

United States Court of Appeals
For the Eighth Circuit

No. 12-3578

United States of America

Plaintiff - Appellee

v.

Theophile J. Taken Alive

Defendant - Appellant

Appeal from United States District Court
for the District of South Dakota - Sioux Falls

Submitted: May 13, 2013

Filed: May 22, 2013

[Unpublished]

Before WOLLMAN, MURPHY, and SMITH, Circuit Judges.

PER CURIAM.

Theophile Taken Alive was convicted of a federal sex offense in February 2002. Then in 2012, Taken Alive was charged with failing to update his registration as required by the Sex Offender Registration and Notification Act (SORNA). 42 U.S.C. § 16901 *et seq.* He moved to dismiss the indictment on the basis of a claim which we have already rejected. Taken Alive argues that the Attorney General cannot

constitutionally be given authority to determine SORNA's applicability to sex offenders who were convicted before the statute's enactment, 42 U.S.C. § 16913(d), citing the nondelegation doctrine of the United States Constitution. See Panama Ref. Co. v. Ryan, 293 U.S. 388, 421 (1935). The district court¹ upheld the constitutionality of the act. Taken Alive then conditionally plead guilty, reserving the right to appeal the nondelegation issue.

A legislative enactment does not violate the nondelegation clause so long as the law contains an "intelligible principle" to guide the implementing authority. Mistretta v. United States, 488 U.S. 361, 372 (1989). We recently considered nondelegation challenges to SORNA in United States v. Kuehl, 706 F.3d 917 (8th Cir. 2013), and United States v. Fernandez, 710 F.3d 847 (8th Cir. 2013). We concluded there that SORNA contains an "intelligible principle" guiding the Attorney General's exercise of delegated authority. Kuehl, 706 F.3d at 920; Fernandez, 710 F.3d at 849. As Taken Alive's challenge is identical to the question raised and decided in Kuehl and Fernandez, we affirm the judgment of the district court.

¹ The Honorable Lawrence L. Piersol, United States District Judge for the District of South Dakota, adopting the report and recommendation of the Honorable John E. Simko, United States Magistrate Judge for the District of South Dakota.