

Case No. 17-8003

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**IN THE SUPREME COURT OF THE UNITED STATES**

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AMI SIMMONS,

*Petitioner,*

v.

STATE OF KANSAS,

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE KANSAS SUPREME COURT

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**BRIEF OF THE STATE OF KANSAS IN OPPOSITION**

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## **QUESTION PRESENTED**

Whether retroactive application of enhancements to the Kansas Offender Registration Act (“KORA”) violates the Ex Post Facto Clause.

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## STATEMENT

The Kansas Supreme Court rejected Petitioner's ex post facto challenge to the Kansas Offender Registration Act, K.S.A. 22-4901 *et seq.* The Petition asserts review is justified because the Kansas Supreme Court's decisions conflict with the result reached by a handful of courts in other jurisdictions. The Petition—like those in Case Nos. 17-6790, 17-7301, and 17-7282—should be denied.

1. The Kansas Legislature began its offender registration regime in 1993 and, though modified, it continues to this date. *See generally Doe v. Thompson*, 373 P.3d 750, 761 (Kan. 2016); *State v. Ward*, 886 P.2d 890, 894 (Kan. Ct. App. 1994). In 1997, the Kansas Legislature amended the offender registration statute to bring certain violent offenders within the registration regime and, as a result, it became known as the Kansas Offender Registration Act (KORA). *See* K.S.A. 1997 Supp. 22-4901. Then, in 2011, the act was amended to broaden the group of offenders subject to the act, K.S.A. 2011 Supp. 22-4901. *See Thompson*, 373 P.3d at 766. As relevant here, the 2011 amendments (i) applied to sex offenders, specified violent offenders, and certain drug offenders, (ii) required in-person quarterly reporting, (iii) imposed registration costs, (iv) expanded the nature of public dissemination of offender information, and (v) criminalized any failure to register. *See id.* at 766-67; *cf. also State v. Petersen-Beard*, 304 P.3d 1127, 1134 (Kan. 2016) (explaining that the federal Sex Offender Registration Notification Act is, in parts, broader than KORA).

2. Recent constitutional challenges to KORA have focused on this Court's decision in *Smith v. Doe*, 538 U.S. 84 (2003). In *Smith*, this Court rejected an ex post

facto challenge to Alaska’s sex-offender-registration system using a two-part intent-effects test.

The first prong of the test looks at legislative intent to determine whether the law was intended to be civil or criminal in nature. *Id.* at 92. Because a conclusion that the law was intended to punish would satisfy an ex post facto challenge, “considerable deference” is extended to the stated intent of the legislature. *See id.* at 92-93.

The second looks at the law’s effect upon the individual challenging it. Again owing to the deference afforded the legislature’s intent, “only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.” *Id.* at 92 (internal quotation marks omitted). Importing the seven-factor test from *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963) into this context, the Court concluded that the “most relevant” of the factors were whether the regulatory scheme “has been regarded in our history and traditions as a punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose.” *Smith*, 538 U.S. at 97.

**3.** The analytical road travelled by constitutional challenges to KORA in the Kansas Supreme Court has been a bumpy one. At bottom, the difficulty is attributable to how—not whether—the *Smith* analysis applies to KORA.

**a.** Kansas first considered whether an offender registration law ran afoul of the Ex Post Facto Clause in *State v. Myers*, 923 P.2d 1024 (1996). Myers committed his offense prior to the effective date of the Kansas Sex Offender Registration Act

(KSORA) and claimed that the retroactive application of its reporting and disclosure requirements violated the Ex Post Facto Clause. *Id.* at 1027. The Kansas Supreme Court applied an intent-effects test, ultimately concluding that the legislative intent or purpose of KSORA was nonpunitive and for public safety, but that the disclosure provisions were too punitive in effect. *Id.* at 1043.

