Circuit Court for Montgomery County
Case No. 463203-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1685

September Term, 2019

BRAD RESPONDEK

v.

STATE OF MARYLAND, ET AL.

Nazarian,
**Gould,
Wright, Alexander
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: October 1, 2021

** Steven B. Gould, now serving on the Court of Appeals, participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a specially assigned member of this Court.

This action requires us to determine whether Brad Respondek, a former lieutenant in the Navy, is required to register as a sex offender under Maryland's Sex Offender Registration Act ("MSOR") or, alternatively, the federal sex registration statute ("SORNA"). Mr. Respondek was first convicted in the Circuit Court for Montgomery County on two counts of possession of child pornography. Based on Mr. Respondek's exemplary behavior during his post-conviction probation period, the circuit court granted him a probation before judgment and excused Mr. Respondek from the obligation to register as a sex offender under MSOR as a result of that charge.

Mr. Respondek was subsequently convicted, on the same underlying facts as his first conviction, by a military court martial for possession of child pornography under the Uniform Code of Military Justice ("UCMJ"). Upon his release from confinement, he was ordered to register in Maryland as a sex offender. Mr. Respondek then filed a Complaint for Declaratory Judgment contending that he was not required under Maryland law to register. The circuit court held that Mr. Respondek's military conviction required Mr. Respondek to register both under Maryland law and under SORNA.

Mr. Respondek appealed. For the reasons that follow, we shall affirm the judgment of the circuit court.

BACKGROUND AND PROCEDURAL HISTORY

On October 15, 2015, Brad Respondek pleaded guilty in the Circuit Court for Montgomery County to two counts of child pornography. He was sentenced to two years for each count, all suspended and to be served concurrently, as well as three years'

probation. Pursuant to MSOR, Mr. Respondek was required to register as a "Tier I" sex offender.

Mr. Respondek timely moved for reconsideration of the sentence under Maryland Rule 4-345(e). The court held the motion *sub curia* until a hearing before the sentencing judge on June 7, 2016. At the hearing, Mr. Respondek's counsel explained that Mr. Respondek was a Lieutenant in the Nurse Corps of the Navy and was facing military discipline. Mr. Respondek's counsel said:

> Because of the plea, [Mr. Respondek] has now been banned from his base because he's on the sex offender registry. He can only go into his office and exit. He can't go anywhere else on the base . . . . [H]is JAG attorney . . . says that it is a foregone conclusion that Mr. Respondek will be discharged from the Navy. She said it's just, no matter what happens today, no matter what happens period, even if this was expunged today, it is, the conduct itself is what will get him discharged. The only issue is whether or not it will be honorable or other than honorable, and the reason that this is of such significance is Mr. Respondek has known that this day would come. We thought it would be a little longer, but an other than honorable discharge will mean that Mr. Respondek is unable to become licensed as a nurse in civilian life because it will be, it will prohibit him from being approved by any board of any state on licensing.
>
> For that reason, we're asking Your Honor to consider a probation before judgment a little earlier than we had anticipated coming to the Court.

Mr. Respondek presented a compelling case that he was remorseful and rehabilitated by speaking on his own behalf, presenting a letter from his probation agent, and having his counselor testify about his progress. The probation agent's letter said that Mr. Respondek had "dedicated himself to the successful completion of and compliance with his probationary requirements, and he has done so with an outstanding attitude and positive outlook." The letter explained that Mr. Respondek went above and beyond the

requirements imposed upon him and that he "is genuinely mortified at his lapse in judgment and the extent to which it has complicated his life, his aspirations, his family's well-being and threatened his ability to provide for his family as a result of his charges[.]"

Mr. Respondek's counselor offered similar praise for Mr. Respondek's efforts, attitude, and motivation in treatment. The counselor testified:

> During the course of treatment he's [] been in the top percentiles of everybody that I've worked with. He's been extraordinarily motivated and has left no stone unturned. He has involved himself with 12-step organizations and mentored other people within the program. He has a very, very low risk of recidivism because of his motivation, and also research has shown that the recidivism rates for child pornography clients are very low, and of those very low groups, he's at the lowest end of that spectrum as well. I can't think of anything in addition to doing what he's already done that he should do.

The court was persuaded by Mr. Respondek's presentation and found a "low risk potential of [Mr. Respondek] for hurtful activities or criminal activities in the future[.]" The court remarked that the letter from Mr. Respondek's probation agent was "extraordinary, and [it did] not know a lot of probation agents to go out of their way to help probationers who commit offenses unless it is truly warranted[.]" The court found that "not only is [Mr. Respondek] an excellent person as a probationer, but has confirmed . . . sincere compliance with the terms of probation." Thus, the court granted the "extraordinary form of relief" of terminating his probationary term, imposing probation before judgment, and relieving him of the requirement to register as a sex offender in Maryland.

Approximately one year later, on June 19, 2017, the Navy initiated a court martial proceeding charging Mr. Respondek with knowingly distributing child pornography. On

February 27, 2018, Mr. Respondek pleaded guilty at a general court-martial for possession of child pornography in violation of Article 134 of the UCMJ. 10 U.S.C. § 934 (2018). The military court sentenced Mr. Respondek to five months of confinement, plus dismissal from the Navy.

On June 18, 2018, after serving his period of confinement, Mr. Respondek signed a Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements in which Mr. Respondek placed his initials next to following statements to signify his acknowledgement thereof:

> 1. I, Respondek, Brad E., . . . was convicted for the commission of (a) sexual offense that (did or did not) [did was circled] include a sentence to confinement, and require(s) me to register as a sex offender.
>
> ***
>
> 3. I acknowledge that I have been informed that if I am retained in the armed forces, I must register as a sex offender with both military and civilian law enforcement agencies with jurisdiction over the installation, and my residence upon my physical arrival on [June 22, 2018] to my assigned unit.
>
> ***
>
> 5. I hereby acknowledge that I was informed that upon my release from confinement or military service, I am subject to registration requirements under the Sex Offender Registration and Notification Act (SORNA) as a sex offender within 72 hours in any state, territory, or tribal nation, in which I will reside, be employed, carry on a vocation, or be a student.
>
> ***
>
> 8. I understand that I must contact the office that follows, to ensure that sex offender registration requirements are met: Montgomery County Department of Police Special Victims Investigative Division [address in MD then provided].

