Case No. 15-10958-A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MICHAEL A. McGUIRE,
Plaintiff-Appellant,

v.

LUTHER STRANGE, Attorney General, State of Alabama, *et al.*,
Defendants-Cross Appellants.

On Appeal from the United States District Court
for the Middle District of Alabama
No. 2:11-CV-1027-WKW

PLAINTIFF-APPELLANT'S REPLY TO APPELLEES RESPONSE TO SUPPLEMENTAL BRIEF

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Certificate of Interested Persons and Corporate Disclosure Statement

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, undersigned counsel for Plaintiff-Appellant Michael A. McGuire certifies that the following listed persons and parties have an interest in the outcome of this case:

1. Luther Strange, Defendant-Appellee, Attorney General of Alabama;

2. John Richardson, Defendant-Appellee, Director, Alabama Department of Public Safety;

3. Derrick Cunningham, Defendant-Appellee, Sheriff, Montgomery County Sheriff's Office;

4. Todd Strange, Mayor, City of Montgomery, Alabama;

5. Andrew L. Brasher, Office of the Alabama Attorney General;

6. William G. Parker, Office of the Alabama Attorney General;

7. James W. Davis, Office of the Alabama Attorney General;

8. Laura E. Howell, Office of the Alabama Attorney General;

9. Winfield J. Sinclair, Office of the Alabama Attorney General;

10. Thomas T. Gallion, III, Haskell Slaughter & Gallion, LLC, Attorney for

Defendants Cunningham and Montgomery County, Alabama Sheriff's Office;

11. Constance C. Walker, Haskell Slaughter & Gallion, LLC, Attorney for Defendants Cunningham and Montgomery County, Alabama Sheriff's Office;

12. Charles McDowell Crook, Jr., Haskell Slaughter & Gallion, LLC, Attorney for Defendants Cunningham and Montgomery County, Alabama Sheriff's Office;

13. Tyrone C. Means, Thomas Means Gillis & Seay, PC, Attorney for Defendants Cunningham and Montgomery County, Alabama Sheriff's Office;

14. Joseph Haran Lowe, Attorney for the Alabama Department of Public Safety;

15. Frank McCollum, Attorney for the Alabama Department of Public Safety;

16. Stacy Reed, Montgomery, Alabama City Attorney's Office;

17. Joseph M. McGuire, Attorney for Michael A. McGuire, Plaintiff-Appellant;

18. Phil Telfeyan, Attorney for Michael A. McGuire, Plaintiff-Appellant;

19. Honorable William Keith Watkins, Chief United States District Judge, Middle District of Alabama;

20. Michael A. McGuire, Plaintiff-Appellant.

/s/ Joseph Mitchell McGuire

Attorney for Plaintiff-Appellant

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INTRODUCTION

Appellees responded to Mr. McGuire's supplemental brief by cobbling a confusing narrative, rife with contradictions and misapprehension of the record and the law. *See generally,* Appellees Supp. Resp. Br.

For example, in their response, Appellees argue on one hand, "Mr. McGuire makes clear that his primary argument turns on what the legislature intended…" Appellees Supp. Resp. Br. at 3. In the same paragraph and, on the other hand, Appellees argue, "[McGuire's] entire brief … focuses on overwhelmingly on ASORCNA's [] effects." *Id*. at 4. And the confusion does not stop there.

Appellees contradict their previous arguments by now asserting that relevant *ex post facto* analysis should not include this Court's review of any individual provisions of ASORCNA, nor the cumulative effects of those provisions. *Id*. at 13; *Cf. McGuire v. Strange*, 83 F. Supp. 3d 1231, 1252.

> MR. PARKER: Well, what I'm trying to say, Your Honor, is if you take each of these provisions and look at them, they each are reasonable in light of the regulatory means chosen.
>
> THE COURT: So then you can have unlimited [effects on offenders] as long as each one stands alone as individual [sic].
>
> MR. PARKER: Yes. If that's your question, yes, that's how I see the law.

Appellees suggest this Court has no authority to decide the salient *ex post facto* issues in this matter by "doubling down" on their argument that,

notwithstanding review of the most comprehensive debilitating sex offender scheme in the land, this Court is required to "presume the constitutionality" of ASORCNA. Appellees Supp. Resp. Br. at 13. Appellees provide distracting details about recent indecipherable amendments[1] to ASORCNA — amendments which only serve to exacerbate punitive effects and expose the Alabama Legislature's punitive intent.

Rather than providing answers for how it is conceivably possible for Mr. McGuire and many registrants of ASORCNA to have had fair notice of the statute's debilitating restrictions, at the time of commission of "qualifying" ASORCNA crimes decades ago, Appellees respond by only asking more questions of the Court.[2]

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[2] For example, the Appellees ask the Court, "how can someone "unwittingly" be knowingly present at a place on a habitual or systematic basis?" Appellees' Supp. Resp. Br. at 17. Mr. McGuire submitted to this Court, the deposition of the primary author of ASORCNA. Appellant's Notice of Supp. Materials – re: *Doe v. Strange*, Exh. A (July 21, 2017). ASORCNA's author could not define "habitually lives" (*see* Notice of Supp. Materials – *Doe v. Strange* at p. 280-298), a term present in the statute until 2017 and defined as "[w]here a person lives with some regularity on an intermittent or temporary basis." *See id*. at 61. The "habitually lives" definition was deleted from the statute in the 2017 amendments. And, "systematic" is not defined in ASORCNA. Mr. McGuire's response to Appellees' question is a short one: "Precisely. Under threat of felony penalty, how indeed?"

Do habitually and systematic mean the same thing? Do traditional visits to a family member's home for Christmas dinner during odd-numbered years constitute habitual or systematic? Or is habitual and systematic more or less frequent than once every two years? And who determines what habitual or systematic is? Based solely on the text of the statute, Appellees do not know the answers, nor could they. How then, is it possible for Mr. McGuire to have fair notice of commission of a felony offense for failure to report his family members' homes, or Walmart trips, or regularly scheduled medical appointments to the VA Hospital? Do his routine visits to those places mean he "resides" there? As absurd as the result is, Appellants concede that this is the arbitrary manner in which they intend to "enforce" the law. Appellees' Supp. Resp. Br. at, 17. ("[I]f a sex offender is habitually or systematically present at a jogging track or baseball stadium, then yes, that sex offender must register his presence there.").

