No.

In the Supreme Court of the United States

JADE JOSEPH NICKELS, PETITIONER,

v.

DREW EVANS, SUPERINTENDENT,
BUREAU OF CRIMINAL APPREHENSION

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

More than 900,000 people in the United States are required to register as sex offenders pursuant to state law. Registration schemes often compel individuals to disclose wide-ranging personal information to the government, make in-person visits to authorities, and notify officials of their movements. The statutes also often publicize an individual's status as a registered sex offender, resulting in severe social stigmatization. Failure to comply with the stringent registration requirements is often a felony.

Federal courts of appeals and state courts of last resort sharply divide over whether there is a liberty interest in not being required to register, such that individuals have a right to some kind of process to contest an erroneous registration determination. This Court previously granted certiorari to answer this question in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), before ultimately ruling on alternative grounds.

In a companion case issued the same day, Justice Stevens expressed that the Court had "fail[ed] to decide whether the statutes deprive the registrants of a constitutionally protected interest in liberty." *Smith v. Doe*, 538 U.S. 84, 111 (2003) (Stevens, J., dissenting). Given that "[t]he statutes impose significant affirmative obligations and a severe stigma on every person to whom they apply," *id.*, they "unquestionably affect a constitutionally protected interest in liberty," *id.* at 112.

The question presented is:

Whether a registration scheme that requires a person to provide detailed information about every aspect of his life, where failing to provide the information and keep it up to date and accurate is a crime, impinges on a liberty interest sufficient to trigger the protections of the Due Process Clause.

RELATED PROCEEDINGS

2nd District Court, Ramsey County, Minnesota:

Nickels v. Evans, No. 62-cv-21-728 (Minn. Dist. Nov. 15, 2022) (order granting summary judgment)

Court of Appeals of Minnesota:

Nickels v. Evans, No. A22-729 (Minn. App. July 10, 2023) (order of affirmance)

Supreme Court of Minnesota:

Nickels v. Evans, No. A22-729 (Minn. Nov. 28, 2023) (order denying further review)

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The order of the Supreme Court of Minnesota (Pet. App. 62a) is unreported. The decision of the Court of Appeals of Minnesota (Pet. App. 1a-17a) is unpublished but available at 2023 WL 4417495. The trial court's order granting summary judgment to respondent (Pet. App. 18a-38a) is unreported.

JURISDICTION

After the Supreme Court of Minnesota denied further review, the judgment of the Court of Appeals of Minnesota was entered on December 8, 2023. Pet. App. 60a. Justice Kavanaugh then extended the time to file a petition for certiorari to April 26, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Relevant statutory and constitutional provisions are reproduced in the Appendix (Pet. App. 63a-91a).

STATEMENT OF THE CASE

This case presents a square and indisputable conflict over a significant question of constitutional law: whether an individual has a liberty interest in avoiding an erroneous determination that she must participate in a registration scheme that requires her to provide detailed information about every aspect of her life to the government, where failing to provide the information and keep it up to date and accurate is a crime. The case represents a natural follow-on to the Court's decision in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003). The Court should take this case and resolve once and for all whether a state must provide some form of

process to ensure that an individual is not erroneously made to register as a sex offender.

In the proceedings below, the Minnesota Court of Appeals declared itself bound by a prior decision of the Minnesota Supreme Court; in that case, the Minnesota Supreme Court held that because the state's registration requirements impose a minimal burden, compelling an individual to register as a sex offender does not sufficiently change the person's status under state law to implicate a liberty interest. *Boutin v. LaFleur*, 591 N.W.2d 711 (Minn. 1999). In that earlier decision, Judge Anderson dissented, noting that sex offender registration imposes "serious restrictions for a person living in a free society such as ours," and "that what separates our society from totalitarian states is that we take individual freedoms seriously and will not deprive citizens of those freedoms without strict adherence to the procedural requirements of the law." *Id.* at 721.

This case easily meets this Court's conventional criteria for review. The split of authority is obvious and has been widely recognized by courts and commentators.[1]

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[1] *E.g.*, *Gwinn v. Awmiller*, 354 F.3d 1211, 1223 (10th Cir. 2004) (comparing Second Circuit decision with opinions from the Sixth and Ninth circuits); *Pers. v. Pennsylvania State Police Megan's L. Section*, No. 222 M.D. 2013, 2015 WL 6790285, at *5 (Pa. Commw. Ct. Nov. 3, 2015) ("The federal circuit courts appear to be split on whether state Megan's Laws satisfy the 'stigma-plus' test and the United States Supreme Court has yet to address this issue."); Daniel Patrick Moylan, *Megan's Laws: Community Registration and Notification Laws for Sex Offenders*, 1 GEO. J. GENDER & L. 727, 740 (2000) ("Federal courts are split on whether registration and notification laws implicate a constitutionally protected liberty interest."); *Making Outcasts Out of Outlaws: The Unconstitutionality of Sex Offender Registration and Criminal Alien Detention*, 117 HARV. L. REV. 2731, 2733 n.19 (2004) ("The lower courts are split on th[e] issue" of "whether the registry impaired a liberty interest sufficient to trigger procedural due process."); Catherine L.

It has existed for decades, and this Court has even granted review once before to answer the question. Three federal courts of appeals and six state courts of last resort have held that a state's decision that an individual must register as a sex offender changes his status under state law and implicates a liberty interest. Three circuits, along with the Supreme Court of Minnesota, have reached the opposite outcome, holding that a state does not alter a person's legal status by compelling registration and its attendant burdens. Further percolation is pointless: the arguments have been thoroughly developed on each side, and there is no realistic prospect that either bloc will reverse course. All the while, the right to challenge a state's erroneous decision regarding sex offender registration has been left to the accident of geography.

