NO. 17-575
IN THE SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA,

Petitioner,

v.

JOSE M. MUNIZ,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

The Supreme Court of Pennsylvania held that Pennsylvania's Sex Offender Registration and Notification Act (SORNA) violated the ex post facto clause of the United States Constitution, U.S. Const. art. I, § 10, cl. 1, and, on adequate and independent state grounds, that SORNA violated Article 1, Section 17 of the Pennsylvania Constitution. The questions presented are:

1. Should this Court decline to grant certiorari where a majority of state Supreme Court Justices held that SORNA violates the state constitution on independent and adequate state grounds?

2. Should this Court decline to grant certiorari where SORNA is materially distinguishable from the Adam Walsh Act such that the decision of the Supreme Court of Pennsylvania did not create a decisional split nor raise an important question under federal law?

TABLE OF CONTENTS

COUNTER-STATEMENT OF THE CASE i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

COUNTER-STATEMENT OF THE CASE 1

I. The Commonwealth's question presented is based on an inaccurate reading of the Pennsylvania Supreme Court's decision. 1

A. A majority of the Supreme Court of Pennsylvania ruled that SORNA is unconstitutional under the Pennsylvania Constitution..1

B. Petitioner is incorrect that the OAJC "premised" its holding on federal law. 3

C. The concurrence does not believe the OAJC federalized the matter. 4

D. SORNA is not "materially indistinguishable" from the Adam Walsh Act. 4

REASONS FOR DENYING CERTIORARI 7

II. This court should deny review because the Pennsylvania Supreme Court's decision rests upon adequate and independent state law grounds, and the Commonwealth seeks review of a fact bound question that presents no important question of law, nor demonstrates a split amongst authorities regarding the application of well accepted law. 7

A. This Court does not have jurisdiction to review this case because the ruling rests upon adequate and independent state law grounds. 7

1. A majority of the Pennsylvania Supreme Court set forth a plain statement that its decision was alternatively based on state law grounds...8

2. The Pennsylvania Supreme Court's ruling is adequate and independent because any decision by this Court would be advisory. 9

B. There is no split amongst authorities regarding whether Pennsylvania's Sexual Offender Registration and Notification Act violates the federal ex post facto clause......13

1. Pennsylvania's Supreme Court, consistent with every other court to address the issue, correctly set forth and applied the well-established ex post facto standard. 13

2. Petitioner asks this Court to make a fact based determination based upon Pennsylvania's unique scheme, even though *Muniz* does not create a decisional split nor raise an important question under federal law...............15

