

EXHIBIT A:

PLAINTIFFS' PROPOSED EMERGENCY INTERIM ORDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES #1-6, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

RICHARD SNYDER, Governor of the
State of Michigan, and COL. KRISTE
ETUE, Director of the Michigan State
Police, in their official capacities,

Defendants.

File No. 2:16-cv-13137

Hon. Robert H. Cleland

Mag. J. David R. Grand

EMERGENCY INTERIM ORDER

Preface

On February 14, 2020, this Court granted the plaintiffs’ motions for summary judgment as to Counts I – IV of the second amended complaint and entered declaratory and injunctive relief on all of the plaintiffs’ claims, including ordering that Michigan’s Sex Offenders Registration Act (SORA), Mich. Comp. Laws § 28.721 *et seq.*, is null and void as to pre-2011 registrants. In order (1) to “allow time for the legislature to craft and enact a new statute,” and (2) to ensure that registrants, prosecutors’ offices, and law enforcement would likewise get notice of the order *before* the injunctive relief took effect, the Court delayed the effective date of its decision until 60 days after the entry of the final judgment. Opinion and Order, ECF #84,

Pg.ID#1805. The Court gave the parties until March 13, 2020, to submit a proposed judgment (as well as proposed notices and a description of when and how they would be served). The process was intended to permit reasonably swift enforcement of the judgment, recognizing that Michigan registrants have been waiting for judicial relief since this Court and the Sixth Circuit held parts of SORA to be unconstitutional in 2015 and 2016, respectively.

The parties then requested a one-week extension to finalize the documents, which the Court granted. By March 20, 2020, however, the global pandemic caused by the COVID-19 virus had disrupted all aspects of everyday life. State government has had to limit its resources to essential services and critical functions during this crisis, making it difficult if not impossible for the Michigan State Police (MSP) Sex Offender Registration (SOR) Unit to complete the steps necessary to implement a final judgment. The defendants reported to the Court that the MSP has not yet identified the members of the ex post facto subclasses. Nor can the MSP say when it will be able to determine which registrants belong to those subclasses and therefore are entitled to relief under Count IV. Accurate identification is necessary in order to know which registrants (absent new legislation) will no longer be subject to SORA, and which will be subject to a more limited SORA, under the Court's decision.

The defendants have also reported that it would be difficult, if not impossible, for the SOR Unit to mail the 44,000 individual notices to class members within the

time frames originally contemplated. MSP employees working from home necessarily lack access to certain computing infrastructure, further impeding their ability to implement the Court's order. In addition, senior decision-makers and state employees in other departments (like Technology, Management and Budget) are unable to provide necessary input and support.

The parties also report that the state legislature is not meeting in regular session, and committee hearings have been cancelled or postponed. Robust debate and public/expert input regarding a new SOR law cannot occur as long as the current crisis continues. The parties further report that even before the governor declared a state of emergency, the MSP and other police agencies had read the Court's February 14, 2020, opinion to require the immediate cessation of registration of the ex post facto subclass. On February 21, 2020, the MSP sent a memo to law enforcement agencies instructing them not to take actions like verifying registration unless the agency could confirm that the registrant's offense occurred before April 11, 2011. The parties report that as a result, people who were trying to register were being turned away, and word had gotten out to many registrants that attempts to register would be futile.

Now, with a state of emergency having been declared, police posts are closing their doors to the public, making compliance with SORA a practical impossibility for registrants. It makes little sense for people to be leaving their homes, traveling

on public transportation (which may not even be available), and seeking access to public spaces in order to register or report, in the face of “stay at home” and “self-isolate” requests /directives from federal and state officials.

Under the current law, registration and reporting must be done in person, sometimes within three days of a given event. And even if the law did not require in-person reporting, there are no established mechanisms for phone, mail, or internet reporting, nor any systemic way to inform registrants of any alternative reporting method. Because limiting contact between persons is essential to reduce the risk of infection and to slow the spread of COVID-19, requiring ongoing registration during the crisis would not only violate “social distancing” and “shelter in place” directives, but would undermine the state and federal efforts to curtail the virus. Around the country, in-person probation and parole reporting has been curtailed or suspended out of concern for public health and safety. *See e.g.* Michigan Supreme Court Administrative Order No. 2020-1. As is increasingly being recognized by states and localities that have suspended in-person SORA reporting, the same public health and safety concerns are present with regard to SORA.

