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IN THE SUPREME COURT OF THE UNITED STATES

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LESTER RAY NICHOLS, :

Petitioner : No. 15-5238

v. :

UNITED STATES. :

- - - - - x

Washington, D.C.

Tuesday, March 1, 2016

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:13 a.m.

APPEARANCES:

DANIEL T. HANSMEIER, ESQ., Kansas City, Kan.; on behalf of Petitioner.

CURTIS E. GANNON, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of Respondent.

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P R O C E E D I N G S

(10:13 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case No. 15-5238, Nichols v. United States.

Mr. Hansmeier.

ORAL ARGUMENT OF DANIEL T. HANSMEIER

ON BEHALF OF THE PETITIONER

MR. HANSMEIER: Mr. Chief Justice, and may it please the Court:

Until three weeks ago, a sex offender who moved to a foreign country was not subject to any Federal registration requirement in the United States unless and until he returned to the United States. Below, the Tenth Circuit nonetheless held that it is a Federal crime for a sex offender who moves to a foreign country to fail to -- to report that move. The Tenth Circuit was wrong for three overarching reasons. First, SORNA's text does not include a requirement to unregister.

Second, SORNA's statutory history reveals that if Congress wanted to include a requirement to unregister, it would have done so just as it did before SORNA's enactment. And finally, a requirement to unregister is unnecessary because all 56 jurisdictions

1 require sex offenders to unregister. Failure to do so
2 is a violation of the jurisdiction's law and not Federal
3 law.

4 JUSTICE GINSBURG: That would be true of
5 Kansas law in this case. It would have violated the
6 Kansas law. Is that true?

7 MR. HANSMEIER: He had an -- he had a
8 requirement to tell Kansas of his departure, correct.

9 JUSTICE GINSBURG: How does it work
10 normally? Say a person under SORNA leaves Kansas and
11 goes to Illinois and registers in Illinois. Is there
12 any obligation, one, for him to register or deregister
13 in Kansas, and does Illinois have an obligation to
14 notify Kansas?

15 MR. HANSMEIER: Correct. So what happens in
16 practice is that SORNA sets minimum Federal standards.
17 And those minimum Federal standards are supplemented by
18 the States, the additional, more stringent requirements.
19 One of those more stringent requirements is the
20 obligation to unregister, and, yes, Kansas has that
21 obligation.

22 So in your hypothetical, Justice Ginsburg,
23 that individual has to unregister in Kansas under State
24 law, and when he gets to Illinois, that's the Federal
25 requirement to tell Illinois -- to register, to update

1 the registration in Illinois because that's the
2 jurisdiction where he resides. And in Illinois under
3 16921(b) (3) will tell -- will tell Kansas of the -- of
4 the move.

5 JUSTICE GINSBURG: And this is in addition
6 to the -- the other venues.

7 MR. HANSMEIER: If there are any, correct.

8 JUSTICE GINSBURG: So it would be both
9 Federal and a State requirement. But in one case, it's
10 on the SORNA person and the other, it's the other State.

11 MR. HANSMEIER: I think that's correct, yes.

12 JUSTICE ALITO: Under --

13 CHIEF JUSTICE ROBERTS: What sense does it
14 make if you have Federal law that says we're going to
15 add this -- these -- these sanctions when you violate
16 the -- the State law? And in the one case, if you don't
17 register, you're triggered and State law says, well,
18 you've got to unregister too. But if you unregister --
19 if you don't unregister, that's not included under the
20 Federal law? Why would -- why would Congress draft a
21 law like that?

22 MR. HANSMEIER: Well, I -- I think they
23 would have done that because -- and if you look at the
24 legislative history, I think this is somewhat clear.
25 What Congress was concerned about were missing sex

1 offenders not at initial registration but when -- when
2 the sex offender crossed State lines. So -- so by -- by
3 requiring registration when you get to the jurisdiction,
4 that -- that was the aim because that's when offenders
5 were going missing.

6 Now, the -- the departure jurisdiction would
7 be a relationship between -- very much a relationship
8 between the State and its citizens. And that -- that's
9 played out if you think of a State sex offender who
10 could live in Kansas. And if he were to have a Federal
11 requirement to unregister in Kansas, that's actually not
12 enforceable under SORNA because the travel has to come
13 after or before he's -- he can't register.

14 So if Mr. Nichols were a State sex offender
15 and -- he's only committed an offense when he leaves
16 Kansas. And that doesn't -- and that's a problem if
17 we're saying that there's a Federal requirement to
18 unregister in -- in the departure jurisdiction. Now,
19 that may work for Federal offenders, but I think the
20 idea is that there are Federalism concerns underlying
21 SORNA. And those Federalism concerns come into play
22 when an individual crosses State lines, and that's the
23 minimum requirement in SORNA.

24 CHIEF JUSTICE ROBERTS: Well, but there's no
25 problem to require him to register, but all of a sudden

1 there is a problem to require him to unregister?

2 MR. HANSMEIER: Well, it's not a problem.
3 It's just SORNA left it to the States.

4 CHIEF JUSTICE ROBERTS: They left the
5 unregistering to the States but not the registering?

6 MR. HANSMEIER: Not a -- not the updating
7 the registration in a new State, correct.

8 JUSTICE SOTOMAYOR: I'm curious. You
9 responded to Justice Ginsburg that he did violate State
10 law. Could the United States have asked for an
11 extradition based on the State law violation? Is this a
12 permanent hole or did they just pick the wrong law to
13 seek extradition under?

14 MR. HANSMEIER: Well, Justice Ginsburg's
15 example was interstate travel.

16 JUSTICE SOTOMAYOR: No, no, no. I'm saying,
17 they asked him to be --

18 MR. HANSMEIER: But you're talking --

19 JUSTICE SOTOMAYOR: -- returned from --
20 where had he fled to? Philippines.

21 MR. HANSMEIER: Mr. Nichols moved --

22 JUSTICE SOTOMAYOR: Under the SORNA
23 violation --

24 MR. HANSMEIER: Correct.

25 JUSTICE SOTOMAYOR: -- could they have asked

1 for him to be returned under the State law violation?

2 MR. HANSMEIER: There's actually a provision
3 in SORNA, I think it's 19 -- 16917, which requires
4 Federal -- the marshals, Federal officials to assist the
5 States in enforcing the registration requirement.

6 JUSTICE SOTOMAYOR: So is that a yes?

7 MR. HANSMEIER: I think yes.

8 JUSTICE SOTOMAYOR: So really what we're
9 talking about is that they asked for the extradition
10 under the wrong law.

11 MR. HANSMEIER: I think that's exactly
12 right. And -- and Mr. Nichols was also on Federal
13 supervised release, so there was a connection there that
14 -- the connection to the Federal aspect of it was his --
15 was his supervision.

16 JUSTICE GINSBURG: Did leave -- did leaving
17 the country without notice violate the terms of his
18 supervised release?

19 MR. HANSMEIER: It did. And he was -- his
20 supervised release was revoked. He -- he received a
21 ten-month sentence for that. And then they still
22 prosecuted him Federally, and he got another six-month
23 sentence.

24 JUSTICE KENNEDY: Are you -- it's mentioned
25 in one -- one of the briefs -- I don't have the

1 reference to it --

2 JUSTICE ALITO: Yeah.

3 JUSTICE KENNEDY: -- at hand. What would
4 happen if he decides he's -- and this is all just within
5 the United States, no foreign travel -- he decides that
6 he wants to move to the West Coast, so he checks out of
7 Kansas. But he's not sure where he wants to live, so he
8 drives to Washington, Oregon, California, takes two
9 weeks. What would the requirement for registration be
10 there?

11 MR. HANSMEIER: Right. Well, I think it
12 gets a little confusing with the interstate travel
13 because we don't really address it because there is a
14 jurisdiction. There is an arrival jurisdiction. I
15 think under our rule, what 16913(c) says is that you
16 don't unregister. You -- you register in the arrival
17 jurisdiction. Now, there may be --

18 JUSTICE KENNEDY: But the arrival
19 jurisdiction is not your residence yet. He doesn't know
20 what it's going to be. He's just there two days. And
21 he's going to go two days, and he's going to look
22 around.

