registry did not try to track everyone for life." [p. 12].
- **Criminal Recidivism in Alaska; Alaska Judicial Council January 2007**; Recidivism in Alaska Executive Summary: "Sexual offenders were the group least likely to be convicted of the same type of offense that they were convicted of in the 1999 sample." [p. 8]. "Offenders whose 1999 felony charges resulted in conviction of a Sexual offense were among the least likely to be re-arrested, have new cases filed, be re-convicted, or return to custody." [p. 12].

THERE IS CONSENSUS THAT SORA LAWS ARE NOT EFFECTIVE AND ARE EFFECTIVELY COUNTERPRODUCTIVE

142. These laws are effectively counterproductive.

- **From the National Institute of Justice (NIJ) US Department of Justice Office of Justice Programs United States of America**: Abstract: “The overall conclusion is that Megan’s law has had no demonstrated effect on sexual offenses in New Jersey, Megan’s Law has had no effect on time to first rearrest for known sex offenders and has not reduced sexual re-offending. Neither has it had an impact on the type of sexual re-offense or first-time sexual offense. The study also found that the law had not reduced the number of victims of sexual offenses.”
- **From the Journal of Experimental Criminology**. “Abstract; Objectives Examine 25 years of Sex Offender Registration and Notification (SORN) evaluations and their effects on recidivism. Methods We rely on methodology guidelines established by the Campbell Collaboration for meta-analyses to systematically synthesize results from 18 research articles including 474,640 formerly incarcerated individuals. We estimate the effect of SORN policies on recidivism from 42 effect sizes and determine if the effect of SORN varies by sexual or non-sexual recidivism when examining arrest or conviction as outcomes. Results The random-effects meta-analysis model demonstrated that SORN does not have a statistically significant impact on recidivism. This null effect exists when examining a combined model and when disaggregating studies by sexual or nonsexual offenses, or conceptualizing recidivism by arrest or conviction. Conclusions SORN policies demonstrate no effect on recidivism. This finding holds important policy implications given the extensive adoption and net-widening of penalties related to SORN.”
- **From the Justice Policy Institute**: “Registries and notification have not been proven to protect communities from sexual offenses and may even distract from more effective approaches. Given the enormous fiscal costs of implementing SORNA, coupled with the lack of evidence that registries and notification make communities safer, states should think carefully before committing to comply with SORNA.” [p 1].
- **From Criminology, Criminal Justice, Law & Society. Public and Professional Views of Sex Offender Registration and Notification**. “There is substantial evidence across numerous jurisdictions that Sex Offender Registration and Notification (SORN) laws in America do not increase public safety. For instance, whether or not convicted sex offenders were obligated to register and cooperate with public notification procedures under SORN policies failed to predict if they sexually recidivated in

Arkansas (Maddan, 2008), Iowa (Adkins, Huff, & Stageberg, 2000; Tewksbury & Jennings, 2010), Massachusetts (Petrosino & Petrosino, 1999), New Jersey (Tewksbury, Jennings, & Zgoba, 2012; Zgoba, Witt, Dalessandro, & Veysey, 2008), New York (Sandler, Freeman, & Socia, 2008), and Washington (Schram & Milloy, 1995)."

- **Psychology Today: Sex Offender Registries: Are they keeping our children safe?** "Several states have conducted studies to look at the effectiveness of their registries on sexual re-offending by those who had already been convicted of a sex crime (the intention of the registry). Overall, these data more conclusively show that registries do not impact re-offending rates."
- **The Journal of Law & Economics Sex Offender Registries: Fear without Function?** "I find little evidence to support the effectiveness of sex offender registries, either in practice or in potential. Rates of sex offenses do not decline after the introduction of a registry or public access to a registry via the Internet, nor do sex offenders appear to recidivate less when released into states with registries." "The results from all three data sets do not support the hypothesis that sex offender registries are effective tools for increasing public safety."
- **Chicago Alliance Against Sexual Exploitation: The Sex Offender Registry Doesn't Work.** "In 1994, state sex offender registries launched as a tool for law enforcement officials and were limited to the most serious offenders. In the two and a half decades that have followed, lawmakers on both sides of the aisle have continually pushed to expand these databases and pile punitive requirements onto people in them. Politicians may be acting on good intentions but what is the result? No improvement to public safety, crushing punishments that hobble offenders' rehabilitation, and costly program maintenance that diverts critical resources away from survivors and prevention strategies."
- **From Melissa Hamilton, Briefing the Supreme Court: Promoting Science or Myth? Emory L. J. Online 2021 (2017).** CONCLUSION "Further, the experts properly warned that policies that target sex offenders, which are not based on some empirical reality, are unlikely to be effective."
- **Miriam Aukerman, ACLU of Michigan senior staff attorney: ACLU SUES STATE OFFICIALS FOR THE FOURTH TIME OVER UNCONSTITUTIONAL MICHIGAN SEX OFFENDER REGISTRATION ACT** "Not only do registration schemes fail to improve community safety, but they also undermine the ability of people with past sex offenses to successfully reintegrate into society. There