**b.** Then, following this Court’s decision in *Smith* and the 2011 amendments to KORA, the Kansas Supreme Court considered ex post facto challenges in three cases that have become known as the “overruled” ex post facto cases: *State v. Redmond*, 371 P.3d 900 (Kan. 2016); *State v. Buser*, 371 P.3d 886 (Kan. 2016); *Doe v. Thompson*, 373 P.3d 750 (Kan. 2016). Those three cases were argued on September 11, 2014, to a Court composed of six Justices and a senior district court judge sitting by assignment to fill a vacancy. *See Petersen-Beard*, 377 P.3d at 1142 (Johnson, J., dissenting) (explaining that the Court was properly constituted under Kansas law, *see* Kan. Const. art. 3, § 6(f) and K.S.A. 20-2616).

A majority of the panel—Justice Johnson, Justice Beier, and Justice Rosen, along with the senior district court judge—applied *Smith*’s intent-effects test. As to legislative intent, the majority agreed with its prior holding in *Myers* that the intent of the 2011 amendments to KORA was for the nonpunitive purpose of public safety. *See, e.g., Thompson*, 373 P.3d at 765-66. As to effect, the Kansas Supreme Court compared “the most significant differences between the 2011 version of KORA” and the Alaska law at issue in *Smith*, ultimately concluding that it was “punitive in effect,” holding that “the amended statutory scheme cannot be applied retroactively

to any person who committed the qualifying sex offense prior to July 1, 2011.” *Thompson*, 373 P.3d at 766-71.

Three Justices—Chief Justice Nuss, Justice Luckert, and Justice Biles—concurred in part and dissented in part. First, they concurred in the majority’s assessment that the “legislature intended for [KORA] and its 2011 amendments to be a civil regulatory scheme for public safety that was nonpunitive.” *Id.* at 772. But, following a long line of federal decisions rejecting similar challenges to the Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. § 16901 *et seq.*, and other offender registration laws from other states, the three Justices dissented from the majority’s conclusion that KORA was punitive in effect. *Thompson*, 373 P.3d at 772-81 (noting federal appellate courts have unanimously held SORNA does not violate the Ex Post Facto Clause and several circuit courts have upheld state registration laws “even when those state laws contained provisions more expansive in scope and impact than either SORNA or the Alaska provisions addressed in *Smith*”). The dissent criticized the majority for “disingenuously characteriz[ing] this unanimous body of caselaw” because, while none of the statutory schemes were identical to KORA, there was such “substantial overlap” that the “rationale from those decisions should apply with equal force here.” *Thompson*, 373 P.3d at 773. Thus, based upon consideration of the *Mendoza-Martinez* factors, how they applied to the particular issues raised by the challengers, and federal caselaw, the dissent concluded that the 2011 amendments to KORA did not violate the Ex Post Facto Clause. *Thompson*, 373 P.3d at 781.

c. The same day that the Kansas Supreme Court issued *Doe v. Thompson*, *State v. Redmond*, and *State v. Buser*, it overruled the “effects” portion of those three decisions. See *Petersen-Beard*, 377 P.3d 1127. In *Petersen-Beard*, the Kansas Supreme Court agreed that the legislative intent of the 2011 amendments to KORA was nonpunitive and then concluded, applying the *Mendoza-Martinez* factors, that the effect of the amendments upon sex offenders was also non-punitive. See *Petersen-Beard*, 377 P.3d at 1131 (recognizing the punishment analysis under *Mendoza-Martinez* applied to Eighth Amendment challenges just as it would for double jeopardy and ex post facto claims); *State v. Reed*, 399 P.3d 865, 869 (Kan. 2017) (“We now explicitly extend the holding of *Petersen-Beard* to apply to ex post facto challenges.”).

Justice Stegall, who had been confirmed as the newest Justice of the Kansas Supreme Court after the original three decisions had been argued, authored *Petersen-Beard*. The three dissenters from the prior decisions—Chief Justice Nuss, Justice Luckert, and Justice Biles—joined Justice Stegall’s decision. The majority largely adopted Justice Biles’s dissent from the overruled cases and rejected *Petersen-Beard*’s claim that the 2011 amendments to KORA constituted punishment. *Petersen-Beard*, 377 P.3d at 1131-40.

