No. 18-6533

IN THE
Supreme Court of the United States

ANTHONY MICHAEL LEWALLYN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eleventh Circuit

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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REPLY ARGUMENT

A. The government concedes that the circuit courts are divided on the question of venue for a SORNA prosecution

The government agrees that there is a conflict but that since it is "shallow," this Court's review is unwarranted. *Brief in Opposition* at 12. Yet, the government cites no case for its position that a "shallow" conflict is not worthy of the Court's review. Indeed, "[o]ne of this Court's primary functions is to resolve 'important matter[s]' on which the courts of appeals are 'in conflict.'" *Gee v. Planned Parenthood*, 586 U.S. —, 139 S. Ct. 408, 408 (2018) (Thomas, J., joined by Alito, J., Gorsuch, J., dissenting from denial of certiorari). This is "[b]ecause uniformity among federal courts is important." *Thompson v. Keohane*, 516 U.S. 99, 106 (1995). As the parties agree that there is a split among the circuits, the Court should grant certiorari to resolve the dispute.

B. The Court's review is warranted because SORNA prosecutions are still occurring in districts where offenders have no present obligation to register

The government argues that further review is unwarranted because it can bring prosecutions in the destination district rather than the district where travel commenced. *Brief in Opposition* at 12. However, that does not cure the error of prosecuting Mr. Lewallyn in Georgia, rather than in North Carolina.

The government's assurance that it can bring prosecutions in the correct venue is not enough. In its brief, the government asserted that "the Department of Justice has distributed to prosecutors informal guidance recommending that they [bring prosecutions in the destination district] where possible." *Id*. However, the government did not attach this "informal guidance" to its brief, or even cite to it. Thus, it is not clear when this guidance was issued, to whom it was issued, and what the exceptions are.

What is clear is that since *Nichols*, SORNA prosecutions continue to occur in the district from which travel commenced rather than the district where the offender had a present obligation to register. *See e.g., United States v. Parkerson*, 3:18-cr-517-B (N.D. Tex.) (defendant residing in Nevada); *United States v. Bolish*, 2:18-cr-261-DCN (D. Idaho) (defendant residing in Louisiana); *United States v. Sleeth*, 4:18-cr-27 (S.D. Iowa) (defendant residing in Florida); *United States v. Spivey*, 7:17-cr-29-H-1, (E.D.N.C.) (defendant residing in Colorado); *United States v. Douglas*, 3:16-cr-53-CRS (W.D. Ky.) and *United States v. Douglas*, 5:16-cr-17-EKD (W.D. Va.) (defendant, a Virginia resident, opted to have his case transferred from Kentucky to Virginia).[1] These prosecutions show that this Court's review is necessary to resolve an ongoing conflict.

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[1] Mr. Spivey has appealed the venue issue to the Fourth Circuit Court of Appeals, but briefing has been suspended pending this Court's decision in *Gundy v. United States*, No. 17-6086. *See Spivey v. United States*, No. 18-4099 (4th Cir.).

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully Submitted,

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