No. 15-5238

In the Supreme Court of the United States

LESTER RAY NICHOLS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE UNITED STATES

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Petitioner's opening brief and the government's brief referred to proposed legislation that would create a new federal statutory obligation for sex offenders to provide notification to sex-offender registries whenever they plan to travel outside the United States. See Pet. Br. 49 n.16, 59 n.20; U.S. Br. 39-40 & n.8. After those briefs were filed, the House of Representatives agreed to a Senate-passed version of such a bill,[1] and the President has now signed H.R. 515, the International Megan's Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders (International Megan's Law).[2]

[1] See 162 Cong. Rec. H387-H394 (daily ed. Feb. 1, 2016).

[2] See The White House, *Statement by the Press Secretary on H.R. 515, H.R. 4188, S. 2152* (Feb. 8, 2016), https://www.whitehouse.gov/the-press-office/2016/02/08/statement-press-secretary-hr-515-hr-4188-s-2152-0. The text of the enrolled bill that was presented to the President on February 4, 2016, is available at https://www.congress.gov/114/bills/hr515/BILLS-114hr515enr.pdf.

1. The International Megan's Law provides for notification by the Department of Homeland Security and the Department of Justice to foreign governments about travel to their countries by sex offenders from the United States. See §§ 4-5. The statute also encourages the Executive Branch to "seek reciprocal international agreements or arrangements" to implement the statute and to obtain information from other countries about "the travel of sex offenders to the United States." *Id.* § 7.

As pertinent here, Section 6 of the International Megan's Law (reprinted in the appendix to this brief, *infra*, 2a-4a) creates a new statutory obligation for sex offenders to provide notice when they intend to travel outside the United States. It amends the list of required sex-offender-registration information by inserting the following paragraph into 42 U.S.C. 16914(a):

> (7) Information relating to intended travel of the sex offender outside the United States, including any anticipated dates and places of departure, arrival, or return, carrier and flight numbers for air travel, destination country and address or other contact information therein, means and purpose of travel, and any other itinerary or other travel-related information required by the Attorney General.

International Megan's Law § 6(a)(1)(B). The statute also amends SORNA's criminal-enforcement provision by adding a new subsection that punishes anyone required to register under SORNA who "knowingly fails to provide information required by [SORNA] relating to intended travel in foreign commerce" and "engages or attempts to engage in the intended travel in foreign commerce." *Id.* § 6(b)(2).

2. The enactment of the International Megan's Law does not affect the conviction in this case. Petitioner was prosecuted under 18 U.S.C. 2250(a) for a failure to update his registration as required by SORNA, not under the amended version of Section 2250(b) that will now apply to sex offenders' failures to provide information specifically relating to intended travel in foreign commerce. Moreover, by virtue of the Ex Post Facto Clause (U.S. Const. Art. I, § 9, Cl. 3), the amended version of 42 U.S.C. 16914(a)(7) is also inapplicable to petitioner's case.

Prospectively, the new provisions will incidentally capture the kind of conduct underlying petitioner's offense. See U.S. Br. 13. If a registered sex offender gives state sex-offender-registry officials accurate information about his "anticipated dates and places of departure, arrival, *or return*, * * * destination country and address or other contact information therein, means *and purpose of travel*," as will now be required under 42 U.S.C. 16914(a)(7) (emphases added), those officials may be able to infer whether the person is abandoning his residence in that State. And a failure to provide *any* information about a sex offender's intended foreign travel will violate the amended provisions.

Accordingly, the Court's resolution of the question presented in this case—about sex offenders' obligations under the pre-2016 version of SORNA to provide notice of the abandonment of a U.S. residence for one abroad—is unlikely to be of significant prospective importance.

3. On the question presented in this case, the enactment of the International Megan's Law does not support petitioner's reading of SORNA itself. Peti-

tioner has suggested (Br. 49 n.16) that the need for the new legislation indicates that SORNA was not intended "to protect children in foreign countries." The International Megan's Law does reflect Congress's concern about "[c]hild sex tourism" in foreign countries, § 2(6), but, for that very reason, it targets a different and broader category of conduct than is at issue in this case. It requires notice of *all* intended international travel by sex offenders, even when that travel does not involve any change of residence. *Id.* § 6(a)(1)(B); see U.S. Br. 39-40. The enactment of a new statute directed at different conduct to achieve different purposes provides no basis for concluding that Congress believed SORNA itself did not already require a sex offender to provide notice that he was abandoning his residence of record in the United States.

