

1 residence, employment or school attendance in the
2 jurisdiction." That's true in the domestic context.

3 And then if you -- if you go on to page 24,
4 it -- it articulates the same requirement in the context
5 of needing to keep the registration current in
6 jurisdictions where someone resides when you're moving
7 out of the country.

8 CHIEF JUSTICE ROBERTS: This -- this is not
9 an administrative law provision. It's a criminal
10 statute. The Attorney General's guidelines can't expand
11 a fair reading of what Congress made illegal under
12 Federal law.

13 MR. GANNON: We're not claiming that the
14 Attorney General has expanded the text of the statute,
15 Mr. Chief Justice. I'm just saying that this is the way
16 the Department of Justice has been construing the
17 statute since 2008. Jurisdiction's implementing the
18 statute. Understand this, and they've been informing
19 sex offenders that they have an obligation.

20 CHIEF JUSTICE ROBERTS: And it's still
21 given -- given what I just said, my -- my answer is, so
22 what? So what if the Attorney General has been
23 construing this since, you know, 1875?

24 MR. GANNON: If -- if --

25 CHIEF JUSTICE ROBERTS: You cannot do

1 anything to expand the words that Congress used.

2 MR. GANNON: That -- that's -- if -- if you
3 disagree that this is a fair reading of the statute, I'm
4 not going to tell you that the guidelines make it a fair
5 reading of the statute. I --

6 CHIEF JUSTICE ROBERTS: What you're saying
7 is the Attorney General thinks it's a fair reading of
8 the statute.

9 MR. GANNON: I'm --

10 CHIEF JUSTICE ROBERTS: So -- so I should
11 think it's a fair reading of the statute.

12 MR. GANNON: Well, I'm also telling you that
13 we think --

14 (Laughter.)

15 MR. GANNON: I'm -- I'm telling you that we
16 think we have good reasons for this construction, and
17 Justice Breyer asked if there's anybody who's ever
18 adopted this construction before, and I say, yes, the
19 Attorney General publicly did so in 2008. All
20 SORNA-implementing jurisdictions were told this is the
21 way the Federal government reads the statute, and
22 they're supposed to inform sex offenders of this.

23 In this instance, Kansas has informed
24 Mr. Nichols that he has an obligation to provide notice
25 when he is terminating his residence. They've gone

1 above and beyond what SORNA requires by always demanding
2 that he inform Kansas, even though SORNA, under our
3 reading, would allow him to inform any one jurisdiction
4 involved. We think --

5 CHIEF JUSTICE ROBERTS: Just to -- I
6 probably should know this, but Kansas requires him to
7 list any change, right? He has to unregister?

8 MR. GANNON: He has to -- he has to report
9 any change in the residence information, yes.

10 CHIEF JUSTICE ROBERTS: Right. What -- what
11 sort of language did they use?

12 MR. GANNON: That their language does -- it
13 specifically says, "He must reregister any change or
14 termination of residence within three days to the
15 registering law enforcement agency or agencies where
16 last registered."

17 So that's the --

18 CHIEF JUSTICE ROBERTS: But it says "where
19 last registered."

20 MR. GANNON: Where it specifically picks up
21 and says, you have to go back to where you last
22 registered, we think that goes beyond -- that's the way
23 in which Kansas law goes beyond SORNA, because SORNA
24 does not always require that.

25 We think that in a situation like this,

1 SORNA effectively required that, because there's no
2 other place for him to have gone. But we also take
3 Petitioner's concession that SORNA permits him to comply
4 with the requirement to keep his registration current by
5 going to the office in Kansas.

6 And it's the same form. There's no doubt
7 that it's possible for him to report the change in
8 residence there. The form says, what is your address?
9 And it has location start date and location end date,
10 and those can be reported in advance or after the fact.

11 Our position is just that when SORNA gets
12 around to saying what it means to keep your registration
13 information current, you have to do that in at least one
14 place within three business days. And so we think that
15 that means he could do it in Kansas even the day after
16 he moved.

17 If you disagree with that, we still think it
18 also must mean at least, as Justice Alito was
19 explaining, that he has to do it -- he has to comply
20 with it by doing it while there still is one
21 jurisdiction. There's no doubt that Kansas was a
22 jurisdiction involved while he was still residing there.

