

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT COURT OF FLORIDA  
MIAMI DIVISION**

**Case No. 1:18-cv-24145-WILLIAMS/TORRES**

**JOHN DOE 1, et al.,**

Plaintiffs,

v.

**MARK GLASS,**

Defendant.

**DEFENDANT MARK GLASS'S MOTION TO DISMISS PLAINTIFF'S THIRD  
AMENDED COMPLAINT**

Defendant MARK GLASS, in his official capacity as Commissioner for the Florida Department of Law Enforcement ("FDLE"), by and through his undersigned counsel, files his Motion to Dismiss Plaintiff's Third Amended Complaint (D.E. 248). In support thereof, Defendant states as follows:

**PROCEDURAL HISTORY**

On October 8, 2018, Plaintiffs first filed this 42 U.S.C. § 1983 action challenging the constitutionality of Fla. Stat. § 943.0435, a portion of the Florida Sexual Registration and Notification Act (FSORNA). (D.E. 1). Since Plaintiffs' initial filing in 2018 (D.E. 1), Plaintiffs have three times amended their complaint. (D.E. 50, 102, 248). Additionally, through the course of litigation, several Plaintiffs have voluntarily dismissed their claims against Defendant. (D.E. 76, 94, 97, 123, 158, 200).

The remaining Plaintiffs are each sexual offenders who are required to register under Fla. Stat. § 943.0435. They have filed this Third Amended Complaint (TAC), alleging violations of procedural and substantive due process clauses of the Fourteenth Amendment. Defendant now

moves this Honorable Court to dismiss the action because their claims are precluded by binding precedent, have failed to state a claim, and finally, some of their claims have been mooted by a prior decision made by the Court in *Harper v. Glass*, 4:21-CV-85 (N.D. Fla. 2021).

### **INTRODUCTION**

Plaintiffs John Doe 1 and John Doe 6 are sex-offenders, required to register with the Florida Sex Offender Registry. ECF No. 248, ¶¶ 8, 9. Plaintiffs claim that the reporting requirements of Fla. Stat. § 943.0435, violate their Procedural Due Process rights by alleging that the statute imposes strict liability on violations of the registration requirement, and further, violate their Substantive Due Process rights because the statute bears no rational relationship as applied to these Plaintiffs. Both the Strict Liability allegation and the As-applied challenge fail.

In support of these claims, Plaintiffs boldly minimize their sex crimes against children, alleging they are not the type of sex offenders deserving of having to report, and the community and public safety have nothing to gain from it. *Id.* at ¶ 58. Plaintiffs cite numbers from unnamed studies that state that the risk of re-offense decreases with every year a registrant is released from prison. *Id.* at ¶ 33. These unnamed sources claim that even the highest-risk offenders present virtually no risk of sexual re-offense. *Id.* None of these claims have been presented with sufficiently plausible facts to assert a proper challenge to the constitutionality of FSORNA.

### **MEMORANDUM OF LAW**

A Complaint must provide more than labels and conclusions, demanding more than “naked assertions” devoid of further factual enhancement. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Id.* at 570.

Even before *Twombly*, this Circuit had held that “[a]s a general rule, conclusory allegations and unwarranted deductions of fact are not admitted as true in a motion to dismiss.” *S. Florida Water Mgmt. Dist. v. Montalvo*, 84 F.3d 402, 408 n.10 (11th Cir. 1996), citing *Assoc. Builders, Inc. v. Alabama Power Co.*, 505 F.2d 97, 100 (5th Cir. 1974). Applying these principles to Plaintiffs’ Third Amended Complaint demonstrates that they have failed to state a plausible claim that FSORNA is a Strict Liability statute, or an As-applied constitutional challenge to § 943.0435(4)(a), (7), or (9)(d). Finally, Plaintiffs’ As-applied challenge to the dual reporting requirement is moot.