9. I understand that should the office listed in block 8 not be the correct point of registry for the jurisdictions in which I plan to reside, be employed, or go to school, I will seek out and register in all appropriate offices.
10. I acknowledge that I have been informed that the sex offender registry of the jurisdiction in which I will reside upon release from confinement or military service is being provided written notice about the offense(s) for which I was convicted, that I am subject to a registration requirement as a sex offender, and the date I was released from confinement or military service.
11. I acknowledge that I have been informed that every change in my local address must be reported in the manner provided by state or tribal law.
12. I acknowledge that I have been informed that if I move to another state, I must report the change of address to the responsible agency in the state I am leaving, and comply with the registration requirements in the new state of residence.
13. I acknowledge that I have been advised and understand that if I do not register and/or change or update such information as required by a relevant state, tribal or territorial sex offender registration program, my failure to comply with these requirements could result in such penalties as revocation of parole/MSR or prosecution under Federal law (18 U.S.C. 2250), punishable by up to 10 years imprisonment.

He also signed a form called "Instructions for Sex Offender Registration," in which he also placed his initials next to the following statements:

> I have reviewed and understand my responsibility to register within the **State of Maryland** at the time of release. The **State of Maryland** requires me to register WITHIN **72 hours of entering any county/when released from confinement.** If I fail to submit myself within the required time allotted, I may face additional UCMJ actions, as well as state and/or federal charges for failing to register as required.
>
> I understand that if I am residing, plan to reside, work or attend school on a military installation, I must submit myself to the Chief. Law Enforcement Agency on the installation for registration.
>
> ***
>
> I elect to receive copies of my registry information at the time of my expected release from the facility.

Mr. Respondek filed a complaint in the Circuit Court for Montgomery County seeking a declaratory judgment that he was not required, under Maryland law, to register as a Tier I sex offender. Mr. Respondek stated that he was listed in the registry "as a Tier I registrant pursuant to 'Maryland law' for his conviction dated '10/27/15.'" He alleged that as a result of the circuit court's prior ruling, he was granted a probation before judgment on the Maryland charge which specifically relieved him of the obligation under MSOR to register. Moreover, he alleged his guilty plea in the military court did not trigger an obligation to register under MSOR because he did not commit the violation of the UCMJ in a military jurisdiction as required by the statute.

Both the State and Mr. Respondek moved for summary judgment. The State argued that Mr. Respondek's military conviction established an independent obligation under federal law to register as a sex offender in Maryland. The State also argued that Mr. Respondek was obligated to register under MSOR because he *did* commit the violation in a "military jurisdiction" as that term is properly construed.

Mr. Respondek countered that enforcing the federal registration requirement would violate his rights under: (1) the Double Jeopardy Clause of the Fifth Amendment; (2) the principles of federalism underlying the Tenth Amendment and Article Three of the Maryland Declaration of Rights; and (3) the terms of Mr. Respondek's plea agreement from his first conviction.

The circuit court held a hearing on these motions on October 16, 2019. In its oral decision, after hearing arguments from counsel, the court granted summary judgment to

the State. In giving its ruling from the bench, the court addressed Mr. Respondek's arguments. Regarding the definition of "military jurisdiction" the court ruled that:

> wherever the military would have jurisdiction and if the crime was committed wherever the military had jurisdiction, that would be sufficient and in this case the military had jurisdiction over the plaintiff and, so, therefore, the State is not violating the law with respect to requiring the plaintiff to register.

The circuit court also ruled that double jeopardy didn't apply to two convictions by two different sovereigns. The court stated that although it was unfortunate that the military trial wasn't considered in the plea agreement, requiring Mr. Respondek to register as a Tier I offender did not "violate[] either Maryland law or any other principles . . . ."

The circuit court's written order also found that federal law imposed an independent duty on Mr. Respondek to register. The order states:

> In February of 2018, Mr. Brad Respondek pleaded guilty to one count of possession of child pornography in violation of Article 134Z of the Uniform Code of Military Justice. Mr. Respondek currently resides in Montgomery County. Mr. Respondek is required under federal law to register as tier I sex offender in Maryland based on his military conviction. 42 U.S.C. § 16911.
>
> Mr. Respondek's military conviction also requires him to register as tier I sex offender under Maryland law. The term "tier I sex offender" is defined in § 11-701(o)(3) of the Criminal Procedure Article to include individuals who commit an offense, or conspire or attempt to commit an offense, "in a federal, military, tribal or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection." *See* Md. Code Ann., Crim. Proc. Art., § 11-701(o)(3) (LexisNexis 2018). Section 11-701(o)(2) lists the crime of "committing violation of 11-208 [possession of child pornography] of the Criminal Law Article" as a tier I qualifying offense, if the victim is minor. Crim. Proc. § 11-701(o)(2). Mr. Respondek meets the definition of a tier I sex offender under Maryland law because the criminal conduct he engaged in while serving in the military, which was also committed in Maryland, constituted

> possession of child pornography, a crime requiring registration as a tier I sex offender in Maryland.
>
> Mr. Respondek is therefore obligated to continue to register as a tier I sex offender for 15 years in accordance with the requirements of the Maryland Sex Offender Registration Act.

Mr. Respondek promptly filed his notice of appeal, and presents us with the following question:

> Did the lower court err, as a matter of law, in denying Mr. Respondek's Motion for Summary Judgment and, instead, granting summary judgment to the state?

For the reasons set forth below, we affirm the circuit court's grant of summary judgment.

STANDARD OF REVIEW

We review a trial court's grant of summary judgment without deference. *Myers v. Kayhoe*, 391 Md. 188, 203 (2006). Our review involves a determination of (1) "whether a dispute of material fact exists," and (2) "whether the trial court was legally correct." *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 93 (2000) (quotations and citations omitted); *see also* Md. Rule 2-501(f). For the purposes of summary judgment, a material fact is "a fact the resolution of which will somehow affect the outcome of the case." *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 174 (2011) (quoting *Barbre v. Pope*, 402 Md. 157, 171–72 (2007)), *aff'd*, 429 Md. 199 (2012). "[W]e independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Myers*, 391 Md. at 203. We view the record "in the light most favorable to the non-moving

party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Rhoads v. Sommer*, 401 Md. 131, 148 (2007).

DISCUSSION

I.

