Appeal No. 17-1333

In the United States Court of Appeals
for the Tenth Circuit

DAVID MILLARD, EUGENE KNIGHT, and ARTURO VEGA,

Plaintiffs-Appellees,

v.

MICHAEL RANKIN,
Director of the Colorado Bureau of Investigation, in his official capacity,

Defendant-Appellant,

On Appeal from the United States District Court
for the District of Colorado
The Honorable Judge Richard P. Matsch
D.C. No. 13-cv-02406-RPM

BRIEF OF 17 SCHOLARS WHO STUDY SEX OFFENSES AS *AMICI CURIAE* IN SUPPORT OF APPELLEES AND SUPPORTING AFFIRMANCE

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In re J.B., 107 A.3d 1 (Pa. 2014) 12
McKune v. Lile, 536 U.S. 24 (2002) 8, 11

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United States v. Kebodeaux, 570 U.S. 387 (2013) 11

STATUTES

C.R.S. § 16-22-112 .... 7, 25

C.R.S. § 16-22-113 .... 5, 6

C.R.S. § 18-3-414.5 5

C.R.S. §16-22-113(1)(c) 5

OTHER AUTHORITIES

Agan, A. Y. *Sex offender registries: Fear without function?* 54 Journal of Law and Economics 207 (2011); J.J. Prescott & Jonah Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?,* 54 Journal of Law and Economics 161 (2011) 29

Alfred Blumstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*,
47 Criminology 327 (2009) 17

Alissa Ackerman, R., Meghan Sacks & David Greenberg, *Legislation Targeting Sex Offenders: Are Recent Policies Effective in Reducing Rape?*, 29 Justice Quarterly 858 (2012) 29

Clearinghouse, Static-99/Static-99R, http://www.static99.org/ 16

Colorado Bureau of Investigation, Web Stats, https://apps.colorado.gov/apps/dps/sor/info-web.jsf 5

David Finkelhor, Richard Ormrod & Mark Chaffin, Dep't of Justice, *Juveniles Who Commit Sex Offenses Against Minors*, Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, Dep't of Justice (Dec. 2009) 12

Eula Biss, *On Immunity: An Innoculation* 37 (2014) 30

Finkelhor, Ormrod, Turner, and Hamby, *School, Police, and Medical Authority Involvement With Children Who Have Experienced Victimization*, 165 Archive of Pediatric and Adolescent Medicine 9 (2011) 24

Grant Duwe & William Donnay, *The impact of Megan's Law on Sex Offender Recidivism: The Minnesota Experience*, 46 Criminology 411 (2008) 28

Harris, Levenson, & Ackerman, *Registered Sex Offenders in the United States: Behind the Numbers*, 60 Crime and Delinquency 3 (2014) 28

Harris, Lobanov-Rostovsky, & Levenson, *Widening the Net: The Effects of Transitioning to the Adam Walsh Act Classification System*, 37 Criminal Justice and Behavior 503 (2010) 26

Ira Ellman & Tara Ellman, *"Frightening and High": The Supreme Court's Crucial Mistake About Sex Crime Statistics*, 30 Const. Comment. 495 (2015) 9

Jacob Sullum, *'I'm Appalled,' Says Source of Phony Number Used to Justify Harsh Sex Offender Laws*, *Reason*,

http://reason.com/blog/2017/09/14/im-appalled-says-source-of-pseudo-statis 9

Jeffrey C. Sandler et al., *Does a Watched Pot Boil? A Time-series Analysis of New York State's Sex Offender Registration and Notification Law,* 14 Psych. Pub. Pol'y &L. 284 (2008) 13

Leslie Helmus, David Thornton, R. Karl Hanson & Kelly M. Babchishin, *Improving the Predictive Accuracy of Static-99 and Static-2002 with Older Sex Offenders: Revised Age Weights*, 24 Sexual Abuse: J. Res. & Treatment 64 (2012) 16

Levenson, Grady, and Leibowitz, *Grand Challenges: Social Justice and the Need for Evidence-based Sex Offender Registry Reform*, 43 Journal of Sociology and Social Welfare 3 (2016) 28

Megan C. Kurlychek, Shawn D. Bushway, & Robert Brame, *Long-Term Crime Desistance and Recidivism Patterns–Evidence from the Essex County Convicted Felon Study*, 50 Criminology 71 (2012) 17

Michael Petrunik, *The Hare and Tortoise: Dangerousness and Sex Offender Policy in the United States and Canada*, 45 Canadian J. Criminology & Crim. Just. 43 (2003) 20

Patrick Langan, Erica Schmitt & Matthew Durose, Dept. of Justice, Bureau of Justice Statistics, *Recidivism Of Sex Offender Released From Prison In 1994* 1 (2003) 12

Paul Slovic, *The Feeling of Risk* (2010) 30

Paul Slovic, *The Perception of Risk* (2000) 30

R. Karl Hanson & Kelly E. Morton-Bourgon, *The Accuracy of Recidivism Risk Assessments for Sexual Offenders: A Meta-Analysis of 118 Prediction Studies*, 21 Psychol. Assessment 1 (2009) 16

R. Karl Hanson, Alyson Lunetta, Amy Phenix, Janet Neeley & Doug Epperson, *The Field Validity of Static-99/R Sex Offender Risk*

Assessment Tool in California, 1 J. Threat Assessment & Mgmt. 102 (2014) 16

R. Karl Hanson, Andrew J.R. Harris, Leslie Helmus & David Thornton, *High Risk Sex Offenders May Not Be High Risk Forever*, 29 J. Interpersonal Violence 2792 (2014) 18

R. Karl Hanson, Elizabeth Letourneau, Andrew J.R. Harris, L. Maaike Helmus & David Thornton, *Reductions in Risk Based on Time Offense-Free in the Community: Once a Sexual Offender, Not Always a Sexual Offender*, 24 Psychol. Pub. Pol'y & L. 48 (2018) 20

Rachel E. Kahn, Gina Ambroziak, R. Karl Hanson & David Thornton, *Release from the Sex Offender Label*, 46 Archives Sexual Behav. 861 (2017) 21

Robert A. Prentky, Austin F. S. Lee, Raymond A. Knight & David Cerce, *Recidivism Rates among Child Molesters and Rapists: A Methodological Analysis*, 21 L. & Hum. Behav. 635 (1997) 14

Sandler, et al., *supra*, n. 24. *See also* Craun, Simmons, & Reeves, *Percentage of Named Offenders on the Registry at the Time of the Assault*, 17 Violence Against Women 1374 (2011) 27

Seung Lee, R. Karl Hanson, Nyssa Fullmer, Janet Neeley & Kerry Ramos, *The Predictive Validity of Static-99R Over 10 Years for Sexual Offenders in California: 2018 Update*, Saratso 19, http://saratso.org/pdf/Lee_Hanson_Fullmer_Neeley_Ramos_2018_The_Predictive_Validity_of_S_.pdf. 22

