25-6702

No. 25-

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IN THE

SUPREME COURT OF THE UNITED STATED

JASON STEVEN KOKINDA, *PRO SE,*

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED FOR REVIEW

Introduction: The case *sub judice* alleges that the defendant violated 18 U.S.C. § 2250(a) by living a nomadic lifestyle of constant travel through multiple states and counties. No instructions were presented to the jury to decide whether he violated any state sex offender registry law or established a "change of residence" according to the ordinary-English-usage rule announced in *Nichols v. United States*, 578 U.S. 104, 136 S. Ct. 1113, 194 L. Ed. 2d 324 (2016). Instead, the trial court relied on lengthy DOJ guidelines to conclude that his regular day-time commutes to one city and brief stays at campgrounds in multiple counties of West Virginia altogether constituted a violation of SORNA. Trial counsel failed to preserve errors.

Question Presented: Did the lower courts commit plain error requiring summary reversal by reinterpreting the elements of 18 U.S.C. § 2250, (construed by the unanimous Supreme Court panel in *Nichols v. United States*, 578 U.S. 104, 136 S. Ct. 1113, 194 L. Ed. 2d 324 (2016),) to thereby criminalize a law-abiding *modus operandi* of never staying longer than state law allows unregistered visitors and moving on?

Question Presented: Is the term "habitually lives" merely ambiguous in isolation, or subject to the rule of lenity, in any regard, because the Attorney General was not delegated specific authority to interpret 18 U.S.C. § 2250 in compliance with judicial canons and lacked the expertise required to provide *Skidmore* deference post-*Loper Bright*?

PARTIES TO PROCEEDING

1: The United States of America, Represented by Respondents:

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II. LIST OF ALL DIRECTLY RELATED PROCEEDINGS

United States v. Jason Kokinda, Case Nos. 2:19CR33 and 2:21CR20, United States District Court for the Northern District of West Virginia, at Elkins, District Court Judge Thomas Kleeh. Judgment entered October 13, 2022 [ECF #188, Case 2:21CR20].

United States v. Jason Kokinda (Kokinda I), Appeal No. 22-4595, United States Court of Appeals for the Fourth Circuit. Judgment entered February 21, 2024 [ECF Docs Nos ##64 (Published Opinion) and 65 (Judgment Order)]. 93 F.4th 635 (4th Cir. 2024). Motion for Rehearing denied April 2, 2024 [ECF Doc #73].

Jason Kokinda v. United States, Case No. 24-5006, Supreme Court of the United States. Petition for Writ of Certiorari granted on October 7, 2025. The judgment of the Fourth Circuit Court of Appeals was vacated, and the case was remanded to the court of appeals for further consideration in light of Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024) [ECF Doc #79].

United States v. Jason Kokinda (Kokinda II), Appeal No. 22-4595. Judgment entered by published authored opinion on July 28, 2025 [ECF Docs ##92 and 93]. 146 F.4th 405 (4th Cir. 2025). Motion for rehearing denied August 25, 2025 [ECF Doc #97].

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V. OPINIONS BELOW

After a three (3) day jury trial, and after a contested sentencing hearing, District Judge Kleeh's findings and conclusions about the guilty verdict were incorporated into the Judgment and Commitment Order, (1A, P. 18a) which was filed on November 8, 2018. Judge Kleeh denied the Appellant's Rule 29 Motion for Judgment of Acquittal, by order dated October 5, 2022 [ECF Doc #174, Case 2:21CR20, USDC NDWV] (Appendix pp. 52a to 63a). The Defendant/Petitioner appealed to the Fourth Circuit Court of Appeals.

The Published Opinion of the United States Court of Appeals for the Fourth Circuit appears in West's National Reporter System at United States v. Kokinda (Kokinda I), 93 F.4th 635 (2024), and at ECF Document #64, Fourth Circuit Court of Appeals, Case No. 22-4595 (Appendix, pp. 27a to 51a). The case was argued in Richmond, Virginia, before a three-judge panel, consisting of Circuit Judges, Agee, Thacker and Rushing, on December 8, 2023. It was decided by published opinion dated February 21, 2024. The opinion of the Appeals Court, authored by Judge Thacker, affirmed the judgment of the United States District Court for the Northern District of West Virginia, District Judge Thomas Kleeh.

A Petition for Writ of Certiorari from the 2024 decision of the Fourth Circuit was granted on October 7, 2024, in (SCOTUS) Appeal No. 24-5006. The judgment of the circuit court was vacated, and the case remanded to the circuit court for further consideration in light of the decision in Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024) [ECF Doc #79, Case 22-4595]. After supplemental briefs were filed by the Petitioner and the government, the circuit court again affirmed the conviction

by a published opinion, United States v. Kokinda (Kokinda II), 146 F.4th 405 (4th Cir. 2025) [ECF Doc #92, Case 22-4595] (Appendix, pp. 1a to 26a).

VI. JURISDICTION

This Petition seeks review of an opinion of the United States Court of Appeals for the Fourth Circuit, decided by published opinion [ECF Doc #92] on July 28, 2025, in Case No. 22-4595, United States v. Jason Kokinda. A pro se Petition for Rehearing was filed on August 1, 2025 [ECF Doc #94]. Counsel filed a Motion to Adopt Pro Se Filing, relating to the Petition for Rehearing [ECF Doc #96] on August 4, 2025. The Petition for Rehearing was denied by order dated August 25, 2025 [ECF Doc #97]. An Application for extension of time to file a petition for writ of certiorari was filed on November 7, 2025, within the 90 day time period for filing a Petition for Writ of Certiorari, under Rule 13, Rules of the Supreme Court of the United States. The application for extension was designated as No. 25A546 in this Court, and, on November 20, 2025, the application was presented to the Chief Justice, who extended the time for filing to and including January 22, 2026. This Petition is, therefore, filed within that deadline and in accordance with Rule 13, Rules of the Supreme Court of the United States. Jurisdiction is conferred upon this Court by 28 U.S.C. §1254.

VI. STATUTES AND REGULATIONS INVOLVED

18 U.S. Code § 2250 - Failure to register

(a)In General.—Whoever—**(1)** is required to register under the Sex Offender Registration and Notification Act;

(B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act; shall be fined under this title or imprisoned not more than 10 years, or both.

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

(c)Keeping the registration current

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

34 U.S. Code § 20914 - Information required in registration

(a)Provided by the offender

The sex offender shall provide the following information to the appropriate official for inclusion in the sex offender registry: **(8)** Any other information required by the Attorney General.

VIII. STATEMENT OF THE CASE

A. Procedural History

District Court

The trial was held in this case on October 19th through October 21st, 2021, on one count of Failing to Register pursuant to 18 U.S.C. § 2250. It resulted in a jury verdict of guilty. On or about October 13, 2022, a sentence was imposed of sixty-three(63) months and lifetime supervision.