Regardless of what petitioner did after he arrived in the Philippines (*i.e.*, whether or not he engaged in sexual conduct with children there), his failure to keep his registration information current in Kansas posed a threat to SORNA's purposes in the United States. As the government has explained, SORNA was intended to foster accurate registries with current information about where sex offenders live, work, and attend school. Purging registries of out-of-date information is important even with respect to sex offenders who move abroad, because it allows law-enforcement authorities to rule out potential suspects of sex crimes, encourages confidence in the integrity of sex-offender registries, minimizes the need to expend time and resources locating offenders who are no longer at their residences of record, and prevents community members from making decisions on the basis of obsolete information

creating a misimpression that absent offenders still reside in the area. See U.S. Br. 31-34. Thus, petitioner's conviction should be sustained even though Congress has now augmented SORNA with new provisions that serve to protect both U.S. and foreign children from sex offenders.

* * * * *

For the foregoing reasons and those stated in our principal brief, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General

FEBRUARY 2016

APPENDIX

The International Megan's Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders* provides in pertinent part as follows:

* * * * *

SEC. 2. FINDINGS.

Congress finds the following:

(1) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted, and murdered in 1994, in the State of New Jersey by a violent predator living across the street from her home. Unbeknownst to Megan Kanka and her family, he had been convicted previously of a sex offense against a child.

(2) In 1996, Congress adopted Megan's Law (Public Law 104–145) as a means to encourage States to protect children by identifying the whereabouts of sex offenders and providing the means to monitor their activities.

(3) In 2006, Congress passed the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248) to protect children and the public at large by establishing a comprehensive national system for the registration and notification to the public and law enforcement officers of convicted sex offenders.

(4) Law enforcement reports indicate that known child-sex offenders are traveling internationally.

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* Because the slip law is not yet available, the following text is taken from the enrolled bill, which is available at https://www.congress.gov/114/bills/hr515/BILLS-114hr515enr.pdf.

(5) The commercial sexual exploitation of minors in child sex trafficking and pornography is a global phenomenon. The International Labour Organization has estimated that 1,8000,000 children worldwide are victims of child sex trafficking and pornography each year.

(6) Child sex tourism, where an individual travels to a foreign country and engages in sexual activity with a child in that country, is a form of child exploitation and, where commercial, child sex trafficking.

* * * * *

SEC. 6. INTERNATIONAL TRAVEL.

(a) REQUIREMENT THAT SEX OFFENDERS PROVIDE INTERNATIONAL TRAVEL RELATED INFORMATION TO SEX OFFENDER REGISTRIES.—Section 114 of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16914) is amended—

(1) in subsection (a)—

(A) by redesignating paragraph (7) as paragraph (8); and;

(B) by inserting after paragraph (6) the following:

"(7) Information relating to intended travel of the sex offender outside the United States, including any anticipated dates and places of departure, arrival, or return, carrier and flight numbers for air travel, destination country and address or other contact information therein, means and purpose of travel, and any other itinerary or other travel-related information required by the Attorney General."; and

(2) by adding at the end the following:

"(c) TIME AND MANNER.—A sex offender shall provide and update information required under subsection (a), including information relating to intended travel outside the United States required under paragraph (7) of that subsection, in conformity with any time and manner requirements prescribed by the Attorney General.".

(b) CONFORMING AMENDMENTS TO SECTION 2250 OF TITLE 18, UNITED STATES CODE.—Section 2250 of title 18, United States Code, is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(2) by inserting after subsection (a) the following:

"(b) INTERNATIONAL TRAVEL REPORTING VIOLATIONS.—Whoever—

"(1) is required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.);

"(2) knowingly fails to provide information required by the Sex Offender Registration and Notification Act relating to intended travel in foreign commerce; and

"(3) engages or attempts to engage in the intended travel in foreign commerce;

shall be fined under this title, imprisoned not more than 10 years, or both."; and

(3) in subsections (c) and (d), as redesignated, by striking "subsection (a)" each place it appears and inserting "subsection (a) or (b)".

(c) IMPLEMENTATION.—In carrying out this Act, and the amendments made by this Act, the Attorney General may use the resources and capacities of any appropriate agencies of the Department of Justice, including the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, the United States Marshals Service, INTERPOL Washington-U.S. National Central Bureau, the Federal Bureau of Investigation, the Criminal Division, and the United States Attorneys' Offices.

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