No. _____

In the Supreme Court of the United States

M.S., WILLMAN.,

Petitioner,

v.

ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

DANIEL C. WILLMAN (P55867)
P.O. 606
Pinckney, MI 48169
(248)-231-0705
Attorney for Petitioner

QUESTIONS PRESENTED

If a State sex offender is not legally *required* 34 U.S.C. §20921 to be on their Jurisdiction's registry, then they will not appear in the Federal offender search engine database. Only Jurisdictions maintain offender registries 34 U.S.C. §20911(9) and the term Jurisdiction as defined in 34 U.S.C. §20911(10) does not include the Federal Government.

Citing 34 U.S.C. §20911 (1) The U.S. Sixth Circuit Court of Appeals has held there exists an independent obligation to register under SORNA, even if an offender (as was Petitioner) is removed from a State sex offender registry in Federal Court.

The position of the Sixth Circuit conflicts with this Court's ruling in *Carr v. U.S.,* 560 U.S. 438, 446 (2010) which ruled, absent an 18 U.S.C. §2250 violation, it would be illogical for the Federal Government to retain an interest in punishing State offenders.

The Sixth Circuit Opinion also conflicts with this Court's rulings in regard to the noted oversight difference between State and Federal offenders *(Reynolds v. U.S.*, 565 U.S. 432 (2012), *Nichols v. U.S.,* 136 S. Ct. 1113 (2016) *U.S. v. Kebodeaux,* 570 U.S. 387 (2013)) warranting a grant of certiorari.

I.

ARE STATE OFFENDERS ONLY REQUIRED TO REGISTER WITH THEIR STATES/JURISDICTIONS AS DEFINED IN 34 U.S.C. 20911(9)(10)?

OR

DOES 34 U.S.C. 20911 (1) AND 20913 (a) IMPOSE AN INDEPENDENT OBLIGATION ON STATE OFFENDERS TO REGISTER WITH THE FEDERAL GOVERNMENT?

IF

AN INDEPENDENT OBLIGATION DOES EXIST, DOES IT END WHEN A REGISTRANT IS NO LONGER REQUIRED TO REGISTER WITH THEIR STATE/JURISDICTION VIA COURT ORDER?

AND

IS SUCH AN ORDER ENTITLED TO ARTICLE IV, FULL FAITH AND CREDIT?

II.

IN THE ABSENCE OF A NEW SEX OFFENSE CONVICTION, WOULD IT VIOLATE THE 8TH AMENDMENT AND OTHER RIGHTS SECURED BY THE U.S. CONSTITUTION TO PLACE A FORMER REGISTRANT ON A REGISTRY, IF THEY HAVE ALREADY BEEN LEGALLY REMOVED VIA STIPULATION AND ORDER IN FEDERAL COURT?

III.

ARE THE PRINCIPLES OF RES JUDICATA APPLICABLE TO SORNA?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The names of all the parties before the United States Sixth Circuit Court of Appeals are contained within the case caption. Petitioner M.S. Willman pursuant to S.Ct Rule 29.6, states there is no parent or subsidiary company to be listed.

The Respondent before the Sixth Circuit and this Court is the Attorney General of the United States. Suit was brought against the Office of Respondent and the Offices of three State of Michigan defendants seeking declaratory relief and attorney fees. The State of Michigan Offices were dismissed via Stipulation and Order (appendix 31a).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner M.S. Willman seeks a writ of certiorari to review an opinion and order of the U.S. Court of Appeals for the Sixth Circuit, which affirmed an opinion and order by the U.S. District Court for the Eastern District of Michigan, which dismissed Petitioner's claims seeking declaratory relief and attorney fees.

OPINIONS BELOW

The Opinion and Order of the Court of Appeals for the Sixth Circuit dated August 26, 2020, is reprinted in the appendix at 1a.

The Opinion and Order of the U.S. District Court of the Eastern District of Michigan dated October 1, 2019 dismissing Petitioner's Case is reprinted at 15a.[1]

JURISDICTION

Pursuant to 28 U.S.C. § 1254 (1) jurisdiction is vested with this Court. Filing of this Petition is within 150 days from the Sixth Circuit's August 26, 2019 Order and this Court's March 19, 2020 Order extending the Rule 13.1. deadline for filing any petition for a writ of certiorari.

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[1] The 6th Circuit does not require a Joint Appendix or Excerpts of Record, the Court uses the District Court EFC record numbers accompanied by a description for reference. In this Petition EFC PageID numbers indicate District Court docket entry number. Sixth Circuit and District Court Opinions, and District Court Stipulation and Order are reproduced in attached appendix

CONSTITUTIONAL AND STATUTORY PROVISIONS

This Court has proper Jurisdiction under Article I, Article III, Article IV, Sec 2, Clause1 Sec 1, Article VI , the 1st, 4th, 5th, 8th and 14th Amendments to the U.S. Constitution and 28 U.S.C. §1331, 42 U.S.C. §1988, 34 U.S.C. §20901, 34 U.S.C. §20913, 18 U.S.C. §2250 and other SORNA sections reproduced in pertinent part 36a.

INTRODUCTION

Petitioner was legally removed from the State of Michigan sex offender registry (SORA) via Stipulation and Order (31a) in Federal Court, which as a consequence removed Petitioner from the Federal offender search engine database (SORNA).

Despite the above, in this matter the U.S. Sixth Circuit Court of Appeals held that there exists an independent federal obligation to register under SORNA. The Sixth Circuit pinned its findings on the belief that 34 U.S.C. §20911 (1) which defines who is a sex offender, and 34 U.S.C. §20913 (a) are 'THE' controlling elements, essentially mandating a perpetual independent obligation to register with the Federal Government, even though the Federal Government only maintains a database and does not have an actual registry, infra. The Court also held sister circuits have reached the same conclusion.

At every level of proceedings Petitioner has squarely presented that registration is a local activity and that the Federal Government is not a registering jurisdiction (SORNA sections 34 U.S.C. §20911 (9)(10), §20921 and §20922). The SORNA database only compiles and links the information of every

jurisdiction's (state, territory and tribe) registries so that it can be queried. If a party is required to be on a Jurisdiction's registry, then and only then, is the information pertaining to that registrant forwarded to the National database for inclusion per 34 U.S.C. §20921, a fact duly noted by the DOJ SMART OFFICE, infra.

Since Petitioner's change in legal status from an active to a former registrant, he has consistently asserted that there does not exist an independent duty under SORNA to register with the Federal Government. Trying to intimidate a former registrant into re-registering, in order to satisfy an obligation that does not exist, violates the Plain Language doctrine (*Carr v. U.S.*, 560 U.S. 438 (2010) and also amounts to Cruel and Unusual punishment and/or an excessive fine under the 8th Amendment to the U.S. Constitution (*Timbs v. Indiana,* 139 S. Ct. 682 (2019) as well as a violation of other rights cited infra.

