



Registry Matters Podcast

Episode 269

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Special Notice to Our Subscribers:

Registry Matters will not be recorded on June 17, 2023. This means it will be two weeks before you receive RM 270.

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Announcer

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00:00:14

Andy

Recording live from FYP studios, East and West transmitting across the internet. This is episode 269 of Registry Matters. Good evening, sir. Happy Saturday night. I almost said Friday. Happy Saturday night. How are you?

00:00:31

Larry

Awesome. And I'm glad you invited me back again.

00:00:36

Andy

But yeah, I probably have something to say about that.

Clip

How much longer are you planning to stay?

Larry

A long time. Get used to me.

00:00:44

Andy

I guess that would be the case if I can't find anybody else to sit in place of you.

00:00:50

Larry

Oh, I love that voice.

00:00:55

Andy

Well, make sure that you head over to YouTube. Press like and subscribe and write a review on your favorite podcast app. Do all of those things and that will make us so happy, and people will find the content and make our audience grow and all of that. That would be fantastic. Did you engage with anybody on YouTube this week?

00:01:16

Larry

I don't think so, but I did see a comment on YouTube. Did you want to read that comment?

00:01:21

Andy

I mean, I can. I'll go find it.

00:01:25

Larry

I could basically say what it said. He asked the person to ask if we never do any challenges, how we're gonna find out what's doable, something to that effect. He said you two sound like you don't believe in challenges and we actually do believe in challenges, but we believe in doing challenges that are put together correctly and focused properly and using the right vehicle. Like sometimes declaratory judgment is the correct vehicle. Sometimes it isn't. It's all about doing litigation correctly. Throwing everything up at the kitchen sink like they did in Michigan and hoping something sticks was not a very wise strategy, but we absolutely have to keep trying things if we're gonna keep chipping away at this. But that was in essence what the question or comment was.

00:02:15

Andy

You didn't write that question, did you?

00:02:17

Larry

No.

00:02:20

Andy

I just went and looked at him. I was like, "Larry, that's you."

00:02:25

Larry

Oh, well that came to me and I put it on YouTube actually.

00:02:30

Andy

And you did get two thumbs up on it though. [Larry Is that right?] You did now? I don't know who did that. I didn't do it. So, you have some loyal fans out there that are saying, "Yep, that's what we need to do." Do you wanna give us a rundown for the show tonight?

00:02:45

Larry

It's gonna be a hodgepodge of stuff. We have two comments from Chris. We have another comment and question from a person who wants to move to Germany. We have an audio clip that came in, I guess by phone, submitted and then we have a question about someone who wants to move from California to New Mexico via Interstate Compact that we've got. Then we've got this main event. We're talking about a circuit court decision that I think you're gonna be fascinated with. You told me, you read it right? You read that 105 pages?

00:03:19

Andy

Man, I have it memorized.

00:03:21

Larry

All right. Well, then we're gonna do that. And so, let's roll the train.

00:03:26

Andy

All right. Well, before we get started, don't you have some sort of funny story regarding your trip to the motor vehicle division yesterday?

00:03:34

Larry

I do.

00:03:35

Andy

I bet it's not funny, but you think it's funny. So, we'll be the judge if it's funny.

00:03:41

Larry

Oh, it's definitely funny. All right. So, I'd made an appointment. They only accept appointments. No walk-ins anymore. And New Mexico has a hybrid system where they run private and public, meaning that you can use a private operator and you pay the registration or the license fee, all those fees, but then you pay the private company for the additional services. So, if a license is \$34 you might pay another \$24 for the convenience fee of using the private company. You know, the private companies do everything better. They have better staff, and they have better customer service and all this kind of stuff. Anything the government does, they screw it up. Right. [Andy . Right.] Ok. So I could make my appointment online and I'm running late because there was an accident on the west side of the city. You have to cross the river to get into town and I was on the west side. I'm running a little bit behind schedule and then I run into construction and I see my appointment time of 11 o'clock and I'm thinking, "Well, gee, I better check in." Of course, I'm not there yet, but I go ahead and check in now. That wasn't particularly brilliant, but I did it. I checked in and they send a text to my phone just as I'm walking in the door. I immediately walk up to the counter and I'm trying to get a real ID compliant license. My license is up for renewal this year. You have to do all that George W. Bush stuff to put your documents in the system again that you put in 40, 50, 60 years ago; birth certificate and Social Security. I go in and I have all the list of documents. I think I need two proofs of address and I have those documents and the clerk says, "You've done a really good job assembling your documents, but you're missing one. I don't see your Social Security card." I said, "The number's been in the system for 50 years." He said, "We still have to have the actual card or we have to have at least something with the full numbers on it." I said, "So you can't do a thing?" "Nope, you gotta come back." I said, "All right." He said, "I'll give you a special pass where you can come in. We're about to close for lunch for an hour. Come back at 1 30. You can come straight up to my window." I said, "By the way, can I take the eye test while I'm here?" I ask because I've had this long-running battle with motor vehicles. They don't understand that you only need one-eyed vision. You do not have to see in both eyes to be licensed to drive. Now, I can speak for the States I've lived in, but you don't need two-eyed

vision and I'm legally blind in one eye and they want to me to read out of both eyes and the private operators are the worst. They will tell you that it's by law, you have to do that, and they give you a form to take to your eye doctor and tell you to get it filled out that says you're ok to drive. And I refuse to do that.