is a scientific and academic consensus that people subjected to registration and notification requirements (like those imposed by SORA []) have difficulty finding and maintaining stable housing, employment, and prosocial relationships. Stable housing, employment, and prosocial relationships are the three most important factors contributing to successful reentry and maintenance of a law-abiding lifestyle. SORA [] imperils public safety by increasing the likelihood of job-lessness, homelessness, and disconnection from prosocial friends and family, which in turn increases the likelihood of sexual and non-sexual recidivism. SORA [] thus sabotages its own avowed public safety goals. Stable housing, employment, and prosocial relationships are the three most important factors contributing to successful reentry and maintenance of a law-abiding lifestyle. SORA [] imperils public safety by increasing the likelihood of job-lessness, homelessness, and disconnection from prosocial friends and family, which in turn increases the likelihood of sexual and non-sexual recidivism. SORA [] thus sabotages its own avowed public safety goals."

- **From the U.S. Department of Justice, Office of Justice Programs 2003**: Are Sex Offenders Dangerous? Abstract: "The results of the research indicate that the overwhelming majority of sex offenders were not rearrested for another sex crime. This finding is surprising given the way in which DNA collection, registration, and notification policies have come about. Research would indicate that robbers may be better candidates for DNA collection, registration, and community notification than sex offenders." "The extension of sex offender policies to nonsexual offenders appears unjustified and would have little effect on preventing future sex crimes. The results indicate that policies can be founded on misconceptions, and these misconceptions not only have financial consequences, but also can affect the likelihood that the policies enacted will achieve their goals. Policy makers need to become better informed on the issues they subject to far-reaching and costly legislation."
- **From the California Sex Offender Management Board (CASOMB) 2014**: "Some of the consequences of lengthy and unnecessary registration requirements actually destabilize the lives of registrants and those – such as families – whose lives are often substantially impacted. Such consequences are thought to raise levels of known risk factors while providing no discernible benefit in terms of community safety." [p. 12-13].

143. SORA is undoubtedly counter-productive to the legislative intent since a high majority of the truly

high-risk individuals will never be identified as such and either be removed from the registry, moved to a lesser tier designation on the path to removal, or never be identified simply because the tier designation is diluted with thousands upon thousands of low-risks, and in the majority of cases, extremely low-risk individuals.

144. SORA is also counterproductive because it encourages homelessness as transient sex offenders are not subject to the address notification so they can avoid public scrutiny and vigilantism (unfortunately for the homeless they must report at minimum once a month in-person to law enforcement, which is extremely onerous, arbitrary and it is not supported by any credible authorities that these reporting requirements increase in public safety in any way).

SORA'S SB 384 OFFENSE-BASED TIER DESIGNIATIONS IGNORES THE SCIENTIFIC CONSENSUS THAT REGISTRIES DO NOT WORK AND DO NOT CORRELATE WITH RISK OF RE-OFFENSE

145. SORA, and its federal counterpart SORNA, laws violate Petitioner's right to be free from oppressive, unreasonable, and arbitrary official actions. California's SORA has been amended and enacted with Senate Bill 384, and California Penal Code Sec. 2 Section 290 *et seq.* which includes tier designation based solely on the offense committed and provides no individualized actuarial dynamic risk assessments to determine if there is a current or future risk to re-offend by any particular individual. This is undoubtedly unconstitutional and counterproductive to the stated legislative intent of protecting the public from high-risk and significantly dangerous sex offenders.