Petitioner also asserted Respondent was a party to the litigation and had a duty to object to removal earlier and that their failure to do so was 'in fact' res judicata.

Petitioner is no longer an active registrant and as this Court noted in *Carr v. U.S.*, 560 U.S. 438, 446 (2010) the Federal Government has zero interest and/or authority to punish any State offender unless there is a 18 U.S.C. §2250 violation demonstrated by a sequential nexus of actions. Absent the required nexus, requiring federal registration would lead to 'illogical result[s].'

For the reasoning within, Petitioner at the minimal seeks an Opinion and Order holding SORNA no longer applies to him or any other similarly situated individual and that such a finding is entitled to Article IV, Full Faith and Credit

STATEMENT OF THE CASE

Background Facts of Petitioner's Conviction

On the night of the allegations leading to his conviction, Petitioner went out for the night with another party, his co-defendant. According to the victim she was ordered into a car by one of the two defendants. Eventually the victim was let out of the car and within minutes was able to call the police, leading to a traffic stop and arrest. The victim was never physically touched by either defendant.

On November 2, 1993 Petitioner was convicted and sentenced under M.C.L. 750.520 G1 - Criminal Sexual Conduct Assault with Intent to Commit Sexual Penetration and robbery. (Appendix in support of Compliant EFC.1.1 PageID 235). At the time of Petitioner's conviction, SORNA did not exist. Petitioner served 10 yrs and successfully completed parole (Complaint EFC.1 PageID 10, also Opinion and Order of Dismissal EFC.23 PageID 563).

Stipulation State of Michigan

On April 4, 2019 Petitioner was legally removed from the State of Michigan SORA registry [2] (EFC.16, PageID 406, Stipulation and Order, also reproduced at 31a) in Federal Court, and claims against three State of Michigan Defendants were dismissed with prejudice. The stipulation held in part:

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[2] In *Does v. Snyder,* 834 F.3d 696 (6th Cir. 2016) the Court held that Michigan's Sex Offender Registration Act (SORA), MCL 28.721 et seq., was retroactive punishment in violation of Article 1 §10 Ex post facto clause of the U.S. Constitution.

1. In light of the Sixth Circuit decision in *Does v. Snyder*, 834 F.3d 696 6th Cir. 2016), cert. denied, 138 S. Ct. 55 (2017), and considering the undisputed facts underlying Plaintiff's claims, the parties wish to avoid further litigation and expense and consent to entry of this order.

2. The State Defendants, as well as their officers, agents, servants, and employees, shall not enforce the 2006 and 2011 SORA amendments against Plaintiff.

3. Under the SORA statutes applicable to Plaintiff, Plaintiff was subject to a 25-year registration, and the duration of his registration has ended. As a result, Plaintiff shall no longer be subject to any registration or verification requirements of SORA.

Per the above Stipulation and Order, Petitioner achieved his two objectives, removal from the Michigan SORA registry, which as a consequence removed Petitioner from the Federal registry/database (NSOPW (National Sex Offender Public Website) which is only a 'search engine similar to a Google search that compiles/links and can query the registries of Jurisdictions noted in 34 U.S.C. §20911(9)(10), 37a.

Since the matter had become moot, Petitioner reached out to Respondent to seek a stipulation for dismissal.

Motion to Dismiss

On May 30, 2019, rather then agree to a stipulation or even discuss the matter, Respondent filed a Motion to dismiss under F.R.C.P. 12 (EFC.18, PageID 451). Relying on an unpublished Sixth Circuit opinion *U.S v. Paul*, 718 F. App'x 360 (6th Cir. 2017), for the first time in the case at hand, Respondent asserted in passing that Petitioner still had an obligation to register with the Federal Government (EFC.18, PageID 460). Respondent also asserted that all of the grounds for relief cited in Petitioner's Complaint had been presented by plaintiffs in other U.S. Courts and rejected.

The District Court adopted the position of Respondent and dismissed Petitioner's case, 20a. The U.S. Sixth Circuit Court of Appeals adopted similar findings.

Sixth Circuit Opinion

The Sixth Circuit pinned its findings on the belief that 34 U.S.C. §20911 (1) which defines who is a sex offender, and 34 U.S.C. §20913 (a) as 'THE' controlling elements mandating an independent obligation to register with the Federal Government (5-6a, 11-12a) even though the Federal Government does not have a registry, supra. The Court also held sister circuits have reached the same conclusion (7a).

Active v. Former Registrant

The cases the Sixth Circuit cited from sister circuits can be easily distinguished from the case at hand, all of those cases were applied to active registrants (not a former registrant legally removed in

Federal Court). The registrants in question had either a federal[3] conviction, were still mandated to register with their State/Jurisdiction[4], or their state was lagging in implementation of SORNA but still possessed some form of a registration system[5]. All had changed residence by moving to another state or another country with the intent of evading detection, resulting in federal charges under 18 U.S.C. § 2250.

As this Court noted in *Carr v. U.S.*, 560 U.S. 438, 447 (2010) the Federal Government has zero interest and/or authority to punish any State offender

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[3] In *Kennedy v. Allera,* 612 F.3d 261 (4th Cir. 2010) the defendant, a former boarder patrol agent, was convicted in a California Federal Court for the rape and murder of an undocumented immigrant. The defendant served time in Maryland. Upon release, the defendant stayed in Maryland and later failed to register while still in Maryland, resulting in a §2250 conviction. Also see *U.S. v. Kebodeaux,* 570 U.S. 387 (2013) the Defendant was court-martialed by the U.S. Military for a sex crime. Upon release the defendant settled in the State of Texas and then later moved (intrastate) within Texas and then failed to update his registration, which resulted in a §2250 conviction.

[4] In *U.S. v. Pendleton*, 636 F.3d 78 (3rd Cir. 2011) the defendant was convicted in the District of Columbia, for multiple interstate and international moves. In *U.S. v. Del Valle-Cruz,* 785 F.3d 48 (1st Cir. 2015) the defendant was convicted originally in State court in Oklahoma and was on Federal Probation for a 18 U.S.C. §2250 violation. While on probation, the defendant moved to Florida and then to Puerto Rico.

[5] See *U.S. v. Felts,* 674 F.3d 599 (6th Cir. 2012).*U.S. v. Gould,* 568 F.3d 459 (4th Cir.2009), *U.S. v. Shenandoah,* 595 F.3d 151(3rd Cir. 2010).

unless there is a 18 U.S.C. §2250 violation.

In the absence of a 34 U.S.C. §2250 violation and sequential nexus, federal prosecution of State offenders would lead to 'illogical result[s]' *Carr* at 446.

Petitioner has consistently, prominently and squarely presented the above controlling position at every level of proceedings. Not once did the lower Courts acknowledge the holding of *Carr*.