I won't bore you with why I refuse to do that. But I don't take the form to the doctor. I just go to another motor vehicle office. And this time he says, "Oh, yeah, you can take the eye test." Why the worry about the eye test?" And I said, "Because they tell me I have to be able to see with both eyes. They don't understand that." He said, we understand that here." And I said, "Yes, this is a public-operated MVD here." He said, "Come back at 1 30." I go back at 1:30 and there's a dealer standing there just taking a lot of time. He sold a car to a young girl and he's making sure he gets the title sent to him. He has his lien and everything. He's setting up a lien and I'm sitting there. Eventually I'm gonna get up to this guy and I don't want to have to take the eye test again. I went back to his window, and he said, "You've got your documents in order, but the computer system just went down. [Andy laughed] I told you that was funny, but it gets funnier. After I waited for the car dealer, it's already going on two o'clock. He said, "You can hang out here for a while." I told him, "I'm gonna leave and come back. Can I get a working phone number that you people answer? And I can just call you because I've got some errands and I'll call you and see if the system's back up." He gave me a number of course, and nobody answered it. You wouldn't expect anybody to answer the phone anymore. I drove back over there before I left the area, and they were running again. I went back in and told him, "I'm here and I want to finish it out." He said, "Let's take your picture really fast." I said, "Yeah, let's do that because it would be funny if the system went down again." And he looked at me really strangely and said, "I don't see why that would be funny." I said, "If I had to come back a fourth time, that's what's funny." And he shook his head, like there was nothing funny about that. Now you have to admit that would be funny if I had to go back a fourth time. That was my funny, but I did finally get everything in the system and supposedly I have a new license on the way. It takes 15 days for them to process all that and merge it into their system, and it all went through.

00:08:51

Andy

Ok. Yes, that would be funny.

00:08:55

Larry

The look on his face when I said that would be funny was if I could have had a picture of it, like I said, that it would be funny if it went down again and he looked at me like, "Are you nuts?"

00:09:05

Andy

A typical bureaucratic employee that has no sense of humor. Right?

00:09:10

Larry

That's correct.

00:09:12

Andy

I've got a question for you before we actually do start moving along. Did they remember we talked maybe a month ago about the Albuquerque police officer who was trying to do some pretrial detention? Trying to get some relief from all that. What happened?

00:09:27

Larry

The state won their pretrial detention motion. So, he's having to sit it out in the Metropolitan Detention Center awaiting trial. And they made a big to-do if he was a threat, that there was nothing they could do that would keep the community safe from this predator while pending trial.

00:09:47

Andy

Well, that's very unfortunate for the individual innocent until proven guilty.

00:09:53

Larry

Apparently not.

00:09:54

Andy

And he was considered to be, at least not enough of a threat to society to become a police officer then. Correct?

00:10:02

Larry

Well, that was before he solicited this teenager though. Now he's a dangerous man.

00:10:09

Andy

All right. Well, then I guess I will play this voicemail message that we got. Now, I got to tell you that at the beginning, it's kind of like he figures out what he's trying to ask as it goes on, but the beginning is a little ... what's the word convoluted?

00:10:23

Larry

Yes.

00:10:24

Andy

All right. So here is a voicemail. Did he ever say his name in it? I didn't even get a chance to try and bleep it. I don't think he did. Ok. Very good.

00:10:34

Speaker #3

I just listened to the podcast. It says RM 267 at International Travel debunking myth. I have a question. If I was charged in Florida and I have to register for life in Florida. I don't know what would be the tier because everybody is in for life. My question is, if I move from Florida to a different state, I have to notify the registration what state I'm traveling to or what would be my new address in the other state? Let's say I'm homeless or I'm living in

an RV and I'm planning to travel and don't have an exact address. Am I required to give them an exact specific address to which state I'm moving to if I'm just gonna be traveling the country in an RV? My understanding is that most states require registration if you're intending to stay in that specific state for more than three days or 72 hours. If I'm traveling to Georgia and within the 1st 72 hours, I travel or am intending international travel and now I've left Florida, so I'm no longer required, I'm required to register in a different state, let's say Georgia, but Georgia doesn't need me to register until 72 hours of me staying there. Let's say the first hour of me traveling to Georgia, I take an international flight and I move somewhere else in Europe or Africa or whatever. Am I required to tell Georgia? Am I required to tell Florida? And that will be excluding the 21 days because if I'm not in Georgia, and I've already told Florida that I'm moving to Georgia, and I didn't give them a specific address, am I allowed first not to give them a specific address? And then if I'm in Georgia and I'm still not required to register unless I'm intending to stay for 72 hours, am I allowed to do international travel without giving them a 21-day notice? Thank you. It's appreciated guy and FYP.

00:12:58

Andy

Good luck with that one.

Larry

Oh, well, actually, once you listen to it five times, you can figure out what he's trying to ask, but it is very convoluted. What he wants to know is if you travel domestically and move to another state or if you just want to travel in an R V, can you do that without giving a specific address? The answer is yes. Now that's from a legal perspective, the answer is yes, you can do that. The real reality of the registry officials can be different. You may have a registration officer in Florida that says, "I gotta know where you're going. I gotta have a specific address I can put in this system." That's something I can't fix. But as a matter of law, you have the right to travel. We're assuming that you're under no supervision, you're merely subjected to registration. He wants to know if he can travel in an RV. And the answer is yes, undoubtedly, yes, you can travel, but you have to at least comply with your state's requirements. Some states have requirements that if you're gonna be out of state for so many days, seven days or whatever the case may be, you have to tell them of that absence. Where he's gonna get tripped up, if you tell Florida that you're going to be traveling in an RV, and then you travel to another state with the intention of not actually connecting with that state. But you're trying to launch your international travel from the state that you're not connected to, which is what he's angling for there.

He picked Georgia because it's a bordering state with Florida. And his theory is that he'll travel to Georgia, and he won't stay in Georgia long enough to trigger a registration obligation, then he will take an international flight and then he wouldn't have been required to give notice because Georgia didn't have him in their system. Well, he's only partially right. Georgia didn't have him in their system yet, but Florida did. He didn't tell Florida he was taking an international trip, he told Florida he was taking a domestic trip, and therefore, Florida is gonna be the one that he has to deal with because Florida is gonna say, nope, that wasn't what he told us when he left. If there was ever a situation where the US Attorney's office would prosecute a person, he would be it

in that scenario because that would be clear what his intent was. He was trying to skirt Florida's advance-notice of international travel by going to Georgia and said, "Well, I didn't have a registration obligation in Georgia, therefore..." I think that would show a level of intent that would result in a conviction. So, if you enjoy federal prison, I would say you just go right ahead and do that plan Club Fed. That's what's gonna happen on that. But, without all the convoluted and meandering around, he can travel, anybody can travel. There's no prohibition against traveling. There may be some barriers in terms of notifying your registration officers. And then when you get to a state where you say you're traveling in an RV, you're gonna need to be aware of how long you can be in a state before you have a duty to register because even though there is no hovercraft following you, there may be some mechanism that might yield proof of how long you were in that state and you could possibly get prosecuted for being in the state too long without fulfilling your registration obligations. So always tell people you need to know how long you can be present in a state as a visitor and then make your decision about what to do in terms of registration while you're in that state.

