

No. 26A208

IN THE
Supreme Court of the United States

TIMOTHY PAUL BEAGLE,
Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Colorado

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether Colorado’s “sexually violent predator” designation, under section 18-3-414.5(1)(a), C.R.S., is a criminal punishment under the Eighth Amendment to the United States Constitution.

Whether Colorado’s “sexually violent predator” designation is cruel and unusual punishment under the Eighth Amendment as applied to Mr. Beagle.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Timothy Paul Beagle. Respondent is the State of Colorado. No party is a corporation.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the Supreme Court of Colorado, the Colorado Court of Appeals, and the Jefferson County, Colorado, District Court:

Timothy Paul Beagle v. The People of the State of Colorado, No. 2024SC154 (Colo. May 18, 2026);

The People of the State of Colorado v. Timothy Paul Beagle, No. 2022CA594 (Colo. App. Jan. 4, 2024);

The People of the State of Colorado v. Timothy Paul Beagle, No. 2020CR2340 (Jeff. Co. Dist. Ct. Feb. 22, 2022).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Timothy Paul Beagle respectfully petitions this Court for a writ of certiorari to review the judgment and opinion of the Supreme Court of Colorado.

OPINION BELOW

The judgment of the Supreme Court of Colorado was published and can be found at *Timothy Paul Beagle v. The People of the State of Colorado*, 588 P.3d 697, 2026 CO 40M (Colo. 2026), and appended to this petition. *See* Pet. App., 2a-35a.

JURISDICTION

The Supreme Court of Colorado entered judgment on April 27, 2026. *See* Pet. App. 3a-4a. The Supreme Court of Colorado denied Mr. Beagle's petition for rehearing on May 18, 2026. Pet. App. 36a-38a. On August 17, 2026, Justice Gorsuch granted an extension of time within which to file this petition to and including September 15, 2026. This petition is timely filed, and this Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment of the United States Constitution, applied to the states through the Fourteenth Amendment, provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amends. VIII, XIV.

This case also involves the following statutes, the pertinent text of which is set out in the appendix to this petition pursuant to Sup. Ct. R. 14.1(f): Colorado's

“sexually violent predator” designation, § 18-3-414.5, C.R.S.; Colorado’s Sex Offender Registration Act, §§ 16-22-101, *et seq.*, C.R.S.; Colorado’s felony failure to register statute, § 18-3-412.5, C.R.S.; and Colorado’s “sexually violent predator” community notification statute, §§ 16-13-901, *et seq.*, C.R.S. *See* Pet. App., 69a-113a.

STATEMENT OF THE CASE

A. Introduction

This case presents this Court a timely and critical opportunity to clarify and update its jurisprudence regarding whether and when state-imposed sanctions—namely, sex offender classification, registration, and notification schemes—are intended to be criminal punishment by their statutory features or otherwise are punitive by their effects under the Eighth Amendment to the United States Constitution.

Specifically, this case involves Colorado’s “sexually violent predator” (“SVP”) designation and the Supreme Court of Colorado’s application of *Ellingburg v. United States*, 607 U.S. 163 (2026), *Smith v. Doe*, 538 U.S. 84 (2003), and *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), to find the designation neither was intended to be criminal punishment nor is punitive by its effects and therefore is not punishment under the Eighth Amendment.

Colorado instituted its SVP designation in 1997, when states across the country were following the federal government’s lead in passing such laws to regulate those convicted of sex offenses. Colorado’s SVP designation involves lifelong and

extensive requirements and restrictions under Colorado’s Sex Offender Registration Act (“CSORA”) and a community notification process that broadcasts a person’s information and SVP status throughout their residential community. *See* Pet. App., 69a-113a.

In 2003, this Court issued its opinion in *Smith*, 538 U.S. 84, finding a similar registration scheme from Alaska was not criminal punishment under the United States Constitution and *Mendoza-Martinez*. In 2006, however, the federal government abolished its own SVP designation scheme in favor of a science-backed tiered risk system for classifying those convicted of sex offenses. *See Beagle*, 2026 CO 24M, ¶¶ 60-65 (Márquez, C.J., specially concurring); Pet. App., 32a-35a. Since then and until now, developments in the law and social sciences regarding sex offender registration and notification schemes illustrate the need for this Court to again opine on the issue, particularly since this Court has not done so since *Smith* in 2003.

To begin, this Court in *Ellingburg*, 607 U.S. 163, updated its statutory intent analysis regarding what statutory features indicate that a statute without clear legislative declarations was intended to be punishment. This Court has not yet applied this analysis in the context of sex offender classifications or supervision schemes, like Colorado’s SVP designation, and, in fact, the Supreme Court of Colorado here is the first and only appellate court, state or federal, to apply the *Ellingburg* analysis since this Court announced its opinion. As further developed below, this Court should review and correct the Supreme Court of Colorado’s analysis.

