

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RONALD W. PAUL,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Sex Offender Registration and Notification Act (“SORNA”) creates a federal duty to register for state sex offenders who are required by state law to register as sex offenders in their states. Mr. Paul was convicted of a qualifying state sex offense, but he later prevailed in state post-conviction proceedings and then settled with the State of Tennessee for a sentence of “time served” and a judgment expressly relieving him of the requirement that he register as a sex offender.

The questions presented are:

1. Did Mr. Paul have a federal duty to register as a sex offender when a valid state judgment relieved him of the state duty to register as a sex offender?
2. Did SORNA improperly delegate legislative authority to the Attorney General?

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JURISDICTION

The Sixth Circuit issued its opinion on December 11, 2017. This court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Tenth Amendment to the United States Constitution provides: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The Fifth Amendment to the United States Constitution provides: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

The Sixth Amendment to the United States Constitution provides: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been

committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”

Article I, Section 1, of the United States Constitution provides: “All legislative Powers herein granted shall be vested in a Congress”

The relevant statutory provisions are codified at 18 U.S.C. § 2250(a) and 42 U.S.C. § 16901, *et seq.*¹

Title 18 U.S.C. § 2250(a) provides, in relevant part:

(a) In general.--Whoever--

(1) is required to register under the Sex Offender Registration and Notification Act;

(2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

(B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act;

shall be fined under this title or imprisoned not more than 10 years, or both.

Title 42 U.S.C. § 16913 provides, in relevant part:

(a) In general[.] A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

(b) Initial registration[.] The sex offender shall initially register--

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

¹ 42 U.S.C § 16901 was subsequently transferred to 34 U.S.C. § 20901.

(2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

(c) Keeping the registration current[.] A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

(d) Initial registration of sex offenders unable to comply with subsection (b) The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).

(e) State penalty for failure to comply[.] Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this subchapter.

STATEMENT OF THE CASE

I. Mr. Paul's state conviction, post-conviction efforts, and judgment

In 1996, Mr. Paul was convicted in Tennessee state court of three counts of rape, one count of aggravated sexual battery, and two counts of sexual battery. *See State v. Paul*, No. 01C01-9511-CC-00358, 1997 WL 578969, at *1 (Tenn. Crim. App. Sept. 19, 1997). Mr. Paul was later granted post-conviction relief due to ineffective assistance of trial counsel. *See generally Paul v. State*, 75 S.W.3d 926 (Tenn. Crim. App. June 29, 2001). His judgment was vacated, and the court ordered a new trial. While on appeal, the state agreed to voluntarily dismiss the appeal, and the parties reached a settlement. The post-conviction judge entered a judgment reflecting that settlement, noting that Mr. Paul would: (1) plead no contest to a single count of rape; (2) receive a punishment of “time served”; (3) *not* receive community supervision for life; and (4) *not* be required to register as a sex offender. (R.22-1, Judgment, PageID#37.)

II. Mr. Paul's post-release conduct

Despite the Tennessee judgment to the contrary, county sheriff officials required Mr. Paul to register as a sex offender,² and Mr. Paul reluctantly complied for some time, registering and paying the required fee on several occasions. The registration forms that Mr. Paul signed notified him of his purported duty to

² Ordinarily under Tennessee law, a sex offender who had a judgment of conviction for the crime of rape would be classified as a “violent sexual offender” and required to register four times per year for life. *See* Tenn. Code Ann. § 40-39-202(30); *id.* § 40-39-204(b)(1).

register as a sex offender. Only the last one informed Mr. Paul that he may also have a federal duty to register as a sex offender.

Each of the jail administrators who registered Mr. Paul testified at trial that he repeatedly complained that he did not have to register in light of the judgment absolving him of that duty. Two of the jail administrators followed up on these complaints, contacting the Tennessee Bureau of Investigation (“TBI”) to determine Mr. Paul’s status and believing that the TBI had sole discretion over which individuals were subject to the registration requirements. Trial testimony established that there was no separate office or administrator for a federal sex offender registry and that the only registration option was for offenders to register through the county jail administrator.

In approximately October of 2012, the jail administrator in the Jackson County Sheriff’s Office saw that Mr. Paul had not registered. She and the U.S. Marshals eventually determined that Mr. Paul had traveled to the Philippines on several occasions between 2006 and 2012.³ Mr. Paul did not report any of his trips to the Philippines in a way that would have complied with Tennessee registration requirements, although he did stay in sporadic contact with the jail administrators by calling and sending mail regarding his whereabouts.

