

Titus House Newsletter

Titus House Ministries, PO Box 2376, Tijeras, NM 87059

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In Person Verification

By Larry Neely



Q: My question is really simple; why is it that I am required to continue in-person verification of my registration information? I have lived at the same address for nearly 20 years, so they know where I am. They threatened me with arrest if I do not come in despite the fact that the governor and health officials have issued orders that people stay home except for essential activities. I am 70 years old and have a compromised immune system due to various health issues I have. Does anyone care that I may become infected and die?

A: NARSOL has repeatedly raised the same question multiple times throughout the duration of this pandemic. The short answer is the reason you have to continue in-person registration is because there were no provisions made in statute or within the regulatory framework prior to the pandemic to handle such a scenario. In addition, there is no previous precedent and little guidance for registry officials. The most analogous situation I can recall would be hurricane Katrina back in 2005 which essentially destroyed the registration operations in some counties on the gulf coast and forced many on the registry to flee for their lives. My recollection is that there were no prosecutions for those who were unable to register because they were stranded on rooftops or their registry office had been abandoned.

The present situation is different in many regards but there are similarities as well. Many states have issued orders which prohibit people from going out unless they are engaging in one of the activities listed as an exemption such as purchasing food or seeking medical treatment. I have not seen sex offender registration listed as an exception to those orders I have reviewed. This in my mind ends the inquiry because if a person is out in public for the purpose of registering, he/she is in violation of the stay at home order. Unfortunately, it is not that simple because of the significant penalties that could be imposed for a violation. Many have resorted to calling the law enforcement entity and asking if registration is still required despite the pandemic. The officials in charge in some jurisdictions have been hesitant to discontinue the in-person component because they claim that "It's the law and my hands are tied." Deputy Charles Williamson of the Franklin county Ohio sheriff's office recently stated that staff are using PPE, the office is being disinfected, and they are encouraging social distancing. He says they have not considered changing the registration process because of the pandemic. He emphasized, "We're required to do registration in accordance with the law." That is the biggest bunch of poppycock and really borders on absurdity. All law enforcement entities have discretion in terms of how they enforce the law and to adjust to the circumstances. The reality is that some have chosen to risk their own personnel as well as those required to register.

Since some agencies have refused to adjust their registration in view of the pandemic, we understand what a registrant should do is a difficult choice. There have been some cases filed challenging the requirements. Unfortunately, those cases have not fared well or are simply not moving due to the fact that the courts are running at reduced capacity. Also, some states have issued recommendations to sheriffs that they discontinue the in-person registration requirement until the pandemic passes.

Governor Newsom of California issued such a directive recently, and the New Mexico Department of Public Safety issued one early on. The reality is that elected officials have limited power in terms of prohibiting other elected officials from discharging the duties of their office. The result is that the person required to register will have to make his/her own choice in terms of what is right. It is my view that a prosecution is unlikely to be successful if law enforcement should make an arrest. First, they would have to have a willing prosecutor, which will be difficult. Second, if a prosecutor should undertake such a misguided effort, there would be viable defenses. A global pandemic with stay at home orders would be a considerable barrier for the prosecution to overcome. This is because if a person is unable to comply with a law due to no fault of his own, that is considered an affirmative defense. *Black's Law Dictionary* tells us that an affirmative defense is "... an assertion by a defendant that raises new facts and arguments that defeat the plaintiff's claim even if all of the allegations in the complaint are true." Having said all of this, the reality is that the fear of prosecution for many is genuine, and we understand. It is so unfortunate that you have been placed in this situation.



The Coronavirus as seen through the eyes of Insiders

These excerpts from inmates at the Harris County Jail in downtown Houston, Texas, were originally catalogued and published May 1 at [The Texas Tribune](#) in this piece by Ian MacDougall.

The *Tribune* is a nonprofit, nonpartisan media organization that informs Texans — and engages with them — about public policy, politics, government and statewide issues.

D. March 30: “We’re all scared of this place getting infected it only takes one guard or the wrong inmate for it to be spread in here like fire in a barn. They say they’re trying to release some of us but doing very little.”

