**THE INFORMATIONAL CORRLINKS NEWSLETTER (ICON) # 93**

**JULY 2023 – DEFINING “DAY”, VISITING NAT’L PARKS**

ICoN provides legal, treatment, activism news & practical info for incarcerated SOs. Send inquiries in separate CorrLinks email (iamthefallen1@yahoo.com) or to Derek Logue, 2211 CR 400, Tobias NE 68453. My focus is SO laws; I don’t advise/assist on appeals, sentencing issues, non-SO news, & services like people-finding, penpals & mail forwarding.

**LEGAL ROUNDUP**

*State v. Corey T. Rector*, 2023 WI 41, 5/23/23: Rector pleaded to 5 counts of CP in a single case, his only conviction. The sentencing judge placed him on the SOR for 15 yrs. The state appealed on the grounds any two or more convictions of registry-eligible sex offenses trigger mandatory lifetime registry. The WI Sup Ct ruled (4-3) that Rector is not required to register for life from multiple convictions stemming from a singular case.

*Range v. US Atty Gen*., No. 21-2835 (3rd Cir. 2023): In 11-4 ruling, Ct ruled the US gov’t cannot ban people convicted of non-violent crimes from possessing guns, a federal appeals court ruled on Tuesday. The decision stems from a 2020 lawsuit by a PA man who was barred under federal law from possessing a gun after pleading guilty to welfare fraud. (Most sex crimes are considered “violent” but some may not be.)

*Turner v. Smith*, No. A164194 (Cal. Ct. App. Apr. 26, 2023): Held that parole officers are not required to knock & announce themselves in compliance with PC 1531 when making the rounds for parole compliance.

*US v. Smith*, Case 1:22-cr-00352-JSR (SD NY May 11, 2023): Ruled that a warrant is required for a cell phone search at the border, “absent exigent circumstances.” “Border-search cases often refer at a fairly general level to the Gov’t’s interest in “the protection of the integrity of the border,” which of course includes the Gov’t’s interests in preventing the introduction into this country of illicit substances or contraband…But despite the strength of this interest, it is hard to see how it applies to searches of the digital data contained on a traveler’s cell phone. When the Gov’t interdicts contraband, identifies goods subject to customs tax, or prevents someone from entering the country without authorization, it successfully stops a person or thing outside the country from unlawfully coming into it. But data stored on a cell phone is not like that -- it instead can & very likely does exist not just on the phone device itself, but also on faraway computer servers potentially located within the country. And, wherever the servers are located, the owner of a cell phone can generally access or share part or all of the data on it with anyone else in the world so long as both parties have an internet connection. Stopping the cell phone from entering the country would not, in other words, mean stopping the data contained on it from entering the country… Some courts have suggested that cell phones might contain so-called “digital contraband” such as explicit images involving the sexual abuse of children… Physical contraband, once interdicted, will not enter the country, whereas digital contraband easily could & very likely already has. But, in any event, no party seriously contends that the search of Smith’s phone in this case was for “digital contraband,” so the Court need not definitively resolve the precise extent of the Gov’t’s interest in interdicting digital contraband…Searches for evidence relating to a crime (such as the search here) require a warrant, because the Gov’t’s interest in obtaining evidence -- as opposed to interdicting contraband or other unwanted items or persons – is not materially different at the border than elsewhere.”

\*As noted by the Electronic Frontiers Foundation, The 9th Cir in *US v. Cano*, 934 F.3d 1002 (9th Cir. 2019) held that a warrant is required for a device search at the border that seeks data other than “digital contraband” such as CP. Similarly, the 4th Cir in *US v. Aigbekaen*, 943 F. 3d 713 (4th Cir. 2019) held that a warrant is required for a forensic device search at the border in support of a domestic criminal investigation. These courts & the Smith court were informed by *Riley v. California*, 573 U.S. 373 (2014), where SCOTUS held that the police must get a warrant to search an arrestee’s cell phone.

*State of Montana v. Hinman*, 2023 MT 116: The MT Sup Ct ruled the state’s current registry rules are punitive & cannot be applied retroactively. (Note: This does NOT eliminate the SOR; it simply states the specific laws passed from 2007 onward cannot be applied to those convicted after those laws took effect. Those convicted before 2007 will likely still have to register; it will likely mean MT will simply have two sets of rules, like the other states that made similar rulings, like OH.) The Court concluded there is a “growing body of research into the effectiveness of SORs has cast significant doubt on their capacity to prevent recidivism” & “the burdens & intrusiveness of SVORA have increased substantially through the subsequent amendments.” “We conclude that the SVORA structure in place since 2007 is punitive & therefore cannot apply retroactively under the ex post facto clause. Unlike the pre-2007 SVORA, the law today places onerous, life-long affirmative restraints on registrants that significantly hinder their liberty & deprive them of privacy. These burdens & the scope of information collected are excessive in relation to the civil regulatory goal. Criminal conduct is undisputedly the trigger for the registry requirements, & the registry itself, by design, implicates a host of collateral consequences & encourages social stigma. These characteristics are emblematic of criminal punishment.”

