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US Judge Halts Imposition of Registration Requirement on Parolee With No Sex-Offense Record

By [Colby Hamilton](/author/profile/Colby-Hamilton/) | January 15, 2019 at 02:04 PM

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U.S. District Judge Alison Nathan. Photo: Rick Kopstein/ALM

A man with no record of sexual misconduct who nevertheless had been required to register as a sex offender under New York state law has won a preliminary injunction from a Manhattan federal judge based on his substantive due process claim.

Equan Yunus Sr. has been forced to register since being released from state prison in 2016 under New York's Sex Offender Registration Act, even though his criminal record is devoid of sexually based offenses. As such, he's faced limitations on where he can live and travel, what he can do on the internet—even whether he can own a pet.

He has challenged the situation in federal court, arguing that the sex offender registration status is a violation of his constitutional rights. His legal battle, which began as a pro se application, cleared a major hurdle recently when U.S. District

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Judge Alison Nathan of the Southern District of New York imposed a preliminary injunction against application of SORA in Yunus' case.

"Labeling individuals as sex offenders when their crimes are not sexual actually risks undermining the usefulness of the registry created to effectuate SORA's purpose," Nathan wrote. "These significant harms to plaintiff and the risk that labeling him as a sex offender actually undercuts public safety further support the conclusion that SORA as applied to plaintiff lacks rational basis."

Yunus pleaded guilty in 2002 to two counts of kidnapping for ransom. It happened that one of the victims was a boy under 17 years of age, and was not his child. SOAR dictates that a conviction for kidnapping under the above conditions is designated as a sex offense—regardless of whether any sexual misconduct was alleged or proven.

Upon his release from prison, Yunus was forced to register at the lowest level. At the SORA hearing, the presiding judge found there was virtually no likelihood he would ever commit a sex crime, the district court found.

Nathan referred motions by both sides to U.S. Magistrate Judge Barbara Moses for a report and recommendation. Despite objections, the district court agreed with the most substantive portions of the report, which allows Yunus' constitutional claims to go forward.

While Nathan agreed with Moses that Yunus' procedural due process claim should be dismissed as a matter of precedent, the court also agreed with Moses that the legislative intent of SORA bore no rational relationship to designating Yunus as a sex offender. The state's argument that the designation was rational to prevent sex offenders from "slipping through the cracks" and protecting minors more generally also were unavailing.

Yunus is now represented by Emery Celli Brinckerhoff & Abady name attorney Andrew Celli and associate David Berman. In a joint statement, the attorneys praised Nathan's decision as "just and fitting."

"In upholding the report and recommendation of Magistrate Judge Barbara Moses, Judge Nathan applied the due process clause in this case faithfully and with rigor. Her ruling upholds the fundamental constitutional principle that the punishment must fit the crime," the pair said. "Equan Yunus is, today, a law-abiding and productive member of society. It is our honor to represent him."

A spokeswoman for Attorney General Letitia James, whose office is handling the case for the state defendants, did not respond to a request for comment.

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