The Sixth Circuit Opinion completely ignored the Plain Language of controlling SORNA sections, which were squarely presented at every level of proceedings by Petitioner, which clearly affirm that the Federal Government is not a registering jurisdiction. (37a). 34 U.S.C. §20911 (9)(10), §20921 and §20922.

If a party is required to be on a Jurisdiction's registry, then and only then, is the information pertaining to that registrant forwarded to the National database for inclusion per 34 U.S.C. §20921, a fact even duly noted by the DOJ SMART OFFICE, infra.

For the reasoning within, application of the position of the Sixth Circuit would lead to 'illogical result[s],'*Carr*, "absurd or impracticable" consequences. *U.S. v.Missouri Pac. R.R. Co.* 278 U.S. 269, 278 (1929) and would in fact be an enlargement of SORNA, that transcends judicial function. *Iselin v. U.S.*, 270 U.S. 245, 251 (1926).

Travel

The one section of the Sixth Circuit Opinion that Petitioner does agree with is the Court's findings in regard to travel by active registrants (12a) as the Court noted:

> SORNA requires a sex offender to update his registration information if he moves to a new residence, place of employment,

> or educational institution. 34 U.S.C. § 20913(c). But those obligations do not prohibit plaintiff from exercising his liberty to go to different places, and they do not even *require* him to obtain permission first. See *United States* v. *Benevento*, 633 F. Supp. 2d 1170, 1210 (D. FNev. 2009) (observing, in a discussion of SORNA and the right to travel, that "[s]ex offenders traveling from state to state may still do so freely without first seeking permission from authorities").

For the reasoning above and within, Petitioner at the minimal seeks an Opinion and Order holding SORNA no longer applies to him or any other similarly situated individual and that such a finding is entitled to Article IV, Full Faith and Credit.

SUMMARY OF ARGUMENT

This Court held in *Carr v. U.S.,* 560 U.S. 438, 452 (2010) that the Federal Government has zero interest and/or authority to punish any State offender unless there is a 18 U.S.C. §2250 violation. A §2250 violation must demonstrate a sequential nexus between being required to register with a Jurisdiction, travel outside of the Jurisdiction, followed by a failure to update a registration if the offender traveled for the purposes of a change in residency, employment or to attend school.

On April 4, 2019 Petitioner was removed from the State of Michigan sex offender registry SORA via Stipulation and Order (between Petitioner and State of Michigan Defendants) in Federal Court (31a). In a passing comment in a later motion to dismiss,

Respondent asserted that Petitioner was still obligated to register with the Federal Government, based on a ruling of an unpublished Sixth Circuit opinion, *U.S v. Paul*, 718 F. App'x 360 (6th Cir. 2017). The District Court adopted the same position.

On appeal the Sixth Circuit held there was an independent federal obligation to register under SORNA and pinned its findings on the belief that 34 U.S.C. §20911 (1)[6] which defines who is a sex offender, not who is required to register, as essentially a stand-alone controlling provision mandating a perpetual obligation to register with the Federal Government. The Court also held sister circuits have reached the same conclusion.

All of the cases from sister circuits (supra), relied upon by the Sixth Circuit, involved federal or active state registrants in the early stages/years of registration or whose registering jurisdiction had not yet fully implemented SORNA, but already had some form of a pre-existing registry. All of the offenders in question also sought to evade state detection.

The Court also suggested that Petitioner could have an "affirmative defense to a prosecution predicated on failure to register if he offered to register in Michigan and the State declined his offer . . . . After that, there is nothing else for plaintiff to do (from the perspective of SORNA) unless at least one relevant circumstance changes." 7a.

The Court left vague what it considered a relevant change in circumstances, although under the Plain Language of 18 U.S.C. §2250 and *Carr* at 446, a §2250 violation by an active registrant must occur in

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[6] And 34 U.S.C. §20913 (c)

sequential order showing an offender 1. Is *required* to register 2. Travels in interstate commerce and 3. Knowingly fails to update a registration seeking to evade a State's reach, *not* the reach of the Federal Government.

Minus a §2250 violation the "affirmative defense" suggestion by the Sixth Circuit is not required or mandated, indeed the Federal Government's interest in punishing such state offenders would be "an illogical result." *Carr* at 446.

As Petitioner asserted in the lower courts, the above position is not only "absurd", it is not required or mandated by the Plain Language of SORNA (one of the most comprehensive statutes ever passed by Congress and signed into law) *U.S. v. Missouri Pac. R.R. Co.* 278 U.S. 269 (1929). A party "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." *Doe v. Bolton*, 410 U.S. 179, 188 (1973).

This Court has had multiple occasions to rule on various challenges to SORNA. Not once has this Court ever ruled, suggested nor inferred in any way, shape or form, that SORNA gives the Federal Government jurisdiction to control State registries. In fact, the opposite has been noted on several occasions, *Carr, Nichols, Reynolds, Kebodeaux*, infra.

Plain Language of SORNA
Registration Is a Local Activity

Most States have had registries which predate SORNA by decades. Congress was mindful of this fact and took great care to avoid serious Constitutional concerns when crafting SORNA, infra. The Plain Language of Federal and State sex offender registration laws have *expressly* stated and relied on

state-level enforcement from inception, *Carr v. U.S.*, 560 U.S. 438, 452 (2010). "[T]he Federal Government has prosecuted a sex offender for violating SORNA only when that offender also violated state-registration requirements" *Kebodeaux*, 570 U.S. 387, 398 (2013).

In fact, the only Federal SORNA enforcement provision against individuals is found within the plain text of 18 U.S.C. §2250, which subjects State sex offenders to Federal prosecution if they intentionally try to evade a "State's reach" *Carr v. U.S.*, 560 U.S. 438, 452 (2010).

At every level of proceedings Petitioner has squarely presented that if a party is *required* to be on a Jurisdiction's registry, then and only then, is the information pertaining to that registrant forwarded to the National database for inclusion per 34 U.S.C. §20921, because registration is a local activity and the Plain Language of SORNA *which is framed in a 'consistent use of the present tense'* makes clear the Federal Government is not a registering jurisdiction (SORNA sections 34 U.S.C. §20911 (9)(10), §20921 and §20922).

The SORNA database only compiles and links the information of every jurisdiction's (state, territory and tribe) registry so that it can be queried much like a Google search engine. The above facts were duly noted by the DOJ SMART OFFICE (infra), and squarely presented at every level of proceedings, yet not once did the lower courts or Respondent address the SMART OFFICE admission.

Change in Status
Active v. Former Registrant

During the District Court filings, Petitioner's status changed from an active registrant to a former

registrant. To date there is not one documented case of a former registrant being legally removed from a registry in Federal Court and then being forced to re-register under SORNA (absent a new sex offense conviction, post-dating removal from a registry).