Furthermore, like Colorado, the majority of states have retained or continue to acknowledge some form of SVP, “sexually dangerous person,” or “sexually violent offender” designation or label. And every state maintains a sex offender registry similar to that in Colorado, with a majority having some form of community notification, as well. Courts across the country, however, are not as uniform in their analysis of whether such schemes are punitive in their effects. As further explored below, since *Smith* in 2003, both federal circuit courts and state supreme courts have continued to split on whether sex offender classification and supervision schemes are punitive in their effects and to what degree. Therefore, this Court should grant review to resolve these deepening splits in the application of the law.

Crucially, also since *Smith*, and also further explored below, courts across the country, including a special concurrence in this case, have recognized the developments in the social sciences that illustrate those convicted of sex offenses do not pose the threats and risks of re-offense that we once thought them to pose—indeed, the United States Congress acknowledged the developing science in abolishing its SVP designation in 2006 and replacing it with a science-backed risk assessment system. *See Beagle*, ¶¶ 60-65 (Márquez, C.J., specially concurring); Pet. App., 32a-35a And sex offender registry and notification schemes are far less benign and regulatory than once conceived. The same science has questioned both the SVP designation, specifically, as well as registry schemes, in general. *Id.* Moreover, *Smith* dealt with an internet registry that existed both before social media and before

smartphones; this new internet frontier has drastically changed the landscape of sex offender registration and of life, itself, for those convicted of sex offenses. A new analysis for the new scientific consensus and digital world is warranted.

Finally, despite his designation, Mr. Beagle does not have the characteristics of an SVP. In fact, Mr. Beagle was found to possess no “sex-related risk factors” upon assessment, and to have no mental disorder or psychopathy that create a risk of sexual violence. Because the anachronistic SVP label does not match the level of threat it communicates, this Court should grant review.

Therefore, this Court should grant review to give modern guidance and meaning to the Eighth Amendment’s prohibition of cruel and unusual punishment in the context of sex offender classification and supervision schemes, like Colorado’s SVP designation and its attendant burdens, and to acknowledge what modern science has already established: outdated traditional labels and supervision schemes like Colorado’s SVP designation are more punitive than scientific or regulatory.

B. Factual Background

Timothy Paul Beagle was driving with his wife and daughter when they encountered E.S. and A.F. hitchhiking on the side of a rural stretch of highway—E.S. and A.F. had escaped from a residential mental health treatment facility. *See Beagle*, ¶¶ 3-4; Pet. App., 7a. Mr. Beagle picked them up and housed them with his family for ten days before he ultimately brought them to police. They were sixteen at the time and were reported missing after their escape and during this period. *Id.* Throughout

the ten days, E.S. and A.F. alleged Mr. Beagle and his family gave them varying access to drugs. *Id.*

One day throughout this period, E.S. alleged that Mr. Beagle kissed her and then attempted to sexually penetrate her; Mr. Beagle admitted that he and E.S. kissed but stated she drove the encounter and that he ended it before it progressed.

After Mr. Beagle was made aware they were officially missing and were minors by a friend, he brought E.S. and A.F. to the police station and waited for their parents with police.

C. Trial Proceedings

The state charged Mr. Beagle with ten crimes, and Mr. Beagle pled guilty to two added charges for the dismissal of the original ten: one count of criminal attempt to commit sexual assault¹ and one count of distribution of a controlled substance to a minor – schedule III or IV². *Beagle*, ¶ 4; Pet. App., 7a.

As a result of the attempt conviction, Mr. Beagle participated in the probation department's and Sex Offender Management Board's ("SOMB") sexually violent predator assessment screening instrument ("SVPASI") and an offense-specific evaluation ("OSE") as part of his presentence investigation ("PSI"). *See* § 18-3-414.5(2), C.R.S.; *Beagle*, ¶ 4; Pet. App., 7a-8a.

¹ §§ 18-3-402(1)(a), (2) (F4), C.R.S.; §§ 18-2-101(1), (4) (F5), C.R.S.

² §§ 18-18-405(1), (2)(b)(II) (DF2), C.R.S.