The existing situation is intolerable. The question presented raises legal and practical issues of surpassing importance, and its correct disposition is critical to the rights of hundreds of thousands of Americans. States impose significant and invasive burdens on individuals required to register as sex offenders, and the social stigma that attaches is overwhelming. Yet in Minnesota, as well as the Sixth, Eighth, and Ninth Circuits, a state need not provide any process to guard against the

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Carpenter, *The Constitutionality of Strict Liability in Sex Offender Registration Laws*, 86 B.U. L. REV. 295, 364 (2006) ("[C]ourts have divided on whether registration includes a sufficient alterable status to qualify as the stigma plus."); Eric J. Mitnick, *Procedural Due Process and Reputational Harm: Liberty As Self-Invention*, 43 U.C. DAVIS L. REV. 79, 135 (2009) (observing that "lower courts have been split on the plus aspect of the stigma-plus doctrine" regarding sex offender registration); Melissa Blair, *Wisconsin's Sex Offender Registration and Notification Laws: Has the Wisconsin Legislature Left the Criminals and the Constitution Behind?*, 87 MARQ. L. REV. 939, 951 (2004) ("[C]ircuits had split jaggedly on the issue of what liberty interests, if any, fulfilled the 'plus' component of the test.").

erroneous designation of a person as a sex offender. Because this case presents an optimal vehicle for resolving this important issue of federal law left unresolved in *Connecticut Department of Public Safety v. Doe*, the petition should be granted.

A. Legal Background

1. The Fourteenth Amendment to the United States Constitution provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

a. A liberty interest protected by the Due Process Clause "may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' or it may arise from an expectation or interest created by state laws or policies." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) (citation omitted). "[A] State creates a protected liberty interest by placing substantive limitations on official discretion." *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). A person must be afforded procedural due process, for instance, before the state deprives him of the "freedom from bodily restraint and punishment," *Ingraham v. Wright*, 430 U.S. 651, 674 (1977), revokes his parole from prison, *Morrissey v. Brewer*, 408 U.S. 471, 482-84 (1972), or takes away his "right to work for a living," *Truax v. Raich*, 239 U.S. 33, 41 (1915).

b. In *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951), this Court considered the Attorney General's decision to designate several organizations as "Communist," such that their members could be barred from government employment. *Id.* at 124-27. That designation placed no affirmative burden on the organizations' members to provide information or report to authorities under threat of criminal sanction. *See id.* at 125-30. The plurality opinion reasoned that because the Attorney General's classification was "patently arbitrary," *id.* at 138, the plaintiff organizations stated a

claim that the Attorney General acted beyond the scope of his powers. *Id.* at 136, 141.

Justice Frankfurter concurred in the judgment, explaining that the issue truly sounded in due process. *Id.* at 161. "[D]esignation has been made without notice," Justice Frankfurter expressed, "without disclosure of any reasons justifying it, without opportunity to meet the undisclosed evidence or suspicion on which designation may have been based." *Id.* "The requirement of 'due process' is not a fair-weather or timid assurance," he explained, and it "[r]epresent[s] a profound attitude of fairness between man and man, and more particularly between the individual and government." *Id.* at 162. "[A] democratic government must therefore practice fairness; and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights." *Id.* at 170.

In *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), the Court determined that officials were required to provide due process before posting public notice that a person engages in "excessive drinking" and forbidding "the sale or gift of intoxicating liquors" to her. *Id.* at 434. "[W]ithout notice or hearing" to Constantineau, police "posted a notice in all retail liquor outlets in Hartford" that she was forbidden from receiving liquor. *Id.* at 435. The state statute again did not require designated individuals to report to authorities, provide information, or mandate affirmative actions under threat of prosecution. *See id.* at 435-36.

The Court asserted that "where the State attaches 'a badge of infamy' to [a] citizen, due process comes into play." *Id.* at 437. Quoting Justice Frankfurter's concurrence in *McGrath*, the Court added that "[t]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Id.* "Where a person's good

name, reputation, honor, or integrity is at stake because of what the government is doing to him," the Court continued, "notice and an opportunity to be heard are essential." *Id.* Because Constantineau was afforded "no process at all" and "may have been the victim of an official's caprice," the state's "unsavory label" could not stand without due process, the Court concluded. *Id.*

This Court returned to the issue in *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972). The plaintiff there brought suit after a public university declined to renew his contract, arguing in part that lack of "notice of any reason for nonretention and an opportunity for a hearing violated his right to procedural due process of law." *Id.* at 569. This Court rejected the plaintiff's argument, noting that the state "did not make any charge against him that might seriously damage his standing and associations in his community." *Id.* at 573. The state did not "charge" him with "dishonesty" or "immorality," and it "would be a different case" if it had. *Id.* (collecting cases). "In such a case, due process would accord an opportunity to refute the charge before University officials." *Id.* Because the plaintiff did not have a property interest in his employment either, he lacked an interest requiring due process protections before non-renewal of his contract. *Id.* at 578-79.

In *Paul v. Davis*, 424 U.S. 693 (1976), the Court considered the liberty interest once again. There, police listed an individual charged with shoplifting on a flyer sent to notify local businesses of potential thieves. *Id.* at 694-96. The police in *Paul* did not require potential shoplifters to check in with authorities or take affirmative action under threat of imprisonment. *See id.* at 694-96. The plaintiff sued the police, contending that they deprived him of a "liberty" protected under the Fourteenth Amendment. *Id.* at 697.

The Court disagreed with the plaintiff's argument, explaining that its relevant "line of cases does not establish … that reputation alone, apart from some more tangible interests such as employment, is either 'liberty' or 'property' by itself sufficient to invoke the procedural protection of the Due Process Clause." *Id.* at 701. As such, there is "no constitutional doctrine converting every defamation by a public official into a deprivation of liberty." *Id.* at 702. Reviewing its caselaw, the Court commented that "there exists a variety of interests which are difficult of definition," *id.* at 710, but the Court had "repeatedly ruled" that procedural due process guarantees apply to "interests … initially recognized and protected by state law … whenever the State seeks to remove or significantly alter that protected status." *Id.* at 710-11.

Because "Kentucky law does not extend to respondent any legal guarantee of present enjoyment of reputation" which the state "altered," *id.* at 711-12, "any harm or injury to that interest … does not result in a deprivation … nor has it worked any change of respondent's status as theretofore recognized under the State's laws," *id.* at 712. Due process protections therefore did not apply. *Id.*

Litigants and lower courts soon began referring to the holding of *Paul v. Davis* as the "stigma-plus" test. *See Moore v. Otero*, 557 F.2d 435, 437 (5th Cir. 1977); *Siegert v. Gilley*, 500 U.S. 226, 234 (1991).

2. Congress has gradually increased both the information sex offenders are required to provide in participating states, as well as the standard punishment for failure to comply.