The procedural history of the case was tortured by confusion regarding the appropriate use of the DOJ guidelines and pre-*Nichols*, *infra*, case-law that assumed that the "change of residence" element was met by simply departing a former jurisdiction. In this case-law, the only remaining question was whether the offender "habitually lives" in the new jurisdiction long enough to trigger a duty to *update* his registration.

1. The only relevant procedural aspect of the district court case is that the trial attorneys, Richard Walker and Hilary Godwin, mistakenly believed that the only guidance for determining proper jury instructions was based on *Bruffy* and *Minor*, *infra*, both decided by the Fourth Circuit in unpublished opinions before *Nichols*.
2. Although post-trial counsel, David Frame, raised the prospect that *Nichols* controlled the case and excluded the use of the unusual concepts of *residency* alleged against Mr. Kokinda, he did not argue it as "plain error" in the trial court. Therefore, Judge Kleeh did not address the argument, as if it was waived.

3. It was held that *Chevron* deference allowed the Court to cobble together passages from the DOJ guidelines to clarify what was alleged to be an ambiguous "habitually lives" phrase that is partly used in defining the "resides" element previously construed by *Nichols*.

Appellate Court

1. The Court of Appeals for the Fourth Circuit panel first *affirmed* the appeal in an unpublished opinion on November 28, 2023.
2. Then the case was **REMANDED** by this Court on October 7, 2024, for further consideration in light of this Court's ruling in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).
3. On September 8th, 2025, the Fourth Circuit panel again *affirmed* the trial court's judgment by falsely asserting that appellant's counsel had conceded that the "habitually lives" sub-element was ambiguous, and it could therefore be defined by the guidelines pursuant to *Skidmore* deference rather than *Chevron* deference.
4. A petition for rehearing was timely-filed and denied on August 25, 2025. Issues were raised about plain error, but the court likely found them procedurally inappropriate and passed on reconsideration.
5. Although the issue wasn't properly preserved or argued, the panel regarded *Nichols* at 1118, lightly, as if the opinion was irrelevant *dicta*, based on the premise that "the purpose" of the guidelines would not exempt Mr. Kokinda's stays at [temporary lodging], like the example in *Nichols*. The panel has essentially displaced the statutory "change of residence"

pursuant-to-ordinary-English-usage construction with a bright-line rule requiring only *intent* to accrue thirty(30)-days of aggregated presence anywhere in a state as *per se* proof of *residency*.

B. Factual Background

The facts of the case *sub judice* were not materially disputed at trial. The Government asserted at trial that bank records proved Mr. Kokinda shopped frequently in Elkins, West Virginia, Randolph County, during the period of August 24 to September 29, 2019. (ECF Doc #79, Trial Transcripts, Vol. II, pp. 264-269, Gov. Exhibit 18, Case 2:21CR20 USDC NDWV).

The bank records also demonstrated that Mr. Kokinda was traveling nomadically throughout the northeastern United States after leaving Vermont. (Vol. II, Govt. Exhibit's 13 and 14, Vol. III. Pgs. 419-426, 489). As pled in *Kokinda v. Koch Indus., et al.*, U.S. Dist. of Vermont, No. 2:17-cv-98 and 2:18-cv-95, Mr. Kokinda's former residence in Vermont burned down in a suspicious fire. Therefore, when he was unexpectedly returned to the U.S. on a warrant to face the later-dismissed Vermont citation, he had no home.

Mr. Kokinda testified that he was planning on ultimately residing at a trailer home his mother in New Jersey had bought to park somewhere in Delaware. (Vol. III, pg. 411-412). And he also testified that she was at the bank trying to secure a loan for the land at the very time he called her about being arrested in Elkins. *Id.*

The Government provided spotty eyewitnesses who testified to seeing Mr. Kokinda at the city park, city library, and YMCA for no more than an hour or two

during daylight hours within said date range. (Vol. III, pgs. 426-428) It was never asserted that Mr. Kokinda had slept or stayed overnight in Elkins or had any ties to the area or elsewhere in West Virginia. (Vol. II, pgs. 329-332). He was not alleged to have family, friends, a job, school, a lease, nor was it alleged he attempted to lease any place to stay permanently, nor did he live on the streets. (Vol. III, Pg. 426).

The Government agreed that Mr. Kokinda had to rent two vehicles from Enterprise for a few days each (Sept. 19 to Sept. 27, 2019) while he had repairs done to his 1999 Ford Contour vehicle. (Vol. II, Govt. Exhibit 17). In particular, Mr. Kokinda testified that he had to have the rear axle beam replaced because it was bent and dangerously damaging his tires from the misalignment. (Vol. III, pg. 409-410). He had traveled to Erie, Pennsylvania, in a rented pickup truck to get the part and had it installed by a repair shop in Elkins. (*Id.*) In addition, he also had new tires put on it two days before he was arrested. (*Id.*)

It was further alleged that the owner of Yokum's campground near Seneca Rocks in Pendleton County, WV, had seen Mr. Kokinda's car on a couple occasions during the two weeks he had reserved a camping spot there. (*Id.* pg. 518). It was then alleged that Mr. Kokinda had traveled to Erie, Pennsylvania, one night, and then stayed a week at the Five River's Campground fifty miles away in Tucker County, WV, and that his tent and belongings were still found there after he was arrested in Elkins. Inferably, he stayed there only the week after his Yokum's reservation expired and trip to Erie. (*Id.* pg. 520).

Mr. Kokinda alleged that he was actually in Accident, Maryland for at least part of the period he was believed to be at the Yokum's campground. (*Id.* pg. 433, 518) It was unclear where exactly Mr. Kokinda had stayed overnight during the first two weeks of the August 26th to September 29th, 2019, period, although he recalled being in Front Royal, Virginia, at Goonie's campground. (*Id.* pg. 519). There are gaps in the bank records during this period even though he still commuted to Elkins at times.

The Government's witness, S.P. Miller, testified that he would have registered Mr. Kokinda in Randolph County under the facts alleged. However, the jury was never provided with any standards of state law in the jury instructions by which they may have determined whether he had violated any state registry laws ever. (ECF Doc. 80, Transcripts, Vol. III, Pg. 413).

