

MICHAEL DONAHOE  
Deputy Federal Defender  
Federal Defenders of Montana  
Helena Branch Office  
50 West 14<sup>th</sup> Street, Suite 1  
Helena, Montana 59601  
Phone: (406) 449-8381  
Fax: (406) 449-5651  
Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAY FRANK TEMPLIN,

Defendant.

**CR 05-09-H-DWN**

**BRIEF IN SUPPORT OF MOTION  
TO TERMINATE OBLIGATION  
TO REGISTER AS A SEX  
OFFENDER**

INTRODUCTION

Defendant, Jay Frank Templin, has filed a motion to terminate his obligation to register as a sex offender. (ECF No. 30). This brief supports that motion.

FACTUAL CIRCUMSTANCES

This is a child pornography case that was brought in this Court in 2005. Mr. Templin pled guilty and was sentenced on November 17, 2005 to five years in prison. *See United States v. Templin*, CR-05-09-H-DWM (ECF Nos. 14 and 24). Mr.

Templin was released from prison on August 7, 2008 and his supervised release was terminated by the Court on August 15, 2013 (ECF No. 30).

Under 34 U.S.C. §20915(b) Mr. Templin has maintained a “clean record” which renders him eligible for release from the obligation to register as a sex offender. Yet the question arises whether it is this Court or the State Court that has jurisdiction to consider and rule on Mr. Templin’s motion for release from the duty to register based on the factors set forth in 34 U.S.C. §20915.

### JURISDICTION

The question arises whether this Court has jurisdiction to grant the relief Mr. Templin requests. *See e.g. United States v. McGrath*, 2017 WL 6349046 (USDC M.D. Louisiana) where Judge deGravelles ruled that a federal court defendant convicted for possessing child pornography was bound by the “term and conditions of Defendant’s registration period . . . [to be] determined entirely by state law and overseen by state entities and officials, regardless of what might be set forth in [the Sex Offender Registration and Notification Act].” Copy of *McGrath* attached here as an Addendum).

What distinguishes Mr. Templin’s situation from the *McGrath* case however is that relevant Montana law provides in part that Level 1 sex offenders “at any time after 10 years of registration . . . may petition the *sentencing court* or the district court for the judicial district in which the offender resides for an order relieving the

offender of the duty to register.” *See* Mont. Code Ann. §46-23-506, (*Set out in entirety in* ECF No. 30) (emphasis added).

Mr. Templin’s duty to register under Montana law arises under Mont. Code Ann. §46-23-502(b) which provides:

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

Mont. Code Ann. §46-23-502(b).

We contend that §46-23-502(b) and §46-23-506(3)(b) (together with the fact that this Court ordered Mr. Templin to register in its sentencing judgment) combine to properly invoke this Court’s ancillary jurisdiction to effect its judgments. *See United States v. Sumner*, 226 F.3d 1005, 1013-1015 (9th Cir. 2000) (discussing ancillary jurisdiction for expungement of arrest and conviction records and finding none). According to *Sumner*, ancillary jurisdiction rests on two sometimes related purposes: (1) to permit disposition in a single court of claims that are factually interdependent; and (2) to allow the Court to function successfully in management of its proceedings, to vindicate its authority and effectuate its decrees. 226 F .3d at 1014 (*citing Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375, 379-380 (1994)).

WHEREFORE, based on Mr. Templin's motion and this brief in support of it (ECF No. 31) Mr. Templin prays the Court will order a background investigation by U.S. Probation to insure that Mr. Templin has the required "clean record" and thereafter hold a hearing and discharge Mr. Templin from the obligation to register as a sex offender, because as a Tier I offender Mr. Templin is eligible for early termination of his duty to register under both state and federal law.

RESPECTFULLY SUBMITTED December 5, 2018.

/s/ Michael Donahoe  
MICHAEL DONAHOE  
Deputy Federal Defender  
Counsel for Defendant

IV. CERTIFICATE OF SERVICE  
**L.R. 5.2(b)**

I hereby certify that on December 5, 2018, a copy of the foregoing document was served on the following persons by the following means:

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3, 4 Mail

1. CLERK, UNITED STATES DISTRICT COURT

1. Cyndee Peterson  
Assistant U.S. Attorney  
U.S. Attorney's Office  
P.O. Box 1478  
Billings, MT 59103  
Counsel for the United States of America

2. Eric C. Buehler  
Supervising U.S. Probation Officer  
901 Front Street, Suite 1200  
Helena, MT 59626

3. Leo Gallagher  
Lewis and Clark County Attorney  
228 Broadway  
Helena, MT 59601

4. Jay Frank Templin  
1107 1/2 Logan St.  
Helena, MT 59601

/s/ Michael Donahoe  
MICHAEL DONAHOE  
Deputy Federal Defender

# **ADDENDUM**

## United States v. McGrath

United States District Court for the Middle District of Louisiana

December 12, 2017, Decided

CRIMINAL ACTION NO. 04-0061-JWD-EWD

### Reporter

2017 U.S. Dist. LEXIS 208390 \*; 2017 WL 6349046

UNITED STATES OF AMERICA VERSUS  
DWAYNE J. MCGRATH

**Counsel:** [\*1] Dwayne J McGrath, Notice Only,  
Pro se, Baton Rouge, LA.

For United States of America, Plaintiff: Ryan  
Crosswell, LEAD ATTORNEY, U.S. Attorney's  
Office, Middle District of Louisiana, Baton Rouge,  
LA; James Walter Green, United States Attorney's  
Office - BR, Baton Rouge, LA.