**I. The Plaintiff’s Substantive Due Process Claim regarding dual in-person temporary travel reporting should fail based on the Doctrine of Mootness**

“Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of ‘Cases’ and ‘Controversies.’” *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th Cir.2001) (per curiam) (citing U.S. Const. art. III, § 2). The Doctrine of Mootness stems from the case-or-controversy limitation because a claim that is moot cannot be construed to be an active case or controversy. *Id.* “Put another way, ‘[a] case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.’” *Fla. Ass’n of Rehab. Facilities, Inc. v. State of Fla. Dep’t of Health & Rehab. Servs.*, 225 F.3d 1208, 1217 (11th Cir. 2000). A claim must be “viable at all stages of litigation; it is not sufficient that the controversy was live only at its inception.” *Brooks v. Georgia State Bd. Of Elections*, 59 F.3d 1114, 1119 (11th Cir.1995).

Plaintiffs allege that “requiring dual, in-person temporary travel reporting to both the DHSMV and the sheriff’s office is extremely burdensome and irrational.” ECF No. 248, ¶ 58. This same claim was made in *Harper v. Glass*, 4:21-CV-85 (N.D. Fla. 2021)<sup>1</sup>, and the Plaintiff in *Harper* prevailed on the claim. See *Harper v. Glass*, ECF No. 129, p. 25, ¶ 1. The *Harper* court found that

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<sup>1</sup> The sister Complaint filed in the Northern District.

there was “no reason for a registrant to report temporary travel to DHSMV, let alone to do so in person.” *Id.* at p. 14. The *Harper* court also suggested that the State repeal the duplicative requirement<sup>2</sup> and held unconstitutional Florida Statute § 943.0435(4)(a) to the extent that it requires a sex offender to report in person to DHSMV certain changes of permanent or temporary residence. *Id.* at p. 17. Furthermore, the court interpreted § 943.0435(4)(a) as not requiring in-person reporting of travel to the Sheriff’s office. *Id.* at p. 24. The order required the Commissioner of the Florida Department of Law Enforcement to provide a method of online reporting of any change of permanent or temporary residence that is not their home, as defined in the relevant statute, binding FDLE and all “others in active concert or participation with any of them.” *Id.* at p. 26, ¶¶ 2, 3. In response, Defendant Commissioner filed a Notice of Compliance with the court’s order “implementing a mechanism whereby sexual offenders may report online any change of a ‘permanent residence’ or ‘temporary residence’[that is not their home]...as required by section 943.0435(4)(a).” *See* ECF No. 245-1.

This order, and the Commissioner’s subsequent compliance with that order, render Plaintiff’s claim moot, as there no longer presents a live controversy with respect to the dual, in-person temporary travel reporting claim, and this court cannot provide any further meaningful relief.

**II. Plaintiffs’ claim that § 943.0435 violates Procedural Due Process must fail because it is not a Strict Liability Statute.**

Plaintiffs argue that § 943.0435 creates a strict liability offense in violation of principles of procedural due process by imposing liability for “inadvertent and unknowing violations of the statute. ECF No. 248, ¶ 49. As point of fact, a statute is not unconstitutional just because it lacks

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<sup>2</sup> The State has repealed the dual reporting requirement and codified on-line registration of in-state travel. HB1351 was signed by the governor and goes into effect October 1, 2025.

a *mens rea* requirement. *United States v. Balint*, 258 U.S. 250, 252 (1922). But more importantly, § 943.0435 is not a strict liability statute. To support their claim, Plaintiffs point to the language in § 943.0435(9)(d) wherein a registrant may only invoke lack of notice to the duty to register as a sex offender as a defense for a first offense. This portion of the statute is valid because the registrant who uses this defense must immediately register as required by statute and therefore cannot logically re-assert a lack of notice of the duty to register. Fla. Stat., § 943.0435(9)(d). However, this does not eliminate the required element of knowingly failing to report, as opposed to lack of notice of the duty to report, or any other possible defense to a registration or reporting violation, such as necessity, or in the case of John Doe No. 6, incompetency.

