IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2014

No. A-

ANTHONY NATION

PETITIONER

v.

STATE OF SOUTH CAROLINA

RESPONDENT.

PETITION FOR WRIT OF *CERTIORARI* TO THE SOUTH CAROLINA SUPREME COURT

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## QUESTIONS PRESENTED

After sentencing Anthony Nation to a term of imprisonment followed by five years probation, South Carolina amended its sex offender registry to require mandatory imposition of satellite monitoring, for at least ten years, for any violation of probation. The minimum term of satellite monitoring exceeds Nation's term of probation. Compliance with satellite monitoring restrains Nation's liberty for several hours per day in order to charge the device. Under these circumstances:

(1) Does imposition of satellite monitoring violate the *ex post facto* clause?

(2) Does imposition of satellite monitoring after the expiration for Nation's sentence violate the double jeopardy clause?

(3) Does Due Process require an individualized determination before the State can impose satellite monitoring?

## RULE 26.9 STATEMENT

Anthony Nation and the State of South Carolina are the only parties to this proceeding. No corporations are involved.

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Anthony Nation respectfully petitions for a writ of *certiorari* to review the judgment of the South Carolina Supreme Court.

## OPINION BELOW

The South Carolina Supreme Court's opinion affirming the order adding satellite monitoring as a condition of Nation's sentence is published, *State v. Nation*, 408 S.C. 474, 759 S.E.2d 428 (2014), and is reprinted in the Appendix (hereinafter "A.") at 1-8. The South Carolina Supreme Court's order denying the petition for rehearing is unreported and reprinted at A. at 22-23.

## JURISDICTION

The South Carolina Supreme Court affirmed the order adding satellite monitoring as a condition of Nation's sentence on July 2, 2014, A. 1-8, and denied his timely petition for

rehearing on August 6, 2014, A. 9-23. Nation invokes this Court's jurisdiction under 28 U.S.C. §1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 10 of the United States constitution declares that "no state shall pass any *ex post facto* law."

The Fifth Amendment to the United States Constitution provides no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." The Fifth Amendment prohibition against double jeopardy applies to the states through the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 789 (1969).

The Fourteenth Amendment to the United States Constitution prohibits any state from "depriv[ing] any person of life, liberty, or property, without due process of law."

This appeal also involves South Carolina's requirement of satellite monitoring for certain sex offenders, found at S.C. Code Ann. §23-3-540. A. 24-27.

## STATEMENT OF THE CASE

In 2003, Nation pleaded guilty to committing a lewd act on a child under age sixteen.[1] The judge sentenced him to fifteen years imprisonment, suspended on the service of twelve years, followed by five years probation. At the time, Nation knew he would have to register for the rest of his life as sex offender, but he had no idea what South Carolina would later require of him after the completion of his sentence.[2]

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[1] *See* former S.C. Code Ann. §16-15-140. In 2010, the General Assembly renamed this offense third-degree criminal sexual conduct with a minor and re-codified it in S.C. Code Ann. §16-3-655(C).

[2] Earlier this year, Nation completed his probation. The South Carolina Department of Probation, Parole, and Pardon Services continues to monitor Nation by satellite. After completing probation, Nation was forced to quit a job at a local meat packing plant in order to be

In 2005, the General Assembly added S.C. Code Ann. §23-3-540 to require satellite monitoring of certain sex offenders. Section C of this statute requires that any person "who violates a term of probation . . . must be ordered by the court or agency with jurisdiction to be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device." Pursuant to Section H of the statute, the requirement is for life, but the South Carolina Supreme Court held that Due Process requires judicial review after ten years. *State v. Dykes*, 403 S.C. 499, 744 S.E.2d 505 (2013), *cert. denied*, ___ U.S. ___, 134 S. Ct. 1937, 188 L. Ed. 2d 964 (2014).

After being released from prison on July 31, 2009, Nation began serving the probation portion of his sentence. On May 6, 2011, his probation agent alleged Nation violated his probation for missing two monthly reports. Record on Appeal (hereinafter "ROA") 217-18. Prior to the revocation hearing, Nation filed a motion and supporting memorandum contending the imposition of satellite monitoring would violate the *Ex Post Facto* Clause, Double Jeopardy, and his Due Process right to an individualized determination before the state could require satellite monitoring. ROA 65-216. The trial court convened a probation revocation hearing on September 14, 2011. ROA 1-63.

During the hearing, Nation presented evidence that his decision whether to plead guilty might have been different had he "known that lifetime GPS[3] monitoring was a potential collateral consequence." ROA 23-32. His probation agent testified about Nation's score of zero on "the Static 99," a test to access the likelihood of reoffending. A zero score is the "lowest level," meaning a person is extremely ***unlikely*** to reoffend. ROA 52-54, 219

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in compliance with satellite monitoring supervision. The monitoring device does not work in the refrigerated climate.

[3] Global Position Satellite.