Appellees fail to explain how Mr. McGuire and registrants may reasonably understand how they violate the provisions on review before this Court, let alone newly added and more punitive and confusing amendments. Finally, Appellees fail to appreciate, or, more likely, fail to acknowledge, the overwhelming compendium of social science on sex offender recidivism which clearly supports Mr. McGuire's contention that, absent individualized assessments, ASORCNA is constitutionally infirm under *ex post facto* scrutiny.

Based on the foregoing reply to Appellees response, and Mr. McGuire's previous submissions, this Court should find that ASORCNA violates the *Ex Post Facto* Clause of the United States Constitution and overturn the statute in its entirety on those grounds.

ARGUMENT

I. UNDER RELEVANT SUPREME COURT AND ELEVENTH CIRCUIT EX POST FACTO ANALYSIS, THE ALABAMA LEGISLATURE'S PUNITIVE INTENT AND ASORCNA'S PUNITIVE EFFECTS ARE CLEAR.

Despite the contentions in Appellees response, Mr. McGuire maintains that by following Eleventh Circuit precedent (*see Doe v. Miami-Dade Cnty.*, 846 F.3d 1180, 1184 (11th Cir., 2017)), the relevant factors weigh heavily in favor of the findings that, (1) when enacting ASORCNA, the Alabama Legislature intended to punish the unpopular class captured in the statute; and importantly, (2) by the

clearest proof, ASORCNA's unprecedented restrictions and requirements of the statute are punitive in their effects.

Mr. McGuire has briefed and argued the punitive intent of Alabama and, he stands by those arguments. *See generally*, Appellant Br.; Appellant Resp. Br.; Appellant Supp. Br.

A. Application of the Mendoza-Martinez Factors Provide the Clearest Proof that ASORCNA's Effects are Punitive.

The number and scope of the provisions of ASORCNA are unprecedented. At this stage of the litigation, this Court likely appreciates the magnitude of control Alabama commands over ASORCNA registrants' lives. It is also clear that only by ferreting through and dissecting the statute can one even attempt to begin to understand how heavy-handed and punitive the provisions are individually, and how they collectively work in concert to punish registrants for past crimes.

1. ASORCNA effectively imposes the traditional forms of punishment upon McGuire and ASORCNA registrants.

Under this *Mendoza* factor, Courts have often considered sex offender statutes in comparison to the harshest forms of punishment (*e.g.* imprisonment or probation for which violations may lead to a return to prison). *See e.g.*, *Doe v. Miller*, 405 F.3d 700, 720 (8th Cir., 2005).

Mr. McGuire has consistently argued that the application of ASORCNA's unprecedented number and life-controlling features resemble probation or parole.

See e.g. Appellant's Supp. Br. at 45. The frequent in-person reporting requirements (§§ 15-20A-7, -10) exceed, or at minimum, resemble, the requirements of most probation or parole obligations. When working in concert with ASORCNA's debilitating restrictions on residency, employment, travel, branded identification, active state dissemination of community notification fliers, homelessness, multi-agency registration, multi-agency fee requirements, and lifetime adherence, the control Alabama has over Mr. McGuire's personal liberty is more restrictive than many probation and parole features. Ala. Code § 15-20A-3(b)); -7; -10; -11; -12; -13; -15; -18; -21; -22.

That said, Mr. McGuire and thousands of registrants of ASORCNA were not on probation or parole and, otherwise had no custodial relationship with Alabama prior to July 1, 2011, the effective date of the statute. Yet ASORCNA's multi-agency periodic (*e.g.* weekly, quarterly) and "status change" reporting requirements are clearly more punitive than traditional forms of punishment such as periodic (*e.g.*, monthly) in-person reporting and status updates to probation officers. And because the statute restricts housing and employment opportunities, ASORCNA turns on its head, what probation most often *requires* criminals to obtain upon release from prison: stable housing and employment.

Moreover, the branded identification requirements and Alabama's active dissemination of community notifications fliers provided for in ASORCNA are

integral features of the statute. Ala. Code §§ 15-20A-18; -21. They are, in effect, modern-day forms of colonial shaming and humiliation. *Id.* ; *Cf. Smith v. Doe*, 538 U.S. 84, 99 (2003) ("[T]he [Alaska statute] does not make the publicity and the resulting stigma an integral part of the objective of the regulatory scheme.").

The branded identification requirement forces Mr. McGuire to display the label of "CRIMINAL SEX OFFENDER," inscribed on his state-issued identification, each time he is required to present it. *McGuire v. Strange*, 83 F.Supp. 3d 1231, 1253. Appellees attempt to counter this fact by relying on a non-binding opinion, Doe v. Kerry, No. 4:16-cv-654, 2016 U.S. Dist. LEXIS 130788 (N.D. Cal. Sept. 23, 2016), to advance a disingenuous argument: "[Alabama's CRIMINAL SEX OFFENDER brand] will not be attributed to the holder and is not a misleading statement." *See* Appellees' Supp. Resp. Br. at 23. On all fronts, Appellees are wrong.

The *Kerry* case, which addressed a provision of the International Megan's Law concerning the use of passports by individuals convicted of sex offenses *against minors*, is easily distinguishable. First, a passport is not ordinarily used as primary identification, and the plaintiffs in the case were contesting its presentation to and among international government authorities — not the punitive shame and humiliation experienced by presenting identification to disinterested people who encountered them in everyday life, such as cashiers, office clerks, prospective

employers, and bank tellers. *See* 2016 U.S. Dist. LEXIS 130788, at *53 ("the identifier . . . will not even be displayed to the public.") Second, the actual passport identifier was not even conceived and implemented at the time of the suit — much unlike this case, where the branded identification method has been in effect for years and has caused actual harm to registrants like Mr. McGuire. *See id.* at, *16, *51 (explaining the form of the identifier was yet to be determined or even implemented). Third, the court reasoned that the use of the identifier would not be "misleading," *see id.* at *51, yet in Mr. McGuire's (and thousands of ASORCNA registrants') cases, the "CRIMINAL SEX OFFENDER" designation invites readers to assume very worst about them (*i.e.*, that they offended against minors, when that is untrue). And, as Appellees admit, *Kerry* was a First Amendment challenge. *See* Appellees Supp. Resp. Br. at 23. Appellees' comparison of the provisions under review in *Kerry* to the branded identification requirement here is at best, misplaced.