CONCLUSION...20

TABLE OF AUTHORITIES

Federal Cases

Arizona v. Evans, 514 U.S. 1 (1995) 3, 7

Coleman v. Thompson, 501 U.S. 722 (1991) 7, 9

Florida v. Powell, 559 U.S. 50 (2010) 8

Harris v. Reed, 489 U.S. 255 (1989) 11

John Does, #1-5 v. Michigan, et al., 834 F.3d 696 (6th Circuit 2016) 4, 17

Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963) 2, 3, 14

Michigan v. Long, 463 U.S. 1032 (1983) 7, 8, 10

Nitro-Lift Techs., L.L.C. v. Howard, 568 U.S. 17 (2012) 11, 12

Oregon v. Guzek, 546 U.S. 517 (2006) 12

Smith v. Doe, 538 U.S. 84 (2003) 2, 14, 17

Statutes

9 U.S.C. § 1 et seq. 11

18 Pa.C.S. § 2904 19

18 Pa.C.S. § 2910 19

18 Pa.C.S. § 4915.1 6

18 Pa.C.S. § 6301(a)(1)(ii) 19

18 Pa.C.S. § 6318 19

18 Pa.C.S. § 7507.1 19

34 U.S.C. § 20901-20991 16

34 U.S.C. § 20911 et seq. 4, 19

34 U.S.C. § 20913(c) 5, 17

34 U.S.C. § 20913(e) 6

34 U.S.C. § 20914(a)(7) 18

34 U.S.C. § 20915 18

34 U.S.C. § 20915(a) 5

34 U.S.C. § 20915(b)(1) 5

42 Pa.C.S. § 9799.10 et seq. 4

42 Pa.C.S. § 9799-10 – 9799.41 ....5, 16

42 Pa.C.S. § 9799.14 ....6, 19

42 Pa.C.S. § 9799.15(g) 5, 17

42 Pa.C.S. § 9799.15(h) 6

42 Pa.C.S. § 9799.15(i) 18

42 Pa.C.S. § 9799.15(h)(1) 18

42 Pa.C.S. § 9799-16(b)(6) 6

42 Pa.C.S. § 9799.25(f) 18

42 Pa.C.S. § 9799.28(b)(13) 17

42 Pa.C.S. § 9799.28(e) 6

42 Pa.C.S. § 9799.30 6

42 U.S.C. § 16901-16991 16

Michigan Comp. Laws Ann. § 28.725 17

Michigan Comp. Laws Ann. § 28.725(2)(1) 17

State Cases

Commonwealth v. Kohl, 615 A.2d 308 (Pa. 1992) 8

Commonwealth v. Muniz, 164 A. 3d 1189 (Pa. 2017) .. 1, 2, 3, 4, 9, 10, 14

Doe v. State, 111 A.3d 1077 (N.H. 2015) 9

Does v. State, 189 P.3d 999 (Alaska 2009) 9

Lehman v. Pennsylvania State Police, 839 A.2d 265 (Pa. 2003) 10

Starkey v. Oklahoma Dept. of Corr., 305 P.3d 1004 (Okla. 2013) 9

Other Authorities

73 Fed. Reg. 38066-67 (2008) 18

73 Fed. Reg. 38030-01 (2008) 5, 6

73 Fed. Reg. 38033 16

73 Fed. Reg. 38058-59 (2008) 17

Brief for the United States as Amicus Curiae, *Michigan, et al. v. John Does, #1-5,* 2016 WL 2929534 (July 7, 2017) (No. 16-768) 19

Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), "Jurisdictions that have substantially implemented SORNA", *available at* https://www.smart.gov/newsroom_jurisdictions_sorna.htm

COUNTER-STATEMENT OF THE CASE

I. The Commonwealth's question presented is based on an inaccurate reading of the Pennsylvania Supreme Court's decision.

This Court specifically requests "that the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted." Rules of the Supreme Court 15.2. Petitioner makes several errors which affect both this Court's decision to grant review and the merits the issues that would be before the Court.

A. A majority of the Supreme Court of Pennsylvania ruled that SORNA is unconstitutional under the Pennsylvania Constitution.

The Petitioner alleges that the Pennsylvania Supreme Court "could not render a ruling by a majority of the court" on whether the "retroactive imposition of the PA SORNA registration requirements violated the Pennsylvania Constitution's *Ex Post Facto* Clause[.]" Pet. at 7.

This is inaccurate. Five justices reached and decided the state constitutional claim. *Commonwealth v. Muniz*, 164 A.3d 1189, 1193 (Pa. 2017) (Opinion Announcing the Judgment of the Court, hereinafter "OAJC") ("we reverse and hold: [. . .] retroactive application of SORNA's registration provisions also violates the ex post facto clause of the Pennsylvania Constitution."; *Muniz*, 164 A.3d at 1124 (Wecht, J., Concurring) ("I agree that the retroactive application of Pennsylvania's [. . .] "SORNA" violates Article 1, Section 17 of the Pennsylvania Constitution.").

The Justices supporting reversal did not disagree about whether state law controlled the result. They agreed that it did. Rather, they disagreed about whether Pennsylvania's Constitution required the state court to adopt different or more protective standards than those currently adopted by this Court in *Smith v. Doe,* 538 U.S. 84 (2003), and *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963). Three Justices determined that Article 1, Section 17 of the Pennsylvania Constitution requires adoption of a test which affords greater protections than its federal counterpart. *Muniz*, 164 A.3d at 1123 (OAJC). The other two Justices concluded that this Court's "intent-effects test provides an appropriate analytical framework." *Muniz*, 164 A.3d at 1230 (Wecht, J., concurring). The concurrence did not believe, however, that it was compelled by federal law to adopt the intent-effects test or reach the same factual conclusion as might a federal court when applying that test to the state issue. *Id.* at 1224 n.2.

