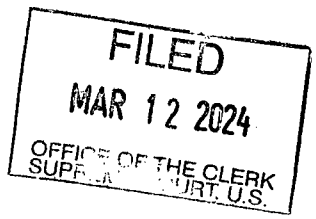
No. 23-7013

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Jason Steven Kokinda — PETITIONER
(Your Name)

vs.

The United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason Steven Kokinda
(Your Name)

55 Columbia Blvd.
(Address)

Clarksburg, WV 26301
(City, State, Zip Code)

609-942-9012
(Phone Number)

QUESTION(S) PRESENTED

1. Is the panel decision in conflict with Boumediene v. Bush, 553 U.S. 723, 779-80, 128 S. Ct. 2229 (2008), in suspending the Writ of Habeas Corpus when a misinterpretation of law is being used to detain the defendant and direct appeal proceedings are inadequate to protect liberty interests in case with plain lack of probable cause?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Brandon Flower
300 Third St., Suite #300
Elkins, WV 26241

Solicitor General of the United States,
Room 5614, Department of Justice,
950 Pennsylvania Ave., N.W.,
Washington, D.C. 20530-0001

RELATED CASES

1: In re: Kokinda, No. 23-2130, U.S. Court of Appeals for the Fourth Circuit, affirmed, Judgment Entered: February 27, 2024.

2: United States v. Kokinda, No. 22-4595, U.S. Court of Appeals for the Fourth Circuit, affirmed, Judgement Entered: February 21, 2024.

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STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
☒ is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

☒ For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was November 28, 2023.

[ ] No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 30, 2024, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE I

Section 9: Powers Denied Congress

"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

34 U.S. Code § 20913 - Registry requirements for sex offenders

(c)Keeping the registration current

A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry.

STATEMENT OF THE CASE

Proceedings:

1: On or about October 21, 2021, Mr. Kokinda was found guilty on one count of 18 U.S.C. § 2250(a), failing to register as a sex offender (predicated on 2007 cybersex sting cases wherein the courts intentionally misconstrued the claims to evade relief).
2: On or about October 13, 2022, Jason Kokinda was sentenced to 63 months and lifetime supervision for his first ever alleged registry infraction based upon relevant conduct that he pushed a consenting and adult-supervised girl on a swing and somehow palmed her butt for a split-second during the push, and speculation of accessing child pornography while outside US.
3: A timely notice of appeal was filed on October 20, 2022, and a subsequent appellant brief by post-trial counsel, David Frame, on March 31, 2022, at ECF No. 24, Docket No. 22-4595, in the U.S. Court of Appeals for the Fourth Circuit, now affirmed.
4: On February 21, 2022, Jason Kokinda filed his first § 2255 petition for habeas corpus relief arguing that he has the right to immediately release as a matter of law because the state and federal registry statutes were narrowly construed by the U.S. and W.V. Supreme Courts to exclude his travels from registration, allowing him to pass through the state.
5: On June 6, 2023, the U.S. District Court for the Northern District of West Virginia denied the § 2255 petition and bail on the basis that Jason Kokinda did not present "extraordinary circumstances" to warrant consideration of the Great Writ and that appellate counsel had raised somewhat similar errors on direct appeal still pending. Certificate of appealability was also denied.

Material Facts:

1: It was alleged that Jason Kokinda had commuted to Elkins, WV, regularly to shop during the daytime and was spotted for a few hours at the gym and park during the August 26th to September 29th period of the indictment. It was also alleged that he had stayed up to a week at one campground in an adjacent county and up to two weeks at another campground in another adjacent county. *See* ECF 80 Volume III Trial Transcripts, testimony of Jason Kokinda, and particularly pg. 492 where the prosecutor equates shopping regularly in Elkins, WV, with residing there and creates a novel obligation to register places one commutes to during the day.
2: It was not alleged that Jason Kokinda had stayed one night in Elkins, WV. And there was no evidence of him sleeping in his car. Yet, the transactions here were instructed to be sufficient for the jury to find that he had violated registry laws with no regard for the narrow construction placed upon them by this court in Nichols, *supra, inter alia.*

REASONS FOR GRANTING THE PETITION

Petitioner seeks a writ of certiorari or summary reversal of the denial of a certificate of appealability and suspension of the writ of habeas corpus, in a case that this court can *presume without deciding* is lacking in probable cause.