Washington State Institute for Public Policy, *Sex offender sentencing in Washington State: Did community notification influence recidivism?* (Document No. 05-12-1202, December 2005), Retrieved from http://www.wsipp.wa.gov/ReportFile/919 28

Wayne Logan, *Knowledge as Power* (2009).. 20

Zgoba, Miner, Levenson, Knight, Letourneau, and Thornton, *The Adam Walsh Act: An Examination of Sex Offender Risk Classification*

Systems, 28 Sexual Abuse: A Journal of Research and Treatment 722 (2016) 26

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INTEREST OF AMICI CURIAE

Amici are seventeen scholars across six disciplines whose work includes the leading studies of persons convicted of sexual offenses, and of the registry laws applied to them. *Amici* share a concern that judicial decisions about these laws have sometimes relied upon misunderstandings about the re-offense risks posed by registrants and the impact of the registry laws on sexual offending. *Amici* wish to provide the Court with accurate and accessible descriptions of the findings of the published scientific studies on these subjects. The Appendix identifies, and describes the work of, each of the seventeen amici.

Pursuant to Fed. R. App. P. 29(a)(4)(E), *Amici* states that: a party's counsel did not author this brief in whole or in part; that a party or a party's counsel did not contribute money that was intended to fund preparing or submitting this brief; and that no person, other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund preparing or submitting the brief. Furthermore, the filing of this amicus brief is permitted under Fed. R. App. P. 29(a)(2) because all parties have consented to its filing.

SUMMARY OF ARGUMENT

Discussions of sex offense registration and public notification take place against a backdrop of fear and loathing—fear that only harsh registration rules can prevent great harms, and a loathing that fuels the feeling that no restriction on "sex offenders" can be too harsh. These emotions underlay the assumption that those placed on these registries may be condemned as a group because they all share critical character defects or psychiatric compulsions that lead them to re-offend at "frightening and high" rates, *Smith v. Doe*, 538 U.S. 84, 103 (2003), that never change, even after they have lived in the community for years as law-abiding citizens. *Id.* at 104.

The Colorado regime at issue in this case is firmly grounded on these assumptions. It requires individuals to register on the basis of a single offense alone, effectively employing an irrebuttable presumption of dangerousness arising from the conviction. It allows no opportunity for individualized assessment, either initially or at any other time during the mandatory registration period, which continues for at least a decade and often for life. The presumption can thus render legally

irrelevant decades of law-abiding behavior following release from custody.

We acknowledge that people who do terrible things warrant punishment (and require treatment) and that recidivists may be punished especially harshly, as a matter of dessert as well as deterrence. But the question this case presents is whether people who have already been punished for their crime, and are no longer subject to criminal justice supervision, may be subject to lifetime burdens solely on the basis of their single conviction.

The presumption's denial of any individualized risk assessment defies everything we know about those required to register. Registrants[1] vary not only in their traits, life experiences, and character, but also in their re-offense risk, within offense categories as well as across them. The vast majority never re-offends. And that is true whether or not they live under a regime of websites and public notification laws like Colorado's. Of course, some do re-offend, as do some murderers, kidnappers, and armed robbers. But that possibility,

[1] We generally use the term "registrant" rather than "sex offender," which can suggest the mistaken assumption that registrants all share common and immutable character flaws.

with registrants no less than others, only emphasizes the importance of grounding the policy on facts. Policies grounded on emotionally driven assumptions may make us feel good, but if the assumptions are wrong, they will not make us safer.

A registrant's re-offense risk can be measured at the time of a registrant's release with simple actuarial scales routinely employed in some states. Even more importantly, whatever an individual's re-offense risk at the time of his release, it drops significantly, and in predictable patterns, every year after release the registrant remains offense-free.

Because Colorado's laws take no account of these facts, its registry is packed with persons very unlikely to re-offend. Their inclusion undermines the public safety goals that motivate these laws in the first place. Colorado's law, as applied to these plaintiffs, causes them serious harm without advancing, and probably degrading, its avowed purpose. It thereby works an arbitrary deprivation of liberty in violation of the Fourteenth Amendment.

ARGUMENT

As of June 25, 2018, 19,178 people were registered on the Colorado Sex Offender Registry.[2] Barely more than 200 had been adjudicated "sexually violent predators."[3] The other 19,000, like Appellees, must register on the basis of a conviction for a listed offense alone, with no assessment of their re-offense risk.[4] The offense also determines their minimum registration period. C.R.S. § 16-22-113. Those subject to minimum registration periods of ten or twenty years from their release may at that point petition a court to remove them from the registry if they have not re-offended.[5] Colorado does not publish data on the frequency with which these petitions are granted,

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[2] Colorado Bureau of Investigation, Web Stats, https://apps.colorado.gov/apps/dps/sor/info-web.jsf (accessed June 25, 2018).

[3] *Id.* The precise number on June 25 was 211. The process for classification as an SVP includes an individualized assessment by evaluator approved by the Colorado Sex Offender Management Board. C.R.S. § 18-3-414.5.

[4] The offenses that currently trigger a registration requirement are listed on the website of the Colorado Bureau of Investigation, https://apps.colorado.gov/apps/dps/sor/information.jsf.https://apps.colorado.gov/apps/dps/sor/information.jsf

[5] Some (not all) of those whose only offense was a misdemeanor may petition after five years. C.R.S. §16-22-113(1)(c).

but the experience of Mr. Vega, as described by the district court, illustrates the substantial barriers such petitioners face.

Many others, like Mr. Millard, can never petition for removal. His "sexual assault"[6] conviction requires lifetime registration.[7] Because Colorado allows him no opportunity to *ever* rebut the presumption that he is dangerous, it renders legally irrelevant the fact that he has lived in the community since 1999 and has never been accused of any new offense of any kind, sexual or otherwise.[8]

Plaintiffs Millard and Knight each has his name, address, and photograph displayed on the searchable website maintained by Colorado Bureau of Investigation (CBI), as do 75% of Colorado registrants.[9] Plaintiff Vega's name is not on the CBI site because it does not include juvenile offenders. However, the 93 websites maintained by

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[6] "Sexual assault" can include a conviction for consensual sexual contact with a fifteen year old, thus requiring lifetime registration. *Stanley v. DA*, 395 P.3d 1198, 1201-03 (Colo. App. 2017).

[7] Statements in the trial court findings and conclusions that suggest he is eligible to petition for removal are mistaken. Mr. Millard was convicted of second-degree sexual assault, C.R.S. § 18-3-403(1)(a), (App. 172, 202), which requires lifetime registration under C.R.S. § 16-22-113(3)(b)(I).

[8] App. 700.

