"Resides" and "Habitually Lives"

Most prosecutions under 18 U.S.C. § 2250 are based on the theory that a sex offender resided in a particular SORNA jurisdiction, thus triggering a registration responsibility under SORNA. In most cases, it is relatively easy to prove that the offender resided in a particular jurisdiction for § 2250 purposes, e.g., they lived in a home in one jurisdiction, then moved to a permanent address in another jurisdiction.

In other instances, however, it is not so clear. What about cases where a sex offender is transient, and moves from jurisdiction to jurisdiction in relatively short order? At what point does a sex offender's presence in a jurisdiction trigger a registration responsibility under SORNA?[1]

SORNA defines "resides" as "the location of the individual's home or other place where the individual habitually lives."[2] The term "habitually lives" is defined in the SORNA Final Guidelines as follows:[3]

> 'Habitually lives' accordingly should be understood to include places in which the sex offender lives with some regularity, and with reference to where the sex offender actually lives, not just in terms of what he would choose to characterize as his home address or place of residence for self-interested reasons. The specific interpretation of this element of 'residence'…is that a sex offender habitually lives in the relevant sense in any place in which the sex offender lives for at least 30 days.
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> Hence, a sex offender resides in a jurisdiction for purposes of SORNA if the sex offender has a home in the jurisdiction, or if the sex offender lives in the jurisdiction for at least 30 days.[4]

Practitioners should familiarize themselves with their relevant Circuit standards for determining 'residence' and when a sex offender 'habitually lives' in a location so as to trigger liability under 18 U.S.C. § 2250.

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[1] Every jurisdiction has its own rules for when a registration responsibility is triggered, and those definitions will often be different from the standard utilized for determining liability for a § 2250 prosecution.

[2] 34 U.S.C. § 20911(13).

[3] There are two issues which often are conflated when discussing this issue: (1) when does an offender 'reside' in a jurisdiction so as to trigger a SORNA registration requirement? 73 Fed. Reg. 38030, 38061-38062; and (2) how does a registration jurisdiction properly record a residence address for an offender who is homeless or transient? *Id.* at 38055-38056. While these issues may overlap in a prosecution for 18 U.S.C. § 2250, it is important to distinguish between the two.

[4] 73 Fed. Reg. 38030, 38061-38062. It worth noting that the recently issued SORNA Rule (2022) did not address the issue. It is unclear what, if any, impact the decision in *Loper Bright v. Raimondo*, 144 S.Ct. 2244 (2024) will have going forward on the applicability of these SORNA Guidelines provisions in § 2250 cases. There is at least one case on remand which will consider the issue, *Kokinda v. United States*, Case No. 2:21-CR-20 (W.D. W.Va.). A hearing has not yet been scheduled.