

APPENDIX

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United States District Court for the Southern District of Iowa

Presiding: Honorable

Case No.

: Clerk's Court Minutes –

Plaintiff(s)

: Defendant(s)

:

:

:

:

:

Plaintiff(s) Counsel:

Defendant(s) Counsel:

Court Reporter:

: Interpreter:

Motion(s) for Ruling:

Ruling / Ruling Reserved

:

:

:

:

Proceedings:

Time Start:

Time End:

Date:

Deputy Clerk

Appendix A

APP. 001

1 need to protect the public from sex offenders and offenses
2 against children, provide an intelligent principle for
3 delegation.

4 Additionally, the delegation is not a broad delegation. It
5 didn't authorize the Attorney General to create a new crime or
6 create a series of crimes. It was a very narrow delegation
7 authorizing the Attorney General to look and decide whether or
8 not the SORNA requirements would apply retroactively to
9 offenders whose convictions predate SORNA's enactment.

10 If we look at some of the case law we know out there as
11 cited in our brief, most pertinently, perhaps, is the *Mistretta*
12 case, where the Supreme Court decided that the whole body of law
13 that is the U.S. Sentencing Commission in which Congress
14 delegated its authority in the sentencing area, much of its
15 authority in the sentencing area, to a commission to establish
16 rules that governed sentencing back then that were mandatory was
17 appropriate because there were sufficient guiding principles.

18 And certainly if that type of broad delegation could create
19 a whole network of then binding laws is appropriate, certainly
20 the United States believes that the narrow delegation in the
21 SORNA context is appropriate, as the *Kuehl* court recognizes.
22 Therefore, we would ask that the Court deny the defendant's
23 motion.

24 THE COURT: Thank you, Mr. Gaumer.

25 I do find here that I'm bound by the decision in *Kuehl* and

1 therefore do deny Defendant's motion to dismiss based upon that
2 binding authority.

3 I recognize and appreciate that the Federal Public
4 Defender's Office is looking out for defendants like Mr. Zeroni
5 who are caught in this middle ground where the law may be
6 changing, but right now that is what the law is, and I'm bound
7 by it, so Defendant's motion to dismiss the indictment is
8 denied.

9 Mr. Herrold, is the case going to be disposed based upon
10 sort of that as a conditional plea issue, or are there factual
11 issues that are being disputed that are subject to trial in this
12 case? Do you have a sense at this point?

13 MR. HERROLD: No, Your Honor. Our plan's always been
14 to enter a plea. We just wanted to preserve this issue. So I
15 am just looking for a conditional plea from the Government.

16 THE COURT: Okay. Then I'll let the two parties work
17 that issue out. I just thought I'd touch on that to make sure
18 we had realistic trial dates if we needed one.

19 Anything else to resolve today?

20 MR. HERROLD: Not today, Your Honor.

21 MR. GAUMER: No, Your Honor.

22 THE COURT: Okay. We are adjourned. Thank you.

23 (Proceedings concluded at 9:13 a.m.)

24

25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA) **JUDGMENT IN A CRIMINAL CASE**
v.)
Michael Joseph Zeroni) Case Number: 4:16-cr-00166-001
) USM Number: 18744-030
) Joseph D. Herrold
) Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) One of the Indictment filed on October 25, 2016.

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2250(a)	Failure to Register	09/29/2016	One

See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

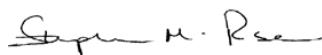
The defendant has been found not guilty on count(s) _____

Count(s) _____ is _____ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

March 15, 2019

Date of Imposition of Judgment



Signature of Judge

Stephanie M. Rose, U.S. District Judge

Name of Judge

Title of Judge

March 15, 2019

Date

DEFENDANT: Michael Joseph Zeroni
CASE NUMBER: 4:16-cr-00166-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

37 months as to Count One of the Indictment filed on October 25, 2016. This sentence shall be served consecutively to the undischarged term of imprisonment in the Iowa District Court for Warren County Docket Number FECR029519.

The court makes the following recommendations to the Bureau of Prisons:

The defendant be made eligible to participate in the 500-hour Residential Drug Abuse Treatment Program (RDAP).

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

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DEFENDANT: Michael Joseph Zeroni
CASE NUMBER: 4:16-cr-00166-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:
Ten years as to Count One of the Indictment filed on October 25, 2016.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Michael Joseph Zeroni
CASE NUMBER: 4:16-cr-00166-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature

Date

DEFENDANT: Michael Joseph Zeroni
CASE NUMBER: 4:16-cr-00166-001

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SPECIAL CONDITIONS OF SUPERVISION

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must participate in a sex offender treatment program, to include psychological testing and polygraph examinations, as directed by the U.S. Probation Officer. You must also abide by all supplemental conditions of sex offender treatment, to include abstaining from alcohol. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. You must contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. Sex offender assessments and treatment shall be conducted by therapists and polygraph examiners approved by the U.S. Probation Office, who shall release all reports to the U.S. Probation Office. The results of polygraph examinations will not be used for the purpose of revocation of supervised release or probation. If disclosure is required by mandatory reporting laws, polygraph results will be reported to appropriate treatment personnel, law enforcement, and related agencies with the approval of the Court. If polygraph results reveal possible new criminal behavior, this will be reported to the appropriate law enforcement and related agencies after obtaining approval from the Court.

