

United States Court of Appeals  
FOR THE SECOND CIRCUIT

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August Term, 2014

(Argued: October 28, 2014      Decided: September 14, 2015)

Docket No. 13-3679-cr

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UNITED STATES OF AMERICA,

*Appellant,*

–v.–

HERMAN AVERY GUNDY, A/K/A HERMAN GRUNDY,

*Defendant-Appellee.*

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B e f o r e :

KATZMANN, *Chief Judge*, HALL and CARNEY, *Circuit Judges*.

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The United States appeals from orders of the United States District Court for the Southern District of New York (J. Paul Oetken, *Judge*) dismissing the January 7, 2013 Indictment against Defendant-Appellee Herman Avery Gundy and denying its motion for reconsideration of the dismissal. The federal Sex Offender Registration and Notification Act makes it a crime for a person who is

1 “required to register” under the Act to travel interstate and then knowingly fail  
2 to register or update his or her registration. 18 U.S.C. § 2250(a). The District  
3 Court dismissed the Indictment for failure to state an offense on the ground that  
4 the interstate travel charged in the Indictment occurred before Gundy was  
5 required to register. We hold that Gundy was a person “required to register”  
6 within the meaning of the Act from before the time of the charged interstate  
7 travel, and thus we REVERSE the District Court’s order of dismissal. We  
8 REMAND the cause to the District Court for reinstatement of the Indictment and  
9 for further proceedings.

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21 SUSAN L. CARNEY, *Circuit Judge*:

22 The United States appeals from orders of the United States District Court  
23 for the Southern District of New York (J. Paul Oetken, *Judge*) dismissing the  
24 January 7, 2013 Indictment against Defendant-Appellee Herman Avery Gundy  
25 and denying its motion for reconsideration of the dismissal. The Indictment  
26 charged Gundy with a violation of the Sex Offender Registration and  
27 Notification Act (“SORNA” or the “Act”), which makes it a federal crime for a

1 person who (1) “is required to register under [SORNA],” and (2) “travels in  
2 interstate or foreign commerce,” to then (3) “knowingly fail[] to register or  
3 update a registration as required by [SORNA].” 18 U.S.C. § 2250(a); *see Carr v.*  
4 *United States*, 560 U.S. 438, 446 (2010) (explaining that the elements must be  
5 satisfied in sequence). This case requires us to decide when a person is “required  
6 to register” within the meaning of SORNA. The District Court, reasoning that  
7 Gundy was not “required to register” until shortly before his release from  
8 custody and thus after the interstate travel charged in the Indictment, held that  
9 Gundy could not have violated § 2250(a). Because we disagree with the District  
10 Court’s conclusion that Gundy was not “required to register” until after the  
11 charged interstate travel, we REVERSE the District Court’s order dismissing the  
12 Indictment and REMAND the cause to the District Court for reinstatement of the  
13 Indictment and for further proceedings.

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## BACKGROUND

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### **A. The Sex Offender Registration and Notification Act**

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The federal government has set national standards for sex offender

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registration and notification since 1994, when it first required states to adopt

1 registration laws as a condition for receiving federal law enforcement funds. *See*  
2 Jacob Wetterling Crimes Against Children and Sexually Violent Offender  
3 Registration Act, Pub. L. No. 103-322, § 170101, 108 Stat. 2038, 2038-42 (1994)  
4 (repealed 2006); *see also* Final Guidelines, 73 Fed. Reg. 38,030 (July 2, 2008). The  
5 Sex Offender Registration and Notification Act, which was enacted on July 27,  
6 2006, *see* Pub. L. No. 109-248, 120 Stat. 590, was designed to improve the existing  
7 system by “mak[ing] more uniform what had,” until that point, “remained a  
8 patchwork of federal and 50 individual state registration systems, with loopholes  
9 and deficiencies that had resulted in an estimated 100,000 sex offenders  
10 becoming missing or lost.” *United States v. Kebodeaux*, 133 S. Ct. 2496, 2505 (2013)  
11 (citations and internal quotation marks omitted). Among other things, the Act  
12 created the National Sex Offender Registry, *see* 42 U.S.C. § 16919; imposed new  
13 guidelines on the states for the maintenance of registries, *see id.* §§ 16912, 16914;  
14 and imposed new registration requirements on offenders, *see id.* §§ 16913-16—  
15 while repealing much of the then-existing registration regime, *see id.* §§ 14071-73  
16 (2006).

