No. 17-6680

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM M. EATON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the appeal-waiver provision in petitioner's plea agreement forecloses his appellate claims.

2. Whether, if the appeal waiver does not foreclose petitioner's claims:

(a) petitioner's federal prosecution, following dismissal of state charges before a jury was empaneled, is barred by the Double Jeopardy Clause of the Fifth Amendment;

(b) petitioner's conviction under 18 U.S.C. 1466A(b) violates the First Amendment;

(c) the imposition of supervised release, including a term requiring petitioner to comply with the provisions of the Sex Offender Registration and Notification Act, 34 U.S.C. 20901 et seq., was beyond the power of the court or violated the Double Jeopardy Clause; or

(d) petitioner's appellate counsel's brief failed to comply with Anders v. California, 386 U.S. 738 (1967).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A3) is not published in the Federal Reporter but is reprinted at 692 Fed. Appx. 321.

JURISDICTION

The judgment of the court of appeals was entered on July 5, 2017. A petition for rehearing was denied on August 22, 2017 (Pet. App. B1). The petition for a writ of certiorari was filed on October 31, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Western District of Missouri, petitioner was convicted on one count of possessing an obscene visual representation of the sexual abuse of children, in violation of 18 U.S.C. 1466A(b). Judgment 1. He was sentenced to 108 months of imprisonment, to be followed by ten years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A3.

1. In September 2011, an undercover investigation by Missouri law enforcement revealed that petitioner was broadcasting a video through his computer of an adult male having sexual intercourse with a minor girl. Presentence Investigation Report (PSR) ¶ 5. The title of the video indicated to law enforcement that the man "was having sex with his 11-year-old daughter." Ibid.

On October 24, 2011, law enforcement officers executed a search warrant at petitioner's residence in Joplin, Missouri. PSR ¶ 6. The officers conducted a forensic preview of petitioner's computer and found "video files depicting minors engaging in sexually explicit conduct." Plea Agreement 2; see PSR ¶¶ 7-8. Officers also found methamphetamine residue in several small plastic baggies in petitioner's bedroom. PSR ¶ 7. After waiving his Miranda rights, petitioner "confessed that he knowingly possessed depictions of what appeared to be minors engaging in sexually explicit conduct on his computer." Plea Agreement 2; see PSR ¶ 6 (petitioner admitted that "he had been downloading child

pornography for three to four years, and during that time, he had probably downloaded 100 videos of child pornography"). As petitioner later acknowledged in his federal plea agreement, a full forensic examination of petitioner's computer "confirm[ed] the existence of multiple files containing depictions of child pornography," which "had traveled across both State and National borders." Plea Agreement 2.

Petitioner was initially charged in Missouri state court with five counts of possession of child pornography and two counts of possession of a controlled substance. See PSR ¶ 38. But the state charges were dismissed between April 2012 and May 2014, before trial in petitioner's case began. Ibid.; State v. Eaton, No. 11AO-CR01612-01 (Mo. Cir. May 28, 2014) (Docket Sheet); see Sent. Tr. 5.

2. Following the dismissal of the state charges, a federal grand jury in the Western District of Missouri returned an indictment charging petitioner with having knowingly received and distributed child pornography, in violation of 18 U.S.C. 2252(a)(2), (b)(1). Indictment 1. On March 15, 2016, the federal government charged petitioner by superseding information with knowingly possessing "an obscene visual depiction" -- "to wit, a digital video of a minor engaging in * * * sexual intercourse, that had been mailed and shipped and transported in interstate commerce" -- in violation of 18 U.S.C. 1466A(b). Superseding Information 1.

That same day, petitioner pleaded guilty, pursuant to a written plea agreement, to the sole count of the information. See Plea Agreement 1-14. The plea agreement included a waiver of petitioner's appellate rights: petitioner expressly "waive[d] his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement, except on grounds of (1) ineffective assistance of counsel; or (2) prosecutorial misconduct." Id. at 9. Petitioner also expressly waived "his right to appeal his sentence, directly or collaterally, on any ground except claims of: (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence." Ibid. The plea agreement further explained that "[a]n 'illegal sentence' includes a sentence imposed in excess of the statutory maximum, but does not include less serious sentencing errors, such as a misapplication of the Sentencing Guidelines, an abuse of discretion, or the imposition of an unreasonable sentence." Ibid. Petitioner affirmed at his change-of-plea hearing that he understood the appeal-waiver provision of his plea agreement. 3/15/16 Tr. 9-10.