23 MR. HANSMEIER: Well, I -- I think SORNA
24 doesn't do a good job of this. The definition of --
25 they define "resides" as the location of one's home or

1 the location where one habitually lives. And so I do
2 think that SORNA does not do a good job of this, but I'm
3 not sure that that wasn't unintended. Because if you
4 think about the -- the -- the window, the
5 three-business-day window --

6 JUSTICE KENNEDY: Yes.

7 MR. HANSMEIER: -- that -- that actually
8 creates a system where an individual is not on the
9 registry for a certain amount of time. If you think of
10 a change of name, which you have to report, if you have
11 three business days to do that, there is going to be up
12 to five days where that registry is inaccurate, and
13 that's just the way it is.

14 So I think, although we might not want to
15 admit it or -- but the -- the reality is that SORNA
16 actually creates these gaps by allowing offenders some
17 period of time to register. And I think Congress did
18 that because it knew the States could supplement SORNA.
19 These are just minimum standards.

20 JUSTICE ALITO: You have a textual argument
21 that I -- that I understand, but one of the arguments
22 you mentioned at the outset was that an examination of
23 the legislative history shows that Congress intended to
24 produce the sort of result that was produced here, and I
25 wonder if that's really a plausible argument.

1 If you're correct, then two things happen;
2 at least two things happen. One, Kansas retains on its
3 record an inaccurate -- inaccurate information about the
4 presence of a sex offender, which can have a lot of
5 adverse consequences for a lot of people. I don't see
6 why Congress would have wanted that to remain.

7 And do you really think Congress was
8 unconcerned about the United States exporting pedophiles
9 to the Philippines or to other countries? Do you think
10 that -- that they were not concerned about not only the
11 human rights implications of that, but our relations
12 with other countries?

13 MR. HANSMEIER: Well -- well, I think if you
14 look at the legislative history, there -- there's
15 nothing to indicate that -- that SORNA in 2006 had
16 anything to do with international travel. And I think
17 the new legislation is important in this regard, because
18 whether -- I don't -- I don't know that I said
19 "intended." If I said that, I didn't mean it. I think
20 the -- the history of it shows more or less that in
21 1996, each State had a registration system. One year
22 later, Congress required departure notification,
23 required unregistration. By 2006, that had happened in
24 all the jurisdictions.

25 So I think what I mean by the "statutory

1 history" is that that's -- that's an indication why
2 there was no unregistration requirement put in SORNA,
3 because it existed in all the jurisdictions.

4 JUSTICE ALITO: Well, if I could then come
5 back to Justice Ginsburg's hypothetical of someone like
6 your client who moves from Kansas to Illinois, what, in
7 the language of the statute, would prevent that person
8 from going to the registry office in Kansas before
9 departing and reporting there that he was moving to
10 Illinois and his new address in Illinois would be
11 whatever it would be? Why does that not fit under this
12 -- under the language of the statute? Or would you
13 agree that it does?

14 MR. HANSMEIER: Well, I would agree that
15 there's nothing that prevents him from doing that, and I
16 would agree that he should do that under State law,
17 but --

18 JUSTICE ALITO: Well, if you -- if you agree
19 to that, then I don't see why -- why there is a
20 difference between that situation and the situation
21 where the -- the person leaves Kansas and goes to the
22 Philippines.

23 MR. HANSMEIER: Well, what -- but I don't
24 agree that it's a -- it's sufficient or a Federal
25 requirement to do it before. That -- I think that's the

1 distinction I would make --

2 JUSTICE ALITO: Why would it not be --

3 MR. HANSMEIER: -- it's not a requirement.

4 JUSTICE ALITO: Why would it not be

5 sufficient under 42 U.S.C. 16913(c)?

6 MR. HANSMEIER: Well, because that provision

7 is still going to require -- and the government, I

8 think, agrees with this. There is still a -- the -- the

9 requirement is to report in the arrival jurisdiction.

10 JUSTICE ALITO: Well, it says, "shall not,

11 later than three business days after each change of

12 residence, appear in person in at least one jurisdiction

13 involved pursuant to subsection (a) and inform that

14 jurisdiction of the change of address."

15 So prior to leaving, he is within the period

16 of not later than what -- than three business days after

17 the change of residence. And at that time when he goes

18 to the registry office in Kansas, he is residing in

19 Kansas. So he falls within subsection (a).

20 MR. HANSMEIER: Well, this is on -- the text

21 is on page 11A of the blue book. I think -- I think

22 what's -- the blue brief. I think what's important

23 is -- is if you looked directly above subsection (c) to

24 subsection (e), I think this is what you're really

25 saying Congress did. Subsection (b) sets forth two

1 subsections, the first of which begins with the word
2 "before." The second of which begins with the phrase
3 "not later than three business days after."

4 So I think if Congress had meant to do
5 something structurally similar in subsection (c), it
6 would have done it, but it didn't. Instead, it just did
7 "not later than three business days after." And -- and
8 I think the change is a trigger, and I think that's --
9 that's key, and it's similar to subsection (b)(2) where
10 the trigger is being sentenced. And -- and so that
11 event has to happen, that occurrence has to happen
12 before you report it.

13 And so in subsection (c), until the change
14 happens, you can't really report it and satisfy this
15 provision.

16 JUSTICE GINSBURG: But now, under current
17 law, under the 2016 change --

18 MR. HANSMEIER: Right.

19 JUSTICE GINSBURG: -- is it -- it's clear
20 that anyone under SORNA who leaves the country --

21 MR. HANSMEIER: Right.

22 JUSTICE GINSBURG: -- has to give notice --

23 MR. HANSMEIER: Right.

24 JUSTICE GINSBURG: -- to the jurisdiction
25 from which he departs.

1 MR. HANSMEIER: Correct. And the
2 statutory --

3 JUSTICE GINSBURG: So they're talking about
4 only the people who were -- were pre -- pre-2016 people.

5 MR. HANSMEIER: We're talking about a very
6 small subset, I assume, unless the Federal government
7 were to go out and indict a bunch of people who have
8 traveled prior to February 8th for this.

9 JUSTICE KENNEDY: What bearing on your
10 argument does the last sentence at the bottom of 11(a),
11 the last sentence of C have? That jurisdiction, in
12 other words, the jurisdiction where he registered, shall
13 immediately provide that information to all other
14 jurisdictions in which the defendant is required to
15 register. Here, there were none.

16 MR. HANSMEIER: Well, correct. And -- and
17 typically, there may not be. But that -- that language,
18 I think, captures the defendant -- for instance, where
19 we come from, a lot of people live in Kansas and work in
20 Missouri. That -- that sentence would capture that
21 situation where there is a -- or a -- an -- an
22 employment jurisdiction that's different than a
23 residence jurisdiction. Then the employment
24 jurisdiction would notify the residence jurisdiction or
25 vice versa.

1 JUSTICE KENNEDY: My question was, does --
2 does this have significant relevance to your argument
3 here?

4 MR. HANSMEIER: Does it help?

5 JUSTICE KENNEDY: Yes.

6 MR. HANSMEIER: I -- I don't think it -- I
7 just think it's how it's -- I don't know that it helps.
8 It's --

9 JUSTICE GINSBURG: There was a reference to
10 a form that everyone under SORNA signs that acknowledges
11 a requirement to register on commencement change,
12 termination of residence, and give 21 days notice before
13 traveling outside the United States.

14 Nichols signed such a form, did he not?

15 MR. HANSMEIER: He did.

16 JUSTICE GINSBURG: And what you're saying is
17 that that form has no operative effect, the fact that he
18 didn't do what he -- what he undertook to do in the form
19 is not a Federal offense.