The Florida Supreme Court has read a *mens rea* requirement into the statute. In *State v. Georgetti*, 868 So.2d. 512 (Fla. 2004), the Court considered whether Fla. Stat., § 943.0435 (2000) imposed strict liability. The Court found because “scienter is often necessary to comport with the due process requirements, we ascribe the Legislature with having intended to include such a requirement.” *Id.* at 518. Thus, “the sexual offender registration statutes include a requirement that the alleged offender knows of the obligation to register and maintain current addresses.” *Id.* at 520. Though the “lack of notice of the duty to register” provision in (9)(d) was added after *Georgetti*, it does not erase the *mens rea* requirement in all other situations. Courts continue to cite *Georgetti* as requiring *mens rea* for violations of § 943.0435. See *Dingman v. Cart Shield USA, LLC*, 2013 WL 3353835, at \*3 (S.D.Fla. 2013)(*Georgetti* stands for the proposition that “Florida’s failure to register as a sex offender statute includes an element of *intent*.”) (emphasis in original); *Owens v. State*, 94 So. 3d 688, 690 (Fla. 4<sup>th</sup> DCA 2012) (whether defendant “acted ‘knowingly’ is an essential element of the offense of failure to register by a sex offender...”); *Smith v. State*, 968 So. 2d 1054, 1055 (Fla. 5<sup>th</sup> DCA 2007) (“although the statute does not expressly contain a scienter

requirement, the Florida Supreme Court has construed the statute as requiring knowledge of a duty to register.”).

Courts continue to impose the *mens rea* requirement on § 943.0435 because Florida courts “recognize that there may be forces outside an individual’s control which may hinder an individual’s timely registration or reregistration.” *Boltri v. State*, 178 So.3d 483, 485 (Fla. 4<sup>th</sup> DCA 2015). Accordingly, Chapter 11.14 of Florida Criminal Jury Instructions specifically tells jurors that the state must prove beyond a reasonable doubt that the failure to register was done knowingly, and additionally, provides jury instructions for the registrant if he or she is misinformed by the state or prevented from complying with the statute. See below.

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the [office of the sheriff] [Department of Highway Safety and Motor Vehicles].

*Criminal Jury Instructions, Florida, Chapter 11.14*

And should the registrant find themselves in an emergent situation (hospital, hurricane), they have the option of asserting a defense of necessity. See *Bozeman v. State*, 714 So. 2d 570 (1<sup>st</sup> DCA 1998)(defendant charged with felony Driving While License Suspended for driving a car after realizing his driver was intoxicated, Appellate Court held it an abuse of discretion not to provide jury instruction of necessity defense). The scienter requirement is further supported by Plaintiff Doe No. 6’s own allegation that his plea to a registration violation was vacated due to his intellectual deficits. ECF No. 248, ¶ 41. The allegation that liability is mandated when a sex offender fails to register cannot be sustained.

I. **Plaintiffs' As-applied challenge to FSORNA because it violates their Substantive Due Process rights fails because they fail to allege a plausible cause of action that the statute does not bear a rational relation to a legitimate government interest as applied to them.**

FSORNA has been upheld as constitutional against numerous facial challenges in the Supreme Court, Eleventh Circuit, and District Courts within the Circuit. See *Doe v. Moore*, 410 F.3d 1337 (11th Cir. 2005); *United States v. Kebodeaux*, 570 U.S. 387 (2013); *Windwalker v. Governor of Ala.*, 579 F. App'x 769 (11th Cir. 2014); *United States v. W.B.H.*, 664 F.3d 848 (11th Cir. 2011); *United States v. Mason*, 510 F.Supp. 2d 923 (M.D. Fla. 2007).