146. In *State v. Bani* the Hawaii State Supreme Court held that Hawaii's sex offender registration statute violated the due process clause of the Constitution of Hawaii, which like the California Constitution also states explicitly that an individual has the fundamental right to privacy, ruling that it deprived potential registrants of a protected liberty interest without due process of law. The Court stated,

> In *State v. Bani*, 36 P.3d 1255 (Haw. 2001), the Hawaii State Supreme Court held that Hawaii's similar sex offender registration statute violated the due process clause of the Constitution of Hawaii, ruling that it deprived potential registrants "of a protected liberty interest without due process of law". The Court reasoned that the sex offender law authorized "public notification of (the potential registrant's) status as a convicted sex offender without notice, an opportunity to be heard, or any preliminary determination of whether and to what extent (he) actually represents a danger to society"
>
> For the reasons discussed below, we hold that the public notification provisions of HRS chapter 846E deprive Bani of a protected liberty interest without due process of law. Our conclusion derives from the fact that HRS § 846E-3 authorizes public notification of Bani's status as a

> convicted sex offender without notice, an opportunity to be heard, or any preliminary determination of whether and to what extent Bani actually represents a danger to society. In our view, the absence of any procedural safeguards in the public notification provision of HRS chapter 846E renders the public notification portion of HRS chapter 846E unconstitutional, void, and unenforceable.

147. The Alaska Supreme Court in *Doe v. Alaska Dep't of Pub. Safety* also found their State's ASORA's coverage,

> is excessive to the extent it applies to sex offenders who do not present a danger of committing new sex offenses. We recognized this point in Doe 04 where we observed that without "the likelihood [that the offender] will commit new sex offenses, there is no compelling government interest in requiring" him to comply with ASORA.

148. The Michigan Attorney General Dana Nessel stated it well in her recent Amicus Briefs in two cases, *People v. Betts* and *People v. Snyder* when she argued that,

> There are dangerous sexual predators, to be sure, and the public needs to be protected from them. But the current SORA it is not the way to achieve that goal because it places people on the registry without an individualized assessment of their risk to public safety and with little differentiation between a violent rapist or re-offender and an individual who has committed a single, nonaggravated offense.

149. California's new offense-based SB 384 tier system does not use actuarial assessments in any way. The American Psychological Association (APA) dictionary definition of actuarial risk assessment is "a statistically calculated prediction of the likelihood that an individual will pose a threat to others or engage in a certain behavior (e.g., violence) within a given period. Unlike in a clinical risk assessment, someone conducting an actuarial risk assessment relies on data from specific, measurable variables (e.g., age, gender, prior criminal activity) that have been validated as predictors and uses mathematical analyses and formulas to calculate the probability of dangerousness or violent behavior."

ACTURIAL RESEARCH USING EMPIRICALLY VALIDATED INSTRUMENTS ARE ALREADY AVAILIBLE TO THE STATE BUT ARE NOT USED FOR TIER DESIGNATIONS

150. The State already has a meaningful actuarial risk assessment process to predict if Petitioner poses a significant risk for re-offense but the legislature omits any language in the SORA statute authorizing such tools, except for individuals while under state supervision. The only entities that employ these dynamic actuarial assessment tools are "probation officers and parole agents who use the risk predictions to inform the intensity of the offenders they supervise, who were convicted of sexually offending, while they are on formal probation or parole. For example, those assessed as having "well above average" risk, formerly known as high-risk, must wear an ankle monitor that uses global positioning system (GPS) technology while on probation.

Supervising officers/agents may place stricter terms and conditions on higher risk offenders and use more intensive supervision strategies. Assessments are also used by treatment programs to direct sex offender-specific treatment."

151. According to **CASOMB**: "California currently uses three types of risk assessment instruments: static, dynamic and violence prediction. Research identifies factors associated with people who are at higher risk. That information is used to make risk predictions, based on group norms. Some risk instruments identify areas in their lives which offenders must address in treatment to succeed in the community. Treatment providers address these identified risk areas using a method called risk/needs/responsivity (RNR)."

152. • **Static Risk**. Static risk instruments predict risk level based on relatively unchanging criminal history factors, such as the number of times an offender has been sentenced in court, or whether the victim of the sexual offense was a stranger. The factors used are ones that research has identified as most strongly related to sexual re-offending. California currently uses the Static-99R [in very limited circumstances as detailed] to predict adult male risk of sexual re-offense, and the JSORRAT-II to predict risk of sexual re-offense for juveniles.

153. • **Dynamic Risk**. Dynamic risk instruments predict risk level based on changing criminogenic needs of the offender, as opposed to fixed (static) factors in the criminal history. Areas of assessment include

factors such as deviant sexual interests, hostility toward women, emotional identification with children, and capacity for relationship stability. California currently uses the STABLE-2007 and ACUTE-2007 during parole and probation supervision.

154. • **Violence risk**. California currently uses an instrument to predict risk of future violence that works for both sexual and nonsexual violence. (Level of Service/Case Management Inventory-LS/CMI). The LS/CMI measures central criminogenic needs, including anti-social attitudes, family relationships, substance abuse, and anti-social companions. Unlike the other risk instruments, the LS/CMI is valid on both male and female offenders. Most risk instruments were not developed to assess female sex offenders.