In advance of sentencing, the Probation Office prepared a presentence report. Applying the 2015 Sentencing Guidelines, the Probation Office initially calculated an offense level of 30, a criminal history category of II, and a resulting advisory Guidelines sentencing range of 108 to 135 months of imprisonment. PSR ¶¶ 28, 34, 56. However, because the statutory maximum sentence

was 120 months, the ultimate Guidelines range was 108 to 120 months. PSR ¶ 56 (citing Sentencing Guidelines § 5G1.1(a) (2015)).

The district court adopted the Probation Office's calculations and sentenced petitioner to 108 months of imprisonment, to be followed by ten years of supervised release. Judgment 2-3; Amended Statement of Reasons 1.

3. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. A1-A3. The court noted that petitioner's counsel had filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), which had "suggest[ed] that the [district] court imposed a substantively unreasonable sentence," Pet. App. A2, but had concluded that because petitioner's sentence was within the applicable statutory and Guidelines ranges and petitioner had expressly waived his appellate rights, "no non-frivolous issues [were] available for appeal," C.A. Anders Br. 6. The court of appeals further noted that petitioner had filed a pro se brief challenging, inter alia, "the district court's jurisdiction, the constitutionality of the statute of conviction, and the validity of his guilty plea and sentence, including the constitutionality of his supervised release." Pet. App. A2.

The court of appeals upheld the district court's judgment. Pet. App. A1-A3. The court of appeals first found "no merit to [petitioner's] contention that the district court lacked jurisdiction," because jurisdiction over a federal prosecution is authorized by 18 U.S.C. 3231. Pet. App. A2. The court next

"decline[d] to consider [petitioner's] assertion regarding the validity of his guilty plea, because he did not move in the district court to withdraw his plea." Ibid. (citing United States v. Foy, 617 F.3d 1029, 1033-1034 (8th Cir. 2010), cert. denied, 562 U.S. 1236 (2011)). The court "also decline[d] to address [petitioner's] newly raised constitutional arguments" because he failed to raise them in the district court. Ibid. (citing United States v. Baker, 98 F.3d 330, 337-338 (8th Cir. 1996), cert. denied, 520 U.S. 1179 (1997), and United States v. Amerson-Bey, 898 F.2d 681, 683 (8th Cir. 1990)). "As to [petitioner's] and counsel's remaining arguments challenging the procedural and substantive reasonableness of the sentence, [the court] enforce[d] the appeal waiver." Ibid. It emphasized that petitioner's "own statements at his change-of-plea hearing indicated that he had knowingly and voluntarily entered into the plea agreement and the appeal waiver." Id. at A3. Finally, the court stated that it had "independently reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), and * * * found no non-frivolous issues outside the scope of the appeal waiver." Ibid.

ARGUMENT

Petitioner renews (Pet. 6-26) several of the arguments he raised in his pro se brief in the court of appeals. In addition, in a supplemental brief, petitioner asks (at 1-2) this Court to grant the petition for a writ of certiorari, vacate the judgment, and remand for the court of appeals to consider whether, in light

of Class v. United States, 138 S. Ct. 798 (2018), consideration of his constitutional claims is barred. None of petitioner's contentions warrants this Court's review. Petitioner expressly waived his right to appeal his conviction and sentence, except on narrow grounds not at issue here, and this Court's decision in Class does not undermine the validity of that waiver. Moreover, even if petitioner's claims were not waived, they lack merit, and the decision below does not conflict with any decision of this Court or of another court of appeals. The petition for a writ of certiorari should be denied.

1. a. This Court has repeatedly recognized that a defendant may knowingly and voluntarily waive constitutional or statutory rights as part of a plea agreement. See, e.g., Ricketts v. Adamson, 483 U.S. 1, 8-10 (1987) (upholding plea agreement's waiver of right to raise a double-jeopardy defense); Town of Newton v. Rumery, 480 U.S. 386, 389 (1987) (affirming enforcement of plea agreement's waiver of right to file an action under 42 U.S.C. 1983). Accordingly, the courts of appeals have uniformly held that a defendant's knowing and voluntary waiver of the right to appeal in a plea agreement is enforceable.[1] Appeal waivers benefit