The state court's internal debate about the degree of protection afforded by Pennsylvania's Constitution does not change the underlying agreement between five justices that state law alone compelled the result. Both opinions explained in no uncertain terms that "'[t]he analysis underlying our holding is separate and independent from the analysis undertaken under the federal constitution." *Muniz*, 164 A.3d at 119 (OAJC) (quoting *Commonwealth v. Kohl*, 615 A.2d 308, 315 (1992); *Muniz*, 164 A.3d at 1124 n.2 (Wecht J., concurring) (explaining that Pennsylvania merely relies on, but is not compelled by, federal precedents).

B. Petitioner is incorrect that the OAJC "premised" its holding on federal law.

The OAJC found that SORNA was punitive under the U.S. Constitution. It also found that when greater protection is afforded under the state constitution SORNA must certainly violate the state ex post facto clause. Petitioner mischaracterizes the decisions when it claims that "three justices premised the state constitutional violation on their federal *ex post facto* ruling." Pet. at 8. This misreading appears to be based upon the concluding line of the OAJC, which states, "as we have concluded SORNA's registration provisions violate the federal clause, we hold they are also unconstitutional under the state clause." *Muniz*, 164 A.3d at 1223 (OAJC).

This statement, taken in isolation, may appear to mean what the Petitioner asserts. That reading, however, ignores the numerous preceding pages in which the OAJC explains that, even though it adopted the *Mendoza-Martinez* intent-effects standard in earlier cases, it finds "Pennsylvania's ex post facto clause provides even greater protection than its federal counterpart." *Id.* The Justices' concluding statement simply recognizes that the federal ex post facto clause provides a constitutional floor, not a ceiling. *See, e.g.*, *Arizona v. Evans*, 514 U.S. 1, 8 (1995). Thus if the state court finds the balance punitive under a less protective federal standard, it would necessarily be punitive where greater protections are afforded. In the Pennsylvania Supreme Court's opinion, such is the case with SORNA.

C. The concurrence does not believe the OAJC federalized the matter.

Petitioner also incorrectly asserts that Justice Wecht "recognized that the [OAJC] does not divest this Court of jurisdiction." Pet. at 10. The concurrence does no such thing. Justice Wecht says nothing about the OAJC federalizing the question. He explains that lower state courts would be better served by relying upon the Pennsylvania Constitution rather than looking to federal law or waiting for federal courts to resolve disputed claims still pending at the time of the decision. *Muniz*, 164 A.3d at 1124 n.2 (citing *Does #1-5 v. Snyder*, 834 F.3d 696 (6th Cir. 2016), *certiorari denied*, No 16-768,__ U.S.__, 2017 WL 4339925 (Mem.)). Justice Wecht does not see the point in even conducting the balance under federal law, as state law controls the result. Nowhere in his concurrence does Justice Wecht impute to the OAJC the Petitioner's alleged interpretation.

D. SORNA is not "materially indistinguishable" from the Adam Walsh Act.

The Adam Walsh Act, 34 U.S.C. § 20911 et seq., is less onerous and less restrictive than is SORNA. 42 Pa.C.S. § 9799.10 et seq. The federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) has deemed Pennsylvania in "substantial compliance" with the Act, *see* https://www.smart.gov/pdfs/sorna/Pennsylvania.pdf. A certification of substantial compliance means only that a jurisdiction meets the baseline requirements for compliance. It does not mean that the state and federal laws are "materially indistinguishable." Pet. at 25-26.

Pennsylvania law requires more and different obligations than does the Adam Walsh Act. First, it is telling that Petitioner's point is conclusory. Pet. at 25-28. Neither the Petitioner, nor the lower courts, even attempted a comparison of the two schemes.[1] As there is no record of the differences or similarities, the Petitioner asks this Court to simply accept its assertion without any analysis. Respondent does not engage in that assessment here. Still, several features are noteworthy.

