

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

NICHOLAS ANTHONY,

Defendant.

CRIMINAL ACTION NO.

1:25-cr-500-01-TRJ-CMS

FINAL REPORT AND RECOMMENDATION

In this criminal case, the Government charged Defendant Nicholas Anthony with failing to register and update his registration as a sex offender as required by the Sex Offender Registration and Notification Act (“SORNA”), in violation of 18 U.S.C. § 2250(a). [Doc. 12, Indictment]. The matter is before the Court on Anthony’s Motion to Dismiss Indictment for Failure to State an Offense and his Motion to Dismiss Based on an Insufficient Indictment. [Docs. 28, 29]. For the reasons below, I will recommend that both motions be **DENIED**.

I. BACKGROUND

On November 13, 2025, a federal grand jury sitting in the Northern District of Georgia returned a single-count Indictment against Anthony. [Doc. 12, Indictment]. The Indictment alleges:

Beginning on a date unknown, but at least by or on about December 12, 2024, and continuing until on or about October 20, 2025, in the Northern District of Georgia, the defendant, NICHOLAS ANTHONY, a person required to register under [SORNA], having traveled in interstate commerce, did knowingly fail to register and update registration as required by [SORNA], in violation of Title 18, United States Code, Section 2250(a).

[*Id.*].

In the Motion to Dismiss Based on an Insufficient Indictment, Anthony argues that the Indictment is unconstitutionally vague and fails to provide notice regarding the charges that Anthony must defend. [Doc. 29]. In the Motion to Dismiss Indictment for Failure to State an Offense, he argues that his prior conviction does not qualify as a sex offense for purposes of SORNA, and therefore he is not required to register as a sex offender under SORNA. [Doc. 28]. I will address these arguments in turn.

II. LEGAL STANDARD

Federal Rule of Criminal Procedure 7(c)(1) provides that an indictment “must be a plain, concise, and definite written statement of the essential facts constituting the offense charged.” FED. R. CRIM. P. 7(c)(1). A defendant may file a pretrial motion challenging an alleged defect in the indictment, including “failure to state an offense.” FED. R. CRIM. P. 12(b)(3)(B)(v). “An indictment is considered legally sufficient if it: ‘(1) presents the essential elements of the charged offense, (2) notifies

the accused of the charges to be defended against, and (3) enables the accused to rely upon a judgment under the indictment as a bar against double jeopardy for any subsequent prosecution for the same offense.” *United States v. Jordan*, 582 F.3d 1239, 1245 (11th Cir. 2009) (per curiam) (quoting *United States v. Woodruff*, 296 F.3d 1041, 1046 (11th Cir. 2002)). When evaluating the sufficiency of an indictment, courts must “read it as a whole and give it a ‘common sense construction.’” *Id.* (quoting *United States v. Gold*, 743 F.2d 800, 813 (11th Cir. 1984)). “[T]he indictment’s ‘validity is to be determined by practical, not technical, considerations.’” *Id.* (quoting *Gold*, 743 F.2d at 812). “‘An indictment that tracks the language of the relevant statute is sufficient, as long as it also provides a statement of facts and circumstances that give notice of the offense to the accused.’” *Id.* at 1246 (quoting *United States v. Walker*, 490 F.3d 1282, 1296 (11th Cir. 2007)).

III. MOTION TO DISMISS BASED ON AN INSUFFICIENT INDICTMENT [Doc. 29]

In his motion to dismiss based on an insufficient indictment, Anthony argues that the Indictment “is unconstitutionally vague and fails to provide notice” regarding the charge against him. [Doc. 29 at 3]. According to Anthony, the Indictment is deficient because it does not identify *why* he is obligated to register and *when* he was required to register, and it leaves the Court to guess the factual basis for the Indictment returned by the grand jury. [*Id.* at 4–5]. The Government

responds that the Indictment tracks the language of the failure to register statute and sufficiently presents the essential elements of the offense. [Doc. 32 at 2–8]. In his reply, Anthony argues that the Government’s discovery reflects that Anthony did not travel directly to Georgia, instead showing that Anthony traveled from Michigan to Pennsylvania and then entered Georgia on an unknown date. [Doc. 35 at 2]. According to Anthony, to be sufficient, the Indictment needed to include the specific dates when he “both entered Georgia and then remained within the state, so as to trigger any registration requirements under SORNA.” [*Id.* (footnote omitted)].