SUMMARY OF ARGUMENT: In summary, a direct appeal is similar to a common law writ of error. In some cases, habeas corpus must be available when the direct appeal is insufficient to safeguard liberty and the statute is being misinterpreted to confine someone.

This Court expressly stated in *Nichols*, *infra*, that stays of several days at [temporary lodging] are exempt from criminal liability under SORNA during interstate travel. The Govt. replaced the ordinary-English-usage test with a hypertechnical form of residency that is met by merely commuting to a city frequently in a day or passing through temporary lodgings in multiple counties without establishing a residence.

The Govt. used language in the guidelines as mere inspiration for this hypertechnical form of residency by editing it to turn "pieces of information" someone may list on a registry into independent obligations to register.

The Fourth Circuit panel claims that this is *Chevron* deference, but it is not deference to the guidelines. It's just tangents cobbled together to create a new hypertechnical residency obligation as a substitute for the ordinary-English-usage test announced in *Nichols*, *infra*.

ARGUMENT: *See* *Thuraissigiam v. US Dept. of Homeland Sec.*, 917 F.3d 1097, 1106 (9th Cir. 2019) ("As *Boumediene* summed it up, the Suspension Clause is rooted in the Framers' first-hand experience "that the common-law writ all too often had been insufficient to guard against the abuse of monarchial power." 553 U.S. at 739-40, 128 S.Ct. 2229. The Clause, therefore, is "not merely about suspending the privilege of the writ of habeas corpus, but about the meaning of the `privilege of the writ' itself." Halliday & White, 94 Va. L. Rev. at 699. "Indeed, common law habeas corpus was, above all, an adaptable remedy . . . [whose] precise application and scope changed depending upon the circumstances." *Boumediene,* 553 U.S. at 779-80, 128 S. Ct. 2229 (citing, *inter alia,* Richard H. Fallon, Jr. & Daniel J. Meltzer, *Habeas Corpus Jurisdiction, Substantive Rights, and the War on Terror,* 120 Harv. L. Rev. 2029, 2102 (2007)).") Id. at 1107 In *Boumediene,* the Court gleaned from its precedents two "easily identified attributes of any constitutionally adequate habeas corpus proceeding." 553 U.S. at 779, 128 S.Ct. 2229. First, the "privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to `the erroneous application or interpretation' of relevant law." *Id.* (quoting *St. Cyr,* 533 U.S. at 302, 121 S.Ct. 2271). Second, "the habeas court must have the power to order the conditional release of an individual unlawfully detained." *Id.* Beyond those minimum requirements, "depending on the circumstances, more may be required." *Id.)*

1. *Boumediene*, *supra*, stands for the proposition that the Great Writ was historically used to address erroneous interpretations of the relevant law for immediate release when the common law writ, the equivalent of today's direct appeal, is inadequate.

   (a) If the direct appeal is "adequate," then why is Jason Kokinda still incarcerated on an obvious error by the prosecutor expanding the scope of the statute without on-point authority and in plain contradiction of *Nichols*, *infra*, expressly exempting his unusual travel patterns?[1]

2. Mr. Kokinda's *direct appeal* is the modern-day, functional equivalent of the "common law writ of error" discussed in *Boumediene*, which was often thought to be insufficient to guard against the abuse of monarchial power in colonial times; the judges are the tyrants at issue.

3. In the instant case, Mr. Kokinda is being denied a "meaningful opportunity to demonstrate that he is being held pursuant to `the erroneous application or interpretation' of relevant law."

4. The errors in Mr. Kokinda's case are simple to resolve by using objective rule-of-law analyses. It is all a matter of how the state and federal registry statutes have been strictly construed by the courts and common sense application of those constructions:

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[1] *Chevron* deference itself never even contemplated the possibility of phrases being misquoted and edited to support a novel expansion. The Govt. is attempting to create a new standard of deference, *Kokinda* deference, whereby they can edit any language that they like into jury instructions to create novel obligations as needed to convict anyone.