IX. REASONS TO GRANT THE WRIT

I. THE LOWER COURTS COMMITTED PLAIN ERROR BY REINTERPRETING THE ELEMENTS OF 18 U.S.C. § 2250, (CONSTRUED BY A UNANIMOUS PANEL IN *NICHOLS*, *SUPRA*,) TO CRIMINALIZE A LAW-ABIDING *MODUS OPERANDI* OF NEVER STAYING LONGER THAN STATE LAW ALLOWS UNREGISTERED VISITORS AND MOVING ON:

A. *Nichols* Overruled All Prior Constructions and Foreclosed Future Constructions

This case presents a straightforward refusal of the lower courts to apply the bright-line rules established by this court, and the right to summary reversal and acquittal under plain error review. The lower courts heavily relied upon older constructions of 18 U.S.C. § 2250 that were overruled *by operation of law* pursuant to the construction announced in *Nichols v. United States*, 578 U.S. 104, 136 S. Ct. 1113, 194 L. Ed. 2d 324 (2016). *See Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 313, n. 12, 128 L.Ed.2d 274, 114 S. Ct. 1510 (1994) (It is well established that "when this Court construes a statute, it is explaining its understanding of what the statute has meant continuously since the date when it became law."); *Id.* at 312-313 ("A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction."); *see also Hohn v. United States*, 524 U.S. 236, 252-53, 118 S.Ct. 1969, 141 L.Ed.2d 242 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality."); *see also Payne v. Taslimi*, 998 F.3d 648, 654 (4th Cir. 2021) ("[A]s an inferior court, the Supreme Court's precedents do constrain us. *See Agostini v. Felton*, 521 U.S. 203, 237, 117 S. Ct. 1997, 138 L.Ed.2d 391 (1997). In looking up to the

Supreme Court, we may not weigh the same factors used by the Supreme Court to evaluate its own precedents in deciding whether to follow their guidance. We must simply apply their commands. So even were we to correctly conclude that a Supreme Court precedent contains many "infirmities" and rests on "wobbly, moth-eaten foundations," it remains the Supreme Court's "prerogative alone to overrule one of its precedents." *State Oil Co. v. Khan*, 522 U.S. 3, 20, 118 S. Ct. 275, 139 L.Ed.2d 199 (1997) (quoting *Khan v. State Oil Co.*, 93 F.3d 1358, 1363 (7th Cir. 1996) (Posner, J.)). It is beyond our power to disregard a Supreme Court decision, even if we are sure the Supreme Court is soon to overrule it.")

B. The Lower Courts View *Nichols* as Discretionary Guidance, Not Binding Precedent

Instead of mechanically applying the rule announced in *Nichols* and strictly limiting the scope of the pivotal "change of residence" element according to ordinary English usage, the Fourth Circuit panel believed it had the right to re-evaluate the factors used by this Court and determined that the rule *as applied to Mr. Kokinda* would undermine the "presumed purpose" of the statute to register all offenders.

Yet, Justice Alito, speaking for a unanimous panel expressly stated, in *Nichols* at 1119, that "[E]ven the most formidable argument concerning the presumed purpose of the statute cannot be overcome by the clarity we find in the text."). The *Nichols* panel also repeatedly noted how the Government is asking for an enlargement of the statute beyond Congress's drafting of it to criminalize defendant Nichols' ***evasion*** of registration by leaving the United States. *See* *Nichols* at 1118, (The Government is "resisting the straightforward reading of the text,"). In the

instant case, the Government's argument to broaden the terms Congress chose, ("residence" and "resides", beyond their ordinary English usage to achieve the "presumed purpose" and prevent ***evasion***) is clearly foreclosed by the same rationale announced in *Nichols*.

C. SORNA Is Failed Legislation that Left Transitory Registration for States to Enact and Custom Tailor

The cold reality is that SORNA is failed legislation. To date, only seventeen states have implemented the minimum requirements of the enhanced standards proposed. Most states have noted that the expense of implementing SORNA outweighs the funding provided as an incentive under the Spending Clause. *See State v. J.E.*, 238 W.Va. 543, 796 S.E.2d at n.3 (W.Va. 2017) (discussing how many states, including West Virginia, have refused to implement SORNA's enhanced standards because the costs outweigh the financial incentive.)

When Congress envisioned SORNA, they believed that the states would immediately sign up and start drafting their own laws to create unique legislation that covers transient and nomadic offenders. The Attorney General was delegated authority to help interpret SORNA for the implementation by the states and had brainstormed lots of amorphous suggestions to register everyone from nomadic long-haul truckers to stays of longer than a week at temporary lodging in Part VII of the guidelines. The AG had also drafted guidelines to help phase in offenders by providing certain offenders *affirmative notice* of a duty to register under enhanced standards while the states determined whether to opt in and enhance their own state-law standards.

Because SORNA compliance is dependent upon state registries and no federal registry locations exist, the power of Congress to implement the full vision of SORNA is strictly curtailed by its Spending Clause power. *See* Printz, 521 U.S. 898, 117 S. Ct. 2365 (1997) (holding that federal law would violate the Tenth Amendment if it involuntarily imposed the implementation of a federal program on states, but Congress can encourage voluntary *discretion* to opt in to a program pursuant to the Spending Clause.); *see also* United States v. Felts, 674 F.3d 599, 607-08 (6th Cir.2012).

D. Congress Must Amend SORNA to Regulate Transitory Offenders, Just like IML

The ordinary-English-usage rule announced in *Nichols* is the Supreme Law of the land. In the same manner that Congress created the International Megan's Law (IML) to prevent evasion by international travel, Congress must on its own accord amend the law to limit evasion by transitory offenders engaged in interstate travel. Congress explicitly chose the word "residence" in the "change of residence" element that triggers a duty to register.

The word "residence" when strictly construed under judicial canons of interpretation cannot logically mean *shopping*, *commuting*, *evading*, *touring*, *daytime stationing*, or *changes of transitory location*, such as brief hotel stays, even for a week or two, nor can it be chronological *presence* in multiple counties of a jurisdiction. For, some jurisdictions are larger than others and can take a longer time to traverse despite transitory states of travel and an intent to pass through. Travel can also be situationally delayed by emergency car repairs. The passage of time in a state or region at large is merely one arbitrary factor. *See* United States v. Novak, 607 F.3d

968, 973 (4th Cir. 2010) (citing *United States v. Venturella*, 391 F.3d 120, 125 (2d Cir. 2004) ("[T]ransients [are] those persons passing through a locality. ... Residency means an established abode, for personal or business reasons, permanent for a time. A resident is so determined from the physical fact of that person's living in a particular place .... A person may be a resident of one locality, but be domiciled in another.")).

There are thousands of long-haul truckers who are floating around virtually unregistered because they are rarely present at their registered home address. They do not and cannot practically update registrations in every state they pass through. The Government is oblivious to how expensive it is to hire a lawyer and ensure proper tier level in states like New Jersey that provide one opportunity.

E. *Nichols* Found § 2250 *Unambiguous*, Thus the *Presumed Purpose* is Not a Factor

Nichols interpreted the law Congress wrote and found it *unambiguous*. And the law is well-established that the *presumed purpose* of a statute cannot create criminal liability on its own without explicit textual support. *See Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1814, 204 L. Ed. 2d 139 (2019)("[L]egislative history is not the law"); *see also Lewis v. City of Chicago*, 560 U.S. 205, 215, 130 S. Ct. 2191, 176 L.Ed.2d 967 (2010) ("It is not for us to rewrite the statute ... to achieve what we think Congress really intended."); *see also Crespo v. Holder*, 631 F.3d 130, 136 (4th Cir. 2011) ("[The Supreme Court] ha[s] repeatedly stated time and again that courts must presume that a legislature says in a statute what is means and means in a statute what it says there. When the words of a statute are unambiguous, then, this

first canon is also the last: judicial inquiry is complete."); *see also* United States v. Pate, 84 F.4th 1196 (11th Cir. 2023) (collecting cases) (holding that it is well established by U.S. Supreme Court precedent that a court may not enlarge the plain text of a statute to achieve its presumed purpose and citing *Nichols*, *supra*, itself where Justice Alito said "[E]ven the most formidable argument concerning the presumed purpose of the statute cannot be overcome by the clarity we find in the text.")

