

SEP 30 2014

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRENT ALLEN PIEARCY,

Defendant - Appellant.

No. 11-30361

D.C. No. 3:11-cr-05196-RJB

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Robert J. Bryan, District Judge, Presiding

Submitted September 23, 2014\*\*

Before: W. FLETCHER, RAWLINSON, and CHRISTEN, Circuit Judges.

Brent Allen Piearcy appeals his guilty-plea conviction for failure to register and update his sex offender registration under the Sex Offender Registration and Notification Act (“SORNA”), in violation of 18 U.S.C. § 2250(a). Piearcy challenges the district court’s denial of his motions to dismiss the indictment. We

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction under 28 U.S.C. § 1291. We review de novo, *see United States v. Cabrera-Gutierrez*, 756 F.3d 1125, 1129 (9th Cir. 2014), and we affirm.

Piearcy first contends that SORNA violates the non-delegation doctrine because it allows the Attorney General to legislate SORNA's retroactive application. This contention is foreclosed. *See United States v. Richardson*, 754 F.3d 1143, 1146 (9th Cir. 2014) (per curiam) ("SORNA's delegation of authority to the Attorney General to determine the applicability of SORNA's registration requirements to pre-SORNA sex offenders is consistent with the requirements of the non-delegation doctrine.").

Piearcy next contends that Congress did not have the power to enact SORNA. This contention is also foreclosed. *See Cabrera-Gutierrez*, 756 F.3d at 1129-32 (Congress had the power under the Commerce and Necessary and Proper Clauses to enact SORNA and its registration requirement).

Finally, Piearcy contends that imposing SORNA's registration requirements on pre-SORNA offenders like him violates the Ex Post Facto Clause. This contention is foreclosed by *United States v. Elk Shoulder*, 738 F.3d 948, 953-54 (9th Cir. 2013), cert. denied, 134 S. Ct. 1920 (2014).

**AFFIRMED.**