**Judges:** JOHN W. deGRAVELLES, UNITED  
STATES DISTRICT JUDGE.

**Opinion by:** JOHN W. deGRAVELLES

### Opinion

### RULING AND ORDER

This matter comes before the Court on a "Motion to Reduce Period of Sex Offender Registration" filed by Defendant Dwayne J. McGrath. ("Motion," Doc. 28).

In 2004, Defendant was convicted in federal court of one count of possessing child pornography and sentenced to forty-one months' imprisonment and three years' supervised release. (Doc. 24 at 1-3). In 2006, Defendant began a period of annual sex offender registrations pursuant to Louisiana law. (See Doc. 33-1 at 2). In 2015, the Louisiana Bureau of Criminal Identification and Information (the "Bureau"), apparently observing that it had not determined for how long Defendant would be required to register, conducted an investigation,

during which the Bureau analyzed the elements of Defendant's federal conviction and determined the "most comparable Louisiana offense." (*Id.* at 2). The Bureau determined [\*2] that Defendant was required to register for twenty-five years with periodic registration every six months. (*Id.* at 2-3). The Louisiana Division of Administrative Law affirmed the Bureau's decision in June 2016. (*Id.* at 7). The opinion affirming the Bureau's decision notified Defendant that he could seek rehearing or reconsideration or judicial review of the decision. (*Id.*).

Defendant's Motion was filed in June 2016. (Doc. 28). Defendant appears to allege that he should no longer be required to register as a sex offender because he has maintained a clean record during the ten years that he has been required to register as a sex offender. (*Id.* at 1-2). Based upon attachments to the Motion, it appears that Defendant wishes to take advantage of "clean record" adjustments described in 34 U.S.C. § 20915 (formerly 42 U.S.C. § 16915), a section of the federal Sex Offender Registration and Notification Act ("SORNA"). (*Id.* at 3). The Government opposes, arguing that the Motion presents no federal question and that Defendant's claims should have been pursued further in state court. (Doc. 33 at 2-3).

Defendant is not entitled to relief. As the Government observes, Congress passed SORNA for the purpose of creating a national system for the registration of sex offenders. [\*3] 34 U.S.C. § 20901 (formerly 42 U.S.C. § 16901). However, according to SORNA's interpretive guidelines, SORNA "generally constitutes a set of minimum national standards and sets a floor, not a ceiling, for

jurisdictions' programs," and "[a] jurisdiction may require sex offenders to register for longer periods than those required by the SORNA standards." Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification, 73 FR 38030-01 (July 2, 2008). For example, a state may comply with SORNA by subjecting all sex offenders to lifetime registration, quarterly verification appearances, and full website posting. *Id.* Such a state would not be required to "assess individual registrants against the tier criteria in the SORNA definitions." *Id.*; *see also Carr v. United States*, 560 U.S. 438, 452-53, 130 S. Ct. 2229, 176 L. Ed. 2d 1152 (2010) ("[F]ederal sex-offender registration laws have, from their inception, expressly relied on state-level enforcement. [ . . . ] In enacting SORNA, Congress preserved this basic allocation of enforcement responsibilities.").

Here, Louisiana agencies determined that Defendant's federal offense was most similar to one provided for in La. R.S. § 14:81.1(B)(8), entitled "Pornography Involving Juveniles." (Doc. 33-1 at 2-3). Louisiana law generally provides for a twenty-five-year registration period for such offenses. La. R.S. §§ 15:544(B)(1); 15:541(25)(d). The term and conditions of Defendant's registration [\*4] period are thus determined entirely by state law and overseen by state entities and officials, regardless of what might be set forth in SORNA.

Defendant's Responses in further support of his Motion, (Docs. 34 & 36), are unavailing. The Responses generally recite textbook principles of federal question jurisdiction in civil cases and appear to claim that the Court has jurisdiction because the state's decision was based on its interpretation of the nature of Defendant's federal offense. (*See* Doc. 36 at 2 ("Classification under Louisiana [l]aw is made by comparing the state's current law against [Defendant's] conviction, in this case Louisiana [l]aw describes that conviction as being 'from an out of state jurisdiction.'")). However, Defendant has provided no evidence or

argument that his original conviction is invalid, and the Court has no source of authority to oversee the state's interpretation of its own registration laws, even where those laws are given content by reference to the elements of a federal crime.

Defendant's Motion is meritless. Accordingly, **IT IS ORDERED** that Defendant's Motion (Doc. 28) is **DENIED**.

Signed in Baton Rouge, Louisiana, on December 12, 2017.

/s/ John W. deGravelles [\*5]

**JUDGE JOHN W. deGRAVELLES**  
**UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF LOUISIANA**

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