00:16:47

Andy

I don't have any follow-up with that. That makes perfect sense. If he's just always registered in Florida, then unless he actually moved somewhere that has different rules, he's just jammed up.

00:17:00

Larry

Well, if he's traveling the country in RVs, he's got the potential of having a duty in those states, depending on how many days, how many hours he's there. If he was in the state of Nevada, I think it's 48 hours and 49th hour the hovercraft would pinpoint him and they would send all sorts of vehicles to surround him and they would take him into custody and say, "You've been here 48 hours and 17 minutes."

00:17:25

Andy

I believe that Larry, that there would be something of a map that you could create that you could hop state to state to state and stay a week or two weeks, possibly longer, and just meander about the country and never even be required to register. At least on the initial part. You would eventually have to come back around and where they have you; if you're here more than a week, but no more than 30 days in a year or something like that when they have that additional annual number, you would probably eventually trick that number trip that number I should say

00:17:58

Larry

You could and also, you've got your check-ins required in the state of Florida. This is one of those things where there's not an answer because nobody contemplated this stuff, but if you're out of Florida, you have a 90-day interval to register and if you're not back in Florida to register and update your paperwork within that 90 days, what would prevent Florida from putting out a warrant for you?

00:18:23

Andy

As I just said in chat, Florida just gets marked off the list. I know that this guy is from Florida but, the scenario I just laid out, you've just got to stay away from Florida at all costs. Probably pretty much the southeastern quadrant in general too. Georgia happens to be some kind of oasis too, for some reason.

00:18:43

Larry

Well, it was because of that litigation by Wendy Whitaker primarily. There were several cases in Georgia, but that was the best one, that had an impact on Georgia's requirements.

00:18:56

Andy

Go back to your comment that the person made on YouTube about challenges. Why don't you people follow more challenges?

00:19:04

Larry

Well, it wasn't, "Why don't we file more challenges?" It was, "Why do we file challenges?" What does he say for specifically? Why do we?

00:19:12

Andy

No, I don't have it. Vamp again. I gotta go get it again.

00:19:15

Larry

That's all right. But it was more of a question. It was more of a question about why are we down on them for trying the challenge? But it didn't work. How will you know what's gonna work? We're not down because they tried to challenge. I didn't say they shouldn't have challenged it. I said that they shouldn't have gone after the governor, the state police chief, and I said they shouldn't have done it so sloppily by making statements that they made like, we believe stuff. You've got to prove stuff, believing it is not enough.

00:19:45

Andy

This person said, "Are you two suggesting that there should never be lawsuits?" How can we know what's possible if nobody ever attempts a new approach?

00:19:56

Larry

Yep. And there was nothing wrong with the approach per se. It's how they did the approach. If you're gonna do novel litigation, you got to do it the best you can, and throwing everything against the wall and hoping it sticks is not the right approach in my opinion.

00:20:10

Andy

I got to go find that one where we covered it a year ago where they had 70 different points that they hit at the registry from you know, "Your mama says it's a good thing." I like that the list just went on and on and on. They tried literally to throw everything at the kitchen sink, and do you think that in that kind of

circumstance, the court just gets irritated and then they just start throwing stuff out without even looking at whether there's merit?

00:20:36

Larry

There is some to that when a case is exceedingly complex with so many issues, it does tend to overwhelm the court.

00:20:45

Andy

If you go in there with two or three or something like that of just quality solid like here's the point. Here's the evidence. Here's the reasoning, then like, OK, well, we can dig into this one not throwing everything in the kitchen sink at it. All right. Let us move on to a question. I believe that this is one question from a person named Chris. Is this the one that I sent you from Patreon?

00:21:11

Larry

It's just a comment. Really? Yeah.

00:21:13

Andy

OK. So it says, "I got lucky and only got 10 years of supervised release. But I knew many others got lifetime. Under federal law, you can petition for release any time after a year. But most people say, wait until 50% of your supervised release is done. The PO was actually the person who advocated for me to transfer my jurisdiction from Utah to Oregon. His logic was that if I violated, he did not want to have to appear in Utah to see the judge. It also would prevent a *in-custody* transfer from Oregon back to Utah for me. Sadly, I violated about a week after the transfer took place. So, I was ok with the transfer. The negative was I got assigned to a judge known as the most conservative judge in the Oregon district. What is this expression here where he says he would prevent an in-custody transfer from Oregon back to Utah? What is an in-custody transfer? Is that what we always talk about where they do the retaking?"

00:22:08

Larry

Yeah, except it's not retaking under the federal system. It would just be that he would have to be transported back to the sentencing jurisdiction. And if you can avoid that, if you can get to the jurisdiction of the court transferred, for example, if you were sentenced in Alabama and you're in Oregon, you wouldn't want to navigate the United States in a custodial situation to get back to Alabama. You'd rather see a judge there in Oregon.

00:22:33

Andy

I see. Ok. Anything there before we move along?

00:22:37

Larry

The only thing I can say is that when we hear that POs do good work and good things, we'll give them a shout-out. We don't know who the PO was, but this PO apparently advocated for him and unfortunately, the PO got kind of screwed because it sounds like you violated very quickly.