Tennessee authorities issued warrants for Mr. Paul’s arrest. Mr. Paul returned to the United States in April 2012 and met with a U.S. Marshal, informing

³ Mr. Paul was staying with a woman in the Philippines—whom he ultimately married—and intended to move there permanently.

him that he had returned in order to clear up the warrants against him. Mr. Paul stated that he resided in the Philippines and that he was not required to register as a sex offender. To investigate Mr. Paul's claim that he did not have to register, the Marshal spoke with the TBI registering agent who opined that Mr. Paul did have to register, and spoke with TBI's head legal counsel who stated that the court order relieving Mr. Paul of his duty to register was contrary to law.

The federal government indicted Mr. Paul for failure to register as a sex offender on May 16, 2012. (R.1, Indictment, PageID#1.)

III. The federal prosecution against Mr. Paul

Mr. Paul filed a motion to dismiss the indictment against him. (R.22, Mot. to Dismiss, PageID#32-36.) He attached the Tennessee judgment against him, (R.22-1, Judgment, PageID#37), and argued that the judgment relieved him of both state *and* federal duties to register as a sex offender.

The district court denied Mr. Paul's motion to dismiss, reasoning that: (1) SORNA itself creates a federal duty to register that is independent of any state duty to register; and (2) Tennessee law does not create an exception to the sex-offender registration requirement, and thus, Mr. Paul's Tennessee judgment was invalid. (R.33, Memorandum, PageID#63-66.) The court also granted the government's motion in limine, precluding Mr. Paul from arguing to the jury that his Tennessee judgment relieved him of his obligation to register as a sex offender. (R.56, Order, PageID#131.)

The first trial resulted in a mistrial, for reasons unrelated to this petition. Following the mistrial, the government filed a superseding indictment, this time alleging three SORNA violations (rather than one) spanning different dates. (R.65, Superseding Indictment, PageID#194-95.)

Mr. Paul renewed his motion to dismiss the indictment, raising the same argument that the state judgment relieved him of the duty to register. (R.80, Mot. to Dismiss, PageID#240-253.) Once again, the district court denied Mr. Paul's motion, this time reasoning that the Tennessee judgment was "inconsequential to this action" because "SORNA creates a federal duty to register that is independent of the state duty to register. (R.88, Memorandum, PageID#287.)⁴

The parties again proceeded to trial, and again litigated the degree to which the jury would be allowed to consider the Tennessee judgment. Over Mr. Paul's objection, the court granted the government's motion in limine to preclude Mr. Paul from arguing that he was not legally obligated to register as a sex offender. (R.138, Trial Tr., Court, PageID#485-87.) The court allowed Mr. Paul to discuss the judgment and the facts surrounding it only to (1) give context for why Mr. Paul behaved the way he did, and (2) allowed Mr. Paul to argue that he did not have notice of his duty to register.

At the close of trial, the jury returned verdicts of guilty on all three counts. The district court sentenced Mr. Paul to time served and 14 months in a halfway

⁴ The court eventually determined that, contrary to its earlier opinions, the Tennessee judgment was indeed valid. (R.140, Trial Tr., PageID#789-90.)

house, in recognition of the confusion resulting from his state judgment and the fact that he had not committed any similar conduct in the 21 years since his original conviction.

III. Appeal

Mr. Paul filed a timely notice of appeal. The Sixth Circuit remanded his case for further proceedings in light of intervening opinion *Nichols v. United States*, 136 S. Ct. 1113 (2016). On remand, the district court vacated Mr. Paul's two convictions involving international travel but not his third conviction. (R.176, Order, PageID#1208.) Mr. Paul again appealed, arguing that his remaining conviction was invalid because the state judgment relieving him of the state duty to register as a sex offender meant that he did not have a federal duty to register. The Sixth Circuit affirmed his remaining conviction, holding that the Tennessee judgment did not excuse Mr. Paul from complying with federal registration requirements. *United States v. Paul*, Case No. 17-5329, __ F. App'x __, 2017 WL 6278773 (6th Cir. Dec. 11, 2017).

ARGUMENT

“[A]s far as we can tell, while SORNA punishes violations of its requirements (instead of violations of state law), the Federal Government has prosecuted a sex offender for violating SORNA only when that offender also violated state-
registration requirements.” *United States v. Kebodeaux*, 570 U.S. 387, 398 (2013). Here, however, the government did just the opposite in prosecuting Mr. Paul, who had a valid state court judgment expressly relieving him of his state duty to register.

