No.

IN THE

SUPREME COURT OF THE UNITED STATES

EARL CASPERSON MEGGISON,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida Fifth District Court of Appeal

PETITION FOR WRIT OF CERTIORARI

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A. QUESTION PRESENTED FOR REVIEW

Whether the Court should resolve the following question for which the state courts are split: is it a violation of constitutional ex post facto principles to apply the current – and more onerous – removal provision of a state's sex offender registration statute to a petitioner seeking removal from the registry.

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

C. TABLE OF CONTENTS AND TABLE OF CITED AUTHORITIES

1. TABLE OF CONTENTS

2. TABLE OF CITED AUTHORITIES

a. Cases

b. Statutes

c. Other

The Petitioner, EARL CASPERSON MEGGISON, requests that the Court issue its writ of certiorari to review the opinion/judgment of the Florida Fifth District Court of Appeal entered in this case on October 22, 2024. (A-3).[1]

D. CITATION TO OPINION BELOW

Meggison v. State, 396 So. 3d 35 (Fla. 5th DCA 2024).[2]

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant

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[1] References to the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

[2] Because the state appellate court did not issue a written opinion, the Petitioner was not entitled to seek review in the Florida Supreme Court. *See Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980).

to 28 U.S.C. § 1257 to review the final judgment of the Florida Fifth District Court of Appeal.

F. CONSTITUTIONAL PROVISION INVOLVED

The Constitution directs: "No State shall . . .pass any . . . ex post facto Law." U.S. Const. art. I, § 10, cl. 1.

G. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

This case concerns the denial of a petition filed by the Petitioner to remove the requirement that he register as a sexual offender in the State of Florida. The statute in effect when the Petitioner completed his probationary sentence (i.e., the 2000 version of section 943.0435, Florida Statutes) stated that the Petitioner would be eligible to seek removal from the registry

after he has been lawfully released from probation for *twenty years*. However, after the Petitioner completed his probationary sentence, the Florida Legislature amended the sex offender registry statute and adopted more onerous requirements – including a new removal provision that makes defendants convicted of the offense for which the Petitioner was convicted ineligible from *ever* being removed from the registry (i.e., the 2000 version of the statute allowed the Petitioner to seek removal from the registry after twenty years – and the current version of the statute prohibits the Petitioner from ever seeking removal from the registry).

The Petitioner filed his petition for removal in 2023 (i.e., after he satisfied the twenty-year requirement contained in the 2000 version of section 943.0435). A hearing on the Petitioner's petition was

held on June 19, 2023. Thereafter, the Florida trial court rendered an order denying the Petitioner's petition. (A-5). In the order, the Florida trial court held that the current registry statute (rather than the registry statute in effect when the Petitioner completed his probation) controls this case. And the Florida trial court confirmed that based on the current registry statute, the Petitioner *is ineligible from ever being removed from the registry*. The Petitioner appealed the Florida trial court's order and argued that constitutional ex post facto principles prohibited Florida from applying the current removal provision of the sex offender registry statute to the Petitioner's case, but the Florida Fifth District Court of Appeal affirmed the Florida trial court's order without explanation. (A-3). Thus, the issue in this case is whether it is a violation of constitutional ex post facto

principles to apply the current version of the registry statute to the Petitioner's case.

H. REASON FOR GRANTING THE WRIT

The Court should resolve the following question for which the state courts are split: whether it is a violation of constitutional ex post facto principles to apply the current – and more onerous – removal provision of a state's sex offender registration statute to a petitioner seeking removal from the registry.

1. The Petitioner's petition for removal.

In his petition for removal from the sex offender registry, the Petitioner alleged the following facts:

> 1. Mr. Meggison is an 81-year-old man, who is a college graduate and the father of two, who both have professional careers. Mr. Meggison is an honorably discharged veteran of the U.S. Navy Submarine Service. He is also a cancer survivor. He has a service-connected disability, rated at 100%.
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> 2. Mr. Meggison was hired by AT&T in 1962 and rose quickly to Senior Management level. He was employed at AT&T in senior management positions for over 25 years.
>
> 3. In January 1987, fourteen criminal charges were filed against Mr. Meggison in the aftermath of a bitter

divorce.