Further, each time Mr. McGuire moves from his bridge to a fixed residence and back to his bridge, the state disseminates community notification fliers, warning the public of his presence in the area. Ala. Code § 15-20A-21; *see also*, Appx., Vol 20, Trial Ex. 70 (Alabama flier distributed in Mr. McGuire's community).

Both the branded identification and community notification flier provisions of ASORCNA mandate that that registrants of the statute suffer far more public shaming and humiliation than that which, prior to being stricken down by the

Alaska's highest court on *ex post facto* grounds (*Doe v. State*, 189 P.3d 999 (Alaska 2008)), was sanctioned by the Supreme Court. *See, Smith v. Doe*, 538 U.S., at 99 ("An individual seeking the information must take the initial step of going to the Department of Public Safety's Web site, proceed to the sex offender registry, and then look up the desired information. *The process is more analogous to a visit to an official archive of criminal records than it is to a scheme forcing an offender to appear in public with some visible badge of past criminality*.") (emphasis added.). A discussed in Mr. McGuire's supplemental brief (at 44-45), these two requirements alone are modern-day "badges of past criminality" which expose Mr. McGuire to daily face-to-face humiliation when he presents his identification, or whenever he locates a habitable bridge or home. *But see, id*.

Mr. McGuire's previous arguments regarding this guidepost (*e.g.* effective banishment from residing and working in his community) further demonstrate the statue's resemblance to traditional forms of punishment. *See e.g.* Appellant's Opening Br. at 27, 34, 53; Appellant Resp. Br, at 37-38. Combined, this factor weighs in favor of a finding that ASORCNA's effects are punitive.

2. ASORCNA's restrictions and onerous requirements impose crippling disabilities and direct restraints upon registrants.

In their response, Appellees provided the Court a "back-handed" admission that the restrictions and requirements of ASORCNA are "onerous." Appellees Supp.

Resp. Br. at 13. They fail to acknowledge the district court's findings that many ASORCNA restrictions and requirements are affirmative disabilities or restraints. *McGuire v. Strange*, at 1259 ("[R]esidency, employment, and travel restrictions, as well as its dual reporting requirements, rise beyond the minor and indirect impositions examined in *Smith* and *W.B.H.*"). And there are additional ASORCNA restrictions on Mr. McGuire's personal liberty and finances — affirmative disabilities or restraints — that Appellees glossed over, but are worthy of revisiting in reply. This Court should find that, in addition to the lower court's findings, ASORCNA's the onerous multi-agency registration, the multi-agency fee requirements and the restrictions and requirements on homeless registrants are affirmative disabilities or restraints.[3]

As a homeless[4] person who lives within a municipality that also has a local police department, Mr. McGuire is required to register with local law enforcement a

[3] Ala. Code §§ 15-20A-7 (a)(7)-(9), (18)-(19); -15-20A-10 (a)(1), (b)-(c), (e); -15-20A-4(13), in conjunction with §§ 15-20A-7, -10, -12 (a)-(b), (d)-(e); -15-20A-4(13), in conjunction with, § 15-20A-22; -15-20A-4(13), in conjunction with the combination of §§ 15-20A-22 and, 15-20A-7, -10. In sum, these provisions represent, respectively, ASORCNA's: (a) overly burdensome reporting requirements; (b) multi-agency reporting requirements; (c) multi-agency fee requirements; (d) multi-agency fees for status change requirements.

[4] Appellants cite one (1) percent homelessness among ASORCNA registrants in the city of Montgomery. Appellees Resp. to Supp. Br. at 9. As of June 28, 2017, there are 164 homeless registrants of ASORCNA. *See* ALEA website, available at https://app.alea.gov/Community/wfSexOffenderSearch.aspx#1 ((1) click sex offender search; (2) accept; (3) click county in drop-down box and then, "search"; (4) scroll through each individual registrant in the county to find address listed as "homeless."). June 28, 2017 results yielded, ten (10) homeless registrants (of 581 total registrants) are in Montgomery County, 63 homeless (of 1,121 registrants) in Jefferson County, 36 homeless (of 720 registrants) in Mobile County and 19

minimum 112[5] times per year. *McGuire v. Strange*, at 1259. ("[I]f requiring 112 in-person registrations per year does not amount to an affirmative disability, it is difficult to envision what, besides incarceration, would qualify."). Meanwhile, registrants who live one mile, one foot, or even one inch, on the side of the county line, where no municipal police departments exist, are required to register only with the county sheriff. Those registrants are required to register a minimum 56 times per year if homeless or, a minimum of four times per year if they "reside" in a "fixed residence." Ala. Code § 15-20A-4 (13), in conjunction with, Ala. Code 15-20A-12.

Appellees acknowledge, but fail to address, that Mr. McGuire suffers the same "dual registration" requirements if there are certain changes in status, as provided for in ASORCNA's in-person reporting provisions. And when he seeks to travel out of his home county for more than two days, Mr. McGuire must seek permission from both city and county law enforcement, three business days in advance. Ala. Code §

homeless (of 440 registrants) in Madison County. *Cf.* Appellant's Appx. Vol. 20, Tr. Exh. 69; Vols. 21-22 Tr. Exh. 79 (demonstrating ASORCNA registrant homeless has grown significantly since 2015.).

[5] Ala. Act 2015-463 reduced the number of homeless registration events to 56. Ala. Code § 15-20A-12 (as amended, effective September 1, 2015) (requiring weekly registration with a single law enforcement agency.). It also provided that registrants no longer have to obtain dual travel permits. *Id.*, at -15. Pending this Court's resolution of the vacatur issue before it on these provisions, Mr. McGuire's arguments reflect the statute, as it existed, at the time of appeal (pre-Act 2015-463).

15-20A-15. As did Michigan's sex offender scheme, ASORCNA simply goes too far:

> Registrants must appear in person, both initially and for updates, and, if they are "Tier III" offenders, they must do so for life. These are direct restraints on personal conduct … [S]urely something is not "minor and indirect" just because no one is actually being lugged off in cold irons bound. Indeed, those irons are always in the background since failure to comply with these restrictions carries with it the threat of serious punishment, including imprisonment. These restraints are greater than those imposed by the Alaska statute by an order of magnitude.

Doe v. Snyder, 834 F.3d 696, 703-704 (6th Cir., 2016).