Pennsylvania follows the basic federal tiering structure, 34 U.S.C. § 20915(a) (Tier I, 15 years, Tier II, 25 years, and Tier III, life); but federal law permits a "clean record" reduction. 34 U.S.C. § 20915(b)(1). Pennsylvania permits no exceptions – once a registrant, always a registrant. 42 Pa.C.S. § 9799.10 - 9799.41.

Federal law also requires in-person updates to changes of only a small subset of information in addition to the periodic verification updates required pursuant to a registrant's tier designation. 34 U.S.C. § 20913(c); The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38030-01 (2008) ("change of name, residence, employment, or student status") (hereinafter "Supplemental Guidelines"). Pennsylvania, however, requires in-person reporting of any change, removal, or addition to an extensive array of minutiae including all phone numbers, internet identifiers including emails and online monickers, professional licensing, temporary lodgings, and even such things as the color of a vehicle or a "change in address of the place [a] vehicle is stored." 42 Pa.C.S. § 9799.15(g). Transient

[1] It is also suggestive of the independent state court basis of the holdings that the state court does not attempt to look at similarities or differences between the laws.

offenders are also required to appear in person much more often. *Compare* 42 Pa.C.S. § 9799.15(h); 42 Pa.C.S. § 9799.16(b)(6) (requiring in person appearances); Supplemental Guidelines, 73 Fed. Reg. 38030-01.X.B (not requiring in-person reporting).

Additionally, Pennsylvania imposes extraordinarily harsh sanctions for failure to comply. Federal law provides that a state must ensure a possible maximum "term of imprisonment that is greater than 1 year." 34 U.S.C. § 20913(e). Pennsylvania far exceeds the federal mandate and imposes maximum penalties of between 7 and 20 years of incarceration, depending on the defendant's tier and prior convictions, for any and all failures to comply. 18 Pa.C.S. § 4915.1.

Pennsylvania law further permits the internet registry to endure, even after a registrant's death, allows for GPS monitoring, and includes a large number of registerable crimes not included within the federal scheme. *See generally*, 42 Pa.C.S. § 9799.28(e)[2]; 9799.30; 9799.14. This is far from an exhaustive list.

As explained below, SORNA, like nearly every state registry, is unique and is not subject to a one size fits all analysis. The Petitioner's claim of material similarity is not only conclusory, it is inaccurate.

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[2] Subsection (e) only prohibits the information listed in subsection (b) from being removed from the Internet *prior* to a registrant's death; it does not require, nor even suggest, that such information be removed after a registrant's death, allowing for the likelihood that a registrant's information will remain on the Internet in perpetuity.

REASONS FOR DENYING CERTIORARI

II. This court should deny review because the Pennsylvania Supreme Court's decision rests upon adequate and independent state law grounds, and the Commonwealth seeks review of a fact bound question that presents no important question of law, nor demonstrates a split amongst authorities regarding the application of well accepted law.

A. This Court does not have jurisdiction to review this case because the ruling rests upon adequate and independent state law grounds.

This Court lacks jurisdiction over a question of federal law if the state court's decision rests on a state law ground that is independent of the federal question and adequate to support the judgment. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). Respect for the independence of state courts, and the aversion to rendering advisory opinions, are the cornerstones of this Court's refusal to review such state court decisions. *See Michigan v. Long*, 463 U.S. 1032, 1040 (1983). This general rule obviates the "unsatisfactory and intrusive practice of requiring state courts to clarify their decision to the satisfaction of this Court." *Arizona v. Evans*, 514 U.S. 1, 7 (1995). This approach also avoids "delay and decrease in efficiency of judicial administration," *Long*, 463 U.S. at 1039-40, and "provide[s] state judges with a clearer opportunity to develop state jurisprudence unimpeded by federal interference, and yet will preserve the integrity of federal law." *Evans*, 514 U.S. at 7.