Paul April 4: “As of 4-4-20 we have been quarantined and no one has informed us as to what’s going on with our situation, and since being quarantined no one has been tested in order to check and see if anyone may be infected with COVID-19. Everyone on this dorm is concerned about what’s going on and what is going to happen.”

Ren April 8: “At this present time I am sick with a bad cold/flu, possibly coronavirus. I am scared. So I am letting you know, I got really sick on last Friday. I told my girlfriend over the phone to call the medical clinic to tell them I was feeling bad—so I could get them to come get me and be seen as a walk-in . . . they checked my vital signs and my fever was up . . . I was rushed out in an ambulance to Ben Taub Hospital to be



screened by a doctor, so I was given medication, a shot, and a chest x-ray. Then they released me on Saturday and sent me back to the jail and screened by the 1200 Baker St. clinic — then they put me in a quarantine tank on the 4th floor at the female inmates’ floor for 14 days. I am scared because of some guys in here that’s sicker than I. I do not want to die in here.

Gregory April 13: “These are frightening times here at the Harris County Jail! The last I heard, over 1,100 inmates were on quarantine. I feel great, but see fellow inmates getting, and staying sick for over 2 wks. We’re literally living in bunk beds that are only 2 1/2 feet apart on both sides! No “social distancing” here!”

Matthew April 13: “It’s scary in here to say the least. I was diagnosed with asthma and scar tissue on my lungs when I was twelve. I’m on an albuterol inhaler and Singulair which is a breathing medication. I don’t know if my lungs could make it through COVID-19. Social distancing is impossible and hand sanitizer is not available. The only way to get bleach is to buy it with food from commissary from the trustees. They are trying to contain something that is im-

possible to stop in here. A detention officer that works the 701 Kitchen tested positive for the virus so all the kitchen workers in 3D4 were put on quarantine. This left no available people to make our food! To fix the problem, the guards and floor workers started passing out sandwiches. This caused a lot of inmates to burn mattresses & blankets on the 7th floor and a lot of animosity towards guards throughout the jail. Also us inmates are literally having to fight other inmates for commissary and food. Only the strong survive attitude.”

Rich April 14: “Being locked up with no fighting chance is wrong. Most of us don’t have life sentences to have a death sentence because of lack of medical supplies, basically it’s like sitting on death row.”

Ken April 16: “And each day that I wake up I’m in fear of my life. Our bunks are about 8 inches apart. And the tank next door is quarantined, there is a doorway between us and them that is not sealed. The whole social distancing is not in compliance. We are closer than 6 ft. We are in a dorm with 58 men. I would like to know if there is any help for us inmates and how do we go about getting word to someone that could please help us out. It’s like they don’t care about anyone in here. Not all of us are guilty of the charges that are against us. Please take this letter seriously because people’s lives are in danger.”

21 inmates test positive for COVID-19 at Otero County Prison Facility

SANTA FE, N.M. (KRQE) – The New Mexico Corrections Department announced Monday that 21 inmates at Otero County Prison Facility have tested positive for the coronavirus.

The first positive inmate is a 31-year-old male inmate that is housed at the state-contracted Otero County Prison Facility that is operated by Management and Training Corporation. The inmate was placed in medical separation on Friday, May 15 after he was feeling ill and was tested for COVID-19.

Medical staff later that evening determined that additional medical services that were required and the in-

mate was transported to the University Hospital in El Paso, Texas. The test result returned positive for the coronavirus.

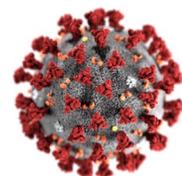
According to a news release, all inmates in the positive individual’s housing unit and any other individuals that may have distant contact or shared space with 31-year-old were tested. A total of 133 inmates were tested.

Results for the tests began coming in on Monday with 20 inmates producing positive results. According to the release, the remaining 112 were negative and one test is still pending.

All coronavirus positive inmates have been separated from the general popula-

tion and are under medical observation. NMCD is currently working with the Department of Health to test the entire population of state inmates at the Otero County Prison Facility.