STATUTORY CONSTRUCTION

This case requires us to construe the applicable Maryland and federal statutes concerning sex offender registration requirements. Speaking for the Court of Appeals in a recent opinion, Judge McDonald summarized Maryland's principles of statutory interpretation:

> The goal of statutory interpretation is to "ascertain and effectuate the real and actual intent of the Legislature." *Gardner v. State*, 420 Md. 1, 8 (2011). We begin with an examination of the text of a statute within the context of the statutory scheme to which it belongs. *Aleman v. State*, 469 Md. 397, 421, *cert. denied*, 141 S. Ct. 671 (2020). Review of the text does not merely entail putting the words under the microscope by themselves with a dictionary at hand, because words that appear "clear and unambiguous when viewed in isolation" may "become ambiguous when read as part of a larger statutory scheme." *Fisher v. Eastern Correctional Institution*, 425 Md. 699, 707 (2012). A particular section of a statute must be construed in a manner consistent with the larger statute's object and scope. *Blackburn Ltd. P'ship v. Paul*, 438 Md. 100, 122 (2014). We also review the legislative history of the statute to confirm conclusions drawn from the text or to resolve ambiguities. In addition, we examine prior case law construing the statute in question. *Aleman*, 469 Md. at 421. Finally, it is important to consider the consequences of alternative interpretations of the statute, in order to avoid constructions that are "illogical or nonsensical, or that render a statute meaningless." *Couret-Rios v. Fire & Police Employees' Retirement System*, 468 Md. 508, 528 (2020).

Nationstar Mortg. LLC v. Kemp, _____ Md. _____No. 43 (Sept. Term, 2020), slip op. at 20-21 (filed Aug. 27, 2021). These principles will guide our analysis below.

II.

OVERVIEW OF SEX OFFENDER REGISTRATION LAWS

A.

SORNA

The Sex Offender Registration and Notification Act ("SORNA") is codified in 34 U.S.C. §§ 20911-20932 (2017) and establishes a nationwide sex offender registration and notification system. SORNA "sets forth 'minimum national standards' for jurisdictions' sex offender registration and notification programs." *Dep't of Pub. Safety & Corr. Servs. v. Doe*, 439 Md. 201, 223 (2014) ("*Doe II*") (quoting 42 U.S.C. § 16912).[1] In enacting SORNA, Congress sought to make uniform a "'patchwork of federal and 50 individual state registration systems' . . . with 'loopholes and deficiencies' that had resulted in an estimated 100,000 sex offenders becoming 'missing' or 'lost[.]'" *United States v. Kebodeaux*, 570 U.S. 387, 399 (2013) (cleaned up).

To properly construe MSOR, it will be helpful to cover some of the standards required of the states by SORNA that will impact our analysis. For starters, SORNA requires that "[e]ach jurisdiction . . . maintain a jurisdiction-wide sex offender registry conforming to the requirements of this subchapter."[2] 34 U.S.C. § 20912(a). "Sex offender

[1] This provision was transferred to 34 U.S.C. § 20912.

[2] As used in this section, "this subchapter" refers to Title 34, Subtitle II, Chapter 209, Subchapter I (Sex Offender Registration and Notification).

registry" is defined as a "registry of sex offenders, and a notification program, maintained by a jurisdiction." *Id.* § 20911(9).

The registration requirements under SORNA apply to any person who meets the definition of a sex offender. *Id.* § 20913.[3] SORNA broadly defines a "sex offender" as "an individual who was convicted of a sex offense." *Id.* § 20911(1). The term "sex offense," in turn, is also defined in SORNA. *See id.* § 20911(5)(A).[4] Relevant here, the term "sex offense" includes a "military offense specified by the Secretary of Defense under

[3] 34 U.S.C. § 20913(a) (2017) provides:

> A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

[4] 34 U.S.C. § 20911(5)(A) provides:

> Except as limited by subparagraph (B) or (C), the term "sex offense" means-
> (i) a criminal offense that has an element involving a sexual act or sexual contact with another;
> (ii) a criminal offense that is a specified offense against a minor;
> (iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of Title 18) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of Title 18;
> (iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or
> (v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note)[.]"[5] *See id.* § 20911(5)(A)(iv).

To determine the duration of the registration requirement for a sex offense based on the gravity of the crime, SORNA devised a tiered system to categorize sex offenders. *Id.* §§ 20911(2)-(4). The system has three tiers, aptly referred to as "tier I sex offender," "tier II sex offender," and "tier III sex offender." *Id.* § 20911(2)-(4). Regardless of the tier, a sex offender is required to register. *Id.* § 20913.

The above are but a few of the standards established by SORNA. SORNA calls for jurisdictions to "substantially implement" its requirements or face a reduction of "10 percent of the funds that would be otherwise allocated . . . under . . . the Omnibus Crime Control and Safe Streets Act of 1968 [("Omnibus Crime Act").]" *Id.* § 20927(a).

Maryland is one of the jurisdictions that chose to implement SORNA.

B.

MSOR

Maryland initially enacted its sex offender registration statute in 1995, before SORNA. *See Doe v. Dep't of Pub. Safety & Corr. Servs.*, 430 Md. 535, 545 (2013) ("*Doe I*"); 1995 Md. Laws, Chap. 142. Under that system, there were four categories of offenders: child sexual offender, offender, sexually violent offender, and sexually violent predator. *See* Attorney General Letter of Advice, Senate Bills 280 and 854 and House Bills 473 and 936, "Criminal Procedure – Sexual Offenders – Lifetime Supervision" and "Crimes – Sex

[5] Such military offenses are also included within the definition of "criminal offenses" under 34 U.S.C. § 20911(6).

Offenders – Notification, Registration, and Penalties," April 29, 2010 ("AG Letter"). A person convicted of possession of child pornography was classified as a "child sexual offender" and required to register in Maryland if he had been "convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in this State, would constitute one of the crimes listed in items (1) and (2) of this subsection." 2010 Md. Laws., Chap. 174. In 2001, the Court of Appeals observed the anomaly that, unlike the definition of "child sexual offender," the statutory definition of "sexually violent predator" and "sexually violent offenses" did not include out-of-state convictions. *See Graves v. State*, 364 Md. 329 (2001). Thus, the Court held that "the statutory definition of a 'sexually violent predator' does not encompass persons who have been convicted of criminal acts committed in another jurisdiction that would constitute a sexually violent offense in Maryland." *Id.* at 331.