17 To promote offenders’ compliance with the new registration requirements,  
18 SORNA made it a federal crime to fail to register or update one’s registration as

1 required by the Act under certain circumstances. In relevant part, the criminal  
2 law provides as follows:

3 (a) In general.—Whoever—  
4 (1) is required to register under [SORNA];  
5 (2) . . .  
6 (B) travels in interstate or foreign commerce . . . ; and  
7 (3) knowingly fails to register or update a registration as  
8 required by [SORNA];  
9 shall be fined under this title or imprisoned not more than 10 years,  
10 or both.

11  
12 18 U.S.C. § 2250.<sup>1</sup>

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14 The particular civil registration requirements upon which criminal liability  
15 under § 2250(a) depends are set out at 42 U.S.C. § 16913. *See Reynolds v. United*  
16 *States*, 132 S. Ct. 975, 978-79 (2012); *see also United States v. Guzman*, 591 F.3d 83, 90  
17 (2d Cir. 2010) (explaining that, “without § 16913, § 2250 has no substance”

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<sup>1</sup> Section 2250(a) provides in full:

(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.

1 (internal quotation marks omitted)). Subsection (a) of § 16913 contains the core  
2 registration mandate. It provides:

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

9  
10 42 U.S.C. § 16913(a). Subsection (b) governs the timing of “Initial registration,”  
11 stipulating that “[t]he sex offender shall initially register—(1) before completing  
12 a sentence of imprisonment with respect to the offense giving rise to the  
13 registration requirement; or (2) not later than 3 business days after being  
14 sentenced for that offense, if the sex offender is not sentenced to a term of  
15 imprisonment.” *Id.* § 16913(b). Subsection (c) sets the terms under which a sex  
16 offender must update his or her registration, requiring a sex offender to report  
17 within three business days—in person and in at least one registration  
18 jurisdiction—any “change of name, residence, employment, or student status.”  
19 *Id.* § 16913(c).

20 The duration of these registration requirements is specified in 42 U.S.C.  
21 § 16915: The “full registration period” is fifteen years for a statutorily defined  
22 “tier I” sex offender, twenty-five years for a “tier II” sex offender, and the life of

1 the offender for a “tier III” offender. 42 U.S.C. § 16915(a); *see also id.* § 16911(2)-(4)  
2 (defining tiers of sex offenders). The period of required registration is reduced  
3 for those offenders who maintain “clean record[s]” for a sufficient number of  
4 years. *Id.* § 16915(b).

5         Rather than determine by statute what retroactive application to give the  
6 registration requirements, Congress vested in the Attorney General “the  
7 authority to specify the applicability of the requirements of [SORNA] to sex  
8 offenders convicted before the enactment of [SORNA] or its implementation in a  
9 particular jurisdiction.” 42 U.S.C. § 16913(d). Since SORNA’s enactment, the  
10 Attorney General—in interim and final rules and proposed and final guidelines  
11 published between 2007 and 2010<sup>2</sup>—has specified that the Act’s requirements  
12 apply to all sex offenders whose convictions predate the enactment of the Act,  
13 even in jurisdictions that have yet to implement it.<sup>3</sup> We have held that SORNA

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<sup>2</sup> *See* Interim Rule, 72 Fed. Reg. 8894, 8896 (Feb. 28, 2007) (“SORNA applies to all sex offenders (as the Act defines that term) regardless of when they were convicted.”); Proposed Guidelines, 72 Fed. Reg. 30,210, 30,212 (May 30, 2007) (“SORNA’s requirements apply to all sex offenders, including those whose convictions predate the enactment of the Act.”); Final Guidelines, 73 Fed. Reg. 38,030, 38,063 (July 2, 2008) (“SORNA applies to all sex offenders, including those convicted of their registration offenses prior to the enactment of SORNA or prior to particular jurisdictions’ incorporation of the SORNA requirements into their programs.”); Final Rule, 75 Fed. Reg. 81,849, 81,850 (Dec. 29, 2010) (finalizing the interim rule “to eliminate any possible uncertainty or dispute concerning the scope of SORNA’s application”).