(a) Pursuant to *Nichols v. United States*, 136 S. Ct. 1113, 578 US 104, 194 L. Ed. 2d 324 (2016); *M.S. Willman v. AG of the United States*, 972 F.3d 819, 826 (2020), it is obvious that "staying at temporary lodging for several days" and "commuting" daily to a commerce district to socialize and access amenities does not constitute "residency as that term is used in ordinary English," the threshold test announced in *Nichols*.

(b) No matter how many times someone may "commute" to a city and visit it during the day, no one would say that they are residents there. It's common sense!

(c) And unless someone signs some sort of long-term lease to park their RV at a campground, vacationing and visiting them lacks the permanency of residences.

(d) The Govt.'s evidence is that Mr. Kokinda may have stayed two weeks at a campground in Pendleton County, possibly a week at a campground in Tucker County, and that he commuted to Elkins in Randolph County to shop/socialize frequently without any evidence of him staying overnight a single day during the August 26-September 29, 2019 period, while traveling interstate during that period.

(e) The Govt. lied to the petit and grand juries by confusing them to believe that Mr. Kokinda had a duty to "update his registry with general descriptions of his whereabouts," particularly the commerce he conducted in Elkins, without

meeting the threshold of "establishing a residence pursuant to ordinary English usage."[2]

(f) Now, Mr. Kokinda admits that someone can establish a residence without a formal address by calling the streets of a city home and pass the ordinary-English-usage test announced in *Nichols* because millions of *ordinary* vagabond residents across the nation live in this manner.

(a) However, there is no such thing as a *multi-county,* camper, commuter resident. When someone is making great leaps and traveling around, his activity is not concentrated in a particular city and does not resemble the *permanency* of residency but instead shows he is merely passing through the area by touring different spots and lacks the concrete ties associated with residency.

(b) The objective test is for the Govt. to demonstrate where these residents are who only stay a couple weeks at campgrounds in various counties and are constantly traveling interstate. That would be evidence of Mr. Kokinda fitting the paradigm according to the *Nichols'* ordinary-English test. Common sense tells us that there are no such residents!

6. *Nichols* also prohibited the Govt. from expanding the "change of residence" element to include an obligation to notify officials of *future* residences. This is the paradigm previously used in the Fourth circuit in *United States v. Bruffy*, 466 F.

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[2] *See* ECF 80, Volume III Trial Transcripts, testimony of Jason Kokinda, and particularly pg. 492

App'x 239 (*4th Cir.* 2012), requiring Bruffy to provide a general description and update his registry to reflect his "general presence."

(a) In the instant case, the Govt. lifted and edited "pieces of information" from the Part VI DOJ guidelines to define Mr. Kokinda's obligation to provide a "general description of his whereabouts" and "places he regularly shopped or stopped during the day."

(b) The Supreme Court rejected the Govt.'s desired construction and stated that the "pieces of information" someone provides at the time of registration have nothing to do with the inquiry of what triggers a duty to register in the first place, the inquiry in a criminal trial.

7. This Court cannot escape the analogs between the attempts to broaden 18 U.S.C. § 2250 in *Nichols* and the Govt.'s frivolous attempts to repackage the same arguments the Govt. lost in that appeal. In order to make weight, the Govt. wants to inject politics, smear campaigns of Mr. Kokinda's character, and stranger danger propaganda to coax the courts to *affirm.*

(a) However, it is the duty of all courts to simply examine the contours of the law as constructed by the U.S. Supreme Court in *Nichols* and apply those principles mechanically.

See Payne v. Taslimi, 998 F.3d 648, 654 (4 th Cir. 2021) (holding that lower courts "must simply apply commands" when the Supreme Court announces a general rule. "[E]ven were we to correctly conclude that a Supreme Court precedent contains many "infirmities" and rests on "wobbly, moth-eaten

foundations," it remains the Supreme Court's "prerogative alone to overrule one of its precedents.")