20 MR. HANSMEIER: Well, what I'm saying is
21 that that's a State form. That's actually the State of
22 Kansas. So SORNA is implemented by the States. So each
23 State -- there's not some Federal form for sex offenders
24 to sign. There are no Federal registration offices.
25 There are no Federal officials who do these things.

1 This is a local thing. A lot of it is county sheriffs.
2 It would be a State form. Every State would have a
3 different form.

4 So what you are referring to, those are
5 quotation summaries of Kansas law, and not Federal law,
6 because if you're in Kansas, you have to -- you are
7 required to register, to update your registration as
8 required by Kansas law, which is much more in-depth than
9 Federal law. And so that's where that language comes
10 from.

11 JUSTICE GINSBURG: But it's the same
12 register, that is -- you said there's no separate
13 Federal entity. So all these requirements in SORNA
14 would be satisfied by informing the State office. Is
15 that --

16 MR. HANSMEIER: Well, I'm saying, in
17 practice, that's what has to happen. There's no Federal
18 person you can tell. You register with the State
19 people.

20 JUSTICE SOTOMAYOR: I find interesting the
21 new legislation. As I see it, it's getting away from
22 where you reside or anything else. It just says if
23 you're going to travel to a foreign place, you have to
24 tell the United States, correct?

25 MR. HANSMEIER: Yes.

1 JUSTICE SOTOMAYOR: Is there anything in
2 that -- in that law that requires the U.S. to tell the
3 State the person's left -- that they've left?

4 MR. HANSMEIER: I think there is a provision
5 for that.

6 JUSTICE SOTOMAYOR: I didn't -- I didn't
7 have a complete chance to go through it.

8 MR. HANSMEIER: I don't know that that
9 provision made its way into the -- the government's
10 supplemental brief.

11 Yes. I think at (4)(a), if I'm reading this
12 correctly, there's an implementation provision.

13 JUSTICE SOTOMAYOR: So the problem at issue
14 here has been completely resolved by new legislation?

15 MR. HANSMEIER: Oh, I think that's
16 absolutely true. I think if there -- whether there was
17 a gap or not, whether it was intended or not, the bottom
18 line is that it's gone away. And there -- there's no
19 reason to take an atextual interpretation of 16913(c).

20 I -- I do want to mention something this
21 Court said in Reynolds, because I think this Court is on
22 the same path as us. Reynolds was the second SORNA case
23 that the Court heard. And there was -- there's a point
24 in Reynolds in which the Court is talking about the
25 defendant, and it says -- it says that he was in prison,

1 he was released, he registered in Missouri, but he moved
2 to Pennsylvania. And it says "without updating his
3 Missouri information," and then this Court puts in
4 parentheses, "as Missouri law required and without
5 registering in Pennsylvania." Then it goes on to talk
6 about how the failure to register in Pennsylvania is a
7 16139(c) offense. That's our position. And I think
8 this Court -- you said it in Reynolds. It had nothing
9 to do with the holding. But I -- I do think that's --
10 that's in this Court's mind, at least.

11 And -- and I do want to note that the
12 government's reading defining the supplemental
13 jurisdiction is one where the defendant appears as a
14 resident on the -- on -- on a registry creates a really
15 weird situation where Mr. Nichols, when he lived in the
16 Philippines, because he still appeared on the Kansas
17 registry, under SORNA, he still lives there. He still
18 resides there. And that's just not right under the
19 statute and the way SORNA defines "resides." And it's
20 just not right as a matter of common sense. You don't
21 reside in Kansas when you actually live in the
22 Philippines.

23 And with that, if there are no further
24 questions, thank you.

25 CHIEF JUSTICE ROBERTS: Thank you, counsel.

1 Mr. Gannon.

2 ORAL ARGUMENT OF CURTIS E. GANNON

3 ON BEHALF OF THE RESPONDENT

4 MR. GANNON: Mr. Chief Justice, and may it
5 please the Court:

6 SORNA required Petitioner to register and to
7 keep his registration information current. This is not
8 an unregistration requirement, but a requirement to keep
9 his registration current in the jurisdictions where he
10 was registered by timely giving notice of any change of
11 residence to at least one jurisdiction involved.

12 And we disagree with Petitioner. We think
13 Kansas was a jurisdiction involved pursuant to
14 subsection (a) here, both because of the meaning of that
15 phrase, which is more capacious than just taking down
16 the phrase that appeared in subsection (a), and also
17 because it's reinforced by Section 16921(b)(3).

18 JUSTICE KENNEDY: Is it your position that
19 he was required to notify Kansas both that he was
20 terminating his residence and that he was moving to the
21 Philippines, or just that he was terminating his
22 residence?

23 MR. GANNON: Here it's just that he's
24 terminating his residence. He could have given
25 information about where he was going.

1 JUSTICE KENNEDY: But he was not required
2 to?

3 MR. GANNON: But that is -- that is not what
4 he was being required to do here. He was being required
5 to keep his registration information current by saying
6 where he will -- where -- where he is residing, and he
7 will -- he is no longer going to be residing here.

8 The phrase that --

9 JUSTICE KENNEDY: I -- I think your answer
10 was clear, but I didn't understand it.

11 Would it -- in your view --

12 MR. GANNON: The --

13 JUSTICE KENNEDY: -- would it have been
14 compliant with SORNA simply to say I am leaving Kansas,
15 period?

16 MR. GANNON: That would have complied with
17 his obligation to keep his registration information
18 current with the jurisdiction involved, yes.

19 The -- we do think that Section 16914(a)(3)
20 allows him to report where he resides or will reside,
21 and therefore, he can report future information, and
22 therefore, the guidelines, promulgated by the Attorney
23 General in 2008, says that normally when somebody's
24 moving from one jurisdiction to another jurisdiction, he
25 should tell Kansas, I am leaving Kansas and this is

1 where I'm going next, so Kansas can give that other
2 jurisdiction warning.

3 JUSTICE KENNEDY: But the -- the Philippines
4 is not a jurisdiction under the statute.

5 MR. GANNON: That's correct. And so what we
6 think is key here is that Kansas is still a jurisdiction
7 involved pursuant to subsection (a). Congress didn't
8 say a jurisdiction described in subsection (a); it said
9 a jurisdiction involved pursuant to subsection (a).

10 CHIEF JUSTICE ROBERTS: Well, all right.
11 How is that the case since subsection (a) refers to each
12 jurisdiction where the offender resides, is an employee
13 or a student? When he's in the Philippines, there's no
14 such jurisdiction covered by SORNA where he resides, is
15 an employee, or is a student.

16 MR. GANNON: That's correct, Mr. Chief
17 Justice, but we think that that's not the only thing
18 that is pulled in by the phrase, "jurisdiction involved
19 pursuant to subsection (a)." He is required to register
20 while he's a registrant in Kansas. He's required to
21 keep --

22 CHIEF JUSTICE ROBERTS: But how is that --

23 MR. GANNON: At --

24 CHIEF JUSTICE ROBERTS: Where is under (a)
25 something that says it's the jurisdiction where you used

1 to be required to register?

2 MR. GANNON: It's -- it's the part that says
3 he has to keep the registration information current.
4 And subsection (c) informs us what it means to keep the
5 registration --

6 CHIEF JUSTICE ROBERTS: But where --

7 MR. GANNON: -- information current. That's
8 further down on the page. This is page 7A of the
9 government's brief.

10 CHIEF JUSTICE ROBERTS: Well, but he only
11 has to keep the registration current if there is a
12 jurisdiction where he -- covered jurisdiction where he
13 resides, is an employee or is a student.

14 MR. GANNON: Well.

15 CHIEF JUSTICE ROBERTS: Otherwise that
16 obligation is inoperative because there's no
17 registration place in the Philippines.