Based solely on where Mr. McGuire's bridge or temporary residence is located, he is required to pay "multi-agency fees." ASORCNA mandates that he pays both city and county law enforcement at each homeless registration event, totaling a minimum of $520.00 annually, plus additional fees for reporting changes to registration status. Ala Code § 15-20A-4 (13), in conjunction with, § 15-20A-12, -22. This requirement creates an affirmative disability inherent in the multi-agency fees and the exorbitant homeless fee provisions. Over the course of the next 20 years, if homelessness persists, Mr. McGuire can be subject to paying over $10,000.00 more than fees paid by county-only registrants with homes. The exorbitant fees are not minor for Mr. McGuire, who has little[6], or for thousands of registrants, who have even less income.

[6] Mr. McGuire's disability payments constitute the sole household income for he and his wife. *McGuire v. Strange*, doc. 354 at 5 (Ex. A). (Including intermittent income from musical

> The burden of proving that [a registration fee] is a fine is on the plaintiffs, and since they [had] presented no evidence that [the registration fee] was intended as a fine, they [could not] get to first base without evidence that [the fee] was grossly disproportionate to the annual cost of keeping track of a sex offender registrant—and they have presented no evidence of that either.

Mueller v. Raemisch, 740 F.3d 1128, 1134 (7th Cir. 2014) (internal citations omitted). The multi-agency and exorbitant homeless fees are explicit requirements of the statute. But if $40 per year is enough to defray the costs of county-only registrants with homes, it is grossly disproportionate to fine Mr. McGuire and thousands of others with multi-registration fees, based solely on their registered address or whether they can afford a home.

Standing alone, each provision Mr. McGuire challenges as affirmative disabilities or restraints affect him in ways that are a life-altering and direct. Working together, these provisions not only cross but obliterate the point where "minor or indirect" ends, and debilitating, direct and punitive impositions begin. This is particularly true, considering the two "minor and indirect" Alaska provisions (registration and internet notification) upheld in *Smith v. Doe*. 583 U.S., at 92. Because the residency, employment, travel, in-person reporting, multi-agency reporting, multi-agency fees and homeless restrictions and requirements of

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engagements, Mr. McGuire receives $1,000.00 in total monthly income, on average.) He pays rent for the home his wife lives in in the amount of $550.00 per month. *Id.*

ASORCNA are affirmative disabilities or restraints, this factor weighs heavily in favor of a finding that the statute is punitive in its effects.

3. ASORCNA's restrictions and requirements expose Alabama's punitive aims – specific and general deterrence and, retribution.

ASORCNA explicitly seeks to deter registrants. Ala. Code § 15-20A-2 (1). Mr. McGuire has consistently argued that ASORCNA advances traditional aims of punishment — deterrence and retribution. Appellees arguments, as to this guidepost, are wrong.

Alabama's requirement that ASORCNA registrants carry branded identification (Ala. Code § 15-20A-18) highlights the Legislature's retribution. Ala. Code § 15-20A-44 (providing state officials the ability to choose the brand of registrant identification.). And again, each time a registrant moves to a new "residence", the state distributes fliers throughout the community. Ala. Code § 15-20A-21.

Mr. McGuire and ASORCNA registrants suffer from the general deterrence and retribution inherent in the state action of branding their identification and actively distributing fliers, warning of their presence in communities. General deterrence is the result of ostracism suffered by Mr. McGuire and other registrants at the hands of Appellees through shaming and humiliating them for life, as they participate in mundane activities such as shopping or moving to a new

neighborhood. *McGuire*, 83 F.Supp.3d 1231, 1253-54. This court should find that the branded identification, active distribution of fliers, and required lifetime adherence serve to generally deter registrant activity and, are retributive. The hatred Alabama displays for Mr. McGuire and this unpopular class of persons is explicit – – the general deterrent and retributive aims of the statute, are clear. This factor weighs in favor of a finding that ASORCNA is punitive in its effects.

4. Appellees Fail to Address the Lack of Rational Connection ASORCNA's restrictions and requirements.

In determining whether ASORCNA, as statutory scheme, and the onerous restrictions and requirements therein have a rational connection to its purported nonpunitive objective, it is important to re-emphasize a basic, intuitive premise: There is no connection, rational or other, which validly tethers "protecting the public, and especially children," to the imposition of debilitating restrictions and requirements upon Mr. McGuire and many registrants, who pose no discernable threat to anyone. *McGuire*, 83 F.Supp. 3d, at 1264. ("[R]egistrants who pose no discernable threat to public safety are subject to ASORCNA, notwithstanding evidence of post-conviction rehabilitation and subsequent years of non-offending.").

Yet without providing for individualized assessments of registrants' risk of future recidivism, Alabama, through ASORCNA, captures the broadest class of "sex offenders" in United States history and imposes the most "comprehensive,

debilitating sex offender scheme in the land" upon them. *Id*. Mr. McGuire has argued the lack of connections between individual provisions of ASORCNA, relative to Alabama's purported nonpunitive objective. He stands by those arguments. *See generally*, Appellant Br.; Appellant Resp. Br. In contrast to the Appellees' passive reference to empirical findings and expert testimony on sex offender recidivism. Mr. McGuire replies by directing the Court to relevant analyses:

a. Empirical evidence regarding sex offender recidivism demonstrates that ASORCNA is not rationally connected to the legislature's purported nonpunitive purpose.

In their recent response, Appellees hint to the Court that the empirical research regarding sex offender recidivism might inure to their benefit. Appellees Supp. Resp. Br. at 12. Quite bluntly, they are just wrong.

In the early stages of this case, Mr. McGuire provided a detailed review of the compendium of empirical evidence regarding sex offender recidivism. Appx., Vol 4, doc. 101, at 64-68. Mr. McGuire presented empirical evidence, demonstrating that, as found by courts throughout the United States, the *credible* studies conducted regarding sex offender recidivism have swung the pendulum.

> [E]vidence in the record support[s] a finding that offense-based public registration has, at best, no impact on recidivism. In fact, one statistical analysis in the record concluded that laws such as SORA actually *increase* the risk of recidivism, probably because they exacerbate risk factors for recidivism by making it hard for registrants to get and keep a job, find housing, and reintegrate into their communities.