Plaintiffs come now to allege an as-applied challenge to Fla. Stats. §§ 943.0435(4)(a), (7) and (9)(d). Plaintiffs assert that, as applied to them, these sections of FSORNA fail to satisfy the rational relationship standard. ECF No. 248 at ¶ 58. “On a rational-basis review, a...statute comes to us bearing a strong presumption of validity, and those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it.” *FCC v. Beach Communications*, 508 U.S. 307, 313 (1993). Plaintiffs implicitly acknowledge that no fundamental rights are at issue here. “When a statute does not implicate fundamental rights, we must ask whether it is rationally related to legitimate government interests.” *Doe v. Moore*, 410 F.3d 1337, 1345 (11th Cir. 2005) (holding that FSORNA was rationally related to a legitimate government interest). In the absence of any fundamental right, a statute is reviewed under the “highly deferential” rational basis standard, which requires that it be upheld except under the “most exceptional circumstances.” *Id.* “Under this deferential standard, the question that we ask is simply whether the challenged legislation is rationally related to a legitimate state interest...[s]uch relationship may merely be based on rational speculation and need not be supported by evidence

or empirical data.” *Corbit v. Secretary of the Alabama Law Enforcement Agency*, 115 F.4<sup>th</sup> 1335, 1348 (11th Cir. 2024).

The purpose of FSORNA is to protect the public from sexual abuse<sup>3</sup>. The public can use the information to determine if there are sex offenders in their neighborhoods and law enforcement can use the information as a tool of criminal investigation, aiding them in identifying and locating potential suspects. Plaintiffs do not allege any exceptional circumstances that could or should invalidate the statute.

Plaintiffs raise five issues they allege violate substantive due process as applied to them, none of them exceptional<sup>4</sup>. ECF No. 248, ¶ 58. The first issue is the requirement to report a change of address whether permanent or temporary, must occur within 48 hours after the change. The third issue is similar to the Plaintiff’s *first* issue, and I will address them here together. With respect to both in-state and out-of-state travel, a registrant can avoid reporting his whereabouts as long as he stays only 2 days in any one location. Plaintiffs allege that, because the community meant to be noticed of this change does not receive it until 48 hours later, or because there is no duty to report if the stay is less than three days, it bears no rational relationship to a legitimate end. However, from an enforcement perspective, there must be some measurable time frame to work with. This is the time frame that the legislature has chosen. This time frame provides the sex offender the opportunity to report and provides information to the community in a reasonable time. Not all sex offenders are changing addresses every two days to avoid reporting or to avoid the dissemination of information - by Doe 1’s own admission, that kind of behavior takes its toll. ECF No. 248, ¶

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<sup>3</sup> “The victims of sex assault are most often juveniles and when convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault.” *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1, 4 (2003).

<sup>4</sup> Plaintiffs do not specifically cite to any section of the statute here, just generally state “FSORNA”.

40. It may not be a perfect solution, but it is rationally related to a legitimate government interest and survives the minimal scrutiny.

Their *second* issue is that the requirement to have a sex-offender report his whereabouts solely for the first three days of *out-of-state* travel has no rational relationship to a permissible legislative objective as applied to Plaintiffs because Florida does not know where the sex-offender is three days after they leave the state. However, every state has a reporting or registration requirement, and any sex offender would be subject to penalties for not reporting or registering in those states. Therefore, the whereabouts of the offender would be known. The fourth issue they raise is the requirement of in-person travel reporting to both DHSMV and the sheriff's office. This issue has been addressed in the Mootness section of this Motion - see p. 3, § I, above. In their fifth and final issue, Plaintiffs claim the requirement to register is "anchored in false assumptions about risk" and does not mitigate whatever risk there is. In support of this, they provide unnamed studies that they claim show sex offenders are at low-risk of recidivism. ECF No. 248, ¶¶ 31- 35. However, the lack of plausible evidence in support of an as-applied challenge, and the inability to make any plausible connection between those studies and the Plaintiffs' own circumstances dooms this claim to fail.

