

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

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IN THE  
SUPREME COURT OF THE UNITED STATES

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TODD LEE GLENN,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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**APPLICATION FOR EXTENSION OF TIME IN WHICH TO  
FILE PETITION FOR WRIT OF CERTIORARI**

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

Petitioner, by his attorney, respectfully makes an application pursuant to  
Supreme Court Rule 13.5 and Rule 22 to extend the time by 60 days in which to file  
a petition for writ of certiorari from the judgment entered by the United States Court  
of Appeals for the Fourth Circuit. In support thereof, counsel states the following:

1. In 2003, before the Sexual Offender Registration and Notification Act (34 U.S.C. § 20913 *et. seq.*) was enacted, Mr. Glenn was convicted of second degree rape in the Circuit Court for Baltimore County, Maryland. He was sentenced to ten years in prison with five years suspended and five years of supervised probation. Upon release from prison in 2005, Mr. Glenn registered as a sex offender in the Maryland. But in 2015, Mr. Glenn moved to Pennsylvania. Upon moving there, he updated his registration. In 2017, Mr. Glenn moved to Delaware. Once again, he updated his registration. However, in August or September of 2017, Mr. Glenn moved back to Maryland, but he failed to update his registration. Based on these facts, on March 6, 2018, Mr. Glenn was indicted for one count of failing to register and failing to update his registration as required by SORNA in violation of 18 U.S.C. § 2250(a).

Thereafter, Mr. Glenn moved to dismiss the indictment upon arguing that 34 U.S.C. § 20913(d) of SORNA is unconstitutional. Specifically, § 20913(d) provides that for individuals convicted of sex offenses before SORNA's enactment ("pre-enactment offenders"), the Attorney General "shall have the authority" to "specify the applicability" of SORNA's registration requirements and "to prescribe rules for [their] registration." 18 U.S.C. § 20913(d). Under this delegated authority, the

Attorney General issued a rule specifying that SORNA's registration requirements apply in full to pre-enactment offenders. 75 Fed. Reg. 81850.

Mr. Glenn argued that in giving the Attorney General this power under § 20913(d), Congress violated the non-delegation doctrine, which bars it from transferring its legislative power to another branch of Government. On May 21, 2018, the district court denied the motion. Subsequent to this denial, Mr. Glenn pled guilty to the offense charged – failing to register as required by SORNA under 18 U.S.C. § 2250. But he entered into a conditional plea, preserving his right to appeal the district court's denial of his motion to dismiss the indictment. On August 7, 2018, the district court sentenced Mr. Glenn to time served as of August 16, 2018. On August 20, 2018, Mr. Glenn filed a timely notice of appeal.

2. However, while Mr. Glenn's appeal was pending in the Fourth Circuit, this Court, on June 20, 2019, issued a plurality decision in *Gundy v. United States*, \_\_ U.S. \_\_, 139 S. Ct. 2116 (2019), ruling that § 20913(d) does not violate the non-delegation doctrine. Justice Kagan (joined by Justices Breyer, Ginsburg, and Sotomayor) reasoned that § 20913(d) does not give the Attorney General the broad power to “specify *whether* to apply SORNA” to pre-enactment offenders. *Id.* at 2128. Rather, the provision only gives the Attorney General the limited power to “specify *how* to apply SORNA” to pre-enactment offenders “if transitional difficulties

require some delay.” *Id.* “In that way” SORNA “give[s] the Attorney General only time-limited latitude to excuse pre-Act offenders from the statute’s requirements. Under the law he had to order their registration *as soon as feasible*.” *Id.* (emphasis added). The Court then found that Congress did not “make an impermissible delegation when it instructed the Attorney General to apply SORNA’s registration requirements to pre-Act offenders as soon as feasible.” *Id.* at 2129 (emphasis added). The Court concluded, “That statutory authority, as compared to the delegations we have upheld in the past is distinctly small-bore. It falls within constitutional bounds.” *Id.* at 2130.