F. The Elements Construed in *Nichols* Apply Equally to All Prosecutions

The elements of the statute as interpreted by *Nichols* cannot be reinterpreted to apply differently to different facts. It is a bright-line rule well-established in *Clark v. Martinez*, 543 U.S. 371, 378, 125 S. Ct. 716, 160 L.Ed.2d 734 (2005) ("[T]he meaning of words in a statute cannot change with the statute's application." ... "To hold otherwise 'would render every statute a chameleon' and 'would establish within our jurisprudence ... the dangerous principle that judges can give the same statutory text different meanings in different cases.'" *Id.* at 382, 386); *see also Patel v. Napolitano*, 706 F.3d 370, 376 (4th Cir. 2013) (applying the *Clark v. Martinez* rule to also foreclose the inconsistent use of guidelines in some cases and not in others.)

The Government did not allege that Mr. Kokinda's prior stays at temporary lodging over the months of his extensive nomadism were individually violations of the law. They have not disagreed, therefore, that a stay at temporary lodging for a week or two is not a "change of residence" or violation of 18 U.S.C. § 2250, or he would be guilty of multiple counts in multiple jurisdictions like the rejected hypotheticals in *Nichols*. *See Nichols* at 1118: ("[N]o one in ordinary speech uses language in such

a strained and hypertechnical way.", in reference to the Government's arguments that *any transitory move* could be characterized as a "change of residence" and trigger a duty to register under § 16913(c).)

How was Mr. Kokinda's final week at the Five Rivers campground fifty miles away from the previous Yokum's campground a permanent relocation *distinguishable* from his past transitory stays? This Court requires *objectively discernable standards.* *See* Manning v. Caldwell, 930 F.3d 264, 278 (4th Cir. 2019) ("Supreme Court requires that statutes be based on objectively discernable standards.")

Congress did not require offenders to register a "change of jurisdiction" or a "change of transitory location." Instead, Congress chose the word "residence" that only applies to permanent relocations in a particular locality. The primary thrust of Nichols was highlighting that *liberal* constructions of "change of residence" can mean anything, but ordinary English usage limits the scope to a final, permanent destination.

See M.S. Willman v. AG of the United States, 972 F.3d at 826 (6th Cir. 2021) (recognizing the clear dichotomy clarified by Nichols, *supra*, between permanent residents and travelers who stay several nights in temporary lodging in transitory states.); *see also* United States v. Seward, 967 F.3d 57 (1st Cir. 2020) at n.16 (recognizing that the construction in Nichols did not create any loopholes or deficiencies in the national registration goal because it left the states discretion in devising their own laws to track travelers, tourists, and visitors beyond minimalistic federal standards.)

Pursuant to *Clark v. Martinez*, there is no authority allowing a statute to be reinterpreted to fit a prosecution because the elements are ambiguous as applied. But that is exactly what the lower courts have based this case upon, ambiguous as applied to Mr. Kokinda alone, (not even to common homeless people who are anchored locally by reason of poverty).

The construction in *Nichols* is now facially integrated into the statute itself and limits registration to **orthodox** changes of residence any common man would recognize, distinguishable from *touring, commuting, passing through* a locality, or *statewide chronological presence* in multiple rural counties. *Cf. Mudock, infra.* These **unorthodox** and *liberal* senses of residency in the very least create inherent *reasonable doubt* of the element being satisfied, regardless of the sophistry applied.

G. Congress Did Not *Absurdly* Draft SORNA to Create an Entrapment by Estoppel

The greatest absurdity with the lower court's proposed criminalization of Mr. Kokinda's travels is that he is being punished without violating any published standard of state law and absent special *affirmative notice* to register despite state law. Congress could not have intended for the state law to act as an *entrapment by estoppel* misleading offenders with irrelevant, laxer registration standards. *See X-Citement Video*, 513 U.S. 64 (1994) (Congress does not intend an absurd result.); *see also United States v. Randolph*, 773 Fed. Appx. 150, 152 (4th Cir. 2019) ("A criminal defendant may assert an entrapment by estoppel defense when the government affirmatively assures her that certain conduct is lawful, the defendant engages in the

conduct in reasonable reliance on those assurances, and a criminal prosecution based upon the conduct ensues.")

In one case, *United States v. Lyte*, No. 21-10316, (9th Cir. May 16, 2023), unpublished opinion, the courts justified imposing 18 U.S.C. § 2250 liability on an offender in *dicta* despite conflicting state law standards. The opinion alleges that prosecutors can be trusted with broad discretion to decide which of the *en masse* offenders entrapped by the estoppel goes to jail for it. The majority of cases require *affirmative notice* that an offender in special situations must register under federal standards when they conflict with state law. *See* Kennedy v. Allera, 612 F.3d 261, 269 (4th Cir. 2010) (requiring registration after *affirmative notice* of a duty to register in Maryland despite conflict with published state law. Notification to register was made through U.S. probation because Maryland courts did not prohibit the use of enhanced SORNA standards in conflation with state registry law.)

See also United States v. Shenandoah, F.Supp.2d 566, 582-83 (3d Cir. (M.D.P.A.) 2008) (The Court's rebuttal to arguments that § 16917 requires the states to provide affirmative notice of enhanced SORNA standards: "In this case, defendant is not charged with violating any provision of SORNA that creates a new obligation on sex offenders -- such as periodic reporting -- but instead defendant is charged with violating those provisions for which he did have prior notice, i.e., registering in any state wherein he resided."); United States v. Whaley, 577 F.3d 254, 262 (5th Cir. 2009) ("We agree with the other circuits to have addressed this issue that notice of duty to

register under state law is sufficient to satisfy the Due Process Clause." (citations from 4th, 7th, 8th, and 10th Circuits omitted)).

See Chicago v. Morales, 119 S. Ct. 1849, 144 L.Ed.2d 67, 527 U.S. 41 (1999) (A loitering statute was, likewise, declared impermissibly vague for defining "loiter to mean "to remain in any one place with no apparent purpose," and citing United States v. Reese, 92 US 214, 221, 23 L.Ed. 563 (11876) ("The Constitution does not permit a legislature to "set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large."))

See also Grayned v. City of Rockford, 408 U.S. 104, 108-09, 92 S. Ct, 2294, 33 L. Ed. 2d 222 (1972) ("Vague laws may trap the innocent by not providing fair warning ... A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.")