4. After four procedurally flawed trials, Mr. Meggison eventually ran out of resources. During the preparations for the fifth trial, the Court declared Mr. Meggison indigent and his attorney withdrew. He was exhausted from the numerous trials, appeals, and motions, so he accepted the new plea bargain in which he pled guilty in exchange for a sentence of 10 years of probation.[3]

5. At the time Mr. Meggison entered his plea, Florida did *not* require sex offenders to register.

6. Mr. Meggison completed his probationary sentence on July 28, 2000. Since that time, Mr. Meggison has complied with the requirement that he register as a sexual offender, even though the sexual offender registration statute (i.e., section 943.0435, Florida Statutes) was adopted by the Florida Legislature in 1997.

7. Section 943.0435, Florida

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[3] Pursuant to the plea agreement, Mr. Meggison entered a plea to the following counts: contributing to the delinquency of a minor (Count 1); lewd and lascivious assault upon a child (Counts 2 and 3); and engaging in sexual activity with a child (Counts 5, 6, 8, 10, 11, 12, 13). [ ]

Statutes (2000) – the statute in effect when Mr. Meggison completed his probation – states the following:

> (11) A sexual offender must maintain registration with the department for the duration of his or her life, unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. *However, a sexual offender*:
>
> (a) *Who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years and has not been arrested for any felony or misdemeanor offense since release*; or
>
> (b) Who was 18 years of age or under at the time the offense was committed and adjudication was withheld for that offense, who has had 10 years elapse since having been placed on

probation, and who has not been arrested for any felony or misdemeanor offense since release *may petition the criminal division of the circuit court . . . for the purpose of removing the requirement for registration as a sexual offender*. The court may grant or deny such relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition

> at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief, subject to the standards for relief provided in this subsection. The department shall remove an offender from classification as a sexual offender for purposes of registration if the offender provides to the department a certified copy of the court's written findings or order that indicates that the offender is no longer required to comply with the requirements for registration as a sexual offender.

(Emphasis added).

8. Mr. Meggison satisfies all of the requirements of section

> 943.0435(11)(a): (1) he has been lawfully released from probation for at least 20 years and (2) he has not been arrested for any felony or misdemeanor offense since his release.
>
> 9. Mr. Meggison prays the Court to remove the requirement that he register as a sexual offender. Mr. Meggison is not a current or potential threat to public safety.
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> 10. Since his release from probation, Mr. Meggison has undergone several sexual assessment evaluations. Most notably, Mr. Meggison has been evaluated by Dr. Darren M. Rothschild, a forensic psychiatrist who has been qualified as an expert on the assessment of sexual offenders. A copy of Dr. Rothschild report is attached to this petition. In his report, Dr. Rothschild concluded that Mr. Meggison is a "low risk" to commit a sexual offense in the future (which is the lowest/best result that can be scored). Based on Dr. Rothschild's findings, it is clear that Mr. Meggison is not a current or potential threat to public safety.
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> 11. Because Mr. Meggison meets all of the criteria of section 943.0435(11)(a), Mr. Meggison requests the Court to grant the instant petition.

(One footnote omitted).

2. The Florida trial court's order denying the Petitioner's petition.

In its order denying the Petitioner's petition, the Florida trial court held that the current registry statute (rather than the registry statute in effect when the Petitioner completed his probation) controls this case – and the trial court held that based on the current registry statute, the Petitioner *is ineligible from ever being removed from the registry*. (A-15-16).[4]

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[4] The current version of Florida's registry statute contains the following removal provision:

> (11) Except as provided in s. 943.04354, a sexual offender shall maintain registration with the department *for the duration of his or her life* unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. However, a sexual offender shall be considered for removal of the requirement to register as a sexual offender only if the person:
>
> (a)1. Has been lawfully released from

3. The Florida trial court's order is in conflict with the decision of the Supreme Judicial Court of Maine in *State v. Letalien*, 985 A.2d 4 (Me. 2009).