<sup>3</sup> SORNA does not require registration, however, by offenders who “have been in the

1 became applicable to pre-Act offenders at the latest when the Attorney General's  
2 final guidelines took effect. *See United States v. Lott*, 750 F.3d 214, 217 (2d Cir.  
3 2014). This occurred on August 1, 2008, thirty days after the final guidelines  
4 were published. *See* 5 U.S.C. § 553(d) (providing that, subject to certain  
5 exceptions not applicable here, “[t]he required publication or service of a  
6 substantive rule shall be made not less than 30 days before its effective date”).<sup>4</sup>

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### 8 **B. Factual Basis for Gundy’s Indictment**

9 In October 2005, Herman Gundy was convicted of violating Maryland  
10 Criminal Law § 3-306, Sexual Offense in the Second Degree. He was sentenced  
11 to twenty years’ imprisonment (with ten years suspended), to be followed by  
12 five years’ probation. When he committed the offense that was the basis for his

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community for a greater amount of time than the registration period required by SORNA.” 73  
Fed. Reg. at 38,046-47.

<sup>4</sup> The guidelines themselves identify their “Effective Date” as July 2, 2008, the date they were published in the Federal Register. *See* 73 Fed. Reg. at 38,030. But 5 U.S.C. § 553(d) creates an exception to the thirty-day prior publication requirement only for “(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.” None of these exceptions applies: The final guidelines do not grant or recognize an exemption or relieve a restriction. They are substantive, not interpretive, rules. *See Lott*, 750 F.3d at 217-19. And the Attorney General “provided no statement of reasons to establish ‘good cause.’” *United States v. Utesch*, 596 F.3d 302, 311 n.8 (6th Cir. 2010). Indeed, in these proceedings, the government itself has conceded that the effective date of the final guidelines was August 1, 2008. *See* Appellant’s Br. 20 n.4.



1 Maryland conviction, Gundy was already subject to the supervision of the  
2 United States District Court for the District of Maryland in relation to an earlier  
3 federal conviction. Committing the Maryland offense violated the terms of his  
4 federal supervised release. In March 2006, Gundy pleaded guilty to the  
5 supervised release violation and was sentenced to twenty-four months'  
6 imprisonment for that offense, to be served consecutively to the Maryland  
7 sentence.

8 About four and a half years later, in November 2010, Gundy was  
9 transferred from the custody of the State of Maryland to the custody of the  
10 Federal Bureau of Prisons to serve his federal sentence for violating his  
11 supervised release. But he remained in Maryland, apparently still in a state  
12 facility notwithstanding his federal custody.

13 Federal authorities eventually transferred Gundy to FCI Schuylkill in  
14 Minersville, Pennsylvania. In March 2012, toward the end of his federal sentence  
15 and in preparation for his release, Gundy signed a "Community Based Program  
16 Agreement" authorizing the Department of Justice to make arrangements for his  
17 transition into community-based custody. Three months later, Gundy was  
18 ordered to be transferred to the Bronx Residential Re-Entry Center, a halfway

1 house in New York. At his request, Gundy was granted a furlough to travel,  
2 unescorted, on July 17, 2012, from FCI Schuylkill to the Bronx. In his furlough  
3 application, Gundy acknowledged, among other things:

4 I understand that if approved, I am authorized to be only in the area  
5 of the destination shown above and at ordinary stopovers or points  
6 on a direct route to or from that destination. I understand that my  
7 furlough only extends the limits of my confinement and that I  
8 remain in the custody of the Attorney General of the United States.  
9 If I fail to remain within the extended limits of this confinement, it  
10 shall be deemed as escape from the custody of the Attorney General  
11 . . . .

12  
13 Ex. H to Decl. of Assistant U.S. Att’y Emil J. Bove III.

14 Gundy traveled from FCI Schuylkill to the Bronx Residential Re-Entry  
15 Center on July 17 as planned. On August 27, 2012, after completing his stay in  
16 the halfway house, Gundy was released from federal custody to a residence in  
17 the Bronx.

18 The government contends that, contrary to SORNA’s requirements, Gundy  
19 registered in neither Maryland nor New York. On January 7, 2013, a grand jury  
20 returned an Indictment against Gundy in the United States District Court for the  
21 Southern District of New York charging him, under 18 U.S.C. § 2250, with being  
22 required to register under SORNA; traveling interstate from Pennsylvania to  
23 New York; and then failing to register as required.

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**C. District Court Proceedings**

In March 2013, Gundy moved in the District Court to dismiss the Indictment for failure to state an offense. *See* Fed. R. Crim. P. 12(b)(3)(B)(v). Gundy argued principally that he was required to register only after the alleged interstate travel between Pennsylvania and New York, and thus could not have violated § 2250(a), the elements of which must be satisfied sequentially. The District Court agreed with Gundy and granted his motion.