The Sex Offender Registration and Notification Act (SORNA) creates an unusual dual state/federal registration requirement. It requires states to create uniform sex offender registries, and requires offenders to register in their states. In practice, there is no place to register “federally,” and state and federal law enforcement officers assume that the law only applies to offenders who are required to register by their state. Because Mr. Paul has no state duty to register, he has no federal duty. SORNA would be unconstitutionally vague if interpreted to require an individual to disregard a valid state court judgment and nevertheless register with his state registry, and any such requirement would deprive the state court judgment of the full faith and credit it deserves. Because SORNA creates no federal registry, requiring states to register offenders who have no state duty to do so would effectively commandeer those state agencies in violation of the Tenth Amendment. Finally, it was an improper delegation of legislative authority for the Attorney

General to determine whether SORNA's registration requirements apply to offenders like Mr. Paul who were convicted prior to SORNA's enactment.

I. Mr. Paul's valid Tennessee judgment—which relieved him of the duty to register as a sex offender in the state—relieved him of his federal duty to register under SORNA.

SORNA's background demonstrates that although it creates a "separate" federal registration requirement for state sex offenders, that requirement is effectively triggered by and coextensive with a *state* registration requirement. The purpose of SORNA was to "creat[e] a national system for the registration of sex offenders." 42 U.S.C. § 16901. According to the Office of the Attorney General, SORNA mandates that state sex offenders provide "extensive registration information" and was intended to create a rigorous new registration regime among the states, as well as to harshly punish the failure to register. Dept. of Justice, Nat'l Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38030, 38044-45 (July 2, 2008); 18 U.S.C. § 2250(a); *see also* 42 U.S.C. § 16914(a).

Despite creating new reporting obligations and criminal sanctions for failure to register and contrary to this stated purpose, SORNA specifically did not create a "federal" system for the registration of sex offenders. Rather, Congress "directed all states and the District of Columbia to create local registries that comply with specific national standards." *United States v. Felts*, 674 F.3d 599, 602 (6th Cir. 2012) (citing 42 U.S.C. §§ 16911(10), 16912(a)). Non-cooperative states were threatened with the loss of ten percent of federal funds under the Omnibus Crime and Safe Streets Act of 1968. *See* 42 U.S.C. §§ 16914(b), 16924, 16925(a).

This dual state/federal structure caused confusion when it came to enforcing SORNA in states that had not yet implemented SORNA. Courts eventually held that SORNA creates a separate federal duty to register as a sex offender, but tied that federal duty to the state duty by determining that the government could still prosecute individuals in states that had not yet implemented SORNA—only because there were pre-existing state registries that sex offenders could use to satisfy their federal obligations. *See, e.g., United States v. Brown*, 586 F.3d 1342, 1349 (11th Cir. 2009) (“[E]very state and the District of Columbia had a sex offender registration law prior to 2006. An individual may therefore comply with SORNA’s registration requirements by registering through the state’s sex offender registry, even if that jurisdiction has not implemented SORNA’s administrative procedures.” (internal citations omitted)).

This Court has since acknowledged this dual federal/state nature by both upholding the notion of a separate federal duty to register and recognizing that the only way to do so was through compliance with a state’s laws. *See Kebodeaux*, 570 U.S. at 398. As discussed below, this interpretation of SORNA is based on a commonsense understanding of how the statute works in practice. However, here, the government has done precisely the opposite in prosecuting an individual whom a state court expressly relieved of the obligation to register as a sex offender in his own state.

A. Under the valid, unchallenged Tennessee judgment, Mr. Paul was not required to register as a sex offender.

The Tennessee judgment in this case embodied the deal into which Mr. Paul and the State of Tennessee voluntarily entered. The Criminal Court of Robertson County has valid jurisdiction to enter a judgment with respect to a criminal matter, and that judgment is valid and final.

No party in Tennessee—not the state or any of its agencies—had the right to ignore the valid Tennessee judgment or claim that it was entered erroneously. *See United States v. Starnes*, 501 F. App'x 379, 386 (6th Cir. 2012) (holding that a state agency “had no authority to disregard a binding court order simply because it disagreed with the sentencing judge’s legal analysis”). Here, it was wrong for the TBI to act as though Mr. Paul’s valid order did not exist, and in doing so, the TBI “erode[d] public confidence in law enforcement [and] erode[d] the rule of law itself.” *See id.* This valid, unchallenged order binds any and all state agencies, regardless of whether (as the government contends) it was entered erroneously.