Maryland's registration system has since undergone multiple revisions, including in 2010. 2010 Md. Laws, Chaps. 174 and 175. In the 2010 amendments, Maryland jettisoned its previous categories of sex offenders and adopted the tiered system to bring the registration provisions into compliance with SORNA. Fiscal and Policy Note, House Bill 936 (2010 Session); *see also* AG Letter.

In 2011, the United States Department of Justice reviewed Maryland's implementation status and determined that Maryland had "substantially implemented" SORNA with only a few minor deviations. *See* U.S. DEP'T OF JUSTICE, OFFICE OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING (SMART), SORNA SUBSTANTIAL IMPLEMENTATION REVIEW STATE OF MARYLAND—

REVISED (July 19, 2011), https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/maryland.pdf ("SMART Office" or "2011 Report").[6] In discussing the SORNA requirements in the 2011 Review, the SMART Office stated:

> SORNA requires that certain federal, military, and foreign offenses are included in a jurisdiction's registration scheme. In addition, SORNA requires that the jurisdiction capture certain sex offenses, both offenses from its jurisdiction and from other SORNA registration jurisdictions, in its registration scheme. SORNA also requires that certain adjudications of delinquency are included in a jurisdiction's registration scheme.
>
> While Maryland meets most of the requirements of this section, Maryland's term "convicted" includes the provision "probation before judgment," which allows the court, upon fulfillment of the conditions of probation, to discharge the defendant from probation. Discharge in this instance means that the defendant shall be without judgment of conviction. A number of Maryland's registerable offenses qualify for this provision and, thus, would be excused from the registration requirements upon discharge. This allowance deviates from the SORNA requirement. To meet this SORNA requirement, Maryland will need to include all registerable sex offenses in Criminal Procedure Article § 6-220(d)(3).

Id. at 2.

With the foregoing legislative framework in mind, we turn now to the substantive issues raised by Mr. Respondek on appeal.

III.

ANALYSIS

Mr. Respondek argues that the circuit court erred in concluding that he was required under Maryland law to register as a sex offender. The circuit court, according to Mr.

[6] In describing the history of Maryland's compliance with SORNA, the Court of Appeals likewise referred to the 2011 Review. *Doe II*, 439 Md. at 224.

Respondek, misinterpreted the definition of Tier I in CP § 11-701(o)(3) in finding that the phrase "committed in a . . . military . . . jurisdiction" referred to any place where the military had jurisdiction over Mr. Respondek's person. According to Mr. Respondek, this subsection speaks to the geographic location in which the underlying crime was committed, and because the crime was committed in the State of Maryland, and not in a "military jurisdiction," he was not required under this statute to register.

The State, relying on *Solorio v. United States*, 483 U.S. 435 (1987), counters that the phrase "military jurisdiction" refers to the "status of the accused;" that is, if the accused is a member of the military, then "the offense for which he was convicted occurred in a military jurisdiction[.]"

Mr. Respondek also argues that the circuit court erroneously found that he was under a separate obligation under SORNA to register as a sex offender in Maryland. He contends that because the military offense was the same offence for which he was convicted in Maryland, "[p]utting him back on the registry, even if required by federal SORNA, places him in jeopardy twice for the same offense thereby violating his Maryland common law right against being punished twice for the same offense." Mr. Respondek further contends that requiring him to register would violate principles of federalism under the Tenth Amendment to the United States Constitution and Article Three of the Maryland Declaration of Rights. And finally, he contends that requiring him to register would constitute a violation of his plea agreement pursuant to which he pled guilty to the Maryland charge and was ultimately excused by the court from the registration requirement.

We will address each of Mr. Respondek's arguments in turn.

A.

MR. RESPONDEK IS REQUIRED UNDER THE MARYLAND STATUTE TO REGISTER AS A SEX OFFENDER

As with all questions of statutory construction, we begin with the text of the relevant provisions of the Maryland Code, starting with the section that imposes the duty to register in the first place:

> (a) A person shall register with the person's supervising authority if the person is:
>
> (1) a tier I sex offender;
>
> (2) a tier II sex offender;
>
> (3) a tier III sex offender; or
>
> (4) a sex offender who is required to register by another jurisdiction, a federal, military, or tribal court, or a foreign government, and who is not a resident of this State, and who enters this State:
>
> (i) to begin residing or to habitually live;
>
> (ii) to carry on employment;
>
> (iii) to attend a public or private educational institution, including a secondary school, trade or professional institution, or institution of higher education, as a full-time or part-time student; or
>
> (iv) as a transient.
>
> (b) Notwithstanding any other provision of law, a person is no longer subject to registration under this subtitle if:
>
> (1) the underlying conviction requiring registration is reversed, vacated, or set aside; or
>
> (2) the registrant is pardoned for the underlying conviction.

Md. Code Ann., Criminal Procedure ("CP") § 11-704 (2001, 2018 Repl. Vol.).

Subsection (4) of § 11-704 does not apply to Mr. Respondek because the parties agree that Mr. Respondek is a Maryland resident. We can also disregard subsections (2) and (3) as the parties agree that Mr. Respondek's offense does not qualify as either a

tier II or tier III offense. That leaves subsection (1)—a tier 1 sex offender—as the only possible subsection applicable to Mr. Respondek.

For the definition of tier 1 sex offender, we turn to CP § 11-701(o), which states:

> (o) "Tier I sex offender" means a person who has been convicted of:
>
> (1) conspiring to commit, attempting to commit, or committing a violation of § 3-308 of the Criminal Law Article;
>
> (2) conspiring to commit, attempting to commit, or committing a violation of § 3-902 or § 11-208 of the Criminal Law Article, if the victim is a minor;
>
> (3) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in item (1) or (2) of this subsection;
>
> (4) any of the following federal offenses:
>
> (i) misleading domain names on the Internet under 18 U.S.C. § 2252B;
>
> (ii) misleading words or digital images on the Internet under 18 U.S.C. § 2252C;
>
> (iii) engaging in illicit conduct in foreign places under 18 U.S.C. § 2423(c);
>
> (iv) failure to file a factual statement about an alien individual under 18 U.S.C. § 2424;
>
> (v) transmitting information about a minor to further criminal sexual conduct under 18 U.S.C. § 2425;
>
> (vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. § 1591; or
>
> (vii) travel with intent to engage in illicit conduct under 18 U.S.C. § 2423(b);
>
> (5) any military offense specified by the Secretary of Defense under Section 115(A)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 Note) that is similar to those offenses listed in item (4) of this subsection; or
>
> (6) a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through (5) of this subsection.