18 MR. GANNON: Well, we -- we disagree that
19 Kansas is not a -- is not a jurisdiction involved. But
20 even if it were not such a jurisdiction, subsection (c)
21 requires him to give notice to at least one
22 jurisdiction. And as Justice Alito has already
23 explained --

24 CHIEF JUSTICE ROBERTS: Well --

25 MR. GANNON: -- it is also the case here

1 that he could have complied with that by giving the
2 notice before he left Kansas --

3 CHIEF JUSTICE ROBERTS: Well, right.

4 MR. GANNON: -- when he was in dispute --

5 CHIEF JUSTICE ROBERTS: But he doesn't have
6 to comply with it until later than three business days
7 after there's a change.

8 MR. GANNON: That's not --

9 CHIEF JUSTICE ROBERTS: So he --

10 MR. GANNON: He doesn't --

11 CHIEF JUSTICE ROBERTS: Shall not later than
12 three business days after each change? That's not true?

13 MR. GANNON: It is true that he has to
14 comply with it not later than three business days. He
15 doesn't have an option of just not doing it. And so if
16 he can't comply with it on business day one or business
17 day two or business day three thereafter, then maybe he
18 should have complied with it by informing Kansas before
19 he left.

20 The --

21 CHIEF JUSTICE ROBERTS: Well, maybe he
22 should have. Maybe he should have. But he may also
23 have thought, when it says at least one jurisdiction
24 involved pursuant to subsection (a), and subsection (a)
25 says where he resides, then maybe there's no

1 jurisdiction involved under --

2 MR. GANNON: But --

3 CHIEF JUSTICE ROBERTS: -- under the --

4 MR. GANNON: It does say where he resides.

5 But it also says he has to keep the registration
6 information current there. And we think that Section
7 16921 --

8 JUSTICE KENNEDY: Current where?

9 MR. GANNON: In -- in the jurisdictions
10 where he has been registered, where he is residing, and
11 --

12 JUSTICE KAGAN: But it is current.

13 MR. GANNON: -- and --

14 JUSTICE KAGAN: It is current at all the
15 time in which he resides there.

16 MR. GANNON: That is true. I -- I certainly
17 take the point. But we think that Congress is using a
18 more capacious phrase in subsection (c) when it says,
19 "jurisdiction involved pursuant to subsection (a)."
20 Kansas is inescapably involved because he has been
21 registered there. And we think that this is reinforced
22 by Section 16921(b) (3) --

23 JUSTICE KAGAN: Well, then, you're just
24 reading pursuant to subsection (a) out of the statute.

25 MR. GANNON: No. I'm reading it to mean

1 something --

2 JUSTICE KAGAN: Excuse me, Mr. Gannon.

3 It tells you exactly what it means to be a
4 jurisdiction involved. It means a jurisdiction involved
5 pursuant to a particular subsection which focuses only
6 on his current residence. And all the time he was a
7 current resident of Kansas, the registry was accurate.

8 MR. GANNON: I understand that, Justice
9 Kagan, but our view is that this is not the same as
10 saying a jurisdiction described in subsection (a). It's
11 a more capacious word to say it's involved pursuant to
12 subsection (a).

13 We know that Kansas is involved here. And
14 Section 16921(b)(3) makes it clear that Kansas continues
15 to be involved because that's the provision that says
16 that as soon as the new change in residence information
17 is conveyed to at least one jurisdiction, that
18 jurisdiction has to give it to every jurisdiction --

19 CHIEF JUSTICE ROBERTS: Right.

20 MR. GANNON: -- from or to which the change
21 of residence occurs. So --

22 CHIEF JUSTICE ROBERTS: I understand -- I
23 understand your argument about 16914(a)(3), but how
24 many -- what's the -- the penalty for -- the maximum
25 penalty for violating this provision?

1 MR. GANNON: I -- I believe it's ten years.

2 It's --

3 CHIEF JUSTICE ROBERTS: Yeah. I think

4 it's --

5 MR. GANNON: -- for violating the Federal
6 provision.

7 CHIEF JUSTICE ROBERTS: -- ten years.

8 So you think somebody is supposed to look at
9 this and say, should I register? Obviously he doesn't
10 want to register or unregister, whatever it is. And he
11 says, okay, it says "involved," but that's different
12 than described in. And (a) says "jurisdiction where the
13 offender resides," and there's no place to register
14 where I currently resides. And then he's supposed to
15 say, ah, but 16914(a)(3) says "resides or will reside."

16 MR. GANNON: And 6 --

17 CHIEF JUSTICE ROBERTS: That's an awful lot
18 to ask a -- a layperson to parse at the penalty of ten
19 years for being wrong.

20 MR. GANNON: Well, there's --

21 CHIEF JUSTICE ROBERTS: For a registration
22 violation.

23 MR. GANNON: It's -- it's also a State law
24 offense. And he signed notices, as Justice Ginsburg
25 pointed out, explaining that he had an obligation to

1 report the termination of his residence --

2 JUSTICE GINSBURG: Then why wasn't --

3 MR. GANNON: -- to Kansas.

4 JUSTICE GINSBURG: Why wasn't the State
5 violation pursued? So he's in the Philippines, and he's
6 extradited because on the government's reading of SORNA.
7 But he did commit an offense, it's conceded, under State
8 law.

9 MR. GANNON: That's true, Justice Ginsburg,
10 and that's going to be true in virtually every single
11 case of Section 2250.

12 JUSTICE GINSBURG: Why wasn't the
13 extradition sought under that which is clear and certain
14 instead of a -- a provision where there has to be a
15 strained interpretation?

16 MR. GANNON: Well, maybe we should have
17 sought that as well, but we did think we had a strong
18 Federal interest in this particular prosecution for
19 multiple reasons. He was a Federal sex offender. And
20 as the Court has already recognized, the United States
21 has a special interest in ensuring that Federal --

22 JUSTICE BREYER: In your interpretation.
23 Let's look at this. It's the word "involved." And
24 you're saying it means ever involved; is that right?

25 MR. GANNON: No. It means involved at the

1 -- at the point in time during the three business days
2 where the change in residence has happened and needs to
3 be notified. And so we --

4 JUSTICE BREYER: I see.

5 MR. GANNON: -- do think that the
6 sentence --

7 JUSTICE BREYER: In other words, it doesn't
8 mean "ever involved," and it doesn't mean "now
9 involved." It means involved during the three business
10 days where da-da-da-da-da-da-da-da.

11 MR. GANNON: It -- it means --

12 JUSTICE BREYER: And a person is supposed to
13 understand that.

14 MR. GANNON: It --

15 JUSTICE BREYER: In fact, you're supposed to
16 read that into the silence.

17 MR. GANNON: It means --

18 JUSTICE BREYER: Now, that's, to me, a
19 little farfetched, would you say?

20 MR. GANNON: No. I don't think it's
21 farfetched because I think that it means it's involved
22 -- it's a jurisdiction involved in the change.

23 JUSTICE BREYER: It's a jurisdiction --

24 MR. GANNON: It's a --

25 JUSTICE BREYER: -- that was involved.

1 MR. GANNON: No. It's involved in the
2 change in residence because --

3 JUSTICE BREYER: Ah.

4 MR. GANNON: -- we know he's changing from
5 Kansas to somewhere else. And so Kansas is inescapably
6 involved --

7 JUSTICE BREYER: I see. And --

8 MR. GANNON: -- in the exchange of
9 information.

10 JUSTICE BREYER: All right. I'm trying to
11 understand it. It is a jurisdiction that is involved in
12 a special way. It is a jurisdiction that used to be a
13 residence, and it is no longer a residence. And that
14 creates an involvement even after they're no longer a
15 residence.

16 You know, the more I explain it, the less I
17 understand it.

18 (Laughter.)

