IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

John Doe, Plaintiff, v. Gerard Sheridan, Defendant.	No. CV-23-01938-PHX-SMM **ORDER**

This matter is before the Court on the Motion for Summary Judgment filed by Intervenor-Defendants Warren Petersen and Ben Toma, (Doc. 70), and the Motion for Partial Summary Judgment filed by Plaintiff John Doe. (Doc. 74). The cross-motions are fully briefed. (Docs. 70, 74, 76, 78–80, 85–86, 91, 93–94, 95, 98, 100). Also before the Court is Plaintiff's Motion to Exclude the Testimony of Dr. John Lott in Whole and in Part, (Doc. 66), which is fully briefed. (Docs. 66, 83, 84). The Court finds the motions appropriate for resolution without oral argument. For the following reasons, the Court grants Intervenor-Defendants' Motion for Summary Judgment and denies Plaintiff's Motion for Partial Summary Judgment.

I. MOTION TO EXCLUDE

Plaintiff John Doe[1] ("Doe") has filed a Motion to Exclude the testimony of Intervenor-Defendants' expert witness, Dr. John Lott. (Doc. 66). Dr. Lott holds a Ph.D. in

[1] The Court permitted Doe to proceed pseudonymously at the outset of this action on the grounds that Doe's status as a sex offender could expose Doe to threats of violence if his identity were revealed. (Doc. 8). Defendant filed no opposition to the Court's grant of anonymity to Doe. (Ibid.)

economics and served as the chief economist for the United States Sentencing Commission. (Docs. 66-3 at 1, 83 at 2). Presently, Dr. Lott is the President of the Crime Prevention Research Center, a role he has served in since 2021. (Doc. 66-3 at 1). The Crime Prevention Research Center, as Doe identifies, focuses on conducting research on laws regulating guns, crime, and public safety. (Doc. 66 at 4).

Doe argues that Dr. Lott is not qualified to offer the opinions in Dr. Lott's report because Dr. Lott has had "no training in criminology, sociology, psychology or any related fields," possesses "no certification or formal training in the treatment or assessment of sex offenders," and "has never been qualified by another court as an expert in general recidivism, sexual offense recidivism, or any other topic relevant to this case." (Doc. 66 at 3). Rather, Doe argues, Dr. Lott's "prior court testimony involves campaign finance, anomalies in voting machines, and gun control." (Id. at 3).

Intervenor-Defendants respond that Dr. Lott is qualified to testify as an expert because Dr. Lott has "extensive training in, and knowledge of, statistical analysis" and is qualified to offer his opinion "that sex crimes are significantly underreported and certain sex offenders are likely to reoffend." (Doc. 82 at 2, 4).

The admissibility of expert opinion testimony is governed by Federal Rule of Evidence 702, which provides as follows:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
> (b) the testimony is based on sufficient facts or data;
> (c) the testimony is the product of reliable principles and methods; and
> (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

Fed. R. Evid. 702. As the Ninth Circuit has described the purpose of Rule 702: The Ninth Circuit has explained that the purpose of Rule 702 is to ensure that only relevant and reliable expert testimony is admitted. United States v. Sandoval-Mendoza, 472 F.3d 645, 654 (9th Cir. 2006). "Expert opinion testimony is relevant if the knowledge underlying it has a 'valid ... connection to the pertinent inquiry.' And it is reliable if the knowledge underlying it 'has a reliable basis in the knowledge and experience of [the relevant] discipline.'" Id. (internal citations omitted) (quoting Daubert v. Merrell Dow Pharms., 509 U.S. 579 (1993) and Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999)).

"Rule 702 'contemplates a *broad conception* of expert qualifications.'" Hangarter v. Provident Life & Accident Ins., 373 F.3d 998, 1015 (9th Cir. 2004) (quoting Thomas v. Newton Int'l Enters., 42 F.3d 1266, 1269 (9th Cir.1994) (emphasis added). To be qualified as an expert, a witness must demonstrate a "minimal foundation of knowledge, skill, and experience required in order to give 'expert' testimony[.]" Thomas, 42 F.3d at 1269.

Dr. Lott possesses no discernable specialized knowledge or expertise in the area of sex crimes, sex offender recidivism, or recidivism more broadly. Nonetheless, Doe's arguments for excluding Dr. Lott's testimony from this matter ultimately go to the weight, not the admissibility, of Dr. Lott's testimony. Dr. Lott possesses some background in statistics and has been retained by Intervenor-Defendants to conduct a statistical analysis; Dr. Lott thus possesses the "minimal foundation of knowledge, skill, and experience" necessary to be qualified as an expert under Rule 702. See Thomas, 42 F.3d at 1269.The Court denies Doe's Motion to Exclude. (Doc. 66).

II. BACKGROUND

Plaintiff Doe is required to register as a sex offender under Arizona's sex offender laws pursuant to Doe's 2016 guilty plea to four criminal counts comprising three separate offenses: (1) attempted sexual conduct with a minor under 15 pursuant to A.R.S. § 13-1405(A) (two counts); (2) sexual abuse pursuant to A.R.S. § 13-1404(C); and (3) public sexual indecency pursuant to A.R.S. § 13-1403(B). Doe was sentenced to lifetime probation. (Doc. 80 at 2, 80-1 at 15). The State of Arizona classifies Doe as a "Level One"

sex offender, the lowest of three levels set forth under Arizona's statutory scheme. See A.R.S. § 13-3825(C). Under Arizona's statutory scheme, Doe is required to register as a sex offender for life. (Doc. 70 at 6, 74-1 at 4).

Doe filed this action on September 15, 2023, challenging the constitutionality of Arizona's sex offender registration requirements. Doe raises facial and as-applied First, Fourteenth, and Eighth Amendment challenges to Arizona's statutes, as well as an Ex Post Facto claim. On September 15, 2023, Doe filed suit against the official charged with enforcing the sex offender requirements: the Maricopa County Sheriff, which was Paul Penzone at the time and is presently Gerard Sheridan. (Docs. 1, 49). Upon appearing in this action, the Sheriff indicated that he did not intend to defend the state statutory framework on the basis that the Sheriff—as the official charged with enforcing the challenged statutes—is merely a nominal or relief defendant in this action. (Docs. 13, 17). The Court denied the Sheriff's Motion to Dismiss, (Doc. 17), and subsequently permitted Intervenor-Defendants to intervene in this action pursuant to A.R.S. 12-1841(A). (Docs. 36, 37). Intervenor-Defendants have since undertaken to defend the constitutionality of Arizona's sex offender registration laws against Doe's claims.