> [W]hile it is intuitive to think that at least some sex offenders … should be kept away from schools, the statute makes no provision for individualized assessments of proclivities or dangerousness, even though the danger to children posed by some … who never committed a sexual offense—is doubtless far less than that posed by a serial child molester.

Doe v. Snyder, 834 F.3d, 704-705 (6th Cir., 2016) (citing Prescott, Rockoff (2011) study) (Appx., Vol. 14, Tr. Ex. 7).

The most recent studies have caused an overall shift from broad hysteria — hysteria based upon high-profile instances of horrific acts of a dangerous few among the broadly defined "sex offender" class; to reason — that which acknowledges the heterogeneity of the broadly defined class and the relatively low, not "frighteningly high," recidivism rates of sex offenders, particularly after many years, post-conviction, of living offense-free in the community. *See*, Appx., Vol. 8, doc. 249, p. 109 ln 2 : p. 117 ln 12 (Testimony of Mr. McGuire's expert, Dr. Letourneau.).

Admittedly, cursory inspection of the science can be confusing and Appellees have made every attempt to exploit this. During his research, Mr. McGuire has found that litigants have not consistently provided courts with distinguishing characteristics of credible empirical studies versus those that have been performed with less statistical rigor. While attempting to avoid being hyper-technical, Mr. McGuire humbly attempts to so direct this Court's attention in reply to Appellees response:

b. Social scientists' sex offender research methods have improved since the enactment of registration laws.

As a preliminary matter, Mr. McGuire would like to point out that all *credible* empirical research seeks to demonstrate, through underlying data and ultimate results, two fundamental research principles: (1) "reliability"; and, (2) "validity." *See*, Ellen A. Drost, *Validity and Reliability in Social Science Research*, Education Research and Perspectives, Vol.38, No.1 (2011), available at http://www.erpjournal.net/wp-content/uploads/2012/07/ERPV38-1.-Drost-E.-2011.-Validity-and-Reliability-in-Social-Science-Research.pdf.

It does not take a rocket (or social) scientist for reliance on the adage, "garbage-in, garbage-out," when examining any empirical findings, sex offender recidivism included. Sex offender recidivism studies conducted from the early 1980s through the early 2000s suffered collectively, from reliability and validity shortcomings. Appx. Vol. 8, doc. 249, p. 146 ln 1 : 149 ln 1 (Dr. Prescott, regarding quality of studies.). There were inconsistent factors (*e.g.* convictions, arrests, or charges for "any crime") which early researchers used to chart and predict "recidivism" of sex offenders. *See*, *id*. Additionally, early studies suffered from statistical imprecision inherent in critical threshold factors, such as under-representative sample sizes, inadequate follow-up periods and the actual groups of individuals (cohorts) under review. *See*, *id*.

Commentary[7] in past litigation, based upon narrowly-focused subject matter, has been misinterpreted by some litigants. Subsequently, such commentary has appeared in well-known cases. *See e.g. Smith v. Doe*, 538 U.S. 84, 103 (U.S. 2003) ("The risk of recidivism posed by sex offenders is "frightening and high.") (citing *McKune v. Lile*, 536 U.S. 24, 34). Many citations of the commentary have landed and been presented as fact in sex-offender *ex post facto* litigation and court opinions ever since.[8] Moreover, many litigants (and courts) have taken contextual liberty with scholars' published work, which has likely contributed to a general theme in American case law suggesting as fact that all persons who have committed crimes which contain a sexual component pose high risks for sexual crime recidivism. *See e.g. id.* There is no wonder why litigants, courts and the public have been confused — even misled — by some sex offender recidivism research findings of the past.

[7] For example, the Court in *McKune v. Lile* stated, "The critical first step in the Kansas Sexual Abuse Treatment Program (SATP), therefore, is acceptance of responsibility for past offenses. This gives inmates a basis to understand why they are being punished and to identify the traits that cause such a frightening and high risk of recidivism." *McKune v. Lile*, 536 U.S. 24, 33-34 (U.S. 2002). Since the Court's commentary, litigants and courts have failed to acknowledge the derivation of this comment in full context – that the Court's commentary originated from a 1988 training guide designed to offer treatment for imprisoned, male sex offenders. *McKune v. Lile*, 536 U.S. 24, 33 (*citing* U.S. Dept. of Justice, Nat. Institute of Corrections, *A Practitioner's Guide to Treating the Incarcerated Male Sex Offender xiii* (1988)).

[8] *See e.g. United States v. Mercado*, 2015 U.S. App. LEXIS 3974, 10 (1st Cir. R.I. Feb. 6, 2015); *Hobbs v. County of Westchester*, 397 F.3d 133, 145 (2d Cir. N.Y. 2005); *Cunningham v. Lemmon*, 2007 U.S. Dist. LEXIS 97020, 25 (S.D. W. Va. Feb. 14, 2007); *Doe v. Snyder*, 932 F. Supp. 2d 803, 813 (E.D. Mich. 2013); *Doe v. Raemisch*, 895 F. Supp. 2d 97, 908 (E.D. Wis. 2012); *Doe v. Nebraska*, 734 F. Supp. 2d 882, 920 (D. Neb. 2010); *United States v. Garner*, 490 F.3d 739, 743 (9th Cir. Cal. 2007); *Seals v. Alabama*, 2011 U.S. Dist. LEXIS 66094, 54 (M.D. Ala. May 26, 2011).

Intuitively, and in fact, the statistical precision employed in sex offender recidivism studies has improved over time. Appx., Vol. 8, doc. 250, p. 81 ln 6 : p. 86 ln 17 (Dr. Prentky testimony on history of recidivism studies.). This has occurred for several reasons, including but not limited to; (1) researchers' ability to identify and delineate sub-groups within the broadly defined class of sex offenders; (2) the ability to control for inconsistent factors (*supra*) of the past, by combining multiple studies (meta-analyses) and creating representative sample sizes of the broad class; (3) the use of stronger, more relevant measures which allow for more accurate predictions of individual sex offender's risk of future recidivism; and, importantly, (4) time — at least three decades for researchers to study "sex offenders" and evaluate the impact of sex offender laws. *See id.*, at p. 93 ln 13 : p. 94 ln 9. The most respected researchers in sex offender recidivism, through their research, now come to the same conclusion: Statutes which manage offenders like ASORCNA does are ineffective and rife with unintended (and intended) consequences. *See generally*, Plaintiffs sex offender recidivism experts' Letourneau, Prescott, Prentky testimony (Appx. Vol., 8, doc. 249 p. 102-131; doc. 249 p. 134-150; doc. 250 p. 11-47; doc. 250 p. 77-111).

c. The most credible empirical evidence demonstrates that ASORCNA fails to serve its primary stated objective, but instead, causes *increased* danger to the public.