PITITIONER HAS A LOWER RISK OF RE-OFFENDING THAN THE RISK POSED BY AVDERAGE MALES IN THE GENERAL POPULATION HAVE OF COMMITTING AN OUT OF THE BLUE SEXUAL OFFENSE

155. This is relevant to Petitioner since Petitioner is being designated as a tier three offender that requires registration and public notification for life based on an offense that occurred nearly two decades ago, and he is neither a violent, habitual, or repeat offender. Petitioner is being designated in a lifetime tier level associated and equivalent to recently released offenders, violent child rapist, habitual re-offenders, and to some of the worst of the worst aggravated heinous offenders, and to other sexual violent predators (SVP) that are at

the highest risk of re-offense.

156. Petitioner was able to locate the factors for the Static 99R and Petitioner self-scored at 2, right in the middle of average risk at time of release. “Nominal Risk Levels (2016 version) Total Risk Level -3, -2, I - Very Low Risk -1, 0, II - Below Average Risk 1, 2, 3 III - Average Risk 4, 5 IVa - Above Average Risk 6 and higher IVb -Well Above Average Risk.” This “Static-99R” tool is not used by SORA or the Legislature for assessments of individuals before assigning individuals to their designated tiers corresponding to different levels of dangerousness that the legislature assumes and projects. It is only used during the first 3-4 years after release while the individuals are on probation or parole supervision and to place individuals into tier three that score extremely high-risk using nothing but the Static99R risk factors.

157. Petitioner was able to locate the factors for the Stable-2007 assessment tool and can self-report here. STABLE-2007 assesses 13 stable risk factors that have been shown to correlate with sexual recidivism: significant social influences, capacity for relationship stability, emotional identification with children, hostility toward women, general social rejection, lack of concern for others, impulsivity, poor problem-solving skills, negative emotionality, sex drive and preoccupations, sex as coping, deviant sexual preference, and cooperation with supervision.

- significant social influences: Petitioner has a multitude of familial and social supports systems
- capacity for relationship stability: Petitioner has been in relationships lasting well over 5 years
- emotional identification with children: Petitioner has emotional identification with adults
- hostility toward women: Petitioner has no hostility towards women
- general social rejection: Petitioner has a multitude of social support systems and is only rejected from those that do not know him personally and are aware or become aware of his sex offender status
- lack of concern for others: Petitioner has plenty of concern and empathy for others
- impulsivity: Petitioner is 54 years old and restrains his impulses
- poor problem-solving skills: Petitioner has recently earned general science, mathematical and geology degrees and is adept at problem solving
- negative emotionality: Petitioner is generally an incredibly positive person

- sex drive and preoccupations: Petitioner's sex drive is normal, and he is not preoccupied with sex
- sex as coping skill: Petitioner never uses sex as a coping skill
- deviant sexual preference: Petitioner has no proclivities toward sexual deviant behavior
- cooperation with supervision: Petitioner cooperated fully when in custody and during parole supervision and the entire time he has been fully compliant with SORA.

158. Petitioner was able to locate the factors for the ACUTE-2007 which assesses seven acute, rapidly changing risk factors that correlate with sexual recidivism. In this scale, there are two factors. The first factor predicts sexual and violent re-offending and uses the following four risk factors: victim access, hostility, sexual preoccupation, and rejection of supervision. The second factor predicts general criminal recidivism using the aforementioned four factors plus emotional collapse, collapse of social supports, and substance abuse for a total of seven items. Each of these seven items is scored on a 4-point scale (0 = no problem evident, 1 = some problem evident, 2 = significant problem evident, and IN = intervene now) for a total of 14 possible points. Once ACUTE-2007 has been scored, this outcome is combined with the offender's STATIC-99/ STABLE-2007 score to estimate an overall risk priority.

- victim access: Petitioner has no access to the alleged victim from his case
- hostility: Petitioner has no hostility towards anyone
- sexual preoccupation: Petitioner has no sexual preoccupation
- rejection of supervision: Petitioner complied and completely accepted parole supervision and has continuously complied with SORA requirements.