On April 28, 2025, the parties filed the instant cross-motions for summary judgment. (Docs. 70, 74). The motions are fully briefed. (Docs. 70, 74, 76, 78–80, 85–86, 91, 93–94, 95, 98, 100).

III. LEGAL STANDARD

Federal Rule of Civil Procedure 56 provides that summary judgment must be granted, on motion, "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The movant must "show[] that there is no genuine dispute as to any material fact and [that] the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see Jesinger v. Nev. Fed. Credit Union, 24 F.3d 1127, 1130 (9th Cir. 1994). "A fact is 'material' only if it might affect the outcome of the case, and a dispute is 'genuine' only if a reasonable trier of fact

could resolve the issue in the non-movant's favor." Fresno Motors, LLC v. Mercedes Benz USA, LLC, 771 F.3d 1119, 1125 (9th Cir. 2014).

The party moving for summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." Id. at 323. "In order to carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." Nissan Fire & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102 (9th Cir. 2000).

If the moving party carries its burden of production, the burden shifts to the nonmoving party to "produce evidence to support its claim or defense." Id. at 1103. "If the nonmoving party fails to produce enough evidence to create a genuine issue of material fact, the moving party wins the motion for summary judgment." Ibid. There is no issue for trial unless enough evidence favors the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). "If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." Id. at 249–50 (internal citations omitted). At the same time, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255.

IV. DISCUSSION

Doe raises both facial and as-applied constitutional challenges to several Arizona statutory provisions that comprise Arizona's sex offender registration requirements. The statutory provisions at issue include Arizona's internet identifier reporting requirements, codified at A.R.S. § 13-3821(I), (P), and 13-3822(C), to which Doe raises a facial and an as-applied First Amendment challenge. Also at issue is Arizona's lifetime registration requirement, provided at § 13-3821(D), (F)–(H), to which Doe raises a Fourteenth Amendment due process challenge. Finally, Doe challenges Arizona's residential

registration requirement, codified at § 13-3822(A), against which Doe brings an as-applied Fourteenth Amendment vagueness challenge, an Eighth Amendment challenge, and an Ex Post Facto challenge.

Intervenor-Defendants first raise the argument that Doe has waived his First Amendment and Due Process challenges to his conditions of supervised release via Doe's plea agreement. Accordingly, the Court first addresses Intervenor-Defendants' argument that Doe has waived these constitutional claims via the plea agreement that Doe entered into when Doe pled guilty.

a. Waiver

The waiver that Doe agreed to upon entering into the plea agreement provides that Doe "waives and gives up any and all motions, defenses, objections, or requests which he has made or raised, or could assert hereafter, to the court's entry of judgment against him and imposition of a sentence upon him consistent with this agreement." (Doc. 79 at 8). Intervenor-Defendants thus assert that "Doe agreed to the very conditions that he challenges as violating his First Amendment and Due Process rights." (Doc. 70 at 7). Intervenor-Defendants argue that "the Sheriff is simply carrying out Doe's judicially imposed sentence of lifetime probation." (Doc. 74 at 1). Intervenor-Defendants cite to United States v. Daniels, 541 F.3d 915, 924 (9th Cir. 2008), in support of their waiver argument. In Daniels, which bears somewhat analogous facts to the instant action, the plaintiff challenged several conditions of supervised release contained in his plea agreement on the basis that those conditions—if imposed for life—violated his First Amendment rights. Ibid. The Ninth Circuit rejected the plaintiff's First Amendment argument, reasoning that "[a]s Daniels expressly agreed to the conditions knowing that a lifetime term of supervised release might be imposed, he has waived his right to challenge them." Ibid.

Doe counters that Intervenor-Defendants have "erroneously conflat[ed] [Doe's] § 1983 challenge here with a motion to modify the terms of probation." (Doc. 91 at 2). Doe argues that the statutes to which Doe raises constitutional challenges are not a condition of

Doe's probation, "but rather independent statutory obligations, imposed by a separate branch of government." (Id. at 3). Second, Doe argues that any waiver only applies to the imposition of a sentence consistent with the plea agreement.

The Court agrees with Doe and finds that Doe did not waive his right to bring the constitutional challenges that Doe raises. As Doe argues, he is not challenging his sentence or the terms of his probation, but rather the statute prescribing the requirements that Doe, as a registered sex offender, is subject to as a result of his conviction. Thus, Doe is not challenging the state court's "entry of judgment against him[,] nor is he challenging the "imposition of a sentence upon him consistent with" Doe's plea agreement. (Doc. 79 at 8).

Moreover, to the extent that Doe's claims can be construed as falling under the plea agreement waiver, Doe's claims would still not be waived because such plea agreement waivers do not, in general, waive constitutional challenges to illegal sentences. The Ninth Circuit has "held that an exception to an appeal waiver applies to sentences that are unlawful or violate the Constitution." United States v. Wells, 29 F.4th 580, 584 (9th Cir. 2022), citing United States v. Bibler, 495 F.3d 621, 624 (9th Cir. 2007), United States v. Watson, 582 F.3d 974, 987 (9th Cir. 2009), United States v. Torres, 828 F.3d 1113, 1125 (9th Cir. 2016), and United States v. Pollard, 850 F.3d 1038, 1041 (9th Cir. 2017). The exception, which is known as the Bibler exception, provides that appeal waivers contained in plea agreements do not waive constitutional challenges to illegal sentences—including supervised release terms—unless the defendant expressly waives the specific constitutional right in the plea agreement. See Wells, 29 F.4th at 584.

Accordingly, the Court finds that Doe's plea agreement waiver does not preclude Doe's First Amendment and Due Process challenges to Arizona's sex offender registration statutes. The Court thus proceeds to consider the parties' arguments as to Count I, Doe's First Amendment challenge to the statutes' reporting requirement.