Mr. Beagle filed a motion objecting to the court finding that he is an SVP. Pet. App., 62a-68a. Relevant here, Mr. Beagle cited the Eighth Amendment to the United States Constitution and argued that, in part, because of the punitive nature of the designation and his personal characteristics, the court should deviate from the SVPASI's recommendation and find that Mr. Beagle is not an SVP. *Id.*

The trial court dismissed the Eighth Amendment argument, finding that “[t]he punitive argument fails because, unlike a criminal sentence, the designation of a sexually violent predator is not punishment.” Pet. App., 53a-54a. The trial court relied on *Allen v. People*, 2013 CO 44, ¶ 7, and explained that it was “bound by” *Allen*, though it had “no doubt that the designation will present some obstacles.” *Id.*

The court designated Mr. Beagle an SVP and sentenced him to a cumulative term of fifteen years in DOC—five years for the attempt conviction. Pet. App., 57a-61a.

D. Proceedings on Appeal

On direct appeal in the Colorado Court of Appeals, Mr. Beagle argued the SVP designation is cruel and unusual punishment as applied to him under the United States and Colorado Constitutions. *See* Pet. App. 46a-50a.

Like the trial court, the division of the Colorado Court of Appeals below found in an unpublished opinion that it was bound by *Allen* to hold that the SVP designation is not a criminal punishment, and therefore that it cannot be unconstitutional cruel and unusual punishment. *Id.*

The Supreme Court of Colorado granted certiorari on the issues of whether the SVP designation is punishment, and whether it is cruel and unusual as applied to Mr. Beagle, under the Eighth Amendment to the United States Constitution. *See Beagle*, ¶ 1; Pet. App., 6a.

The Supreme Court of Colorado applied the two-part intent and effects test articulated in this Court’s precedent, particularly in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963), to find Colorado’s SVP designation is neither intended to be criminal punishment nor punishment by its effects and therefore did not reach whether the designation was cruel and unusual punishment for Mr. Beagle. *See Beagle*, ¶¶ 14, 16-18, 58-59; Pet. App., 3a-31a.

To find the designation was not intended to be criminal punishment based on a statutory interpretation analysis, the Supreme Court of Colorado relied exclusively on an application of *Ellingburg v. United States*, 607 U.S. 163 (2026). *Beagle*, ¶¶ 19-25; Pet. App., 14a-18a. And to find the designation is not punitive in effect as to override the lack of a punitive intent, the Supreme Court of Colorado relied exclusively on *Smith v. Doe*, 538 U.S. 84 (2003), *Hudson v. United States*, 522 U.S. 93 (1997), and *Kansas v. Hendricks*, 521 U.S. 346 (1997). *Beagle*, ¶¶ 37-57; Pet. App. 22a-31a.

The Chief Justice of the Supreme Court of Colorado, joined by one other Justice, issued a special concurrence urging the Colorado General Assembly to reconsider the SVP statute in line with the federal government’s elimination of its

SVP designation in 2006 and with the SOMB's consistent recommendations based on the evolving scientific consensus. *Beagle*, ¶¶ 60-65 (Márquez, C.J., specially concurring); Pet. App., 32a-35a.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW MISAPPLIED THIS COURT'S RECENT ANALYSIS IN *ELLINGBURG* TO FIND THE DESIGNATION, IMPOSED BY THE COURT AT CRIMINAL SENTENCING AND BASED ON A PREDICATE CRIMINAL CONVICTION, WAS NOT INTENDED TO BE A CRIMINAL PUNISHMENT.

In *Ellingburg*, this Court found that monetary restitution pursuant to certain federal criminal convictions is a criminal punishment under the Ex Post Facto Clause based on a statutory interpretation and legislative intent analysis. Specifically, this Court opined that “[w]e are not saying that all of the statutory features present here are necessary to constitute criminal punishment, but they are sufficient,” and noted the following seven statutory features:

MVRA restitution is labeled as a penalty, is codified in the criminal code, is predicated on a criminal conviction, is imposed against a criminal defendant, is sometimes imposed in lieu of other penalties, is ordered at sentencing where the United States is the adverse party, and can result in resentencing when the defendant refuses to pay.

Ellingburg, 607 U.S. at 168; *see also id.*, at 169-70 (Thomas, J., concurring) (“ . . . in 1798, ‘punishment’ for a ‘crime’ would have been understood to refer to any coercive penalty for a public wrong”) (citing *Calder v. Bull*, 3 U.S. 386, 386, 389-91 (1798)).

The Supreme Court of Colorado, in finding that the SVP designation was not intended to be punishment, opined that *Ellingburg* analyzed six features of the

federal restitution statute that establish federal restitution is punishment, and found four present here but that the lack of the other two controlled. *Beagle*, ¶¶ 20-25; Pet. App., 15a-18a. Namely, the Court found the following four features to be present and weigh in favor of criminal punitive intent: “the SVP designation is imposed at sentencing; the People remain an adverse party; the designation is located in the criminal code; and compliance with sex-offender registration is often a condition of probation or parole, so noncompliance could result in a modification of such terms.” *Beagle*, ¶ 21; Pet. App., 16a. But the Court found the following two features to be absent and such absence to be dispositive: “it is not labeled a penalty for a criminal offense, and it is not imposed ‘in lieu of’ other punishments.” *Beagle*, ¶ 22; Pet. App., 16a.