The most recent, credible empirical research on sex offender recidivism provides the collective conclusion that sex offender recidivism, generally, is low relative to other crimes. True, when a recidivist pedophile claims an additional victim, it is a horrific occurrence — the pain and anguish to victims, their families and the community, palpable. But current research indicates that sexual crimes and recidivism are best managed by a targeted approach towards those who pose credible threats of recidivist activity. Based on decades of observation of sexual offenders, the compendium of research now indicates that Alabama's "one-size-fits-all" approach to employing its onerous sex offender scheme is inapposite prevailing findings and common sense.

As mentioned in Mr. McGuire's Supplemental Brief (at 22), the most recent findings of a meta-analysis (over 540,000 individuals across 11 different studies) of sex offenders provides solid support for Mr. McGuire's contentions. *See*, Rachel E. Kahn, Gina Ambroziak, Karl Hanson & David Thornton, *Release from the Sex Offender Label*, Archives of Sexual Behavior (Feb., 2017), available at https://www.researchgate. net/publication/314487441_Release_from_the_Sex_ Offender_Label.[9] Employing the soundest statistical measurements available today, the results found by Kahn *et al*., provide further proof of what Mr. McGuire has now

[9] Appellees criticize Mr. McGuire for submitting published and publicly available information detailing the findings of this comprehensive study, which was unavailable to the lower court or this Court heretofore. Appellees cite no basis (nor could they) for why this Court may not

contended for years — the lack of individualized assessments is fatal under *ex post facto* scrutiny for an unprecedented scheme as expansive as ASORCNA.

The Kahn *et al*. analysis of the study's results suggests that Alabama sex offenders, like Mr. McGuire and ASORCNA registrants who are similarly situated, have predicted rates of sexual recidivism between 1 and 2 percent. *Id.*, at 2; *see also*, Appx., Vol. 8, doc. 250, p. 86 ln 22 : p. 90 ln 4 (Mr. McGuire's expert, Dr. Prentky, discussing Mr. McGuire's "offender" profile.). The study finds that, at such low rates, sexual offenders' risk of recidivism cannot be differentiated from that of "out of the blue" sexual crimes committed by persons convicted for non-sexual crimes. *Id.*, at 2.

The Kahn *et al.* publication intuitively suggests that, if registrants pose no more risk than that of an "out of the blue" sexual offense, ASORCNA's lifetime registration requirement, let alone its unmatched debilitating restrictions and requirements, simply make no sense absent individualized assessments. *Id*., at 2. The study buttresses previous findings that predicted sexual recidivism rates decrease dramatically over time for offenders who remain offense-free. *Id*. Yet there

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consider this public information and the study is relevant here. Moreover, Dr. Karl Hanson, primary author of the study, and Plaintiffs' retained expert in *Doe et al., v. Strange et al.*, 2:15-cv-00606 WKW, is frequently regarded as the world's leading expert on the topic of sex offender recidivism. He has provided Mr. McGuire with a copy of the full study and informed him that the full publication has been accepted for publication by September, 2017. R. Karl Hanson, Andrew J. R. Harris, Elizabeth Letourneau, L. Maaike Helmus, David Thornton, *Running Header: NOT ALWAYS A SEXUAL OFFENDER*, Psychology, Public Policy and Law (in press, May 8, 2017). Mr. McGuire did not submit the full publication due to its pending publication.

are likely thousands of ASORCNA registrants who, like Mr. McGuire, have been offense-free in the community after committing a single sexual crime against adult victims, 20, 30, or more than 40 years ago. Appx., Vol 9, doc. 251, p. 91 ln 22 : p. 92 ln 17 (Alabama Intelligence Analyst, Lesia Baldwin, testifying to as many as 17,000 ASORCNA registrants in the state database as of April 2, 2014.).

Mr. McGuire has provided unrebutted expert testimony in this matter which strongly indicates that disabling Mr. McGuire and many registrants the way ASORCNA does *increases* risk of recidivism. *See e.g.*, Appx., Vol 8, doc. 249, p. 137 ln 1 : p. 142 ln 11. The findings by Dr. Prescott *et al.*, are also intuitive. Making it difficult for persons to find jobs and housing, and to seek shelter with family members — to reintegrate into our communities after atoning for their crimes — leads to desperation and despair, for lack of basic sustenance and family and community support. *See id.*, p. 137 ln 1 : 144 ln 18. Increased crime among the homeless, jobless and desperate is a result that is quite familiar to this Court.

d. The appellees have no credible rebuttal to the overwhelming empirical research demonstrating that ASORCNA, as a statutory scheme, is not rationally connected to a nonpunitive purpose.

The compelling empirical evidence presented by Mr. McGuire in this matter demonstrates that the statute is unconstitutional, absent the individualized assessments due him and thousands of registrants of ASORCNA. In comparison and contrast, Appellees present virtually nothing. They have strained to sift through

the body of sex offender research, which overwhelmingly supports Mr. McGuire's contentions, and conveniently (and duplicitously) direct this Court's attention to *excerpts* of studies and to narrow studies lacking the requisite rigor broadly accepted in social science today.[10] Appellees have waived "shiny objects," such as "cross-over"[11] offending and, the "dark figure"[12] of crime, in their attempt to distract this Court from the salient issues within the compendium of credible sex offender empirical analyses. Defendants advance logical (and illogical) fallacies about recidivism rates of small, finite sub-groups of offenders, such as serial child molesters, and argue that the Court should assign associated risk of those groups to ASORCNA's broadly defined class, including Mr. McGuire. *See* n. 10, *supra*. And, the only expert Appellees could present at trial, flew thousands of miles across the country, to Alabama, only to make glaring and telling admissions, including, but not limited to, (1) that his statistical analyses[13] regarding the empirical information in

[10] For example, the Appellees here, submitted (and re-submitted) a study by Ron Langevin *et. al*. in support of their "high" or undeterminable sex offender recidivism theory. Appellees Supp. Appx., doc. 166-2. *Cf*. Appx., Vol. 10, doc. 251, p. 178 ln 10-24 (Defendant's trial expert, Dr. McCleary under questioning about the study being "poorly designed", admitting that the Langevin study, "would not be up to [] standards.").