The issue in *Letalien* was whether a change to that state's registration statute's removal provision violated ex post facto principles. Specifically, when the petitioner in *Letalien* was first required to register for the Maine sexual offender registry, the registration requirement was for a period of fifteen years – but subsequently, the Maine Legislature amended the statute and changed the registration requirement from

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> confinement, supervision, or sanction, whichever is later, for at least 25 years and has not been arrested for any felony or misdemeanor offense since release, *provided that the sexual offender's requirement to register was not based upon an adult conviction*:
>
> . . . .
>
> b. For a violation of s. 794.011 . . . .

(Emphasis added). The Petitioner's conviction is now defined as a violation of section 794.011, Florida Statutes.

fifteen years to life. *See Letalien*, 985 A.2d at 10 ("Because SORNA of 1999, as amended, deemed the crime for which Letalien was convicted in 1996 a 'sexually violent offense,' in 2001 Letalien was classified as a 'sexually violent predator' and the duration of his duty to register increased from fifteen years to his entire lifetime."). Ultimately, the Supreme Judicial Court of Maine held that the change in the removal provision (from fifteen years to life) violated the petitioner's federal constitutional[5] ex post facto principles:

> The United States Constitution directs: "No State shall ... pass any ... ex post facto Law." U.S. Const. art. I, § 10, cl. 1. . . . The prohibition on ex post facto laws "applies only to penal statutes which disadvantage the offender affected by

[5] In *Letalien*, the Supreme Judicial Court of Maine explained that the "Ex Post Facto [p]rovisions of the United States and Maine Constitutions are [c]oextensive." *Letalien*, 985 A.2d at 12.

them." *Collins v. Youngblood*, 497 U.S. 37, 41 (1990).

In *Collins*, the United States Supreme Court comprehensively reviewed the history of interpretation of the ex post facto clause. *Id.* at 40-52. Summarizing, the Court stated that the ex post facto clause prohibits laws that "retroactively alter the definition of crimes or increase the punishment for criminal acts." *Id.* at 43. The *Collins* Court described the criteria to be used for measuring whether or not a law imposing requirements on persons previously convicted of a crime is constitutionally prohibited as ex post facto:

> It is settled, by decisions of this Court so well known that their citation may be dispensed with, that any statute which punishes as a crime an act previously committed, which was innocent when done; which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with crime of any defense available according to law at the time when the act was committed, is

prohibited as ex post facto.

Id. at 42 (quoting *Beazell v. Ohio*, 269 U.S. 167, 169-170 (1925)).

The *Collins* criteria are stated in the alternative; violation of any one prohibition renders a law a violation of the ex post facto clause. The constitutional prohibition on "any statute ... which makes more burdensome the punishment for a crime, after its commission" looks to, among other things, the burdens subsequently imposed on persons previously sentenced. *Id.*

. . . .

. . . [T]he ex post facto clauses of the Maine and United States Constitutions are interpreted similarly and are coextensive, and a statute violates the prohibition against ex post facto laws if it: (1) punishes as criminal an act that was not criminal when done, (2) makes more burdensome the punishment for a crime after it has been committed, or (3) deprives the defendant of a defense that was available according to law at the time the act was committed. *See Collins*, 497 U.S. at 42; *State v. Chapman*, 685 A.2d 423, 424 (Me. 1996).

. . . .