The Court misapprehended *Ellingburg* in three ways.

First, *Ellingburg*, 607 U.S. at 166-68, analyzed seven statutory features, not six. Indeed, the Supreme Court of Colorado collapsed two into one in its recitation of the features: (1) the penalty label, and (2) being “predicated on a criminal conviction.” Compare *Beagle*, ¶ 20 (feature (1), listing them together) with *Ellingburg*, 607 U.S. at 168 (listing them separately); Pet. App., 15a-16a. Furthermore, the Court found the lack of a penalty label to be “particularly” persuasive yet did not include that the SVP designation is predicated on a criminal conviction in its statutory intent analysis. *Beagle*, ¶¶ 21-25; see also *Beagle*, ¶ 41 (acknowledging in the effects prong of the analysis that “the SVP designation only applies to behavior that is already a

crime, given that it is imposed on those who have been convicted of a sex offense”); Pet. App., 15a-18a, 24a. The Court below also failed to include in its analysis that the lifelong registration requirements accompanying the designation are enforced by threat of felony conviction and incarceration. *Beagle*, ¶¶ 21-25; § 18-3-412.5, C.R.S. Pet. App., 15a-18a, 100a-104a. Therefore, five out of the seven statutory features from *Ellingburg* are present here, contrary to the Court’s analysis—the four features found by the Court below plus the feature of being predicated on a criminal conviction. And, at any rate, *Ellingburg*, 607 U.S. at 167, emphasized that not all seven features were necessary but rather were sufficient to make it “abundantly clear that restitution is criminal punishment.”

Second, relatedly, this Court in *Ellingburg*, 607 U.S. at 167-68 (citing *United States v. Bajakajian*, 524 U.S. 321, 328 (1998)), in discussing precedent, indicated that two of the features were particularly critical to its holding, including the omitted one above: that the sanction “occurs at the culmination of a criminal proceeding and requires conviction of an underlying crime.” Therefore, contrary to the Supreme Court of Colorado’s analysis emphasizing instead the penalty label feature, the presence here of these two critical features, in combination with the three others, clearly indicates that the SVP designation is criminal punishment. *See also Sripetch v. Sec. & Exch. Comm’n*, 146 S.Ct. 1403, 1417, n. 3 (2026) (Thomas, J., concurring) (“Disgorgement also appears to be a ‘coercive penalty for a public wrong,’ so it would

have been understood at the founding as ‘punishment’ for a ‘crime’ for constitutional purposes”) (citing *Ellingburg*, 607 U.S. at 169 (Thomas, J., concurring)).

Three, the Supreme Court of Colorado found that evidence of nonpunitive intent in CSORA and the community notification statutes affirmatively indicated a lack of punitive intent for the SVP designation statute. *Beagle*, ¶¶ 23, 25; Pet. App., 16a-18a. However, as *Ellingburg*, 607 U.S. at 168-69, instructs, even if “[s]everal provisions” of a statute reflect a nonpunitive objective, that does not preclude the presence of a punitive intent because a legislature may intend for both. And, regardless, the nonpunitive declarations relied upon by the Court are specific to statutes separate from the SVP designation statute in the criminal code. *Compare* § 18-3-414.5, C.R.S. (SVP designation) *with* § 16-13-901, C.R.S. (community notification); § 16-22-103(5)(a), C.R.S. (CSORA legislative intent); § 16-22-110(6)(a), C.R.S. (same); § 16-22-112(1), C.R.S. (same); *see* Pet. App., 69a-72a (SVP designation), 85a (CSORA), 90a (CSORA), 106a (community notification).

Therefore, respectfully, the Supreme Court of Colorado misapprehended and misapplied *Ellingburg*, and this Court should grant review to correct and clarify the statutory interpretation analysis for the state supreme courts. *See* Sup. Ct. R. 10(c).

II. FEDERAL CIRCUIT COURTS AND STATE SUPREME COURTS REMAIN SPLIT POST-*SMITH* OVER WHETHER SEX OFFENDER REGISTRY SCHEMES ARE PUNITIVE IN EFFECT SUFFICIENT TO CONSTITUTE CRIMINAL PUNISHMENT.

This Court should grant review because the Supreme Court of Colorado’s opinion reveals a split in the nation’s appellate courts over the application of the

Mendoza-Martinez, 372 U.S. 144, factors to sex offender registry and community notification schemes. *See* Sup. Ct. R. 10(b).