At the outset of our analysis of this subsection, we first observe that the statute under which he was originally convicted in the circuit court was § 11-208 of the Criminal Law Article, thus Mr. Respondek became a tier 1 sex offender when he originally pled guilty in the circuit court on October 27, 2015. Md. Code Ann., Crim. Law ("CL") § 11-208 (2002, 2012 Repl. Vol.) When the circuit court later imposed a probation before judgment and excused him from the registration requirement, under Maryland law Mr. Respondek was no longer deemed "convicted" under the Maryland registration statute.[7] At that point, therefore, the carve-out provision of CP § 11-704(b) kicked in, rendering Mr. Respondek "no longer subject to registration under this subtitle . . . ." Viewed solely from the perspective of his conviction under MSOR, therefore, under CP § 11-702, Mr. Respondek is no longer required under CP § 11-704 to register as a sex offender.

But that's not the end of the analysis, because after he was excused from the registration requirement by the circuit court, Mr. Respondek was subsequently convicted by a military court under the UCMJ. The question, therefore, is whether Mr. Respondek was returned to his status as a Tier 1 sex offender by virtue of his court-martial conviction. Scanning the various 4 possibilities for tier 1 status under CP § 11-701(o), we can rule out subsections (o)(1) and (o)(2), which on their face apply to convictions under the

[7] A person is considered "convicted" under CP § 11-702 when the person:

(1) is found guilty of a crime by a jury or judicial officer;
(2) enters a plea of guilty or nolo contendere;
(3) is granted a probation before judgment after a finding of guilt for a crime if the court, as a condition of probation, orders compliance with the requirements of this subtitle; or
(4) is found not criminally responsible for a crime.

specifically enumerated Maryland statutes, not laws from other jurisdictions. Mr. Respondek's conviction under the UCMJ clearly does not qualify under either subsection. We can also rule out subsection (o)(4), which applies only to convictions under specific, enumerated federal statutes, but not the specific crime under the UCMJ to which Mr. Respondek pleaded guilty.

That leaves subsection 11-701(o)(3) as the only possibility, which defines a "tier I sex offender" as one who is convicted of "a crime *committed in* a federal, military, tribal or other jurisdiction that, *if committed in this State*, would constitute one of the crimes listed in item (1) or (2) of this subsection."[8] (Emphasis added). Mr. Respondek makes a compelling argument that the phrase "committed in a federal, military, tribal or other jurisdiction" indicates that the focus is on "where" the underlying criminal conduct occurred. Further, Mr. Respondek contends that because Mr. Respondek committed the crime within the borders of the State of Maryland, not on a military base, subsection (o)(3) is not applicable to him. But construing the statute in light of all of its provisions as well in the context of the relevant Maryland and federal statutory registration requirements for sexual offenders, we are not convinced that in a situation where, as here, the person is a member of the armed services, the General Assembly intended this subsection to be broken down by geographic boundaries, as opposed to the reach of the military's authority in a given case.

[8] Subsection 5 applies to certain military convictions that are "similar" to the federal crimes listed in subsection 4. Subsection 6 applies to convictions in courts of certain countries other than the United States. Neither of those sections applies.

As noted above, the General Assembly specifically intended to implement SORNA through the 2009 and 2010 amendments to Maryland's registration statute. *Doe II*, 439 Md. at 223. The SMART Office concluded that Maryland substantially succeeded in doing so. 2011 Report at 1. As such, we must construe its provisions keeping in mind that the General Assembly intended the registration statute to comply with the requirements of SORNA. *Doe II*, 439 Md. at 223.

One such requirement, as the SMART Office observed, was that "certain federal, military, and foreign offenses are included in a jurisdiction's registration scheme." *Id*. at 2. One category of such offenses is, under 34 U.S.C. § 20911(5), a "military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note)[.]" Mr. Respondek does not contest that he was convicted for a military qualifying offense.[9] Thus, for Maryland to have complied with SORNA, it is fair

[9] As explained by the State,

> [a]s the member of the armed services, Mr. Respondek was subject to requirements imposed on service members by the Department of Defense. As indicated by the Department of Defense Report of result of Trial confirming his conviction (E. 74, *see* line 8), these requirements included the obligation to register as a sex offender, an obligation imposed by Department of Defense Instruction ("DoDI") 1325.07. DoDi 1325.07 requires registration by anyone "convicted in a general or special court-martial of any of the offenses listed in Table 4," and this requirement demands that the convicted individual register in any state where "he or she will reside, work, or attend school upon leaving confinement." Among the offenses listed in Table 4 under DoDI 1325.07 is the offense for which Mr. Respondek was convicted: violation of Article 134 of the Uniform Code of Military Justice, 10 U.S.C. § 934 92018) DIBRS Code 134Z, pornography involving a minor.

to assume the General Assembly intended such crimes would trigger the registration requirement under MSOR.

The only provision that would accomplish this purpose as to Mr. Respondek is the registration requirement imposed by CP § 11-704(a)(1) on tier I sex offenders, which is defined in CP § 11-701(o) to include "a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in item (1) or (2) of this subsection[.]" CP § 11-701(o)(3). In construing this clause, it is important to note that the identical phrasing is used in the definitions for tiers II and III.[10] It is axiomatic that the same wording and phrasing used throughout the provisions of a statute should be interpreted consistently. *See Harris v. State*, 331 Md. 137, 148-50 (1993).

To test Mr. Respondek's theory, let's suppose a person is convicted in a court martial for rape with the use of force in violation of UCMJ Article 120(a)(1), which provision is subject to the registration requirement under DoDI 1325.07. The corresponding crime in Maryland is found in CL § 3-303(a)(1), a tier III offense under CP § 11-701(q)(1)(ii). Of course, if the State of Maryland convicts someone under CL § 303, that person would be required under CP § 11-704(a)(3) to register. But let's suppose that for whatever reason, at the time of his military conviction, our hypothetical rapist has not

[10] That is, a tier II sexual offense is defined to include, in CP § 11-701(p)(5) "a crime that was *committed in* a federal, military, tribal or other jurisdiction that, *if committed in this State*, would constitute one of the crimes listed in items (1) through (3) of this subsection[.]" (Emphasis added). And a tier III sexual offense is defined in CP § 11-701(q)(5) to include "a crime *committed in* a federal, military, tribal or other jurisdiction that, *if committed in this State*, would constitute one of the crimes listed in items (1) through (3) of this subsection[.]" (Emphasis added).

been brought to trial by the State of Maryland for charges brought under CL § 3-303. Under Mr. Respondek's interpretation of MSOR, his military conviction alone would not trigger Maryland's registration requirement, even though it is clearly a tier III offense under MSOR.