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b. Count I – facial and as-applied First Amendment challenge to internet identifier and website reporting requirements

The parties each argue that summary judgment should be awarded in their favor as to Doe's First Amendment challenge to Arizona's internet identifier reporting requirements as set forth in A.R.S. § 13-3821(I), (P), and 13-3822(C). Section 13-3821 requires that, at the time of registering as a sex offender, a person must provide information including "Any required online identifier" and "the name of any website or internet communication service where the identifier is being used." § 13-3821(I)(2)–(3). The statute separately defines "[r]equired online identifier" as "electronic mail address information or instant message, chat, social networking or other similar internet communication name[.]" § 13-3821(R)(3). A.R.S. § 13-3822 concerns a change in a person's information and provides that:

> A person who is required to register pursuant to this article shall notify the sheriff either in person or electronically within seventy-two hours, excluding weekends and legal holidays, after a person makes any change to any required online identifier, and before any use of a changed or new required online identifier to communicate on the internet.

Section 13-3822(C).

Intervenor-Defendants argue that Doe's First Amendment challenge is barred by issue preclusion, contending that "[i]n challenging his probation terms here, Doe seeks to relitigate the same issue he raised and lost in his request to modify terms of his probation in superior court." (Doc. 79 at 11). Indeed, Doe previously moved to modify or revoke certain probation terms imposed by the state court on the grounds that the terms violated the First Amendment, and the state court denied Doe's Motion. The state court found, in a brief but reasoned order, that Doe had agreed to the terms, that the terms were related to his offenses and rehabilitation process, and thus that the terms constituted appropriate limitations on Doe. (Doc. 80-1 at 151).

"Issue preclusion is a judicial doctrine that, when applicable, prevents a party from relitigating an issue of fact decided in a prior judgment." Hancock v. O'Neil, 515 P.3d 695,

698 (Ariz. 2022). "The law of the jurisdiction of the court from which the underlying initial judgment issues determines whether that judgment has preclusive effect." Ibid., citing In re Gen. Adjudication of All Rts. to Use Water in Gila River Sys. & Source, 127 P.3d 882, 887 (Ariz. 2006). "Arizona has long recognized that 'when the second case is upon a different cause of action, the prior judgment or decree operates as an estoppel only as to matters actually in issue, or points controverted, upon the determination of which the judgment or decree was rendered.'" Crosby-Garbotz v. Fell in and for Cnty. of Pima, 434 P.3d 143, 146 (Ariz. 2019) (quoting MacRae v. Betts, 14 P.2d 253, 254 (Ariz. 1932)).

At the outset, the Court finds that the doctrine of issue preclusion does not bar Doe's facial challenge because Doe did not previously raise a facial constitutional challenge to the statutes; rather, Doe argued to the state court that the court-ordered terms of his probation were not reasonably related to the goals underlying probation. Accordingly, the state court judgment could not have decided any facial challenge to Arizona's statutory scheme.

As applied to the facts of this case, the Court finds that issue preclusion also does not bar Doe's as-applied challenge because, as explained above, Doe previously challenged specific probation conditions imposed by the state court, not Arizona's registry statutes. Thus, the issues that Doe challenges here are distinct from those litigated and decided in the state court. Intervenor-Defendants acknowledge as much, remarking that "the terms Doe sought to remove from probation are *more onerous* than mere registration of online identifiers." (Doc. 79 at 11). In order for issue preclusion to apply, the prior issue actually litigated must be identical to the issue raised. Crosby-Garbotz, 434 P.3d at 146. The fact that the state court ruled that more onerous terms were constitutional does not entitle the state court's ruling to preclusive effect over a separate and distinct issue. Thus, the Court finds that issue preclusion does not apply to bar Doe's First Amendment challenge to the internet identifier reporting requirements set forth in A.R.S. § 13-3821(I), (P), and § 13-3822(C).

Bearing in mind that an as-applied First Amendment challenge should generally be considered before a facial challenge, see Bd. of Trs. v. Fox, 492 U.S. 469, 484–85 (1989), the Court proceeds to consider Doe's as-applied challenge to Arizona's internet identifier reporting requirements.

a. As-applied

1. Legal standard

An as-applied constitutional challenge "focuses on the statute's application to the plaintiff," and requires the court to only assess the circumstances of the case at hand. Rodriguez Diaz v. Garland, 53 F.4th 1189, 1203 (9th Cir. 2022) (quoting Wells Fargo Bank, N.A. v. Mahogany Meadows Ave. Tr., 979 F.3d 1209, 1217 (9th Cir. 2020)). "An as-applied challenge contends that the law is unconstitutional as applied to the litigant's particular speech activity, even though the law may be capable of valid application to others." Project Veritas v. Schmidt, 125 F.4th 929, 939–40 (9th Cir. 2025) (internal citations omitted).

The parties dispute the standard under which the Court should evaluate Doe's as-applied challenge to Arizona's internet identifier reporting requirements. Intervenor-Defendants argue that the law should be evaluated under the deferential reasonable conditions test because Doe, a lifetime probationer, is required to register as a sex offender under the terms of his plea agreement. (Doc. 70 at 3, 95 at 2) (Doc. 80-1 at 3). Intervenor-Defendants argue that "[f]or probationers, 'the government may still impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens.'" (Doc. 70 at 4) (quoting Doe v. Harris, 772 F.3d 563, 571 (9th Cir. 2014)). "The reasonable conditions test is met when a 'probation condition has a reasonable nexus with the twin goals of probation, rehabilitation and protection of the public.'" (Doc. 74 at 4) (quoting United States v. Terrigno, 838 F.2d 371, 374 (9th Cir. 1988)).

In response, Doe contends that he is not challenging the conditions of his probation, but rather the statutes themselves. As Doe argues, "the statutes challenged here are not a condition of John Doe's probation, but rather independent statutory obligations, imposed

by a separate branch of government, for the life of the individual, regardless of probation status." (Doc. 91 at 3) (emphasis in original). "Whether or not probation conditions mirroring A.R.S. §§ 13-3821 and 13-3822 could be imposed as part of Mr. Doe's sentence is simply beside the point. They were not." (Ibid.) (emphasis in original). Doe thus argues that First Amendment scrutiny applies and that Arizona's internet identifier reporting requirements should be subject to intermediate scrutiny.