As noted above, the Supreme Court of Colorado below, relying primarily on *Smith*, 538 U.S. 84, conducted the seven-factor *Mendoza-Martinez* analysis to find that the effects of the SVP designation, which include in large part the lifelong requirements of CSORA and community notification, were not sufficiently punitive to establish the designation is criminal punishment. *Beagle*, ¶¶ 37-57; Pet. App., 22a-31a; *see Mendoza-Martinez*, 372 U.S. at 168-69.

More specifically, the Court found two factors weigh in favor of punishment: “that the sex-offender registration and community notification programs here resemble a historical form of punishment—namely, public shaming and humiliation,” and that “the SVP designation applies to behavior that is already a crime, given that it is imposed on those who have been convicted of a sex offense.” *Beagle*, ¶¶ 38, 41; Pet. App., 22a-24a. The Court found one factor “neutral” to its analysis: “whether the law involves an affirmative disability and restraint.” *Beagle*, ¶¶ 42-43; Pet. App., 24a-25a. And, finally, the court found the other four factors to dispositively weigh against a finding of punishment: the designation does not require a finding of scienter; the designation does not promote the traditional aims of punishment; the designation and its associated requirements are rationally related to a nonpunitive purpose; and the designation and its effects are not excessive in relation to its nonpunitive purpose. *Beagle*, ¶¶ 44-56; Pet. App., 25a-31a. Thus, according to the Court, “although certain

effects of the SVP designation may resemble punishment, they do not by the ‘clearest proof’ outweigh the legislature’s nonpunitive intent.” *Beagle*, ¶ 57; Pet. App., 31a.

Several state supreme courts have come to the same conclusion as the Supreme Court of Colorado in regards to their respective state sex offender registration and notification schemes and their nonpunitive effects under *Mendoza-Martinez*, applying *Smith*, see, e.g., *State in Int. of D.D.*, 413 So.3d 319, 325-29 (La. 2025); *Commonwealth v. Torsilieri*, 316 A.3d 77, 100-110 (Penn. 2024); *Doe v. Olson*, 696 S.W.3d 320, 329-333 (Mo. 2024); *Commonwealth v. Butler*, 226 A.3d 972, 988-993 (Penn. 2020), as well as several federal circuit courts, see, e.g., *Nat’l Ass’n for Rational Sexual Offense Laws v. Stein*, 112 F.4th 196, 205-211 (4th Cir. 2024); *Nelson v. Town of Paris*, 78 F.4th 389, 396-401 (7th Cir. 2023); *Millard v. Camper*, 971 F.3d 1174, 1181-85 (10th Cir. 2020).

On the other hand, however, several state supreme court opinions have analyzed the same factors post-*Smith* to come to the opposite conclusion regarding substantially similar sex offender registration and notification schemes, finding them punitive, see, e.g., *People v. Kardasz*, 2025 WL 3691966, at *7-15 (Mich. Dec. 19, 2025); *People v. Betts*, 968 N.W.2d 497, 508-515 (Mich. 2021); *In Int. of T.H.*, 913 N.W.2d 578, 588-596 (Iowa 2018); *Commonwealth v. Muniz*, 164 A.3d 1189, 1210-18 (Penn. 2017), *superseded by statute as recognized in Butler*, 226 A.3d 972; *Doe v. State*, 111 A.3d 1077, 1089-1101 (N.H. 2015); *Starkey v. Oklahoma Dep’t of Corr.*, 305 P.3d 1004, 1017-1030 (Okla. 2013); *State v. Letalien*, 985 A.2d 4, 24-26 (Me. 2009), as

well as multiple federal circuit courts, *see Does v. Wasden*, 982 F.3d 784, 790-93 (9th Cir. 2020) (finding it plausible that Idaho’s sex offender registry scheme was punitive in effect); *Doe v. Miami-Dade Cnty., Florida*, 846 F.3d 1180, 1184-86 (11th Cir. 2017) (finding plausible claim that sex offender residency restrictions, specifically, are punitive); *Does #1-5 v. Snyder*, 834 F.3d 696, 701-06 (6th Cir. 2016) (finding Michigan’s sex offender registration scheme to be punitive in effect); *see also Does #35 v. Labrador*, 679 F.Supp.3d 1019, 1039-1048 (D. Idaho 2023) (on remand following *Wasden*, 982 F.3d 784, finding that Does plausibly alleged certain portions of Idaho’s sex offender registry scheme were punitive in effect and denying a motion to dismiss).