[9] *Id.* The website shows the number of persons displayed on it as well as the total number of registrants in the state, allowing one to compute this percentage.

local Colorado law enforcement agencies[10] may include juveniles, C.R.S. § 16-22-112, as does the list of registrants anyone may obtain from the CBI.[11] The CBI also offers a free service providing anyone who asks with weekly email notifications of all additions to the registry in any zip code they designate.[12]

Colorado thus endeavors to publicize the identity and address of every registrant, and largely succeeds. Anyone identified on the official government lists may of course also be included on privately run websites that have their own criteria for whom to list.

The statute authorizing these public notifications explains their purpose is "to allow [the public] to adequately protect themselves and their children from these persons." C.R.S § 16-22-112(1). The unstated but obvious factual premise they communicate is that registrants are dangerous. There could otherwise be no need to protect oneself from

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[10] These are accessible at https://www.sotar.us/sotar-public/initPublicIndexRedirect.do.

[11] "You may contact your local Police Department, County Sheriff's office, or the CBI for a COMPLETE list of registered sex offenders in your city, county or state." https://apps.colorado.gov/apps/dps/sor/information.jsf.

[12] https://apps.colorado.gov/apps/dps/sor/notifications.jsf.

them. A second necessary factual premise is that protective measures targeting registrants will indeed enhance public safety.

As explained in the sections that follow, and as courts have begun to recognize, both these factual premises are seriously mistaken. They are certainly wrong with respect to registrants whose risk profiles resemble the plaintiffs in this case. The registry thus imposes serious harms on these registrants without any basis for the claim that doing so advances public safety. Imposing serious burdens on an individual because he is a member of a group is problematic. Doing so on the basis of erroneous factual assumptions about the group's dangerousness is worse. Doing so without allowing the burdened individual any opportunity to show he is among the large majority of group members who pose no special danger is an unconstitutionally arbitrary denial of liberty under the Fourteenth Amendment. The absence of any empirical support for the regime's ostensible civil purpose also supports the trial court's conclusion that its real purpose is punishment.

The plurality in *McKune v. Lile,* 536 U.S. 24, 33 (2002), in a passage the Court later quoted in *Smith v. Doe*, 538 U.S. 84, 103 (2003),

said registrants re-offend[13] at the "frightening and high" rate of 80%. That dramatic phrase has been repeated by over 100 courts.[14] But it was grounded on casual impression, not data,[15] and has since been disavowed by the very sources the Court relied upon in making it.[16] Empirical studies published since *Smith,* in peer-reviewed scholarly journals, have persuaded courts to reach the opposite conclusion. *See Does #1–5 v. Snyder*, 834 F.3d 696, 704 (6th Cir. 2016) ("The record below gives a thorough accounting of the significant doubt cast by recent empirical studies on the pronouncement in *Smith* that '[t]he risk

[13] Because the purpose of registration is to protect the community from new sex offenses, we use the term "re-offend" to refer to the commission of a subsequent sex offense, not to any subsequent offense regardless of whether it is sexual in nature. Studies often provide counts of both.

[14] A 2015 count found that the phrase "frightening and high" in 91 judicial opinions, and briefs in 101 cases. Ira Ellman & Tara Ellman, *"Frightening and High": The Supreme Court's Crucial Mistake About Sex Crime Statistics*, 30 Const. Comment. 495, 497 (2015). A Lexis case search for the phrase now results in 118 hits.

[15] The Court's statement that re-offense rates for those convicted of sex crimes is "as high as 80%" relied, apparently unknowingly, on a second-hand description of an article in a popular magazine that contained no data. *Id.* at 497-98.

[16] Jacob Sullum, *'I'm Appalled,' Says Source of Phony Number Used to Justify Harsh Sex Offender Laws*, *Reason*, http://reason.com/blog/2017/09/14/im-appalled-says-source-of-pseudo-statis.

of recidivism posed by sex offenders is 'frightening and high.'"), *cert. denied*, 138 S. Ct. 55 (2017).

The implicit but mistaken assumption that all registrants present the same re-offense risk lies behind most inflated claims of the danger they pose, as explained in Section I below. Section II describes the compelling data establishing the decline in re-offense risk over time, and how the rate of that decline varies with a registrant's initial risk level, measured by simple actuarial tests used by some states. Section III describes research that shows that registries like Colorado's provide no detectible improvement in public safety (its stated goal), and may in fact have the opposite effect.

I. Statements about Re-Offense Rates of Registrants Are Often Mistakenly Based on Counts of Nonrandom Subgroups

Legislators and judicial opinions often mistakenly assume that empirical studies on the re-offense rates of one subgroup of registrants apply equally to all registrants. But the enormous range of offenses that trigger registration requirements ensures that registrants are a heterogeneous group of people whose experiences, characters, and rehabilitative potential vary enormously.

It is easy to miss this important point. For example, after acknowledging that some studies find registrants have low recidivism rates, the opinion in *United States v. Kebodeaux*, 570 U.S. 387, 395–96 (2013) adds:

> There is evidence that recidivism rates among sex offenders are higher than the average for other types of criminals. See Dept. of Justice, Bureau of Justice Statistics, P. Langan, E. Schmitt, & M. Durose, Recidivism of Sex Offenders Released in 1994, p. 1 (Nov. 2003) (reporting that compared to non-sex offenders, released sex offenders were four times more likely to be rearrested for a sex crime, and that within the first three years following release 5.3% of released sex offenders were rearrested for a sex crime).

The 5.3% re-offense figure the Court quotes here from the Langan *et al.* study is obviously much lower than the 80% erroneously assumed by the Court in *McKune* and *Smith*. But even 5.3% overstates the three-year rate averaged across *all* registrants,[17] because this study looked

[17] See *infra* this section. The statement that released sex offenders are four times more likely than other released felons to be arrested for a sex crime is also misleading. It is clearly incorrect with respect to the registrants like appellees who have been at liberty for years without re-offending. It is also misleading because no context is provided. For example, if male ex-felons in general who are in their twenties are two or three times more likely to be arrested for a sex crime after their release than are male ex-felons in their 60's, that would hardly justify placing all younger male ex-felons on a registry.

only at adult, male, violent offenders released from state prisons[18]--quite clearly a higher-risk group than registrants generally. The exclusion of juvenile offenders like Mr. Vega is important because juveniles constitute more than a third of those known to the police to have committed sex offenses against a minor,[19] and their average re-offense rate is lower than for adults.[20] But perhaps most importantly, the limitation to those "released from state prisons" excludes registrants like Mr. Millard, Mr. Knight, and Mr. Vega who were never in prison in the first place, because they were instead sentenced to probation or a short jail term (or both).[21]

[18] Patrick Langan, Erica Schmitt & Matthew Durose, Dept. of Justice, Bureau of Justice Statistics, *Recidivism Of Sex Offender Released From Prison In 1994* 1 (2003) (noting that everyone in the study population was male); *id.* at 3 (defining violent offender); and *id.* at 7 (giving age at time of release and noting that "a few" offenders were under age 18).