Intervenor-Defendants argue in their reply brief that Doe "attempts to subvert…reality by arguing that his probation status does not affect the First Amendment analysis." (Doc. 95 at 3). Intervenor-Defendants argue that Doe's registration as a sex offender is an "express condition of his probation[,]" and thus that the reasonable conditions test should apply here. (Doc. 95 at 6).

Both parties present compelling arguments on this point. On one hand, Doe is subject to the statutory registry requirements not by virtue of his probation, but rather by virtue of his conviction. See A.R.S. § 13-3821(B) (mandating sex offender registration for any person convicted of an offense listed in § 13-3821(A), including sexual conduct with a minor). If Doe's probation was ordered under very different or minimal conditions, or if Doe was not a probationer at all, Doe, as a registered sex offender pursuant to the offense of his conviction, remains subject to Arizona's registry requirements under threat of criminal penalty. Doe's failure to abide by the statutory requirements could result in the state charging Doe with violating § 13-3821 or § 13-3822—a class 4 felony and a separate crime, unlike a probation condition violation. See A.R.S. § 13-3824(A).

On the other hand, prior cases that applied First Amendment scrutiny to sex offender registration laws—such as Harris—have distinguished the circumstances of probationers and parolees from the rationale applied therein. See 772 F.3d 563, 572 ("registered sex offenders who have completed their terms of probation and parole 'enjoy[] the full protection of the First Amendment.'") (quoting Doe v. Harris, No. C12-5713 THE, 2013 WL 144048 (N.D. Cal. Jan. 11, 2013)). That is because probationers and parolees remain on the "continuum of state-imposed punishments." Id. at 571. Though the Supreme Court

in Packingham v. North Carolina was not faced with the question, the Court there signaled as "troubling" the imposition of highly restrictive sex offender registration requirements on individuals who have completed their criminal sentences, indicating a meaningful distinction in the freedoms of those individuals versus probationers and parolees. 582 U.S. 98, 107 (2017).

While the issue presents a close call, the Court finds here that, despite Doe's status as a probationer, Doe enjoys First Amendment protections with respect to Doe's challenge to Arizona's registry requirements. The reasonable conditions test, by its name, is tailored to apply to probation conditions; however, no such conditions are at issue here. Arguably, the plea agreement incorporates the statutes by reference into the terms of Doe's probation, but the fact remains that Doe is challenging statutory requirements to which he is subject as a direct result of his conviction and irrespective of his probation status. Of course, invalidating the statutes as applied to Doe would not have the effect of invalidating the separate probation conditions to which Doe is subject, as those conditions are subject to a standard more deferential to the state that the Court does not address here.

2. First Amendment scrutiny

The Court thus proceeds to consider whether Arizona's internet identifier reporting requirements burden Doe's First Amendment rights. Doe argues that "[i]t is settled law that internet identifier and website disclosure requirements, such as those challenged here, impose a 'substantial burden on sex offenders' ability to engage in legitimate online speech, and to do so anonymously.'" (Doc. 74-1 at 4) (quoting Harris, 772 F.3d at 574–76). Keeping with the Ninth Circuit's decision in Harris, the Court finds that Arizona's reporting requirements do burden Doe's First Amendment rights because they restrict Doe's ability to engage in online speech. Accordingly, First Amendment scrutiny is warranted.

Next, the Court determines the level of First Amendment scrutiny that should be applied to §§ 13-3821 and 13-3822. On this, the Court agrees with Doe that intermediate scrutiny applies here; although Arizona's registry scheme makes speaker-based

distinctions, the reporting requirements themselves are content neutral. See Harris, 772 F.3d at 576 ("[A]lthough it is true that the Act singles out registered sex offenders as a category of speakers, it does not target political speech content, nor is it a ban on speech."). To survive intermediate scrutiny, a law must be "narrowly tailored to serve a significant governmental interest." McCullen v. Coakley, 573 U.S. 464, 486 (2014) (internal quotation marks omitted). That is, the law must not "burden substantially more speech than is necessary to further the government's legitimate interests." Ibid. (internal quotation marks omitted). "To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." McCullen, 573 U.S. at 495.

3. Application to Arizona's statutes

Turning first to Arizona's governmental interest in enacting the sex offender registry statutes at hand, it is plain that Arizona has a significant governmental interest in protecting children and preventing sex offender recidivism. See Harris, 772 F.3d at 577 ("Unquestionably, the State's interest in preventing and responding to crime, particularly crimes as serious as sexual exploitation and human trafficking, is legitimate."); Packingham, 582 U.S. at 106 ("[I]t is clear that a legislature 'may pass valid laws to protect children' and other victims of sexual assault 'from abuse.'") (quoting Ashcroft v. Free Speech Coal., 535 U.S. 234, 245 (2002)). Doe notes that "Arizona's registration laws contain no statement of purpose." (Doc. 74-1 at 10). The purpose, however, is hardly a mystery; Arizona's sex offender registration laws bring the state into compliance with the federal Sex Offender Registration and Notification Act ("SORNA"), which "states on its face that its purpose is to 'protect the public from sex offenders and offenders against children.'" Am. Civil Liberties Union of Nevada v. Masto, 670 F.3d 1046, 1054 (9th Cir. 2012) (quoting 42 U.S.C. § 16901). Regardless, Doe does not advance the argument that Arizona lacks a significant governmental interest in this sphere but rather contends that the

challenged internet identifier reporting requirements fail to advance Arizona's government interests. (Doc. 74-1 at 10).

The Court thus considers whether Arizona's law is narrowly tailored or whether it instead "burden[s] substantially more speech than necessary to further" Arizona's interests. McCullen, 573 U.S. at 486. Doe's primary argument is that Arizona's internet identifier reporting requirements fail intermediate scrutiny because the requirements are ineffective at preventing recidivism. Doe argues that "[t]here is no evidence that collection of internet identifiers and websites has prevented any sexual offense or resulted in the arrest and/or conviction of any person for any sexual offense." (Doc. 74-1 at 10–11). Doe argues that "neither Defendant nor Intervenors have adduced any evidence showing that collection of internet identifiers and websites has worked to deter sexual offenses or that, indeed, sexual offenses have been reduced at all by the disclosure requirements." (Doc. 74-1 at 11). Doe argues that "the internet identifier and website disclosure requirements apply to a broad class of individuals regardless of individual risk, crime, history, or otherwise, and include all internet communications – regardless of type, location, or purpose. (Doc. 74-1 at 12).