In fact, even in some of the cases that ultimately concluded a sex offender registry scheme was not punitive like the Supreme Court of Colorado here, the courts analyzed some *Mendoza-Martinez* factors differently than the Court here. For example, some courts have found that certain in-person registration requirements are “affirmative disabilities or restraints” weighing in favor of punishment even if a scheme ultimately is not punishment. *See, e.g., Stein*, 112 F.4th at 208-09 (finding registration requirements *are* affirmative disabilities and restraints weighing in favor of punishment but scheme ultimately not punishment); *Butler*, 226 A.3d at 988-90 (finding registration requirements *are* affirmative disabilities and restraints weighing in favor of punishment but scheme ultimately not punishment); *Millard*, 971 F.3d at 1183 (finding registration requirements are *not* affirmative disabilities

and restraints and scheme ultimately not punishment); *see also Beagle*, ¶ 42 (finding affirmative disabilities and restraints factor “neutral” to punishment analysis of Colorado’s registration scheme); Pet. App., 24a-25a; *cf. People in Int. of T.B.*, 2021 CO 59, ¶ 49 (Supreme Court of Colorado finding CSORA’s in-person registration requirements constitute affirmative disabilities and restraints for juvenile registrants).

Therefore, this Court should grant review to resolve this disparate application of the law in both the lower federal courts and the state supreme courts. Sup. Ct. R. 10(b).

III. THIS CASE IS AN IDEAL VEHICLE TO CLARIFY THE LAW OF PUNITIVE INTENT STATUTORY ANALYSIS AND TO RESOLVE THE SPLITS REGARDING THE PUNITIVE EFFECTS OF SEX OFFENDER REGISTRATION AND NOTIFICATION SCHEMES.

As stated above, the Supreme Court of Colorado relied solely on this Court’s precedent for both parts of the constitutional punishment analysis. This case, therefore, presents this Court cleanly with the opportunity to clarify the law of both parts of the analysis, as the purely legal questions under the Eighth Amendment and this Court’s law are squarely presented for this Court’s review. This Court should thus grant review to issue guidance to the courts below and settle the law. *See* Sup. Ct. R. 10(b), (c).

Particularly, this Court should grant review to issue guidance to the lower courts on *Ellingburg* statutory intent analysis and to update the law of the *Mendoza-Martinez* factors as applied to sex offender registration and notification schemes.

First, this case presents the first state supreme court opinion to apply *Ellingburg*, and, as demonstrated above, the Supreme Court of Colorado misapplied the *Ellingburg* statutory feature analysis. *See* Issue I., *supra*. Therefore, this Court should grant review to correct the erroneous analysis before other state supreme courts commit the same misapplication or otherwise create a split in *Ellingburg*'s application, and to issue guidance for the state supreme courts in applying *Ellingburg* to conduct the statutory intent analysis. Sup. Ct. R. 10(b). Indeed, this Court has already issued an order remanding a case to the Michigan Supreme Court to apply *Ellingburg* in *People v. Neilly*, 35 N.W.3d 606 (Mich. 2026), which, as of this filing, is still pending, *id.* And no federal circuit court has yet to meaningfully apply the *Ellingburg* statutory intent analysis. Because this case thus gives this Court the opportunity to clarify the law for the lower courts before the further development of its erroneous or disparate application, respectfully, this Court should grant review. *See* Sup. Ct. R. 10(b), (c).

Second, this case presents this Court with an ideal vehicle to resolve the deepening splits post-*Smith* in state supreme court and federal circuit court application of the *Mendoza-Martinez* punitive-effect factors to sex offender registration and notification schemes. *See* Sup. Ct. R. 10(b).

These splits twenty years post-*Smith* illustrate the need for this Court to update the application of this law and *Smith*, itself. *See United States v. Carolene Prod. Co.*, 304 U.S. 144, 153 (1938) (discussing that where “the constitutionality of a

statute [is] predicated upon the existence of a particular state of facts,” courts routinely overrule prior precedent based on changed factual understanding). *Smith* involved a passive sex offender registry on the internet in the early 2000s and based its opinion on a scientific understanding of sex offenders stemming from the late 1990s to which science no longer subscribes. *Id.*; see *Smith*, 538 U.S. at 98-100; *Beagle*, ¶¶ 60-65 (Márquez, C.J., specially concurring) (discussing how science around the understanding of sex offender recidivism and treatment has evolved in the last three decades) (citing, *inter alia*, Kristen M. Zgoba & Meghan M. Mitchell, *The Effectiveness of Sex Offender Registration and Notification: A Meta-Analysis of 25 years of Findings*, 19 J. EXPERIMENTAL CRIMINOLOGY 71, 90 (Sep. 2021); Jill S. Levenson, Melissa D. Grady & Geroge Leibowitz, *Grand Challenges: Social Justice and the Need for Evidence-Based Sex Offender Registry Reform*, 43 J. SOCIO. & SOC. WELFARE 3, 9, 14, 19-20 (June 16)); Pet. App., 32a-35a; see also *Snyder*, 834 F.3d at 704-05 (discussing empirical studies about sex offender recidivism and treatment that cast “significant doubt” on the reasoning of *Smith*); Ellman & Ellman, “*Frightening and High*”: *The Supreme Court’s Crucial Mistake About Sex Crime Statistics*, 30 CONST. COM. 495 (2015).