00:22:53

Andy

Yes, it does. Yes. If the person advocate for you and then you screw up a week later, that probably doesn't go well for them. All right. And then another comment is: the difference between the federal charge of possession of the minor kind of content, zero to 10 years and receipt of CP, 5 to 20 years, five-year mandatory minimum. A case that may be worth looking at for some info is US versus Dunn. And that's Michael Lauren Dunn. He was a friend of mine in prison. He got hit for both. But the appeals court struck down one of the charges since they were the same case also has some info about victim restitution though, I believe it may not apply any longer due to the Amy Vicky and Andy Child Pornography Victim Assistance Act of 2018. Of course, that act may also be a good subject for discussion as well.

00:23:45

Larry

I will look into that case, but I'll say this, the US attorney's office is always gonna file the higher charge because it gives them more leverage. So if there's a mandatory sentence with receipt of CP and there is not a mandatory sentence with possession, what do you think they're going to charge? Because I can't imagine how you would be in possession of it if you didn't receive it to possess it.

00:24:16

Andy

Well, definitely, if they're going to have the option of hitting you for 20, and then you'll take the five-year plea. Like they've still won. They got the conviction. They don't get kudos for how many years you got? They get kudos for the conviction.

00:24:29

Larry

Well, some prosecutors are proud about how many years that they've managed to impose on people. They'll say, "Well, I was the chief prosecutor, I handed out 9,240 years of prison time. I got those criminals out of our neighborhood."

00:24:47

Andy

Somebody asked in chat, I hope that this is a relevant question. Are appeals decisions precedential if they don't go to the State Supreme Court? And then he corrects it or federal Supreme Court. Is that a clear enough question to ask?

00:25:02

Larry

Appellate courts can be precedential unless the court doesn't want them to be. So, it can be an appeals court in a state if you're taking up an issue in the New Mexico Court of Appeals. And the New Mexico Court of Appeals rules in your favor. That is a precedential decision. It expands the impact of that case from the judge that made the decision in Albuquerque to the entire state. Now, if the State Attorney General appeals to the Mexico Supreme Court and they grant cert, and they overturn the court of appeals, it's no longer precedential. But yes, an appellate-level decision is binding in the jurisdiction of where it was issued. So, an 11th Circuit decision would be binding in all three states of the 11th Circuit, 11th Circuit Court of Appeals decision. A Georgia Court of Appeals

decision would be binding in every county in Georgia unless they deemed it not published. And that way you can still cite to it if it's not published, but you can say it's persuasive authority, it's not binding.

00:26:12

Andy

So, and that then is a similar if something happens only in the state of Georgia, then Tennessee can say they did this here and while it doesn't mandate something, it's persuasive. But going across districts in the circuit courts, then that would be similar that if you're talking about something that was decided in the 11th, it doesn't stop binding in the ninth, but you could say they did this here. So, we should do it here too.

00:26:40

Larry

Absolutely. And the Halloween sign case in Butts County Georgia is a great example of that. That case has no control outside of those three states. But if someone in Missouri wanted to litigate that issue because it's in their statutory scheme about Halloween or maybe even Tennessee, I think that's in their statutory scheme as well. If they wanted to litigate, they would cite to the 11th Circuit decision. And they would say this is persuasive. I mean, this is great logic here by the 11th circuit and the circuit that's looking at that would either be convinced or they would say no, it's not all that compelling to us because our law has some distinguishing factors or they'll say it's great and we're going to adopt that same reasoning here.

00:27:24

Andy

Yeah. Yeah, I got you. Let us move along if there's a lot of comments and chat of people going. It just depends on your answer. Let's do a couple of things about moving. So, this is somebody that says, "Hello, I am seeking some advice and I think you may be uniquely qualified to answer my question. I'm a PFR in Alaska and I've managed to become somewhat successful here, but am emotionally drained from vigilantes targeting me and ostracizing me and making less money than I am qualified to make due to my employment discrimination as such. I find myself considering leaving for Germany. I was about to do so several years ago when a vigilante cost me another job and then COVID-19 happened and put that plan on hold. At that time, I was planning to seek asylum as I had completed my probation a year prior, and a vigilante had just gotten me illegally fired from my job and the EEOC was ignoring my claim. I'm considering leaving now. A few important things have changed. Alaska declared mandatory PFR registration unconstitutional based on the state constitution. I am in the lowest risk category of offender and have no other criminal record. So, I shouldn't have to register anymore. The issue is you have the burden of suing the state for removal. And even if I managed to do so, Alaska refused to pardon or seal the records of anyone ever and has no limit on background checks. I had a lawyer quote me \$3000 minimum for attempting this. And I'm wondering how this situation might affect whatever I do regarding Germany. I think it, plus my registration period being only another 10 years at most, might have me denied asylum. I have been the target of at least a half dozen vigilantes, including one that was a police officer. So, this may be a factor as well to continue. Do you want me to stop and have any comments before I go on?"

00:29:14

Larry

Not really because I'm not qualified on most of it. You're getting to the part where I am qualified.

00:29:20

Andy

All right. Well, I wasn't sure you weren't qualified for some of those things. I think you are Larry, you're uniquely qualified even so to continue. Germany amended its citizenship law a couple of years ago, they made citizenship by declaration much easier. I just barely qualify via one of my ancestors. The issue is the law says no criminal record. I looked up the German guidelines on my offense. Possession of CP in the German legal code as it says that that kind of record is erased after five years of completing your sentence if you are not charged with a new offense. And I'm wondering if this means my American offense would not be held against me since it is older than that. I would much rather obtain German citizenship than claim asylum because I could potentially continue to have real estate assets here in the US and thus more income. I contacted a lawyer, and they wanted \$450 just to tell me yes or no, regarding whether citizenship by declaration is even possible for me. And they want \$4500 for submitting the application for me. The \$450 seemed reasonable to me and I'd like your thoughts on the \$4,500. I can't afford to spend that kind of money at present because my jobs haven't been making me as much as they used to. I'm mostly trying to plan for when I can. Again, I prefer citizenship to my real due to my real estate assets and I'm not wanting to have to fear arrest if I ever left Germany. Wow, that's a lot. Hey, that's concise. Kind of like that's getting to the point in giving you some meat to work with.