Justice Johnson, who authored the majority opinion in the overruled cases, wrote a dissent that harshly criticized the majority for delaying the release of *Thompson* while it considered the issue anew in *Petersen-Beard*. Analytically, the dissent took issue with the majority for relying upon federal authorities on an issue

of state law and questioned whether strict adherence to *Smith* was justified since this Court is comprised of “new justices” who “are younger” and therefore might be “more attuned to the digital age.” *Id.* at 1142-49. Justices Beier and Rosen joined Justice Johnson’s dissent, but only “as to the result.” *Id.* at 1142-49.

Petersen-Beard sought certiorari from this Court. *See* Case No. 16-5367. On October 3, 2016, this Court denied that petition. *See Petersen-Beard v. Kansas*, 137 S. Ct. 226 (2016).

4. This history sets the stage for Petitioner’s challenge.

In 2005, Ami Latrice Simmons pled guilty to possession of cocaine with the intent to distribute and to selling cocaine, both in contravention of Kansas law. *See State v. Simmons*, 405 P.3d 1190 (Kan. 2017). Sentenced to 30 months in prison, she received parole in October 2008. *See id.* at 1191. She initially registered pursuant to KORA, but eventually failed to do so, causing the State to charge her in 2011 with failing to register as the 2011 amendments to KORA required. *See id.*

She and several other individuals convicted of failing to register under the 2011 amendments argued to the Kansas Supreme Court that their convictions for failing to register were invalid on ex post facto grounds. The first case to address and resolve that issue was *State v. Meredith*, 399 P.3d 859, 863 (Kan. 2017). Because the Kansas Supreme Court’s disposition of Petitioner’s ex post facto challenge at issue in

this Petition incorporates the analysis of the identical claim in *Meredith*, a brief summary of *Meredith* is appropriate. *See generally* Brief in Opp., Case No. 17-7301.<sup>1</sup>

*Meredith*, like *Simmons*, did not preserve the ex post facto challenge in the district court. Nonetheless, both the Kansas Court of Appeals and the Kansas Supreme Court considered and rejected the argument. Applying the intent-effectstest from *Smith v. Doe*, the Kansas Supreme Court reaffirmed that the 2011 amendments to KORA were not punitive. In particular, the Kansas Supreme Court held again that the Legislature’s intent in enacting KORA was to create a nonpunitive civil regulatory scheme: “the legislature intended KORA registration for all classes of offenders to be civil and nonpunitive.” *Meredith*, 399 P.3d at 863.

Next, the Kansas Supreme Court considered the effects on *Meredith*. Recognizing that the Kansas Supreme Court has “already held—after full consideration of the available facts presented in the *Thompson/Petersen-Beard* line of cases—that there is insufficient proof of the punitive effects of KORA on the class of sex offenders to override the nonpunitive legislative intent,” the Kansas Supreme Court focused on whether “any member of a non-sex offender class subject to KORA” was able to “demonstrate conclusively that the act as applied to a non-sex offender has a significantly different *effect*—*i.e.*, it is punitive.” *Meredith*, 399 P.3d at 863-64.

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<sup>1</sup> Ami Simmons was listed in the body of the Petition in Case No. 17-7301, but was not listed on the cover. She filed a separate Petition, Case No. 17-8003. The claims that she is making and the reasons for the Kansas Supreme Court’s denial of the same are substantially similar to the petitioner in that case. *Compare State v. Meredith*, 399 P.3d 859 (Kan. 2017) *with State v. Simmons*, 405 P.3d 1190 (Kan. 2017).