*The People v. Superintendent, Woodbourne Correctional Facility,* No. 47-opn-23 (NY Ct of App, 6/15/2023): NY Ct of App, state’s highest court, ruled the state’s Sexual Assault Reform Act’s (SARA) Executive Law § 259-c (14), i.e., 1000 ft residency restrictions applied to Lvl 3 or those w/ minor victims currently under supervision, doesn’t violate Ex Post Facto when applied to those whose crimes predated the 2005 amendments to SARA. In a separate ruling, *The People v. Superintendent, Livingston Correctional Facility*, No. 46-opn-23 (NY Ct of App, 6/15/2023), the same Court ruled this applies to juveniles.

FL – In 2016, Jared Stephens, a homeless & (untreated/neglected) schizophrenic man, attempted to walk out of a Best Buy w/ stolen laptop. When confronted, Stephens pulled a laptop out of his backpack & said, “Look, I have CP!” He then sat on the floor & looked at CP until police arrested him. Estranged from family & uttering gibberish in open court, Stephens refused to cooperate with his attorney & rejected a 3yr offer. He was sentenced to 150 yrs (excessive), but was recently reduced to 10 yrs + probation due to severe mental illness.

**TRAVELING & VISITING NATIONAL PARKS**

Summer is usually when people think about vacations. RPs are not completely banned from traveling but there are some places that are not friendly to us. First & foremost, if you plan on taking a trip, you must consider registration, proximity restrictions, & residency restriction laws before traveling. For example, if you plan on renting a car & camping at a public park, you may be required by your state to register the vehicle & the location you plan to camp. You may even have to make an itinerary. Check with your registration officer before you make plans.

Many private businesses may institute rules denying services to Registered Persons. As noted in the travel chapter, the Six Flags & Disney World (FL) theme park, & Carnival, Royal Caribbean, & Norwegian Cruise Lines all ban RPs from entry. Hotels & motels have not banned RPs from renting a room unless banned by a state or local law. However, Airbnb, the most well-known “short-term rental” company (i.e., “time-shares” & those who rent out rooms or houses in residential area for short term leases) prohibit RPs from using their services. In recent years, states have also attempted to pass laws to block RPs from using other short-term rental services, though few attempts have been successful. I cannot find any credible reports suggesting anyone has been denied car rentals due to registry.

Park bans in certain states may preclude you from entering state parks; but state & local laws do not apply to national parks, national forests, national grasslands, national monuments, national recreation areas, national refuges, & federally managed reservoirs. Even though the Property Clause of the US Constitution says that the federal government will regulate its own lands, these same federal agencies “made the choice” to allow state & local laws to apply. Currently, 5 of the 6 agencies that manage federal recreation lands do this:

* **Bureau of Land Management** allows state & local laws to apply. 43 CFR §8365.1-7 (“includes, but is not limited to…”)
* **Army Corps of Engineers** allows state & local laws to apply. 36 CFR §327.26 (“includes, but is not limited to…”)
* **U.S. Forest Service** requires its officers to cooperate with state officers in enforcing state laws. 36 CFR §211.3. (Note: The stature only mentions enforcement of “fire, game, & health laws.”)
* **Bureau of Reclamation** allows state & local laws apply to its l&s & recreation areas. 43 CFR §423.3 (“This part & all applicable Federal, State, & local laws apply to all…”)
* **U.S. Fish & Wildlife** allows state & local laws to apply to its wildlife refuges. 50 CFR §25.13 (“Nothing in this subchapter shall be construed to relieve a person from any other applicable requirements imposed by a local ordinance or by a statute or regulation of any State or of the United States.”)
* Only the National Park Service remains true to the Property Clause of the U.S. Constitution & forbids state & local laws from applying. This should mean that you can visit a national park even if located in a state with park bans in place.

(Source: https://www.boondockersbible.com/knowledgebase/do-state-and-local-laws-apply-to-federally-managed-lands/)

**WHAT IS A DAY?**

Speaking of travel issues: If I ask you to define a day, what is your answer? For most of us, we think of a day as a 24-hour period, or a “calendar day,” presumably, 12:00am to 11:59pm. When planning a trip, this question becomes more convoluted. I do everything I can to make my registry guide as accurate as possible, but oftentimes I’m as confused by the language of poorly written law as you are.

In FloriDUH, you’re required to register when at a “place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 or more days in the aggregate during any calendar year, & which is not the person's permanent address.” But FL doesn’t define day. In 2022, SB 1932 would’ve defined “day” to include physical presence in any location for “part” of a day. So, if you arrived at 11:59pm, checked into a hotel, then clocked out the next morning, Is this one day or two? When does the time start? Are they going by calendar time to check-in time? Thankfully, SB 1932 failed to pass, but FL law is still vague & confusing.

TN’s is worse; visitors must register within “48 hours” of entering state (The TN SOR Office states that time begins from the moment you cross state lines but not counting weekends/holidays starting at midnight; but their online FAQ states time begins when you establish “a physical presence at a particular location”). See TCA §40-39-202. Under §40-39-203(a)(1) the law says you must register “Within forty-eight (48) hours of establishing or changing a primary or secondary residence, establishing a physical presence at a particular location…” So does the time start the minute you enter the state, or the moment you stablish a physical presence? & why even mention establishing a residence at all if just being present in a location starts the clock?

In IL, their FAQ notes that visitors are required to register if they spend more than 3 total days in a calendar year in the state at ANY location, & will be placed on the state registry (4th day triggers registration).

It seems people want to ask everyone else but the agency that determines when you have to register. I get it, I hate talking to registry officers, too, but if you plan a trip after your release, the only place you can get definitive answers is by contacting the registration office & ask them about visitor’s policies.