> In both [*State v.*] *Haskell*, 784 A.2d 4 [(Me. 2001)], and *Doe* [*v. District Attorney*, 932 A.2d 552 (Me. 2007)], we analyzed SORNA of 1999 following the two-step "intent/effects" test employed by the United States Supreme Court in *Smith* [*v. Doe*, 538 U.S. 84 (2003),] and *Hudson v. United States*, 522 U.S. 93, 99 (1997). Having concluded that SORNA was intended to be a civil, regulatory statute, we next applied the seven factors set forth in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963), to determine whether, notwithstanding the Legislature's civil intent, it has been established by "clearest proof" that the effects of SORNA of 1999 are so punitive as to overcome the civil characterization.
>
> In light of the considerable deference we afford to the Legislature's express statement that SORNA of 1999 is intended to "protect the public from potentially dangerous registrants by enhancing access to information concerning those registrants," 34-A M.R.S. § 11201 (2008), and because the Legislature has placed SORNA of 1999 entirely outside of the Criminal Code, we find no reason to depart from our prior decisions that determined that the law was intended by the Legislature to be a civil regulatory statute. Accordingly, we

direct our focus to the second step of the inquiry and examine SORNA's effects.

3. *Mendoza-Martinez* Factors

In the second step of the analysis, a statute that is intended to be civil will be found to be an ex post facto law only if the "party challenging the statute provides 'the clearest proof' that 'the statutory scheme [is] so punitive either in purpose or effect as to negate [the State's] intention' to deem it 'civil.'" *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997) (quoting *United States v. Ward*, 448 U.S. 242, 249 (1980)) (alterations in original). The seven *Mendoza-Martinez* factors provide a "useful framework" for this determination. *Smith*, 538 U.S. at 97. They are:

> Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether

> an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned.

Mendoza-Martinez, 372 U.S. at 168-169 (footnotes omitted).

The *Mendoza-Martinez* decision recognized that although "all [the factors are] relevant to the inquiry, [they] may often point in differing directions." *Id.* at 169. As one commentator has explained, "This test is not applied according to any precise mathematical formulation, ... and at various times the courts have emphasized particular factors over others." Erin Murphy, *Paradigms of Restraint*, 51 Duke L.J. 1321, 1349 (2008). "Sometimes one factor will be considered nearly dispositive of punitiveness 'in fact,' while sometimes another factor will be crucial to a finding of nonpunitiveness." *Doe v. Pataki*, 120 F.3d 1263, 1275 (2d Cir.1997), *amended on other grounds by* 120 F.3d at 1285 (2d Cir.1997). Indeed, in *Smith*, the Court considered five of the factors, but it recognized that one factor – the statute's "rational connection to a nonpunitive purpose" – was the most significant in its

determination that the effects of Alaska's sex offender registration statute are not punitive. 538 U.S. at 102 (citing *United States v. Ursery*, 518 U.S. 267, 290 (1996)).

. . . .

5. Facial Analysis of SORNA of 1999 in Conjunction with the Seven *Mendoza-Martinez* Factors

a. Affirmative Disability or Restraint

The first *Mendoza-Martinez* factor is whether SORNA of 1999 involves an affirmative disability or restraint. 372 U.S. at 168. "Here, we inquire how the effects of the [a]ct are felt by those subject to it. If the disability or restraint is minor and indirect, its effects are unlikely to be punitive." *Smith*, 538 U.S. at 99-100.

In *Smith*, the Supreme Court concluded that this factor indicated that the Alaska statute was civil because it imposes no physical restraints, it restrains no activities sex offenders may pursue, and it leaves them free to change jobs or residences. *Id.* at 100. The Court further concluded that any occupational or housing disadvantages that could occur as a result of the procedures employed under the statute would occur in any

event because the information about the individual's conviction is already in the public domain. *Id.* Any adverse consequences flow not from the availability of the information by virtue of the Alaska sex offender statute, but from the fact of a criminal conviction that is already a matter of public record. *Id.* at 100-01.