In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. Pub. L. 103-322, 108 Stat. 1796, 2038 (1994). The law tasked the Attorney General with

developing guidelines for state programs requiring individuals convicted of certain offenses to register with law enforcement, provide address and other demographic information, and verify the address upon request. *Id.* The statutory scheme required participating states to introduce unspecified "criminal penalties" for violations and provided that states "may release relevant information that is necessary to protect the public concerning a specific person required to register." *Id.* at 2041-42. Congress conditioned federal funding on states' compliance with the Act. *Id.* at 2042. The statute provided no mechanism to challenge a state official's decision to designate an individual as a sex offender. By 1996, forty-seven states had enacted registration statutes. Ketanji Brown Jackson, *Prevention Versus Punishment: Toward A Principled Distinction in the Restraint of Released Sex Offenders*, 109 Harv. L. Rev. 1711, 1713 (1996).

Congress soon amended the Act, through Megan's Law, to require broader dissemination of information. Pub. L. 104-145, 110 Stat. 1345 (1996). The law allowed for release of information "for any purpose permitted under the laws of the State," and mandated that the State "shall release relevant information that is necessary to protect the public concerning a specific person required to register." *Id.* Congress made various other incremental changes to relevant federal law over the ensuing decade, and by 2003 all fifty states had enacted a version of Megan's law. *Connecticut Dep't of Pub. Safety*, 538 U.S. at 4.

In 2006, Congress passed the Sex Offender Registration and Notification Act (SORNA), which wholly rewrote the federal standards for sex offender registration and notification. Pub. L. 109-248, 120 Stat. 587 (2006). SORNA requires registration and categorization of sex offenders based on the crime of conviction. *Id.* § 111. Offenders must register before

completing their sentences and must notify authorities "in person" within three business days after "each change of name, residence, employment, or student status." *Id.* § 113. Offenders must also appear in person at least once per year, or as often as every three months, to verify information. *Id.* § 116. Jurisdictions "shall" make information about offenders available on the Internet, although jurisdictions may exempt information related to Tier I offenders. *Id.* § 118.

SORNA requires participating states to "provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with" its requirements. *Id.* § 113(e). At the same time, Congress added a federal statute criminalizing an individual's failure to register. *Id.* § 141; 18 U.S.C. § 2250. Violation carries imprisonment of up to ten years. *Id.* SORNA continued to condition federal funding on states' compliance, Pub. L. 109-248 § 125, and 22 states and territories met SORNA's minimum requirements as of early 2022, U.S. Dep't of Just., Sex Offender Registration and Notification Act (SORNA) State and Territory Implementation Progress Check (Jan. 25, 2022), at https://bit.ly/3WbaKQ3.

Neither SORNA nor its predecessors provide any mechanism for individuals to challenge a state's determination that they are required to register, meaning that states need not allow for error correction. *See generally* Pub. L. 109-248; Pub. L. 103-322.

3. In 2003, prior to SORNA, this Court evaluated the effect of sex offender registration statutes on individual constitutional protections in two companion cases.

In *Connecticut Department of Public Safety v. Doe*, this Court granted certiorari to review the Second Circuit's decision that public disclosure "deprived registered sex offenders of a 'liberty interest,' and violated the Due Process Clause." 538 U.S. at 4. The

Second Circuit concluded that due process was lacking "because officials did not afford registrants a predeprivation hearing to determine whether they are likely to be 'currently dangerous.'" *Id.* This Court reversed, holding that a finding of current dangerousness was not relevant to the statutory scheme, which considered "an offender's conviction alone." *Id.* at 7. "[D]ue process" thus "does not entitle [an offender] to a hearing to establish a fact that is not material." *Id.* at 7.

In *Smith v. Doe*, 538 U.S. 84 (2003), the Court decided that Alaska's sex offender registration requirements did not constitute retroactive punishment prohibited by the *Ex Post Facto* Clause. *Id.* at 89. The Court reasoned that the Alaska legislature "inten[ded] … to create a civil, nonpunitive regime." *Id.* at 96. The Court further noted that the Alaska law did not resemble traditional forms of punishment, imposed no physical restraint, served a nonpunitive purpose, and was not excessive with respect to that purpose. *Id.* at 97-106.

Justice Stevens dissented in *Smith*, observing that the Court had "fail[ed] to decide whether the statutes deprive the registrants of a constitutionally protected interest in liberty." 538 U.S. at 111. "The statutes impose significant affirmative obligations and a severe stigma on every person to whom they apply," he asserted. *Id.* The Alaska statute required offenders to "provide local law enforcement authorities with extensive personal information" at least once a year for 15 years or at least quarterly for life. *Id.* A registrant had one working day to update information after moving and could not change his appearance without notifying authorities. *Id.* Much of this information would be placed on the Internet. *Id.* "The registration and reporting duties imposed on convicted sex offenders are comparable to the duties imposed on other convicted criminals during periods of supervised release or parole," Justice Stevens added. *Id.* "[T]hese

statutes unquestionably affect a constitutionally protected interest in liberty." *Id.* at 112.

4. Minnesota, like all states, requires individuals convicted of certain offenses to register with authorities.

a. Minnesota's law mandates registration for those convicted of a specified list of felony offenses, as well as those charged with the offenses but convicted of "another offense arising out of the same set of circumstances." Minn. Stat. § 243.166, subd. 1b(a). The statute may thus compel defendants to register as predatory sex offenders even when they are acquitted of criminal sexual conduct but convicted of other offenses, or when they plead guilty to lesser offenses. *See State v. Lopez*, 778 N.W.2d 700, 706 (Minn. 2010) ("[T]he circumstances underlying both [charges] must overlap with regard to time, location, persons involved, and basic facts.").

The statute is silent as to who decides that the crime of conviction "aris[es] out of the same set of circumstances" as the charged offense, meaning that neither a court nor state official may be held accountable for an error. *See generally* Minn. Stat. § 243.166. While the convicting court may inform a defendant of the duty to register, the registration statute specifically provides that the court "may not modify the person's duty to register." Minn. Stat. § 243.166, subd. 2. The Bureau of Criminal Apprehension (BCA) is apparently the ultimate authority, *see generally* Minn. Stat. § 243.166, but the statute provides no mechanism to challenge the BCA's individualized determination, including after the state criminally charges an individual for failure to register.

b. Under Minnesota's scheme, registrants must take regular, affirmative action to provide the BCA with an exhaustive amount of personal information. Minn. Stat. § 243.166 subd. 4a. Registrants must provide the address of their primary residences, any secondary homes, and any properties that they own, lease, or rent. Minn. Stat.