[1] See, e.g., United States v. Teeter, 257 F.3d 14, 21-23 (1st Cir. 2001); United States v. Riggi, 649 F.3d 143, 147-150 (2d Cir. 2011); United States v. Khattak, 273 F.3d 557, 560-562 (3d Cir. 2001); United States v. Marin, 961 F.2d 493, 495-496 (4th Cir. 1992); United States v. Melancon, 972 F.2d 566, 567-568 (5th Cir. 1992); United States v. Toth, 668 F.3d 374, 377-378 (6th Cir. 2012); United States v. Woolley, 123 F.3d 627, 631 (7th Cir. 1997); United States v. Andis, 333 F.3d 886, 889-890 (8th Cir.) (en banc),

defendants by providing them with "an additional bargaining chip in negotiations with the prosecution." United States v. Teeter, 257 F.3d 14, 22 (1st Cir. 2001). Appeal waivers likewise benefit the government by enhancing the finality of judgments and discouraging meritless appeals. Ibid.

Petitioner here expressly waived his right to appeal his conviction and sentence as a condition of his guilty plea, subject only to limited exceptions that do not cover the claims he now asserts. Plea Agreement 9; see id. at 15 (petitioner and his counsel affirmed that petitioner entered into the plea agreement knowingly and voluntarily). Petitioner's plea agreement states that he "acknowledge[d], underst[ood] and agree[d] that, by pleading guilty pursuant to this plea agreement, he waive[d] his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement, except on grounds of (1) ineffective assistance of counsel; or (2) prosecutorial misconduct." Id. at 9. Petitioner has not made either of those claims. The plea agreement further provides that petitioner "expressly waive[d] his right to appeal his sentence, directly or collaterally, on any ground except claims of: (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an

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cert. denied, 540 U.S. 997 (2003); United States v. Navarro-Botello, 912 F.2d 318, 320-322 (9th Cir. 1990), cert. denied, 503 U.S. 942 (1992); United States v. Hernandez, 134 F.3d 1435, 1437 (10th Cir. 1998); United States v. Bushert, 997 F.2d 1343, 1347-1350 (11th Cir. 1993), cert. denied, 513 U.S. 1051 (1994); United States v. Guillen, 561 F.3d 527, 529-532 (D.C. Cir. 2009).

illegal sentence," defined to "include[] a sentence imposed in excess of the statutory maximum." Ibid. Petitioner has not raised any of those claims, either. Thus, the appeal waiver in petitioner's plea agreement forecloses all of the arguments petitioner makes in this Court, and the petition for a writ of certiorari should be denied on that basis.

b. Petitioner suggests (Supp. Br. 1-2) that in light of this Court's decision in Class, supra, the court of appeals should be required to consider his claim that the statute of conviction, 18 U.S.C. 1466A, is unconstitutional and his argument that "both supervised release" and the registration requirements of the Sex Offender Registration and Notification Act, 34 U.S.C. 20901, et seq. (SORNA) "are illegal punishments that the Government has no right to subject him to." That suggestion is misplaced.

In Class, this Court held that "a guilty plea by itself does not bar" an appeal in which the defendant argues that the statute of conviction is unconstitutional. Class, 138 S. Ct. at 801-802 (emphasis added); see id. at 803. But nothing in this Court's decision calls into question a defendant's ability to expressly waive his right to appeal claims, including constitutional claims, where, as here, the waiver is knowingly and voluntarily made. See United States v. Mezzanatto, 513 U.S. 196, 201 (1995) ("A criminal defendant may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution.").

Petitioner's request for a remand in light of Class accordingly rests on the premise that "none of [the relevant] claims was barred by [his] appeal waiver." Supp. Br. 2. For the reasons already stated above, that premise is incorrect.

c. To the extent that petitioner seeks to avoid the effect of his appeal waiver by arguing (Pet. 9-14) that the district court lacked "jurisdiction" over his Section 1466A(b) prosecution because "there was no interstate commerce in his case," that argument is unsound. As the court of appeals correctly held (Pet. App. A2), the district court had jurisdiction under 18 U.S.C. 3231, which grants "district courts of the United States * * * original jurisdiction * * * of all offenses against the laws of the United States." And as this Court has previously recognized, a claim that a federal criminal statute is unconstitutional is not a challenge to subject-matter jurisdiction and does not implicate the district court's power to adjudicate the case. See United States v. Williams, 341 U.S. 58, 66 (1951) ("Even the unconstitutionality of the statute under which the proceeding is brought does not oust a court of jurisdiction.").[2]