This Meredith did not do: “[B]ecause Meredith produced no factual record and made no arguments below concerning KORA’s punitive effects on drug offenders as a class distinct from sex offenders,” the Kansas Supreme Court was unable to “conduct a full and fair analysis” of the *Mendoza-Martinez* factors. *Meredith*, 399 P.3d at 864 (“An analysis of the *Mendoza-Martinez* factors requires a robust record because the effects prong of the applicable legal test obliges an appellate court to premise its legal conclusions on a least some fact-intensive questions . . .”). Justice Beier, joined by Justices Rosen and Johnson, dissented.

Simmons—like Petitioners in Case Nos. 17-6790 and 17-7301—argued that the application of KORA is precluded on ex post facto grounds. *See* 405 P.3d at 1192. After recounting the analysis from *Meredith* on this very issue, the Kansas Supreme Court concluded that Simmons’s argument “suffers from the same flaw,” that is she was “unable to satisfy the ‘clearest proof’ standard because the record below has not been sufficiently developed.” *Simmons*, 405 P.3d at 1192. Justice Beier, joined by Justices Rosen and Johnson, dissented. *See id.* at 1194.

\* \* \* \* \*

## ARGUMENT

Petitioner contends that this Court should grant certiorari to resolve whether the Kansas offender registration violates the Ex Post Facto Clause. Pet. at 6. Petitioner's contention does not merit further review.

Kansas's offender registration scheme contains a variety of features that are found, in one form or another, in similar federal and other states' laws. After applying this Court's multi-factor framework set out in *Smith v. Doe*, 538 U.S. 84 (2003), the Kansas Supreme Court concluded that the 2011 amendments to the Kansas Offender Registration Act (KORA) were civil in nature and were not demonstrated to be punitive.

Review of that conclusion is unwarranted. Petitioner does not challenge the conclusion that KORA was intended to be a civil regulation and did not present the Kansas Supreme Court with evidence to evaluate the law's effect on her. So, based upon the record provided, the Kansas Supreme Court applied this Court's precedent to conclude that Petitioner had not demonstrated that application of the law violated her constitutional rights. And, while some lower courts have reached differing conclusions about particular features of other states' offender registration schemes, those decisions are attributable to widely varying features among the states' laws and the lower courts' judgments as to how those features should be handled under *Smith*.

### **I. Petitioner's record does not permit this Court to review her claims.**

Review is unwarranted because Petitioner's arguments and presentation preclude review under either part of *Smith*'s intent-effectstest. She does not challenge the

conclusion that the Legislature’s intent in enacting KORA was to create a civil regulation in furtherance of public safety, and she failed to produce any evidence or argument demonstrating by “the clearest proof” that the effect of KORA upon them was punitive.

**A. Petitioner does not assert that the legislative intent of KORA was to punish.**

The first part of the *Smith* test focuses on whether the legislative body enacting the offender registration law intended it to be punitive or a civil regulatory scheme. *See* 538 U.S. at 92. “[W]here a legislative restriction ‘is an incident of the State’s power to protect the health and safety of its citizens,’ it will be considered as ‘evidencing an intent to exercise that regulator power, and not a purpose to add to the punishment.’” *Id.* at 93-94 (quoting *Flemming v. Nestor*, 363 U.S. 603, 616 (1960)).

The Kansas Supreme Court, in this case and previously, has “repeatedly held that the legislature’s intent in enacting KORA was to create a nonpunitive civil regulatory scheme.” *Meredith*, 399 P.3d at 863. Finding “no subsequent legislative history [that would lead the Court] to deviate from these holdings,” the Kansas Supreme Court reaffirmed its conclusion that “the legislature intended KORA registration for all classes of offenders to be civil and nonpunitive.” *Id.* The Petition makes no argument challenging that conclusion. Rather, the Petition is focused only on the second part of the *Smith* test. Pet. at 13-16.

**B. Petitioner presented no evidence to demonstrate KORA had a punitive effect on her.**

The second part of the *Smith* test focuses on whether the law's effect is so punitive as to negate the legislature's intent to create a civil regulatory regime. Reflective of the deference to legislative intent, *Smith* declares that “*only the clearest proof* will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.” 538 U.S. at 92 (internal quotation marks omitted) (emphasis added).