In granting the motion, the court rejected the government’s contention that Gundy, who was convicted of a covered crime before SORNA’s enactment in 2006, was “required to register” as soon as SORNA became retroactive. The court interpreted 42 U.S.C. § 16913(b)(1)—which provides that a “sex offender shall initially register . . . before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement” —as demonstrating that Gundy was “required to register” under 18 U.S.C. § 2250(a)(1) only “shortly before he was released from custody in New York,” and after he had traveled interstate, *United States v. Gundy*, No. 13 Crim. 8(JPO), 2013 WL 2247147, at \*6, \*13 (S.D.N.Y. May 22, 2013).

1 Accounting for the fact that the sentence Gundy was serving immediately  
2 before his release in New York was for violating the terms of his federal  
3 supervised release, and not for the Maryland sexual assault, the District Court  
4 held that the federal sentence was also “a sentence of imprisonment with respect  
5 to” Gundy’s sex offense. *See id.* at \*11-12. In a motion for reconsideration, the  
6 government argued for the first time that Gundy was nevertheless required to  
7 register at the latest before he completed his Maryland sentence pursuant to 42  
8 U.S.C. § 16913(b)(1), because the language of the statute states that a sex offender  
9 must register “before completing *a* sentence of imprisonment,” in the singular  
10 (emphasis added).

11 The District Court denied the government’s motion, concluding that this  
12 argument was waived, but also rejecting it on the merits due to considerations of  
13 “statutory purpose and the rule of lenity.” *United States v. Gundy*, No. 13 Crim.  
14 8(JPO), 2013 WL 4838845, at \*2-3, \*6 (S.D.N.Y. Sept. 11, 2013). The government  
15 now appeals the court’s orders.



1           We agree with the government’s first argument that Gundy was a person  
2 “required to register” from the time SORNA became retroactive. A person is  
3 “required to register” under SORNA “[o]nce [that] person becomes subject to  
4 SORNA’s registration requirements.” *Carr*, 560 U.S. at 447. For Gundy, who was  
5 convicted of a sex offense in 2005, before SORNA’s July 2006 effective date, the  
6 registration requirements attached at the latest on August 1, 2008, the effective  
7 date of the Attorney General’s final guidelines, *see Lott*, 750 F.3d at 217; 5 U.S.C.  
8 § 553(d).

9           Gundy contends that he was not subject to SORNA’s registration  
10 requirements at all until shortly before his 2012 release from federal custody. In  
11 urging this position, he relies principally on § 16913(b), which provides (as  
12 relevant here) that a “sex offender shall initially register . . . before completing a  
13 sentence of imprisonment with respect to the offense giving rise to the  
14 registration requirement.” 42 U.S.C. § 16913(b)(1). Gundy points to subsection  
15 (b)’s reference to “initial” registration and reasons that a person cannot be  
16 “required to register” before that person is required *initially* to register.

17           Although § 16913(b) undoubtedly regulates initial registration, we  
18 disagree that this means that § 16913(b) also regulates when registration

1 requirements attach. It is our view that § 16913(b) is most naturally read to set  
2 deadlines for initial registration, not to establish the conditions that make  
3 registration mandatory. The provision is worded in terms of cutoff dates rather  
4 than beginning points: Thus, subsections (b)(1) and (2) direct that an offender  
5 sentenced to a term of imprisonment must initially register “before completing a  
6 sentence of imprisonment with respect to the offense giving rise to the  
7 registration requirement,” and that an offender not sentenced to a term of  
8 imprisonment must register “not later than 3 business days after being sentenced  
9 for that offense.” 42 U.S.C. § 16913(b)(1), (2) (emphases added).

10 Gundy does not dispute this reading of the statute. Instead, he argues that  
11 there can be no “require[ment] to register” until an offender has reached a  
12 registration deadline. But this argument gives insufficient weight to the fact that  
13 § 2250(a) treats being “required to register” and “fail[ing] to register or update a  
14 registration as required” as separate and distinct elements of the criminal  
15 offense. 18 U.S.C. § 2250(a)(1), (3). The temporal relationship between these  
16 elements—the first necessarily is satisfied before the second, *see Carr*, 560 U.S. at  
17 446—establishes that a person can be “subject to SORNA’s registration  
18 requirements,” *id.* at 447, before he or she is subject to immediate sanction for

1 “fail[ing] to register,” 18 U.S.C. § 2250(a)(3).<sup>5</sup> Section 16913(b) does not regulate  
2 when registration requirements attach.