Moreover, the government had no standing or power to assert the invalidity of this order in federal court. But even if it did, there is no question that Tennessee courts would have to give credit to such a judgment, even if it were somehow “erroneous”:

A lawful order is one issued by a court with jurisdiction over both the subject matter of the case and the parties. An order is not rendered void or unlawful simply because it is erroneous or subject to reversal on appeal. Erroneous orders must be followed until they are reversed.

Konvalinka v. Chattanooga-Hamilton County Hosp. Auth., 249 S.W.3d 346 (Tenn. 2008) (internal citations omitted).

Federal courts cannot disregard this judgment. They are constitutionally and statutorily required to give full faith and credit to state-court judgments. The Full Faith and Credit Clause of the U.S. Constitution provides that “Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State.” U.S. Const. art. IV, § 1. The Full Faith and Credit statute, enacted to implement the Full Faith and Credit Clause, states that the acts of the legislature of any state and the records and judicial proceedings of any court of any state “shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.” 28 U.S.C. § 1738. Accordingly, the Act “directs all courts to treat a state court judgment with the same respect that it would receive in the courts of the rendering state. Federal courts may not employ their own rules in determining the effect of state judgments” *Matsushita Elec. Indus. Co., Ltd. V. Epstein*, 516 U.S. 367, 373 (1996).

There are ways that a party can attack such a final judgment, such as an appeal or post-conviction proceedings. The state of Tennessee pursued neither of these (nor could it have pursued post-conviction proceedings). The judgment was thus a valid, final judgment from a court with competent jurisdiction, and Mr. Paul was not required to register with the Tennessee sex offender registry.

B. Because Mr. Paul had a valid state-court judgment relieving him of the duty to register at the state level, he had no separate federal obligation to register as a sex offender under SORNA.

As this Court has noted, the government has historically not prosecuted state sex offenders who had no obligation to register under state law; instead, it has “prosecut[ed] a sex offender for violating SORNA only when that offender also violated state-registration requirements.” *United States v. Kebodeaux*, 570 U.S. at 398. Despite this pronouncement, courts have struggled to interpret SORNA in cases similar to Mr. Paul’s. While not presenting a traditional circuit split, the following decisions are illustrative of the confusion presented by SORNA’s unusual state/federal structure. The Third Circuit in *United States v. Pendleton*, 636 F.3d 78 (3d Cir. 2011) held (before this Court’s *Kebodeaux* decision) that a defendant who was not required to register under state law was nevertheless required to register in that same state under SORNA. *Id.* at 86. More recently, however, and in accordance with the Court’s observation in *Kebodeaux*, the Fifth Circuit in *United States v. Shepherd*, 880 F.3d 734 (5th Cir. 2018) granted relief under 28 U.S.C. § 2255 to a defendant who had been convicted under SORNA for failing to register federally in a state that did not require him to register. *Id.* at 742, 744-46. The court found that the fact that he did not need to register at the state level was a viable defense to the SORNA violation; his counsel gave him ineffective assistance in not researching this, rendering his guilty plea involuntary. *Id.*

Because Mr. Paul had no duty to register at the state level, his prosecution under SORNA was inappropriate.

1. The structure and practical application of SORNA demonstrates that Mr. Paul was not required to register as a sex offender.

As discussed above, SORNA's structure creates what appears to be a confusion in this case. On the one hand, federal law is well settled that the registration requirement in 42 U.S.C. § 16913(a) is a separate federal obligation. *See, e.g., Felts*, 674 F.3d at 604. On the other hand, that duty has always been premised on a state-court duty to register, as this Court recognized in *Kebodeaux*.

The government's own witnesses at trial all acknowledged that there is no separate registry for one's "federal" obligations, and, most importantly, that the only agency that determines whether an individual must register as a sex offender is the TBI, a state law enforcement agency. Even the deputy U.S. Marshal who investigated Mr. Paul's registration status acknowledged that the TBI made the sole determination of whether Mr. Paul had to register.