00:30:48

Larry

Well, I think, he said the \$450 seemed unreasonable. At least that's the way I'm seeing it here for the consultation. I don't know anything about immigration law and certainly nothing about German Law. So, of those things, I don't know that I can be helpful. I know how lawyers operate. I know some good questions to ask lawyers and I generally can figure out when they're giving you smoke. And I've learned that most of the time people don't want to know when they're being smoked out by a lawyer with BS. It sounds like this one might be an exception. He might want to know because he's hesitant about spending \$4,500. But it sounds like he wants to do dual citizenship. He's not gonna renounce his American citizenship. He didn't say that that's a good thing.

00:31:46

Andy

He says he prefers citizenship due to his real estate, but he doesn't say he wants to give up his American citizenship though.

00:31:54

Larry

Yeah, that would make him a dual citizen. And if he has dual citizenship, he can come back to the United States if he wanted to. I can't imagine why he would want to if they have a much better treatment of PFRs in Germany and he can become a German citizen. I can't imagine he didn't want to, particularly if he can run his business, his American business from Germany. But the \$4,500 is not that much money if the person knows what they're doing.

And if they're going to actually provide value for it. I would pay \$4,500 at a heartbeat. When people say, "It cost me \$5,000 to get off the registry," I say, "Well, if the registry is as bad as what you say it is, wouldn't it be worth \$10,000 or \$15,000 to get off of it if you have it?" But you want to make sure that the person has the skills and the understanding of the interplay of German law and American law. And there's a lot buried in this thing about whether he would surrender any American rights. I don't think he would, but I'm not qualified to say that. But for \$4,500, the first thing I'm gonna ask the lawyer is what his expertise is in German law. And if he says, none, I'm gonna say, what do you plan to do to become an expert?

00:33:09

Andy

Yes. If I give you \$4,500 what is your immediate education program to get up to speed on it?

00:33:16

Larry

And, you know, there will be some research involved in figuring out what Germany will do. He could certainly consult a legal professional in Germany. I assure you that there are a lot of people in Germany who speak very fluent English. I know that because I used to do property management and I had a continuous flow of German students, and they were very fluent in their English. And I suspect you won't have any problem finding a German, whatever their equivalent of an attorney might be to discuss the matters of how the German immigration system would look at his request for citizenship based on this old conviction, that's more than five years old. And then the American lawyer might want to work with the German lawyer to make sure that everything done on state side is correct. But don't give up your American citizenship folks. The concept sounds good, but it really isn't.

00:34:09

Andy

Should he get in touch with the guy we had on the podcast on episode 195 over in Germany? Do you think?

00:34:17

Larry

Certainly, that would be a possibility. I would suspect he knows more than the average person since he's successfully there.

00:34:22

Andy

And apparently has brought others over. You wanna look up common sense laws on YouTube and, <https://justfactsnotfear.com>. People are posting in chat. Shall we move along from there?

00:34:34

Larry

Certainly.

00:34:36

Announcer

Registry Matters Promo Deleted.

00:35:22

Andy

All right. Well, this one I sent to you, and you had also received it on your own. It says, I'm from NARSOL and I was recommended to talk to you. The letter is a little bit crude. And so that's a warning. "I have an urgent need, so I'm contacting anyone who might help. I am still fighting for my husband's life, a PFR in San Diego. And we cannot figure out how to get a successful interstate transfer to New Mexico. The injustice system is almost doing us both in. We almost had a transfer and it fell through because the Bernalillo Parole made that cruel decision that I can't talk about it. It's been ruthless for both of us trying to accomplish it, not knowing what to do or where he could live and still be very in love and working together. I desperately need someone who knows what the F they're talking about to act quickly and successfully and will do as much footwork as it takes as long as it ends. Well, I've wasted too much time on ideas from well-meaning but clueless people. He will be homeless in San Diego in a month. We'll be looking for Bernalillo or Sandoval. Is that right? Sandoval county? And at this point, I'll even live in the war zone. Please help if you can."

00:36:43

Larry

Yeah. Well, we don't refer to that as the war zone anymore. It is now the international district.

00:36:49

Andy

Oh? I don't know. Ok. What is that?

00:36:52

Larry

It's an area of town where you tend to have an elevated rate of crime and a lot of poverty and it kind of grew with the name, the war zone, but it's very rude to refer to an area as the war zone or the student ghetto or anything like that. All right. What do you want me to tell her about this?

00:37:13

Andy

I've personally spoken to this individual and then I have seen these miscellaneous claims come out afterward. I have never ever wanted you to tell me something that is wrong or blow smoke up my rear end or anything of that sort. So I would want you to be brutally honest on: can I get off probation? Can I expect to get off registry? Like anything that I ask you? I don't want you to bullshit me. So, I would tell you, for you telling someone else what they're expecting if, especially if they're trying to go into your home territory. Tell them the truth. That's what I think.

00:37:55

Larry

Well, there's an attorney here named Ashley. [Andy: I know her]. Yes. And she contacted me many years ago about a loved one that she was trying to get into New Mexico that was on probation in Georgia, of all places. And I told her what they would do, how probation and parole would operate here. At that time, she was a prosecutor, and she was just devastated. She said there's no way, there's no way that the system is that evil and vicious. And I said, yes way, there is. It is that way. This state is right up at the top of trying to keep people from coming here, particularly PFR

offenders. They are going to do everything they can when you make an application to transfer here to find the slightest reason to say no. And sometimes they have to invent those reasons. They have to cough up something that, well, it looks like there might be a school bus stop about to come to this place or they come up with imaginary boogeymen, but that should convey something to you when they play that kind of game with you. What do you suppose would happen if you did successfully get here when they do not want you here?

00:39:13

Andy

I would imagine that they're going to then be very creative in inventing problems for while you're there under some kind of supervision.