§ 243.166 subd. 4a(a)(1)-(3). Registrants must inform the BCA of valid addresses for their workplaces and places they attend school. Minn. Stat. § 241.166 subd. 4a(a)(4)-(5). During the period in which they are compelled to register, registrants must timely complete an annual primary address verification. Minn. Stat. § 243.166 subd. 4(e). If registrants plan to change their primary residences, they must give notice to law enforcement, in writing, five days before they start living at their new address. Minn. Stat. § 243.166, subd. 3(b).

Examples of the personal information registrants must provide include fingerprints and biological specimens for DNA analysis. Minn. Stat. § 243.166 subd. 4(a). Registrants must additionally provide the BCA with a list of telephone numbers where they can be reached, including home, cell, work, and school. Minn. Stat. § 243.166 subd. 4a(a)(8). Registrants must inform the BCA of the color, year, make, model, and license plate numbers and tabs for all vehicles that they own or regularly operate. Minn. Stat. § 243.166 subd. 4a(a)(6)-(7). Further, Minnesota law enforcement agents may photograph registrants at any time, with frequency chosen by the appropriate authority. Minn. Stat.§ 243.166, subd. 4(d)(1).

Some registrants must comply with these requirements for life following conviction. Minn. Stat. § 243.166, subd. 6(d). Others must comply for a period of ten years following the offense or until their probation, supervised release, or conditional release period expires. Minn. Stat. § 243.166, subd. 6(a). If a registrant is incarcerated following a new offense, the ten-year registration period starts anew upon release. Minn. Stat. § 243.166, subd. 6(c).

Minnesota's predatory offender registration scheme contemplates public release of sex offender status. The statute requires all registrants to notify officials prior to

admission to a healthcare facility, as the facility is required to circulate a fact sheet with the offender's name, description, conviction history, risk level classification, and likely victims. Minn. Stat. § 243.166, subd. 4b(b)-(c). For certain risk levels, disclosure must be provided to healthcare providers before the registrant can even receive direct care. Minn. Stat. § 243.166, subd. 4b(e). Law enforcement in the area a registrant lives, expects to live, is employed, or is regularly found may disclose information to the public in accordance with an individual's assigned risk level. Minn. Stat. § 244.052. For risk level III offenders, for instance, officials may notify organizations and community members in proximity to the individual's residence or workplace. Minn. Stat. § 244.052, subd. 4(c)(1). A registrant's information may also be disclosed to child protection workers or local welfare agencies for family assessments or to authorize the offender to live in a household where children reside. Minn. Stat. § 243.166, subd. 7(b); Minn. Stat. § 244.057.

Failure to comply with Minnesota's registration statute is a felony. A first conviction carries a presumptive sentence of between one and five years. Minn. Stat. § 243.166, subd. 5(b). A subsequent violation carries a presumptive sentence of two-to-five years. *Id.* subd. 5(c). The sentence carries no possibility for probation, parole, discharge, work release, conditional release, or supervised release. *Id.* subd. 5(e). A registrant who fails to provide the BCA with required information or fails to return a verification form within ten days of receipt will be required to register for an additional five years, tacked on to the end of the offender's registration period. Minn. Stat. § 243.166, subd. 6(b).

The registration requirements for those who are homeless or otherwise highly mobile are even more comprehensive. Registrants who lack permanent addresses or who are homeless must alert law

enforcement within 24 hours of the time they no longer have a primary address and within 24 hours of moving to a new jurisdiction. Minn. Stat. § 243.166, subd. 3a(a)(c). So long as registrants lack a permanent address, they must report in-person to law enforcement on a weekly basis and provide law enforcement with a description of their whereabouts with as much specificity as possible. Minn. Stat. § 243.166, subd. 3a(d)-(e).

c. In *Boutin v. LaFleur*, the Supreme Court of Minnesota considered a procedural due process challenge to a previous version of its sex offender registration statute. Minnesota charged Boutin with criminal sexual conduct in the third degree, among other counts. 591 N.W.2d at 713. Boutin pled guilty to third-degree assault, *id.*, a crime for which the sex offender statute would not normally mandate registration. The BCA nonetheless required Boutin to register as a predatory offender because he was convicted of "another offense arising out of the same set of circumstances" as the criminal sexual conduct charge. *Id.* at 715-16.

Boutin brought suit, arguing in part that "his constitutional right to procedural due process was violated when he was required to register as a predatory offender without first being confronted with such charges." *Id.* at 718. He contended that he had a protected liberty interest under *Paul v. Davis*'s "stigma-plus" test. *Id.* The Minnesota Supreme Court agreed that Boutin met the "stigma" portion of the test, as "[b]eing labeled a 'predatory offender' is injurious to one's reputation." *Id.* Although "the information regarding Boutin's case is available to the general public in the form of court documents," the court observed, "there is a distinct difference between the mere presence of such information in court documents and [its] active dissemination … to the state's law enforcement community." *Id.* Boutin failed the "plus" portion of the test, however, because "there is no

recognizable interest in being free from having to update address information." *Id.* "Such a requirement is a minimal burden," the court continued, "and is clearly not the sufficiently important interest the 'stigma-plus' test requires." *Id.*

Justice Anderson dissented, asserting that "because of the[] serious consequences" that accompany registration, "procedural due process must be followed." *Id.* at 720. "[T]he former charges against [Boutin] were dismissed pursuant to a plea agreement," Justice Anderson explained, and "the record before us lacks any finding" that the crime "of which Boutin stands convicted arose out of the same circumstances as the dismissed charges." *Id.*

"These are serious restrictions for a person living in a free society such as ours," Justice Anderson asserted. *Id.* at 721. "It is worthy to note that what separates our society from totalitarian states is that we take individual freedoms seriously and will not deprive citizens of those freedoms without strict adherence to the procedural requirements of the law," Justice Anderson continued. "Unfortunately, absent a finding by the district court, procedural due process was not met in this case." *Id.*

B. Factual Background

1. In June 1998, Minnesota charged petitioner with felony first-degree criminal sexual conduct, which is a registrable offense, as well as possession of a controlled substance. Pet. App. 2a. Petitioner agreed to plead guilty to the controlled substance offense and gross-misdemeanor fifth-degree criminal sexual conduct, a non-registrable offense. *Id.* In exchange, the state agreed to dismiss the first-degree criminal sexual conduct charge and promised petitioner that he would not be required to register as a sex offender. Pet. App. 2a-3a. Petitioner entered an *Alford* plea to the gross-misdemeanor criminal sexual conduct charge, and the court imposed a 17-month

prison sentence. Pet. App. 3a. The court did not inform petitioner that he was required to register as a sex offender, nor did it find that the misdemeanor charge arose from the same circumstances as the dismissed charge. After petitioner served his sentence, the BCA informed him that he was required to register as a predatory offender pursuant to Minn. Stat. § 243.166 because he was originally charged with felony criminal sexual conduct. *Id.*

As a result of subsequent incarceration for offenses unrelated to criminal sexual conduct, petitioner is required to register as a predatory offender until at least February 2030. Pet. App. 3a. At no time did Minnesota afford petitioner notice or a hearing regarding his requirement to register, meaning that he received no process whatsoever.