[19] David Finkelhor, Richard Ormrod & Mark Chaffin, Dep't of Justice, *Juveniles Who Commit Sex Offenses Against Minors*, Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, Dep't of Justice (Dec. 2009), at 3. About half of reported juvenile sex offenders are between 15 and 17 years old. *Id.* at 1, 4.

[20] *See, e.g.*, the studies gathered in *In re J.B.*, 107 A.3d 1, 17–18 (Pa. 2014).

[21] Mr. Millard was sentenced to jail work release and probation, App. 966-68. Mr. Knight was sentenced to probation and 90 days in jail, App. 1010. Mr. Vega was sentenced to a juvenile detention facility, App. 707.

Those never sent to prison probably constitute at least 25% of Colorado registrants.[22] They are lower risk because they are more likely than those sent to prison to be first offenders,[23] and first offenders have lower re-offense rates than those who have already re-offended. That well-established fact is illustrated by the first offenders among this very group of adult, male, violent, released prisoners: their three-year re-offense rate was 3.3%[24], not the 5.3% overall rate quoted in *Kebodeaux.*

In sum, the overall re-offense rate of violent, adult, males convicted of a sex offense and released from prison is necessarily much higher than the overall re-offense rate of Colorado registrants. The

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[22] Juveniles and misdemeanants, who are not sentenced to prison, are the only groups excluded from the CBI website, according to the site itself. https://apps.colorado.gov/apps/dps/sor/index.jsf. Because the CBI has chosen to include those with one felony conviction, App. 914, it appears that the exclusion of juveniles and misdemeanants largely accounts for the fact that the site displays only 75% of all registrants. Because there are also adult felons, like Mr. Millard and Mr. Knight, who are not sentenced to prison, it seems likely that more than 25% of Colorado registrants were not in prison.

[23] First offenders are about 95% of those arrested for sex crimes, but were only 71.5% of those in this sample. Jeffrey C. Sandler et al., *Does a Watched Pot Boil? A Time-series Analysis of New York State's Sex Offender Registration and Notification Law,* 14 Psych. Pub. Pol'y &L. 284, 297 (2008) (finding 95% of those arrested in New York for sex offenses were first offenders); Langan *et al.*, *supra* n. 18 at 26 (Table 27) and 28 (Table 30) (showing that 78.5% in study convicted of a prior crime and 28.5% of a prior sex crime).

[24] Langan *et al.*, *supra* n. 18 at 26-27 (Tables 27 and 29).

error arises from the failure to take account of differences between the study population and the registrant population.

This kind of error is common. *Smith v. Doe*, 538 U.S. 84 (2003) provides another example. It considered an Alaska statute requiring registration for either 15 years or for life, depending upon the offense. 538 U.S. at 90. The Court stated:

> The duration of the reporting requirements is not excessive. Empirical research on child molesters, for instance, has shown that, "[c]ontrary to conventional wisdom, most reoffenses do not occur within the first several years after release," but may occur "as late as 20 years following release." National Institute of Justice, R. Prentky, R. Knight, & A. Lee, U.S. Dept. of Justice, Child Sexual Molestation: Research Issues 14 (1997).

Id. at 104.

In this passage the Court cites a summary of the study's findings, rather than the study itself, which was published the same year in a peer-reviewed professional journal.[25] That full report explains that the population studied was 136 rapists and 115 child molesters released from the Massachusetts Treatment Center for Sexually Dangerous Persons, which had been established "for the purpose of evaluating and

[25] Robert A. Prentky, Austin F. S. Lee, Raymond A. Knight & David Cerce, *Recidivism Rates among Child Molesters and Rapists: A Methodological Analysis*, 21 L. & Hum. Behav. 635 (1997).

treating individuals convicted of repetitive and/or aggressive sexual offenses."[26]In other words, the study did not examine the re-offense rates of "child molesters," much less of all registrants, but rather of a small and atypical subgroup, incarcerated in a special facility designed for sexual offenders who presented a particularly high risk. The paper itself cautions that its findings cannot be applied to other offender populations.[27]

In sum, registrants are a heterogeneous group. Their experiences, character, and re-offense risk vary considerably. One cannot apply re-offense data from a subgroup with one risk profile to those with a different risk profile. And more importantly, even a properly computed average re-offense risk across *all* registrants is no more likely to fit the individual registrant than would a shoe of the group's average size.

II. Individualized Assessments of Re-offense Risk at the Time of Release are Easily Done, and Risk Declines over Time for all Risk Groups, Including those Initially at Higher Risk

Reasonably accurate and practical ways to estimate the re-offense risk posed by individual registrants, or by groups who share a similar

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[26] *Id.* at 637-38.
[27] *Id.* at 636.

risk profile, are available and in use. A good example is the Static-99R, a 10-item actuarial scale that assesses the re-offense risk of adult males who have committed a sex crime.[28] A non-proprietary tool developed by researchers employed by the Canadian government, it is the most widely used sex offense risk assessment tool in the world.[29] Several studies commissioned by the State of California validated its predictive accuracy for adult males on the California registry.[30]

The Static 99R measures re-offense risk at the time of release from custody, but once the registrant has been at liberty for a few years, an accurate risk assessment must also take account of what he has done–and *not* done–after release. The single most well-established

[28] The ten items cover demographics, sexual criminal history (e.g., prior sexual offense), and general criminal history (e.g., prior non-sexual violence). *See, e.g.*, Leslie Helmus, David Thornton, R. Karl Hanson & Kelly M. Babchishin, *Improving the Predictive Accuracy of Static-99 and Static-2002 with Older Sex Offenders: Revised Age Weights*, 24 Sexual Abuse: J. Res. & Treatment 64, 65 (2012). Such "structured" risk assessment tools are more accurate than clinical assessments. R. Karl Hanson & Kelly E. Morton-Bourgon, *The Accuracy of Recidivism Risk Assessments for Sexual Offenders: A Meta-Analysis of 118 Prediction Studies*, 21 Psychol. Assessment 1, 6–8 (2009).

[29] *See* Clearinghouse, Static-99/Static-99R, http://www.static99.org/.