00:39:21

Larry

That is precisely what will happen. Here's the way they look at it. I'm not gonna say it's right or wrong. We can't agree on the recidivism rate, but we can agree that there is some recidivism. They are forced to deal with people that are convicted here. They have some level of discretion with people who are not convicted here. They figure that if they keep 200 PFRs out that weren't convicted here, whatever that level of a re-offense would be, whether it be 2% 3% or 4%, they would rather than be offending in the jurisdiction they were convicted in. They're gonna do everything they can to keep from granting a transfer. If they do approve the transfer, they're gonna be doing everything they can to find a way to violate you. That's just the reality of the New Mexico Probation Parole Division. That's what they're going to do. And you're the exception if they don't target you. There have been a couple of people that have made it in from Colorado that I know. I helped them get here and they've had very little problem from probation parole, but the overwhelming majority of them are targeted with really minor technical violations. They have arrest and hold powers here because they're allowed to treat an offender here the same as we allow them to treat our in-state offenders. In many states you would need a warrant to take a probationer into custody. You'd have to convince the judge that that person had violated and posed a threat and needed to be taken into custody. All the probation officer has to do here is issue a hold detain order. They take that order; they grab a team of probation officers, and they go out and arrest you and they throw you into jail. Then that whole process that we've talked about many times about violation, probable cause hearing, it doesn't work, and you sit in jail for weeks, months, not seeing any judges just sitting there. And eventually, you sign a waiver, and you go back to the state where you were convicted and then you find yourself stuck there again because you have to re-compact out once you get back to that state and you let them do whatever they're gonna do to you. You end up having to start the process all over again. If there are any options other than New Mexico, don't come here.

00:41:47

Andy

All right. I know a little bit about the situation, but it just seems that in the past Larry, like if someone could get there, that is the place to be. Is this different because the person is on supervision and not just simply the registry?

00:42:01

Larry

That is correct. Supervision is tough here. I'm not gonna blame the previous Republican governor because they were harsh in that administration. But they were harsh in the previous administration under a Democratic governor. These are career people that run corrections. They've been there a long time. They're very hard-nosed and these policies haven't changed. Even with this so-called, progressive governor, we have now, they have not lightened up any corrections as far as I can see in terms of how they treat people that are convicted of sexual offenses. If you're looking for an easy place to go, this is not where you wanna go while you're under supervision. If you're only registering the registry is not too bad here. But if you're paying your debt to society in particular, where you're gonna be under state supervision, it's tough.

00:42:55

Andy

Because like when I was on supervision, I was getting like, forget travel permits, Larry, I could move around the state. Your people can't even like, you have to get a travel permit to move to, to go visit your parents in another county.

00:43:10

Larry

That is correct. And when you leave Bernalillo County to go to Sandoval county, you've got to get a travel permit to do that.

00:43:20

Andy

Does this even apply Larry if you live in and it's a stone's throw like across my backyard is where the county line is. Do you have to get a travel permit to go visit your neighbors that are in the other county that's behind your own property?

00:43:32

Larry

I suspect there might be some allowance for people who work in an adjoining county. They wouldn't have to get a travel permit to go to work every day. They would probably write in an exception for that, for you to go to work. But like, for example, Rio Rancho is a suburb that's in Sandoval County, and if you lived in a Rio Rancho and worked in Albuquerque, you probably wouldn't have to get a travel permit to go into Bernalillo County. But if you're going on anything other than work, I would say that they probably want you to get a travel permit.

00:44:04

Andy

That's bizarre. And like, you're gonna be at this address for this time visiting these people and you'll be back in 48 hours or something just to go to the other county. That's where Sam's is, and you have to get a travel permit to go to Sam's.

00:44:16

Larry

That would be correct if it's not work related. But I think they would give you a little bit of slack for a job.

00:44:21

Andy

Yeah. Yeah. Yeah. Yeah. I'm sure you would have, like, you might have to get like a monthly repeating. I've known people that are truck drivers and they just get a monthly reoccurring travel permit.

00:44:31

Larry

I've heard of that, but they don't tend to do that much here. You're gonna have a hard time traveling while you're under supervision here. The kind of stuff you're used to that you've witnessed just doesn't happen here. When people go to conferences, it's not gonna happen here, you're not going to be allowed to travel, so get over it

00:44:50

Andy

Is your advice then that this individual should try to figure out how to go where her husband is instead of having him come to her?

00:44:58

Larry

That would be my advice if that's at all possible. Otherwise, you're gonna be regretting the decision to if you succeed and successfully, move him here. The likelihood is very strong that you will regret that.

00:45:12

Andy

And him being in California, I have no idea. Zero clues about what the probation system is like in San Diego.

00:45:21

Larry

It's a huge metropolitan area. It might not be too bad. I don't know either.

00:45:24

Andy

You can't really argue with the weather that much. It's probably a little bit of a smog-filled area, but maybe, pretty decent weather year-round. Well, Larry again, that's why you're Mr. Doom and Gloom. But it's honest. And again, I would tell you, Larry, please, always be honest. Don't blow smoke. I don't think that you should be one of the people that paints a doom and gloom picture just because it's doom and gloom. But paint an accurate picture. Sorry, if that actually paints you as Mr. Doom and Gloom. Well, let's talk about this Third Circuit Court of Appeals. I did read it, Larry, to be honest, it's 105 pages and I actually spent the time to memorize it. Why on earth have you put a gun case in here for us to talk about? What does this have to do with the registry? Are you getting more senile? I'm thinking it's definitely more senile. Each week you are more senile.

00:46:16

Larry

Oh, well, I think it has some tangential connection. Let's hope so. Anyway,

00:46:22

Andy

The case is Brian Range v. Attorney General of the United States. The opinion says Brian Range appealed the district court's summary judgment. Summary judgment, your favorite, rejecting his claim that the federal felon in possession violates the second amendment right to keep and bear arms. I don't see it yet. So, keep working.

00:46:39

Larry

Well. I hope I can make the connection. So yeah, keep going, and let's get it set up and I'll try. Ok.