Plaintiffs state that even if the court found those "false assumptions" to be reasonable, they are not reasonable *as applied* to these Plaintiffs. When asserting an as-applied constitutional challenge to a statute, a robust set of facts is a prerequisite. An as-applied challenge "necessarily requires the development of a factual record for the court to consider...because an as-applied challenge addresses whether a statute is unconstitutional based on the facts [relating] to a particular party." *Schultz v. Alabama*, 42 F.4<sup>th</sup> 1298, 1319 (11th Cir. 2022)(cleaned up); see also, *Maple v. City of Miami Beach*, No. 21-cv-23960-BLOOM, 663 F. Supp.3d 1318, 1324 (S.D. Fla. March 22,

2023)(granting a motion to dismiss on relevant counts because plaintiff “must allege additional facts to support her as-applied challenges.”). Moreover, in a well-pleaded complaint, a claim for relief must be plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Aschroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Plaintiffs provide little to no facts regarding their own sex offenses to assist this court to make any determination of constitutionality as applied to them. Details of their crimes appear to be missing or glossed over. In terms of John Doe No. 1, questions remain. He states he committed a “qualifying offense” against his sister in 1989-1990 when they were both minors. ECF No. 248, ¶ 36. How old was the victim sibling? Was she 8 or 17? Was there a significant age difference between the sister and Doe No. 1? What was the nature of the sex offense – touching of the outside of the genitals or was there penetration of the mouth or vagina? How many times did it happen over that course of 1-2 years? The fact that Doe 1 committed these sex offenses over the course of more than a year could plausibly indicate that Doe 1 has an impulse control disorder. Without these needed facts, Doe 1 cannot plausibly allege that the statute is unconstitutional as applied to him. As for Doe 6, he claims that his attempted kidnapping (with the help of a co-defendant) “later became a qualifying offense.” ECF No. 248, ¶ 42. This statement appears to be an attempt to minimize the offense. Further, Doe 6 claims that his co-defendant was the one who grabbed the child and forced her into a car, but co-defendant pled to a misdemeanor. ECF No. 248, ¶ 42. This leaves the Court to question what part Doe 6 had in the crime because he explains nothing of relevance. One plausible scenario is that he was responsible for more heinous aspects of the crime, and this is why he was convicted of a felony. But the facts are lacking. Both Plaintiffs perpetrated

their crimes on minors. Neither Plaintiff has provided any plausible facts that they represent little-to-no risk to reoffend. They fail to support their claim that they should not qualify to register because this statute bears no rational relationship to a legitimate government as applied to them. The “studies published by the United States government” mentioned in the Complaint (Id. at ¶ 31), have no titles, authors, dates, sources, or publications, and therefore, the Defendant, and this Court, are at a disadvantage to determine their validity or what weight they should be given. These mystery studies cannot support Plaintiffs’ conclusory statements that they are not likely to offend again. See *Id.* ¶¶ 31-35.

Taken at face value, the most that the Court can infer from the Complaint is that neither Plaintiff has been arrested for a sexual offense since their first arrest. Plaintiffs’ conclusion that the data from these unnamed studies shows that John Does 1 and 6 are at a low risk to reoffend is not plausible. Consequently, they fail to state a sufficient as-applied challenge to the constitutionality of the statute.

### **CONCLUSION**

WHEREFORE, because their claims are precluded by Supreme Court and Eleventh Circuit binding precedent; and because they have failed to state their claims for a violation of procedural due process because Fla. Stat. § 943.0435 is not a strict liability statute; and because they failed to make a proper As-applied challenge to the statute; and finally, because some of their claims have been mooted by a prior decision made by the Court in *Harper v. Glass*, 4:21-CV-85 (N.D. Fla. 2021), Defendant Mark Glass, Commissioner of the Florida Department of Law Enforcement, respectfully requests that the Court enter an order dismiss the Third Amended Complaint, with prejudice, because Plaintiffs have been provided multiple opportunities to amend.

Respectfully submitted,

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/s/Martha Hurtado

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**CERTIFICATE OF SERVICE**

Pursuant to Local Rule 5.1(b), I hereby certify that on June 23, 2025, I electronically filed a true and correct copy of the foregoing with the Clerk of Court and on all counsel or parties of record via CM/ECF.

/s/Martha Hurtado

Martha Hurtado  
Chief Assistant Attorney General