2. In February 2021, petitioner filed a lawsuit under 42 U.S.C. § 1983 against respondent in his official capacity as superintendent of the BCA. Petitioner alleged, among other theories, that the state has erroneously required him to register as a predatory offender based on a dismissed charge, depriving him of due process of law in violation of the Fourteenth Amendment. Pet. App. 94a-95a. Relying on *Boutin v. LaFleur* as controlling precedent, the trial court concluded that petitioner could not show the state's requirement that he register as a predatory offender implicated a liberty interest protected by the Due Process Clause of the Fourteenth Amendment. Pet. App. 32a-35a.

3. The Minnesota Court of Appeals affirmed. The court observed that in *Boutin v. LaFleur*, the Supreme Court of Minnesota ruled that the sex offender registration requirement imposes only a "'minimal burden' and 'is clearly not the sufficiently important interest the stigma-plus test requires.'" Pet. App. 10a. The court noted that since *Boutin*, Minnesota had greatly

expanded the breadth of information registrants must provide, as well as required disclosure of registration status before admission to a healthcare facility. Pet. App. 10a-11a. The court nonetheless concluded that these additional requirements do "not lead to the loss of a liberty interest under the 'stigma-plus' test" because they placed "only a minimal burden on offenders." Pet. App. 11a. The court thus rejected petitioner's contention that the requirement to register as a predatory offender affects his interest in being free from the threat of prosecution, as well as his ability to obtain admission to addiction treatment facilities, maintain his parental rights, or find employment and housing. Pet. App. 11a-13a. As a result, he was entitled to no process to challenge the BCA's decision the he must register as a predatory offender. Pet. App. 13a. The Supreme Court of Minnesota declined discretionary review. Pet. App. 62a.

REASONS FOR GRANTING THE PETITION

I. THERE IS A CLEAR CONFLICT OVER WHETHER REGISTRATION SCHEMES THAT IMPOSE BURDENSOME REPORTING REQUIREMENTS BACKED BY SERIOUS CRIMINAL PENALTIES IMPLICATE A PROTECTED LIBERTY INTEREST

The decision below further cements a conflict over a longstanding question that *Connecticut Department of Public Safety v. Doe* left open: whether a liberty interest is implicated by an individualized requirement to report wide-ranging information to authorities under penalty of imprisonment. Federal courts of appeals and state courts of last resort have splintered, taking dramatically different approaches to the question of whether designation as a sex offender, accompanied by registration requirements, "significantly alter[s]" a person's "status as a matter of state law" in a manner implicating a liberty interest under *Paul v. Davis*. 424 U.S. at 708. The uncertainty over this area is palpable,

with federal and state judges alike dissenting from their own courts' decisions, comparing lack of due process here to the practice of "totalitarian states," *Boutin*, 591 N.W.2d at 721 (Anderson, J., dissenting); and observing that "these statutes unquestionably affect a constitutionally protected interest in liberty," *Smith*, 538 U.S. at 112 (Stevens, J., dissenting).

The split of authority present when this Court granted certiorari in *Connecticut Department of Public Safety v. Doe* has only deepened, reaching at least 9-4, with two sides firmly dug in on their respective rules. The conflict has been openly acknowledged by courts and commentators alike, and there is no chance it will resolve itself. *See, e.g.*, *supra* note 1. At least three federal circuits and six state supreme courts have held that sex offender registration requirements do change an individual's state-law status. In stark contrast, at least three federal circuits agree with the Minnesota Supreme Court that registration under penalty of imprisonment is not a "plus factor" supporting a liberty interest. Several of these state courts, including those in Nebraska and Oregon, sit in federal circuits that have reached the opposite outcome.

The scope of Fourteenth Amendment due process rights now varies widely by jurisdiction, and only some individuals can petition the state to correct the erroneous application of registration requirements. This flagrant conflict over the rights of nearly one million Americans is unbearable, and definitive guidance over the scope of the liberty interest is overdue. The division will not subside without this Court's intervention, and the Court should grant this petition to resolve it.

1. The Fifth, Seventh, and Tenth circuits have concluded that a requirement to register with the government alters an individual's state-law status under *Paul v. Davis*. Joining these federal courts are the highest courts of Massachusetts, Nebraska, New Jersey, New

York, Oregon, and Rhode Island. These decisions conflict with the Supreme Court of Minnesota's approach because the courts determined that registration changes an individual's state law rights in a manner implicating a liberty interest.

a. The Supreme Court of Minnesota's decision conflicts squarely with the Tenth Circuit's holding in *Gwinn v. Awmiller*, 354 F.3d 1211 (10th Cir. 2004). There, the Tenth Circuit held that the registration requirement "significantly altered" Gwinn's "status as a matter of state law," *id.* at 1224, such that he "sufficiently allege[d] that his classification as a sex offender outside the prison walls implicated a liberty interest" requiring due process protections. *Id.* at 1223-24; *see also Brown v. Montoya*, 662 F.3d 1152, 1168 (10th Cir. 2011) (applying *Gwinn* to conclude that "requiring a person to register as a sex offender triggers the protections of procedural due process").

Colorado charged Gwinn with robbery and sexual assault, but the sexual assault charge was dismissed after he pled guilty to robbery. *Id.* at 1214. Just like in petitioner's case, Colorado required Gwinn to register as a sex offender upon his release from prison despite dismissal of the sexual assault charge. *Id.* at 1215. Gwinn brought a § 1983 lawsuit against the Colorado Department of Corrections, alleging that officials "violated his rights under the Due Process Clause of the Fourteenth Amendment by failing to provide him with an adequate hearing before classifying him as a sex offender, requiring him to register as a sex offender, and revoking his parole for failing to participate in a treatment program." *Id.* at 1214.