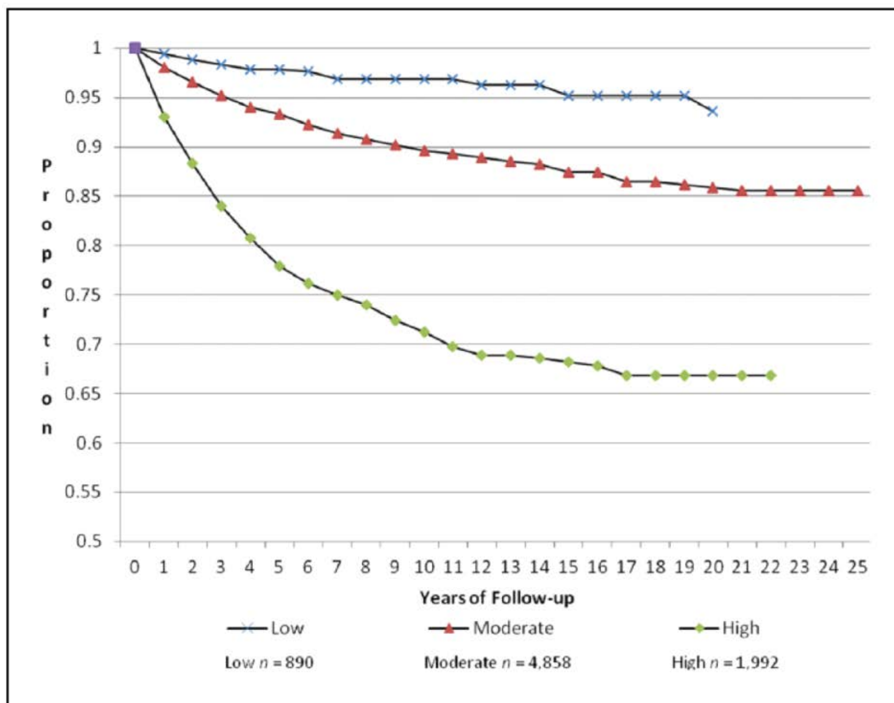
[30] *E.g.*, R. Karl Hanson, Alyson Lunetta, Amy Phenix, Janet Neeley & Doug Epperson, *The Field Validity of Static-99/R Sex Offender Risk Assessment Tool in California,* 1 J. Threat Assessment & Mgmt. 102 (2014).

finding in criminology is that the likelihood a released felon will re-offend declines with each year after release he remains offense-free.[31] Two widely-cited studies show that the same is true for those convicted of sex offenses.

Whatever a registrant's risk level at the time of his or her release, the probability of re-offending declines every year he or she remains at liberty without having re-offended. The reduction in an offender's re-offense risk follows predictable trajectories that vary with his or her original risk level. But even those who present a high re-offense risk at the time of their release become low risk after enough years at liberty without re-offending.

[31] Alfred Blumstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, 47 Criminology 327 (2009); Megan C. Kurlychek, Shawn D. Bushway, & Robert Brame, *Long-Term Crime Desistance and Recidivism Patterns–Evidence from the Essex County Convicted Felon Study*, 50 Criminology 71, 75 (2012).

The first of these studies, published in 2014, combined data from 21 prior studies that in total followed 7,740 adult male sex offenders after their release from custody.[32] The follow-up periods varied with the original study. They were 8.2 years on average, but as long as 31 years.[33] The Static-99R was used to classify offenders as High,



[32] R. Karl Hanson, Andrew J.R. Harris, Leslie Helmus & David Thornton, *High Risk Sex Offenders May Not Be High Risk Forever*, 29 J. Interpersonal Violence 2792, 2794–95 (2014). This study examined re-offending by adult men only, because the Static-99R has not been validated for women, juveniles, or some non-contact offenders.

[33] In 10 of the 21 studies, re-offense was defined as a new conviction for a sex offense; in 11, re-offense was defined as the filing of new sex offense charges. *Id.* at 2797.

Moderate, or Low risk for sexual re-offending at the time of release. The chart reprinted below, taken from the study,[34] shows the proportion in each of these three risk groups who committed no new sex offense at years 1 to 21 after release.

The Static-99R's predictive power is shown by the separation of the three lines in the years after release. After 20 years, 95% of the low risk group had not re-offended, compared to 85% of the moderate risk group and 67% of the high risk group. But the key finding is that the proportion who remain offense-free stabilizes over time–it stops declining, as shown by the way all three lines in chart flatten. The line for the high risk group, for example, is quite flat after the 12th year, and doesn't change at all after the 17th. That means that very few who haven't re-offended by the 12th year re-offend later, and virtually none re-offend for the first time after 17 years living offense-free in the community.

Sixteen of the 21 studies drawn upon for this analysis were done on offenders in other western countries (most often, Canada) in which released offenders are not subject to American-style offender

[34] *Id.*

registries.[35] Moreover, the five American studies involved offenders released before use of internet sites listing them became widespread.[36] It is thus clear that the declining re-offense risk found in this study was *not* the result of public notifications or website listings.

The second study in 2018 asked at what point after release the legally-compliant offender's risk level becomes too low to justify special treatment.[37] One cannot demand a zero risk level, because no group in the population presents a zero sex offense risk. An appropriate risk benchmark can be identified by looking at the sexual offense rate for a

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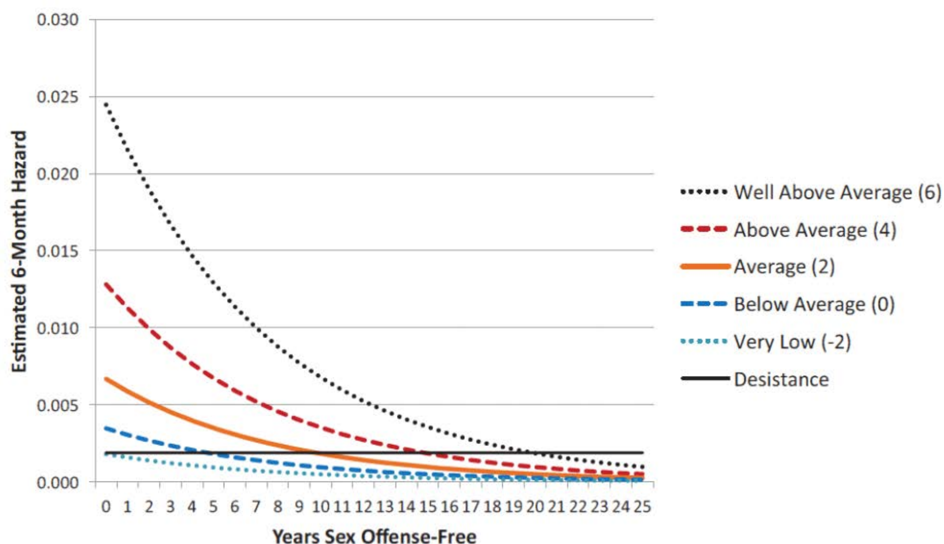
[35] Ten of the 21 studies involved Canadian offenders. Hanson et al, *supra* n. 33, at 2797. The six studies that were neither Canadian nor American tracked offenders in Austria, Denmark, Germany, New Zealand, Sweden, and the United Kingdom. *Id.* For a comparison of Canadian and American laws, discussing why Canada adopted a much less aggressive approach to sex offenders, *see* Michael Petrunik, *The Hare and Tortoise: Dangerousness and Sex Offender Policy in the United States and Canada*, 45 Canadian J. Criminology & Crim. Just. 43 (2003).

[36] The five American studies tracked offenders released in 1970, 1988, 1995, and 1996 (twice). Hanson et al, *supra* n. 33, at Table 1, pp. 2797-2798. Megan's Law, enacted in May of 1996, was the first time the federal government required states to have community notification provisions as a condition of federal funding; internet sites were first required by the Adam Walsh Act, adopted in 2006. Wayne Logan, *Knowledge as Power* 61-64 (2009).