Nation's probation agent also testified about his training and experience "dealing with GPS monitoring." "It's a device that is attached to the ankle with a strap." It is made out of plastic and "would fit in the palm of your hand. The strap is made two inches wide." The agent can monitor Nation's location in "real time." The agent can see where Nation is located, the direction he is traveling, an even how fast he is driving. The agent testified "three hours [daily] is the standard charg[ing]" time for the monitor's battery. Charging the battery means "somebody has to sit next to a wall, plugged into a wall." When the battery "gets weaker," then "you have to charge them more often." The probation agent provides a "charging schedule." If the monitor's "battery is getting low," then a command center "that monitors these devices 24-hours-a-day" alerts the agent. The agent then calls the person to "tell them to plug in, charge it up." ROA 48-52.

The probation revocation hearing judge reviewed Nation's written motion and supporting memorandum, took "into account all the arguments," overruled the constitutional challenges, and declined to "deviate from the explicit black letter law of the statute." The judge found Nation to be "in willful violation of his probation for having missed two of his appointments with his probation officer," and revoked five months of the suspended sentence. He found "that GPS monitoring is mandatory, that . . . this Court has no discretion." The judge, however, noted, "If I had discretion I perhaps might have been inclined to use it under these facts and circumstances." ROA 61-63.

Before the Supreme Court of South Carolina, Nation contended his state's sex offender registry has become punitive over time. Brief of Appellant, pp. 7-10. He argued that satellite monitoring was much more restrictive and punitive than the sex offender registration

requirements that survived an *ex post facto* challenge in *Smith v. Doe*, 538 U.S. 84 (2003). He presented these constitutional claims:

> 1. Imposition of satellite monitoring violates the *Ex Post Facto* Clause of the United States Constitution where he pleaded guilty and was sentenced before the General Assembly created this monitoring requirement.
>
> 2. Imposition of satellite monitoring violates the Double Jeopardy Clause where the additional penalty imposed at a probation violation hearing continues after Nation completes the terms of his original sentence.
>
> 3. Imposition of satellite monitoring violates Due Process where there is no individualized determination of Nation's likelihood to reoffend.

In his brief below, at pp. 14-24, Nation argued that the *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963) factors weigh in favor of finding the satellite monitoring requirement to be punishment.

Nation pointed out the sanction applies to behavior that is already a crime and is imposed after a finding of scienter. It applies only to people who commit and are convicted of certain crimes. It applies to everyone who commits those crimes. And, it applies for the duration of probation and beyond.

Charging the device infringes on Nation's right to travel and, therefore, is an affirmative disability or restraint. Nation is continuously under surveillance of the government. The device is a permanent and physical attachment. There is no other context when the state physically attaches an item to a person, without consent, and without regard for the individual circumstances.

Regarding the traditional aims of punishment, satellite monitoring is deterrence and retribution. Retribution applies under this provision because, regardless of the person's

likelihood to reoffend, her or she must comply with monitoring. Additionally, satellite monitoring is historically regarded as punishment. South Carolina uses it to monitor compliance with probation and parole, S.C. Code Ann. § 24-21-85, and the Home Detention Act, S.C. Code Ann. §24-13-1510 *et. seq.*

Citing *Commonwealth v. Cory*, 454 Mass. 559, 572, 911 N.E.2d 187, 197 (2009), Nation argued satellite monitoring is "excessive to the extent that it applies without exception . . . regardless of any individualized determination of [the person's] dangerousness or risk of re-offense." Brief of Appellant, p. 23. *Cory*, applying the *Mendoza-Martinez* factors, invalidated retroactive, mandatory application of satellite monitoring as a condition of probation for certain sex offenders.

Nation further argued that satellite monitoring "increase[ed] and expanded[ed] his punishment." Citing *North Carolina v. Pearce*, 395 US. 784, 717 (1969), he contended the Fifth Amendment prohibition against double jeopardy "protects against . . . a second prosecution for the for the same offense after conviction . . . [a]nd . . . multiple punishments for the same offense." Brief of Appellant, p. 24.

Nation also argued Due Process "requires a full hearing to determine whether or not he should be subject to" satellite monitoring. Brief of Appellant, p. 36. He argued "heightened scrutiny should be applied because of the fundamental rights involved, including the right to travel [and] the right to be free from unreasonable searches and seizures." *Id.* at 38.

The Supreme Court of South Carolina, however, held that imposition of satellite monitoring on a sex offender convicted prior to the statute's effective date, did not violate the *Ex Post Facto*, Double Jeopardy, or Due Process Clauses of the United State's Constitution. In reaching these conclusions, the court below considered "electronic monitoring is *not a*

*punishment*, but a civil requirement." *Nation*, 408 S.C. at 481, 759 S.E.2d at 432 (emphasis original; internal quotations omitted) (citing *In re Justin B.*, 405 S.C. 391, 404-08, 747 S.E.2d 774, 781-83 (2013) *cert denied* 134 S. Ct. 1496, 188 L. Ed. 2d 380 (2014). The lower court's conclusion that satellite monitoring is not punishment influenced its decision on the three federal issues raised in this petition.