We could set forth other examples of different permutations and combinations of military and Maryland criminal offenses across tier I, tier II, and tier III sexual offenses under CP § 11-101 that would have similar results, but the example above suffices to make the point. Mindful of the General Assembly's legislative purpose of implementing SORNA, our interpretation of tier I under Maryland's statute should avoid, if possible, situations where qualifying military convictions would evade Maryland's registration requirement. *See State v. Bricker*, 321 Md. 86, 92-93 (1990) (noting that when trying to ascertain legislative intent, "the purpose, aim, or policy of the legislature cannot be disregarded.").

There are many reasons why the General Assembly would not have intended such a result. For example, a trial by a Maryland court could be delayed for extended periods of time for reasons having nothing to do with the merits of the underlying charge, including the unavailability of counsel, witnesses, experts, and crowded court docket, to name but a few. In the meantime, the person could be convicted based on the same conduct in a military court, yet under Mr. Respondek's theory, the person would not be required to register as a sex offender Maryland's statute. The same unintended and unwelcome result would be produced if, for whatever reason, the State of Maryland declined to bring charges under State law, but the person is nevertheless convicted in a military court martial. A

result that would allow tried and convicted sexual offenders to slip through the cracks would run contrary to the legislative purpose of protecting the public from sex offenders. *See Rogers v. State*, 468 Md. 1, 42 (2020).

Our preference to construe the Maryland statute in line with the General Assembly's intent does not give us carte blanche to re-write it to conform to our understanding of such intent. *See Donlon v. Montgomery Cnty. Pub. Schs.*, 460 Md. 62, 75-76 (2018). We agree with the State, however, that there is a reasonable interpretation of CP § 11-701(o)(3) that remains true to its text and aligns with the General Assembly's purpose. In our view, the clause "a crime committed in a . . . military. . . jurisdiction" includes wherever the military's court-martial authority extends to a member of the armed service. This interpretation is supported by the U.S. Supreme Court's decision in *Solorio*, which held that the military jurisdiction would include any geographic area in which a crime committed by a member of the military would be subject to a military court martial.[11] *Solorio*, 483 U.S. at 426. We

[11] In *Solorio*, the defendant was a member of the United States Coast Guard. *Solorio*, 483 U.S. at 436. While stationed in Alaska and living in civilian area, the defendant was accused of sexually assaulting the minor daughters of another Coast Guard member. *Id.* at 436-37. The defendant claimed that because the conduct was not connected to his service, he was not subject to court-martial jurisdiction. *Id.* at 437. Thus, the issue before the United States Supreme Court was "whether the jurisdiction of a court-martial convened pursuant to the Uniform Code of Military Justice (U.C.M.J.) to try a member of the Armed Forces depends on the "'service connection' of the offense charged" or whether it depends on the military status of the accused. *Id.* at 435. The answer to the question hinged on the Court's interpretation of the clause in the United States Constitution—Article I, § 8, clause 14—that "grants to Congress the "power '[t]o make Rules for the Government and Regulation of the land and naval Forces[.]'" *Id.* The Court held that the military's jurisdiction turned on the military status of the person, not on the service connection of the charged offense. Thus, because the defendant was a member of the Armed Services at the time of the offense, his court-martial under the UCMJ did not violate the Constitution. *Id.* at 450-51.

must presume that the General Assembly was cognizant of how the concept of military jurisdiction was defined in *Solorio* when it amended the statute in 2010. *See Donlon*, 460 Md. at 76-77 (quoting *Bd. of Ed of Garrett Cnty. v. Lendo*, 295 Md. 55, 63 (1982)).

Mr. Respondek looks to the same 2010 amendment and concludes that it lends credence to his interpretation. Specifically, Mr. Respondek points out that before the tier system was adopted in 2010, a "child sex offender" was defined as one who "has been *convicted in* another state or in a federal, military, or Native American tribal court of a crime that, if committed in this State, would constitute one of the crimes listed in items (1) and (2) of this subsection." As Mr. Respondek sees it, if the General Assembly intended to define the tiers by reference to where the person was convicted, as opposed to where the person committed the offense, then the General Assembly would not have changed the wording of the statute from "convicted in" to "committed in." Implicit in Mr. Respondek's argument is the notion that, under the pre-2010 amended version, Mr. Respondek's military conviction alone would have triggered Maryland's registration requirement.

To be sure, an analysis of a statute's changes over time could yield helpful interpretative clues. *Bellard v. State*, 452 Md. 467, 482 (2017). But the appeal to his reasoning notwithstanding, we remain unpersuaded. The changes to the statute were wholesale and comprehensive. As noted above, the 2010 amendment jettisoned the four categories of sex offenders—child sexual offender, offender, sexually violent offender, and sexually violent predator—in favor of a tiered system that "corresponds" to the tiered system established in SORNA. *Doe II*, 439 Md. at 223. Thus, if we are going to attempt to divine legislative intent by comparing the wording that the General Assembly abandoned

from the prior version to the wording adopted in the amended version, we would compare the changes made to the statute as a whole—not on a subsection to subsection basis in isolation. As shown above, if we adopt Mr. Respondek's interpretation, we would have to conclude that the General Assembly intended to reduce the scope of conduct and offenses that would trigger Maryland's registration requirement. Our review of the legislative history indicates no such intent.