19 JUSTICE BREYER: That may be my fault,
20 but --

21 MR. GANNON: Well, perhaps it's mine as
22 well. But I think that it's involved because he is
23 still registered there as a resident. And we know that
24 the fundamental purpose of this law, in order to have a
25 sex offender registry, is to provide an accurate listing

1 of where sex offenders reside --

2 JUSTICE BREYER: I'm firmly for purposes,
3 but this one is a -- a little tough, because as I read
4 it, literally, at all, I don't -- I don't get an
5 interpretation -- and you could do the same thing.
6 You're supposed to -- and you seem to be saying that.
7 Look, you said you're supposed -- they're supposed to
8 keep the registration current. Now, maybe there's a
9 requirement somewhere that says when you're thinking of
10 leaving, before you leave, you have to go tell the
11 people before you leave of where you're thinking of
12 going. So then I looked up what you have to have in
13 here, and it says the attorney general can have
14 regulations that would say something like I just said.
15 But I take it there are no such regulations. And I take
16 it when it -- it says, you know, the kinds of things you
17 have to report, I guess. You know, you could get
18 something like that out of it, but you're not arguing
19 that.

20 MR. GANNON: No, we're arguing that he
21 has --

22 JUSTICE BREYER: Yeah.

23 MR. GANNON: -- an obligation to ensure that
24 the information in the registry is current. That the
25 purpose of the registry is to enable to us to have a

1 listing, to have the jurisdiction have a listing of
2 where sex offenders reside, are employed, or are a
3 student. And it has failed in that purpose if it
4 inaccurately says he is living in Leavenworth, Kansas,
5 when that is the one place that he is not living.

6 JUSTICE BREYER: So he's been living for 15
7 years in the Philippines where he is employed. He now
8 changes his employment and he goes to work in Thailand.

9 Now does he have to tell Kansas?

10 MR. GANNON: No, because --

11 JUSTICE BREYER: Why is it? I mean, Kansas
12 was once involved.

13 MR. GANNON: Because -- no. Because Kansas
14 was not a registration where he was listed as being
15 employed. If he were moving his job, his employer --

16 JUSTICE BREYER: Oh, what he's done is he's
17 lived in the Philippines for 15 years, and now he's
18 changed his residence to South Korea.

19 Does he have to tell Kansas?

20 MR. GANNON: No, Justice Breyer.

21 JUSTICE BREYER: But --

22 MR. GANNON: We believe that this
23 requirement is about updating the registration
24 information associated with his residence in Kansas.
25 And we think that Kansas remains involved. So long as

1 the registry says he is living in Leavenworth, Kansas --

2 JUSTICE KAGAN: Mr. Gannon --

3 MR. GANNON: -- and he has not yet given
4 notification to at least one jurisdiction, that that is
5 no longer true.

6 JUSTICE KAGAN: It seems to me that what
7 you're saying is that each of those offenders is
8 supposed to recognize the underlying purpose of the law,
9 which is to have accurate registries, and to do
10 everything he can to serve that underlying purpose. And
11 we would -- you know, it would be good if everybody did
12 that. But the text of the law is something different.
13 And if you look at this text of the law, there's just no
14 way that a reasonable reader reads that text and says it
15 requires me to provide departure notification when I
16 leave to another country.

17 MR. GANNON: Well --

18 JUSTICE KAGAN: So you can say well, he's
19 supposed to keep it current, and -- and that's right.
20 He is -- he should keep it current, because we would all
21 like sex registry. But the statute provides very
22 specific details about what it means to keep it current,
23 and it seems to me he has conformed with every single
24 one of those requirements.

25 MR. GANNON: And we just don't think that's

1 true, because Kansas was a jurisdiction that he could
2 have informed while he was still a resident. That
3 doesn't even require this reading of --

4 JUSTICE KAGAN: You know, he could have, and
5 he should have.

6 MR. GANNON: -- and that would have --

7 JUSTICE KAGAN: But he didn't have to
8 under --

9 MR. GANNON: -- but --

10 JUSTICE KAGAN: -- this statutory language.

11 MR. GANNON: But it is subsection (c) that
12 provides the content for what it means to keep the
13 registration current, and it says you have to inform at
14 least one jurisdiction. He informed zero jurisdictions.
15 That's the problem here.

16 JUSTICE KAGAN: It -- it says he has to have
17 informed at least one jurisdiction involved pursuant to
18 subsection (a), and subsection (a) makes clear that the
19 only jurisdictions that they're talking about are the
20 jurisdictions in which he currently either lives, works,
21 or is a student.

22 MR. GANNON: And that was true the morning
23 before he left Kansas and the morning he was going to
24 move out of his apartment. And he could have said --

25 JUSTICE KAGAN: And that morning --

1 MR. GANNON: -- today is my last day in
2 Kansas; I'm a resident right now, but by the --

3 JUSTICE KAGAN: That morning, everything was
4 current. And then when he left Kansas, he's not subject
5 to this statutory provision anymore.

6 MR. GANNON: He is subject to the provision
7 that requires him to keep it current. He's given a
8 three-business-day grace period, but if he fails to
9 comply with it by the end of the three business days
10 anywhere, that's what we think the problem is. And so
11 we do think that --

12 JUSTICE GINSBURG: You -- you agree --

13 MR. GANNON: -- he could have done it --

14 JUSTICE GINSBURG: -- that the problem has
15 been cured, prospectively.

16 MR. GANNON: I -- I -- I think that the new
17 statute captures this type of conduct, effectively,
18 incidentally, because the new statute actually talks
19 about a much broader category of conduct. It talks
20 about intended international travel. It doesn't -- it
21 doesn't talk per se about changes of residence, but it
22 does require you to report your itinerary and the
23 purpose of your travel. Therefore --

24 JUSTICE GINSBURG: So --

25 MR. GANNON: -- we would expect it to pick

1 up this information.

2 JUSTICE GINSBURG: So -- so who -- who is
3 left out under the new law that would be covered under
4 your reading of the old law?

5 MR. GANNON: I -- I don't think any -- my
6 point is not that somebody is left out under the new
7 law. My point is that the new law captures many more
8 people.

9 JUSTICE GINSBURG: Well, I'm trying to find
10 out what is the effect --

11 MR. GANNON: The --

12 JUSTICE GINSBURG: -- of -- of ruling one
13 way or another. It's a relatively small category, and
14 there is no problem, prospectively. Is that --

15 MR. GANNON: Yes. And we -- we acknowledged
16 in our brief opposing certiorari that we thought that
17 this affected a small category of cases. That was, of
18 course, before the new statute took effect. And so we
19 do think that there will now -- this type of conduct
20 will now be captured under the new statute, but we don't
21 think that the new statute indicates that Congress did
22 not think this conduct was captured under the old
23 statute, because it is directed at a much broader
24 category of conduct.

25 CHIEF JUSTICE ROBERTS: I understood -- I --

1 if I understood you correctly, there is still a category
2 of people under your interpretation today that would not
3 be covered under the new law, because you have to file
4 an itinerary, right?

5 MR. GANNON: Yes.

6 CHIEF JUSTICE ROBERTS: Okay. Well, okay.
7 This person files an itinerary saying I'm flying to
8 the -- the Philippines. And if he takes up residence
9 there, then he's still violating the law, under your
10 interpretation?

11 MR. GANNON: Well, that would be true, Mr.
12 Chief Justice, except that the language that we're
13 talking about here is the new subsection. It would be
14 new 16914(a)(7), and it includes not just the itinerary,
15 but also, the offender has to report the means and
16 purpose of travel. And so we're expecting that the
17 purpose of travel, if it --

18 CHIEF JUSTICE ROBERTS: So if his purpose is
19 I'm going to visit the Philippines, and while there, he
20 decides I'm going to set up permanent residence here,
21 then you would be able to prosecute him under this
22 provision, even though the new law doesn't cover it.

23 MR. GANNON: Well, I think --

24 CHIEF JUSTICE ROBERTS: His purpose is to
25 visit the Philippines. And while in the Philippines, he

1 decides to set up residence there.

2 MR. GANNON: Well, then, I think that
3 would -- that would raise a separate question, and would
4 mean that because his purpose had changed, we would --
5 we would have to find out whether the attorney general's
6 time and manner implementation of this provision, which
7 is also authorized under the new statute, requires him
8 to report such changes in purpose after he's already in
9 the Philippines. And if so, and he doesn't say, well, I
10 thought I was here on vacation, but it turns out I'm
11 moving my residence, so that may well turn out also to
12 be a violation because he needs to report the purpose of
13 his travel has changed.