To avoid the "arduous efforts to detect, case by case, whether a state ground of decision is truly 'independent of the [state court's] understanding of federal law,'"

this Court adopted a "plain statement rule." *Florida v. Powell*, 559 U.S. 50, 57 n.2. (2010). The rule provides:

> If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.

Long, 463 U.S. at 1041.

1. <u>A majority of the Pennsylvania Supreme Court set forth a plain statement that its decision was alternatively based on state law grounds.</u>

The Pennsylvania Supreme Court was unequivocal in its plain assertion that Pennsylvania's Constitution controlled its decision. The statements in the OAJC and the concurring opinions constituting five justices of the Pennsylvania Supreme Court are not merely a form of words. They are clear, compelling, and sufficient.

Preceding its determination that Pennsylvania law provides greater protection than the federal ex post facto clause, the OAJC quoted its ruling in *Commonwealth v. Kohl*, 615 A.2d 308 (Pa. 1992):

> The analysis underlying our holding is separate and independent from the analysis undertaken under the Federal Constitution. Therefore, our holding under the Pennsylvania Constitution *would remain unchanged* should the U.S. Supreme Court resolve the issue contrary to our analysis of the federal constitutional question.

Kohl, 615 A.2d at 315 (emphasis added). Justice Wecht also complied with the plain statement rule, quoting *Long* and proclaiming that he would have refrained from even addressing the federal question. Instead, he "would simply hold that SORNA violates Article I, Section 17 of the Pennsylvania Constitution — a determination

for which this Court is the final arbiter." *Muniz*, 164 A.3d at 1224 n.2 (Wecht, J., concurring).

2. The Pennsylvania Supreme Court's ruling is adequate and independent because any decision by this Court would be advisory.

The adequate and independent statement rule is ultimately designed to prevent advisory opinions. "'We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.'" *Coleman*, 501 U.S. at 729 (quoting *Herb v. Pitcairn*, 324 U.S. 117, 125–126 (1945)). This undesired result is precisely what would happen here. All five state court justices supporting the ruling declared that regardless of this Court's decision, the same result would be reached under state law. *Muniz*, 164 A.3d at 1219 (OAJC); *Muniz*, 164 A.3d at 1224 n.2. (Wecht J., concurring).

The Petitioner claims it is unclear what the Pennsylvania Supreme Court would do if this Court were to reverse. Pet. at 12-13. It even speculates that the decision would be different. Pet. at 13. But this Court does not have to guess what might happen. Each Justice of the Pennsylvania Supreme Court has explained what they would do. The three justices in the plurality would apply a more protective standard under Pennsylvania law. *Muniz*, 164 A.3d at 1219-24 (OAJC). The concurring Justices, like a number of other state courts, s*ee Doe v. State*, 111 A.3d 1077, 1090 (N.H. 2015); *Starkey v. Oklahoma Dept. of Corr.*, 305 P.3d 1004, 1019 (Okla. 2013); *Doe v. State*, 189 P.3d 999, 1007 (Alaska 2009)), would retain the

intent-effects test but conduct an independent balance on the factual questions under state law giving due respect for state precedent and policy. *See Muniz*, 164 A.3d at 1224 n.2, 1229-31. Petitioner asks this Court to do precisely what the plain statement rule is designed to prevent – a case by case second guessing of the intentions of a state's highest court. Pet. at 15-16.

Even if this Court were to delve into the legal conclusions underlying the plain statements, the decision rendered by the Pennsylvania Supreme Court did not depend upon the interpretation of federal law. First, the adoption of a federal test for use in interpreting a state constitutional provision does not mean state law is thus forever linked and controlled by federal law. *Long*, 463 U.S. at 1044; *Lehman v. Pennsylvania State Police*, 839 A.2d 265, 270 n.4 (Pa. 2003) ("The Pennsylvania and United States Constitutions afford separate bases for proscribing ex post facto laws. This Court has applied the standards used in federal ex post facto analysis to evaluate similar claims under the Pennsylvania Constitution.").