The Tenth Circuit agreed. The court looked to its precedent in *United States v. Bartsma*, 198 F.2d 1191 (10th Cir. 1999), *overruled on other grounds by United States v. Atencio*, 476 F.3d 1099, 1104 (10th Cir. 2007). In

Bartsma, the Tenth Circuit held that because a court's imposition of sex offender registration as a special condition of supervised release "implicated a liberty interest … [f]undamental fairness require[d] notice" to the defendant prior to sentencing. *Id.* at 1200 n.7.

Applying *Bartsma* in *Gwinn*, the Tenth Circuit observed it "did not suggest that the [*Bartsma*] defendant was required to show that the government had deprived him of employment opportunities or anything else of value in order for a liberty interest to be implicated." 354 F.3d at 1223. "The registration requirement was sufficient in itself to implicate such an interest." *Id.* "This conclusion is supported by decisions of other courts," the Tenth Circuit added. *Id.* (discussing, for example, *Doe v. Dep't of Pub. Safety*, 271 F.3d 38 (2d Cir. 2001), *rev'd on other grounds*, 538 U.S. 1 (2003)).

"In light of our holding in *Bartsma* and these other decisions adopting a similar approach," the Tenth Circuit continued, "we conclude that Mr. Gwinn has sufficiently alleged that his classification as a sex offender outside the prison walls implicated a liberty interest." *Id.* at 1223-24. Applying *Paul v. Davis*, the Tenth Circuit held that the plaintiff sufficiently alleged the registration requirement "imposed a burden that 'significantly altered [his] … status as a matter of state law.'" *Id.* at 1224. The government's accompanying statements were also "sufficiently derogatory to injure his reputation." *Id.* Officials thus could not deprive the plaintiff of this liberty interest without due process of law.

b. The Supreme Court of Minnesota's decision is also incompatible with the Seventh Circuit's holding in *Schepers v. Commissioner, Indiana Department of Correction*, 691 F.3d 909 (7th Cir. 2012). In *Schepers*, the Seventh Circuit concluded that Indiana's requirement for offenders to report to the police, along with residency restrictions, "fit the requirement in *Paul v. Davis* of an

alteration in legal status that takes the form of a deprivation of rights under state law." *Id.* at 914.

The Indiana law in that case required registration for individuals convicted "for any of 21 different offenses," coming with "a variety of obligations and restrictions" where "failure to comply can have criminal consequences." *Id.* at 911. Registrants were required to "periodically report in person to the local law enforcement authority" and "allow law enforcement to visit [registrants] and verify their addresses." *Id.* Registrants were required to carry identification at all times and were forbidden from changing their names. *Id.* at 911-12. Individuals categorized as "sexually violent predator[s]" committed a felony if they "live[d], work[ed], or volunteer[ed] within 1,000 feet of a school, public park, or youth program center." *Id.* at 912.

Indiana "erroneously designated" Schepers as a sexually violent predator, and he brought suit under § 1983, "arguing that the [state's] failure to provide any mechanism to correct registry errors violated due process." *Id.* The Seventh Circuit noted that for state action "to implicate the Due Process Clause, the action must also alter one's legal status or rights." *Id.* at 914.

Schepers "here is complaining about much more than the kind of simple reputational interest asserted by respondent" in *Paul v. Davis*, the court reasoned. *Id.* "The Indiana statute deprives members of the class of a variety of rights and privileges held by ordinary Indiana citizens," the court continued, "in a manner closely analogous to the deprivations imposed on parolees or persons on supervisory release." *Id.* In addition, "[c]itizens do not need to report to the police periodically, nor is their right to travel conditioned on notifications to the police in both the home and the destination jurisdiction." *Id.* The court added that Schepers was barred from living within a certain distance from a school

or park, unlike "members of the public," who "are free to decide where they wish to live." *Id.* Because sex offender registration not only changes an individual's status under state law, but is also stigmatizing, the Seventh Circuit concluded that "registry mistakes … implicate a liberty interest protected by the Due Process Clause." *Id.* at 915.

c. The Minnesota Supreme Court's decision directly conflicts with the Nebraska Supreme Court's holding in *State v. Norman*, 282 Neb. 990 (2012). There, the court held that "the statutory registration duties imposed on" a registrant "constitute [a] plus factor" under *Paul*. *Id.* at 1008.

Norman was charged with sexual assault of a child but later pled no contest to an assault charge. *Id.* at 992-93. As part of his sentence, the trial court ordered him to register as a sex offender. *Id*. at 996-97 Under Nebraska's statute, "persons convicted of offenses not sexual in nature … can be ordered to register under SORA … based upon a finding of an act of sexual penetration or sexual contact." *Id.* at 1006. Norman appealed the portion of his sentence requiring registration, claiming denial of due process because the court did not make this finding under the statute. *Id.* at 1000.

The court summarized the Nebraska statute's requirements, which "alter[ed] his legal status," "[we]re governmental in nature," and were "extensive and onerous." *Id.* at 1007. Individuals were required to "register in person" with police, notify police when they moved, provide DNA samples, and provide online identifiers, among other requirements. *Id.* at 1007-08. Failure to comply was a felony. *Id.* at 1008.

The court concluded that "these and other statutory obligations taken together constitute the plus factor." *Id.* "The imposition on a person of a new set of legal duties that, if disregarded, subject him or her to felony prosecution," the court continued, "'constitutes a change

of [that person's] status under state law' under *Paul* and constitutes the plus factor." *Id.* Because Norman could also prove the government's "reputation-tarnishing statement" that "he is a sex offender" false, his allegations satisfied both prongs of the stigma-plus test. *Id.* at 1007. "Because a liberty interest is at stake," the court concluded, "due process requires notice and a meaningful opportunity to be heard." *Id.* at 1008.