14 But my point is just that even though
15 Congress has now addressed intended international travel
16 and is expecting this to be reported in advance, as the
17 title of the new statute indicates, and therefore, we
18 wouldn't have to have this debate about whether this is
19 a jurisdiction in which he is currently residing when he
20 says, I intend to fly to the Philippines in 21 days.
21 That debate would -- would be mooted out by the new
22 statute.

23 CHIEF JUSTICE ROBERTS: So you -- you read
24 16913(a) as saying, where the offender resides or
25 resided, is an employee or was an employee, is a student

1 or was a student.

2 MR. GANNON: I don't think that that's the
3 way we're reading the provision, Mr. Chief Justice.
4 We're saying that there are two obligations there: one
5 is to register and the other is to keep the registration
6 current. And if you allow the registry to have
7 inaccurate information, that when it -- where you look
8 up your current address and it's not your current
9 address, then you've violated that obligation. And we
10 think that subsection (c) provides additional
11 explanation as to what it means to keep the information
12 current.

13 And it says, you know what? You don't have
14 to give advance information, advance notice that you're
15 going to be changing your residence. You can do it up
16 to three business days thereafter. But you have to
17 inform at least one jurisdiction involved. And we think
18 that in that situation, especially because another
19 provision of the statute makes it clear that the
20 jurisdictions that are entitled to the information about
21 that change in residence include those from and to which
22 the change in residence is made, they get the
23 information. They are involved --

24 JUSTICE KAGAN: That --

25 MR. GANNON: -- in -- in --

1 JUSTICE KAGAN: That is 16921(b)? Is that
2 the one you're referring to there?

3 MR. GANNON: That's correct, 16921(b)(3),
4 which is on 11a of the government's brief.

5 JUSTICE KAGAN: But 16921(b)(3) is
6 specifically an obligation that's placed on officials.
7 It has nothing to do with any obligations on offenders.

8 MR. GANNON: That is true, Justice Kagan,
9 but what we think it reveals is that it is telling us
10 which jurisdictions are involved in the exchange of
11 information that is at issue in the change of residence.

12 JUSTICE KAGAN: So but an offender is
13 supposed to look at a statute that places only an
14 obligation on State officials and to say, really? That
15 obligation applies to me as well?

16 MR. GANNON: No. We think the offender is
17 supposed to look to the notices that he received, which
18 said he was supposed to provide notification of every
19 change of address. I think any reasonable person, when
20 told that he has to give notification of his change of
21 address, says, oh, if I decide I'm moving out of the
22 country, I don't have to tell every -- anybody, that
23 that -- that is actually contrary to a common-sense
24 reading of this provision. And we know that the notice
25 reinforces the idea that he does have to inform Kansas.

1 Now, as Petitioner says, that's clear as a
2 matter of State law. We also think that it's -- that
3 it's part of the minimum requirements of SORNA, and we
4 don't think it's sufficient for the court to say, well,
5 Congress expected this to be a State law prosecution and
6 didn't want there to be a Federal law prosecution,
7 because that would be true of virtually every single
8 violation of Section 2250.

9 JUSTICE BREYER: They might have, but it's
10 the language that's bothering people. And what -- I'm
11 trying to see if there is support for this word
12 "involved" which I hadn't really thought of.

13 And -- and let's imagine he leaves Kansas.
14 He left on Monday. It's now Tuesday. So he doesn't
15 reside in Kansas anymore. He's now over residing --
16 he's not there anymore. So is Kansas still a
17 jurisdiction involved pursuant to subsection (a)?

18 MR. GANNON: If --

19 JUSTICE BREYER: And your answer is "yes,"
20 and I say --

21 MR. GANNON: If --

22 JUSTICE BREYER: -- okay. You mean any
23 jurisdiction that he ever -- no, you said it's not -- it
24 doesn't mean "ever." I said, does it mean involved
25 right now? No, you said it doesn't mean that, because

1 if it's involved right now, it isn't. You mean it was
2 involved two days ago?

3 And now you have a general definition of
4 that. And you mean it was involved because it was the
5 last jurisdiction in which he actually resided. That's
6 what you -- now, is that basically it?

7 MR. GANNON: No, not precisely it. We mean
8 that it is involved because he has not told them, I am
9 no longer living in Kansas.

10 JUSTICE BREYER: No, that can't be a reason
11 to be involved, because he didn't -- I mean, there are a
12 lot of people he didn't tell. I mean --

13 MR. GANNON: They are involved because he --
14 he is on the rolls there as being a current resident.

15 JUSTICE BREYER: Okay.

16 MR. GANNON: So he has an obligation --

17 JUSTICE BREYER: In other words, where he is
18 on the rolls as being a current resident -- be careful,
19 because you run into Thailand, and you know, the -- the
20 guy moved 50 years later --

21 MR. GANNON: Except he's not going to be on
22 the rolls there.

23 JUSTICE BREYER: Oh, he will be on the rolls
24 in Kansas because they never took him off, and -- and
25 now it's 20 years later. So you can't --

1 MR. GANNON: And he violated --

2 JUSTICE BREYER: Let's take what you mean.

3 And now -- now I -- I have an idea of it. What support
4 is there for that? Is there support in a regulation?
5 Is there support in some previous case? Is there
6 support -- and I'm thinking focusing narrowly on your
7 interpretation of the word "involved."

8 MR. GANNON: There is support in the
9 Attorney General guidelines to the extent that the
10 Attorney General --

11 JUSTICE BREYER: Right.

12 MR. GANNON: -- guidelines adopted in
13 2008 -- and we're not claiming Chevron deference to
14 them, but this has been our construction of the statute
15 all along.

16 JUSTICE BREYER: Tell me where it is.

17 MR. GANNON: The -- the Attorney General
18 guidelines are reprinted at the end of our brief, and
19 they specifically say that he is obliged in order to
20 keep his registration information current, to --

21 JUSTICE SOTOMAYOR: What's the page, please?

22 MR. GANNON: This is at page 22a. It says,
23 "Even if he doesn't know where he is going next, he is
24 required to keep the registration information current by
25 informing the jurisdiction if he is terminating his

1 residence, employment or school attendance in the
2 jurisdiction." That's true in the domestic context.

3 And then if you -- if you go on to page 24,
4 it -- it articulates the same requirement in the context
5 of needing to keep the registration current in
6 jurisdictions where someone resides when you're moving
7 out of the country.

8 CHIEF JUSTICE ROBERTS: This -- this is not
9 an administrative law provision. It's a criminal
10 statute. The Attorney General's guidelines can't expand
11 a fair reading of what Congress made illegal under
12 Federal law.

13 MR. GANNON: We're not claiming that the
14 Attorney General has expanded the text of the statute,
15 Mr. Chief Justice. I'm just saying that this is the way
16 the Department of Justice has been construing the
17 statute since 2008. Jurisdiction's implementing the
18 statute. Understand this, and they've been informing
19 sex offenders that they have an obligation.

20 CHIEF JUSTICE ROBERTS: And it's still
21 given -- given what I just said, my -- my answer is, so
22 what? So what if the Attorney General has been
23 construing this since, you know, 1875?

24 MR. GANNON: If -- if --

25 CHIEF JUSTICE ROBERTS: You cannot do

1 anything to expand the words that Congress used.

2 MR. GANNON: That -- that's -- if -- if you
3 disagree that this is a fair reading of the statute, I'm
4 not going to tell you that the guidelines make it a fair
5 reading of the statute. I --

6 CHIEF JUSTICE ROBERTS: What you're saying
7 is the Attorney General thinks it's a fair reading of
8 the statute.

9 MR. GANNON: I'm --

10 CHIEF JUSTICE ROBERTS: So -- so I should
11 think it's a fair reading of the statute.

12 MR. GANNON: Well, I'm also telling you that
13 we think --

14 (Laughter.)