Courts have long recognized that states can impose some burden on the First Amendment rights of sex offenders to further the state's legitimate purpose of preventing sex offender recidivism. As the Supreme Court stated in Packingham, "it can be assumed that the First Amendment permits a State to enact specific, narrowly tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime, like contacting a minor or using a website to gather information about a minor." 582 U.S. at 107 (holding that states may not completely bar registered sex offenders from accessing social media). In fact, "[s]pecific laws of that type must be the State's first resort to ward off the serious harm that sexual crimes inflict." (Ibid.)

Arizona's internet identifier reporting requirements do not bar Doe from engaging in online discourse. The state is afforded no authority to veto any new online identifier that Doe reports. As the Court has recognized the state's legitimate interest in protecting children and preventing sex offender recidivism, just as other courts have recognized, the

proper analysis for the Court to undertake is whether Arizona's registry requirements burden substantially more speech than necessary to further that goal. While the parties have presented opposing expert testimony on empirical data relating to sex offense recidivism and the impact of sex offender registration laws on recidivism, the real-world effectiveness of Arizona's registry scheme—and, by extension, its federal counterpart SORNA—is an issue for the legislature, not one of constitutionality.

Doe cites to Harris in support of Doe's arguments that Arizona's internet identifier reporting requirements unconstitutionally burden Doe's First Amendment rights, raising parallel arguments to those that persuaded the Ninth Circuit in that case. (Doc. 74-1 at 10–12). Harris indeed bears many similarities to this case; there, the Ninth Circuit found that California's sex offender registry statutes (the "CASE Act") unnecessarily chilled First Amendment speech for three reasons: (1) the CASE Act was ambiguous as to what registrants were required to report, (2) the statute contained inadequate standards for releasing internet identifying information to the public, and (3) the statute's 24-hour reporting requirement was not narrowly tailored. 772 F.3d at 579–82.

The CASE Act provisions considered by the Ninth Circuit in Harris were distinct from Arizona's online identifier reporting requirements in a few meaningful ways. First, with respect to the Ninth Circuit's first basis for finding that the CASE Act was not narrowly tailored, Doe does not argue that any ambiguity in the statute's definition of "required online identifiers" unnecessarily chills Doe's online speech. Doe does note that the statutory definition of "required online identifier" is more expansive in § 13-3827 than in § 13-3821, but this observation does not itself identify a potential chilling effect caused by uncertainty as to what Doe must report under the statutes.

Next, with respect to the statutes' standards for releasing internet identifying information, the Ninth Circuit found troublesome that the CASE Act expressly allowed for the state to provide sex offender information, including internet identifiers, to any member of the public based on an ambiguous standard. The CASE Act provided that "any designated law enforcement entity may provide information to the public about a person

required to register as a sex offender … by whatever means the entity deems appropriate, when necessary to ensure the public safety based upon information available to the entity concerning that specific person." 772 F.3d at 580 (quoting Cal. Penal Code § 290.45(a)(1)). Recognizing that the right to engage in anonymous online speech is protected by the First Amendment, Ninth Circuit held that the CASE Act's "standards for releasing Internet identifying information to the public are inadequate to constrain the discretion of law enforcement agencies and that, as a result, registered sex offenders are unnecessarily deterred from engaging in anonymous online speech." Id. at 574, 581.

Here, the Arizona statutes do not contain a similar statutory mechanism for releasing Doe's internet identifiers to the public. Section 13-3827(D) provides that:

> The department of public safety shall maintain a separate database and search function on the website that contains any required online identifier of sex offenders whose risk assessments have been determined to be a level two or three and the name of any website or internet communication service where the required online identifier is being used. This information shall not be publicly connected to the name, address and photograph of a registered sex offender on the website.

The same statute also provides that the department "shall make available to an authorized organization a registered sex offender's required online identifier and the name of any corresponding website or internet communication service for comparison with information that is held by the authorized organization." § 13-3827(E). That clause also provides that "[t]he authorized organization shall not further disseminate that the person is a registered sex offender." § 13-3827(E). "[A]uthorized organization" is defined in the statute as "an internet communication service or related safety organization" that has been approved by the Arizona department of public safety. § 13-3827(K)(1).

Doe argues that Arizona's statutory scheme allows for the collected online identifiers, as part of the registrant's criminal history records, to be "widely disseminated." (Doc. 74-1), citing A.R.S. § 13-3823. The statute that Doe points to, § 13-3823, provides

in full that "[e]xcept for use by law enforcement officers and for dissemination as provided in § 41-1750, a statement, photograph or fingerprint required by this article shall not be made available to any person." Doe argues that, under the statutes, Doe's internet identifiers may be "disclos[ed] to any individual for any lawful purpose upon providing the subject's fingerprint card and paying a fee." (Doc. 74-1 at 8) (citing A.R.S. § 41-1750(G)(4)).

Though Arizona's statutes contain no express prohibition against public dissemination of registrants' online identifiers, the Court is satisfied that Arizona's statutes contain adequate safeguards to prevent the publication of Doe's internet identifiers and their association with Doe. Unlike the CASE Act, Arizona's registry scheme does not expressly allow for the release of Doe's information to the public; it does not allow registrants' online identifiers to be publicly connected to the name, address, and photograph of the registrant as available on the state's internet sex offender website, see § 13-3827(D), and it prohibits, apart from use by law enforcement and dissemination under § 41-1750, the state from making Doe's information available to any person. See § 13-3823. Further, as Intervenor-Defendants argue, "while Arizona's law does not expressly exempt disclosure of online identifiers from the public records law, A.R.S. § 39-121 et seq., there is also no evidence that members of the public are requesting such records." (Doc. 85 at 6). Doe's argument that § 41-1750 could potentially be used to publicly disclose Doe's online identifiers is too speculative for the Court to find that Doe's speech is burdened by the mere prospect that an individual—who must possess Doe's fingerprint card and a lawful purpose for seeking the information—may be able to request Doe's online identifiers. In sum, Doe's fears of public dissemination of his internet identifiers are too speculative to support a claim that his protected online speech is chilled as a result of Arizona's reporting requirements.