Justice Alito concurred in judgment, but he did so with hesitation. He acknowledged that “since 1935, the Court has uniformly rejected nondelegation arguments and has upheld provisions that authorized agencies to adopt important rules pursuant to extraordinarily capricious standards.” *Id.* at 2130-31 (Alito, J., concurring). However, he made clear that “[i]f a majority of [the] Court were willing to reconsider the approach [it] ha[s] taken for the past 84 years, [he] would support it.” *Id.* at 2131. Nonetheless, he concluded that “because a majority is not willing to do that, it would be freakish to single out the provision at issue here for special treatment.” *Id.*

Justice Gorsuch (with whom Chief Justice Roberts and Justice Thomas joined) vigorously dissented upon reasoning that the plurality “reimagine[s] (really rewrite[s])” the terms of § 20913(d). *Id.* at 2148 (Gorsuch, J., dissenting). Specifically, Justice Gorsuch explained that “[t]he breadth of the authority Congress granted to the Attorney General in [the] few words in [§ 20913(d)] can only be described as vast”— i.e., to determine whether or not SORNA is retroactive to all, some, or none of pre-enactment offenders, *id.* at 2132:

As the Department of Justice itself has acknowledged, SORNA “does not require the Attorney General” to impose registration requirements on pre-Act offenders “within a certain time frame or by a date certain; it does not require him to act at all.” If the Attorney General does choose to act, he can require all pre-Act offenders to register, or he can “require some but not all to register.” For those he requires to register, the Attorney General may impose “some but not all of [SORNA’s] registration requirements,” as he pleases. And he is free to change his mind on any of these matters “at any given time or over the course of different [political] administrations.”

*Id.* at 2132 (citation omitted).

Justice Gorsuch forcefully declared that this “free reign” that “Congress [] gave to the Attorney General . . . to write the rules for virtually the entire existing sex offender population in this country” violates the non-delegation doctrine. *Id.* “That is delegation running riot.” *Id.* at 2148 (citation omitted).

Finally, it is important to note that Justice Kavanaugh did not participate in *Gundy* because the case was argued before he took the bench. In light of this fact and Justice Alito's willingness to reconsider the non-delegation issue with a supporting majority, Justice Gorsuch suggested that the issue may be before the Court again: "Justice Alito supplies the fifth vote for today's judgment and he does not join either the plurality's constitutional or statutory analysis, indicating instead that he remains willing, in a future case, with a full Court, to revisit these matters." *Id.* at 2131.

3. In light of this Court's willingness to revisit the issue, Mr. Glenn preserved the non-delegation doctrine challenge on appeal. However, on December 5, 2019, the Fourth Circuit rejected Mr. Glenn's argument, holding that it was bound by this Court's decision in *Gundy*, 139 S. Ct. at 2129-31 that § 20913(d) did not violate the nondelegation doctrine. *See United States v. Todd Lee Glenn*, 786 Fed. Appx. 410 (4th Cir. Dec. 5, 2019); Exhibit 1.

4. Mr. Glenn now plans to file a petition for certiorari on this critical issue in light of this Court's indication in *Gundy* that it is willing to re-visit the non-delegation challenge to SORNA. However, undersigned counsel needs more time to adequately prepare the petition.

Since the date of the Fourth Circuit's decision in this case, undersigned counsel has been busy with several appellate and district court assignments. In particular,

counsel has been handling more than 100 28 U.S.C. § 2255 petitions seeking retroactive habeas relief under *Davis v. United States*, \_\_\_ U.S. \_\_\_, 139 S. Ct. 2319 (2019). Additionally, counsel is currently working on several appeals in the Fourth Circuit. Finally, counsel is responsible for supervising the appellate attorneys in the federal public defender's office in Maryland as well as pro bono attorneys who work with the office on criminal matters.

5. In light of undersigned counsel's workload, he respectfully requests an extension of 60 days, from March 4, 2020 (the current due date) until May 3, 2020 on which to file the petition for writ of certiorari on Mr. Glenn's behalf. This case presents an important recurring issue that impacts federal criminal cases on a daily basis. Additional time will allow counsel to adequately research this matter and prepare an effective petition for certiorari.

Wherefore, Petitioner prays that this application be granted.

Respectfully submitted,

JAMES WYDA  
Federal Public Defender  
for the District of Maryland

/s/ Paresh S. Patel  
PARESH S. PATEL  
Assistant Federal Public Defender  
*Counsel of Record*  
Office of the Federal Public Defender  
6411 Ivy Lane, Ste. 710  
Greenbelt, Maryland  
(301) 344-0600  
Paresh\_Patel@fd.org

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