The Kansas Supreme Court denied Petitioner's ex post facto challenges because the record was insufficient to demonstrate that the effect of the 2011 amendments to KORA would have the effect of punishing them. In *Meredith* (which the court followed in Petitioner's case), the court declared that “the record in this case is insufficiently developed for Meredith to persuasively argue KORA's allegedly punitive effects on drug offenders as a class separate and distinct from sex offenders.” 399 P.3d at 862. Instead, Meredith “present[ed] essentially the same arguments [the Kansas Supreme Court] considered and rejected in *Petersen-Beard* without drawing a material distinction between drug and sex offenders that would persuade us that KORA has a punitive effect on drug offenders.” *Meredith*, 399 P.3d at 864; *accord Simmons*, 405 P.3d at 1192 (dismissing Simmons's claim for the same reasons as in *Meredith*).

Although Meredith argued that “drug offenders present less public safety risk than sex offenders,” the record presented was “not factually developed to support such sweeping assertions—perhaps because the issue is only raised for the first time on

appeal.” *Meredith*, 399 P.3d at 864. That record deficiency was critical: “An analysis of the *Mendoza-Martinez* factors require a robust record because the effects prong of the applicable legal test obliges an appellate court to premise its legal conclusion on at least some fact-intensive questions—*i.e.*, the legitimacy of the public safety interest at stake, the effectiveness of the alternative purpose to promote public safety, etc.” *Meredith*, 399 P.3d at 864 (noting this Court, in *Smith*, relied in part on social science data concerning recidivism and public safety). Thus, the Kansas Supreme Court could not “conduct a full and fair analysis of the *Mendoza-Martinez* factors “because *Meredith* produced no factual record and made no arguments below concerning KORA’s punitive effects on drug offenders as a class distinct from sex offenders.” *Meredith*, 399 P.3d at 864; accord *Simmons*, 405 P.3d at 1192.

This Court should deny review just as it did in *Petersen-Beard*, the case in which the Kansas Supreme Court held that the 2011 amendments to KORA, as applied to sex offenders, did not constitute punishment. See *Petersen-Beard v. Kansas*, 137 S. Ct. 226 (2016) (denying review). In this case, Petitioner failed to produce any evidence or argument that her situation is distinguishable from *Petersen-Beard*. See *Simmons*, 405 P.3d at 1192. Thus, the Kansas Supreme Court rejected Petitioner’s challenges to KORA, but recognized that its ruling did not fully foreclose future ex post facto challenges to KORA registration for non-sex offenders. See *id.* If drug offenders subject to KORA are someday able to differentiate their situation from sex offenders, the Kansas Supreme Court should first be permitted to pass upon that question. See *id.*

Petitioner’s failure to present a proper record for consideration by the Kansas Supreme Court renders the Petition an imperfect vehicle to consider overruling the expressed and repeatedly upheld intent of the Kansas Legislature. This Court has often recognized that a party’s failure to present an issue with an appropriate record counsels against exercising discretionary review, owing to principles of comity to the States, deference to state courts, and practical considerations related to this Court’s review of difficult constitutional issues that would benefit from full consideration by lower courts. *See generally Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 79 (1988) (describing the “not pressed or passed upon below” rule). That rule counsels against granting the Petition in this case, where the Kansas Supreme Court was not presented with a sufficient record to resolve the multi-factor test of *Mendoza-Martinez*.

**II. Review is unwarranted because the Kansas Supreme Court applied the correct legal framework.**

Under this Court’s rules, a “petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” *See* S. Ct. R. 10. That, however, is all Petitioner seeks.