The Ninth Circuit's third reason for finding the CASE Act to be unconstitutional was the CASE Act's requirement that registrants making changes to their internet identifiers "send written notice by mail of the addition or change to the law enforcement

agency or agencies with which he or she is currently registered[.]" Cal. Penal Code § 290.014(b). The Ninth Circuit found the mail-in requirement to be particularly onerous, stating that "anytime registrants want to communicate with a new identifier, they must assess whether the message they intend to communicate is worth the hassle of filling out a form, purchasing stamps, and locating a post office or mailbox." Id. at 582. "The mail-in requirement is not only psychologically chilling, but physically inconvenient[.]" Ibid.

However, Doe is afforded the option of notifying the sheriff electronically, an option which is decidedly less burdensome than California's mail-in requirement. The statute requires registrants to "notify the sheriff either in person or electronically within seventy-two hours, excluding weekends and legal holidays, after a person makes any change to any required online identifier, and before use of a changed or new required online identifier to communicate on the internet." § 13-3822(C). As Intervenor-Defendants argue, "[u]nlike [the CASE Act], Arizona's law permits a sex offender to report changes in online identifiers using an online form that a person can email to the sheriff." (Doc. 85 at 6). To be sure, the requirement that Doe report any new or changed internet identifiers *before* using them is more onerous than the CASE Act's requirement that registrants report changes in online identifiers within 24 hours. Regardless, the option for registrants to use electronic noticing is adequate to minimize the burden on Doe's online speech.

The Court finds that Intervenor-Defendants have met their burden of showing that Arizona's internet identifier reporting requirements do not burden substantially more speech than necessary to further Arizona's goal of protecting children and reducing sex offender recidivism. Arizona's statutes thus survive intermediate scrutiny and the Court grants Intervenor-Defendants' Motion for Summary Judgment with respect to Doe's as-applied First Amendment challenge to Arizona's internet identifier reporting requirements.

b. Facial

In addition to Doe's as-applied First Amendment challenge to Arizona's internet identifier reporting requirements, Doe raises a facial challenge to the statutes. (Doc. 1 at 9–11, 74-1 at 4). Generally, "a plaintiff can only succeed in a facial challenge by

'establish[ing] that no set of circumstances exists under which the Act would be valid,'" Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449 (2008) (quoting United States v. Salerno, 481 U.S. 739, 745 (1987)). In the First Amendment context, however, a plaintiff may bring an overbreadth challenge, which instead "requires a plaintiff to show that 'a substantial number of the law's applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" Id. (cleaned up) (citing Moody v. NetChoice, LLC, 603 U.S. 707, 723 (2024)). Accordingly, that a statue is found to be valid as applied does not defeat an overbreadth challenge. See Moody, 603 U.S. at 756 (Thomas, J., concurring) ("under our First Amendment overbreadth doctrine, a plaintiff need not be injured at all; he can challenge a statute that lawfully applies to him so long as it would be unlawful to enforce it against others."). Indeed, when a plaintiff raises both an as-applied and an overbreadth challenge, the Court proceeds to the overbreadth challenge only if finds that the statute is valid as applied. Fox, 492 U.S. at 484–85.

Doe does not expressly cast his facial First Amendment claim as an overbreadth challenge or identify the standard applicable to such a challenge. Indeed, Doe fails to acknowledge that Doe, rather than Intervenor-Defendants, bears the burden on such a challenge. Irrespective of how Doe frames his facial challenge, however, Doe's arguments that the reporting requirements burden more speech than necessary and do not further a legitimate purpose are inadequate to show that a substantial number of applications of the reporting requirements are unconstitutional. The Court thus concludes that Doe has failed to meet his burden of showing that "the law's unconstitutional applications substantially outweigh its constitutional ones." Moody, 603 U.S. at 724. The Court rejects Doe's facial First Amendment challenge to Arizona's internet identifier reporting requirements and grants summary judgment to Intervenor-Defendants on this claim.

c. Count II – as-applied Fourteenth Amendment due process challenge to lifetime registration requirements

In Count II of Doe's Complaint, (Doc. 1), Doe "brings an as-applied challenge that mandatory, lifetime registration as a sexual offender in Arizona violates his due process

rights" under the Fourteenth Amendment. "The basis for this challenge is that lifetime registration is not reasonable related to any legitimate State purpose." (Doc. 74-1 at 13). Doe argues that "to be constitutionally valid, legislation must have a 'reasonable and substantial relation to the object sought to be attained.'" (Ibid.) (quoting Vandevere v. Lloyd, 644 F.3d 957, 969 (9th Cir. 2011)). Doe argues that subjecting Doe to lifetime registration requirements achieves no purpose because the undisputed evidence shows that Doe, a Tier 1 offender, presents a low risk of recidivism. (Id. at 17).

Intervenor-Defendants argue that summary judgment should be awarded to Intervenor-Defendants on Doe's due process claim "because the Legislature had a legitimate purpose in enacting the statutory lifetime registration requirement—public safety, crime prevention, and assisting law enforcement in solving crimes—and the law promotes that purpose." (Doc. 70 at 6). Intervenor-Defendants argue that "Arizona's law, which, in most circumstances, requires sex offenders to register for life, serves the legitimate purpose of protecting the public." (Ibid.) Because of the high risk of recidivism, Intervenor-Defendants argue, it is not "'[i]t is not irrational' for the Arizona Legislature to conclude that requiring sex offenders to register and, in most cases, remain on the registry for life will 'deter recidivism and promote public safety.' (Id. at 7) (quoting Litmon v. Harris, 768 F.3d 1237, 1242 (9th Cir. 2014)).

Doe does not expressly identify his Fourteenth Amendment claim as either a substantive or a procedural due process claim. However, Doe's Complaint, (Doc. 1), is consistent with bringing a procedural due process claim, as Doe alleges that he "was given no notice of any registry requirement enacted after" his conviction, as well as that Doe "has no opportunity under Arizona law for [a] hearing" concerning whether he is properly subject to the statutory requirements. (Doc. 1 at 11–12). These allegations are consistent with a procedural due process claim because Doe is asserting that lifetime subjection to Arizona's registry statutes "deprives [Doe] of protected liberty interests without notice of the right to be heard." Doe v. Tandeske, 361 F.3d 594, 596 (9th Cir. 2004).