This is further demonstrated by the concurring opinion's desire to "promote consistency" between the state and federal ex post facto clauses. *Muniz*, 164 A.3d at 1229 (Wecht J., concurring). According to Justice Wecht, while the two clauses are separate and the interpretation of the two may at some point diverge, there is no need to cement that departure now. *Id.* at 1232-33. If, however, this Court were to accept review and reverse, the state's prior cases suggesting the independent strength of certain factors in the intent-effects test, along with state specific policy considerations, would likely counsel divergence of the two clauses in light of Justice

Wecht's agreement with the analytical balance, forged by the OAJC, finding a punitive effect. *Id.* at 1227-28; 32-33.

Second, Petitioner's argument also falls flat with respect to this Court's reluctance to overlook a state court's plain statement. This Court will not presume ambiguity where a plain statement exists. *Harris v. Reed*, 489 U.S. 255, 261 (1989) (citing *Long*, 463 U.S. at 1042, and numerous other cases). It is only the exceptional and obvious case where this Court has accepted review despite the existence of a plain statement. Petitioner ignores this fact and tries to imply that this is the norm, yet cites only one case in support of its position, *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17 (2012) (per curiam). Pet. at 15-16.

Nitro-Lift could not be more dissimilar. The federal question involved there was obvious. There, Oklahoma's Supreme Court rejected this Court's interpretation of the Federal Arbitration Act (FAA), 9 U.S.C. § 1 et seq., claiming that the Act's requirement that the arbiter decide the validity of a non-competition clause in the first instance violated state law. The state court's determination that neither the Act itself, nor this Court's interpretation of the Act, barred it from reviewing the validity of an agreement cannot be independent of a federal question because "the Oklahoma Supreme Court must abide by the FAA, which is the supreme Law of the Land." *Id.* at 21 (quotation omitted). If the FAA mandates that the arbiter gets to decide, a state court cannot supersede that federal interpretation under its own law. State law cannot override federal law or prevent this Court from deciding whether the statute allows such an interpretation.

The situation in *Nitro-Lift* is nothing like the instant case. Federal law cannot prevent a state from reaching its own independent and possibly more protective conclusions under state law. Three justices expressly expanded the protections of Pennsylvania law and two others merely relied on federal ex post facto standards for guidance. Neither decision was dependent upon or interwoven with federal law. *See contra id.*; *Oregon v. Guzek*, 546 U.S. 517, 520-21 (2006) (rejecting a state court's assertion of adequate and independent state grounds where language in a state court evidentiary rule was defined and constrained by federal constitutional law).

Here, the Pennsylvania Supreme Court simply reached a conclusion which borrows precedent and guidance from the federal courts. It is a substantive determination on behalf of five Justices which stands alone under Pennsylvania law. The Pennsylvania Supreme Court's decision is final.

B. There is no split amongst authorities regarding whether Pennsylvania's Sexual Offender Registration and Notification Act violates the federal ex post facto clause.

1. Pennsylvania's Supreme Court, consistent with every other court to address the question, correctly set forth and applied the well-established ex post facto standard.

A state does not upset established federal law or create a split in authorities when it reaches a fact specific conclusion after properly applying a long standing federal standard and adopting that test for use under its own constitution. Although Petitioner is correct that some courts have reached different conclusions regarding the punitive effect of particular provisions of other jurisdiction's sex-offender-registration laws, none of those decisions conflicts with the Pennsylvania Supreme Court's decision. A state court's application of this Court's settled test to a unique state scheme does not render the test or the result inconsistent with other decisions reviewing different laws.

This Court has set forth a clear and administrable standard for examining whether a law is punitive under the federal ex post facto clause.

> If the intention of the legislature was to impose punishment, that ends the inquiry. If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, we must further examine whether the statutory scheme is "so punitive either in purpose or effect as to negate [the State's] intention' to deem it 'civil.'"

Smith v. Doe, 538 U.S. 84, 92 (2003) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997) (stating that the intent-effects "framework for our inquiry [...] is well established"); *see also Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963) (same).