[37] R. Karl Hanson, Elizabeth Letourneau, Andrew J.R. Harris, L. Maaike Helmus & David Thornton, *Reductions in Risk Based on Time Offense-Free in the Community: Once a Sexual Offender, Not Always a Sexual Offender*, 24 Psychol. Pub. Pol'y & L. 48, 50 (2018).

suitable comparison group that society does *not* place on the sex offender registry. The authors chose nonsexual offenders, who of course are not placed on sex offense registries. Their different treatment, as compared to sexual offenders, should be based on a lower risk of sexual offense. Looking at data on the rate of spontaneous "out of the blue" sexual offending among those with a criminal conviction but no history of sexual offenses, the authors settled on "desistance" benchmark of a



sexual re-offense rate of 2% or less.[38]

For this study the Static 99R score was used to classify registrants in one of five risk categories, from "Very Low" through "Well Above

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[38] Rachel E. Kahn, Gina Ambroziak, R. Karl Hanson & David Thornton, *Release from the Sex Offender Label*, 46 Archives Sexual Behav. 861, 862 (2017); *see also* Hanson, *et al.*, *supra* note 38 at 49.

Average".[39] The likelihood of a future sexual offense for those in all five categories was recalculated at six-month intervals in the years following release, to take account of the absence of any sexual reoffending up to that point. These "hazards rates" for each of the five risk categories, for a period of 24 years following release, are shown on the chart that follows, reproduced from the 2018 study.[40] The horizontal black line shows the 2% "desistance" rate against which each group's hazard rate can be compared.

The highest risk group ("well above average") remains above the 2% desistance level for a long time—about 21 years. But a recent California study found that only 33 of a random sample of 371 adult male registrants (8.8%) were in this high-risk category.[41] Another 74 (20%) were above average in risk.[42] More than 70% of registrants were in the three lower risk categories. The two lowest reach desistance by the fifth year after release, while the average risk group does so by the

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[39] *Id.* at 51, 54-56.

[40] *Id.* (Figure 2).

[41] Seung Lee, R. Karl Hanson, Nyssa Fullmer, Janet Neeley & Kerry Ramos, *The Predictive Validity of Static-99R Over 10 Years for Sexual Offenders in California: 2018 Update*, Saratso 19, http://saratso.org/pdf/Lee_Hanson_Fullmer_Neeley_Ramos_2018_The_Predictive_Validity_of_S_.pdf.

[42] *Id.*

10th year (if they have not reoffended). In short, by the tenth year after their release, more than two-thirds of all adult male registrants present a lower risk of sexual reoffending than do those released after having committed only nonsexual offenses--whom no one proposes subjecting to registration and public notification requirements. Many registrants reach that low risk level before their fifth year at liberty. And all registrants will have been subjected to the often life-ruining burdens imposed by the public notification regime from the day of their release.

The fact that a significant proportion of sex offenses are not reported to law enforcement authorities has little bearing on this analysis. There is no reason to think that offenses committed by registrants are less likely to be detected than offenses committed by those with no criminal record of sex offenses. Indeed, the contrary would seem more likely, if police investigations focus first on registrants. That means the relative re-offense rate of registrants—their real rate, as compared to the real rate of those not on the registry—would likely be lower, not higher, if unreported offenses could

be taken into account, because registrant offenders are less likely than those without a prior sexual offense conviction to go undetected.[43]

One must also distinguish between unreported *offenses* and unreported *offenders*. The more offenses one commits, the more likely that at least one will have been reported. If, e.g., half of all offenses are reported, then more than half of perpetrators with multiple offenses will trigger a report.

Appellees have been at liberty for 9, 18, and 19 years without having committed *any* offense,[44] much less a sexual offense, long enough to place all but the very small percentage who began with a "well above average" re-offense risk past, or near, desistance. Yet Colorado law denies one of them any opportunity to *ever* seek removal from the registry, while the others must seek removal in proceedings that the district court found, in Mr. Vega's case, adopted "Kafkaesque"

[43] Increased public attention to the general problem of sex offenses also seems to have reduced the proportion that go reported, at least for child victims. Finkelhor, Ormrod, Turner, and Hamby, *School, Police, and Medical Authority Involvement With Children Who Have Experienced Victimization*, 165 Archive of Pediatric and Adolescent Medicine 9 (2011). Police are particularly likely to know about sex offenses committed against children by adults (as opposed to the large share that were committed by other children). *Id.*

[44] Mr. Knight was paroled in 2009, App. 705, Mr. Vega was released in 2000, App. 707, and Mr. Millard began probation in 1999, App. 700.

rules that denied him due process. As appellees argue, their arbitrary inclusion on the registry and website is an unconstitutional denial of liberty without due process.

III. Studies Find that Offense-Based Registries Like Colorado's Do Not Reduce Sexual Offending

Registries that trigger a public notification system that includes website listings and email alerts are a different matter from an offender database available to law enforcement authorities. Their purported purpose is to allow the public to "protect themselves and their children from these persons." C.R.S. § 16-22-112(1). The public can take general safety precautions against criminal activity without such publicized listings. Their only function, then, is to encourage protective measures targeting "these persons". As one would expect and as the trial court found, that message causes registrants substantial harm. Among other things, it burdens their ability to find work and a place to live. Yet given the way Colorado's registry is constructed, logic suggests the registry will not advance public safety. And that logic is confirmed by empirical studies.

Studies find a poor correspondence between a registrant's actual risk level as measured by the Static 99R and the risk level assigned him

in offense-based classification systems like Colorado's, because that system mistakenly treats many low risk registrants as high risk.[45] Colorado compounds the mistake by then keeping registrants on despite a decade or more at liberty without re-offending. Because Colorado places and retains people on its registry on the basis of a single offense, without any consideration of the reoffense risk the individual registrant actually poses, it creates a large haystack in which a few dangerous needles can hide. That alone makes it a poor tool for guiding the public in how to protect themselves from harm.