This is how the law is practiced throughout the country. The reason the federal government does not ordinarily indict individuals who do not have an obligation to register at the state level is because that is precisely how SORNA is supposed to work. The state obligation is what triggers the federal obligation (at least for state sex offenders). It makes sense that an individual who is relieved of the duty to register at the state level is also relieved of the federal duty. Cases addressing the question of whether an individual, who unquestionably had a state duty to register, was still required to register under SORNA in states that had not fully implemented SORNA, do not contradict this. The conclusion in *Felts*, for

example, was premised on the assumption that a defendant not only *could* register in the state registry but that he *must*, and that this fact was inextricably tied with SORNA's requirements. 674 F.3d at 605 ("Felts clearly did not comply with the Tennessee law in effect at the time, which was consistent with SORNA insofar as it provided for and required registration with a registry . . .").

Interpreting SORNA to mean that a federal duty to register arises even absent a state duty, or to apply even when a state judgment has explicitly relieved a defendant of the obligation to register under state law, would contradict the plain language of the SORNA statute. Although the statute's federal registration requirement is ostensibly "separate" from the state requirement, it is nevertheless phrased in such a way as to tie it directly to the state requirement: "A sex offender shall register, and keep the registration current, *in each jurisdiction where the offender resides . . .*" 42 U.S.C. § 16913(a) (emphasis added). In other words, the registration requirement presupposes that an individual is required to register as a sex offender in his state. Mr. Paul had no obligation to register as a sex offender in Tennessee, and thus he could not have had a federal duty to register.

2. An interpretation of SORNA that would allow the federal government to commandeer state registries for alleged "federal" obligations would violate the Tenth Amendment.

While SORNA created a regulatory scheme that punished individuals for not registering, it did not create a federal sex offender registry. Rather, it explicitly required states to create or update their registries and directs individuals to register in their state offices. The Tenth Amendment prohibits the federal

government from “commandeering” states, which, among other things, prevents the federal government from telling states and state officials what to do. *Printz v. United States*, 521 U.S. 898, 935 (1997).

In Mr. Paul’s case, it violates the Tenth Amendment for the federal government to tell a Tennessee county sheriff’s office that it *must* register a federal offender who has no obligation to register under state law. The *Printz* opinion itself demonstrates the problem. There, this Court invalidated a federal law requiring state law enforcement officials to conduct background checks of prospective handgun purchasers. *Id.* at 935. It held that “[t]he Federal Government may neither issue directives requiring the states to address particular problems, nor command the states’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.” *Id.*

Mr. Paul has no state obligation to register, and his county sheriff’s office has no obligation to register him as a sex offender. The government’s interpretation of SORNA as creating a federal duty to register that is distinct from Mr. Paul’s state duty to register would likewise force county officials to register offenders who have no state obligation to register. Such an interpretation would create a problem almost identical to the law in *Printz* that required state officers to conduct federal background checks. *See id.* If the government intends to prosecute more individuals who have no state duty to register, then it will effectively require state agencies across the country to register individuals whom they would otherwise not register.

“[A]s between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act.” *Rust v. Sullivan*, 500 U.S. 173, 190 (1991) (citing *Blodgett v. Holden*, 275 U.S. 142, 148 (1927)). The commonsense reading of SORNA and the most constitutionally sound reading are the same: that SORNA allows the federal government to punish state offenders who fail to comply with state law.

3. **If SORNA can be interpreted as creating a separate federal obligation for an individual who has been relieved of the duty to register at the state level, then it is unconstitutionally vague as applied to Mr. Paul.**

SORNA’s registration requirement applies to all “sex offenders,” 42 U.S.C. § 16913(a), a term that is defined as “an individual who was convicted of a sex offense.” § 16911(1). In other words, to determine whether an individual is required to register as a sex offender, we look to his judgment of conviction. But Mr. Paul’s judgment of conviction contained the following language: “nor shall defendant be required to comply w/ the sexual offender registry.” Applying SORNA in such a case violates basic due process by rendering SORNA unintelligible and depriving Mr. Paul of notice of his registration obligation.

“A statute is unconstitutionally vague and violates the Due Process Clause if it fails to define the offense with sufficient definiteness such that ordinary people can understand the prohibited conduct” *United States v. Blaszak*, 349 F.3d 881, 888 (6th Cir. 2003). “The prohibition of vagueness in criminal statutes ‘is a well-recognized requirement, consonant alike with ordinary notions of fair play and

the settled rules of law,’ and a statute that flouts it ‘violates the first essential of due process.’” *Johnson v. United States*, 135 S. Ct. 2551, 2556-57 (2015) (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926)). The same is true of the non-criminal portions of SORNA’s requirements. *Smith v. Doe*, 538 U.S. 84, 96 (2003) (concluding that it is only “logical to provide those persons subject to [a regulatory scheme] with a clear and unambiguous notice of the requirements and the penalties for noncompliance”).