Every federal court that has addressed whether a sexual offender registration scheme is punitive has applied this test. The OAJC applied this test consistently in resolving the federal question and also adopted it for use under the Pennsylvania Constitution. *Muniz*, 164 A.3d at 1208 (OAJC) ("We first consider whether the General Assembly's intent was to impose punishment, and, if not, whether the statutory scheme is nonetheless so punitive either in purpose or effect as to negate the legislature's non-punitive intent."). The OAJC also recognized that the "clearest proof" is required to establish, through an examination of the entire statutory scheme, that the law is punitive in effect. *Id.*

Having set forth the appropriate rubric, the OAJC determined that "the General Assembly's intent in enacting SORNA apparently was twofold: to comply with federal law; and . . . not to punish, but to promote public safety through a civil, regulatory scheme." *Id.* at 1209-10 (internal quotations and citations omitted). The OACJ then conducted an analysis of the *Mendoza-Martinez* factors.

In conducting that analysis, the OAJC found that aspects unique to SORNA weighed in favor of finding SORNA punitive, concluding that: the statute involves an affirmative disability or restraint; the specific sanction has historically been regarded as punishment; the operation of the statute promotes the traditional aims of punishment; and the statute is excessive in relation to the alternative purpose

assigned. *Id.* at 1210-19. Finding that the balance weighs in favor of a punitive effect, the OAJC held that retroactive application of SORNA violates the ex post facto clause of the United States Constitution. *Id.* at 1219. This result is consistent with the methodology employed by other state courts of last resort and the federal judiciary.

Moreover, a state court's decision under its own law, even if it adopts a federal test, does not create a conflict with federal law. And even if this Court were to decide that the Pennsylvania Supreme Court's holding rested upon federal law, which it does not, the Pennsylvania Supreme Court's application of the proper analytical framework neither creates conflict nor warrants review by this Court. As the next section demonstrates, the Petitioner's dispute is with the Pennsylvania Supreme Court's factual conclusion, and that dispute does not raise any broad legal questions suitable for this Court's review.

2. Petitioner asks this Court to make a fact based determination based upon Pennsylvania's unique scheme, even though *Muniz* does not create a decisional split nor raise an important question under federal law.

Most sexual offender registration laws share some similar elements, but no two registration schemes are identical. Despite the federal government's attempt to create national unity in registration practices, only eighteen states have substantially complied with federal law. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), "Jurisdictions that have substantially implemented SORNA", *available at*

https://www.smart.gov/newsroom_jurisdictions_sorna.htm. And here too, the Adam Walsh Act "set[ ] a floor", not a ceiling, with respect to registration laws, such that even amongst those few compliant states, each program may significantly differ in approach and effect. 73 Fed. Reg. 38033. Thus, an assessment of each registration scheme is fact based, and differing results do not create conflicts amongst the courts. The decision below is no different.

Pennsylvania's Sex Offender and Registration and Notification Act (SORNA), 42 Pa.C.S § 9799.10-9799.41, is materially different from, and goes beyond the baseline requirements established by, the Adam Walsh Child Safety and Protection Act of 2006 (Adam Walsh Act), 42 U.S.C § 16901-16991, trans. to 34 U.S.C § 20901-20991. The Supreme Court of Pennsylvania's decision finding that SORNA violates the ex post facto clause of the United States Constitution is consequently not incompatible with federal court decisions upholding the constitutionality of the Adam Walsh Act. Accordingly, further review by this Court is not warranted.

First, SORNA is more onerous with respect to in-person reporting. SORNA requires in-person reporting within 3 business days of: any change in name, residence, employment, or student status; any change in telephone number or cell phone number; any change in ownership or operation of a motor vehicle, watercraft, or aircraft, including providing license plate numbers and registration numbers; the commencement or termination of temporary lodging; any change in email address, instant messaging address, or "any other designation used in internet communications or postings"; and any change related to occupational and

professional licensing, 42 Pa.C.S. § 9799.15(g). The Adam Walsh Act only requires in-person reporting for a change of name, residence, employment, or student status within 3 business days of the change, 34 U.S.C. § 20913(c). To be clear, SORNA does not just require the updating of the listed information, which the Adam Walsh Act does not, it also requires those updates to be made in person and within 3 business days of the change.

