

In the Supreme Court of the United States

JADE JOSEPH NICKELS,

Applicant,

v.

DREW EVANS, SUPERINTENDENT, BUREAU OF CRIMINAL APPREHENSION

**APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Jade Joseph Nickels respectfully requests a 60-day extension of time, to and including April 26, 2024, within which to file a petition for a writ of certiorari. The Minnesota Court of Appeals issued an opinion on July 10, 2023. A copy of that opinion is attached as Exhibit A. The Minnesota Supreme Court denied discretionary review in an order issued on November 28, 2023. A copy of that order is attached as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1257(a).

2. Absent an extension, a petition for a writ of certiorari would be due on February 26, 2024. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case concerns whether a predatory offender registration scheme that requires the submission of detailed personal information about every aspect of a person's life, where failing to provide the information and keep it up to date and accurate is a felony, impinges on a liberty interest sufficient to trigger the protections of the Due Process Clause.

4. Applicant Jade Joseph Nickels is required to register as a predatory offender based on an incident that occurred more than 25 years ago when Applicant was nineteen-years old. In June 1998, the State of Minnesota charged Applicant with first-degree criminal sexual conduct and a controlled substance crime. The state and Applicant entered into an agreement under which Applicant would plead guilty to the controlled substance crime and the state would enter an amended charge of gross-misdemeanor fifth-degree criminal sexual conduct in exchange for the state's dismissal of the first-degree criminal-sexual-conduct charge. A condition of the plea agreement was that Applicant would not have to register as a predatory offender. Applicant subsequently pled guilty to the controlled substance crime and entered an *Alford* plea to fifth-degree criminal sexual conduct. The district court accepted Applicant's plea and imposed a 17-month prison sentence on the controlled substance offense.

5. Upon his 1999 release from prison, Applicant learned that, because he was charged with the predatory offense of first-degree criminal sexual conduct (a charge that was dismissed) and convicted of fifth-degree criminal sexual conduct (which is by definition not a predatory offense), he was required to register as a predatory offender for ten years pursuant to Minn. Stat. § 243.166 (1998) (the registration statute). Applicant has been

reincarcerated several times between then and 2009; each incarceration initiated a new ten-year registration period. Minn. Stat. § 243.166, subd. 1b(a)(iii) (2022).

6. In February 2021, Applicant commenced a 42 U.S.C. § 1983 action against respondent, Drew Evans, in his official capacity as superintendent of the Minnesota Bureau of Criminal Apprehension (BCA). As relevant here, Applicant sought injunctive and declaratory relief based on procedural and substantive due-process violations. Respondent moved to dismiss the complaint and the trial court granted the motion to dismiss. The court of appeals affirmed. The Minnesota Supreme Court denied discretionary review.

7. The trial court and the Minnesota Court of Appeals held that Applicant had no cognizable liberty interest in avoiding registering as a predatory offender. It reached that conclusion even though the statute requires persons to provide personal information, fingerprints, and a photograph to law enforcement; annually verify their address by mail; and notify law enforcement five days before changing their address. It also requires registrants to provide law enforcement with their primary and secondary addresses; the addresses of property they own, lease, or rent; all locations where they are employed and schools where they are enrolled; the year, make, model, color, and license-plate number of all the motor vehicles they own or regularly drive and the expiration date of motor-vehicle tabs for the motor vehicles they own; and all telephone numbers. Minn. Stat. § 243.166, subd. 4a(a) (2022). It also requires registrants to disclose their registration status to everyone in a healthcare facility before admission to a healthcare facility. *Id.*, subd. 4b(b). The court of appeals reached that holding even though failing to keep this information

current and accurate is a felony. *See* 13 Minn. Stat. § 243.166, subd. 5 (1998) (outlining the criminal penalties for failure to register and follow registration requirements).

8. This is an important question about which federal courts of appeals and state courts of last resort have reached incompatible holdings. *See, e.g., Gwinn v. Awmiller*, 354 F.3d 1211, 1222-23 (10th Cir. 2004) (holding that the sex offender “registration requirement [is] sufficient in itself to implicate” a liberty interest); *Schepers v. Comm’r, Indiana Dep’t of Correction*, 691 F.3d 909, 915 (7th Cir. 2012) (finding that restrictions attending registration “implicate a liberty interest”); *People v. David W.*, 95 N.Y.2d 130, 137 (2000) (“Defendant’s private interest, his liberty interest in not being stigmatized as a sexually violent predator, is substantial.”); *State v. Norman*, 282 Neb. 990, 1008 (2012) (finding “a reputational liberty interest at stake when the court ... ordered [the defendant] to register” as a sex offender); *Cutshall v. Sundquist*, 193 F.3d 466, 482 (6th Cir. 1999) (finding no liberty interest implicated in registration); *Russell v. Gregoire*, 124 F.3d 1079, 1094 (9th Cir. 1997) (same); *In re Meyer*, 142 Wash. 2d 608, 620-22 (2001) (holding that the state’s registration statute “do[es] not meet the *Paul [v. Davis]* ‘stigma-plus’ requirements” but “recogniz[ing] there are authorities to the contrary”); *Helman v. State*, 784 A.2d 1058, 1071 (Del. 2001) (concluding that “a federally protected liberty interest is not implicated” by sex offender registration).

9. Applicant respectfully requests an extension of time to file a petition for a writ of certiorari. A 60-day extension would allow counsel sufficient time to fully examine the decision’s consequences, research and analyze the issues presented, and prepare the petition for filing. Additionally, the undersigned counsel have a number of other pending

matters that will interfere with counsel's ability to file the petition on or before February 26, 2024.

Wherefore, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including April 26, 2024.

Dated: February 15, 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew T. Tutt", with a large, stylized initial "A" and "T".

Andrew T. Tutt

Counsel of Record

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