23 JUSTICE KAGAN: Could I -- could I ask a
24 question, Mr. Gannon, of absolutely no legal
25 significance? Chalk it up to curiosity.

1 Does the Federal government bring many of
2 these prosecutions? Because I might have thought that
3 when sex offenders leave the country permanently, the
4 attitude might be like, good luck and good riddance?

5 (Laughter.)

6 MR. GANNON: Well, I -- I take the point,
7 Justice Kagan, but remember this is somebody who is not
8 just a Federal sex offender. He's on Federal
9 supervisory release. The notion that we have somebody
10 on Federal supervisory release, we're supposed to be
11 keeping track of him and making sure that he's not
12 committing other crimes. If --

13 JUSTICE KAGAN: But you're not -- you're --
14 as I understand the requirement that even you say he's
15 subject to, it's just a requirement that says he's
16 leaving the State. It doesn't -- he's not required to
17 tell you where he's going in the world. He could be
18 going to the Philippines or any other country. So it
19 doesn't really help us in terms of, you know, helping
20 our allies deal with sex offenders.

21 I'm just curious why it is that people --
22 why DOJ makes the decision to bring sex offenders back
23 to this country in such circumstances.

24 MR. GANNON: Well, as -- as I said, he was a
25 Federal sex offender who was on Federal supervisory

1 release who appeared to be on the cusp of committing
2 additional Federal offenses in the Philippines, and so
3 we brought him back. And we do think that there's a
4 Federal interest in this case.

5 But Section 2250 includes cases where
6 somebody is also violating State law, because by
7 definition, all of these registration requirements in
8 SORNA much of the time are also going to be violations
9 of State law.

10 And -- and so in this instance, the problem
11 is that the registry was inaccurate. It's supposed to
12 say where he's living.

13 JUSTICE KAGAN: I am right, right, that when
14 you say he had the responsibility to keep the registry
15 accurate, that's just to say he had the responsibility
16 to tell Kansas he was no longer in Kansas.

17 MR. GANNON: That's right.

18 JUSTICE KAGAN: Even on your view, he had no
19 other responsibilities.

20 MR. GANNON: That -- that's -- that's the
21 applicable responsibility here. That's right.

22 JUSTICE ALITO: In terms of --

23 CHIEF JUSTICE ROBERTS: How -- how do we --
24 how do we know -- I'm sorry. Go ahead, please.

25 JUSTICE ALITO: In terms of Federal policy,

1 hasn't Congress, by the enactment of the new statute and
2 in other ways, evidenced a belief that the United States
3 should not be exporting its pedophile problems to other
4 countries?

5 MR. GANNON: Yes, Justice --

6 JUSTICE ALITO: And countries like the
7 Philippines where the -- the Petitioner here went are
8 known places that are attractive to sex tourists who go
9 there to abuse young children and -- hasn't Congress
10 evidenced a concern about this both for the human rights
11 aspects of the problem and, also, I would think, for
12 relations with the government of the Philippines?

13 MR. GANNON: Absolutely, Justice Alito. And
14 it -- it would have been a Federal offense for him to
15 have engaged in -- in sexually elicit conduct in the
16 Philippines.

17 JUSTICE KAGAN: Right. And I completely
18 understand that, Mr. Gannon, but even your own
19 interpretation doesn't get you the information --

20 (Laughter.)

21 (Lights out.)

22 CHIEF JUSTICE ROBERTS: I knew we should
23 have paid that bill.

24 (Laughter.)

25 JUSTICE KAGAN: My red light on the bench is

1 still working.

2 (Laughter.)

3 JUSTICE KAGAN: -- does not get you the
4 information that you need in order to tell the
5 Philippines, look, you have a sex offender in your
6 midst.

7 MR. GANNON: That's -- that's correct,
8 Justice Kagan. The new statute does that as did the
9 supplemental guidelines that the Attorney General
10 adopted in 2011 under SORNA as additional information
11 that was required. That's not what's at issue in this
12 particular case.