15 MR. GANNON: I'm -- I'm telling you that we
16 think we have good reasons for this construction, and
17 Justice Breyer asked if there's anybody who's ever
18 adopted this construction before, and I say, yes, the
19 Attorney General publicly did so in 2008. All
20 SORNA-implementing jurisdictions were told this is the
21 way the Federal government reads the statute, and
22 they're supposed to inform sex offenders of this.

23 In this instance, Kansas has informed
24 Mr. Nichols that he has an obligation to provide notice
25 when he is terminating his residence. They've gone

1 above and beyond what SORNA requires by always demanding
2 that he inform Kansas, even though SORNA, under our
3 reading, would allow him to inform any one jurisdiction
4 involved. We think --

5 CHIEF JUSTICE ROBERTS: Just to -- I
6 probably should know this, but Kansas requires him to
7 list any change, right? He has to unregister?

8 MR. GANNON: He has to -- he has to report
9 any change in the residence information, yes.

10 CHIEF JUSTICE ROBERTS: Right. What -- what
11 sort of language did they use?

12 MR. GANNON: That their language does -- it
13 specifically says, "He must reregister any change or
14 termination of residence within three days to the
15 registering law enforcement agency or agencies where
16 last registered."

17 So that's the --

18 CHIEF JUSTICE ROBERTS: But it says "where
19 last registered."

20 MR. GANNON: Where it specifically picks up
21 and says, you have to go back to where you last
22 registered, we think that goes beyond -- that's the way
23 in which Kansas law goes beyond SORNA, because SORNA
24 does not always require that.

25 We think that in a situation like this,

1 SORNA effectively required that, because there's no
2 other place for him to have gone. But we also take
3 Petitioner's concession that SORNA permits him to comply
4 with the requirement to keep his registration current by
5 going to the office in Kansas.

6 And it's the same form. There's no doubt
7 that it's possible for him to report the change in
8 residence there. The form says, what is your address?
9 And it has location start date and location end date,
10 and those can be reported in advance or after the fact.

11 Our position is just that when SORNA gets
12 around to saying what it means to keep your registration
13 information current, you have to do that in at least one
14 place within three business days. And so we think that
15 that means he could do it in Kansas even the day after
16 he moved.

17 If you disagree with that, we still think it
18 also must mean at least, as Justice Alito was
19 explaining, that he has to do it -- he has to comply
20 with it by doing it while there still is one
21 jurisdiction. There's no doubt that Kansas was a
22 jurisdiction involved while he was still residing there.

23 JUSTICE KAGAN: Could I -- could I ask a
24 question, Mr. Gannon, of absolutely no legal
25 significance? Chalk it up to curiosity.

1 Does the Federal government bring many of
2 these prosecutions? Because I might have thought that
3 when sex offenders leave the country permanently, the
4 attitude might be like, good luck and good riddance?

5 (Laughter.)

6 MR. GANNON: Well, I -- I take the point,
7 Justice Kagan, but remember this is somebody who is not
8 just a Federal sex offender. He's on Federal
9 supervisory release. The notion that we have somebody
10 on Federal supervisory release, we're supposed to be
11 keeping track of him and making sure that he's not
12 committing other crimes. If --

13 JUSTICE KAGAN: But you're not -- you're --
14 as I understand the requirement that even you say he's
15 subject to, it's just a requirement that says he's
16 leaving the State. It doesn't -- he's not required to
17 tell you where he's going in the world. He could be
18 going to the Philippines or any other country. So it
19 doesn't really help us in terms of, you know, helping
20 our allies deal with sex offenders.

21 I'm just curious why it is that people --
22 why DOJ makes the decision to bring sex offenders back
23 to this country in such circumstances.

24 MR. GANNON: Well, as -- as I said, he was a
25 Federal sex offender who was on Federal supervisory

1 release who appeared to be on the cusp of committing
2 additional Federal offenses in the Philippines, and so
3 we brought him back. And we do think that there's a
4 Federal interest in this case.

5 But Section 2250 includes cases where
6 somebody is also violating State law, because by
7 definition, all of these registration requirements in
8 SORNA much of the time are also going to be violations
9 of State law.

10 And -- and so in this instance, the problem
11 is that the registry was inaccurate. It's supposed to
12 say where he's living.

13 JUSTICE KAGAN: I am right, right, that when
14 you say he had the responsibility to keep the registry
15 accurate, that's just to say he had the responsibility
16 to tell Kansas he was no longer in Kansas.

17 MR. GANNON: That's right.

18 JUSTICE KAGAN: Even on your view, he had no
19 other responsibilities.

20 MR. GANNON: That -- that's -- that's the
21 applicable responsibility here. That's right.

22 JUSTICE ALITO: In terms of --

23 CHIEF JUSTICE ROBERTS: How -- how do we --
24 how do we know -- I'm sorry. Go ahead, please.

25 JUSTICE ALITO: In terms of Federal policy,

1 hasn't Congress, by the enactment of the new statute and
2 in other ways, evidenced a belief that the United States
3 should not be exporting its pedophile problems to other
4 countries?

5 MR. GANNON: Yes, Justice --

6 JUSTICE ALITO: And countries like the
7 Philippines where the -- the Petitioner here went are
8 known places that are attractive to sex tourists who go
9 there to abuse young children and -- hasn't Congress
10 evidenced a concern about this both for the human rights
11 aspects of the problem and, also, I would think, for
12 relations with the government of the Philippines?

13 MR. GANNON: Absolutely, Justice Alito. And
14 it -- it would have been a Federal offense for him to
15 have engaged in -- in sexually elicit conduct in the
16 Philippines.

17 JUSTICE KAGAN: Right. And I completely
18 understand that, Mr. Gannon, but even your own
19 interpretation doesn't get you the information --

20 (Laughter.)

21 (Lights out.)

22 CHIEF JUSTICE ROBERTS: I knew we should
23 have paid that bill.

24 (Laughter.)

25 JUSTICE KAGAN: My red light on the bench is

1 still working.

2 (Laughter.)

3 JUSTICE KAGAN: -- does not get you the
4 information that you need in order to tell the
5 Philippines, look, you have a sex offender in your
6 midst.

7 MR. GANNON: That's -- that's correct,
8 Justice Kagan. The new statute does that as did the
9 supplemental guidelines that the Attorney General
10 adopted in 2011 under SORNA as additional information
11 that was required. That's not what's at issue in this
12 particular case.

13 JUSTICE SOTOMAYOR: What's so interesting is
14 that regulation tells the States to do this.

15 JUSTICE BREYER: Yeah.

16 JUSTICE SOTOMAYOR: It doesn't tell the sex
17 offender that he's obligated to do it. It says the
18 States must do it.

19 MR. GANNON: It's --

20 JUSTICE SOTOMAYOR: I'm -- it's a little bit
21 odd.

22 MR. GANNON: It's true that the guidelines
23 were addressed. Both the guidelines and the
24 supplemental guidelines were addressed to implementing
25 jurisdictions. They were articulating the Federal

1 government's construction of the statute and -- and what
2 is required.

3 JUSTICE SOTOMAYOR: So now a sex offender is
4 supposed to understand what "involved" means and read a
5 directive to jurisdictions in your regulation and say,
6 ah, that includes me, too.

7 MR. GANNON: Well, we -- we --

8 JUSTICE SOTOMAYOR: Jurisdiction is supposed
9 to do this, but now I've got to do something more.

10 MR. GANNON: Well, but what the jurisdiction
11 was told is that it has to inform sex offenders that
12 they must do this, and that happened here. Kansas
13 informed him that he had to provide notice of any
14 termination or change in his residence. That's what was
15 required by SORNA.