[11] Appellees Supp. Appx., doc. 166-3, -4. Yet Appellees ignore that fact that *all* manner of sexual recidivism is subsumed in comprehensive, well-conducted studies, especially meta-analyses with longer follow-up periods on the topic.

[12] Appx. Vol. 10, doc. 251, p. 180 ln 16 : p. 183 ln 21 (Dr. Richard McCleary discussing "the dark figure.").

[13] *See*, Appx., Vol. 7, doc. 249, p. 60 ln 1 : p. 61 ln 15 (McGuire's expert, Peter Wagner, discussing Dr. McCleary's "unfair" and "misleading" information submitted regarding Mr.

this matter were sloppy; (2) that he was unsure whether he was a sex offender recidivism "expert"[14]; and, (3) that questions on sex offender recidivism were, "beyond his … expertise."[15] At every turn, Appellees parse certain studies in support of argument that the science is at best, unclear and, as they contend, this Court owes deference to the "common sense" of the Legislature. This Court should not be detained by Appellees attempts to engage this Court in fallacious anecdotes.

Considering ASORCNA's debilitating features in *toto*, and because the statute provides for no individualized assessments, it cannot be credibly argued that the statute is rationally connected to protecting the public, and especially children — the purported objective of Alabama. ASORCNA casts the widest possible net, capturing persons retroactively and requiring adherence for life, coupled with all its life-disabling restrictions and requirements. Alabama does so based on the egregiously flawed assumption that, as the Legislature emphasizes, *all* registrants of the statute are dangerous. Ala. Code § 15-20A-2. The legislative finding of wholesale

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Wagner's mapping data.); Appx. Vol. 9, doc. 251, p. 124 ln 3-17 (Dr. McCleary, acknowledging his unfair and misleading information regarding Mr. Wagner's report.).

[14] Appx. Vol. 10, doc. 251, p. 180 ln 16 : p. 183 ln 21 (Dr. McCleary, acknowledging no published works regarding "sex offender recidivism"; *Cf.* Appx. Vol. 10, doc. 251, p. 184 ln 1 : p. 186 ln 21 (Dr. McCleary denying being a S.O.B. (Sexually Oriented Businesses) expert, although nearly 70% of the credentials submitted to the Court in his *curriculum vitae* were S.O.B.-related testimony and research.).

[15] Appx. Vol. 10, doc. 251, p. 202 ln 17 : p. 203 ln 3 (Dr. McCleary admitting that, his ability to opine on the Alabama Legislature's purported "common sense" approach to creating ASORCNA, was "way beyond [his] expertise.").

dangerousness of all registrants is *the sole* basis[16] for ASORCNA's registrant restrictions and requirements, which purportedly serve to protect the public and children. I*d*. Alabama cannot now, under "presumption of constitutionality," attempt to disavow the explicit statutory calculus that is fatal to ASORCNA's constitutionality under *ex post facto* scrutiny. And the Legislature cannot now, though empirical excerpts, "cherry-pick" their way around the fact that their statutory calculus is inapposite all credible empirical evidence. This guidepost weighs heavily in favor of a finding that ASORCNA is punitive in effect because the statute is not rationally connected to the Legislature's stated nonpunitive objective.

5. ASORCNA's unrivaled restrictions and requirements are excessive.

Mr. McGuire reiterates here, that numerous courts have overturned sex offender statutes or individual provisions within those statutes on *ex post facto* grounds. *See e.g.* Appellants Supp. Br. at 16-19. Mr. McGuire now directs this Court's attention to yet another state's highest court (Pennsylvania), applying the federal *ex post facto* analysis, and overturning the state's sex offender statute on those grounds just weeks prior to this filing. *Commonwealth v. Muniz*, 2017 Pa. LEXIS 1682, *65-66 (Pa. July 19, 2017) ("We conclude [Pennsylvania's] SORNA

[16] See Ala. Code § 15-20A-2 (making numerous references to the "dangerousness" of all sex offenders.").

involves affirmative disabilities or restraints, its sanctions have been historically regarded as punishment, its operation promotes the traditional aims of punishment, including deterrence and retribution, and its registration requirements are excessive in relation to its stated nonpunitive purpose. Accordingly, we hold the retroactive application of SORNA to appellant violates the ex post facto clause of the United States Constitution."). As with every other sex offender scheme in the country, Pennsylvania's now defunct statutory restrictions and requirements pale[17] in comparison to those of ASORCNA.

Appellees respond to Mr. McGuire by gliding by his arguments of ASORCNA's excessiveness. Appellees' Supp. Resp. Br. at 13, 23. But, in examining the excessiveness factor under the *Mendoza-Martinez* analysis, it is important to point out once again, that ASORCNA's combination of debilitating features is

[17] The Pennsylvania court opined:

> SORNA classifies offenders and their offenses into three tiers. 42 Pa.C.S. §9799.14. Those convicted of Tier I offenses are subject to registration for a period of fifteen years and are required to [report], in person at an approved registration site, annually. 42 Pa.C.S. §9799.15(a)(1), (e)(1). Those convicted of Tier II offenses are subject to registration for a period of twenty-five years and are required to verify their registration information and be photographed, in person at an approved registration site, semi-annually. 42 Pa.C.S. §9799.15(a)(2), (e)(2).
>
> Those convicted of Tier III offenses are subject to lifetime registration and are required to verify their registration information and be photographed, in person at an approved registration site, quarterly. 42 Pa.C.S. §9799.15(a)(3), (e)(3).

Commonwealth v. Muniz, 2017 Pa. LEXIS 1682, *34 (Pa. July 19, 2017).

unrivaled in breadth and in scope. The trial court in this matter clearly exposed these truths about ASORCNA:

> [N]o court has ever been faced with analyzing *in toto* the general effects of a scheme this expansive," and "Alabama's scheme goes miles beyond the minimum federal requirements of the Sex Offender Registration Act ("SORNA").

McGuire, 83 F.Supp. 3d, at 1251. See also id. at 1267 ("both Smith and W.B.H. were dealing with schemes with only a fraction of the features embodied in ASORCNA.").