3 Gundy argues, *inter alia*, that the government’s interpretation of when  
4 registration requirements attach undermines SORNA’s purposes, contradicts  
5 Supreme Court precedent, and ignores other provisions of the Act. We find none  
6 of his arguments persuasive.

7 SORNA was enacted in part “to address the deficiencies in prior law that  
8 had enabled sex offenders to slip through the cracks.” *Carr*, 560 U.S. at 455.

9 According to Gundy, permitting sex offenders to satisfy their initial registration  
10 requirements by initially registering long before their release would, contrary to  
11 this purpose, enable “offenders . . . easily [to] abscond following their release  
12 from prison, before they had registered their community address.” Appellee’s  
13 Br. 28. This argument ignores that a sex offender, having initially registered,  
14 remains subject to SORNA’s registration requirements and is required “not later  
15 than 3 business days” after a change in residence to update his or her registration

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<sup>5</sup> Gundy’s argument is also in tension with his assertion that he was required to register “shortly before” his release from custody. Were the government “simply wrong in asserting that ‘a person can be required to register under a statute for a period of time prior to that person’s deadline for completing that registration process,’” Appellee’s Br. 24 (quoting Appellant’s Br. 23), there would be no period of time before the deadline—however “short” —during which a person would be subject to a registration obligation.



1 information. 42 U.S.C. § 16913(c). Such an offender who initially registers and is  
2 then released from custody is in a position similar to that of a sex offender who is  
3 not sentenced to a term of imprisonment and must initially register “not later  
4 than 3 business days after being sentenced for that offense.” *Id.* § 16913(b)(2). In  
5 either case, the sex offender is “required to register”; should he or she leave the  
6 state of conviction and thereafter fail to register, a federal criminal penalty may  
7 be imposed. In contrast, were the Court to adopt Gundy’s position that a sex  
8 offender is “required to register” only upon the arrival of the offender’s initial  
9 registration deadline, an offender not sentenced to a prison term—and thus, in  
10 Gundy’s view, “required to register” 3 business days after sentencing—would  
11 not be subject to a federal criminal penalty if he or she left the state on the day of  
12 sentencing and thereafter failed to register. The travel would have occurred  
13 before the offender was “required to register,” precluding prosecution. *See Carr*,  
14 560 U.S. at 446. This result certainly would run counter to SORNA’s purpose.

15 Gundy’s attempt to use *Carr v. United States*, 560 U.S. 438 (2010), to  
16 challenge the government’s position is not persuasive. In *Carr*, the Supreme  
17 Court faced the question whether a defendant who had both been convicted of a  
18 sex offense and traveled interstate before SORNA’s enactment could be

1 convicted under § 2250(a) for failure to register. *See id.* at 442. The Court  
2 concluded that he could not. *See id.* at 458. In reaching this conclusion, the Court  
3 agreed with the defendant that the three elements of the crime necessarily would  
4 have had to occur after SORNA's effective date, rejecting the suggestion that  
5 being "required to register under [SORNA]" was merely "shorthand" for the  
6 status of having been convicted of a sex offense covered by SORNA. *Id.* at 446-47  
7 (internal quotation marks omitted).

8 Gundy charges that the government's position here runs afoul of the *Carr*  
9 Court's holding that being "required to register" under SORNA "denotes a more  
10 specific meaning than being among a class of sex offenders, or having a prior sex  
11 offense conviction." Appellee's Br. 20. But the government's position, and the  
12 one we adopt here, is not that the set of persons who are "required to register" is  
13 equivalent to the set of persons who been convicted of a sex offense. Rather, it is  
14 that a sex offender is "required to register" once he or she is "subject to"  
15 SORNA's registration requirements. This can occur only after SORNA's effective  
16 date, and after SORNA has been made applicable to that person. Gundy, for  
17 example, was convicted in 2005, before SORNA's effective date, and therefore  
18 was "required to register" not upon his conviction, but only once SORNA was

1 made retroactively applicable to him. Further, the period of required registration  
2 does not necessarily persist indefinitely. A person for whom the statutorily  
3 prescribed registration period is complete is no longer subject to SORNA's  
4 registration requirements, even as he or she remains among the class of  
5 statutorily defined sex offenders. *See* 42 U.S.C. § 16915; 73 Fed. Reg. at 38,046-47.

