

No. A-\_\_\_\_\_

**In the Supreme Court of the United States**

Anthony Rayshon Bethea,  
*Petitioner,*

v.

North Carolina,  
*Respondent.*

**Application for an Extension of Time to File a Petition  
for a Writ of Certiorari to the North Carolina Court of Appeals**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and  
Circuit Justice for the Fourth Circuit:

Pursuant to Rule 13.5 of this Court, Anthony Rayshon Bethea respectfully  
requests a 30-day extension of time, to and including September 6, 2018, in which to  
file a petition for a writ of certiorari in this Court.

The final judgment of the North Carolina Supreme Court was entered on May  
9, 2018, so Mr. Bethea's time to file a petition for a writ of certiorari currently  
expires on August 7, 2018. Copies of the North Carolina Supreme Court's order  
denying review and the North Carolina Court of Appeals' opinion are attached.

1. This case raises an issue on which the lower courts are deeply divided. In  
*Smith v. Doe*, 538 U.S. 84 (2003), the Court rejected an Ex Post Facto Clause  
challenge to the retroactive application of Alaska's sex offender registration statute,  
on the ground that the statute was civil, not punitive. Alaska's statute was typical  
of that era. It required only that offenders register with the government and that

information about offenders be available to the public. In the years since *Smith v. Doe*, the states have added much harsher restrictions to their sex offender statutes. These “second-generation” statutes prohibit offenders from living within a certain distance of schools, parks, playgrounds, and other places where children may be present. Often they bar offenders from even *being* too close to such places. They ban offenders from certain professions. They impose onerous in-person reporting requirements. They mandate very long registration periods—much longer than the first-generation statutes did. They punish violations of these restrictions as felonies. And they are retroactively applied to offenders who were convicted before the statutes were enacted.

Some lower courts have held that the retroactive application of these statutes violates the Ex Post Facto Clause, because these statutes are punitive, unlike the statute the Court considered in *Smith v. Doe*. See *Does #1-5 v. Snyder*, 834 F.3d 696, 697-705 (6th Cir. 2016) (reviewing Michigan’s statute), cert. denied, 138 S. Ct. 55 (2017); *Commonwealth v. Muniz*, 164 A.3d 1189, 1208-18 (Pa. 2017), cert. denied, 138 S. Ct. 925 (2018); *Riley v. New Jersey State Parole Bd.*, 98 A.3d 544, 552-60 (N.J. 2014); *State v. Letalien*, 985 A.2d 4, 14-26 (Me. 2009); *Commonwealth v. Baker*, 295 S.W.3d 437, 442-47 (Ky. 2009), cert. denied, 559 U.S. 992 (2010).

Other lower courts, by contrast, have held that the retroactive application of these statutes does not violate the Ex Post Facto Clause, because these statutes, like the one the Court considered in *Smith v. Doe*, are not punitive. See *Shaw v. Patton*, 823 F.3d 556, 560-77 (10th Cir. 2016) (reviewing Oklahoma’s statute);

*Litmon v. Harris*, 768 F.3d 1237, 1242-43 (9th Cir. 2014) (reviewing California's statute); *ACLU v. Masto*, 670 F.3d 1046, 1052-58 (9th Cir. 2012) (reviewing Nevada's statute); *Doe v. Miller*, 405 F.3d 700, 718-23 (8th Cir. 2005) (reviewing Iowa's statute), cert. denied, 546 U.S. 1034 (2005); *Kammerer v. State*, 322 P.3d 827, 831-39 (Wyo. 2014); *State v. Harris*, 817 N.W.2d 258, 269-73 (Neb. 2012); *State v. Trosclair*, 89 So. 3d 340, 347-57 (La. 2012); *State v. Seering*, 701 N.W.2d 655, 666-69 (Iowa 2005).

2. Anthony Bethea pled guilty in 2004 to the North Carolina offense of sexual activity with a student. As part of a plea agreement, he agreed to register as a sex offender. Under North Carolina's then-existing sex offender statute, Mr. Bethea was required to register with the sheriff of the county where he resided and to notify the sheriff if he moved. The sheriff's office posted his registration information on the Internet. These were the only obligations imposed by registration. Under the then-existing statute, Mr. Bethea would be automatically removed from the registry in 2014, ten years after registered, if he did not commit any further offenses.

Beginning in 2006, however, North Carolina radically transformed its sex offender statute, by adding many more burdens that are entailed by registration. Now, Mr. Bethea is subject to a host of restrictions that did not exist at the time of his plea agreement. For example, it is a felony for him to be on the premises of schools (including his own children's schools, except under extremely limited circumstances), playgrounds, parks, libraries, swimming pools, and the state fairgrounds. It is a felony for him to reside within 1,000 feet of a school. It is a

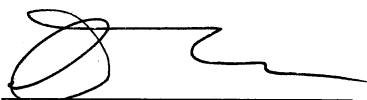
felony for him to work or volunteer in any field that involves the instruction or supervision of minors, such as helping to coach his children's sports teams. If he changes his address, even for a few days (such as by taking his family on vacation), he must appear in person before the sheriff and provide written notice of the new address within three days of the change. Because of these changes and others, sex offender registration looks nothing like it did in 2004, when Mr. Bethea pled guilty. Moreover, in the years since he pled guilty, North Carolina has drastically lengthened the registration period. In 2004, it was set to expire automatically after ten years. Now it lasts for thirty years. Mr. Bethea is not even eligible to apply to have the period shortened until he has been on the registry for twenty-five years.

3. In 2014, ten years after he registered, Mr. Bethea petitioned the Superior Court to be removed from the registry. He argued that the Ex Post Facto Clause barred the state from applying all these new restrictions to him. The Superior Court denied his petition. The North Carolina Court of Appeals affirmed. *In re Bethea*, 806 S.E.2d 677 (N.C. Ct. App. 2017). The North Carolina Supreme Court denied review. *In re Bethea*, 813 S.E.2d 241 (N.C. 2018).

4. Good cause exists for an extension of time to prepare a certiorari petition in this case. Undersigned counsel was only just brought into the case. He needs time to familiarize himself with the full record and to research the sex offender registration laws of all fifty states, so that the certiorari petition can explain, as precisely as possible, the scope and practical effects of the lower court conflict. In addition, counsel has a long-planned family vacation scheduled for July.

For these reasons, we request a 30-day extension of time, to and including September 6, 2018, in which to file a petition for a writ of certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stuart Banner', written over a horizontal line.

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June 21, 2018