Instead, as noted above, the 2010 amendment was intended to implement and comply with SORNA's requirements and adopt a tiered system that "corresponds" to SORNA's tiered system. *Doe II*, 439 Md. at 223. And, as also discussed above, SORNA's tiered system was structured to encompass "a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(1) of Public Law 105- 119 (10 U.S.C. 951 note)[.]" 34 U.S.C. § 20911(5)(A)(iv). Our interpretation of the relevant provisions of Maryland's statute captures all such qualifying military offenses and thus aligns with the General Assembly's clear intent. We are unable to say the same about Mr. Respondek's interpretation.[12]

[12] It's important to note that Mr. Respondek's geographic-based understanding of military jurisdiction is more straightforwardly and appropriately applied when a military member commits a sexual offense on a military base. In such a case, under the "federal enclave doctrine," the military member potentially may not be subject to the jurisdiction of the state within which the enclave is located. *See Colon v. United States*, 320 F. Supp. 3d 733, 746 (D. Md. 2018) ("The general rule for identifying whether a state law is applicable on a federal enclave is as follows: a state law in effect at the time of cessation continues in effect as long as it does not conflict with federal purposes, but a subsequent state law has no effect unless (1) at the time of cessation the state specifically retained jurisdiction over the subject matter at issue or (2) Congress specifically authorized the enforcement of the state law on the federal enclave."); *see also Hansford v. D.C.*, 329 Md. 112, 131 (1993) (holding that even in the circumstances in which the state does retain jurisdiction for such

crimes, "the state court may be required under traditional choice of law principles to apply federal law in a tort suit."). Thus, a military member who commits the same acts on a military base that Mr. Respondek committed could possibly, depending on the circumstances, not be prosecuted in a Maryland court under Maryland law. *See Colon*, 320 F. Supp. 3d at 746. This is an example of the application of the federal enclave doctrine, which CJ § 11-701(o)(3) appears to address. *See* U.S. DEP'T OF JUSTICE, OFFICE OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING (SMART), SEX OFFENDER REGISTRATION AND NOTIFICATION IN THE UNITED STATES, CURRENT CASE LAW AND ISSUES, at 7 (March 2019), https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/case-law-update-2019-compiled.pdf. That same military member, however, may be convicted for those same acts by a military court under the UCMJ. *See* 10 U.S.C. § 934 (2018).

The "Enclave Clause" of the Constitution states that Congress shall have the power: "to exercise Legislation in all Cases whatsoever over such District[s] . . . as may, by Cession of particular States . . . become the Seat of Government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock–Yards, and other needful Buildings[.]" U.S. CONST. Art. I, § 8 cl. 17.

Under this doctrine, a military court may have the exclusive jurisdiction to convict someone of a crime committed on a federal enclave. Lori McPherson, *The Sex Offender Registration and Notification Act (SORNA) at 10 Years: History, Implementation, and the Future*, 64 DRAKE L. REV. 741, 780-85 (2016) (footnotes and citations omitted); *see generally* Emily S. Miller, *The Strongest Defense You've Never Heard Of: the Constitution's Federal Enclave Doctrine and its Effect on Litigants, States, and Congress*, 29 HOFSTRA LAB. & EMP. L.J. 73 (2011). Conversely, there could be situations in which a civilian commits a crime on a military base and therefore would not be subject to Maryland's jurisdiction. *See Weisel v. Kaimetrix, LLC*, No. CV JKB-19-3281, 2020 WL 2112157, at *2-3 (D. Md. May 1, 2020).

Another example of application of the Enclave doctrine is tribal jurisdiction. In *McGirt v. Oklahoma*, the Supreme Court observed that "State courts generally have no jurisdiction to try Indians for conduct committed in 'Indian country.'" __ U.S. __, 140 S.Ct. 2452, 2459 (2020) (quoting *Negonscott v. Samuels*, 507 U.S. 99, 102-03 (1993)). The language requiring registration for "a crime committed in a federal, military, tribal, or other jurisdiction" fills the patchwork.

The anomalous result in this case—that Mr. Respondek is deemed to have committed the crime within military jurisdiction even though he committed it in civilian-controlled Maryland—derives from the convergence of three facts: (1) Mr. Respondek was a member of the armed forces when he engaged in the criminal conduct; (2) Mr. Respondek was a resident of Maryland at the time of his criminal conduct; and (3) he committed the crime from his residence in Maryland, not on a military base. This confluence of factors results in a more expanded scope of military jurisdiction than would be the case if he had committed the crime under the facts of this case on a military base.

IV.

DUTY TO REGISTER UNDER FEDERAL LAW

The circuit court held that even if Mr. Respondek was not required under Maryland law to register, he was required by federal law—SORNA—to register. We agree. The Secretary of Defense has specified that possession of pornography involving a minor, punishable under Article 134 of the Uniform Code of Military Justice, is a sex offense that would qualify one as a sex offender under SORNA. SORNA requires a sex offender to "register [as a sex offender], and keep the registration current, in each jurisdiction where the offender resides . . . ." 34 U.S.C. § 20913(a). Mr. Respondek was convicted by a military court of possession of pornography involving a minor, and he is a Maryland resident. Thus, under the plain language of SORNA, Mr. Resondek is required to register in Maryland as a sex offender.

Mr. Respondek contends otherwise. We shall address each of his contentions in turn.

A.

VIOLATION OF MARYLAND LAW

Relying on *Doe II*, Mr. Respondek argues that applying SORNA to him based on his conviction under Maryland law would violate Maryland law. *Doe II*, 439 Md. at 201. He reasons that after he successfully completed his probation, the circuit court granted his

Anomalous thought the result is, we see no indication that the General Assembly intended not to adopt the concept of military jurisdiction enunciated in *Solorio* in this type of scenario.

motion for probation before judgment and specifically ruled that Mr. Respondek was no longer required to register under Maryland's statute. Thus, he contends, requiring him to register would violate the circuit court's order. This argument, as the State points out, fails to account for the fact that his duty under SORNA to register is based on his military conviction, not his conviction under Maryland law. The circuit court's order excusing him from the registration requirement related only to the Maryland conviction. Accordingly, we are not persuaded that application of SORNA's registration requirement violates Maryland law.

B.

DOUBLE JEOPARDY

Mr. Respondek argues that requiring him to register under SORNA —for the same underlying facts that predicated his conviction under Maryland law— would violate the constitutional prohibitions of multiple punishments for the same offense. "One of the twin evils traditionally guarded against by the prohibition against double jeopardy, pursuant to either the Double Jeopardy Clause of the federal Fifth Amendment or to the common law of Maryland, is that of multiple punishment for the 'same offense.'" *Pair v. State*, 202 Md. App. 617, 636 (2011).