The inmates are the first to test positive at one of the state’s 11 prison facilities.





An encouraging win in Pennsylvania

By Larry . . . *T.S. v. Pennsylvania State Police* was just decided by the Commonwealth Court of Pennsylvania. The Commonwealth Court is the intermediate court of appeals which leaves open the door for the state to seek review in the Pennsylvania Supreme Court.



This case has the potential to remove a significant number of people from the state's sex offender registry. Petitioner T.S. sought mandamus and declaratory relief against the Pennsylvania State Police (PSP), challenging as unconstitutional subchapter I of the most recent version of the sexual offender registration scheme. T.S. was convicted and sentenced for his offenses before any sexual offender registration scheme existed in the state. He argued that the provisions of subchapter I of Act 29 governing his lifetime registration are punitive as applied to him in violation of the ex post facto clauses of the United States and Pennsylvania Constitutions.

SORNA, the fourth iteration of sex offender registration, which became operational in 2012, laid the foundation for this challenge. Pennsylvania enacted SORNA to comply with the federal Adam Walsh Act (AWA). SORNA classified offenders and offenses into three tiers, with each corresponding to an offender's duration of registration and frequency of required verification, anywhere from quarterly to annually. The Pennsylvania Supreme Court struck down SORNA as unconstitutional in 2017. See *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017), cert. denied, __ U.S. __, 136 S. Ct. 925 (2019). In *Muniz*, the petitioner was convicted and sentenced for his offense in 2007, when Megan's Law III was in place. He absconded and at the time of his capture in 2014, SORNA dictated his registration requirements. His triggering offense carried a 10-year registration requirement under Megan's Law III but a lifetime registration under SORNA. He challenged the retroactive application of SORNA's provisions to him as ex post facto. The Pennsylvania Supreme Court agreed, concluding that the increased registration period and the other registration requirements of SORNA, including quarterly in-person registration, in-person verification of registration information, and the dissemination of personal information online were punitive provisions.

In response to *Muniz*, the General Assembly enacted Act 29. The new law divided SORNA into two subchapters. Subchapter H is based on the original SORNA statute and is applicable to offenders who committed offenses after the December 20, 2012, effective date of SORNA; Subchapter I is applicable to offenders who committed offenses prior to the effective date of SORNA and to whom the *Muniz* decision directly applied. However, the Supreme Court did not strike down the mere registration of such offenders retroactively, analyzing instead the provisions governing registration, which included an online database with information about offenders' criminal convictions and requirements for periodic updates by offenders, and determined these provisions were nonpunitive.

PSP argued that subchapter I of Act 29 is not a criminal punishment but "a civil registration system," and neither PSP nor the courts can alter the registration obligations. None of the prior case law in Pennsylvania has addressed the application of subchapter I of Act 29 in the wake of *Muniz* to offenders who committed offenses prior to the enactment of any sexual offender registration scheme. Pursuant to subchapter I of Act 29, T.S. argued that he must: (1) register for life; (2) notify PSP within three business days of a change in residency or employment; (3) appear annually to verify residence and be photographed; (4) be subject to criminal sanction if he fails to verify his residence or notify PSP of changes; and (5) be subject to display on the internet for life through the internet dissemination provision.

The Supreme Court in *Muniz* emphasized the multiple times per year and over a lifetime that an offender was required to appear in person under SORNA; it also more generally stated that it found ". . . the in-person reporting requirements, for both verification and changes to an offender's registration, to be a direct restraint upon liberty" and that this factor ". . . weighs in favor of finding SORNA's effect to be punitive." See *Commonwealth v. Muniz*, 164 A.3d at 1211. In *Muniz*, the Supreme Court stated, "The information SORNA allows to be released over the internet goes beyond publicly accessible conviction data," to include addresses of residence and employment, physical description, and vehicle information. *Id.* at 1215-16.