Petitioner has since consistently asserted that making a former registrant, legally removed from a registry in Federal Court, re-register to satisfy an obligation that does not exist violates the Plain Language doctrine (*Carr v. U.S.*, 560 U.S. 438 (2010) and would be cruel and unusual punishment and/or an excessive fine under the 8th Amendment to the U.S. Constitution (*Timbs v. Indiana,* 586 U.S. --, 139 S. Ct. 682 (2019).

Under any reasonable interpretation (*Chevron*) of SORNA, the rule which the Sixth Circuit Opinion infers exists simply *does not exist.* Allowing Respondent to enforce a non-existent provision against a former registrant that was never delegated to them (Reynolds), would be an Ex Post Facto violation as well as a violation of other rights cited by Petitioner infra.

SORNA is a civil statute to which the principles of Res Judicata a.k.a. claim preclusion and issue preclusion, also known as collateral estoppel, apply. Because Respondent had clear notice of the ramifications of Petitioner's removal from the Michigan SORA registry, reasonable diligence would dictate that if they had any objections to the Stipulation and Order, those objections should have been raised at that time. Their failure to do so was in fact res judicata.

As a matter of law, Respondent could have obtained further review (Currier v. Virginia, 138 S.Ct. 2144 (2018) yet did not, this lack of diligence should not be rewarded. The actions complained of here are also capable of repetition yet evading judicial review.

Petitioner is not an active registrant, he is no

longer subject to SORNA, and there is no authority to the contrary. There simply does not exist such a rule within the clear, unambiguous, Plain Language of SORNA.

For the reasoning above and within, Petitioner at the minimal seeks an Opinion and Order holding SORNA no longer applies to him or any other similarly situated individual and that such a finding is entitled to Article IV, Full Faith and Credit.

ARGUMENT

I.

DOES THERE EXIST AN INDEPENDENT DUTY FOR STATE OFFENDERS TO REGISTER WITH THE FEDERAL GOVERNMENT? IF SO DOES THAT OBLIGATION END WHEN ANY REGISTRANT IS NO LONGER REQUIRED TO REGISTER WITH THEIR STATE/JURISDICTION VIA A COURT'S ORDER? AND IS SUCH AN ORDER ENTITLED TO ARTICLE IV, FULL FAITH AND CREDIT?

The Federal Government has zero interest and/or authority to punish any State offender unless there is a 34 U.S.C. §2250 violation. A §2250 violation must demonstrate a sequential nexus between being required to register with a Jurisdiction, travel outside of the Jurisdiction, culminated by an intentional failure to update a registration if the offender traveled for the purposes of a change in residency, employment or to attend school.

As this Court noted in *Carr v. U.S.*, 560 U.S. 438, 446 (2010) absent the proceeding requirements, a federal prosecution would lead to 'illogical result[s].' Petitioner has consistently, prominently and squarely presented the above controlling position of *Carr* at

every level of proceedings. Not once did the lower Courts acknowledge the holding of *Carr*.

The Sixth Circuit Opinion 1a completely ignored *Carr* and instead asserts that all State offenders are subject to an independent duty to register with the Federal Government and that sister circuits have made similar findings supra. (The Sixth Circuit position also conflicts with a DOJ SMART OFFICE statement which was also squarely presented at every level of proceedings, infra).

The Court's opinion does not take into consideration or make any distinction between State and Federal registrants or active and former registrants, most notably registrants who have been removed from registries via judicial process in Federal or State court.

The reasoning of the Court is based on the misconception that 34 U.S.C. §20911 (1) which defines what is a sex offender and 34 U.S.C. §20913 (a) (keep registration information current section) are 'THE' controlling elements essentially mandating a perpetual, independent obligation to register with the Federal Government, even though the Federal Government does not have a registry, supra, infra.

When Congress enacted SORNA it did so to tie together a patchwork of State registries, to close loopholes and deficiencies *Reynolds v. U.S.*, 565 U.S. 432, 435 (2012) to enable states/jurisdictions to keep track of active offenders who seek to evade a "State's reach" *Carr v. U.S.*, 560 U.S. 438, 452 (2010).

Since the passage of SORNA in 2006, this Court has had multiple occasions to rule on various challenges to SORNA. Not once has this Court ever ruled, suggested nor inferred in any way, shape or form, that SORNA gives the Federal Government jurisdiction to control State registries. In fact the

opposite has been noted on several occasions, infra.

When crafting SORNA Congress was mindful of *U.S. v. Lopez*, 514 U.S. 549 (1995) and *U.S. v. Morrison*, 529 U.S. 598 (2000) where thoughtfully intended, yet Constitutionally defective, legislation[7] was nullified. In both cases the Court held the legislation in question infringed upon 10th Amendment State Police Powers.

It is clear Congress took great care to avoid the serious Constitutional concerns raised in *Lopez* and *Morrison* when crafting SORNA. It was against this backdrop and our Nation's system of dual sovereignty, that SORNA was written in clear, unambiguous terms, as was noted *Carr v. U.S.* 560 U.S. 438, 452 (2010): "Congress instead chose to handle federal and state sex offenders differently."

Required and Juridiction Defined

The plain language of SORNA clearly defines who is required to register, what constitutes a registry and what constitutes a registering jurisdiction.

Under 34 U.S.C. §20921(a) The Attorney General shall maintain a national *database* . . . for each sex offender and any other person *required* to register in a *jurisdiction's* sex offender registry.

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The goal sought in *Lopez* was to give an extra layer of protection to school children by having gun-free school zones (No guns within 1000 ft.). Congress later passed legislation with the same intent which withstood Constitutional Muster *Citation omitted*. The goal in *Morrision* was to provide an additional/supplemental Federal civil remedy to women victimized by gender violence.

Under 34 U.S.C. §20911:

> (9) Sex offender registry-The term "sex offender registry" means a registry of sex offenders, and a notification program, maintained by a *jurisdiction*.
>
> (10) Jurisdiction-The term "jurisdiction" means any of the following: (A) A State. (B) The District of Columbia. (C) The Commonwealth of Puerto Rico. (D) Guam. (E) American Samoa. (F) The Northern Mariana Islands. (G) The United States Virgin Islands. (H) To the extent provided and subject to the requirements of section 20929 of this title, a federally recognized Indian tribe.

Per the above, individuals on the Federal sex offender website are there *only* because they are required, by a Jurisdiction, to be on *that Jurisdiction's registry*. Then and only then, is the information pertaining to that registrant forwarded to the National Offender database for inclusion 34 U.S.C. §20921.[8]

Yet the rationale of the Sixth Circuit Opinion held otherwise citing 34 U.S.C. §20913 (a)[9] as controlling "As we explained above, SORNA's applicability to plaintiff turns on whether he is a "sex offender." 34 U.S.C. §20913 (a) ("A sex offender shall

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[8] Also see 40a. 34 U.S.C. §20922: (b) . . . The Website shall include relevant information for each sex offender and other person *listed* on a *jurisdiction's* Internet site.