Doe's argument is analogous to that which was rejected by the Supreme Court in Connecticut Department of Public Safety v. Doe, 538 U.S. 1 (2003). There, the Supreme Court rejected a procedural due process challenge to Connecticut's sex offender registry laws because registration was required by the fact of conviction as sex offender, thus rendering any additional process superfluous. Id. at 7–8. As the Ninth Circuit explained in Tandeske:

> The Court [in Connecticut Department of Public Safety] held that, even assuming, arguendo, that the respondent had been deprived of a liberty interest, procedural due process "does not require the opportunity to prove a fact that is not material to the State's statutory scheme." Because "the law's requirements turn on an offender's conviction alone—a fact that a convicted offender has already had a procedurally safeguarded opportunity to contest," the Court reasoned, "any hearing on current dangerousness is a bootless exercise." The Court concluded that "States are not barred by principles of procedural due process from drawing such classifications."

361 F.3d at 596 (quoting 538 U.S. at 4, 7–8) (internal citations and question marks omitted).

Like Connecticut, Arizona has determined that conviction is sufficient, as opposed to a determination of dangerousness or risk level, to warrant lifetime subjection to the registration requirements. Per Connecticut Department of Public Safety, there is no need consider whether sex offender registration deprives Doe of a protected liberty interest. See 538 U.S. at 8. Because Doe already had a "procedurally safeguarded opportunity to contest" his conviction, see 538 U.S. at 7, Doe's claim that lifetime registration as a sex offender violates his Fourteenth Amendment procedural due process rights must fail. The Court thus grants summary judgment to Intervenor-Defendants on Count II of Doe's Complaint.

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d. Count III – as-applied Fourteenth Amendment vagueness challenge to residential registration requirements

Doe brings an as-applied Fourteenth Amendment vagueness challenge to the residence reporting requirements enumerated in § 13-3822[2] on the grounds that the statutes fail to provide fair notice as to when Doe—who owns two houses in different Arizona counties—is required to register with law enforcement. (Doc. 74-1 at 17–20). Specifically, Doe's contentions center on whether Doe is "moving" within the meaning of the statute when Doe spends more than three days, excluding weekends and holidays, at his alternate residence. (Id. at 18–19). Doe avers that "[h]e travels between [his residences] frequently for both short and long periods of time" and, without sufficient guidance, "is forced to continually report to law enforcement (and trigger burdensome inter-agency notification requirements) whenever he simply travels between his houses or risk felony conviction for running afoul of registry requirements." (Id. at 17–18).

Arizona's residential registration requirements for sex offenders are contained in §§ 13-3821 and 13-3822. The initial registration statute, § 13-3821(A), provides that persons convicted of certain enumerated sex offenses, "within 10 days after the conviction or adjudication or within seventy-two hours, excluding weekends and legal holidays, after entering and remaining for at least seventy-two hours in any county of this state, shall register with the sheriff of that county." The following section, § 13-3822, requires registrants to give notice when moving to or from a place of residence. That section provides, in relevant part, that:

> Within seventy-two hours … after moving to or from the person's residence or to a different county or after changing the person's name or address, a person who is required to register under this article shall inform the sheriff in person and in writing

[2] Doe's Complaint, (Doc. 1), states that Doe brings both a facial and as-applied challenge to §§ 13-3821 and 13-3822; however, Doe's summary judgment motion identifies only an as-applied challenge to § 13-3822(A), and the Court presumes that Doe has narrowed his vagueness challenge accordingly. The Court notes disapprovingly that Doe's scattershot approach to raising claims in his Complaint has necessitated that Intervenor-Defendants expend valuable page space to address claims that Doe has apparently abandoned. This approach also results in the Court's time and resources being unnecessarily expended to determine what statutory provisions are still at issue.

> of the person's new residence or residences are temporary or permanent and the person's address or new name …. If the person has more than one residence the person shall register in person and in writing every residence and address not less than every ninety dates with the sheriff in whose jurisdiction the person is physically present.

Section 13-3822(A).

Doe argues that the word "move" in § 13-3822 could be read to require Doe to register in-person with law enforcement each time Doe travels to his alternate residence. Guidance is needed, Doe argues, to resolve whether Doe is "moving" or changing his "residence" within the meaning of the statute in such instances. (Doc. 74-1 at 17). Doe concedes that any constitutional infirmity in the statute could be absolved by a limiting instruction, proposing a reading of the statute that defines "moving" as "to establish a new residence not already registered with the registering authority." (Id. at 19) (emphasis in original). This construction of the statute, Doe argues, is supported by the statute's structure and provides constitutionally sufficient notice as to what is required of offenders.

Intervenor-Defendants argue that Doe's vagueness challenge must fail because "Arizona's reporting requirements provide fair notice of what an offender, including Doe, must do to comply with the law." (Doc. 70 at 8). With respect to construing the statute's requirements, however, the parties are mostly in agreement. Intervenor-Defendants submit in their Response to Doe's Motion for Summary Judgment that § 13-3822(A)'s requirement is "only triggered if an offender is 'moving,' i.e. changing the person's residence such that a location is no longer a 'residence.'" (Doc. 85 at 15). Intervenor-Defendants state that their reading "is similar to Doe's, but focuses on moving to or from the old residence. Thus, the operative question is whether the person has physically left the old residence with an intent not to return to it as his or her 'dwelling place, whether permanent or temporary.'" (Ibid.)

The parties are thus largely in agreement that § 13-3822(A) does not require Doe to inform the sheriff each time that Doe travels between his two residences. Indeed, this

reading of the statute—such that a registrant with multiple residences is not subject to the burdensome 72-hour requirement each time they travel between their residences—appears to be the most plausible with respect to individuals with more than one residence. This reading of the two provisions as separate requirements is also consistent with the Arizona Supreme Court's interpretation of the clause's transient registration provision in State v. Burbey. See 403 P.3d 145, 149 (Ariz. 2017) ("[I]t is reasonable to construe § 13–3822(A)'s residence notification and transient registration provisions as separate requirements, with only the latter applying to persons who transition from residences to homelessness, and we therefore interpret the statute in that manner.")