Despite the General Assembly's intent to address the concerns of the Supreme Court in *Muniz* through subchapter I of Act 29, T.S. asserted that this factor and the Mendoza-Martinez factors on the whole weigh in favor of finding subchapter I of Act 29 punitive. He emphasized that at the time of commission of his offenses and convictions, he could not have anticipated that his conduct would subject him to the sanctions imposed by Act 29. The Court agreed and held that Act 29 cannot be applied to T.S. because it violates the ex post facto clause. It remains to be seen if the state will seek further review to the Pennsylvania Supreme Court.



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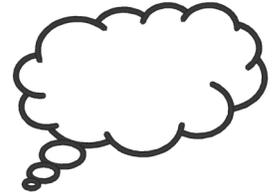
We're on the Web
titushouseministries.org

Hebrew 13:3 - Continue to remember those in prison as if you were together with them in prison, and those who are mistreated as if you yourselves were suffering.

Remember if you change your address you need to let us know if you want to continue to receive this newsletter



THOUGHTS FROM ALICE



I have been asking myself: What is the most important thing in my life right now? That is a hard question since I have a long list of to-dos – planting a small garden, brushing the long extra hair from my dogs, doing the usual housework such as cooking meals, washing clothes and dishes. I have a husband who likes some attention, especially when he is hungry. This morning he suddenly jumped up, grabbed a bite and said he had a doctor's appointment. Well, that is good of course. I get to sit at my typewriter, unbothered from phone calls from Don's bunch of friends. I may tackle a pile of letters, many from various prisons. I may get phone calls from family and friends who are very nervous about the corona virus. My thoughts wander from death of a friend's spouse, how can I help, to who should I call in my own family who sounded discouraged the last time we talked.

We have two neighbors who deserve our attention – Gary, Vietnam vet living next door in a travel trailer who just adopted a little puppy. Mike, survivor of a lifetime of drugs, new enthusiastic Christian who is serving at Foothills Church. He has survived several old cars and finally has one he likes. He used to talk stooped over and now he is enthusiastically walking much straighter and with less puffing than he did a year ago. One of his joys is to approach the fence of my dogs and bark at them!

I hardly have time to remember I just had my 91st birthday. I get a kick out of inmate letters who write to me as if I were single and hopefully about 45! I usually send them a pic of Don and me.

The virus – Should I keep on listening to the latest figures of hundreds of people who have been exposed, to the hundreds who might catch it and to the relatively short list of those nearby who actually got it? Should I hide in my home realizing I am too old now to even get many benefits designed for "old people?"

At times like this the only answer I can find is in Scripture. I love the story of Moses in the Old Testament. He was a playboy in Egypt, raised by the queen who saved him from drowning in the river. You all know the story! She raised him in the palace and he lived the "good" life until he killed a man. He fled to the desert and lived with shepherds until he thought no one would remember what he did. He married some daughter of a shepherd until one day God showed up and told him he was going to save the Israelites who were slaves in Egypt! What??? By this time Moses had repented of his disobedience toward God but he had about as much self-esteem as one of his fellow shepherders! He even argued with God and finally got God to say He would send his talented brother Aaron to help him. God had actually asked Moses to go to Egypt and free His people! Aaron agreed to go and the rest is history. Why do I like this story? I was a rich kid sent away to a private school to shape me up. I didn't take school seriously for a while but God grabbed hold of me, called me to be a missionary to the Philippines with my first husband for about 15 years. That is another story but I have to say when God gets hold of you, better quit making excuses and listen! God doesn't easily give up. Yes, Moses and I have a lot in common, but remember, God has a way of winning!

During these trying times Titus House needs your support.



Circle of Concern

Circle of Concern is aimed at breaking down isolation and fear by providing a safe place for registrants and their loved ones to get together, build community, and learn ways to step out and take charge of their lives and overcome the stigma

they face. The Circle of Concern is a group of concerned registered citizens, family and friends that meet together on the 3rd Sunday of each month. We are **NOT** meeting this month due to the Coronavirus. Hopefully we will meet next month. We meet at Foothills Fel-

lowship Church, corner of Tramway and Candelaria on the far east side of Albuquerque. We encourage and try to help each other. It is a safe place to share our strengths and struggles.

Stay safe, wash your hands and wear your masks.