In light of the current crisis, the Court will delay entry of the final judgment on an emergency interim basis, as set forth below. The delay, however, puts registrants in jeopardy of being charged with crimes for failing to register or report during the current crisis. The delay, which comes years after this Court and the Sixth Circuit

first held the school exclusion zones to be unconstitutional, also could prevent registrants from being able to get inpatient medical treatment, to find shelter, or to assist sick relatives within the exclusion zones (during a time when all schools are closed). The state's current inability to determine which registrants are subject to which obligations (i.e., which primary class members are members of the ex post facto subclasses) or to provide notice to registrants of what their obligations are, exacerbates these risks.

Moreover, registrants should not face conflicting legal obligations. They cannot both be legally required to remain in their homes and be compelled to register in person. This Court's interim order, which will delay the entry of the final judgment, will therefore include protection from these risks for the primary class on an emergency interim basis, as set forth below.¹

IT IS THEREFORE ORDERED:

1. The Court will delay entry of a final judgment for the duration of the current COVID-19 crisis. The "current crisis" shall be considered ended (a) when

¹ It is possible that prosecutors would not threaten or bring such charges. But charges were threatened or brought against registrants under SORA provisions that this Court or the Sixth Circuit had held to be unconstitutional – including after this Court entered a class-wide declaratory judgment (ECF #55). Moreover, registrants should not have to speculate about whether or not they will be prosecuted, or whether or not they will succeed in pleading defenses to any such prosecutions. Nor should public safety be jeopardized by registrants leaving their homes because they fear prosecution if they do not report in person.

there is no longer an operative federal or state executive order or legislative act declaring a state of emergency, or (b) when the Court determines that the conditions giving rise to the need for this interim order no longer apply.

2. The defendants and their agents are preliminarily ENJOINED from enforcing registration, verification, school zone, and fee violations of SORA that occurred or may occur from February 14, 2020, until the current crisis has ended, and thereafter until registrants are notified of what duties they have under SORA going forward.² This interim injunctive relief conforms with and implements this Court's order that registrants cannot be held strictly liable for SORA violations. *See* Opinion & Order of 2/14/20 (ECF #84), at 31. The interim injunction takes effect immediately and applies to the primary class.

3. This emergency interim order is not a final judgment. During this interim period the parties will continue to prepare a final judgment (along with notices and a description of when how the notices will be served), so that they can submit the proposed joint final judgment within fourteen days after the current crisis ends (if not sooner). Pursuant to the Court's opinion and order of February 14, 2020, the final judgment shall not take effect until 60 days from the date that it enters.

4. Within seven days of the entry of this order:

² This interim injunction enjoins only enforcement. It does not bar the defendants from maintaining the registry, such as inputting information about new registrants or continuing the Public Sex Offender Registry.

- a. The MSP and the plaintiffs' counsel shall post notice of this order, and a copy of it or link to it, on their websites³ or such other locations so as to be seen widely by class members;
 - b. The Executive Director of the Prosecuting Attorneys Coordinating Counsel shall provide notice of this order, and a copy of it or link to it, by email to all elected county prosecutors in Michigan, who shall be responsible for transmitting the notice to all prosecutors in their county;
 - c. The MSP SOR Unit shall provide notice of this order, and a copy of it or link to it, by email to the Michigan Association of Chiefs of Police and to the Michigan Sheriffs' Association, who shall be responsible for transmitting the notice to all law enforcement personnel within those agencies who handle SORA enforcement matters.
5. The parties shall report to the Court every 30 days on their progress in completing the tasks set out above and in the Court's February 14, 2020, Opinion & Order, ECF #84, or other matters pertinent to moving this case forward as expeditiously as possible in light of the current crisis.

SO ORDERED.

Hon. Robert H. Cleland
U.S. District Judge

Dated: March __, 2020

³ MSP website: https://www.michigan.gov/msp/0,4643,7-123-1878_24961---.00.html; ACLU website: [ACLU website: https://www.aclumich.org/en/SORA](https://www.aclumich.org/en/SORA).