But the problem is worse because even high risk registrants account for only a very small proportion of most sexual offenses. That's because most sexual offenses are committed by people who are not on

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[45] Some states initially employed individualized risk-assessment standards to classify registrants but moved to an offense-based system like Colorado's to be consistent with the standards set by the Adam Walsh Act, but the result was to shift many registrants to higher risk categories than justified by their individual assessments. Harris, Lobanov-Rostovsky, & Levenson, *Widening the Net: The Effects of Transitioning to the Adam Walsh Act Classification System*, 37 Criminal Justice and Behavior 503 (2010). For that reason, these offense-based risk classifications are less accurate in predicting re-offending than are risk assessments based on the offender's Static 99R score. Zgoba, Miner, Levenson, Knight, Letourneau, and Thornton, *The Adam Walsh Act: An Examination of Sex Offender Risk Classification Systems*, 28 Sexual Abuse: A Journal of Research and Treatment 722 (2016).

the registry at all, and can't be on it, as 95% of all sexual offenses are committed by first-time offenders.[46]

Regimes like Colorado's thus distract parents from focusing on the real risks to their children, by feeding the widespread but mistaken belief that the primary threat of sexual assault comes from strangers who can be identified by studying the registry. But it is well-established, as Colorado itself concedes, that more than 90% of sexual offenses against children under 12 are committed by people the family knows, with more than a third committed by family members.[47] Another third of all sex offenses against children are committed by other children.[48]

The foregoing helps explain why studies find no evidence that registries like Colorado's contribute anything to reducing the rate of sexual offending. The methodological challenges in determining whether registries and public websites affect rates of sexual offending lead different studies to take different approaches, but they all reach

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[46] Sandler, et al., *supra*, n. 24. *See also* Craun, Simmons, & Reeves, *Percentage of Named Offenders on the Registry at the Time of the Assault*, 17 Violence Against Women 1374 (2011).

[47] As set out on Colorado's sex offense website, https://apps.colorado.gov/apps/dps/sor/faq.jsf.

[48] Finkelhor, *et al.*, *supra*, n. 19.

the same result. Some compare offending rates within a jurisdiction, before and after the website's implementation; others compare offending rates at the same time but between jurisdictions with differing laws. A 2016 article[49] reviewing this work found a few "before and after" studies that detected a "modest" positive impact from public notification in two states, Minnesota and Washington. But these states assessed registrants individually with an empirically based tool like the Static 99R, and then limited public notification to those who posed the highest risk.[50] Washington displays 29.8% of its registrants on its website, compared to Colorado's 75%. Minnesota's website lists only 3.1% of its registrants.[51] No other "before and after" study found any

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[49] Levenson, Grady, and Leibowitz, *Grand Challenges: Social Justice and the Need for Evidence-based Sex Offender Registry Reform*, 43 Journal of Sociology and Social Welfare 3 (2016), at 7.

[50] The two studies were Washington State Institute for Public Policy, *Sex offender sentencing in Washington State: Did community notification influence recidivism?* (Document No. 05-12-1202, December 2005), Retrieved from http://www.wsipp.wa.gov/ReportFile/919; Grant Duwe & William Donnay, *The impact of Megan's Law on Sex Offender Recidivism: The Minnesota Experience*, 46 Criminology 411 (2008).

[51] For Minnesota's and Washington's percentages, *see* Harris, Levenson, & Ackerman, *Registered Sex Offenders in the United States: Behind the Numbers*, 60 Crime and Delinquency 3 (2014), at Table 2, pp. 12-13. The current percentage in Colorado can be calculated from information on the "information/web stats" tab on state's website,

effect from the public website. The three most recent and sophisticated studies examining data across jurisdictions could find no effect of public notification on sex crime rates.[52]

There is nothing surprising about this data. It is hard to see how a registry could have an important impact on the rate of sexual offenses when most of those listed are quite unlikely to commit them, and the few that do account for only a tiny percentage of the offenses that occur. Looking at this same data, the Sixth Circuit Court of Appeals recently concluded that the evidence supported "a finding that offense-based public registration has, at best, no impact on recidivism." *Does v. Snyder*, 834 F.3d 696, 704 (6th Cir. 2016).

CONCLUSION

Study after study has shown people are poor at perceiving where danger lurks.[53] Dramatic events stick in the mind and distort our

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https://apps.colorado.gov/apps/dps/sor/info-web.jsf, which shows both the total number of registrants and the number listed on the site.

[52] Alissa Ackerman, R., Meghan Sacks & David Greenberg, *Legislation Targeting Sex Offenders: Are Recent Policies Effective in Reducing Rape?*, 29 Justice Quarterly 858 (2012); Agan, A. Y. *Sex offender registries: Fear without function?* 54 Journal of Law and Economics 207 (2011); J.J. Prescott & Jonah Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?,* 54 Journal of Law and Economics 161 (2011).

perception of risk. People believe accidents cause as many deaths as disease, when in fact disease causes 15 times as many deaths as do accidents. They think more people die from homicides than from diabetes or stomach cancer, when in fact the opposite is true.[54] Writing a few years ago about common misperceptions of the risks associated with inoculations, Eula Biss observed:

> Risk perception may not be about quantifiable risk so much as it is about immeasurable fear. Our fears are informed by history and economics, by social power and stigma, by myth and nightmares. And as with other strongly held beliefs, our fears are dear to us. When we encounter information that contradicts our beliefs, we tend to doubt the information, not ourselves.[55]

Though written for another context, these words well describe the fears that fuel registry laws. Registries encourage the perception that all those listed on them are mentally deranged monsters who will always be dangerous. Registries are born of fear and generate animus. But registrants are individuals whose experiences and character vary enormously. Most registrants, like the plaintiffs in this case, pose little

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[53] There is a large experimental literature on this topic. *See, e.g.*, Paul Slovic, *The Perception of Risk* (2000); Paul Slovic, *The Feeling of Risk* (2010).

[54] For both these examples, *see* Slovic, *The Perception of Risk*, *supra* at 106-07 (2000).

[55] Eula Biss, *On Immunity: An Innoculation* 37 (2014).

re-offense risk. The deprivation of liberty cannot be based on animus or irrational fear. It requires facts. The district court's judgment should be affirmed.

Respectfully submitted this 25th day of July, 2018.

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CERTIFICATE OF COMPLIANCE WITH RULE 32(G)

I hereby certify that the foregoing brief complies with the type-volume limitations of Fed. R. App. P. 32(g) because this brief has been prepared in a proportionally spaced typeface in Century Schoolbook 14-point, and that, according to the word-processing system used to prepare the same, the foregoing brief, exclusive of the Appendix and the portions stated in Fed. R. App. P. 32(a)(7)(B)(iii), contains 6,422 words.

THE LAW OFFICES OF PETER R. BORNSTEIN

s/Peter R. Bornstein
Peter R. Bornstein

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

(1) all required privacy redactions have been made per 10th Cir. R. 25.5;

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THE LAW OFFICES OF PETER R. BORNSTEIN

s/Peter R. Bornstein
Peter R. Bornstein

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2018, I electronically filed the foregoing **Brief of 17 Scholars Who Study Sex Offenses as Amici Curiae in Support of Appellees and Supporting Affirmance** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel of record, and that within 2 business days of the electronic filing 7 hard copies will be filed with the Clerk of the Court.

THE LAW OFFICES OF PETER R. BORNSTEIN

s/Jeannette Wolf
Paralegal to Peter R. Bornstein

APPENDIX: DESCRIPTION OF *AMICI CURIAE*

The amici scholars are:

Amanda Agan is Assistant Professor of Economics and an Affiliated Professor in the Program in Criminal Justice at Rutgers University. She received her Ph.D. in Economics from the University of Chicago. Her research focuses on the economics of crime, and her studies spotlight the unintended consequences of policies such as sex offender registration and ban-the-box laws. Her studies on the consequences of sex offender registration include papers in the Journal of Law and Economics and the Journal of Empirical Legal Studies.