The second factor predicts general criminal recidivism using the aforementioned four factors plus,

- emotional collapse: Petitioner is emotionally stable and secure
- collapse of social supports: Petitioner has a multitude of societal support systems in place
- substance abuse: Petitioner does not abuse any substance

159. The violent risk assessment tool is irrelevant; Petitioner is not and has never been a violent offender.

160. According to these risk assessment factors anyone of sound mind can reasonably extrapolate that when combined Petitioner was at virtually no risk for re-offense even within the first 4 years after his release

from prison (this is accurate as Petitioner has already detailed, he would never purposely commit any crime that would land him back in the prison system, then, now, or in the future). Of course, it has been nearly two decades since Petitioner committed his offense in 2004, nearly 14 years since his release on parole supervision in 2008, with no accusations, arrests, or convictions for any previous or subsequent sexual offense.

161. When considering Petitioner's age, time offense free, and these other current and relevant personal and societal factors, Petitioner is now undoubtedly, according to the State's own authorities, at "less risk than an average citizen is of committing an out of the blue sexual offense."

162. Petitioner understands the subjective fear, anger, and disgust with individuals that commit sexual offenses, but these factors should not influence a decision by the Court that is not based on an objective and holistic determination based on proven science, indisputable facts, and universally accepted empirical data.

163. Again, the legislature has not made any attempts at employing any of the recommended and proven risk assessment tools when considering what tiers an individual should be designated in, or to determine the risk level or present dangerousness of the individual, nor the length of time they must register, or what type of public notification (if any) should be applied, or to determine if Petitioner should even be required to register based on his risk of re-offense, or lack thereof, in the first place. The registration and notification previsions as-applied undoubtedly violate Petitioner's California Constitutional right not to be erroneously deprived of his fundamental liberties.

REMENDY FOR VIOLATION OF PETITIONER'S FUNDAMENTAL RIGHT TO BE FREE FROM UNREASONABLE ARBITRARY OFFICIAL ACTIONS

164. The only cure to this substantive due process violation is order Respondent to remove Petitioner's information from the publicly accessible Megan's Law Website and CSAR data base and to discontinue his obligation to register pursuant to SORA. Petitioner is not a significant threat to public safety. The State cannot present demonstrable facts that SORA, as-applied to Petitioner who poses no significant risk to the public, is justified or necessary, demonstrates some significant efficacy, and is the least restricted method to achieve the stated legislative goal.

THIS COURT CAN EVALUATE THIS CASE AND ISSUE A DISPOSITIVE DECISION DECLARING PETITIONER IS NOT A RISK TO PUBLIC SAFETY

165. This Court does not even have to require any procedural due process hearings in this as-applied

case. The Court is perfectly capable of conducting such a hearing (if a hearing beyond this is even necessary) and can evaluate this case and issue a dispositive ruling based on Petitioner's holistic individual dynamic circumstances, along with all the supporting facts and evidence presented, including the highly credible authorities' attributions that Petitioner has provided herein, and declare Petitioner is not a risk to public safety. Accordingly, he must be relieved of his obligation to register pursuant to California's SORA and his information must be removed from the State's Megan's Law Website and CSAR data base.

166. When observed objectively California's SORA, as-applied to Petitioner, cannot even pass rational basis review according to all the experts and authorities or reasonable minds. There is no way the law in question would pass intermediate scrutiny and surely does not come close to passing strict scrutiny, as Petitioner argues applies in this as-applied case.

SORA IS NO LONGER AN EFFECTIVE OR NECESSARY TOOL FOR USE BY LAW ENFORCEMENT

167. Not only is SORA a unnecessary and counterproductive tool as it relates to providing information to the public or public safety, but it is also an unnecessary and useless tool for law enforcement purposes in this digital mass information sharing era. The nation's first sex offender registration law was originally created to give police departments a way to keep track of known offenders by creating a list of suspects for use when new crimes occurred. This was at a time when criminal record access for law enforcement was extremely limited and still in paper only files.

168. We have made far reaching leaps and bounds since then that give law enforcement nearly instantaneous access to; DNA databases that actually produce results; fingerprints; names and aliases; Social Security numbers; home addresses; dates of births; the color of skin and eyes; any scars, tattoos, or identifying marks; height, vision, and gender; type of vehicle you're driving, driver licenses and vehicle descriptions and plate numbers; even traffic violation history; Plus local, state, and federal criminal history information; and much more." *Id*.

169. "The National Data Exchange (N-DEx) System complements other well-known FBI systems, such as the National Crime Information Center (NCIC), Interstate Identification Index (III), and Next Generation Identification (NGI) with the N-DEx system, analysts have access to the criminal justice records of thousands of agencies across the nation to link investigative information and quickly obtain more detailed reports.

Additionally, N-DEx provides visualization tools to graphically depict associations between people, places, things, and events either on a link-analysis chart or on a map."

170. These tools eliminate any need for a registry for law enforcement purposes in the modern era of mass computerization and information sharing between governmental agencies.