d. The decision below conflicts with at least one other federal court of appeals and five additional state courts of last resort holding that the requirement to register as a sex offender alters an individual's status under state law in a manner satisfying the stigma-plus test. *See Meza v. Livingston*, 607 F.3d 392, 401 (5th Cir. 2010), *decision clarified on denial of reh'g*, No. 09-50367, 2010 WL 6511727 (5th Cir. Oct. 19, 2010) ("[I]t is clear that Meza had a liberty interest in being free from being required to register as a sex offender and participate in sex offender therapy."); *Doe v. Poritz*, 142 N.J. 1, 100 (1995) (holding that registration implicated "protectible liberty interests, and therefore that procedural protection is due"); *Roe v. Attorney General*, 434 Mass. 418, 428 (2001) ("The mere fact that a citizen is being forced to take some action (unconnected with the citizen's own desire to engage in a form of regulated activity) infringes, to at least some extent, on his liberty."); *Noble v. Bd. of Parole & Post-Prison Supervision*, 327 Or. 485, 496 (1998) ("The [liberty] interest cannot be captured in a single word or phrase. It is an interest in knowing when the government is moving against you and why it has singled you out for special attention. It is an interest in avoiding the secret machinations of a Star Chamber."); *People v. David W.*, 95 N.Y.2d 130, 137 (2000) ("The ramifications of [registration] fall squarely within those cases that recognize a liberty interest where there is some stigma … coupled with some more 'tangible' interest that is affected

or a legal right that is altered."); *State v. Germane*, 971 A.2d 555, 578 (R.I. 2009) ("[T]he conclusion is ineluctable that the [sex offender registration statute] burdens a protectible liberty interest and therefore triggers the individual's right to procedural due process under both the federal and state constitutions."); *see also Doe v. Dep't of Pub. Safety ex rel. Lee*, 271 F.3d 38, 56 (2d Cir. 2001), *rev'd on other grounds by Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003) ("the statutory registration duties imposed on the plaintiff constitute a 'plus' factor").

2. In contrast with the view that the requirement to register with the government under threat of felony prosecution changes an individual's state-law status under *Paul v. Davis*, the Sixth, Eighth, and Ninth circuits agree with the Supreme Court of Minnesota that no such change in status occurs.

a. The Eighth Circuit agrees with the Minnesota Supreme Court that the requirement to register as a sex offender does not change an individual's status under state law. Nebraska courts have therefore reached a different constitutional interpretation from federal courts in the state. In *Gunderson v. Hvass*, 339 F.3d 639 (8th Cir. 2003), Minnesota charged the defendant with criminal sexual conduct but later agreed to a plea of third degree assault. *Id.* at 641. Like petitioner, Gunderson was later informed that he was required to register even though "he had never been convicted of a crime triggering predatory status." *Id.* at 642.

Gunderson argued, in part, that application of the Minnesota sex offender registration statute violated his procedural due process rights under *Paul v. Davis*. *Id.* at 644. The Eighth Circuit rejected Gunderson's argument, holding that "[t]he burden imposed upon Gunderson is a minimal one." *Id.* The court observed that Gunderson was required only to "provide his fingerprints, a photograph,

and information regarding his whereabouts (residences, places of employment, make and model of vehicle)." *Id.* Citing *Boutin*, the court held that Gunderson "ha[d] not identified a tangible, protectible" interest in not registering, so "his procedural due process claim must fail." *Id.* at 645.

b. The Sixth Circuit has also held that a sex offender lacks the "'plus' factor" necessary "to satisfy the stigma-plus test of *Paul*." *Cutshall v. Sundquist*, 193 F.3d 466, 482 (6th Cir. 1999). As a result, an offender "is not entitled to any procedural protections under the Due Process Clause" in relation to registering. *Id.*; *see also Bruggeman v. Taft*, 27 F. App'x 456, 458 (6th Cir. 2001) (citing *Cutshall* to conclude that "there is no liberty interest in being free from having to register as a sex offender or from public disclosure of registry information").

Cutshall challenged both the registration and community notification aspects of Tennessee's registration law on procedural due process grounds. 193 F.3d at 469. Registration "impose[d] a stigma," he argued, and also "deprive[d] him of employment and privacy" as the "plus" requirement. *Id.* at 479. The Sixth Circuit rejected these bases for a change in status under state law. "The Act in no way infringes upon Cutshall's ability to seek, obtain, and maintain a job," the court asserted, meaning that a liberty interest in employment was not implicated. *Id.* at 480. The court similarly determined that "there is no federal constitutional right of nondisclosure" supporting a plus factor on that basis. *Id.* at 481. Finally, the Tennessee constitution also lacked "a right to the nondisclosure of private facts." *Id.* at 482. As a result, Cutshall "failed to satisfy the stigma-plus test of *Paul*" and was "not entitled to any procedural protections" in connection to his requirement to register as a sex offender. *Id.*

Judge Jones dissented, asserting that "the guarantees secured by the Fourteenth Amendment's Due Process Clause require, at minimum, that a hearing be held prior to public disclosure of a sex offender's registration and verification information." *Id.* at 484. Under his view, a hearing would serve two purposes: to ensure that "the information to be disclosed is accurate" and that "disclosure is in fact necessary to protect the public." *Id.*

c. The Ninth Circuit has similarly determined that the requirement to register as a sex offender does not alter an individual's status under state law. Litigants in Oregon thus encounter different interpretations of the Fourteenth Amendment in state versus federal court. In *Russel v. Gregoire*, 124 F.3d 1079 (9th Cir. 1997), the court held that "collection and dissemination of information" under Washington's sex offender registration law "does not amount to a deprivation of liberty or property." *Id.* at 1094.

The plaintiffs in *Russell* sued Washington state officials, arguing in part that the state's sex offender registration law violated their constitutional rights to privacy and due process. *Id.* at 1082. The court reasoned that this Court has never "established a general constitutional right to privacy in information collected in a database." *Id.* at 1093. The court additionally concluded that none of the information collected is "generally considered 'private.'" *Id.* at 1094. Because the court rejected the plaintiffs' privacy claims, it "conclude[d] that they have no liberty interest at stake, and hence [rejected] their due process claims," as well. *Id.* The court declared that "[a]s a matter of law, the Act does not violate … the Due Process Clause." *Id.*

* * * * *

The entrenched split will not subside without this Court's intervention. Six regional circuits have weighed in, many of them decades ago. In the proceedings below, Minnesota once again declined to review its position. In at least nine federal courts of appeals and state courts of last resort, a state's decision that someone must register as a sex offender implicates a liberty interest. Four other courts have held just the opposite: that registration involves no liberty interest and therefore requires no process to guard against errors. These incompatible interpretations of the Fourteenth Amendment will find no resolution without this Court's intervention.