16 JUSTICE SOTOMAYOR: What makes it a State as
17 opposed to a Federal crime? That's really what's at
18 issue here.

19 MR. GANNON: It --

20 JUSTICE SOTOMAYOR: I understand it's a
21 crime.

22 MR. GANNON: Yes.

23 JUSTICE SOTOMAYOR: The question is which
24 kind of crime.

25 MR. GANNON: Yes. And in this instance,

1 Petitioner acknowledges it's a State crime. It is also
2 a Federal crime.

3 Mr. Chief Justice, May I finish answering?

4 CHIEF JUSTICE ROBERTS: Briefly.

5 MR. GANNON: Under Section 2250, because
6 he's a Federal sexual offender, there doesn't even need
7 to be independent travel. It's the violation of the
8 SORNA requirements that makes it a Federal offense.

9 CHIEF JUSTICE ROBERTS: Thank you, counsel.

10 Mr. Hansmeier, you have 11 minutes
11 remaining.

12 REBUTTAL ARGUMENT OF DANIEL T. HANSMEIER

13 ON BEHALF OF THE PETITIONER

14 MR. HANSMEIER: Sorry, Mr. Chief Justice. I
15 don't think I actually reserved time for rebuttal, so
16 thank you.

17 CHIEF JUSTICE ROBERTS: Okay.

18 MR. HANSMEIER: I forgot to say that, but
19 thank you.

20 I would --

21 CHIEF JUSTICE ROBERTS: Oh.

22 MR. HANSMEIER: Justice Breyer, if I can --
23 I'll -- I'll be brief.

24 On the guidelines -- this is actually a
25 direct quote -- the -- the -- according to the

1 Department of Justice, "A jurisdiction may require that
2 changes in registration information be reported by
3 registrants on a more stringent basis than the SORNA
4 minimum standards. For example, requiring that changes
5 of residence be reported before the sex offender moves
6 rather than within three business days following the
7 move."

8 I mean, that's our position. I don't --
9 there are other portions in -- in the guidelines that
10 direct jurisdictions to do this. But that -- but -- but
11 what the -- what the guidelines say right there is -- is
12 exactly what we say, that it -- it is a more stringent
13 requirement.

14 A few other points on the word "current." I
15 think if you -- if you look in the -- in the -- there's
16 a provision on in-person verifications where there is
17 requirements for a current photograph. That word
18 clearly doesn't mean a future. And I think that's
19 important to understand, that when you're talking about
20 current information, it's not future information. I
21 think Justice Kagan mentioned that a few times.

22 On 1621 -- 16921(b)(3), again, that's --
23 that's language directed towards the jurisdictions.
24 That's not a requirement for the offender, and that's
25 how the former jurisdiction would be informed of the

1 change.

2 And if there are no other questions.

3 CHIEF JUSTICE ROBERTS: Thank you, counsel.

4 The case is submitted.

5 (Whereupon, at 11:04 a.m., the case in the
6 above-entitled matter was submitted.)

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<p style="text-align: center;">A</p> <p>a.m 1:13 3:2 55:5 able 37:21 above-entitled 1:11 55:6 absolutely 18:16 47:24 50:13 abuse 50:9 accurate 26:7 30:25 33:9 49:15 acknowledged 36:15 acknowledges 16:10 53:1 add 5:15 addition 5:5 additional 4:18 39:10 49:2 51:10 address 9:13 12:10 13:14 39:8,9 40:19,21 47:8 addressed 38:15 51:23,24 administrative 44:9 admit 10:15 adopted 43:12 45:18 51:10 advance 38:16 39:14,14 47:10 adverse 11:5 agencies 46:15 agency 46:15 ago 3:11 42:2 agree 12:13,14,16 12:18,24 35:12 agrees 13:8 ah 27:15 30:3 52:6 ahead 49:24 aim 6:4 Alito 5:12 9:2 10:20 12:4,18 13:2,4,10 23:22 47:18 49:22,25 50:6,13 allies 48:20</p>	<p>allow 39:6 46:3 allowing 10:16 allows 21:20 amount 10:9 answer 21:9 41:19 44:21 answering 53:3 anybody 40:22 45:17 anymore 35:5 41:15,16 apartment 34:24 appear 13:12 APPEARANCES 1:14 appeared 19:16 20:16 49:1 appears 19:13 applicable 49:21 applies 40:15 arguing 31:18,20 argument 1:12 2:2 2:5,8 3:3,7 10:20 10:25 15:10 16:2 20:2 26:23 53:12 arguments 10:21 arrival 9:14,16,18 13:9 articulates 44:4 articulating 51:25 asked 7:10,17,25 8:9 45:17 aspect 8:14 aspects 50:11 assist 8:4 Assistant 1:17 associated 32:24 assume 15:6 atextual 18:19 attendance 44:1 attitude 48:4 attorney 21:22 31:13 38:5 43:9 43:10,17 44:10,14 44:22 45:7,19 51:9</p>	<p>attractive 50:8 authorized 38:7 awful 27:17</p> <p style="text-align: center;">B</p> <p>b 13:25 14:9 back 12:5 46:21 48:22 49:3 based 7:11 basically 42:6 basis 54:3 bearing 15:9 begins 14:1,2 behalf 1:15,19 2:4 2:7,10 3:8 20:3 53:13 belief 50:2 believe 27:1 32:22 bench 50:25 beyond 46:1,22,23 bill 50:23 bit 51:20 blue 13:21,22 book 13:21 bothering 41:10 bottom 15:10 18:17 Breyer 28:22 29:4 29:7,12,15,18,23 29:25 30:3,7,10 30:19 31:2,22 32:6,11,16,20,21 41:9,19,22 42:10 42:15,17,23 43:2 43:11,16 45:17 51:15 53:22 brief 13:22 18:10 23:9 36:16 40:4 43:18 53:23 Briefly 53:4 briefs 8:25 bring 48:1,22 broader 35:19 36:23 brought 49:3 bunch 15:7 business 10:11</p>	<p>13:11,16 14:3,7 24:6,12,14,16,16 24:17 29:1,9 35:9 39:16 47:14 54:6</p> <p style="text-align: center;">C</p> <p>c 2:1 3:1 13:23 14:5 14:13 15:11 23:4 23:20 25:18 34:11 39:10 California 9:8 capacious 20:15 25:18 26:11 capture 15:20 captured 36:20,22 captures 15:18 35:17 36:7 careful 42:18 case 3:4 4:5 5:9,16 18:22 22:11 23:25 28:11 43:5 49:4 51:12 55:4,5 cases 36:17 49:5 category 35:19 36:13,17,24 37:1 certain 10:9 28:13 certainly 25:16 certiorari 36:16 Chalk 47:25 chance 18:7 change 10:10 13:11 13:14,17 14:8,13 14:17 16:11 20:10 24:7,12 26:16,20 29:2,22 30:2 39:21,22 40:11,19 40:20 46:7,9,13 47:7 52:14 55:1 changed 32:18 38:4 38:13 changes 32:8 35:21 38:8 54:2,4 changing 30:4 39:15 checks 9:6 Chevron 43:13</p>	<p>Chief 3:3,9 5:13 6:24 7:4 19:25 20:4 22:10,16,22 22:24 23:6,10,15 23:24 24:3,5,9,11 24:21 25:3 26:19 26:22 27:3,7,17 27:21 36:25 37:6 37:12,18,24 38:23 39:3 44:8,15,20 44:25 45:6,10 46:5,10,18 49:23 50:22 53:3,4,9,14 53:17,21 55:3 children 50:9 Circuit 3:15,18 circumstances 48:23 citizens 6:8 City 1:15 claiming 43:13 44:13 clear 5:24 14:19 21:10 26:14 28:13 34:18 39:19 41:1 clearly 54:18 client 12:6 Coast 9:6 come 6:12,21 12:4 15:19 comes 17:9 commencement 16:11 commit 28:7 committed 6:15 committing 48:12 49:1 common 19:20 common-sense 40:23 complete 18:7 completely 18:14 50:17 compliant 21:14 complied 21:16 24:1,18</p>
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