THE CALIFORNIA SUPREME COURT HAS RECOGNIZED THE LEGISLATIVE OVERREACH CONCERNING OTHER SORA RELATED LAWS

171. The California Supreme Court has struck down various statutes concerning registered sex offender's constitutional rights in California.

172. The California Supreme Court in *In re Taylor* found that,

> The California Department of Corrections and Rehabilitation (CDCR) had begun to violate sex offender parolees' rights through blanket enforcement of Jessica's Law, including the Petitioners who challenged the statute, some of whom were returned to prison on parole violations. CDCR statistics showed that over a third of the registered sex offenders in San Diego County were classified as homeless or transient, and as a result were difficult to monitor for parole compliance. Further, a report prepared with the CDCR's assistance showed that 3003.5(b) had not improved public safety and in fact had reduced it. CDCR had engaged in "arbitrary and oppressive enforcement action" of Jessica's Law, which had actually made the community less safe.

173. The Court recognized that the asserted rights by those supervised parolees were fundamental and considered all the collateral consequences of Jessica's Law, the CDCR's statistics, and the facts produced from empirical evidence in the record and found that the Law violated the paroles' rights.

174. In *Doe v. Harris* the California Supreme Court, in striking down California's statute concerning the Internet Identifier disclosure and reporting requirement, the opinion clearly demonstrates the Court's consideration of the collateral consequences faced by those ex-offenders,

> [B]ut sex offenders' fear of disclosure in and of itself chills their speech. If their identity is exposed, their speech, even on topics of public importance, could subject them to harassment, retaliation, and intimidation. See *McIntyre*, 514 U.S. at 341–42 ("The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible.").

BECAUSE OF THE DISTINGUISHABLE FACTS, EVIDENCE AND ISSUES PRESENTED HEREIN THIS IS A CASE OF FIRST IMPRESSION AND PETITIONER PRAYS THAT THIS COURT WILL CONDUCT MEANINGFUL REVIEW

175. This is a case of first impression concerning the recently enacted and implemented California tiered registration law as-applied to Petitioner, which requires a meaningful review of the particular assertions, facts,

and evidence presented in this complaint. Petitioner prays the court in this case will not dismiss the statistics, facts, and empirical evidence that Petitioner has provided.

176. Petitioner contends that the assertions, facts, and evidence provided herein concerning the issues of this case have not been brought to the attention of any court in California's jurisdiction.

177. The collateral consequences, statistics, facts, and empirical evidence that Petitioner has provided herein nearly mirror those recognized by the California Supreme Court concerning other SORA related laws that have been struck down.

178. Just as the case at issue *In Re Taylor* concerning residency restrictions, Petitioner has provided comparable adjudicative facts from some of the same governmental agencies, and many other agencies from the governmental and academic spheres, that the Court in *Taylor* judicially noticed and concluded the evidence presented did indeed demonstrate the irrationality of those statutes at issue in that case.

179. Just as the issues in *Taylor's* residency restrictions, the system of registration in California, according to the State's own authorities and administrative bodies, hampers the ability of law enforcement to supervise or monitor higher risk offenders, uses unnecessary resources that could be used for high-risk offenders, has not been proven to prevent recidivism, does not enhance public safety, and according to those state government entities and the extensive empirical evidence, registration of statistically low-risk offenders may very well be just as, or even more, counter-productive as the residency restrictions were in the *Taylor* case.

180. There is no doubt that Petitioner, being a statistically low-risk offender, is far less dangerous than that subclass of parolees which included habitual, aggravated, and violent offenders, and even SVPs along with low-risk offenders, all of whom were recently released and at the highest risk of re-offending yet found relief from that unconstitutional residency restriction statute as-applied.

181. Petitioner suffers the same collateral consequences that the *Harris* court outlined, and much more as described herein in many aspects of his life. Only the "harassment, retaliation, and intimidation" comes from a wider array of sources including from neighbors, employers, and the public at large, both online and in-person, solely because of public disclosure on the Megan's Law Website, inclusion in the CSAR data base, and the requirement to register pursuant SORA.

182. The Court considered all Petitioner's concerns in *Doe v. Harris*, albeit in an altogether different statute. Nonetheless this Court should consider all the collateral consequences in this case as occurred in *Doe v.*

Harris.

183. Although many courts have addressed many different issues and challenges to these SORA laws across the country, these particular facts are materially distinct and have not been ruled upon.