8. In addition to **ignoring** the two general rules announced in *Nichols*, the Govt. wholly refused to even consider Mr. Kokinda's admitted compliance with state law as a bar to prosecution.[3]

9. Yet, the Fourth Circuit held in *Kennedy v. Allera*, *infra*, that the states possess the Chancellor's Foot and that their refusal to register any offender is an *affirmative defense*. *See* *Kennedy v. Allera*, 612 F.3d 261, 269 (4th Cir. 2010) ("States can refuse registration inasmuch as they allow registration.")

   (a) The defendant in *Kennedy* was found to be exempt from registration by this Circuit, pursuant to the 18 U.S.C. § 2250(c) *affirmative defense* provision, when the officials of the Maryland registry refused to register him.

   (b) Relevant to federal WV prosecutions, the West Virginia Supreme Court has decided that it will not "contort" the West Virginia registry to conform with the Adam Walsh Act (SORNA) unless the WV legislature decides to adopt those enhanced SORNA standards.

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[3] If Mr. Kokinda stayed two weeks at Yokum's Campground in Pendleton Co. and one week at Five River's Campground in Tucker Co., he could not have stayed more than fifteen continuous days in any county during the Aug. 26-Sept. 29, 2019 period of the indictment. He therefore, had no duty to register under state law and would not be registered by any official acting in the scope of his duties and clothed in state law because he was considered a non-registerable visitor under the strictly construed contours of state law. *See* *State v. Beegle*, 237 W. Va. 692, 533, 790 S.E.2d 528 (W.Va. 2016) at n.11 ("[T]he initial duty to register as a sex offender in a particular county arises when an offender has been in that county for more than fifteen continuous days. *See* C.S.R. § 14-5.1"); *see also* *United States v. George*, 946 F.3d 643, 645 (4th Cir. 2020) ("Criminal statutes are "strictly construed and should not be interpreted to extend criminal liability beyond that which Congress has plainly and unmistakenly proscribed.")

See State v. J.E., 238 W.Va. 543, 796 S.E.2d at 885-88 (W.Va. 2017) (holding that the Court will not "contort West Virginia Code Sec. 15-12-[] to make it conform to the Adam Walsh Act" unless the "legislature may amend our sex offender registry statute and adopt the Adam Walsh Act in its discretion." [sic]) The footnotes also discuss how the great majority of the states have not adopted the standards due to the excessive expense in implementing them.

10. Although there are *factual permutations* between Kennedy and Mr. Kokinda's case, the principle involved is the same: If the state says that someone should not be registered, then that is an *affirmative defense* for the offender to use in estopping an 18 U.S.C. § 2250(a) prosecution.[4]

    (a) If this Court would decide against applying the rule in Mr. Kokinda's case because it is, by contrast, the West Virginia Supreme Court declaring the law rather than an *ad hoc* decision by a low-level registry official, it would be mere caprice and malice against Mr. Kokinda personally.

11. Common sense dictates that a pronouncement and construction of the state law as declared by its highest court regarding the categorical limits of registration in the state **carries more weight** than the *ad hoc* decision of a registry official in a

[4] *See* Wright v. West, 505 U.S. 277, 304, 112 S. Ct. 2482, 120 L.Ed.2d 225 (1992) (O'Connor J. concurring and citing Stringer, 503 U.S. at 237) ("If a proffered factual distinction between the case under consideration and pre-existing precedent does not change the force with which the precedent's underlying principle applies, the distinction is not meaningful, and any deviation from precedent is not reasonable.") Common law is wholly based upon *analogs*, not exact facts.

county, such as a Maryland county, lacking on-point authority to prohibit the use of federal SORNA standards.

See Johnson v. Fankell, 520 U.S. 911, 916 (1997) (Federal courts do not have "any authority to place a construction on a state statute different from the one rendered by the highest court of the state.")

12. And it would be a mere hypertechnical formality to attempt registration when the law isn't within the discretion of the registry official, as was the case in *Kennedy*, but instead is declared by the Supreme Court to categorically exclude Mr. Kokinda from being registered pursuant to SORNA's enhanced standards.