The independent Civil Version of SORNA does not *actually* exist nationwide because it is a Spending Clause program, like Medicare, that hinges on each State's adoption and implementation of its enhanced standards. *See* United States v. Ditomasso, U.S. Dist. Court, No. 07-CR-132 (D. Rhode Island, May 8, 2008) (recognizing that SORNA's enhanced standards only apply in a state that has implemented them, and other offenders must only comply *generally* with the laws of each particular state to satisfy registration under SORNA.)

(a) For this reason, the criminal statute, based in part on limited portions of SORNA's civil registration criteria, is also limited by *due process* and *fair warning* constitutional limits to only criminalize a wholesale failure to register under equal or laxer state standards. *See* Whaley, *supra.*

See also United States v. Kebodeaux, 570 U.S. 387, 113 S. Ct. 2496, 186 L.Ed.2d 540 (2013) (noting that SORNA merely enhanced penalties and shortened deadlines to register as modifications of the former Jacob Wetterling Act. Furthermore, although SORNA does not *per se* adopt state law, the Supreme Court is unaware of a criminal prosecution absent concurrent state law violations.)

(b) Since Kebodeaux, cases, such as Kennedy v. Allera, 612 F.3d 261 (4th Cir. 2010), have found state law may not matter if the particular state, nevertheless, allows the use of SORNA's enhanced standards and the offender is provided *affirmative notice* of a duty to register despite state law not requiring it, eliminating *fair warning* and *due process* violations.

(1) This case is factually the opposite of Kennedy, *supra*, by reason of Mr. Kokinda never receiving *special notice* to register despite laxer state laws, and also because West Virginia has expressly **prohibited** corruption of their registry scheme with enhanced SORNA standards.

H. Affirmative Evidence Proves That Mr. Kokinda Did Not Violate State Law

The Fourth Circuit panel *assumed* that Mr. Kokinda violated West Virginia registry laws. The panel errantly cited the statutory text rather than the controlling construction declared by the West Virginia Supreme Court. Furthermore, the jury

was not provided with any instructions to find a violation of state registry laws. The strictly construed construction of the West Virginia registry statute in Beegle, *infra*, affirmatively excluded Mr. Kokinda's alleged stays at two campgrounds for less than fifteen continuous days, and it does not reach his daytime commutes to Elkins. Furthermore, it is binding on federal courts.

See State v. Beegle, 237 W.Va. 692, n.11 (W.Va. 2016) (Explaining the various registration standards in West Virginia for homeless people and clarifying that the *initial* duty to register in a particular county arises when the offender lives there for "more than fifteen continuous days," not even the broader standard of *consecutive* days.); *see also* Johnson v. Fankell, 520 U.S. 911, 916 (1997), cited more recently in Johnson v. United States, 559 U.S. 133, 138 (2010) (Federal courts do not have "any authority to place a construction on a state statute different from the one rendered by the highest court of the state."); "[s]tate courts are the ultimate expositors of the state law," Mullaney v. Wilbur, 421 U.S. 684, 691 (1975), and "a fixed and received construction of [a] statute [] of a state in its own courts" becomes "a part of the statute[]," Mudock v. City of Memphis, 87 U.S. 590, 611 (1874).

I. West Virginia Law Expressly Prohibits the Use of Enhanced SORNA Standards

Additionally, the Fourth Circuit panel errantly concluded that state law did not prohibit the use of enhanced SORNA standards to register Mr. Kokinda. *Cf.* State v. J.E., 238 W.Va. 543, 796 S.E.2d at 885-88 (W.Va. 2017) (holding that the W.Va. Supreme Court will not "contort West Virginia Code § 15-12-[] to make it conform to the Adam Walsh Act" unless the "legislature may amend our sex offender registration

statute and adopt the Adam Walsh Act in its discretion.") Although the specific facts of the case were to foreclose the prosecution of juvenile offenders adjudicated delinquent and not subject to registration under state law, the robust rationale would apply analogously to *any* enhanced SORNA standards that were not adopted by the West Virginia legislature.

J. The Bright-line Rule Announced in *Brand X* Prohibits the Use of Guidelines Altogether in the Instant Case

Because the U.S. Supreme Court found 18 U.S.C. § 2250 *unambiguous* in a unanimous decision, it would be constrained even by its own precedents from reinterpreting the statute with the use of guidelines. *Cf.* *Nat'l Cable Telecomm. Assoc. v. Brand X Internet Servs.*, 545 U.S. 967, 982, 125 S. Ct. 2688, 162 L.Ed.2d 820 (2005) (explaining that a binding judicial construction of an unambiguous statute "leaves no room for agency discretion."). The U.S. Supreme Court did not have to use the magic word "unambiguous" in *Nichols*, for the examples in *Brand X* did not use that magic word. It is enough that the U.S. Supreme Court did not *formerly* resort to the rule of lenity or deference to guidelines under *Chevron*.

See *Loper Bright v. Raimondo*, 603 U.S. 369, 219 L. Ed. 2d 832, 144 S. Ct. 2244 (2024) (J., Scalia, concurring) (recognizing that even when applying *Chevron* deference[,] *Brand X*, 545 U.S., at 982 prevented guidelines from usurping a judicial interpretation previously found "unambiguous.")

K. The Instant Case is Entitled to Summary Reversal Under Plain Error Review

As a result, the lower courts have committed numerous plain errors that did not require preservation by counsel and may be ruled on by this court in the first

instance. The reality is that the use of guidelines and uncertainty over *Chevron* so infected the trial with cumulative error that it was difficult to preserve errors.

See *Mahler v. Eby*, 264 U.S. 32, 68 L. Ed. 549, 44 S. Ct. 283 (1924); *Rice v. Ames* 180 U.S. 371, 45 L. Ed. 577, 21 S. Ct. 406 (1901), among legions of cases, recognizing the general rule that this Court has the power to notice plain or fundamental errors appearing on the record, although no question in that respect was properly raised by the parties or preserved below. These plain errors are also enough to satisfy "actual innocence" under the *Bousley v. United States*, 523 U.S. 614 (1998), habeas standard, but the grave injustice requires prompt intervention.

See also *United States v. Alvarado-Casas*, 715 F.3d 945, 951 (5th Cir. 2013) ("[E]rror is plain if the defendant's proposed interpretation 'is compelled by the language of the statute itself, construction of the statute in light of the common law, or binding judicial construction of the statute.'" (quoting *United States v. Caraballo-Rodriguez*, 480 F.3d 62, 70 (1st Cir. 2007))).

There can be no doubt that the errors highlighted in this petition meet the four-prong test announced in *United States v. Olano*, 507 U.S. 725 (1993). The **errors** are **plain** because *Nichols*, *supra*, provides a binding judicial construction of 18 U.S.C. § 2250. *Nichols* does not have to be *factually identical* to control as a binding construction in all prosecutions.