184. In *Planned Parenthood of Se. Pa. v. Casey*, the United States Supreme Court stated,

> [A]s the Supreme Court reiterated in *Cooper Industries, Inc. v. Aviall Services, Inc*., "[q] uestions which merely lurk on the record, neither brought to the attention of the court nor ruled upon, are not to be considered as . . . precedent[]." Therefore, a prior decision serves as precedent only for issues, given the particular facts, that the court explicitly considered in reaching its decision.

185. Although concerning Alaska's ASORA, Petitioner feels this is apropos here as Alaska's Constitutional fundamental rights concerning privacy and safety nearly mirror those in the California Constitution. Also, ASORA was similar in respect to its lack of individual risk assessments such as the newly implemented tiered registration in California's SORA.

186. In *Doe v. Alaska Dep't of Pub. Safety* the Alaska Supreme Court stated,

> The superior court also correctly recognized that registration may seriously affect Doe's liberty interests. But the court did not strike a proper balance between Doe's liberty interests and ASORA's public safety purposes when it concluded that ASORA may be applied to Doe without affording him the right to a hearing to show that he does not pose a risk to the public sufficient to require continued registration. Doe's affected liberty interests are fundamental and thus protected from infringement by state action except under a narrowly drawn statute reasonably designed to achieve a compelling state interest.

187. Because of the distinguishable facts and issues presented in this case Petitioner prays that this Court can and will conduct the same meaningful review and consider all the facts and evidence from the governmental and academic data, findings, reports, including the conclusions/statements and recommendations from the authorities, along with the detailed cumulative requirements and effects of the statute, just as the California Supreme Court did in *In Re Taylor* and *Doe V. Harris*.

CONCULSION

188. Petitioner is being coerced under extreme duress by the Respondent into unwillingly participating and working in conjunction with the state officials to "monitor" and "supervise" "every significant aspect" of Petitioner's own life under threat of severe criminal sanctions that include a minimum of 16 months to 3 years in the State penitentiary for any failure to comply.

189. There are not any purported civil regulations ever enacted in the United States that bear any plausible resemblance to the mandatory criminal consequences for not voluntarily participation with state

actions and complying with such onerous requirements of today's SORA. This alone should cause great concern in the judicial branch and demands that any judicial officer take pause and really scrutinize such a far-reaching regulatory scheme that affects millions of people across the country in extremely detrimental and potentially dangerous ways.

190. Once again, this is the first time in American History that the government has enacted any such legislation with criminal penalties and collateral consequences that even remotely resembles California's SORA that apply to someone that is not on federal or state supervision

191. Petitioner is not asking the court to legislate from the bench but is asking the court to take a holistic approach and determine if SORA, regardless of conclusions by other courts regarding significantly and distinguishably different facts and issues, or the state's stated interest that is not supported by the current facts or evidence, can pass constitutional scrutiny as-applied to Petitioner.

192. It is in the public's best interest to grant Petitioner this relief as it will increase his ability to reintegrate into society and increase the probability that he will maintain stability in his life and be a law abiding, productive member of society; all of which have been proven to decrease his risk for re-offense even further.

193. Granting Petitioner relief will allow governmental agencies and law enforcement agencies to re-direct their limited resources to monitor high-risk and habitual offenders more intensively thereby prospectively increasing public safety (if the statutes in reality actually increase public safety, which is questionable even for high-risk offenders when time offense free is considered).

194. It will also save the state taxpayer dollars that can be used for policies or services such as education, rehabilitative and reintegration programs, sexual abuse prevention and support groups or programs, and desperately needed mental health services. Those 10-40 billion dollars a year spent on the registry could very well go a long way to these other programs and services that are proven to be effective.

195. In this age of criminal justice reform, such as that which was passed by 87% of the Senate, and approved by the House by a 358-36 vote and which was signed into law by President Donald Trump, it seems inane not to take reformation of the sex offender registration system seriously and to discontinue to subject statistically low-risk offenders such as Petitioner to regulations that violate his privacy, endangers his (and family members) personal safety, is unreasonable, arbitrary and oppressive, that severely hampers his prospects

for reintegration into society, that waste precious taxpayer dollars, and are proven to be counter-productive in many cases.

THERE ARE NO ALTERNATIVE REMENDIES EXCEPT FOR INTERVENTION BY THIS COURT

196. There is no alternative for relief besides through the judicial processes and a decision favorable to Petitioner in this case simply because the legislature is not basing its findings, nor the resultant statutes, on any empirical or expert research on this issue. Instead, the legislature is actively and blatantly ignoring its own highly credible authorities and facts available in the governmental sphere, including the extensive empirical evidence from the highly credible scientific authorities, when crafting and implementing the legislation at issue in this case.