Catherine L. Carpenter is The Honorable Arleigh M. Woods and William T. Woods Professor of Law, Southwestern Law School. She teaches and writes in the area of criminal law. For the last decade, Professor Carpenter's scholarship has focused primarily on the constitutionality of sex offender registration laws. Her work has been cited by courts and attorneys advocating for their clients.

Ira Ellman is Distinguished Affiliated Scholar, Center for the Study of Law and Society, University of California, Berkeley, and Affiliated Faculty of the Berkeley Center for Child and Youth Policy. He was Chief Reporter for the American Law Institute's major project, Principles of the Law of Family Dissolution. His empirical studies with social psychologists have focused on family policy. His 2015 article, "Frightening and High": The Supreme Court's Crucial Mistake About Sex Crime Statistics, has been widely discussed in both legal publications and in key national media.

R. Karl Hanson, Ph.D., C.Psych., is one of the leading researchers in the field of risk assessment and treatment for individuals with a history of sexual offending. He has published more than 175 articles, including several highly influential reviews, and has contributed to the development of the most widely used risk assessment tools for individuals with a history of sexual offending (Static-99R; Static-2002R; STABLE-2007). Based in Ottawa, Canada, he worked for Public Safety

Canada between 1991 and 2017, a federal department, and retired as Manager of Corrections Research. He is now adjunct faculty in the psychology departments of Carleton University (Ottawa) and Ryerson University (Toronto).

Eric Janus is a professor of law at Mitchell Hamline School of Law, former dean of William Mitchell College of Law, a scholar and expert in sex offender civil commitment laws, author of Failure to Protect: America's Sexual Predator Laws and the Rise of the Preventive State, and director of the Sex Offense Litigation and Policy Resource Center, established in 2017.

Richard A. Leo, Ph.D., J.D., is the Hamill Family Professor of Law and Psychology at the University of San Francisco School of Law. He is an expert on police interrogation practices, the impact of Miranda, psychological coercion, false confessions, and the wrongful conviction of the innocent. Dr. Leo has won numerous individual and career achievement awards for research excellence and distinction, and in 2016, The Wall Street Journal named him as one of the 25 law professors most cited by appellate courts in the United States.

Chrysanthi Leon, J.D., Ph.D., is Associate Professor of Sociology and Criminal Justice at the University of Delaware. She received her J.D. and Ph.D. from the University of California, Berkeley. She is the author of Sex Fiends, Perverts, and Pedophiles: Understanding Sex Crime Policy in America, and co-editor of Challenging Perspectives on Street-Based Sex Work.

Jill S. Levenson, Ph.D., is a Professor of Social Work at Barry University in Miami, Florida. She studies the impact and effectiveness of social policies and therapeutic interventions designed to reduce sexual violence. She has published over 100 articles about sex offender management policies and clinical interventions, including projects funded by the National Institutes of Justice and the National Sexual Violence Resource Center.

Wayne A. Logan is Gary & Sallyn Pajcic Professor, Florida State University College of Law. Professor Logan is the author of Knowledge as Power: Criminal Registration and Community Notification Laws in

America (Stanford University Press, 2009), cited by the U.S. Supreme Court in United States v. Kebodeaux, 570 U.S. 387 (2013), and co-editor (with J.J. Prescott) of Sex Offender Registration and Community Notification Laws: An Empirical Evaluation (Cambridge Univ. Press, under contract).

Robert D. Lytle is an Assistant Professor in the Department of Criminal Justice at the University of Arkansas at Little Rock. He has published research on public opinion, desistance patterns, and policy relating to sex offending, including a dissertation and several papers on Sex Offender Registration and Notification Laws. His current work is focusing on policy implementation and effectiveness for criminal justice policy, including sex offense laws generally and sex offender registration and notification specifically.

Michael H. Miner, Ph.D., L.P. is Professor of Family Medicine and Community Health and Research Director for the Program in Human Sexuality at the University of Minnesota Medical School. He is Coordinator of Psychological and Forensic Assessment for the Program in Human Sexuality. His research focuses on sex offender treatment, sexual abuse perpetration by adolescent males, risk assessment, and psychological and cognitive mechanism underlying hypersexuality and sexual risk behavior. He is the immediate Past President of the Association for the Treatment of Sexual Abusers (ATSA) and Past Vice President of the International Association for the Treatment of Sexual Offenders (IATSO).

J.J. Prescott, Ph.D., J.D., is an economist and Professor of Law at the University of Michigan where he is co-director of the Empirical Legal Studies Center and the Program in Law and Economics. His recent research includes examination of the ramifications of post-release sex offender laws and the socio-economic consequences of criminal record expungement. The Sixth Circuit Court of Appeals relied upon his work in Does #1–5 v. Snyder, 834 F.3d 696 (6th Cir. 2016), cert. denied, 138 S. Ct. 55 (2017) in holding that portions of Michigan's sex offender registration law violated the Ex Post Facto clause.

Lisa L. Sample is the Reynolds Professor of Public Affairs and Community Service in the School of Criminology and Criminal Justice at the University of Nebraska Omaha. She has been publishing research on public opinion, reoffending, and sex offender laws since 2001. Her current research focus is the longitudinal effects of sex offender laws on registrants, their partners/spouses, and their children, which is the subject of her forthcoming co-authored book, Living Under Sex Offense Laws: Consequences for Offenders and their Families.

Jonathan Simon, J.D., Ph.D., is the Adrian Kragen Professor of Law and Director of the Center for the Study of Law and Society at the University of California, Berkeley. His work focuses on the political dimensions of criminal law and crime policies.

Christopher Slobogin, J.D., LL.M. occupies the Milton Underwood Chair at Vanderbilt University School of Law. He is co-author of the leading casebook on mental health law and the best-selling treatise on the same subject. He has written several articles about preventive detention of sex offenders and also addresses the topic in his Harvard University Press book, Minding Justice: Laws that Deprive People with Mental Disability of Life and Liberty.

Richard Wollert, Ph.D., is a member of the Mental Health, Law, and Policy Institute at Simon Fraser University. An expert witness in many cases involving sexually violent predators, his publications critique sex offender recidivism risk assessments, DSM paraphilia diagnoses, and federal sentencing guidelines for child pornography. Dr. Wollert and his associates have treated over 5,000 sex offenders at his Oregon and Canadian clinics.

Franklin Zimring is the William G. Simon Professor of Law and Faculty Director, Criminal Justice Studies, at the University of California, Berkeley. He is known worldwide for his empirical work on criminal justice policy. Among his many books are Criminal Law and the Regulation of Vice, and An American Travesty: Legal Responses to Adolescent Sexual Offending.