Even *qualified immunity* does not require such a high degree of specificity to give defendants notice that their conduct violates clearly established law. *See* *Smith v. Cupp*, 430 F.3d 766, 777 (6th Cir. 2005) ("[W]here a general constitutional rule

applies with 'obvious clarity' to a particular case, factually similar decisional law is not required to defeat a claim of qualified immunity." (citation omitted)).

The errors affected **substantial rights** because defendants have an absolute right to the correct statement of the law in petit and grand jury proceedings. The **fairness**, **integrity**, and **public reputation** of the judiciary is obviously compromised when it allows people to be imprisoned under erroneous interpretations of the law, rather than the established construction.

L. Plain Error in Using "Pieces of Information" to Trigger Prosecution

Trial counsel failed to raise the errors because he misunderstood the law. He believed that *United States v. Bruffy*, 466 F.App'x. 239 (4th Cir. 2012), and the *United States v. Minor*, 498 F.App'x. 278 (2012) case he previously worked on, were hopelessly the only guidance available. Cases like *Bruffy* and *United States v. Voice*, 622 F.3d 870 (2010) seemed to be on-point in the trial court because they factually addressed obligations of people moving interstate. The examples provided theories that an offender had to perpetually "update" their registration when "pieces of information" someone may list on a registry may change, e.g., "some more or less specific description of where that offender habitually lives" (ECF Doc #65, p. 16 of 21, Case 2:21CR20 USDC NDWV). However, in *Nichols*, at 1118, the court clarified that changes in these "pieces of information" do not trigger a criminal prosecution under

§ 2250.[1] Instead, § 20913(c) (formerly § 16913(c)) provided that an offender must register only when he changes his **residence**, **employment**, or **school**.

The Attorney General was delegated specific authority to define additional "pieces of information" in 34 U.S.C. § 20914(a)(8), "Any other information required by the Attorney General", as discussed in *Ward*, *infra*. And that was the whole sum of what is provided in Parts VI and VII of the DOJ guidelines. There is no doubt whatsoever that the trial court quoted extensively from Part VI and committed a grave error by using these "pieces of information" to trigger a criminal prosecution (ECF #65, pp. 15-16 of 21, Case 2:21CR20 USDC NDWV).

The authority of *Nichols* could not be more definitive or final as a prohibition foreclosing such a construction. Any factual discrepancies are immaterial. The principle is about how Congress drafted SORNA and organized the sections. Therefore, the ruling is general enough to apply to all prosecutions.

The only arguments the Government can make to uphold this prosecution is that "habitually lives" is ambiguous as applied to Mr. Kokinda. Yet, they have failed to provide authority that statutes may be reinterpreted against the defendant if they are ambiguous as applied. In operation, the panel below skipped the traditional tools of statutory interpretation, ignored *Nichols*, and vaguely conclude that *Skidmore* deference applies (regardless of whether the purpose of the delegation is *not specific*

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[1] *Nichols* at 1118, "Relatedly, the Government points out that among the pieces of information a sex offender must provide as part of his registration is "[t]he address of each residence at which the sex offender resides *or will reside*." §16914(a)(3) (emphasis added). The use of the future tense, says the Government, shows that SORNA contemplates the possibility of an offender's updating his registration before actually moving. But §16914(a) merely lists the pieces of information that a sex offender must provide if and when he updates his registration; it says nothing about whether the offender has an obligation to update his registration in the first place."

enough or whether the Executive branch lacks **expertise** to interpret criminal elements pursuant to judicial canons of law). The panel also has no concern for the fact their bright-line standard requiring mere *intent* to accrue thirty(30) days of jurisdictional presence **displaces** the "change of residence" element to cover unorthodox abstractions of *residency* contrary to the statutory text.

II. THE TERM *HABITUALLY LIVES* IS MERELY AMBIGUOUS IN ISOLATION, OR SUBJECT TO THE RULE OF LENITY, IN ANY REGARD, BECAUSE THE ATTORNEY GENERAL WAS NOT DELEGATED SPECIFIC AUTHORITY TO INTERPRET 18 U.S.C. § 2250 IN COMPLIANCE WITH JUDICIAL CANONS AND LACKED THE EXPERTISE REQUIRED TO APPLY *SKIDMORE* DEFERENCE POST-*LOPER BRIGHT*:

A. *Habitually Lives* is Merely a Sub-element of the "Resides" Element

The unanimous U.S. Supreme Court *Nichols* panel obviously considered 18 U.S.C. § 2250 as a whole in construing its operation. "Statutory construction ... is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme — because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Savings Assn. of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371, 108 S. Ct. 626, 630, 98 L.Ed.2d 740 (1988) (citations omitted).

The law requires us to accept that judges know the law and ruled correctly even if a ruling merely is implied and not expressly written in the opinion. *Cf. Walton v. Arizona*, 497 U.S. 639, 653, 110 S. Ct. 3047, 111 L.Ed.2d 511 (1990) ("Trial judges are presumed to know the law and to apply it in making their decisions.") The *Nichols*

panel did not have to expressly discuss the "habitually lives" phrase isolated from the "resides" and "residence" definitions to announce a construction binding on all cases.

It did not open up a hole for the lower courts to attack and undermine the *Nichols* court ruling. Nor did the failure of the panel to spell out that all prior interpretations were overruled by *Nichols* open up a door for the lower courts to rely on older case-law models, such as *Voice* and *Bruffy*, *supra*.

The terms *resides, residence,* and *habitually lives,* essentially mean the same thing. The liberal interpretations of these terms to cover merely *commuting, shopping,* or mere *transitory chronological presence in multiple counties over weeks in a large rural state,* analogously violates the judicial canon of strict construction applied to criminal laws. It also violates the ordinary-English-usage limitation the *Nichols* court imposed to exclude the hypertechnical interpretations sought by the Government in that case. *Habitually lives* would merely add an additional burden of proof that the offender presently lives at the property, not that he simply owns it. Yet, that all relates back in a circular fashion to where an offender makes a *bona fide* "change of residence" and currently "resides" as used in ordinary English usage.

The Government merely prefers the Attorney General's amorphous and open-ended recommendations for jurisdictions to devise harsher standards in the guidelines. Those suggestions provide an immediate public policy solution to patch up SORNA despite its failed acceptance by states refusing to implement it. And if the lower courts continue to act deliberately obtuse, they will pile up loads of wrongful convictions until this Court finally addresses the regression to older case-law.

B. The *Purpose* of the Delegation to the Attorney General Was Not Specific Enough to Allow *Skidmore* Deference

The ruling in *Loper Bright v. Raimondo*, 603 U.S. 369 (2024) should have foreclosed the Government entirely from arguing that the guidelines had any value whatsoever. Nevertheless, by vaguely discussing the issues, the Fourth Circuit panel found that the Attorney General was delegated authority to interpret SORNA, and the guidelines therefore still had the force of law and were applicable under *Skidmore* deference.