197. The violations detailed in this complaint will continue to cause Petitioner irreparable harm if he continues to be subjected to, and obligated to comply with, California's SORA. The harm is ongoing and cannot be alleviated except by declaratory judgement and injunctive relief.

INJUNCTION RELIEF AND DECLARATORY JUDGEMENT ARE APPROPRIATE IN THIS CASE

198. Unless enjoined through permanent injunctive relief and granted declaratory judgement of Petitioner's legal rights by this Court, the Respondent will continue to violate Petitioner's constitutional rights to privacy, safety, and to be free from unreasonable and arbitrary state actions.

INJUNCTIVE RELIEF

199. Injunctive relief is proper pursuant California Code, Civil Code - CIV § 52.1 (a)-(m).

200. A party seeking permanent injunctive relief must prove: (1) that the Petitioner has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for the injury; (3) that the remedy in equity is warranted upon consideration of the balance of hardships between the Petitioner and respondent; and (4) that the permanent injunction being sought would not hurt public interest.

- Petitioner has demonstrated that he does suffer irreparable harm unless the Court acts and grants Injunctive relief, and enjoins the California AG, and all the AG's subordinates from enforcement of California's SORA against Petitioner.
- Petitioner has demonstrated that there is no other remedy at law to end irreparable harm Petitioner suffers.
- Petitioner has demonstrated that Respondent will suffer no harm if the court grants Petitioner

Injunctive relief,

- Petitioner has demonstrated that Respondent will not even lose federal funding since California is not compliant with the Federal Sex Offender Registration and Notification Act's (SORNA) mandatory guidelines.
- Petitioner has demonstrated that Public interest will not be negatively affected in anyway and will be in fact better served by the injunction.
- Petitioner has demonstrated that the public interest in protection of Petitioner's Constitutional Liberties is a highly regarded public interest as well.

DECLARATORY JUDGEMENT

201. To state a cause of action for declaratory relief, the Petitioner must allege facts that show that there is either an actual present, or probable future, controversy that relates to the legal rights and duties of the parties, and request that the court adjudge those rights and duties.

202. Declaratory judgement is proper because Petitioner has established facts that show that there is either an actual present, or probable future, controversy that relates to the legal rights and duties of the parties.

REQUEST FOR RELIEF

203. Wherefore, Petitioner respectively request that this Court:

- Issue Injunctive Relief and Declaratory Judgement pursuant to California Code, Civil Code - CIV § 52.1 (a)-(m), declaring that the (1) SORA (Penal Code 290, *et seq*.); (2) Megan's Law Internet Website (Penal Code 290.46); as-applied to Petitioner violate his fundamental liberty interest in his privacy, which is an explicit inalienable right under California's Constitution Article 1, section 1.
- Issue Injunctive Relief and Declaratory Judgement pursuant to California Code, Civil Code - CIV § 52.1 (a)-(m), declaring that (1) SORA (Penal Code 290, *et seq*.); (2) Megan's Law Internet Website (Penal Code 290.46); as-applied violate Petitioner's right to pursuing and obtaining safety, which is an explicit inalienable right under California's Constitution Article 1, section 1.
- Issue Injunctive Relief and Declaratory Judgement pursuant to California Code, Civil Code - CIV § 52.1 (a)-(m), declaring that (1) SORA (Penal Code 290, *et seq*.); (2) Megan's Law Internet Website (Penal Code 290.46); as-applied violate Petitioner's right to be free from unreasonable, arbitrary, and oppressive official action, which is an explicit inalienable right under California's Constitution

Article 1, section 1.

PRAYER

204. Because of the actions alleged above and throughout Petitioner's Complaint, Petitioner seeks judgment against Respondent as follows:

- Petitioner prays the court grant him Declaratory Judgement and Permanent Injunctive Relief in this case.
- To immediately enjoin Respondent Rob Bonta and all associated agencies of the California Department of Justice, or of the California Attorney General, including the parties' officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with these individuals from publishing Petitioner's information on the Megan's Law Website.
- To require Respondent to immediately remove Petitioner's information from the CSAR data base.
- To declare Petitioner's obligation to register as a sex offender pursuant to (1) SORA (Penal Code 290, *et seq*.); (2) Megan's Law Internet Website (Penal Code 290.46) unconstitutional under California's Constitution as-applied to him.
- That Petitioner recover such relief as the Court deems just and proper.

PETITIONER'S DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Respectively submitted,

Dated: _____ Signed: _____

Michael Richardson

Pro Se