You must refrain from associating with anyone engaged in the exploitation of minors whether known or unknown to local, state, or federal law enforcement.

You must not go to, or remain at, any place for the primary purpose of observing children under the age of 18, or any place where you know children under the age of 18 are likely to be, including parks, schools, and playgrounds, without the prior approval of the U.S. Probation Officer.

You must have all residences, employment, and volunteer work pre-approved by the U.S. Probation Officer. You must notify the U.S. Probation Office of any locations where you receive mail or like matter. You must not obtain a new mailing address, post office box, or the facility of any private business for residence or postal transactions without the prior approval of the U.S. Probation Officer.

You must not have any direct contact (personal, electronic, mail, or otherwise) with any child you know or reasonably should know to be under the age of 18, including in employment, without the prior approval of the U.S. Probation Officer. If contact is approved, you must comply with any conditions or limitations on this contact, as set forth by the U.S. Probation Officer. Any unapproved direct contact must be reported to the U.S. Probation Officer within 24 hours. Direct contact does not include incidental contact during ordinary daily activities in public places.

You must provide the U.S. Probation Officer with truthful and complete information and inventory regarding all computers (as defined in 18 U.S.C. § 1030(e)(1)), internet capable devices, cellular telephones, and other electronic communications, computer hardware, software, electronic services, internet accounts/identifiers, and data storage media to which you have access.

You must comply with all sex offender laws for the state in which you reside and must register with the local sheriff's office within the applicable time frame.

You must not patronize business establishments where more than fifty percent of the revenue is derived from the sale of alcoholic beverages.

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DEFENDANT: Michael Joseph Zeroni
CASE NUMBER: 4:16-cr-00166-001

ADDITIONAL SPECIAL CONDITIONS OF SUPERVISION

You must not view or possess any "visual depiction" (as defined in 18 U.S.C. § 2256), including any photograph, artwork, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of "sexually explicit conduct" (as defined in 18 U.S.C. § 2256). You must not correspond with anyone in the business of providing such material, or enter adult entertainment venues where sexually explicit conduct is the primary product(s) for purchase or viewing.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Michael Joseph Zeroni
CASE NUMBER: 4:16-cr-00166-001

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>JVTA Assessment *</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ 0.00	\$ 0.00	\$0.00

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$0.00	\$0.00	

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Michael Joseph Zeroni
CASE NUMBER: 4:16-cr-00166-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.

While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, and (8) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 19-1654

United States of America

Plaintiff Appellee

v.

Michael Joseph Zeroni

Defendant Appellant

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: January 13, 2020

Filed: April 8, 2020
[Unpublished]

Before BENTON, GRASZ, and STRAS, Circuit Judges.

PER CURIAM.

Michael Joseph Zeroni pled guilty to one count of failure to register as a sex offender in violation of 18 U.S.C. § 2250(a), and the district court¹ sentenced him to 37 months of imprisonment and ten years of supervised release. We affirm.

Because Zeroni was convicted of second degree indecency with a child in 1994, when the Sex Offender Registration and Notification Act (“SORNA”) was passed in 2006, Zeroni was required to register as a sex offender under the Act. But when Zeroni took up residence in Missouri in 2016, he failed to register at the Missouri address in contravention of his SORNA obligation.

After Zeroni was indicted for this violation of SORNA under 18 U.S.C. § 2250(a), he filed a motion to dismiss. Zeroni argued that 34 U.S.C. § 20913(d), the provision of SORNA delegating authority to the United States Attorney General to determine which pre-SORNA convictions are included in the Act’s registration requirements, was unconstitutional because it violated the nondelegation doctrine. Zeroni acknowledged his argument was as good as buried since it was foreclosed by Eighth Circuit precedent in *United States v. Kuehl*, 706 F.3d 917 (8th Cir. 2013). But he nonetheless wanted to preserve his claim pending the United States Supreme Court’s decision in *Gundy v. United States*. Zeroni’s appeal was premised on a hope that the Supreme Court’s *Gundy* decision would exhume his argument by reversing our existing precedent. Ultimately, Zeroni’s reasoning was rebuffed.

In *Gundy*, a plurality of an eight-member Supreme Court determined that “Section 20913(d)’s delegation falls well within permissible bounds” of the nondelegation doctrine. *Gundy v. United States*, 139 S. Ct. 2116, 2124 (2019). The delegation was deemed permissible because the Attorney General’s delegated role was “limited,” involving only the determination of how practically “to apply SORNA

¹The Honorable Stephanie M. Rose, United States District Judge for the Southern District of Iowa.

to pre-Act offenders as soon as [the Attorney General] thought it feasible to do so.” *Id.* at 2125. The plurality found that “because § 20913(d) does not give the Attorney General anything like the ‘unguided’ and ‘unchecked’ authority” Gundy had claimed, “the delegation in SORNA easily passes muster,” and does not violate the nondelegation doctrine. *Id.* at 2123, 2129.

Because we are bound by the Supreme Court’s holding in *Gundy* and our precedent in *Kuehl*, we must affirm the district court’s denial of Zeroni’s motion to dismiss.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-1654

United States of America

Plaintiff - Appellee

v.

Michael Joseph Zeroni

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:16-cr-00166-SMR-1)

JUDGMENT

Before BENTON, GRASZ, and STRAS, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

April 08, 2020

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.