Aside from the fact that this Court made a holistic interpretation and found the statute *unambiguous*, and that of itself is binding on lower courts, *Skidmore* deference is only applicable if the expertise and delegated purpose of the agency is specific enough. Here, the Attorney General's delegation was not to interpret the *criminal* elements of 18 U.S.C. § 2250 pursuant to the judicial canons of interpretation, but instead, its expertise was in interpreting the *civil* elements as broadly as possible for jurisdictions to devise their own SORNA-inspired laws.

The Attorney General himself said that the § 20912(b) guidelines are merely a "blueprint" to assist states in crafting their own legislation and obtain federal funding. *See United States v. Ward*, 2014 WL 6388502 (USDC N.D. Fla.) The guidelines issued under § 20913(d), by contrast, were a typical function relegated to the AG historically, for it has expertise in announcing unto whom and when a statute may apply as part of its Executive branch enforcement powers.[2]

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[2] "To allow the nation's chief law enforcement officer to write criminal laws he is charged with enforcing—to "'unite'" the "'legislative and executive powers . . . in the same person'"—would be to

See Gundy v. United States, 139 S.Ct. 2116 (2019) at n.3 (Gundy "points to changes that Attorneys General have made in guidelines to States about how to satisfy SORNA's funding conditions. *See* Brief for Petitioner 32–33. But those state-directed rules are independent of the only thing at issue here: the application of registration requirements to pre-Act offenders. Those requirements have been constant since the Attorney General's initial rule, as the guidelines themselves affirm. *See* 73 Fed. Reg. 38046 (2008); 76 Fed. Reg. 1639 (2011). Indeed, the guidelines to States are issued not under § 20913(d) at all, but under a separate delegation in § 20912(b). *See* 73 Fed. Reg. 38030; 76 Fed. Reg. 1631.")

The Supreme Court characterizes the § 20912(b) guidelines that the Govt. in the case *sub judice* relies upon as merely directions for states "about how to satisfy SORNA's funding conditions"; they are not guidelines to assist the courts in determining the ***conclusive elements*** in a criminal prosecution. The DOJ does not even attempt to apply the canons of judicial construction that the courts are bound by, but instead liberally construed the elements in a manner that would make the statute unconstitutionally vague and subject to *ad hoc* revision if such liberal constructions were permissible in criminal law. *See* Grayned, *supra*.

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mark the end of any meaningful enforcement of our separation of powers and invite the tyranny of the majority that follows when lawmaking and law enforcement responsibilities are united in the same hands." United States v. Gundy, 139 S.Ct. 2116, 2144-45, 204 L.Ed.2d 522 (2019)(citing The Federalist No. 47 (Madison, endorsing "the doctrine of Montesquieu")); Accord, 1 Blackstone, Commentaries on the Laws of England, at 142; see also Cass R. Sunstein, Delegation Reconsidered: A Delegation Doctrine for the Modern Administrative State, 40 Harv. J. L. & Pub. Pol'y 147, 153 (2016). "Some agencies enforce the law; more particularly, some enforce criminal law. Is it plausible to say when criminal statutes are ambiguous, the Department of Justice is permitted to construe them as it sees fit? That would be a preposterous conclusion." Cass R. Sunstein, "Chevron Step Zero," 92 Virginia Law Review 187, 210 (2006);

In *United States v. Reynolds*, 565 U.S. 432 (2012), this Court further distinguished these two separate delegations by highlighting that the interim rule of the § 2091(d) guidelines must be drafted with the ***rule of lenity*** in mind. The guidelines in § 20912(b), by contrast, clearly do not have the faintest idea of a strict and certain construction in mind, but instead offer vague and optional choices.

(For example, at pg. 42, the DOJ guidelines suggest "[t]he jurisdiction[] may specify in the manner of [its] choosing" whether to count the 30 days in the aggregate for offenders who *live* in the jurisdiction, or may even count the days for mere *presence* in the jurisdiction for 30 days or less. *Jurisdiction* is not even specified and may be local, regional, or statewide, in the state legislature's choosing. The Attorney General himself made a separate section to optionally cover *temporary lodging* in Part VII, thereby acknowledging that the ordinary "change of residence" statutory standard would not normally apply to stays of seven days or more at a campground or hotel.)

Cf. Crandon v. United States, 494 U.S. 152, 177-78, 110 S. Ct. 997, 108 L.Ed.2d 132 (1990) ("Thus, to give persuasive effect to the Government's expansive advice-giving interpretation of § 209(a) would turn the normal construction of criminal statutes upside-down, replacing the doctrine of lenity with a doctrine of severity."); *Cf. Adamo Wrecking Co. v. United States*, 434 U.S. 275, 284, 54 L. Ed. 2d 538, 98 S. Ct. 566 (1978) (holding that the rule of lenity applied because there was some doubt whether Congress intended delegation to the agency to be used as a conclusive element in a criminal prosecution.); id. at 288, n.5, (also rejecting the authority of the guidelines under *Skidmore* deference for similar reasons.)

Therefore, (even if *Skidmore* deference may apply to some cases with specific delegations for the use of guidelines post-*Loper Bright*,) the DOJ delegation here is not specific enough to believe the DOJ had some sort of expertise to warrant *Skidmore* deference. *See Cf. Adamo*, *supra*, at n.5, (rejecting application of *Skidmore* deference doctrine because *Skidmore* only gives persuasive "respect" to specifically delegated-purpose of guidelines.)

It could not be any clearer that the lower courts are rejecting the rule announced in *Nichols* as a binding construction, in part, because the plain errors were never properly raised. As a result, they are trying to revive the old case-law that created independent liability and amorphous standards of registration based on the DOJ guidelines. And it is merely a sophism that these guidelines have "the force of law" because the Attorney General was not provided with a specific delegation to interpret 18 U.S.C. § 2250, a criminal statute bound by opposing canons of strict interpretation. *See United States v. Hilton*, 701 F.3d 959, 966 (4th Cir. 2012) (Criminal statutes are "strictly construed and should not be interpreted to extend criminal liability beyond that which Congress has plainly and unmistakably proscribed.") According to *Gundy*, the only "force of law" they have is to determine if jurisdictions are entitled to funding under the Spending Clause and have substantially implemented SORNA.

If this was a question of deference to the U.S. Sentencing Commission's revised guidelines in a sentencing issue, clearly *Skidmore* deference would be applicable. The

U.S.S.C. has expertise in devising sentencing guidelines and are perpetually delegated that very specific purpose.

C. The Lower Courts Ignored All the Warnings Regarding Guidelines Made in *Loper Bright*

This Court's landmark ruling in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) demonstrates how hostile this Court has become about the willy-nilly use of deferring to guidelines. And it has carved out the narrowest exception possible under *Skidmore* deference for the following list of reasons.

(a) *Chevron* "displaces the statutory text" instead of interpreting its meaning, *see Loper Bright*, 603 U.S. at pg. 31;

(b) *Id.* at pg. 28, noting how "courts do not always heed the various steps and nuances of" the evolving *Chevron* doctrine.