The Kansas Supreme Court’s decision in *Meredith*, which it specifically invoked to deny Petitioner’s claim, correctly identified *Smith* as establishing the governing standard by which to measure ex post facto challenges like Petitioner’s and applied the *Smith* framework. The *Meredith* court expressly recognized that this Court’s *Smith* decision “summarized and restated the well-established ‘intent-effects test’ to determine whether a statutory scheme is punishment for ex post facto

purposes” and quoted that general framework. *See Meredith*, 399 P.3d at 863. It also further highlighted the seven factors from *Mendoza-Martinez* that inform the “effects” portion of the inquiry. *Meredith*, 399 P.3d at 683.

The Kansas Supreme Court’s application of its resolution of Meredith’s challenge comports with *Smith*. The court in *Meredith* first reiterated that “[w]e have repeatedly held that the legislature’s intent in enacting KORA was to create a nonpunitive civil regulatory scheme” and observed that nothing had been presented to suggest that those decisions should be reconsidered. Next, the Kansas Supreme Court noted it had “already held—after full consideration of the available facts presented in the *Thompson/Petersen-Beard* line of cases—that there is insufficient proof of the punitive effects of KORA on the class of sex offenders to override the nonpunitive legislative intent,” and was unable to discern any evidence or argument that the effect upon Petitioner would be different than the sex offenders at issue in *Petersen-Beard*. *Meredith*, 393 P.3d at 863-64.

The Kansas Supreme Court thus applied the correct legal standard to assess Petitioner’s ex post facto challenges. That application does not warrant this Court’s review.

**III. Any conflict among lower courts results only from local application of this Court’s legal rule to individual facts.**

This Court’s review is not necessary to resolve conflicts between lower courts because there is no conflict concerning the legal doctrine applicable to ex post facto challenges. Instead, the decisions Petitioner relies on properly applied the multi-

factor *Mendoza-Martinez* test to the laws at issue and the evidence presented in those cases, ultimately concluding that, under *Smith*, the effects of the laws were punitive.

The Sixth Circuit's decision in *Does v. Snyder*, 834 F.3d 696 (6th Cir. 2016), is a prime example. There, six sex offenders challenged certain amendments to Michigan's offender registration regime, focusing on a prohibition of living, working, or loitering within 1,000 feet of a school. *Id.* at 698 (noting the restriction prevented plaintiffs who have children or grandchildren from watching them participate in school plays or on school sports teams and kept them from visiting public playgrounds with their children). Applying the *Mendoza-Martinez* factors to the expert testimony and record evidence presented by the offenders, the Sixth Circuit concluded that the aggregate impact of Michigan's law, as applied, constituted punishment that could not be retroactively enforced. *See Snyder*, 834 F.3d at 702-06.

That the result in *Snyder* was contrary to the near universal holdings of other courts does not create a legal conflict or split of authority. The Government recognized as much when it opposed the State of Michigan's petition for writ of certiorari in *Snyder*: "To the extent any tension exists among appellate courts about whether certain common features (described at a relatively high level of generality) of sex-offender-registration laws are punitive, this case would not be a suitable vehicle for resolving any such feature-by-feature tension because the court of appeals' decision here is directed at the *aggregate* effect of the challenged aspect of Michigan's law." Brief for the United States as Amicus Curiae, *Snyder v. Does*, Case No. 16-768 (U.S.), p. 16. This Court, of course, denied review. *See Snyder v. Does*, 138 S. Ct. 55 (2017).