Letalien asserts that the Alaska statute is distinguishable because it does not contain provisions similar to those in SORNA of 1999 requiring quarterly, in-person verification procedures. We agree. These provisions, which require lifetime registrants, under threat of prosecution, to physically appear at their local law enforcement agencies within five days of receiving a notice by mail, place substantial restrictions on the movements of lifetime registrants and may work an "impractical impediment that amounts to an affirmative disability." *See Doe*, 2007 ME 139, ¶ 32, 932 A.2d at 562. The majority in *Smith* concluded that the procedure at issue, which did not require updates to be made in person, did not amount to a form of "supervision." 538 U.S. at 101. Here, however, quarterly, in-person verification of identity and location of home, school, and employment at a local police station, including fingerprinting and the

submission of a photograph, for the remainder of one's life, is undoubtedly a form of significant supervision by the state. In this respect, SORNA of 1999 imposes a disability or restraint that is neither minor nor indirect.

b. Sanctions Historically Considered Punishment

For the second *Mendoza-Martinez* factor, we consider whether sanctions imposed by SORNA of 1999 have historically been regarded as punishment. 372 U.S. at 168. In *Smith*, the Supreme Court considered Alaska's statute in light of the colonial punishments of public shaming, humiliation, and banishment, and concluded that the dissemination of truthful information in furtherance of a legitimate governmental objective could not be considered punishment. *See Smith*, 538 U.S. at 97-98. The use of the Internet to disseminate sex offender registrant information did not alter the Supreme Court's conclusion. *See id.* at 99. The Court found that "[t]he purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender. Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation." *Id.*

Maine's statutory scheme is indistinguishable in this respect and, for the reasons articulated by the Supreme Court in *Smith*, we conclude that Internet posting pursuant to SORNA of 1999 is not punitive in purpose or effect. However, Internet posting aside, there is another aspect of Maine's statutory scheme that is distinguishable from that considered in *Smith*.

. . . .

Because sex offender registration was required to be part of Letalien's criminal sentence, the retroactive application of SORNA of 1999's requirements to Letalien modified and enhanced a portion of his criminal sentence. The requirement that he register for fifteen years, with the possibility of early termination after five years, has been superseded by the requirement that he register for life with no possibility of early termination. Although the State correctly points out that courts may order defendants to comply with various civil regulatory provisions as a condition of probation if the court imposes a partially or wholly suspended sentence, the fact remains that sex offender registration was required to be an integral part of the

original sentencing process and resulting sentence for Letalien's crime of gross sexual assault at the time of his conviction. Because of this, the retroactive application of SORNA of 1999 "makes more burdensome the punishment for a crime after its commission." [*State v.*] *Joubert*, 603 A.2d [861,] 869 [(Me. 1992)] (quoting *Collins*, 497 U.S. at 42). The second *Mendoza-Martinez* factor suggests that SORNA of 1999 is punitive as applied to those offenders who were originally made subject to SORA of 1991 or SORNA of 1995.

c. Finding of Scienter

The third factor asks whether the obligation to register according to SORNA is triggered only on a finding of scienter. *Mendoza-Martinez*, 372 U.S. at 168. In *Haskell* we concluded that it is not and that this factor supports SORNA being viewed as non-punitive.

d. Traditional Aims of Punishment

The fourth factor requires consideration of whether SORNA of 1999 promotes retribution and deterrence, the traditional aims of punishment. *Mendoza-Martinez*, 372 U.S. at 168. The Supreme Court in *Smith* found that Alaska's statute was not punitive merely because the statute might deter future crimes, nor was it retributive, even

though it was applied based upon the extent of the wrongdoing rather than the extent of the risk posed. 538 U.S. at 102. Like the Alaska statute considered in *Smith*, Maine's SORNA of 1999 "differentiates between individuals convicted of aggravated or multiple offenses and those convicted of a single nonaggravated offense." *Id.* The Court recognized in *Smith* that "[t]he broad categories, however, and the corresponding length of the reporting requirement, are reasonably related to the danger of recidivism, and this is consistent with the regulatory objective." 538 U.S. at 102.