Moreover, the trial court illuminated the excessiveness of the debilitating effects of ASORCNA's restrictions and requirements, individually:

> Only 13 other states restrict residency . . . , only 15 other states restrict employment . . . , and only 9 restrict both residency and employment. No other state requires dual reporting to both the sheriff and the police department, and only one other state (Tennessee) contains travel restrictions. Only five other states are infinitely retroactive combined with lifetime application, meaning that the vast majority of states have some limit as to how far back or how far forward their provisions apply. Put together, there is not a single state that matches the cumulative and punitive effects of Alabama's ASORCNA – in fact, none even comes close.

Id. at 1251 n.18 (internal quotation marks omitted); *see also id., at* 60.

Mr. McGuire has highlighted, *supra*, the Sixth Circuit's recent decision. With regard to excessiveness, the *Doe v. Snyder* Court found:

> [W]hile the statute's efficacy is at best unclear, its negative effects are plain on the law's face. As explained above, SORA puts significant restrictions on where registrants can live, work, and "loiter," but the parties point to no evidence in the record that the difficulties the statute imposes on registrants are counterbalanced by any positive effects.

> Indeed, Michigan has never analyzed recidivism rates despite having the data to do so. The requirement that registrants make frequent, in-person appearances before law enforcement, moreover, appears to have no relationship to public safety at all. The punitive effects of these blanket restrictions thus *far exceed* even a generous assessment of their salutary effects.

Doe v. Snyder, 834 F.3d 696, 705 (6th Cir., 2016).

ASORCNA suffers from many more *ex post facto* infirmities than did the Michigan statute. ASORCNA should meet the same fate as Michigan's scheme — it should be stricken in its entirety on *ex post facto* grounds. After all, if Michigan's sex offender scheme "far exceeds" its purported public safety effects, ASORCNA *far exceeds that which is in far excess* of that purpose. Except in Alabama, the Appellees cannot direct this Court to a single statute enacted or case litigated, in the history of the United States, where a state has even *attempted* to impose upon registrants of a sex offender scheme, the volume and scope of debilitating restrictions and requirements presented here.

ASORCNA's excessiveness as a statute is thus clear. Its excessiveness weighs heavily in favor of a finding that the statute is punitive in its effects.

CONCLUSION AND RELIEF REQUESTED

At trial, Chief Judge Watkins asked a question of the Defendant-Appellees regarding the unprecedented number and debilitating scope of the restrictions and requirements of ASORCNA. For those at the margins of the matter before this Court, the district court's question may appear rhetorical, even "tongue-in-cheek."

Mr. McGuire believes the question captures the essence of what this most important case entails, and why this Court should invalidate the statute. The Chief District Judge asked: "How long is a piece of string?" Appx., Vol. 10, doc. 252, p. 23 ln 19; p. 27 ln 7.

Mr. McGuire most humbly offers a tag-along question to the district court's: How many "pieces of string," so intertwined, working together in concert, effectively constitute a rope? … A rope which binds the hands of unpopular men and women who simply want to use them to provide for their families; which binds the feet of human beings, who simply want to lawfully, go about their way; which binds the minds of citizens who must awaken, daily, wondering first, how to avoid 115 felonies for activities that, but for law which *only applies to them*, are otherwise lawful; a rope that binds the hearts of husbands, wives, parents, siblings, uncles and aunts alike, because that rope often tethers shut, the gate between them and many of their family members; and, finally, a rope which relegates Americans, *free* Americans, to a perpetual life of "walking on eggshells" because, a law which permanently labels them — a law created *after* many of them atoned for crimes — makes it so likely, even if unwittingly, for them to "hang themselves," and return to prison. Indeed, how long is a piece of string? And how many pieces, constitute a rope? ASORCNA imposes all of these punitive things upon registrants like Mr. McGuire. Worse, the statute does so without providing for assessments of the future

risk of any member of the unrivaled, broad class captured and trapped, forever, through its strictures.

Thus, this Court has before it, a monumental case to decide: No United States Court of Appeals has ever reviewed a sex offender statute so expansive and so debilitating nor, one so glaringly void of adequate constitutional safeguards. Mr. McGuire now utters a two-word prayer upon this Court — words which underpin the very foundation of United States jurisprudence — "Fundamental fairness."

Based on the forgoing, the Alabama Sex Offender Registration and Community Notification Act should be stricken in its entirety because it violates the *Ex Post Facto* Clause of the United States Constitution. Mr. McGuire respectfully requests that this Court do so. In the alternative, and upon the same grounds, Mr. McGuire requests that the Court strike as unconstitutional, Ala. Code § 15-20A-3(a), in conjunction with the following provisions:

a. The required lifetime adherence to the statute provided in Ala. Code § 15-20A-3(b);
b. The residency restrictions provided in Ala. Code § 15-20A-11;
c. The homeless restrictions provided in Ala. Code § 15-20A-12(b)-(e);
d. The employment restrictions provided in Ala. Code § 15-20A-13;
e. The travel restrictions and mandatory permission requirements provided in Ala. Code § 15-20A-15(a), (c), (f);
f. The branded identification requirements of Ala. Code § 15-20A-18(b)-(e);
g. The in-person reporting requirements provided in Ala. Code §§ 15-20A-7 (a)(7)-(9), (18)-(19); 15-20A-10(a)(1), (b)-(c), (e);
h. The required active, state dissemination of community notification fliers provided in Ala. Code § 15-20A-21;
i. The multi-agency registration requirements provided in Ala. Code § 15-20A-4(13), in conjunction with §§ 15-20A-7, -10, -12(a)-(b), (d)-(e);

j. The multi-agency registration fee requirements provided in Ala. Code §§ 15-20A-4(13), in conjunction with, § 15-20A-22; and,
k. The multi-agency "status change" registration fees provided in Ala. Code § Ala. Code §§ 15-20A-4(13), in conjunction with the combination of §§ 15-20A-22 and, 15-20A-7, -10.

Respectfully submitted,

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Certificate of Compliance

Pursuant to Federal Rule of Appellate Procedure 32(a), undersigned counsel hereby certifies that this brief complies with the type-volume limitation of Fed.R.App.P. 32(a)(7)(B) because this brief contains 8,952 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

Undersigned counsel further certifies the brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

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Certificate of Service

I certify that on August 21, 2017, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notice of such filing to the following counsel:

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