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[2] Petitioner suggests (Pet. 10) that the Fourth, Eighth, and Tenth Circuits have issued internally inconsistent decisions regarding whether an "interstate commerce element is jurisdictional in criminal cases." That is incorrect. Those circuits all recognize that "Section 3231 is generally the beginning and the end of the jurisdictional inquiry," although Congress can remove the jurisdiction granted by Section 3231 "if it makes a clear and unambiguous expression of the legislative will." United States v. Aossey, 854 F.3d 453, 455 (8th Cir.) (citations and internal quotation marks omitted), cert. denied,

In any event, petitioner is incorrect in contending (Pet. 9) that "there was no interstate commerce in his case." Section 1466A contains an interstate commerce requirement, see 18 U.S.C. 1466A(d), and petitioner admitted in his plea agreement, and again at his Rule 11 hearing, that investigators found "multiple files containing depictions of child pornography" on his computer and that "[t]he files containing depictions of minors engaged in sexually explicit conduct had traveled across both State and National borders." Plea Agreement 2; see 3/15/16 Tr. 8.[3]

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138 S. Ct. 520 (2017); see United States v. Tony, 637 F.3d 1153, 1158 (10th Cir. 2011); United States v. Carr, 271 F.3d 172, 178 (4th Cir. 2001). To the extent the courts of appeals have referred to interstate commerce elements in Section 1466A and other statutes as "jurisdictional," they are "'jurisdictional only in the shorthand sense that without that nexus, there can be no federal crime. The absence of a required element 'is not jurisdictional in the sense that it affects a court's subject matter jurisdiction, i.e., a court's constitutional or statutory power to adjudicate a case.'" Tony, 637 F.3d at 1158-1159 (citations omitted); see United States v. Simpson, 659 Fed. Appx. 158, 161 (4th Cir. 2016); United States v. Jeronimo-Bautista, 425 F.3d 1266, 1268-1273 (10th Cir. 2005), cert. denied, 547 U.S. 1069 (2006).

[3] Petitioner further contends (Pet. 8-9) that despite his appeal waiver, Eighth Circuit precedent "makes mandatory" review of his claims that he pleaded guilty "to something that isn't a crime," "that the conduct at issue is protected by the 1st Amendment," and that his punishment constitutes "double jeopardy." That is incorrect. The cases petitioner cites (Pet. 8-9) did not involve express appeal waivers. Moreover, the defendants in those cases alleged the absence of a sufficient factual basis for the plea, and thus that the district court erred in accepting the plea under Rule 11, see United States v. Christenson, 653 F.3d 697, 700 (8th Cir. 2011); United States v. Frook, 616 F.3d 773, 775 (8th Cir.), cert. denied, 562 U.S. 1096 (2010); that the government had breached (and thus rendered unenforceable) the plea agreement, United States v. Vaughn, 13 F.3d 1186, 1188 (8th Cir.), cert. denied, 511 U.S. 1094 (1994); or that the sentence was "illegal," i.e., outside of the statutorily permissible sentencing range,

2. Even if petitioner's appeal waiver did not bar his claims, they lack merit and would not warrant this Court's review. Because petitioner did not timely raise his claims in the district court, review would be for plain error. See Fed. R. Crim. P. 52(b). Petitioner would have the burden to establish (i) error that (ii) was "clear or obvious, rather than subject to reasonable dispute," (iii) "affected [his] substantial rights, which in the ordinary case means he must demonstrate that it 'affected the outcome of the district court proceedings,'" and (iv) "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" Puckett v. United States, 556 U.S. 129, 135 (2009) (citations omitted); see Rosales-Mireles v. United States, 138 S. Ct. 1897, 1904-1905 (2018); United States v. Dominguez Benitez, 542 U.S. 74, 81-82 (2004). "Meeting all four prongs is difficult, as it should be." Puckett, 556 U.S. at 135 (citation and internal quotation marks omitted). Petitioner cannot show error, let alone plain error, with respect to any of his claims.

a. Petitioner contends (Pet. 20-26) that his federal prosecution violated the Double Jeopardy Clause of the Fifth Amendment because it followed criminal proceedings initiated by the state of Missouri. Petitioner's claim is without merit.