00:46:45

Andy

The material facts are undisputed. In 1995 Range pleaded guilty in the court of common pleas of Lancaster County, Pennsylvania to one count of making a false statement to obtain food stamps in violation of Pennsylvania law. Now, it's not just about guns, Larry, but it's also about food stamps. Though he did not recall reviewing the application, Range accepted full responsibility for the misrepresentation Range was sentenced to three years' probation which he completed without incident. He also paid \$202,458 in restitution, \$288 in court costs, and a \$100 fine. Other than his 1995 conviction, Range's criminal history is limited to minor traffic and parking infractions and a summary offense for fishing without a license. So, we have gun stuff, food stamps, and fishing without a license. And you somehow have made the connection that this has to do with the registry, right?

00:47:39

Larry

Well, I'm trying. When Rnge pleaded guilty in 1995, his conviction was classified in Pennsylvania as a misdemeanor, punishable by up to five years of incarceration. The conviction precludes Range from possessing a firearm because federal law generally makes it unlawful for any person who has been convicted in any court of any crime punishable by imprisonment of a term exceeding one year to possess in affecting commerce, any firearm or ammunition. So there we're eventually gonna look back to hear how this ties to the registry, but it's kind of blurry at the moment.

00:48:16

Andy

So, in 1998 Range tried to buy a firearm, but was rejected by Pennsylvania's instant background check system. Range's wife, thinking the rejection a mistake, gifted him a deer-hunting rifle. Years later, Range tried to buy a firearm and was rejected again. After researching the reason for the denial, Range learned he was barred from buying a firearm because of his 1995 conviction. Range then sold his deer-hunting rifle to a firearms dealer. What did he do next?

00:48:47

Larry

Well, Range did what I recommend people do. He sued in United States district court for the eastern district of Pennsylvania seeking a declaratory judgment that this section we're going to refer to as just 9 22 G, violates the second amendment as applied to him. He also requested an injunction prohibiting the law's enforcement

against him. Range asserted that, but for a 922 G, he would for sure purchase another deer hunting rifle and maybe a shotgun for self-defense.

00:49:19

Andy

I see that Range and the government cross-moved for summary judgment and I know that this is your favorite. You are a big fan of summary judgment.

00:49:29

Larry

Well, not a big fan because it can be an appropriate maneuver. But in most cases, we end up regretting it. In this case, it worked to Range's advantage because the government did not carry its burden of proof. And because of it being a second amendment, the government had a burden of proof here.

00:49:51

Andy

The District Court granted the Government's motion. Faithfully applying our then-controlling precedents, the Court held that Range's crime was serious enough to deprive him of his Second Amendment rights. In doing so, the Court noted the two-step framework we established in *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010). What was that framework?

00:50:20

Larry

That framework, as exists, was whether the conviction was classified as a misdemeanor or felony, number one. Number two, whether the elements of the offense involve violence. Number three, the sentence imposed. Number four, whether there was a cross-jurisdictional consensus as to the seriousness of the crime. And number five, the potential for physical harm to others created by the offense.

00:50:44

Andy

I see the government conceded that four of the five factors favored Range because he was convicted of a nonviolent, non-dangerous misdemeanor and had not been incarcerated. While Range's appeal was pending, the Supreme Court decided *New York State Rifle and Pistol Association v. Bruin* 142. I don't know what "S and then CT is"?

00:51:05

Larry

Supreme Court.

00:51:07

Andy

Oh, what? Ok. I can't say SCOTUS, but they can write Supreme Court this way. A panel for the Third Circuit affirmed the district court's summary judgment, holding the government had met its burden to show that subsection 922 G paragraph one reflects the nation's historical tradition of firearm regulation such that Range's conviction places him outside the class of people traditionally entitled to Second Amendment rights. What is a law-abiding citizen?

00:51:35

Larry

Well, according to the court, the phrase law-abiding responsible citizen is as expansive as it is vague. Who are law-abiding citizens in this context. Does it exclude those who have committed summary offenses such as petty misdemeanors which typically result in a ticket and a small fine? They go on to say we are confident that the Supreme Court's references to law-abiding responsible citizens do not mean that every American who gets a traffic ticket is no longer among the people protected by the second amendment. Perhaps, then the category refers only to those who commit real crimes like felonies or felony equivalents.

00:52:18

Andy

The court stated, "Having determined that Range is one of the people, we turn to the easy question: whether § 922(g)(1) regulates Second Amendment conduct. It does. Range's request to possess a rifle to hunt and a shotgun to defend himself at home tracks the constitutional right as defined by Heller. The Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding."

00:52:48

Larry

They held that "because Range and his proposed conduct are protected by the Second Amendment, we now ask whether the Government can strip him of his right to keep and bear arms. To answer that question, we must determine whether the Government has justified applying § 922(g)(1) to Range by demonstrating that it is consistent with the nation's historical tradition of firearm regulation. We hold that the Government has not carried its burden."

00:53:25

Andy

The government argued that weapon forfeiture was common back in colonial times. The court noted that founding era laws often prescribed the forfeiture of the weapon used to commit a firearms-related offense without affecting the perpetrator's right to keep and bear arms generally. I think I'm starting to see the potential here. The court appears to have decided that the second amendment prevents a lifetime ban simply by using the categorical approach.

00:53:50

Larry

I knew that you were gonna connect the dots. I knew you were going to. I have that confidence. The court noted that Range's crime of making a false statement on the application for food stamps did not involve a firearm. So, there was no criminal instrument to be forfeited. And even if there were, government confiscation of the instruments of crime for a convicted criminal's entire life differs from the status-based lifetime ban on firearm possession. So, you take the weapon or the instrument that they used at the time, but you don't tell them like sometimes people forfeit their vehicle, but you don't tell them you can never own another vehicle. And that's what this law does. But anyway, the government has, they go on to say the government has not cited a single statute or case that precludes a convict who has served his

sentence from purchasing the same type of object used to commit a crime. Nor has the government cited forfeiture cases in which the convict was prevented from regaining possessions, including firearms except forfeiture, precluded execution. I mean, if they executed you, you probably didn't get your stuff back. And so, I'm optimistic that we can make this type of argument for those on the registry. Since the Adam Walsh Act prescribes a categorical approach to PFRs, the logic would be that a person who has had nonconsensual sex with an adult poses no threat to children. Thus, a lifetime deprivation of basic constitutional rights is not appropriate as applied to those certain categories.