However, the Supreme Court has held that "a crime under one sovereign's laws is not 'the same offence' as a crime under the laws of another sovereign." *Gamble v. United States*, __ U.S. __, 139 S.Ct. 1960, 1964 (2019). For its part, under Maryland's common law, "[o]ffenses against separate sovereigns are separate offenses for double jeopardy purposes even if the successive prosecutions are based upon the same acts." *Bailey v. State*,

303 Md. 650, 660 (1985). Here, Mr. Respondek's obligation to register under SORNA is predicated on a conviction from a sovereign other than Maryland—namely, the federal government through a military tribunal under the UCMJ. As such, SORNA's requirement to register does not violate any protection against double jeopardy.

C.

TENTH AMENDMENT

Mr. Respondek argues that ordering the State of Maryland to require him to register as a sex offender under SORNA violates "principles of federalism." He relies on the Tenth Amendment of the U.S. Constitution, which states, "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Mr. Respondek argues that the Tenth Amendment prevents Congress from encroaching on the State's police powers, and that SORNA's imposition of an independent obligation does just that. In that regard, he contends that the circuit court's application of Maryland law resulted in a finding that he is not required to register as a sex offender, a finding that falls squarely within Maryland's police power. The application of SORNA's registration requirement would, as Mr. Respondek sees it, impermissibly encroach on the police powers reserved to the State of Maryland. Mr. Respondek insists that "Congress has absolutely no authority to impose a mandate on states that they enforce registration."[13]

[13] He also relies on Article Three of the Maryland Declaration of Rights, which states: "[t]he powers not delegated to the United States by the Constitution thereof, nor prohibited by it to the States, are reserved to the States respectively, or to the people thereof."

Mr. Respondek is correct that the Tenth Amendment prohibits federal officers from "commandeering" state officials to administer and enforce a federal regulatory program. *Printz v. United States*, 521 U.S. 898, 925-26 (1997). This constitutional infirmity is avoided if the federal law meets two requirements: (1) the statute must be "the exercise of a power conferred on Congress by the Constitution[;]" and (2) the statute must regulate private actors. *Murphy v. Nat'l Collegiate Athletic Ass'n.*, __ U.S. __, 138 S.Ct. 1461, 1467 (2018). SORNA's registration requirements passes this two-part test.

First, the military offenses at issue here was the product of the legitimate exercise of Congress's authority because "[t]he Constitution explicitly grants Congress the power to 'make Rules for the . . . Regulation of the land and naval Forces.'" *Kebodeaux*, 570 U.S.at 394 (quoting Military Regulation Clause, U.S. CONST. art. I, § 8, cl. 14). In addition, SORNA's registration requirements have been found to be within Congress's authority under the Necessary and Proper Clause. *Id.*

Second, the obligation to register is placed on Mr. Respondek, not the State. *See Doe II*, 439 Md. at 232 (quoting *Kennedy v. Allera*, 612 F.3d 261, 269 (4th Cir. 2010) ("While SORNA imposes a duty *on the sex offender* to register, it nowhere imposes a requirement *on the State* to accept such registration."). In other words, SORNA regulates the conduct of a private actor, which is within Congress's power, and therefore does not impermissibly usurp the police power reserved to the states, including Maryland. *See Murphy*, __ U.S. at __, 138 S.Ct. at 1476-77. Thus, in *Kennedy*, relied upon by the Court of Appeals in *Doe II*, the court rejected a Tenth Amendment challenge to Maryland's implementation of SORNA. *Kennedy*, 612 F.3d at 268-70.

Congress can violate the commandeering prohibition by using monetary incentives to effectively coerce action by the states. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 542, 580-81 (2012) (holding that a State's failure to implement part of the Affordable Care Act resulting in a loss of all of the State's Medicaid funding was a violation of the Tenth Amendment). Mr. Respondek argues that such coercion is present here in that SORNA coerces states through the withholding of funds to implement SORNA. But here, the potential withholding of "10 percent of funds" from the Omnibus Crime Act does not cross over the line into the realm of coercion. Courts have held that the encouragement of state action with a "relatively small" percentage of federal funds does not amount to coercion. *See South Dakota v. Dole*, 483 U.S. 203, 211-12 (1987) (Congress offering "relatively mild encouragement to States" to lower the minimum drinking age to 21 with the inducement of "a relatively small percentage of highway funds" amounting to 5% was constitutional); *see also Sebelius*, 567 U.S. at 581 (distinguishing between the 100% loss in Medicaid funding and the "relatively small percentage" of funding that was upheld in *Dole*). Here, the relatively small amount of funds that Maryland receives for having implemented SORNA does not amount to coercion. *Cf. United States v. Felts*, 674 F.3d 599, 607-08 ("Congress through SORNA has not commandeered Tennessee, nor compelled the state to comply with its requirements. Congress has simply placed conditions on the receipt of federal funds. A state is free to keep its existing sex-offender registry system in place (and risk losing funding) or adhere to SORNA's requirements (and maintain funding) . . . . The choice is that of the state.").

Finally, Mr. Respondek points to several out-of-state cases to support his argument that the application of SORNA to Mr. Respondek, in the absence of state law requiring him to register, is unconstitutional.[14] However, each of these cases involve situations where the enforcement is unconstitutional under a specific provision of the state constitution, which is not the case here.

Accordingly, we reject Mr. Respondek's federalism challenge to SORNA's registration requirements.

D.

PLEA AGREEMENT

Mr. Respondek argues that requiring him to register under SORNA as a sex offender in Maryland violates the terms of the plea agreement entered into by the circuit court for Montgomery County. Plea agreements are governed by the law of contracts. *Rankin v. State*, 174 Md. App. 404, 408 (2007). Courts enforce plea agreements as a matter of fair play and equity. *Jackson v. State*, 358 Md. 259, 275 (2000).

Mr. Respondek does not identify a provision of the plea agreement that would be violated by enforcing SORNA's registration requirement. The plea agreement applied to his conviction under the Maryland statute, and permitted him to eventually seek a probation before judgment. He availed himself of that right, and the court granted his request and excused him from Maryland's registration requirement. We fail to see how Mr.

[14] Specifically, the cases are *State v. Hough*, 978 N.E.2d 505 (Ind. App. 2012); *Andrews v. State*, 978 N.E.2d 494 (Ind. Ct. App. 2012); *In re CP*, 967 N.E.2d 729 (Ohio 2012); *State v. Letalien*, 985 A.2d 4 (Me. 2009).

Respondek's plea agreement with the State concerning his Maryland charges could apply to charges under the UCMJ that had not yet been brought against Mr. Respondek.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1685s19cn.pdf