(c) *Id.* at pg. 22, noting how *Chevron* also undermines the principle that "every statute's meaning is fixed at the time of enactment", a very dangerous principle creating "an eternal fog of uncertainty", especially when applied to criminal law (*Id.* at pg. 33);

(d) *Id.* at pg. 26, noting how the Framers disallowed judges from construing the law "with an eye to policy preferences that had not made it into the statute."

The Government's work-around is to just, analogously, skip the steps required by *Skidmore*, as it did with *Chevron*, to displace the statutory text and destroy the rule of law. If the lower courts exhausted the traditional tools of statutory interpretation and applied the same "ordinary English usage" limitation on

"habitually lives", it plainly excludes the *perpetual transitory conduct* alleged against petitioner.

III. In Summary

The Government's position adopted by the lower courts violates multiple bright-line Constitutional rules clearly established in this Court sufficient to constitute *per se* plain error and justify summary reversal and acquittal. *See* Pavan v. Smith, 582 US 563, 137 S. Ct. 2075, 2079, 198 L. Ed. 2d 636 (2017) ("Summary reversal is usually reserved for cases where "the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error."); *Cf.* United States v. Dejarnette, 741 F.3d 971, 985 (9th Cir. 2013) (reversing conviction when DOJ guidelines were erroneously used in jury instructions: "As the foregoing discussion indicates, not only were the instructions prejudicially erroneous, but the evidence was clearly insufficient to sustain a conviction under a correct reading of the law. Because the evidence was insufficient, "`the Double Jeopardy Clause forbids a second trial.'" Douglas v. Jacquez, 626 F.3d 501, 505 (9th Cir.2010) (quoting Burks v. United States, 437 U.S. 1, 11, 98 S. Ct. 2141, 57 L.Ed.2d 1 (1978)).")

The trick being used to affirm this conviction is to discuss everything so ***vaguely*** that it seems to fit the desired conclusion. The only thread the Government can hold onto is that the guidelines have "the force of law," a crude sophism because the purpose of the delegation was not specific enough to include the force of *criminal* law. The other sophism was that Mr. Kokinda moved once from Vermont to West Virginia, which is only plausible by ***vaguely*** discussing the facts and couching his

extremely nomadic activity partially in the explanatory language used by the *Nichols* court.

The lower courts have also wholly ignored Mr. Kokinda's compliance with state law and have rewritten the state law standards to presume he violated them.

This case is among the most important cases on this Court's docket because Mr. Kokinda has spelled out in his *pending* lawsuit how he was charged with nine facially malicious charges at once, and this is the only one remaining. And they all used the same trick of *liberally* construing the elements so that those *uninitiated* in the law may believe he committed a crime.[3]

The following plain errors clearly foreclosed the prosecution from day one:

1. Former and future constructions of 18 U.S.C. § 2250 are foreclosed by *Nichols* under the rule announced in *Rivers v. Roadway Express, Inc.*, *supra.*

   (a) Factual distinctions between *Nichols* and the instant case are immaterial because the "resides" and "change of residence" elements, as construed, must apply the same meaning in every case under the *Clark v. Martinez* rule, and § 2250 uses the same § 20913(c) criteria to limit the duty to register in both interstate and international departure cases.

2. *Nichols* firmly established that the structure of 18 U.S.C. § 2250 limits registration to changes of **residence**, **employment**, or **school**, and does

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[3] *See* *Kokinda v. Elkins Police Dep't., et al.*, U.S Dist. Ct., No. 3:21-CV-154 (4th Cir. (N.D.W.V.) April 21, 2025, (ECF Doc. 163-1 Memorandum, and May 6, 2025, ECF Doc 165 Reply), *pending*.

not trigger a duty to register on any other basis beyond the § 20913(c) criteria.

(a) This particularly excludes registration based on § 20914(a) (formerly § 16914(a)) "pieces of information" that registries require at time of registration, such as the information required by Part VI and VII of the DOJ guidelines fulfilling the § 20914(a)(8) delegation.

3. Congress chose the specific words "residence" and "resides" which foreclose prosecution for the *transitory changes of location* Mr. Kokinda experienced.

(a) His two documented stays were brief visits and fifty miles apart, and his commutes to Elkins were simply *commutes*, not a "change of residence."

4. *Brand X* expressly prohibits the use of guidelines if a former construction of the same elements, such as *Nichols*, did not resort to the rule of lenity or guidelines.

5. It is an egregious error to conclude that Congress intended § 2250 to operate like an *entrapment by estoppel* by allowing states to egregiously mislead offenders into complacency with irrelevant, laxer state registry standards.

6. The universally binding construction of the West Virginia registry law announced in *Beegle*, *supra*, and affirmative evidence of bank records foreclosed the courts from determining that any West Virginia state registry laws were violated.

7. The West Virginia Supreme Court in State v. J.E., *supra*, expressed a rationale general enough to prohibit the registration of offenders pursuant to *any* enhanced SORNA standards unless the W. Va. Legislature's adopts SORNA.

8. The *Skidmore* test is the only method left to use guidelines, and it requires certainty that the agency has ***expertise*** in determining the question posed and that the ***specific purpose*** of the delegation is to provide the answer.

   (a) In application, the Executive branch plainly lacks the expertise to judicially interpret the criminal code, and the specific purpose of the delegation was not to interpret § 2250 even if § 20913(c) provides threshold criteria.

9. *Reynolds* requires the Attorney General to keep the **rule of lenity** in mind when it is engaged in explicitly delegated *direct* rule making that directly affects offenders.

   (a) The delegation relied upon in the instant case is *indirect* rule making through proposed adoption by state legislatures and was not written with the rule of lenity in mind to provide *fair warning* in a criminal prosecution.

10. The Government cannot provide any evidence that *any* offenders are being charged for failing to register within 3 days even if they establish a traditional home in West Virginia. Clearly, the enhanced SORNA standards are non-existent if the state has failed to implement them.

11. Last but not least, the Fourth Circuit's belief that *Kennedy v. Allera*, *supra*, is still good law and that individuals in a criminal prosecution lack standing to assert Tenth Amendment challenges is also "plain error" in light of *Bond v. United States*, 564 U.S. 211 (2011), overruling that outdated rationale.

    (a) This is just one of the many instances evidencing that the panel is stuck on outdated case-law and have failed to seriously consider the claims on their merits, resulting in a severe miscarriage of justice.

X. CONCLUSION

Therefore, a Writ of Certiorari granting summary reversal and acquittal or a full review is requested in this court's discretion to provide any relief as justice requires for a matter of extreme national importance affecting nearly a million offenders and their families. The accrual of epic wrongful convictions, if left unchecked, will grow by the day as courts are misled by the Fourth Circuit's statutory-displacing, willy-nilly guidelines construction.

This 22nd day of January, 2026.

Respectfully submitted,

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