The categories considered in *Smith* are different from those at issue here. Under the Alaska law, Letalien's offense would have required him to register for fifteen years. Under SORNA of 1999, Letalien must register for life. The record of this case provides us little basis to assess the reasonableness of this widely disparate treatment and whether Maine's requirement of lifetime registration is reasonably related to the danger of recidivism. We thus treat this factor as neutral on the issue of SORNA of 1999's punitive effect.

e. Application Only to Criminal Behavior

The fifth factor requires us to

consider whether the behavior to which SORNA applies is already a crime. *Mendoza-Martinez*, 372 U.S. at 168. This factor was addressed only briefly by the majority in *Smith*, which found it to be of little weight in the case. 538 U.S. at 105. Justice Souter noted in his concurring opinion, however:

> The fact that the [a]ct uses past crime as the touchstone, probably sweeping in a significant number of people who pose no real threat to the community, serves to feed suspicion that something more than regulation of safety is going on; when a legislature uses prior convictions to impose burdens that outpace the law's stated civil aims, there is room for serious argument that the ulterior purpose is to revisit past crimes, not prevent future ones.

Id. at 109.

Because registration under SORNA of 1999 only applies to offenders who were convicted of specified crimes,

does not arise based on individualized assessment of an offender's risk of recidivism, and cannot be waived based on proof that an offender poses little or no risk, SORNA of 1999 applies exclusively to behavior that is already a crime. It is punitive in effect in this respect. *See generally Smith*, 538 U.S. at 112-113 (Stevens, J., dissenting); *Doe v. Alaska*, 189 P.3d 999, 1015 (Alaska 2008).

f. Rational Connection to a Non-Punitive Purpose

Next, we consider the sixth factor-whether SORNA of 1999 has a rational connection to a non-punitive purpose. *Mendoza-Martinez*, 372 U.S. at 168-169. As was the case in *Smith*, SORNA of 1999 was enacted to serve the legitimate non-punitive purpose of public safety. *See Smith*, 538 U.S. at 102-103. The Supreme Court concluded that Alaska's statute was rationally connected to its purpose and narrowly drawn, despite the statute's applicability to all convicted sex offenders as a class, despite the requirement that registrants register for their lifetimes regardless of the duration of the threat posed by any individual registrant, and even though it placed no limits on who had access to the information on the sex offender registry. *Id.* at 90, 103-105.

There is no doubt that SORNA of

1999 serves a valid governmental purpose separate from punishment. The Legislature declared that SORNA of 1999 is intended "to protect the public from potentially dangerous registrants by enhancing access to information concerning those registrants." 34-A M.R.S. § 11201 (2008). Protecting the public from potentially dangerous sex offenders is, without question, a compelling state interest in furtherance of the state's police powers. Among the fundamental natural rights recognized by the Maine Constitution is the right of all people to "pursu[e] and obtain [ ] safety and happiness." Me. Const. art. I, § 1. The protection advanced by SORNA is among the most basic obligations state government owes its people-ensuring their safety. In accord with the sixth *Mendoza-Martinez* factor, SORNA of 1999 has a rational connection to a non-punitive purpose.

g. Excessiveness

The seventh factor addresses whether SORNA of 1999 "appears excessive in relation to the alternative purpose assigned." *Mendoza-Martinez*, 372 U.S. at 169. In *Smith*, the Supreme Court described excessiveness in the following terms:

> The excessiveness inquiry of

> our ex post facto jurisprudence is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy. The question is whether the regulatory means chosen are reasonable in light of the nonpunitive objective.

538 U.S. at 105. Reasonableness is an objective standard. We analyze excessiveness in this case as it relates to the increased burdens resulting from SORNA of 1999's retroactive application to individuals who were originally subject to a fifteen-year registration period under SORA of 1991 or SORNA of 1995, but who are now subject to lifetime registration and quarterly in-person verification.