13. In addition, *Kennedy* was provided "fair notice" of a duty to register by his probation officer despite general state law provisions, while Mr. Kokinda by contrast had "fair notice" of established law that WV was not allowed to register him under federal standards.

    (a) Furthermore, this Court is not allowed to construe the statute in a manner that would usurp the state's autonomy, forcing it to implement SORNA's enhanced standards.

See United States v. Felts, 674 F.3d 599, 607 (6th Cir. 2012) ("Under the Tenth Amendment, federal officers are prohibited from conscripting, or commandeering, state officials to administer and enforce a federal regulatory program. *Printz v. United States*, 521 U.S. 898, 935, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997).")

14. Although SORNA was found facially constitutional in *Felts, supra,* because it fits the Spending Clause exception of *South Dakota v. Dole,*483 U.S. 203, 206–08, 107 S.Ct. 2793, 97 L.Ed.2d 171 (1987), it would not be constitutional as applied in WV where the state has rejected SORNA's enhanced standards and the funding that *activates* the Spending Clause argument for exception.

15. If the receipt of funds is the exception carved in in *Printz*, then the exception plainly has no force as applied if the state rejects those funds whereby it is under no obligation to "contort" its laws to conform with implementation of a federal program.

    (a) If the law were otherwise, then *Printz* and the anti-commandeering aspect of the Tenth Amendment would have no force. The Courts could force the states to implement any burdensome federal registration program and rely on the fact that the statute *facially* offers some financial incentive and therefore is constitutional to impose on the states, end of story.

16. While there is plenty of case-law vaguely asserting that SORNA still applies regardless of a state's failure to implement it, you can't simply **forget** about *Kennedy, supra*, and the *affirmative defense* available when the State rejects registration under federal standards.

    (a) All states have a registry, so most offenders would eventually incur a federal penalty for wholly failing to register after establishing a residence in the state and violating its laws.

17. Trial counsel did not preserve these errors, and appellate counsel did not properly develop them. It is clear from the fourth circuit opinion that they are missing key dimensions of the claims and only had a vague understanding of the claims.

(a) The appellee and appellant briefs are rife with character assassination that paint Mr. Kokinda in this predatory light based on unreliable, double-hearsay evidence contrived after destroying conclusive electronic evidence that would foreclose the attacks.

18. The appellate claims were not addressed on their merits in a full and fair proceeding. By omitting a dimension of the claims, it may seem that the court addressed or implicitly considered and denied them. However, it ridiculous to believe that the court made such implicit holdings.[5]

(a) While the courts have an argument based on *judicial economy* to let the direct appeal play out before dedicating resources to the habeas petition, it is premature to conclude that those direct appeal proceedings are sufficient; Mr. Kokinda is under oppressive restraints.

(b) Unless Mr. Kokinda is released immediately, then the direct appeal does not provide an adequate remedy under the law.

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[5] *Cf.* Campbell v. Bradshaw, 674 F.3d 578, 596 (6th Cir. 2012) (de novo review required when State's framing or analysis omitted dimensions of federal claim.); Everett v. Beard, 290 F.3d 500, 508 (3d Cir.2002). *See also* United States v. Williams, 1997 U.S. App. Lexis 6402 (4th Cir. 1997) at Lexis 2-3 ("[C]laims [Defendant] raised in his § 2255 motion are not the same as those he litigated and lost on direct appeal; thus, he may present them in a collateral proceeding." – "Section 2255 states in part, "[a] motion for such relief may be made at any time." While a § 2255 motion is generally not heard where a direct appeal is pending, except in "exceptional circumstances," that does not mean that the district court was without jurisdiction.")

19. The direct appeal furthermore fails to focus on the fact that *Chevron* deference is categorically inapplicable to the **major questions** presented in the strictly construed interpretations used in criminal proceedings.

See Gun Owners of Am., Inc. v. Garland, 992 F.3d 446, 454 (6th Cir. 2021) ("We agree and conclude that Chevron deference does not apply to the judicial interpretation of statutes that criminalize conduct, i.e., that impose criminal penalties.")