00:55:31

Andy

But that means such a challenge would also then leave some behind. Yeah, you would totally not. It's not gonna wipe out the whole registry in one fell swoop by doing that.

00:55:40

Larry

It is not. But once we chip this away, if we can apply this logic and say, "Wait a minute guys, we've just got this decision from the US Supreme Court. The Third Circuit has interpreted it to mean that a lifetime forfeiture of a fundamental constitutional right can't be done." Then we can make a similar argument that one of the most fundamental rights you have, I would say would be to travel, to have relationships with people. You want to bear children, to raise a family and you can't. A PFR in Alabama that had nothing to do with children when their PFR offense was committed, and then to ban them from having a child and having like that statue in Alabama that's under challenge right now by an attorney out of North Carolina that's handling that challenge.

This is good stuff, potentially, in my opinion, that we can launch additional litigation based on the reasoning of this case. That's why I wanted to talk about it.

00:56:42

Andy

And that challenge is what? What's the summary of that challenge in Alabama? Is that somebody that is convicted of a PFR offense? And then now having a child and they're going to tell them they can't be with that child?

00:56:51

Larry

Yes, Alabama replicated the Tennessee law that requires that you can't live with minors if you're on the PFR list. And Alabama has a similar statute. Paul Dubbeling has launched a challenge. I don't know the exact status of it. I'm sure we will be hearing more about it in about a week and a half in Houston when he speaks. But that is really obvious to me that this same logic would apply.

00:57:20

Andy

That does sound reasonable. Where would you want to go with something like this? What would be the lowest hanging fruit? Would it be something like that where an adult did something with another adult and then they bar them from having contact with children and it's not related?

00:57:36

Larry

That's where I'd want to start. I would not want to end there, but I would want to start there with something that's got a person on the registry that had nothing to do with a minor. It could be indecent exposure. It could be even nonconsensual sex with another adult because that doesn't endanger a minor. And I'd like to make the argument that, "Well, just because you had nonconsensual sex when you were 22 with a 21-year-old, that you pose a threat to children now that you're 45?" I don't see how they could make that connection.

00:58:12

Andy

Same if you have a non-internet-related crime and then they clamp down on your internet usage.

00:58:17

Larry

Correct.

00:58:19

Andy

Very good. Well, all right. You've taken one that's pretty off in the wilderness somewhere and kind of brought it back to where it has some semblance of focus. Larry. I appreciate the good job.

00:58:31

Larry

Well, I saw it posted on the affiliate list and I saw it on the national criminal defense lawyers. People were hopeful that this would be used for us. I didn't see anybody on the national defense lawyers list opine what I just did, but I think there's something to work with here.

00:58:47

Andy

Do you ever post anything like that? You're posting and opining on the national, the NACDL list. Did you ever do that?

00:58:54

Larry

I ask a question occasionally. I don't post anything unless I'm answering a question for someone because since I don't hold that precious admission card, I feel that people would say, "who is he to think he is to start telling us about the law?"

00:59:12

Andy

I have an idea, Larry. And I mean, you already write for the NARSOL Digest, but perhaps you could write like a legal blog. Because there's a Scotus blog out there. The person that writes that maybe they have an attorney kind of degree, but they're not an attorney. So, you could set up a site or some sort of platform where you speak about these things from your expertise as a, I mean, layperson, not layperson, you could totally do that and not get nailed for it. Go, "Hey, look, I'm not an attorney. Piss off. This is just my opinion."

00:59:50
Larry
I could do that, but I want to put the Social Security YouTubers out of business first.

00:59:55
Andy
Yes, I know that you're hell-bent on knocking out the Social Security people and now AI is about to hang up the line. So, don't talk about Social Security anymore. Well, all right then. Is there anything else before we shut this father down?

01:00:12
Larry
Nothing other than maybe promoting the conference, the live stream that you're gonna be managing for NARSOL?

01:00:17
Andy
Oh, yeah. Oh, yeah. There is the conference. Go to NARSOL.org and you'll find links there. Probably conference.narsol.org would also get you directly there. It's a three-ish day extravaganza of all kinds of stuff related to registry with different speakers. Do you know who would be a speaker that you think will be interesting for you to hear? I always love hearing Emily Horowitz. I think she's fabulous.

01:00:42
Larry
I was gonna mention Emily and Paul is a very good speaker, Paul Dubbeling that is. He really inspires people.

01:00:51
Andy
Well, very good, sir. And that is on the, when does that start? That starts next Friday the 23rd, not, not the 16th, but the one after the 23rd is when that starts, there's a social on the 22nd, then it runs Friday, Saturday and Sunday. So if you see the goofy dude running all the computer stuff and jumping between the rooms, that's probably me.

01:01:12
Larry
That sounds good. And I'm planning on being there.

01:01:16
Andy
You are. So, you're not gonna bail out this year. You bailed out last year.

01:01:20
Larry
This year. I'm going to do my best.

01:01:22
Andy
What would prevent you from going this year? An outbreak of another COVID kind of thing.

01:01:29
Larry
Probably. That would be one thing, but just the pain management I'll continue to deal with, but I'm gonna probably make it. Odds are very good.

01:01:39
Andy
Very good. Oh, someone said, to make sure you bring your showerhead and a fan, right?

01:01:43
Larry
I will definitely bring the showerhead, the fan is gonna be harder to bring,

01:01:47
Andy
But you'll buy one on site. I won't have a car this time. So, we'll get you a fan. We'll go to Walmart or something and get you a fan.

01:01:55
Larry
If I need one, I will get one.

01:01:57
Andy
Very good Larry, I appreciate all of it. Make sure you go over to registry matters.co to find the links to everything and please support the program over at patreon.com/registry matters. And if you are not so inclined, make sure you press like and subscribe and give a thumbs up and leave a review. Those things also are ways that you can help in a non-monetary fashion, and they are also appreciated. And if that's all Larry, I hope you have a great rest of your weekend, and I will talk to you soon.

01:02:28
Larry
Goodbye.

01:02:32
Announcer
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