The Double Jeopardy Clause provides that no person shall "be subject for the same offence to be twice put in jeopardy of life

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United States v. Greatwalker, 285 F.3d 727, 729-731 (8th Cir. 2002). Petitioner makes no similar arguments here.

or limb." U.S. Const. Amend. V. This Court has held that a criminal defendant's double jeopardy rights are implicated in a second prosecution only if jeopardy attached in the first proceeding. See, e.g., Crist v. Bretz, 437 U.S. 28, 32-33 (1978); Serfass v. United States, 420 U.S. 377, 388-389 (1975). In the context of a jury trial -- which petitioner had requested in the state proceedings, see Docket Sheet -- "jeopardy attaches when the jury is empaneled and sworn." Martinez v. Illinois, 134 S. Ct. 2070, 2074 (2014) (per curiam) (quoting Crist, 437 U.S. at 35).

Petitioner's state charges were scheduled to be tried before a jury on May 28, 2014. See Docket Sheet. The State moved to dismiss the remaining charges on that day, and the trial was cancelled. Ibid. Nothing in the record or the state court docket suggests that a jury was empaneled or sworn. See ibid.; cf. Sent. Tr. 5. The public record thus indicates that petitioner was never placed in jeopardy in the state proceedings, and petitioner has not shown that federal prosecution violates the Double Jeopardy Clause.

Petitioner contends (Pet. 20-26) that this Court should grant a writ of certiorari in this case to reexamine the dual-sovereignty doctrine, which permits successive prosecutions for "a single act" that "violates the laws of separate sovereigns." Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863, 1871 (2016). On June 28, 2018, this Court granted the petition for a writ of certiorari in Gamble v. United States, No. 17-646, which raises that question. For the

reasons already discussed, however, no reason exists to hold the petition in this case pending the Court's decision in Gamble. Irrespective of the dual-sovereignty doctrine, petitioner's double-jeopardy claim would fail because it is barred by his appeal waiver and because petitioner was never put in "jeopardy" in the state proceedings.

b. Petitioner also contends (Pet. 14-16) that his prosecution violated the First Amendment because Section 1466A(b) did not require the government to prove, or petitioner to admit, that the persons involved in the offending materials were actual children. Petitioner observes that Section 1466A(b) criminalizes the possession of a visual depiction of "a minor engaging in sexually explicit conduct" that is "obscene," 18 U.S.C. 1466A(b)(1)(A), as well as the possession of a visual depiction "that is, or appears to be, of a minor engaging in * * * sexual intercourse" and that "lacks serious literary, artistic, political, or scientific value," 18 U.S.C. 1466A(b)(2). And petitioner notes (Pet. 14) that Section 1466A(c) provides that "[i]t is not a required element of any offense under this section that the minor depicted actually exist." 18 U.S.C. 1466A(c).

Petitioner's argument is misdirected. Even assuming arguendo that some applications of Section 1466A might violate the First Amendment, application of the statute to petitioner does not. Petitioner was charged with, and admitted to, possessing visual depictions of actual minors. The information to which petitioner

pleaded guilty charged him with "possess[ing] an obscene visual depiction, to wit, a digital video of a minor engaging in sexually explicit conduct * * * to wit, sexual intercourse." Superseding Information 1. In his plea agreement, petitioner admitted that investigators found on his computer "multiple files containing depictions of child pornography." Plea Agreement 2. The presentence report similarly listed as victims of the offense "[t]he children who posed or were posed by others for the images possessed by the defendant," PSR ¶ 10, and it noted that petitioner's computer contained files from "two known series" of child pornography with known victims, PSR ¶ 11.[4] Petitioner's conviction thus rests on his admitted possession of actual child pornography, which is "fully outside the protection of the First Amendment." United States v. Stevens, 559 U.S. 460, 471 (2010).

To the extent petitioner contends (Pet. 14-16) that Section 1466A(b) is unconstitutional because it prohibits a substantial amount of other people's conduct that is protected by the First Amendment, that argument is likewise misplaced. As this Court has explained, a statute may be found to violate the First Amendment because of overbreadth only "if it prohibits a substantial amount of protected speech." United States v. Williams, 553 U.S. 285, 292 (2008). Given the language of the information, it appears that petitioner was charged under -- and thus could challenge --

[4] Petitioner initially lodged an objection to paragraph 11 of the presentence report, but he withdrew that objection at sentencing. PSR Objections 2; Pet. App. C2-C3.

only Section 1466A(b)(1). Because that subsection prohibits only the possession of obscene materials involving actual minors, which lack any protection under the First Amendment, petitioner cannot show that it prohibits any (let alone a substantial amount of) protected speech.[5]

c. Petitioner next challenges (Pet. 16-20) the existence and terms of his ten-year period of supervised release. His arguments lack merit.