13 JUSTICE SOTOMAYOR: What's so interesting is
14 that regulation tells the States to do this.

15 JUSTICE BREYER: Yeah.

16 JUSTICE SOTOMAYOR: It doesn't tell the sex
17 offender that he's obligated to do it. It says the
18 States must do it.

19 MR. GANNON: It's --

20 JUSTICE SOTOMAYOR: I'm -- it's a little bit
21 odd.

22 MR. GANNON: It's true that the guidelines
23 were addressed. Both the guidelines and the
24 supplemental guidelines were addressed to implementing
25 jurisdictions. They were articulating the Federal

1 government's construction of the statute and -- and what
2 is required.

3 JUSTICE SOTOMAYOR: So now a sex offender is
4 supposed to understand what "involved" means and read a
5 directive to jurisdictions in your regulation and say,
6 ah, that includes me, too.

7 MR. GANNON: Well, we -- we --

8 JUSTICE SOTOMAYOR: Jurisdiction is supposed
9 to do this, but now I've got to do something more.

10 MR. GANNON: Well, but what the jurisdiction
11 was told is that it has to inform sex offenders that
12 they must do this, and that happened here. Kansas
13 informed him that he had to provide notice of any
14 termination or change in his residence. That's what was
15 required by SORNA.

16 JUSTICE SOTOMAYOR: What makes it a State as
17 opposed to a Federal crime? That's really what's at
18 issue here.

19 MR. GANNON: It --

20 JUSTICE SOTOMAYOR: I understand it's a
21 crime.

22 MR. GANNON: Yes.

23 JUSTICE SOTOMAYOR: The question is which
24 kind of crime.

25 MR. GANNON: Yes. And in this instance,

1 Petitioner acknowledges it's a State crime. It is also
2 a Federal crime.

3 Mr. Chief Justice, May I finish answering?

4 CHIEF JUSTICE ROBERTS: Briefly.

5 MR. GANNON: Under Section 2250, because
6 he's a Federal sexual offender, there doesn't even need
7 to be independent travel. It's the violation of the
8 SORNA requirements that makes it a Federal offense.

9 CHIEF JUSTICE ROBERTS: Thank you, counsel.

10 Mr. Hansmeier, you have 11 minutes
11 remaining.

12 REBUTTAL ARGUMENT OF DANIEL T. HANSMEIER

13 ON BEHALF OF THE PETITIONER

14 MR. HANSMEIER: Sorry, Mr. Chief Justice. I
15 don't think I actually reserved time for rebuttal, so
16 thank you.

17 CHIEF JUSTICE ROBERTS: Okay.

18 MR. HANSMEIER: I forgot to say that, but
19 thank you.

20 I would --

21 CHIEF JUSTICE ROBERTS: Oh.

22 MR. HANSMEIER: Justice Breyer, if I can --
23 I'll -- I'll be brief.

24 On the guidelines -- this is actually a
25 direct quote -- the -- the -- according to the

1 Department of Justice, "A jurisdiction may require that
2 changes in registration information be reported by
3 registrants on a more stringent basis than the SORNA
4 minimum standards. For example, requiring that changes
5 of residence be reported before the sex offender moves
6 rather than within three business days following the
7 move."

8 I mean, that's our position. I don't --
9 there are other portions in -- in the guidelines that
10 direct jurisdictions to do this. But that -- but -- but
11 what the -- what the guidelines say right there is -- is
12 exactly what we say, that it -- it is a more stringent
13 requirement.

14 A few other points on the word "current." I
15 think if you -- if you look in the -- in the -- there's
16 a provision on in-person verifications where there is
17 requirements for a current photograph. That word
18 clearly doesn't mean a future. And I think that's
19 important to understand, that when you're talking about
20 current information, it's not future information. I
21 think Justice Kagan mentioned that a few times.

22 On 1621 -- 16921(b)(3), again, that's --
23 that's language directed towards the jurisdictions.
24 That's not a requirement for the offender, and that's
25 how the former jurisdiction would be informed of the

1 change.

2 And if there are no other questions.

3 CHIEF JUSTICE ROBERTS: Thank you, counsel.

4 The case is submitted.

5 (Whereupon, at 11:04 a.m., the case in the
6 above-entitled matter was submitted.)

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