To determine reasonableness, we rely on the record before us, the authorities cited by the parties and amicus curiae, the published decisions of other courts, and common sense. From these sources, we find insufficient information with which to gauge whether the regulatory means chosen – in particular, increasing the registration period from fifteen years to life without

the possibility of a waiver, and increasing the verification from infrequent notices to quarterly in-person reporting and fingerprinting at a police station – are reasonable in light of the law's non-punitive purpose. In *Smith*, the Supreme Court found the durational requirements of the Alaska law were reasonably related to the danger of recidivism and, therefore, were not excessive. 538 U.S. at 104. However, under the Alaska statute considered in that case, Letalien would have been required to report for fifteen years, not for life, and, after his initial registration, his verification would have been in writing on an annual basis. *See* 538 U.S. at 90, 101. We are left uncertain as to whether the vastly longer degree of regulation of registered offenders such as Letalien required by SORNA of 1999 is reasonable. What is more certain is the substantial impact that this change will have, first on the lives of the affected offenders, and second, on public safety.

First, regarding SORNA of 1999's impact on registered offenders, although the law disseminates truthful information, much of which may be otherwise available to the public through far less accessible means, many of the persons included in the registry may no longer pose a danger to the public. One of

the primary objectives of criminal sentencing is the rehabilitation of the offender. No statistics have been offered to suggest that every registered offender or a substantial majority of the registered offenders will pose a substantial risk of re-offending long after they have completed their sentences and probation, including any required treatment. The registry, however, makes no such distinctions. For the public, the substantiality of the risk every registrant poses is suggested by the government's initiative in establishing the registration, verification, and community notification requirements in the first place. All registrants, including those who have successfully rehabilitated, will naturally be viewed as potentially dangerous persons by their neighbors, co-workers, and the larger community. It is unknown to what extent this reality will impair the opportunity for rehabilitated offenders to reintegrate and become productive members of society.

Second, the over-inclusive aspect of the registration requirement has a corresponding positive benefit in that it assures that the public has ready access to information for a longer period regarding a group of individuals who, at least as a class of persons, pose a public safety risk. Even in the absence of

individualized risk assessments of registrants, information concerning the conviction history and current whereabouts of every sex offender benefits public safety.

Although we lean toward the view that the increased regulatory scheme of SORNA of 1999 appears excessive when applied to registered offenders previously made subject to SORA of 1991 or SORNA of 1995 because there is no consideration of the individual circumstances or rehabilitation of each offender, we are left uncertain. Accordingly, we treat this factor as neutral.

6. Evaluation of *Mendoza-Martinez* Factors

It is not our role to ask whether the Legislature could achieve its goals through alternative means. Indeed, we properly exercise restraint in our review of a legislative effort to apply retroactively a civil regulatory scheme intended to address a complex public safety issue. We proceed with care so as not to interfere with innovative legislative efforts intended to advance the public interest, unless required otherwise by constitutional mandates.

Although the ex post facto evaluation in this case raises numerous questions, many of which do not lend themselves to precise answers, ultimately

we must determine only whether the punitive effects of SORNA of 1999 negate its civil intent by the "clearest proof." Although we have considered all of the *Mendoza-Martinez* factors and related information in this analysis, the first and second factors, considered together, stand out as being most probative on the question of punitive effects.

As to the first factor, it belies common sense to suggest that a newly imposed lifetime obligation to report to a police station every ninety days to verify one's identification, residence, and school, and to submit to fingerprinting and provide a current photograph, is not a substantial disability or restraint on the free exercise of individual liberty. As to the second factor, the duty to register imposed by SORA of 1991 and SORNA of 1995 was an integral part of the criminal sentencing process and the resulting sentence. The retroactive application of SORNA of 1999 thus imposes a substantial disability or restraint and, in so doing, makes more burdensome the registration requirements that resulted from an offender's original sentence.

Regarding the second *Mendoza-Martinez* factor – whether the effects of SORNA of 1999 can be historically regarded as punishment – the State properly notes that in *Haskell*, we

determined that the retroactive application of SORNA of 1999 to a crime that was committed on August 8, 1999, did not violate the ex post facto prohibition. *Haskell* is, however, distinguishable from this case in one important respect.