SORNA was enacted in 2006 “to protect the public from sex offenders . . . by establishing a comprehensive national system for the registration of those offenders.” *United States v. Vineyard*, 945 F.3d 1164, 1168 (11th Cir. 2019) (alteration in original) (internal quotation marks and citation omitted). “Criminal penalties for individuals who violate SORNA’s registration requirements are set out in 18 U.S.C. § 2250(a).” *Id.* That statute provides, in relevant part:

Whoever--

(1) is required to register under [SORNA];

(2)(A) is a sex offender as defined for the purposes of [SORNA] by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

(B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(3) knowingly fails to register or update a registration as required by [SORNA];

shall be fined under this title or imprisoned not more than 10 years, or both.

18 U.S.C. § 2250(a). Thus, a violation of § 2250(a) occurs when the person charged (1) was required to register under SORNA, (2) traveled in interstate or foreign commerce, and (3) knowingly failed to register or update a registration as required by SORNA. *Id.* Here, the Indictment states:

Beginning on a date unknown, but at least by or on about December 12, 2024, and continuing until on or about October 20, 2025, in the Northern District of Georgia, the defendant, NICHOLAS ANTHONY, a person required to register under [SORNA], having traveled in interstate commerce, did knowingly fail to register and update registration as required by [SORNA], in violation of Title 18, United States Code, Section 2250(a).

[Indictment]. The Indictment thus tracks the language of § 2250(a), and it sufficiently alleges all of the elements of the offense. *See United States v. Torchia*, No. 1:20-cr-464-MHC-LTW, 2021 WL 2169484, at *3 (N.D. Ga. May 7, 2021) (concluding that an indictment containing similar language was sufficient to allege an offense), *adopted by* 2021 WL 2166863 (N.D. Ga. May 27, 2021).

In support of his argument that the Indictment is fatally flawed because it does not specify why or when he was required to register, Anthony relies on *United States*

v. Sumner, 89 F. Supp. 3d 1161 (N.D. Okla. 2015). In that case, the defendant was charged with violating § 2250. *Sumner*, 89 F. Supp. 3d at 1163. The indictment in *Sumner* stated:

From in or about May 2013 through in or about May 2014, in the Northern District of Oklahoma, the defendant . . . , an individual required to register under [SORNA], and a sex offender by reason of a conviction under Oklahoma state law, . . . Entered and left Indian Country, and knowingly failed to register and update his registration.

Id. The court concluded that the indictment was insufficient because it did not “put the Defendant on fair notice of the crime charged.” *Id.* at 1164. The court reasoned that even though the defendant was charged with a single count, there were at least seven different alleged instances of him entering Indian country at two different locations. The court stated that because the indictment alleged that the conduct occurred over a one-year period (which it considered “a broad time frame”), it was impossible for the court to determine which of those instances formed the basis for the grand jury’s indictment. *Id.* at 1166. The court also noted that the indictment alleged that the defendant “entered and left Indian Country,” and it stated:

By generically alleging that the Defendant entered and left Indian Country without specifying a time or location, the Defendant is left to guess where and when within the Northern District of Oklahoma he could have crossed into Indian Country. Given the unique prevalence of Indian [C]ountry throughout this district, there are any number of possibilities. Without a more specific allegation as to the time or place of the offense, the indictment does not put the Defendant on fair notice

of the charges he is facing and leaves the Court to guess the factual basis for the indictment returned by the grand jury.

Id.