[9] Along with 34 U.S.C. §20911 (1)

register, and keep the registration current . . . ." (6a).

Without explanation the Court dismissed the rest of the subsections of §20913, in particular sub section (e) infra.

Registration is a Local Activity

[I]t is notable that the federal sex-offender registration laws have, from their inception, expressly relied on state-level enforcement *Carr v. U.S.*, 560 U.S. 438, 452 (2010). The fact that registration is a local activity has even been acknowledged by the DOJ SMART-Office :

> Every one of these systems has its own nuances and distinct features. *Every jurisdiction* (state, territory and tribe) *makes its own determinations about who is required to register*, what information offenders must provide, which offenders are posted on the *jurisdiction's* public registry website, and so forth. [10]

State Requirements
34 U.S.C. §20911 and §20913

The Sixth Circuit Opinion held: "[I]f Congress meant for sex offenders' SORNA requirements to depend on state registration requirements, the Act would specifically say so."7a-8a.

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[10] DOJ(https://smart.gov/caselaw.htm. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking March 2018.Complaint Appendix EFC.1.1 PageID 100. 34 U.S.C. §20945)

The Act does clearly 'say so' via 34 U.S.C. §20913 (e) which makes failure to comply with registration requirements *a state penalty not federal* and instructs states/jurisdictions to enact at least a 1 year penalty for non-compliant offenders required to be on that jurisdiction's registry. Under Section §20913 (e) there is no mention of a federal penalty because a failure to comply under §20913 (a) results in state punishment under §20913 (e) because it is 100% a *local* matter. 34 U.S.C. §20913 and its subsections only apply for a failure to meet the requirements of a registering "jurisdiction" under 34 U.S.C. §20911 (10), and the Federal Government is not a registering jurisdiction and does not maintain a registry, it only maintains a database.

Federal Requirements
18 U.S.C. § 2250

The only Federal (SORNA) enforcement provision against individuals is found within the plain text of 18 U.S.C. §2250, which subjects State sex offenders to Federal prosecution under SORNA *only* if they travel in interstate or foreign commerce and then fail to register (new residence, school, or place of work) under 34 U.S.C. §20913 (e). Seeking to evade a "State's reach" *Carr v. U.S.*, 560 U.S. 438, 452 (2010). A §2250 violation by an active registrant must occur in sequential order (*Carr* at 446): Showing an offender:

1. Is *required* to register
2. Travels in interstate commerce and
3. Knowingly fails to update a registration.

Before 4-4-2019 Petitioner was required to register but he is no longer required to be on the State

of Michigan registry. The term required is clearly defined in the *present tense* and placement on a registry is left to the Jurisdiction in which a registrant resides.

Resides & Required
Clearly Defined In The Present Tense

The terms "resides" in 18 U.S.C. §2250 was an important topic of discussion in *Carr* where this Court noted the clear language of §2250 and its use of the term 'resides' is stated in the present tense. "A statute's "undeviating use of the present tense" is a "striking indic[ator]" of its "prospective orientation." *Carr,* at 449 citing *Gwaltney. v. Chesapeake* , 484 U.S. 49, 59 (1987).

In fact, it was noted in its entirety that the Plain Language of §2250[11] was stated in the present tense, which includes the phrase "whoever *is* required," "elements of a §2250 violation are similarly set forth in the present tense." *Carr* at 449.

As cited supra, infra, this Court has noted the distinction between a State and a Federal sex offender on multiple occasions.

Federal v. State Conviction

Reynolds v. U.S., 565 U.S. 432 (2012) noted there is a distinction between a Federal and a State conviction: "Although a state pre-Act offender could not be prosecuted until he traveled interstate, there is no interstate requirement for a federal pre-Act offender"

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[11] The SORNA sections beginning at 34 U.S.C. § 20911 are also written in the present tense.

at 441.

Thus based on the above, an active State registrant, as opposed to an active Federal registrant, as in *U.S. v. Kebodeaux,* 570 U.S. 387 (2013), cannot be guilty of a §2250 violation unless they travel interstate and then fail to register (new residence, school, or place of work) under 34 U.S.C. § 20913 (e) seeking to evade a "State's reach" *Carr v. U.S.*, 560 U.S. 438, 452 (2010).

Reynolds
Delegation & Exceptions

While *Reynolds* is most noted for its patchwork language, it also dealt with the applicability of delegating to the U.S. Attorney General the decision whether the 2006 SORNA Act could be applied retroactively to pre-act offenders. (*The purpose of the act was and is to* coordinate *State registries, not control them).* While the Court found authority was properly delegated, that delegation was narrowly tailored to the applicability of the Act and did not confer the power to make exceptions to the Act, at 440.

The ability to make exceptions is reserved for the States, who control the enforcement of their own registries consistent with our system of dual sovereignty, which is clear from the crafting of SORNA and the absence of any language[12] holding otherwise. Congress did not want to repeat the missteps noted supra in *Lopez* and *Morrison*. "[W]e will interpret a

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[12] *Escondido Mut. Water . v. La Jolla Band of Mission Indians,* 466 U.S. 765, 772 (1984), [absent] a clearly expressed legislative intention to the contrary, [statutory] language must ordinarily be regarded as conclusive.

statute to preserve rather than destroy the States' "substantial sovereign powers." *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 209 (1998).

Prior to SORNA and the Federal laws which preceded it, nearly every State had a registration system which handily predated the Federal system and in fact some State statutes had been around for "close to half a century" *U.S. v. Kebodeaux*, 570 U.S. 387, 397 (2013).

> *Congress instead chose to handle federal and state sex offenders differently*. There is nothing "anomal[ous]" about such a choice . . . . It is similarly reasonable for Congress to have given the States primary responsibility for supervising and ensuring compliance among state sex offenders and to have subjected such offenders to federal criminal liability only when, after SORNA's enactment, they use the channels of interstate commerce *in evading a State's reach*. *Carr* at 452.

In support of the above, as noted in *Kebodeaux*, "the Federal Government has prosecuted a sex offender for violating SORNA only when that offender also violated state-registration requirements" at 398.

Plain Language

The plain language doctrine has been an unwavering bedrock of American jurisprudence, as defined by the U.S. Supreme Court: "Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise," *Caminetti v. U.S.*, 242 U.S. 470, 485 (1917). "[u]nless

otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning" *Also see Sebelius v. Cloer* 569 U.S. 369, 376 (2013).

The starting point for Statutory interpretation is the statute itself. Statutory language must ordinarily be regarded as conclusive."[I]n interpreting a statute a court should always turn to one cardinal canon before all others . . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-254 (1992).