In the contemporary context, citizens can access and wield a much different and more powerful internet with greatly enhanced capabilities for viewing, sharing, and interacting with information about sex offenders, especially given the advent of smartphones and social media, and society and science have a vastly different

working knowledge of sex offender recidivism and treatment. *Id.* This case, involving common registry and community notification schemes with internet components, provides this Court the opportune vehicle to update this law given the modern era and, in so doing, close the divide in the application of the law in the lower federal and state courts. *See* Sup. Ct. R. 10(b), (c).

Third, similarly, the Supreme Court of Colorado's reliance on *Hendricks*, 521 U.S. 346, also establishes the need for this Court's review and guidance. *See Beagle*, ¶ 48; Pet. App., 26a-27a. As the four-Justice dissent indicates, this Court in *Hendricks* did not apply *Mendoza-Martinez* to determine if civil commitment for those designated an SVP in Kansas was punitive in effect. *See Hendricks*, 521 U.S. at 394-95 (Breyer, J., dissenting); *see* Sup Ct. 10(c). Relatedly, because *Hendricks* dealt with whether the civilly labeled commitment of those designated an SVP in Kansas based on a specific finding of mental illness was a criminal punishment, this Court did not analyze the SVP designation there, itself, nor its effects from registration and community notification schemes like those at issue here. Therefore, this Court has not yet meaningfully ruled whether and under what circumstances state SVP designations, themselves, constitute criminal punishment. *See* Sup. Ct. R. 10(c); *see also Kansas v. Crane*, 534 U.S. 407, 413-14 (2002) (discussing the lack of a bright-line and easily applicable rule in *Hendricks*, stating: "the Constitution's safeguards of human liberty in the area of mental illness and the law are not always best enforced through precise bright-line rules . . . Consequently, we have sought to

provide constitutional guidance in this area by proceeding deliberately and contextually, elaborating generally stated constitutional standards and objectives as specific circumstances require”).

Therefore, because this case presents this Court an opportune vehicle to correct the misapplication of *Ellingburg* and issue guidance accordingly; to update the law of *Mendoza-Martinez* and *Smith* in accordance with the modern technological and scientific era; to resolve the deepening splits in the circuit courts and state supreme courts over the punitive effects of sex offender registry and notification schemes; and to elaborate for the first time on a modern state SVP designation, respectfully, this Court should grant this petition. Sup. Ct. R. 10(b), (c).

IV. THE DESIGNATION IS CRUEL AND UNUSUAL FOR MR. BEAGLE.

The Eighth Amendment to the United States Constitution “prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed” because the “principle that a punishment should be proportionate to the crime is deeply rooted and frequently repeated in common-law jurisprudence.” *Solem v. Helm*, 463 U.S. 277, 284-85 (1983) (citations omitted); U.S. Const. amends. VIII, XIV. “When sentences are reviewed under the Eighth Amendment,” courts’ analyses are guided by objective criteria, “including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions.” *Solem*, 463 U.S. at 290-92 (citations omitted).

The SVP designation is cruel and unusual under this analysis as applied to Mr. Beagle.

First, the gravity of crime and the harshness of the penalty are disproportionate.

To begin, the underlying crime for Mr. Beagle's designation is an attempt crime, which courts recognize as, while still serious, "less serious" than a completed crime. *Solem*, 463 U.S. at 293. Indeed, the SVP-qualifying conviction here is an attempt to commit the lowest level felony that makes adults in Colorado eligible for the designation. *See* § 18-3-414.5(1)(a)(II), C.R.S.; Pet. App., 70a. Further, Mr. Beagle returned the victims to the authorities on his own volition, limiting the harm caused and threatened to the victims and society, and Mr. Beagle has no prior sexual or violent offenses. *See Solem*, 463 U.S. at 292-93. Accordingly, Mr. Beagle's pre-sentencing investigation and assessments include findings that he lacks: (1) "pedophilic disorder," (2) any "sex-related risk factors," or any "deviant sexual" or "paraphilic interests," upon SOMB assessment; and (3) any psychopathy or personality disorders that would create a risk for sexual re-offense. Mr. Beagle's risk factors comprised mainly his long-term undetected use of controlled substances.