As applied to Mr. Paul’s unique circumstances, SORNA is unconstitutionally vague. First, no “ordinary person” would read a judgment of conviction that expressly relieved him of the duty to register as a sex offender in the state of Tennessee as creating a duty to register as a sex offender in the state of Tennessee. Second, the complicated dual state/federal structure of SORNA provides little guidance to Mr. Paul as to whether his valid state judgment relieving him of the duty to register nevertheless requires him to register federally. This is especially true when there is no place he could go to register federally.

All Mr. Paul could do is go to his county sheriff’s office, but his judgment specifically tells him he does not have to do that. This Court has recognized that a statute’s vagueness is especially pernicious where the statute is “so standardless that it invites arbitrary enforcement.” *Johnson*, 135 S. Ct. at 2556. In this unique case, the statute failed to provide Mr. Paul notice of his “duty” and therefore violates his due process rights.

4. **The district court's orders preventing Mr. Paul from arguing that the Tennessee judgment relieved him of the federal duty to register impermissibly deprived Mr. Paul of his right to present a defense.**

The first element that the government must prove beyond a reasonable doubt in a SORNA prosecution is that the accused is “required to register under [SORNA].” 18 U.S.C. § 2250(a)(1). At the trial of this case, the district court granted the government’s motion in limine to “preclude defendant Ronald W. Paul from arguing that he was not legally obligated to register as a sex offender under either [SORNA] or under the law of the State of Tennessee SORNA or state law [*sic*].” (R.95, Mot. in Limine, PageID#301; R.103, Order, PageID#343.) This order effectively deprived Mr. Paul of the right to present his best defense. First, the jury should have heard Mr. Paul’s argument that the state judgment relieved him of the duty to register federally. The Sixth Amendment requires “criminal convictions to rest upon a jury determination that the defendant is guilty of every element beyond a reasonable doubt.” *United States v. Gaudin*, 515 U.S. 506, 510 (1995). The jury’s “constitutional responsibility is not merely to determine facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence.” *Id.* at 514. And while a judge “must be permitted to instruct the jury on the law,” *id.* at 513, in this case, as discussed above, the law is inherently informed by the unique and unprecedented facts regarding Mr. Paul’s state-court judgment. Thus, even if the question raised in the first element of the offense is *ordinarily* a purely legal question, it is not in this case, and Mr. Paul had a basic Sixth Amendment right to

have a jury make that determination.

Second, the district court's ruling arbitrarily prevented Mr. Paul from presenting his best legal defense. *See United States v. Scheffer*, 523 U.S. 303, 308 (1998) (noting that the "right to present a defense" may not be abridged by "arbitrary" rules). The court here effectively ruled that Mr. Paul could not raise *any* defense related to element one of the SORNA crime, which was Mr. Paul's best defense. Even if a court often has some interest in directing the jury toward a specific legal conclusion, the court's ruling was arbitrary in this case where (1) this was Mr. Paul's best legal defense, and he had argued it at every turn in this litigation; and (2) the law is uniquely unsettled in this area, a fact of which the district court was aware given that Mr. Paul had cited the Supreme Court's *Kebedeaux* opinion to the court. This arbitrary order left Mr. Paul without his best defense.

II. It was an improper delegation of legislative authority for the Attorney General to determine whether SORNA's registration requirements apply to offenders like Mr. Paul who were convicted prior to SORNA's enactment.

This Court recently granted certiorari to consider the question of whether SORNA improperly delegates legislative authority to the Attorney General. *Gundy v. United States*, 138 S. Ct. 1260 (2018). The application of SORNA's requirements to Mr. Paul, who was convicted of his sex offense in Tennessee prior to the enactment of SORNA, violates the Nondelegation Doctrine. *See Mistretta v. United States*, 488 U.S. 361, 371 (1989). This Court should therefore grant certiorari, or at a minimum, hold this petition in abeyance pending the disposition of *Gundy*, and

then afterwards grant certiorari, vacate, and remand for further consideration in light of *Gundy*.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

s/ Isaiah S. Gant

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RONALD W. PAUL,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

APPENDIX

United States v. Paul, Case No. 17-5329, __ F. App'x __, 2017 WL 6278773 (6th Cir.
Dec. 11, 2017)
(Opinion affirming Mr. Paul's conviction)

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