While there have been many Constitutional challenges to SORNA there are few challenges to its textual interpretation and such textual challenges have focused on the use of past and present tense.

As noted supra, SORNA is framed in a "consistent use of the present tense" *Nichols v. U.S.*, 136 S. Ct. 1113, 1118 (2016) the plain language of SORNA clearly defines who is required to register, what constitutes a registry and a registering jurisdiction.

The Sixth Circuit Opinion infers a rule that simply *does not exist* by treating sections 34 U.S.C. §90211 (1) and 34 U.S.C. §90213 (a) as stand-alone provisions essentially resulting in the creation of a residual clause to one of the most comprehensive statutes the U.S. Congress has ever passed and would be an enlargement of SORNA that transcends judicial function. *Iselin v. U.S.*, 270 U.S. 245, 251 (1926).[13]

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[13] "Congress is presumed to act intentionally and purposely when it includes language in one section but omits it in another." *Estate of Bell v. Commissioner*, 928 F.2d 901, 904 (9th Cir. 1991).

The Sixth Circuit also suggested that Petitioner could have an "affirmative defense to a prosecution predicated on failure to register if he offered to register in Michigan and the state declined his offer . . . . After that, there is nothing else for plaintiff to do (from the perspective of SORNA) unless at least one relevant circumstance changes." 7a.

The Court left vague what it considered a relevant change in circumstances, although under the Plain Language of §2250 and *Carr* a §2250 violation by an active registrant has three (3) elements which must occur in sequential order (*Carr* at 446), supra.

Minus a §2250 violation the "affirmative defense" suggestion by the Sixth Circuit is not required or mandated, indeed the Federal Government's interest in punishing such state offenders would be "an illogical result." *Carr* at 446.

"A party"should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." *Doe v. Bolton*, 410 U.S. 179, 188 (1973). The above "affirmative defense" suggestion is "absurd" and (*U.S. v. Missouri Pac.* 278 U.S. 269, 278 (1929) is not required by the Plain Language of SORNA.

There is zero ambiguity *Chevron. v. Natural Res. Def. Council,* 467 U.S. 837 (1984) the position of the Sixth Circuit is unsupported by the Plain Language of SORNA and allowing the Opinion to stand would usurp other sections of SORNA including 18 U.S.C. §2250 which is the only Federal penalty provision, thus creating the type of rule/power which Chief Justice Roberts warned about in his concurrence in *Kebodeaux*, at 399-403, the rule the Sixth Circuit insists is real and inferred simply *'does not exist.'*

Petitioner's change in status must be recognized, accepted by the Courts and Respondent, he is no longer an active registrant but a former registrant. Even if

Petitioner were to change residence to go to school or be employed in another State/Jurisdiction, his status is entitled to Article IV, Full Faith and Credit.

There is not one case or SORNA section cited by the Court's Opinion which can point to direct Plain Language or a Constitutional provision supporting the notion that there exists an independent duty to register with the Federal Government. Strict construction applies to resolve or eliminate ambiguity in a criminal statute but "only to conduct clearly covered" *U.S. v. Lanier,* 520 U.S. 259, 266 (1997).

As this Court noted in *Nichols v. U.S.,* 136 S. Ct. 1113, 1119 (2016)." We interpret criminal statutes, like other statutes, in a manner consistent with ordinary English usage". . . even the most formidable argument concerning the statute's purposes could not overcome the clarity we find in the statute's text."[14]

The Court's Opinion relies on a rule which does not exist, ignores controlling rulings of this Court, and is an impermissible reach.

For all of the above reasoning, this Petition and the issues within deserve to be granted certiorari by this Court.

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[14] 18 U.S.C. §2250 is a criminal statute *Reynolds v. U.S.,* 565 U.S. 432 (2012) . "When criminal penalties are at stake . . . a relatively strict test is warranted," *Springfield Armory, v. City of Columbus*, 29 F.3d 250, 252 (6th Cir. 1994).

II.
IT WOULD VIOLATE THE 8TH AMENDMENT OF THE U.S. CONSTITUTION TO THREATEN A FORMER REGISTRANT WITH PLACEMENT ON A JURISDICTION'S REGISTRY WHEN THEY HAVE ALREADY BEEN LEGALLY REMOVED VIA STIPULATION AND ORDER IN FEDERAL COURT.

The Sixth Circuit Opinion held SORNA did not violate the Eighth Amendment cruel and unusual punishment prohibition, because a sanction must be a punishment. The Court relied in part on prior analysis noted in *Cutshall v. Sundquist,* 193 F.3d 466, 477 (6th Cir. 1999), which held a Tennessee state registration law was not punishment for purposes of the Ex Post Facto Clause and "It follows, therefore, that SORNA is not punishment for purposes of the Eighth Amendment either." 9a-10a

The Sixth Circuit Opinion treats/confuses the Ex Post Facto Clause[15] and the 8th Amendment as one and the same. The Ex Post Facto Clause deals with the unfair imposition of a retroactive rule, which in and of itself equals punishment. The 8th Amendment deals with punishment that is so out of the norm that it is indeed cruel and unusual or excessive (fine) to impose.

In *Timbs v. Indiana,* 586 U.S. --, 139 S. Ct. 682 (2019) the Petitioner was arrested for dealing a de minimis amount of an illegal narcotic substance. As a result of his arrest, law enforcement officials used

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The Court did not make any distinction between an Ex Post Facto law under Article 1 § 9 or Article 1 § 10, while Petitioner's Brief in the Sixth Circuit and here is based on Article 1 § 9.

state forfeiture laws to confiscate/seize Petitioner's luxury auto, even though Petitioner was able to prove that the vehicle was purchased directly with funds from an inheritance (life insurance policy). This Court, in a watershed[16] 9-0 decision, held that the forfeiture was indeed disproportionate and excessive in violation of the 8th Amendment.

In the unanimous decision in *Packingham v. North Carolina,* 137 S.Ct. 1730 (2017) this Court dealt, in part, with the imposition of excessive internet restrictions placed on registered offenders under state law. This Court held that those restriction in fact violated the 1st Amendment to the U.S. Constitution.

While *Packingham* did not directly challenge SORNA Justice Kennedy, the author of *McKune v. Lile* 536 U.S. 24 (2002) and *Smith v. Doe* 538 U.S. 84 (2003)[17] (of which all offender cases are the progeny), felt the necessity to opine his observations[18] about its

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'Watershed rules implicate' "the fundamental fairness and accuracy of the criminal proceeding." *Saffle v. Parks,* 494 U.S. 484, 495 (1990). See *Gideon v. Wainwright,* 372 U.S. 335 (1963) as the example of a ' watershed rule, which was so essential to the fairness of a proceeding that it altered the understanding of bedrock procedural elements,' *O'Dell v. Netherland,* 521 U.S. 151, 167 (1997).