Another judge in this District addressed a similar motion to dismiss an indictment charging a defendant with violating § 2250(a) and found that *Sumner* was distinguishable. *Torchia*, 2021 WL 2169484, at *3. The court noted that the indictment in *Sumner* alleged that the defendant “entered and left Indian Country at some unspecified point during a period of over a year.” *Id.* (internal quotation marks omitted). The court noted that the indictment before it involved a much shorter timeframe—three months, rather than over a year. *Id.* The court also stated:

While the indictment does not specify the exact date on which Defendant allegedly “traveled in interstate commerce,” this case does not present a “unique” situation like *Sumner* where it was difficult to ascertain where and when the defendant “could have crossed into Indian Country” while traveling within the Northern District of Oklahoma itself. This is not a case where a defendant’s travels could unknowingly trigger a registration requirement under SORNA. State lines are much more clearly defined, and as the Government points out[,] Defendant allegedly traveled over 1,000 miles from Minnesota to Georgia. It is easily ascertainable when the alleged violation occurred, and the Government has only charged one violation of SORNA, putting the Defendant on notice about the charge he faces.

Id. (citations omitted). I find that this reasoning is persuasive, and I conclude that *Sumner* is distinguishable from this case.

Here, the time period alleged in the Indictment is relatively long—nearly ten months. *See* [Indictment (alleging that the conduct occurred “at least by or on about December 12, 2024, and continuing until on or about October 20, 2025”)]. Unlike *Sumner*, however, this case does not present a situation where it might be difficult to determine where or when Anthony’s travels triggered SORNA’s registration requirement. State lines, unlike the lines marking Indian Country, are much more defined. *Torchia*, 2021 WL 2169484, at *3. And, as the Government points out, there are more than a thousand miles between Michigan, where Anthony lived before, and Georgia. Therefore, there is no speculation as to when or how he entered Georgia to commit the charged offense. The Government states in its brief that the discovery material provided to defense counsel references Anthony’s specific travel from Michigan to Georgia during the timeframe charged in the Indictment. Thus, the Indictment adequately puts Anthony on notice about the charge he is facing.

Anthony provides no authority for his argument that the Indictment is deficient because it does not identify why and where he was required to register, or that the Government must allege in the Indictment that it provided him with notice of his reporting obligations. Indeed, notice is not an element of the offense. *See Torchia*, 2021 WL 2169484, at *3 (“Section 2250(a) only requires the Government to allege *that* Defendant was ‘required to register under [SORNA],’ not *why*

Defendant was required to register under SORNA.”) (emphasis and alteration in original) (quoting 18 U.S.C. § 2250(a)).¹

For the above reasons, I conclude that the Indictment is sufficient. Anthony’s motion to dismiss based on an insufficient indictment should be denied.

IV. MOTION TO DISMISS FOR FAILURE TO STATE AN OFFENSE

Anthony also moves to dismiss the Indictment based on an alleged failure to state an offense. [Doc. 28]. Anthony argues that his underlying conviction for assault with intent to commit criminal sexual conduct involving sexual penetration—in violation of Michigan Compiled Law (“MCL”) § 750.520g(1)—is not the type of offense that would render him a sex offender subject to SORNA’s registration requirement. [*Id.* at 3].

A. SORNA’s Definitions

SORNA’s registration requirements apply to state and federal “sex offender[s].” *See* 34 U.S.C. §§ 20911, 20913. SORNA defines “sex offender” to

¹ Anthony also raises concerns about double jeopardy, but he provides no authority for his position that the Indictment should be dismissed on this basis. [Doc. 29 at 5–6]. I agree with the Government that given the allegations in the Indictment, Anthony can plead an acquittal or conviction as a bar against future prosecutions for the same offense. *See Sumner*, 89 F. Supp. 3d at 1164 (holding that where the indictment alleged that the conduct took place over one year, “it would be sufficient to bar future prosecutions for the same offense.”).

mean “an individual who [has been] convicted of a sex offense.” *Id.* § 20911(1). SORNA’s relevant definition of the term “sex offense” is “a criminal offense that has an element involving a sexual act or sexual contact with another.” 34 U.S.C. § 20911(5)(A)(i). SORNA defines neither “sexual act” nor “sexual contact.” The term “sex offense” can also mean “an attempt or conspiracy to commit [such] an offense.” 34 U.S.C. §§ 20911(5)(A)(v).

B. The Michigan Statute that Anthony was Convicted of Violating

The Michigan law at issue, MCL § 750.520g, is titled “Assault with intent to commit criminal sexual conduct.” Anthony was convicted of violating Subsection (1) of the statute, which provides as follows:

Assault with intent to commit criminal sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than 10 years.