Petitioner contends (Pet. 16-17) that it is irrational, and therefore impermissible, to require convicted sex offenders to register under SORNA, 42 U.S.C. 16901 et seq. But this Court has already determined that "Congress could reasonably conclude that registration requirements applied to federal sex offenders after their release can help protect the public from those federal sex offenders and alleviate public safety concerns." United States v. Kebodeaux, 570 U.S. 387, 395 (2013); see id. at 396-398.

Petitioner further contends (Pet. 17-19) that his term of supervised release, including the requirement that he comply with

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[5] Moreover, even if petitioner could mount an overbreadth challenge to Section 1466A(b)(2), which applies to certain depictions of what "appears to be" a minor engaging in certain sexual acts, 18 U.S.C. 1466A(b)(2)(A), he could not show that that provision prohibits a substantial amount of protected speech. In the vast majority of its applications, the materials covered by Section 1466A(b)(2) are unprotected by the First Amendment because they involve actual child pornography or images that qualify as obscenity. See United States v. Dean, 635 F.3d 1200, 1205-1209 (11th Cir.) (rejecting overbreadth challenge to similarly worded prohibition in 18 U.S.C. 1466A(a)(2)), cert. denied, 565 U.S. 1058 (2011).

SORNA, is "[b]eyond [g]overnment [p]ower." That contention is mistaken. See Kebodeaux, 570 U.S. at 395 (Congress's decision to impose SORNA's civil registration requirements on released offenders was "eminently reasonable."). Petitioner's assertion (Pet. 18) that SORNA and state-law registration requirements may impose burdens on released offenders, even if correct, provides no support for his constitutional argument. Petitioner has identified no case suggesting, let alone holding, that Congress lacked the power to enact SORNA or provide for supervised release, or that district courts lack power to impose registration or supervised-release requirements in appropriate cases.

Petitioner additionally claims (Pet. 19-20) that supervised release and the requirement to register under SORNA constitute "a second term of imprisonment imposed at the time of the offense," in violation of the Double Jeopardy Clause. That is incorrect. Although the Double Jeopardy Clause protects "against cumulative punishments," because "the substantive power to prescribe crimes and determine punishments is vested with the legislature, the question under the Double Jeopardy Clause whether punishments are 'multiple' is essentially one of legislative intent." Ohio v. Johnson, 467 U.S. 493, 499 (1984) (citations omitted). The statutes governing supervised release make clear that it is a "part of" a "sentence to a term of imprisonment," not an additional punishment. 18 U.S.C. 3583(a); see 18 U.S.C. 3583(k) (providing supervised-release term for offenses under 18 U.S.C. 2252A); see

18 U.S.C. 1466A(b) (stating that a defendant convicted under Section 1466A(b) "shall be subject to the penalties provided in section 2252A(b)(2)"). And SORNA's registration requirements are civil, not punitive or criminal. See Kebodeaux, 570 U.S. at 395; see also, e.g., Smith v. Doe, 538 U.S. 84, 96 (2003) (holding similar Alaska registration requirement to be civil in nature). They therefore do not constitute punishments within the meaning of the Double Jeopardy Clause. See, e.g., Hudson v. United States, 522 U.S. 93, 96, 98-105 (1997).

d. Finally, petitioner contends (Pet. 6-9) that his appellate counsel violated Anders v. California, 386 U.S. 738, 743-744 (1967), by failing to advocate for petitioner and thereby "complete[ly] abandon[ing petitioner's] cause." Pet. 7. For the reasons already discussed, petitioner had no viable claims in the court of appeals, and his argument therefore lacks merit. If petitioner nonetheless wishes to pursue an argument that his counsel should have raised other arguments on appeal, he should do so in the context of a claim for ineffective assistance of counsel under 28 U.S.C. 2255. See Plea Agreement 9 (reserving petitioner's right to collaterally attack his conviction based on ineffective assistance of counsel); see Massaro v. United States, 538 U.S. 500, 504 (2003) ("[I]n most cases a motion brought under § 2255 is preferable to direct appeal for deciding claims of ineffective assistance [of counsel].").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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