6 Gundy points to the fact that the state has a duty to inform a sex offender  
7 of the registration requirements only "shortly before" his or her release from  
8 custody, 42 U.S.C. § 16917(a), as another reason to conclude that Gundy could  
9 not have been a person "required to register" until shortly before his release from  
10 federal custody consecutive to his state custody. But we have emphasized that  
11 SORNA's requirements for the states and for sex offenders are not necessarily  
12 interdependent: In *United States v. Hester*, 589 F.3d 86 (2d Cir. 2009) (*per curiam*),  
13 we held that the defendant's duty to register under SORNA was dependent  
14 neither on his actual knowledge of SORNA's requirements nor on the state's  
15 implementation of SORNA, *see id.* at 91-93; the application of the registration  
16 requirements cited in § 2250(a)(1) did not hinge on whether the state had  
17 provided notice of those requirements, *see id.* at 92. And in any case, the timing  
18 of the state's duty to provide notice is not random: An offender who is "required

1 to register” under SORNA but does not register is not vulnerable to any  
2 punishment until after the time at which the state incurs a duty to provide notice.  
3 This is because an offender cannot have “fail[ed] to” satisfy any SORNA  
4 requirement applicable to him or her until the deadline for satisfying that  
5 requirement has passed; for a sex offender sentenced to a term of imprisonment,  
6 the initial registration deadline is when he or she “complet[es] a sentence of  
7 imprisonment with respect to the offense giving rise to the registration  
8 requirement,” 42 U.S.C. § 16913(b)(1).<sup>6</sup> That Congress required states to provide  
9 notice to sex offenders only shortly before their release from custody fails to  
10 demonstrate that Congress did not intend for sex offenders to be persons  
11 “required to register” from an earlier stage.

12 Further, any suggestion that Gundy could not have been a person  
13 “required to register” beginning in 2008 because registration would have been  
14 impossible for him to accomplish while in custody must be rejected. The statute  
15 expressly requires an offender sentenced to imprisonment to initially register  
16 while still in custody. *See* 42 U.S.C. § 16913(b)(1) (requiring a sex offender to  
17 register “before completing a sentence of imprisonment”). And the nature of the

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<sup>6</sup> Indeed, any offender designated as such based on a state law conviction does not violate § 2250(a)—and is not subject to *federal* criminal sanction—unless he or she fails to register after traveling interstate.

1 registration information that a sex offender must provide accounts for the  
2 possibility that a sex offender may not have a current place of employment or  
3 permanent residence. For example, § 16914(a) requires a sex offender to provide  
4 the name and address of any place where the sex offender “resides or will reside,”  
5 or “is . . . or will be” an employee or student. *Id.* § 16914(a)(3)-(5) (emphases  
6 added). Notably, it is only after initial registration, to “[k]eep[] the registration  
7 current,” that a sex offender must “appear in person” to provide information, *id.*  
8 § 16913(c); and the particular requirement to keep one’s registration current in  
9 this way does not apply to sex offenders during any period of custody or civil  
10 commitment, *see id.* § 16915(a); 73 Fed. Reg. at 38,068.

11 In sum, Gundy was a person “required to register” under SORNA  
12 beginning at the latest on August 1, 2008, the effective date of the Attorney  
13 General’s final guidelines. This date arrived well before his alleged travel from  
14 Pennsylvania to New York. The District Court thus erred in concluding that  
15 Gundy became a person “required to register” under SORNA only after  
16 traveling interstate.

17 Gundy urges us, to the extent we disagree with the District Court, to  
18 affirm the court’s dismissal order on the alternative ground that the travel

1 charged in the Indictment does not amount to “interstate travel” within the  
2 meaning of § 2250(a)(2)(B). Gundy notes that by virtue of his one-day travel  
3 agreement with the federal government, he remained in the custody of the  
4 Federal Bureau of Prisons when he traveled from Pennsylvania to New York to  
5 take up his residence in the halfway house. As a result, he argues, his travel fell  
6 outside the purview of § 2250(a)(2)(B). Gundy raised this issue before the  
7 District Court, but the District Court did not reach it. We leave it to the court on  
8 remand to decide in the first instance whether dismissal of the Indictment is  
9 warranted on this other ground.

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## CONCLUSION

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For the reasons above, we REVERSE the District Court’s order dismissing  
the Indictment. We REMAND the cause to the District Court for reinstatement  
of the Indictment and for further proceedings consistent this opinion. Gundy’s  
appeal from the District Court’s order denying reconsideration is moot.