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In *McKune* and *Smith* the original intent of offender statutes was to create a database to protect children from sexual predators, the act was even called the Child Protection Act (citations omitted).

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Echoing J. Stevens dissent at 113."No matter how often the Court may repeat and manipulate multifactor tests that have been applied in wholly dissimilar cases involving only one or two of these three aspects of these statutory sanctions, it will never

restrictions:

> the "troubling fact" SORNA has grown to impose severe restrictions "on persons who already have served their sentence and *are no longer subject to* the supervision of the criminal justice system" at 1737.

The one major difference in circumstances between Petitioner's case and the observations of Justice Kennedy in *Packingham,* is that Petitioner is no longer an active registrant and the position of the Sixth Circuit and Respondent is not just troubling, it in fact equals cruel and unusual, excessive punishment and is based on a rule that simply does not exist but is imposed by arbitrary fiat.

The restrictions imposed on registrants are the most sweeping obstacle to the rights of an accused or convicted individual since *Gideon v. Wainwright*, 372 U.S. 335 (1963) and a prior state conviction, by itself, does not give the Federal Government a freestanding, independent, and perpetual interest supra, in tracing former offenders who are no longer subject to the supervision of the criminal justice system.

Not One Documented Case

For Petitioner to go through the proper channels for removal and be removed, only to be told at a later date that there is a new duty to register, a duty *which does not exist,* is indeed the epitome of cruel and

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persuade me that the registration and reporting obligations that are imposed on convicted sex offenders and on no one else as a result of their convictions are not part of their punishment."

unusual punishment and/or an excessive fine in violation of the 8th Amendment to the U.S. Constitution.

"[T]he Framers also knew that there could be exercises of cruelty by laws other than those which inflicted bodily pain or mutilation." *Furman v. Georgia,* 408 U.S. 238, 271 (1972). Indeed "[A] punishment may be degrading simply by reason of its enormity" *Furman* at 273. Also see *Crist v. Bretz,* 437 U.S. 28, 35 (1978).

At the heart of this case and *Timbs,* supra, is the 8th Amendment prohibition against cruel and unusual punishment, the "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Weems v. U.S.* , 217 U.S. 349, 367 (1910).

The Sixth Circuit Opinion is an enlargement of SORNA, which transcends judicial function.' *Iselin v. U.S.*, 270 U.S. 245, 251 (1926). No party has the right to enforcement of an unconstitutional law, *Tyson Foods v. McReynolds*, 865 F.2d 99, 103 (6th Cir. 1989) especially one that *does not exist*.

There is not one documented case of a former registrant, who was legally removed from a registry, being forced back on a registry because of a SORNA mandate which does not exist.

It would be cruel and unusual punishment in complete violation of the 8th Amendment[19] to require an individual to comply with restrictions which a Federal Court has already Ordered are no longer required.

For all of the above certiorari should be granted.

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[19] The 8th Amendment to the U.S. Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The 8th Amendment is applicable on the states via the 14th Amendment, *Robinson v. California,* 370 U.S. 660 (1962).

III.
RESPONDENT WAS WELL AWARE OF THE CONSEQUENCES THAT REMOVAL FROM A JURISDICTION'S REGISTRY ALSO RESULTS IN REMOVAL FROM THE SORNA DATABASE. SORNA IS A CIVIL STATUTE. FAILURE BY AN ADVERSE PARTY TO THE LITIGATION, TO OBJECT TO REMOVAL IS RES JUDICATA.

In *Does v. Snyder*, 834 F.3d 696 (6th Cir. 2016), the Court ruled that Michigan's SORA was unjust and violated the Ex post facto clause (Article 1 § 10) of the U.S. Constitution. The U.S. Supreme Court denied cert, thus affirming *Snyder,* and making the decision controlling and binding for the states that comprise the U.S. Sixth Circuit Court of Appeals, a fact stated by the DOJ: https://smart.gov/caselaw.htm. (Appendix in Support of Complaint EFC1.1 PageID 100). Per *Snyder,* Petitioner was legally removed from the Michigan registry which as a consequence also removed him from the Federal SORNA registry.

Not once did the lower courts or Respondent address the undisputable DOJ Smart Office admission/ruling, which noted and accepted the fact that *registration is conducted at the local level.* Issues not clearly raised or challenged in the briefs are considered abandoned. See *Allstate Ins. Co. v. Swann*, 27 F.3d 1539, 1542 (11th Cir.1994), *Fleishman v. Cont'l Cas.*, 698 F.3d 598, 608 (7th Cir. 2012) (rules "prevent parties from getting two bites at the apple").

Petitioner was removed from Michigan's SORA registry via Stipulation between himself and all State of Michigan Defendants and a proper Order was entered in the District Court (Stipulation & Order (EFC.16 PageID 406). Because Respondent had clear notice, reasonable diligence would dictate that, if they

had any objections to the Stipulation and Order, those objections should have been raised at that time.

Res judicata

Except for sections 18 U.S.C. §2250 and 34 U.S.C. §20913 (e) SORNA is a civil statute to which double jeopardy does not apply, but to which the principles of Res Judicata a.k.a. claim preclusion and issue preclusion, also known as collateral estoppel, do apply *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 n.1 (6th Cir. 1987).

Not once did Respondent ever object to the Stipulation. As a matter of law, Respondent could have obtained further review (Currier v. Virginia, 138 S.Ct. 2144 (2018) yet did not, their silence on the subject and their own prior SMART OFFICE statement noted above are in fact a declaration against interest, punctuated by deafening acquiescence equaling waiver. The doctrine of the law of the case provides that "a decision on an issue made by a court at one stage of a case should be given effect in successive stages of the same litigation." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 815-16 (1988). *Also see Arizona v. California,* 460 U.S. 605, 618 (1983), *U.S. v. Todd,* 920 F.2d 399, 403 (6th Cir. 1990):

> Historically, both claim and issue preclusion have sought to "promot[e] judicial economy by preventing needless litigation." *Currier* at 2156 citing *Parklane Hosiery.*, 439 U.S. 322, 326 (1979).

The matter has been decided, the failure to obtain further initial renew is in fact res judicata *Parklane Hosiery. v. Shore,* 439 U.S. 322 (1979). *Buck v. Thomas M. Cooley Law,* 597 F.3d 812, 817 -818 (6th Cir. 2010).

IV.
ALLOWING ENFORCEMENT OF A SORNA PROVISION WHICH WAS NEVER DELEGATED AND DOES NOT EXIST IS INDEED AN EX POST FACTO VIOLATION.

To date there is not one documented case of a former registrant being legally removed from a registry in Federal Court and then subsequently being forced to re-register under SORNA, absent a new sex offense conviction post-dating removal from a registry.