Thus, while serious, the gravity of the underlying offense and Mr. Beagle's conduct is lessened.

To continue, the harshness of the penalty is greatly disproportionate to this lower-gravity offense.

In fact, pursuant to Mr. Beagle's conviction, alone, Mr. Beagle would only have to register annually and could petition to deregister and discontinue the annual CSORA registration requirements ten years after completing his sentence. § 16-22-113(1)(b), C.R.S.; Pet. App., 93a. Because of the SVP designation, however, Mr. Beagle will have to reregister quarterly for the rest of his life, a dramatic increase. § 16-22-113(3)(a), C.R.S.; Pet. App., 98a. The designation also comes with unique impacts on parole, the community notification requirement that will accompany Mr. Beagle to any community to which he moves, and the attendant residency restrictions that will limit where Mr. Beagle will be able to reside for the remainder of his life. *See* Pet. App., 64a-66a, 69a-113a; *see also T.B.*, 2021 CO 59, ¶¶ 50-51 (collecting municipal and state residential and economic restrictions that apply to those in Colorado subject to CSORA). Moreover, as a person with disabilities, Mr. Beagle has relied on federal assistance to survive; the SVP designation will disqualify him from federal housing assistance programs upon his release. *See* Pet. App., 64a-65a; 42 U.S.C. § 13663.

Lastly, Mr. Beagle could address the OSE and PSI evaluators' concerns regarding his drug abuse and mental health, effectively mitigating the identified risks. Yet upon re-entry into the community, he will have the harsh and punitive requirements that accompany the designation in addition to the socially alienating label for life, without any opportunity to re-evaluate or revisit his risk levels. The permanent punishment of the designation is thus overly harsh for what the state

found to be the risks posed by Mr. Beagle because the designation is not related or responsive to those risks.

Therefore, considering the offense at issue and the SVP designation's requirements of and impact on Mr. Beagle, the designation is excessively harsh compared to the underlying crime and Mr. Beagle's personal characteristics. *Solem*, 463 U.S. at 295, 300.

Second, the most serious sex crimes in Colorado—F2 sexual assault and F3 sexual assault on a child—are also subject to the SVP designation the same as F5 attempt to commit F4 sexual assault. § 18-3-414.5(1)(a)(II), C.R.S.; Pet. App., 70a. However, a person with one of those most serious and completed sex crimes could potentially not be designated an SVP, while a person convicted of a lesser, attempted crime, like Mr. Beagle, may still be designated an SVP based on non-sex risk factors, providing “some indication that the punishment at issue may be excessive.” *Solem*, 463 U.S. at 291. Relatedly, because the designation only applies to the enumerated *sex* offenses, people convicted of much more serious, completed offenses and crimes of violence, even with sexual factual bases, are not eligible for the designation. The imposition of the designation on Mr. Beagle, therefore, is excessive in light of the punishments for other sexual and violent offenses in Colorado. *Solem*, 463 U.S. at 291, 293, 298-300.

Third, finally, other jurisdictions, like Pennsylvania, allow for those designated SVPs to petition for removal of the designation and provide treatment and support

as conditions of the designation. *See Butler*, 226 A.3d at 992; 42 Pa.C.S. § 9799.15(a.2). In marked contrast, Mr. Beagle will suffer the public shame and humiliation, housing and financial destabilization, near-banishment from society, and the other restrictions and requirements associated with the SVP designation for the rest of his life without support or any recourse and despite any rehabilitative progress he makes. Thus, looking to other jurisdictions illustrates that the imposition of the lifetime SVP designation for Mr. Beagle is grossly disproportionate. *Solem*, 463 U.S. at 296-303.

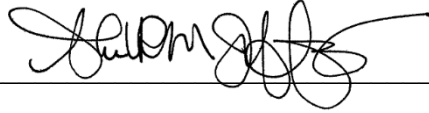
Therefore, the SVP designation is harsh and grossly disproportionate in light of Mr. Beagle's actions underlying his convictions, Mr. Beagle's personal characteristics, and the comparative punishments imposed on others in Colorado and in other jurisdictions. *Id.*

This Court, respectfully, should thus grant review because the designation is cruel and unusual punishment as applied to Mr. Beagle, and the lower courts' erroneous views of the law unfairly prevented them from conducting this analysis. U.S. Const. amends. VIII, XIV; Sup. Ct. R. 10(c).

CONCLUSION

For the foregoing reasons, Mr. Beagle respectfully requests that this Court grant this petition for a writ of certiorari to the Supreme Court of Colorado.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Shann Jeffery', is written over a horizontal line.

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