SORNA of 1999 became effective only six weeks after Haskell had committed his crime, but well before his sentencing. *Id.* ¶¶ 2, 6, 784 A.2d at 6, 8. Accordingly, we did not have reason in *Haskell* to consider the question we face today: Whether it is an ex post facto violation to apply retroactively the enhanced requirements of SORNA of 1999 when, by so doing, the application revises and enhances sex offender registration requirements that were a part of the offender's original sentence. This question was also not addressed in *Smith*; the retroactive application of the Alaska statute at issue did not revise and enhance registration requirements that were part of the offenders' actual underlying criminal sentences. *See* 538 U.S. at 91.

. . . .

Having considered all of the *Mendoza-Martinez* factors, we are convinced that an ex post facto violation

has been shown by the clearest proof. Specifically, we hold that the retroactive application of the lifetime registration requirement and quarterly in-person verification procedures of SORNA of 1999 to offenders originally sentenced subject to SORA of 1991 and SORNA of 1995, without, at a minimum, affording those offenders any opportunity to ever be relieved of the duty as was permitted under those laws, is punitive. As to these offenders, the retroactive application of SORNA of 1999 is an unconstitutional ex post facto law because it "makes more burdensome the punishment for a crime after its commission." *Collins*, 497 U.S. at 42 (quotation marks omitted).

7. Conclusion

To summarize, we conclude:

(1) For ex post facto purposes, SORNA of 1999 is properly evaluated on its face, and not in relation to how it has been applied against any individuals. Our suggestion to the contrary in *Doe v. District Attorney*, 2007 ME 139, 932 A.2d 552, is overruled.

(2) The prohibition on ex post facto laws in the Maine Constitution, Me. Const. art. I, § 11, is coextensive with the corresponding prohibition in the United States Constitution, U.S. Const. art. I, § 10, cl. 1.

(3) The retroactive application of

> the lifetime registration requirement and quarterly in-person verification procedures of SORNA of 1999 to offenders originally sentenced subject to SORA of 1991 and SORNA of 1995, without, at a minimum, affording those offenders any opportunity to ever be relieved of the duty as was permitted under those laws, is, by the clearest proof, punitive, and violates the Maine and United States Constitutions' prohibitions against ex post facto laws.
>
> Because the Legislature, in its upcoming session, may wish to consider revisions to SORNA of 1999 to address the registration of offenders originally sentenced subject to SORA of 1991 and SORNA of 1995, we postpone the effective date of our mandate to March 31, 2010.
>
> The entry is:
>
> Judgment affirmed. Mandate to issue March 31, 2010.

Letalien, 985 A.2d at 12-26 (footnotes and some citations omitted).[6]

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[6] Notably, although the Florida trial court cited *Letalien* in its order (A-10), the Florida trial court did *not* address the holding in *Letalien* or otherwise distinguish the reasoning of the Supreme Judicial Court of Maine in that case.

As in *Letalien*, in the Petitioner's case, application of the factors set forth in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), to the changes that have occurred to Florida's sex offender registration statute establishes that "[t]he retroactive application of the lifetime registration requirement" of the current version of section 943.0435 to offenders whose probation ended when the 2000 version of section 943.0435 was in effect "without, at a minimum, affording those offenders any opportunity to ever be relieved of the duty as was permitted under those laws, is, by the clearest proof, punitive, and violates the [] United States Constitution['s] prohibition[] against ex post facto laws." *Letalien*, 985 A.2d at 26.

* * * * *

Thus, the holding in *Letalien* is clearly in conflict with the Florida trial court's order below. By granting

the petition in the instant case, the Court will have the opportunity to resolve this conflict and clarify whether is it a violation of constitutional ex post facto principles to apply the current – and more onerous – removal provision of a state's sex offender registration statute to a petitioner seeking removal from the registry. The issue in this case has the potential to impact numerous cases nationwide. As explained above, the split of authority is in present need of resolution from this Court before the split widens even more.

Accordingly, for the reasons set forth above, the Petitioner requests the Court to grant his petition and exercise its discretion to hear this important matter.

I. CONCLUSION

The Petitioner requests the Court to grant his petition for writ of certiorari.

Respectfully Submitted,

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