SORNA's in-person reporting requirements are in fact similar to the onerous in-person reporting requirements of Michigan's Sex Offenders Registration Act (SORA), Mich. Comp. Laws Ann. § 28.725, which was found by the court of appeals for the 6th circuit to violate the federal ex post facto clause of the Constitution. *John Does, #1-5 v. Michigan, et al.*, 834 F.3d 696 (6th Circuit 2016), cert. denied __ S.Ct. ___, 2017 WL 4339925 (U.S. October 2, 2017). Both SORNA and SORA also go beyond the requirements of the Adam Walsh Act by requiring an offender's tier classification to be made public via internet dissemination. Mich. Comp. Laws Ann. § 28.728(2)(l) and 42 Pa.C.S. § 9799.28(b)(13). The federal law is more limited. *See* 73 Fed. Reg. 38058-59 (2008). Addressing the public dissemination of an offender's information in general, this Court in *Smith v. Doe*, 538 U.S. 84 (2003), stated, "Our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment." *Smith*, at 98. However, tier classification is disseminated publicly despite a lack of evidence correlating crime of conviction with likelihood of reoffending. Thus a purely speculative metric of dangerousness is presented to the public as though it were an objective trait of a

registrant. SORNA has infected the dissemination of truthful information with baseless claims regarding a registrant's threat to public safety. *See* Wayne A. Logan, Knowledge as Power: Criminal Registration and Community Notification Laws in America 138 (Stanford Univ. Press 2009) ("To conclude that registries only contain 'accurate information' is to thus misstate the government's action; a wholly stigmatizing and unwelcome public status is being communicated, not mere neutral government-held information.").

Additionally, while both the Adam Walsh Act and SORNA require registrants to report information with regard to international travel no later than 21 days prior to that travel, only SORNA requires the reporting to be done in person. 34 U.S.C. § 20914(a)(7) and 42 Pa.C.S. § 9799.15(i). The Adam Walsh Act is silent as to how and when the reporting of international travel plans must be reported. 73 Fed. Reg. 38066-67 (2008) (leaving the matter to each jurisdiction).

Significantly, the Adam Walsh Act also provides for a reduction in the number of years an offender is required to register if the offender meets certain requirements. 34 U.S.C. § 20915. SORNA provides for no such reduction for any registrant regardless of their conduct during their period of registration.

Unlike the Adam Walsh Act, SORNA restricts where some registrants may reside. Section 9799.25(f) of the Act limits the number of registrants deemed sexually violent predators who can live in a group-based home. SORNA also requires transient offenders to appear in person monthly. 42 Pa.C.S. § 9799.15(h)(1). The Adam Walsh Act is silent with respect to transient and

homeless offenders. U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), SORNA Implementation Document #6.

SORNA also sweeps within its reach more offenders than does the Adam Walsh Act. The list of offenses requiring registration under SORNA, but not under the Adam Walsh Act, include: Interference with Custody, 18 Pa.C.S. § 2904; Luring Child into Motor Vehicle or Structure, 18 Pa.C.S. § 2910; Corruption of Minors, 18 Pa.C.S. § 6301(a)(1)(ii); Invasion of Privacy, 18 Pa.C.S. § 7507.1; and Unlawful Contact with Minor, 18 Pa.C.S. § 6318. *Compare* 42 Pa.C.S. § 9799.14 and 34 U.S.C. § 20911.

To paraphrase the Solicitor General, "To the extent any tension exists among appellate courts about whether certain common features (described at a relatively high level of generality) of sex-offender-registration laws are punitive, this case would not be a suitable vehicle for resolving any such feature-by-feature tension because the [Supreme Court of Pennsylvania's] decision here is directed at the aggregate effect of the challenged aspects of [SORNA]." Brief for the United States as Amicus Curiae, *Michigan, et al. v. John Does, #1-5*, 2016 WL 2929534 (July 7, 2017) (No. 16-768) at 16.

CONCLUSION

WHEREFORE, this Court should deny the Commonwealth's Petition for Writ of Certiorari.

Respectfully submitted,

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