Petitioner has not shown that any unique feature of KORA, in isolation or aggregate, would be punitive as applied to her based on the reasoning or rationale of *Snyder* or any of the handful of cases reaching a result they favor. That is because KORA is materially distinct from Michigan’s law at issue in *Snyder*. For example, the Sixth Circuit repeatedly noted that the Michigan law’s geographic restriction—prohibiting the offender from living, working, or loitering within 1,000 feet of a school—made it practically impossible for an offender to find a place to live or work. *Snyder*, 834 F.3d at 701 (concluding that the law, as a result, “has much in common with banishment and public shaming”); *see also Doe v. State*, 111 A.3d 1077, 1095 (N.H. 2015) (describing offender’s evidence that the law prevented him from living with his son or in public housing); *Starkey v. Oklahoma Dep’t of Corr.*, 305 P.3d 1004, 1023 (Okla. 2013) (restricting offenders from living within a 2000-foot radius of any school, educational institution, property, or campsite); *Commonwealth v. Baker*, 295 S.W.3d 437, 444 (Ky. 2009) (finding law akin to banishment, as it restricts where an offender can live and would even require vacating the offender’s home where residency had been established before the law had been enacted). The geographic restriction is wholly absent from both KORA and SORNA, a factor that easily distinguishes the result in *Snyder* (and similar cases) from the one repeatedly reached by the Kansas Supreme Court. *See Petersen-Beard*, 377 P.3d at 1135 (KORA contains no residency restriction); *see also Johnson v. Madigan*, 880 F.3d 371, 375 (7th Cir. 2018) (distinguishing *Snyder* on this basis); *United States v. Morgan*, 255 F. Supp. 3d 221, 231 (D.D.C. 2017) (same).

The other decisions reaching the result favored by Petitioner also do not mark a conflict in analysis. Instead, those cases identified *Smith* as establishing the proper test, individually analyzed how that jurisdiction’s law fit within the *Mendoza-Martinez* test, and rendered a judgment based on the evidence presented. *See Commonwealth v. Muniz*, 164 A.3d 1189, 1213 (Pa. 2017) (concluding, based upon its own weighing of the *Mendoza-Martinez* factors, that the Pennsylvania law has a punitive effect despite the non-punitive legislative intent); *State v. Letalien*, 985 A.2d 4, 25 (Me. 2009) (concluding, based upon its balancing of the *Mendoza-Martinez* factors, that the law was punitive); *Doe v. State*, 189 P.3d 999, 1018 (Alaska 2008) (disagreeing “respectfully but firmly” with this Court and relying on its own unique “assessment of [the *Mendoza-Martinez*] factors and their relative weight”). Considering the variation among jurisdictions’ offender-registration laws and the evidence presented, courts may—and do—reach different conclusions without creating a conflict over legal principles. That is true even when, if viewed at a high level of generality, the laws share one or more common features.

Unable to identify a conflict of legal principles from these cases, Petitioner parrots the complaints of Justice Johnson’s dissent in *Petersen-Beard* and condemns KORA as a being a “super-registration scheme” that differs from the federal SORNA because KORA includes a quarterly reporting requirement, a registration fee, criminal sanctions for noncompliance, and other administrative concerns. Pet. at 11-16. But Petitioner has identified no law similar to KORA that has been found to violate the Ex Post Facto Clause. Thus, Petitioner does not demonstrate that the

Kansas Supreme Court’s conclusion applied a contrary rule of law or constituted a legal error concerning application of the *Mendoza-Martinez* factors to her case.

Finally, Petitioner laments that enforcement of offender registration “provisions should not vary based on which state or circuit an offender resides” and that the “disparate conclusions regarding enhanced registration schemes warrant[] review by this Court.” Pet. at 12. That charge is hollow. There are countless iterations of offender registration laws across the land that, by definition, result in disparate treatment of offenders based on the controlling law in that particular jurisdiction. And the *Mendoza-Martinez* factors require a balancing of the effects of those unique laws as applied to particular offenders. Thus, it is no surprise that, while most of these laws have been upheld, there are a handful of provisions in some jurisdictions that have not.

Review is not warranted here because Petitioner has not and cannot point to any decision that reaches the opposite conclusion based on the application of materially identical statutory provisions to offenders who are similarly situated to her. Rather, the unifying feature among all the decisions discussed above is that the courts have applied this Court’s test in *Smith*, and reached different conclusions based on different facts and laws being challenged.

### **CONCLUSION**

The petition for writ of certiorari should be denied.

Respectfully submitted,

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