MCL § 750.520g(1). According to the Michigan Supreme Court, the elements of this offense are (1) an assault, and (2) an intent to commit criminal sexual conduct involving sexual penetration. *See People v. Nickens*, 685 N.W.2d 657, 661 (Mich. 2004). Under Michigan law, the specific intent necessary for this crime is that the defendant must have intended to commit a sexual act “involving some actual entry of another person’s genital or anal openings or some oral sexual act.” *People v. Daniel*, No. 220814, 2000 WL 33405365, at *1 (Mich. Ct. App. Oct. 24, 2000) (per

curiam) (quoting *People v. Snell*, 325 N.W.2d 563, 564 (Mich. Ct. App. 1982)). “[I]t is not necessary to show that the sexual act was started or completed in order to prove the required specific intent.” *Id.* at *2.

C. Analysis Using the Categorical Approach

The Eleventh Circuit has held that a “categorical approach”² must be applied to determine whether a conviction “has an element involving a sexual act or sexual contact with another” such that it qualifies as a SORNA sex offense. *Vineyard*, 945 F.3d at 1170. As such, the Court may consider only the fact of Anthony’s conviction and the elements of the Michigan statute. *Id.* The specific circumstances of a defendant’s crime are irrelevant; all that matters is whether the elements of the state crime match the elements of the federal crime. *Descamps v. United States*, 570 U.S. 254, 260–61 (2013).

Under the categorical approach, Anthony’s conviction will qualify as a sex offense under SORNA only if the Michigan statute under which he was convicted

² This is in contrast to the other approach—a “circumstance-specific approach”—whereby the Court may consider whether the conduct underlying the prior conviction meets the definition. The Eleventh Circuit has ruled that the circumstance-specific approach is not appropriate for this particular analysis. *See Vineyard*, 945 F.3d at 1170. Moreover, the parties agree that the Court must apply the categorical approach to determine whether Anthony’s conviction qualifies as a sex offense under SORNA. [Doc. 28 at 5; Doc. 33 at 2].

covers the same conduct as—or a narrower range of conduct than—SORNA. *See Vineyard*, 945 F.3d at 1170. The sexual act or sexual contact required by Michigan’s statute must be “materially the same as—or less encompassing than—the definition of” those terms as used in SORNA for the conviction to qualify as a sex offense under SORNA. *Id.* Under the categorical approach, if Michigan’s definitions of those terms are broader than SORNA’s, Anthony’s conviction cannot qualify as a sex offense under SORNA, regardless of his actual conduct in committing the offense. *Id.* at 1170–71.³

As noted above, SORNA does not define the terms “sexual act” or “sexual contact.” The Eleventh Circuit, however, has defined “sexual contact” as “a touching or meeting of body surfaces where the touching or meeting is related to or for the purpose of sexual gratification.” *Vineyard*, 945 F.3d at 1172. Although the Eleventh Circuit has not defined “sexual act,” the Fourth Circuit defined that term as “something done voluntarily that relates to sexual desire or gratification.” *See United States v. Helton*, 944 F.3d 198, 207 (4th Cir. 2019).

³ The Sixth Circuit has concluded that a conviction under MCL § 750.520g(1) constitutes a sex offense under SORNA. *Willman v. Attorney General of the U.S.*, 972 F.3d 819, 823 (6th Cir. 2020). In that case, however, the defendant did not argue that his conviction did not qualify as a sex offense under SORNA, and the Sixth Circuit did not evaluate MCL § 750.520g(1) using the categorical approach. *Willman*, 972 F.3d at 823.

Anthony argues that MCL § 750.520g(1) is broader in scope than SORNA because it criminalizes “an apprehension-type assault” that can be accomplished without physical contact between the assailant and the victim. [Doc. 28 at 6]. Anthony argues that a sexual offense under SORNA, in contrast, “must involve the touching or meeting of bodily surfaces, or an attempt to do so.” [*Id.*]. He also argues that the Michigan statute is broader than SORNA because it includes an apprehension-type assault that places the onus on what the victim perceives to be a threat, rather than focusing on the actions of the assailant. [Doc. 28 at 6–7].