II. THE QUESTION PRESENTED IS IMPORTANT AND WARRANTS REVIEW IN THIS CASE

The question presented is of exceptional legal and practical importance for nearly one million Americans, and this case presents the ideal vehicle to answer it. The need for further review is starkly apparent, as the split of authority evidences confusion among the courts of appeals regarding the nature of an alteration of state law status under *Paul v. Davis*. The case presents a clear, entrenched conflict over a core issue of constitutional rights, and the split has only deepened since this Court granted certiorari in *Connecticut Department of Public Safety v. Doe.* This split of authority reaches far beyond the topic of sex offender registries, and this Court's intervention is necessary to resolve it.

1. As of late 2018, more than 900,000 people in the United States were required to register as sex offenders. Andrew J. Harris et. al., *States' SORNA Implementation Journeys: Lessons Learned and Policy Implications*, 23 NEW CRIM. L. REV. 315, 328 (2020). The number of individuals required to register has historically increased by at least 20,000 per year, *id.*, meaning that the number likely now exceeds one million people. Many juveniles are additionally required to register. *See, e.g.*, *In re Welfare*

of J.R.Z., 648 N.W.2d 241, 244 (Minn. Ct. App. 2002) (holding that 14-year old was required to register as sex offender for crime committed at age 11). As it stands, these individuals' rights to challenge erroneous determinations that they must register varies widely by jurisdiction or choice of court within a jurisdiction.

State and federal legislatures have similarly ratcheted up requirements in recent years. SORNA dictates in-person registration, broader dissemination of information, longer registration periods, and stricter criminal penalties. In addition, "[b]etween 2009 and 2017, states enacted 536 SORN[A]-related bills, an average of sixty legislative bills per year." Harris at 328. These state laws have significant effects on registrants' lives. More than twenty states "require GPS devices to track certain sex offenders, and six of those states require sex offenders to wear ankle bracelets for life." Lara Geer Farley, *The Adam Walsh Act: The Scarlet Letter of the Twenty-First Century*, 47 WASHBURN L.J. 471, 497 (2008). In many states, offenders must "supply a biological specimen" to authorities for DNA identification. Catherine L. Carpenter & Amy E. Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 HASTINGS L.J. 1071, 1088 (2012) (detailing legislatures' "Race to the Harshest" sex offender registration laws). The statutes also contemplate monitoring of registrants' online activity, requiring offenders to provide usernames and passwords. *Id.* at 1089-90. One Indiana statute, for instance, requires offenders using an "email address" or "social networking web site username" to "sign a consent form authorizing" searches of their computers and installation of monitoring software at the "offender's expense." Ind. Code Ann. § 11-8-8-8.

Registrants navigate a complex regulatory web that varies by state. Minnesota, for instance, requires individuals "charged with … an offense in another state"

to register when they spend 14 consecutive days or longer in Minnesota or more than 30 aggregate days per calendar year if the offense is similar to one of the enumerated offenses requiring registration in Minnesota. Minn. Stat. § 243.166 subd. 1b(b)(1). North Carolina similarly requires registration after 15 days for offenses "substantially similar" to the state's enumerated offenses. N.C. Gen. Stat. § 14-208.7(a) (2014). Texas requires registration after seven days for offenses with substantially similar elements. Tex. Code Crim. Proc. Ann. art. 62.051(a) (2023). Navigating these requirements is no small task, and offenders must bear the psychic burden of not knowing whether they are breaking the law.

The explosion of new laws and the ever-increasing burdens on individuals required to register differs starkly from the state of affairs that existed when this Court decided *Smith v. Doe* in 2003. There, the Court pointed to the "minor condition of registration," 538 U.S. at 104, lack of constant "supervision," *id.* at 101, and registrants' freedom to "change jobs and residences," *id.* at 100. "[T]he disability imposed" and "the effect of the sanction" indicate that contemporary sex offender registration regimes may now be punitive in nature. Jackson, 109 HARV. L. REV. at 1726.

Whether an individual has a liberty interest in avoiding this burdensome, complicated, and ever-shifting registration ecosystem is therefore a critical question of constitutional law. The Court recognized this when it granted the petition in *Connecticut Department of Public Safety v. Doe*, and the problem has only become more pronounced in the last two decades as registration rolls have grown and lower courts have further fractured.

2. The lower courts' failure to recognize a liberty interest in not being required to comply with a burdensome regulatory scheme is inconsistent with the basic concept of liberty enshrined in the Constitution. The

Constitution's conception of liberty encompasses not just a right against imprisonment but "the right to worship freely, to debate public policy without censorship, to gather with friends and family, [and] simply to leave our homes." *Arizona v. Mayorkas*, 143 S. Ct. 1312, 1315 (2023) (Gorsuch, J., statement respecting denial of certiorari). Any government action that impinges, even slightly, on those core "personal freedoms" must be accompanied by at least *some* process. *See Goss v. Lopez*, 419 U.S. 565, 576 (1975) (student has a liberty interest in not being suspended from school for ten days); *Constantineau*, 400 U.S. at 437 (individual has a liberty interest in not being labeled as an "excessive drinker" and barred from purchasing alcohol).

3. This case presents an ideal vehicle to address an issue left unanswered in *Connecticut Department of Public Safety v. Doe* and represents a natural follow on to that opinion. There is no question that the scope of petitioner's liberty interest was outcome determinative. Because petitioner received exactly zero process in connection with the state's requirement that he register, the lower court would have granted petitioner relief if it held that sex offender registration does alter one's status under state law and triggers due process protections under the Fourteenth Amendment. Pet. App. 13a. Mootness is additionally not at issue, given that petitioner is required to register until at least 2030. Pet. App. 27a.

Unlike *Connecticut Department of Public Safety v. Doe*, this case isolates the existence of the liberty interest rather than the process that is due. Petitioner received no process regarding the BCA's requirement that he register as a sex offender. The trial court made no related findings, and the BCA notified him of the requirement only after it had rendered its decision. Pet. App. 3a. The Court may therefore speak to the scope of a liberty

interest without wading into complicated balancing to determine what amount of process petitioner is due.

The issue is additionally a pure question of law appropriate for this Court's review. There are no factual or procedural obstacles to resolving the question presented. Petitioner would have prevailed on this question in a federal court in the Fifth, Seventh, or Tenth circuits, as well as in a state court in Massachusetts, Nebraska, New Jersey, New York, Oregon, or Rhode Island. He lost only because his case arose in Minnesota. This case presents an uncommonly clean vehicle to address a critical issue of law that has parted lower courts for decades, and the Court should take this opportunity to resolve it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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