The Sixth Circuit Opinion held SORNA did not violate the Ex Post Facto Clause (Article 1 § 9) of the U.S. Constitution. The Court's reasoning (8a) rested on cases which involved active registrants only a few years removed from conviction and/or parole, who moved to other states or out of the country with clear intent to evade detection, in violation of 18 U.S.C. §2250.

Applying SORNA to a former registrant (absent a new sex conviction post-dating removal from a registry) is in essence an ex post facto violation and "subtle ex post facto violations are no more permissible than overt ones." *Collins v. Youngblood,* 497 U.S. 37, 46 (1990)[20]. [N]eed not impair a "vested right." *Weaver*

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[20] Also see *Gibson v. Mississippi,* 162 U.S. 565, 590 (1896), *Beazell v. Ohio,* 269 U.S. 167 (1925)."[R]etrospective laws are, indeed, generally unjust." *Eastern Enterprises v. APFEL,* 524 U.S. 498, 533, (1998).

v. Graham, 450 U.S. 24, 29 (1981).

The Court had a duty to recognize Petitioner's change in status, and 'documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.' *Tellabs, v. Makor*, 551 U.S. 308, 322 (2007). (See *Amini v. Oberlin College*, 259 F.3d 493, 502 (6th Cir. 2001) Orders, exhibits in the record).

Under any reasonable interpretation (*Chevron*) of SORNA, the rule the Court insists exists, does not, and was never delegated (*Reynolds)* because of the concerns raised in *Lopez* and *Morrison* (all four cases supra).

A prior state conviction, by itself, does not give the Federal Government a freestanding, independent, and perpetual interest supra, in tracing former offenders thereby subjecting them to embarrassment, expense and ordeal and compelling them to live in a continuing state of anxiety and insecurity. *Green, v. U.S.* 355 U.S. 184, 187 (1957).

SORNA no longer applies to Petitioner, he is now an average member of the community and applying a law which does not exist to punish "conduct which would not be blameworthy in the average member of the community would be too severe for that community to bear." *Lambert v. California*, 355 U.S. 225, 229 (1957).

Applying SORNA restrictions to a former registrant, legally removed from a jurisdiction's registry in Federal Court, is in fact punishment, *Calder v. Bull*, 3 U.S. 386 (1798).

V.
PETITIONER'S 1st AND 14th AMENDMENT RIGHTS ARE SUFFICIENTLY THREATENED.

The right to be let alone is a most cherished right and for someone who has lost that right, the hope and opportunity to regain their anonymity is immeasurable. In accessing the courts and exercising his due process rights, Petitioner followed all of the proper procedures and channels, and did regain his privacy. To have his privacy taken away after following the rules, because of a rule which simply does not exist, would indeed violate his rights under the 1st and 14th Amendments to the U.S. Constitution.

In dismissing Petitioner's 14th Amendment claim the Court held (13a):

> "The Fourteenth Amendment's Due Process Clause is a directive to the states. . . . SORNA, however, is a federal law. Therefore, this claim fails from the start."

Petitioner is not required to register under 34 U.S.C. §20911 (9)(10) and as a consequence he is not subject to criminal liability under 34 U.S.C. §20913 (e) and 18 U.S.C. §2250 (supra). Any contrary assertion that he could be forced to re-register is a sufficient threat of a loss of his liberty (actual injury[21]) "right to privacy," to be let alone *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) and invokes the 14th Amendment,

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[21] Art. III, Sec.2 Cl. 1 U.S. Constitution. case or controversy. *See Railway Mail Assn. v. Corsi*, 326 U.S. 88, 93 (1945). *Muskrat v. U.S.*, 219 U.S. 346 (1911).

because it would require having the State of Michigan violate Petitioner's due process rights (which he has already exercised without objection), to fulfill an obligation which does not exist.

Substantive due process applies to the right a plaintiff has been denied, life, liberty or property. County of Sacramento v. Lewis 523 U.S. 833 (1998) *Daniels, v. Williams*, 474 U.S. 327 (1986), *Cleveland Board. of Education. v. Loudermill*, 470 U.S. 532 (1985). Furthermore:

> The Fourteenth Amendment requires due process of law for the deprival of "liberty," just as for deprival of "life," and there cannot constitutionally be a difference in the quality of the process based merely upon a supposed difference in the sanction involved. *Gideon v. Wainwright*, 372 U.S. 335, 349 (1963).

"[T]he full scope of the liberty guaranteed by the Due Process Clause . . . is not a series of isolated points . . . . It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and *purposeless* restraints . . . ." Justice Souter, concurring[22] *Albright v. Oliver*, 510 U.S. 266, 287 (1994). "[o]ne does not have to await the consummation of threatened injury to obtain preventive relief." *Farmer v. Brennan,* 511 U.S. 825, 845 (1994).

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[22] Citing J. Harlan. *Poe v. Ullman,* 367 U.S. 497, 543 (1961) (dissenting opinion).

VI.
THIS CASE IS CAPABLE OF REPETITION YET EVADING JUDICIAL REVIEW.

Not reaching a decision in this case could lead to countless Federal and State filings.

A ruling in this case would impact every registry and every registrant in every jurisdiction who holds any glimmer of hope that they can be lawfully removed from their jurisdiction's registry, which in turn would remove them from the SORNA database.

Based on all of the above, this case is capable of repetition yet evading judicial review. Even "[V]oluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. . . . "[I]f it did, the courts would be compelled to leave '[t]he defendant . . . free to return to his old ways.'" *Friends of The Earth v. Laidlaw,* 528 U.S. 167, 189 (2000). See *Mesquite v. Aladdin*, 455 U.S. 283, 289 (1982), *U.S. v. Nixon*, 418 U.S. 683 (1974), *Globe v. Norfolk*, 457 U.S. 596 (1982). *Southern Pacific Terminal v. I.C.C.*, 219 U.S. 498 (1911).

CONCLUSION

Petitioner seeks an Opinion and Order holding that SORNA no longer applies to him or any other similarly situated individual and that such a finding is entitled to Article IV, Full Faith and Credit.

As final the arbiter *(Article VI) Marbury v. Madison,* 5 U.S. (1 *Cranch*) 137 (1803) and for all of the above reasoning, this Petition and the issues within deserve to be granted certiorari by this Court.

REQUEST FOR ATTORNEY FEES
AND
OTHER RELIEF

If any of the above requested relief is granted, it would amount to success on a significant issue in litigation warranting recovery of attorney fees. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).[23]

If this Petition is granted certiorari, Petitioner respectfully requests that the Court allow for paperless filings, except for the copies noted in the Court's April 15, 2020 Order requiring one copy on 8 ½ x 11 paper.

Dated: November 24, 2020

Respectfully Submitted,

s/Daniel C. Willman
Daniel C. Willman
Attorney for Petitioner

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[23] 42 U.S.C. 1988