See also Cargill v. Garland, 57 F.4th 447 (5th Cir. 2023) ("We must not apply Chevron where, as here, the Government seeks to define the scope of activities that subject the public to criminal penalties.")

See also Hardin v. BATFE, 2023 U.S. App. 9938 (6th Cir. 2023) (Applying rule of lenity rather than Chevron in hybrid statute with direct criminal penalties, as evidence that the two doctrines are generally considered mutually exclusive.)

19. All of the above discussion is based on the objective contours of the law as defined by the state and federal Supreme Courts. Because the lower courts are required to apply those principles mechanically, despite any factual permutations, there is nothing more to discuss.

(a) Therefore, Mr. Kokinda meets "extraordinary circumstances" threshold for hearing a habeas corpus petition with a direct appeal pending review in this court via writ of certiorari.

See Gonzalez v. Thaler, 565 U.S. 134, 140-41, 132 S. Ct. 641, 181 L.Ed.2d 619 (2012) ("When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right.")

20. The lower courts should have *presumed without deciding* that the statutory constructions as declared by the U.S. and W.V. Supreme Courts foreclosed the prosecution's erroneous interpretation of the law and that Mr. Kokinda has presented "extraordinary circumstances" of completing nearly all of his severe sentence with blatant disregard for the rule of law and should be released forthwith on minimal conditions pending acquittal.

See *Villanueva v. United States*, 346 F.3d 55, 61 (2d Cir. 2003) (discussing how AEDPA merely codifies the "abuse of the writ" doctrine and sets orderly time limits for relief while preserving the pre-AEDPA equitable case-law considerations already established.)

See also *Weaver v. Foltz*, 888 F.2d 1097, 1099-1100 (6th Cir. 1989) (In "extraordinary cases" requiring prompt federal intervention," the lack of exhaustion may be excused to allow a decision on the merits of a claim – exercised here given the strength of claim that evidence was constitutionally insufficient to support petitioner's conviction.)

21. The Fourth Circuit's recent opinion in the No. 22-4595 direct appeal shows that they have not adjudicated these simple claims on the actual merits. If they did so implicitly, then they are absurdly concluding that the Govt. can make up any elements it wants by editing and distorting sections of the guidelines to mislead a jury by turning "pieces of information" someone may list on a registry into new independent obligations that trigger an initial duty to register.

22. They would also be holding that the Govt. can replace the ordinary-English-usage test announced in *Nichols* with a 30-day state cap on transience by editing language in the guidelines to make up their own elements. Even if guidelines had the force of law, the U.S. Supreme Court precedent in *Nichols* has the force of *Supreme Law* and supplants their ruling.

23. The lower courts have just ignored the claims and intentionally misconstrue the issues to evade them and come to a predetermined conclusion of guilt. This constitutes fraud on the court and is exclusively within this Court's supervisory powers to correct.

    (a) Because this registry law affects nearly a million people and their families, it is a question of national importance to ensure that the law is properly interpreted by the lower courts and that people aren't being capriciously thrown in prison for years without any merits review of egregious errors.

    (b) This Court granted certiorari in *Nichols*, *supra*, and may wish to grant it here as the only means of stopping the lower courts from expanding SORNA to punish every transitory move with a lifetime federal penalty.

24. This Court may also grant summary reversal pursuant to Supreme Court Rule 16.1 by recognizing that Mr. Kokinda has established meritorious claims of a constitutional violation and that the direct appeal is inadequate.[6]

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[6] *See Gonzalez v. Thaler*, 565 U.S. 134, 140-41, 132 S. Ct. 641, 181 L.Ed.2d 619 (2012). ("When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right.")

See Supreme Court Rule 16.1 ('order [disposing of the certiorari petition] may be a summary disposition on the merits"). *Maryland v. Dyson*, 527 U.S. 465, 465 n.1 (1999) *per curiam* ("summary reversal does not decide any new or unanswered question of law but simply corrects a lower court's demonstrably erroneous application of federal law").

CONCLUSION

The petition for a writ of certiorari should be granted.
In the alternative, the Court is requested to grant summary reversal.

Respectfully submitted,

Jason Lee 1-308
All Rights Reserved

Date: March 7th, 2024