These arguments are unavailing because actual sexual contact is not part of SORNA’s definition of a “sex offense.” Rather, all that is required under SORNA is that one of the elements *involve* a sexual act or sexual contact with another; it does not require that an offense have a sexual act or sexual contact as an element. 34 U.S.C. §§ 20911(5)(A)(i). In the Armed Career Criminal Act context, the Eleventh Circuit has adopted an “expansive interpretation of the word ‘involving.’” *United States v. White*, 837 F.3d 1225, 1233 (11th Cir. 2016) (per curiam) (discussing the ACCA’s definition of a serious drug offense which includes the word “involving”).

Here, MCL § 750.520g(1) satisfies this definition because it requires “an intent to commit [criminal sexual conduct] involving sexual penetration.” *Nickens*,

685 N.W.2d at 661. To violate MCL § 750.520g(1), a defendant must commit the offense with intent “to commit a sexual act involving some actual entry of another person’s genital or anal openings or some oral sexual act.” *Daniel*, 2000 WL 33405365, at *1 (internal quotation marks omitted). Thus, a conviction under MCL § 750.520g(1) requires that a defendant have specific intent to sexually penetrate the victim—even if the act of penetration was not ultimately accomplished. *Id.* The Government argues, and I agree, that any crime that requires the specific intent to sexually penetrate the victim—even if the sexual penetration was not accomplished—is a crime that has “an element *involving* a sexual act or sexual contact with another.” 34 U.S.C. § 20911(5)(A)(i) (emphasis added).

Anthony focuses on the term “sexual contact” and ignores the fact that the definition of a sex offense also includes crimes that have an element involving a “sexual act.” 34 U.S.C. § 20911(5)(A)(i). The Government correctly points out that “[a] ‘sexual act’ must mean something different than ‘sexual contact,’ lest the inclusion of this phrase be rendered mere surplusage.” [Doc. 33 at 7 (citing *In re Shek*, 947 F.3d 770, 777 (11th Cir. 2020))]. As noted above, the Eleventh Circuit has not defined the term “sexual act,” but the Fourth Circuit defined the term as “something done voluntarily that relates to sexual desire or gratification.” *Helton*, 944 F.3d at 207. Anthony’s conviction for violating MCL § 750.520g(1) required

proof that Anthony committed an assault with intent “to commit a sexual act involving some actual entry of another person’s genital or anal openings or some oral sexual act.” *Daniel*, 2000 WL 33405365, at *1 (internal quotation marks omitted). I conclude that such an act certainly relates to sexual desire or gratification and therefore qualifies as a sexual act under SORNA. *See Helton*, 944 F.3d at 208 (concluding that a violation of South Carolina’s voyeurism statute qualified as a sexual act under SORNA because a conviction under that statute involved a voluntary act— “[k]nowingly viewing another person without that person’s consent”—done “for the purpose of arousing or gratifying sexual desire of any person”) (internal quotation marks omitted).

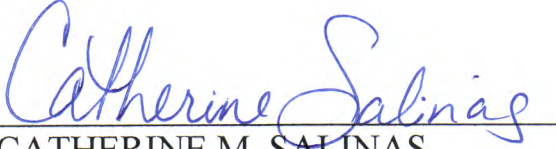
For the above reasons, I conclude that Anthony’s conviction for violating MCL § 750.520g(1) qualifies as a sex offense under SORNA. Anthony’s motion to dismiss the indictment for failure to state an offense should be denied.

V. CONCLUSION

Accordingly, I **RECOMMEND** that Anthony’s Motion to Dismiss Indictment for Failure to State an Offense [Doc. 28] and Anthony’s Motion to Dismiss Based on an Insufficient Indictment [Doc. 29] be **DENIED**.

I have now addressed all referred pretrial matters and have not been advised of any impediments to the scheduling of a trial. Accordingly, this case is **CERTIFIED READY FOR TRIAL.**

SO REPORTED AND RECOMMENDED, this the 24th day of March, 2026.


CATHERINE M. SALINAS
UNITED STATES MAGISTRATE JUDGE