Though the parties are in agreement with respect to § 13-3822(A), the parties appear to disagree as to the applicability of § 13-3821 beyond initial registration in a given county. Doe argues that the registration requirement in § 13-3821, which requires registrants to register with the sheriff of a county in which the registrant has entered and remained for at least 72 hours, only applies the first time a person enters and remains in a *new* county for 72 hours—not each time a person travels to a county with which that person has already registered. (Doc. 91 at 9). Intervenor-Defendants argue, on the other hand, that "Doe must comply with A.R.S. 13-3821(A)'s reporting requirement *whenever* he travels between counties—including between his two residences—for more than 72 hours." (Doc. 95 at 6–7) (emphasis added). Doe's interpretation appears more likely because, as the Arizona Supreme Court has observed, "[§]13–3821(I) pertains to *initial* sex offender registration." Burbey, 403 P.3d at 148 (emphasis added). The 72-hour requirement in § 13-3821 is thus not triggered each time a person enters and spends time in a county that the person has already registered in.

The subject of Doe's vagueness claim is § 13-3822, not § 13-3821, however, and the Court need not determine which party's reading of § 13-3821 is correct. And, because the parties agree on a construction of § 13-3822 that, by Doe's own arguments, alleviates any constitutional infirmities, the Court need not substantively consider Doe's Fourteenth Amendment vagueness challenge. The Court thus grants summary judgment to Intervenor-

Defendants on Count III of Doe's Complaint.

e. Counts IV and V – as-applied Eighth Amendment and Ex Post Facto challenges to reporting requirements

Doe contends in Count IV of his Complaint that lifetime subjection to the challenged sex offender reporting requirements amounts to cruel and unusual punishment in violation of the Eighth Amendment. (Doc. 1 at 13–15, 91 at 11). Doe further raises a claim that application to Doe of the current statutory registration requirements, which were amended after Doe's conviction, violates the Constitution's Ex Post Facto Clause. (Doc. 1 at 15).

Doe does not seek summary judgment on these claims but rather contends in response to Intervenor-Defendants' Motion that both claims are not ripe for summary judgment because material issues of fact remain as to whether Arizona's registry statutes, as applied to Doe, are punitive. (Doc. 91 at 14). "As applied to John Doe, lifetime subjection to the challenged reporting requirements (which themselves burden his First Amendment rights) is not a 'reasonable' public safety measure[,]" Doe argues. (Doc. 91 at 11). Doe argues that "[a]t the very least, this is a fact-intensive question not suitable for summary judgment." (Ibid.)

Summarily asserting that a claim is fact-intensive, or that unspecified material issues of fact preclude summary judgment, is inadequate to defeat a motion for summary judgment. Doe offers only a bald assertion of a material factual dispute but has presented no specific factual dispute that would prevent the resolution of Doe's Eighth Amendment and Ex Post Facto claims at this stage. Accordingly, the Court proceeds to the parties' arguments.

At the outset, Doe's Ex Post Facto Clause claim fails as a matter of law because Doe only attempts to distinguish this action from prior cases that have found Arizona's sex offender registration statutes to be civil and nonpunitive by arguing that the registry scheme is punitive as applied to Doe. (Doc. 91 at 11) ("as applied to John Doe, there is strong evidence that the Arizona statutory regime is punitive in intent."). However, "ex post facto claims based on the punitive effect of purportedly civil statutes cannot be construed as 'as-

applied' challenges." Does v. Wasden, 982 F.3d 784, 791 (9th Cir. 2020), citing Seling v. Young, 531 U.S. 250, 263–65 (2001). "Rather, courts must evaluate a law's punitive effect based on a variety of factors—such as the terms of the statute, the obligations it imposes, and the practical and foreseeable consequences of those obligations—in relation to the statute on its face." Id., citing Seling, 531 U.S. at 262.

The Arizona Supreme Court recently reaffirmed in Trujillo that Arizona's sex offender registration regime is civil and nonpunitive, see 462 P.3d at 561–62 and there is little cause for the Court to repeat that facial analysis. As courts have consistently held, the civil and nonpunitive nature of Arizona's registry statutes defeats Doe's Ex Post Facto Clause claim. See id. at 564; Smith, 538 U.S. at 102–106; Clark v. Ryan, 836 F.3d 1013, 1016 (9th Cir. 2016); Am. Civil Liberties Union of Nevada, 670 F.3d at 1058.

The nonpunitive nature of Arizona's registry statutes similarly defeats Doe's Eighth Amendment claim. Doe v. Garland, 17 F.4th 941, 948 (9th Cir. 2021) ("[C]ourts employ [the Smith] test for punishment in the Eighth Amendment context."); Ronet v. Ariz. Dep't of Public Safety, 2022 WL 2314475, *3 (D. Ariz. May 18, 2022) ("In order for the Cruel and Unusual Punishment Clause to apply, the challenged action must be considered 'punishment' within the meaning of that Clause."), citing Garland, 17 F.4th at 948; Wilson v. Seiter, 501 U.S. 294, 300 (1991) ("[T]he Eighth Amendment … bans only cruel and unusual *punishment*.") (emphasis in original).

Accordingly, the Court grants summary judgment to Intervenor-Defendants on Counts IV and V of Doe's Complaint.

V. CONCLUSION

Upon review of the parties' briefing, the Court finds that judgment as a matter of law should be granted to Intervenor-Defendants on each of Doe's constitutional claims raised in his Complaint. (Doc. 1). The Court therefore grants Intervenor-Defendants' Motion for Summary Judgment, (Docs. 70, 79), and denies Doe's Partial Motion for Summary Judgment. (Doc. 74). The Court also denies Doe's Motion to Exclude. (Doc. 66).

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Accordingly,

IT IS ORDERED granting Intervenor-Defendants' Motion for Summary Judgment. (Docs. 70, 79).

IT IS FURTHER ORDERED denying Doe's Partial Motion for Summary Judgment. (Doc. 74).

IT IS FURTHER ORDERED denying Doe's Motion to Exclude the Testimony of Dr. John Lott in Whole and in Part. (Doc. 66).

IT IS FURTHER ORDERED directing the Clerk of Court to terminate this action.

Dated this 6th day of November, 2025.

Stephen M. McNamee
Senior United States District Judge