

No. 10-1544

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

NAM VAN HOANG

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

REPLY BRIEF FOR THE UNITED STATES

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Respondent argues that this Court should not grant certiorari because (i) the question presented affects only a limited number of persons who were convicted of a sex offense before the enactment of the Sex Offender Registration and Notification Act (SORNA) and who traveled interstate between July 27, 2006, and February 28, 2007, and (ii) the standing question presented in *Reynolds v. United States*, cert. granted in part, No. 10-6549 (argued Oct. 3, 2011), is not at issue in this case. Respondent misunderstands the substance of the government’s petition and of the issue before the Court in *Reynolds*.

1. The government did not ask the Court to grant plenary review in this case. Rather, the government urged the Court to hold this petition pending its decision in *Reynolds*. Notwithstanding respondent’s contention that the issue is “exceedingly *unimportant*” (Br. in Opp. 1), the Court already granted certiorari in *Reynolds* to decide whether

SORNA's registration requirements apply of their own force to persons who were convicted of sex offenses before SORNA's effective date.* As respondent acknowledges, if the Court concludes that SORNA does apply of its own force to this class of sex offenders, then respondent's conviction should be "reinstate[d]." *Id.* at 2. Accordingly, the petition should be held for *Reynolds*.

2. Respondent also contends that the "standing" question presented in *Reynolds* is not at issue in this case. Respondent misunderstands the issue before the Court in *Reynolds*.

The petitioner in *Reynolds*, unlike respondent here, traveled in interstate commerce and thereafter failed to register seven months after the Attorney General's February 28, 2007, interim rule confirming that SORNA's registration requirements apply to all sex offenders. Reynolds accordingly challenged the validity of that rule. The Third Circuit held that he did not have "standing" to challenge the rule because SORNA applies of its own force to sex offenders (like Reynolds) who had already registered, by virtue of pre-SORNA convictions, as sex offenders under state law. See *United States v. Reynolds*, 380 Fed. Appx.

* Respondent contends that "the five-year statute of limitations fairly guarantees that," as of February 28, 2012, no person "who traveled in interstate commerce between July 27, 2006 and February 28, 2007 * * * will ever again be prosecuted for violating SORNA." Br. in Opp. 2. The statute of limitations, however, does not begin to run when a person travels interstate. Failure to register is an offense that continues until the sex offender is arrested or registers. See, e.g., *United States v. Clements*, No. 09-10034, 2011 WL 3659356, at *1 (9th Cir. Aug. 22, 2011) ("Failure to register pursuant to SORNA, or to keep one's registration current, is a continuing offense."); *United States v. Pietrantonio*, 637 F.3d 865, 870 (8th Cir. 2011) ("[A]ll of the courts that have recognized a 'continuing' SORNA violation have found that the violation continues until the defendant is arrested *or* registers.").

125, 126 (2010), cert. granted in part, No. 10-6549 (Jan. 24, 2011). The actual dispute in *Reynolds*, however, centers on whether a preenactment sex offender's federal duty to register under SORNA arises from the statute itself. If this Court concludes that it does, that holding would mean that Reynolds has no personal stake in challenging the validity of the interim rule because it would have no impact on the validity of his conviction. As for respondent, such a holding would mean that he was properly convicted under Section 2250, even though he traveled before promulgation of the interim rule, and that the decision below should be reversed and his conviction reinstated.

* * * * *

For the foregoing reasons, and those stated in the petition for a writ of certiorari, the petition should be held pending this Court's decision in *Reynolds*, and disposed of as appropriate in light of that decision.

Respectfully submitted.

DONALD B. VERRILLI, JR.
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OCTOBER 2011