## WHY THE WRIT SHOULD BE GRANTED

Under the circumstances of this case, Nation asks this Court to consider whether imposition of satellite monitoring violates the *Ex Post Facto*, Double Jeopardy, and Due Process Clauses of the United States Constitution. Resolving these issues incudes a determination of whether satellite monitoring is punishment or a civil requirement. This Court's guidance is needed to resolve a split among the states regarding the implementation of *Smith v. Doe, supra*, to determine whether a condition of a state's sex offender registry is punishment.

*Smith v. Doe*, of course, considered and rejected an *ex post facto* challenge to Alaska's sex offender registry. The majority of this Court noted, "The Alaska statute, on its face, does not require these updates to be made in person." 538 U.S. at 101. This Court, accordingly, reserved for another day "[w]hether other constitutional objections can be raised to a mandatory reporting requirement, and how those questions might be resolved." *Id.* at 102. Alaska, however, subsequently recognized that its sex offender registration requirement "treats offenders not much differently than the state treats probationers and parolees subject to continued state supervision." *Doe v. State*, 189 P.3d 999, 1009 (Alaska 2008) (holding sex offender registry violates *ex post facto* clause of state constitution).

Other states reached the same conclusion as Alaska regarding various sex offender registry conditions. Maine invalidated retroactive application of enhanced registration

requirements based on the *Ex Post Facto* Clause of the United States Constitution. Ohio, Maryland, and Oklahoma relied on state constitutions to invalidate retroactive application of registration requirements. Kentucky applied the *Ex Post Facto* Clause of the United States Constitution in invalidate retroactive application of residency restrictions. Indiana invalidated retroactive application of residence restrictions based on the state constitution, although this Court's precedent heavily influenced that decision. As will be seen in Section I below, California, Massachusetts, Florida, and New Jersey invalidated retroactive application of satellite monitoring. Three of these states relied on the *Ex Post Facto* Clause of the United States Constitution. These states' cases are discussed in more detail below.

Maine was the first of three states to act in 2009 in *State v. Letalien*, 2009 ME 130, 985 A.2d 4 (2009). After Letalien was sentenced, the legislature amended the sex offender registration requirements. "[T]he duration of his duty to register increased from fifteen years to his entire lifetime." He "lost the right to seek a waiver of the registration and notification provisions." The new provisions increased the frequency of his obligations to notify law enforcement about address and changes in employment. *Id.* 2009 ME at ¶ 8, 985 A.2d at 10. The Supreme Judicial Court of Maine recognized this Court's holdings in *Smith v. Doe* and *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), *id.* 2009 ME at ¶ 26, 985 A.2d at 14, and applied the *Mendoza-Martinez* factors, *see e.g.* 2009 ME at ¶¶ 30-32, 985 A.2d at16-17. Finding these provisions punitive, the Court held the statute "violates the Maine and United States Constitutions' prohibitions against *ex post facto* laws." *Id.* 2009 ME at ¶ 63, 985 A.2d at 26.

The next two states to act invalidated retroactive application of residency restrictions. Indiana held retroactive application of these restrictions "violate[d] the prohibition on *ex post*

*facto* laws contained in the Indiana Constitution because it impose[d] burdens that have the effect of adding punishment beyond that which could have been imposed when his crime was committed." *State v. Pollard*, 908 N.E.2d 1145, 1154 (Ind. 2009). Although the Court evaluated the restrictions under the state constitution, the opinion was heavily influenced by the *Mendoza-Martinez* factors.

Kentucky soon followed Indiana's lead. Although the state legislature had declared residency restriction requirements for sex offenders to be a civil consequence, application of *Smith v. Doe* "weigh[ed] in favor of concluding" that the statute "is so punitive in effect as to negate the General Assembly's intention to deem it civil." *Commonwealth v. Baker*, 295 S.W.3d 437, 447 (Ky. 2009). The Supreme Court of Kentucky, therefore, held the statue "violate[d] the *ex post facto* clauses of the United States and Kentucky constitutions." *Id.*

In 2011, the Supreme Court of Ohio addressed retroactive application of increased sex offender notifications requirements. The Court observed, "The statutory scheme has changed dramatically since this court [previously] described the registration process imposed on sex offenders as an inconvenience comparable to renewing a driver's license." *State v. Williams*, 129 Ohio St. 3d 344, 348, 952 N.E.2d 1108, 1112 (2011) (internal quotations omitted). Ohio would no longer "label these proceedings as civil in nature. These restraints on liberty are the consequences of specific criminal convictions and should be recognized as part of the punishment that is imposed as a result of the offender's actions. *Id.* The Court held retroactive application of these provisions violated the Ohio constitution, "which prohibits the General Assembly from enacting retroactive laws." *Id.* 129 Ohio St. 3d at 350, 952 N.E.2d at 1113. Although it decided *Williams* under the state constitution, the Supreme Court of Ohio subsequently combined *Williams's* holding that the sex offender registry is punitive with this

Court's Eighth Amendment precedent to invalidate the lifetime juvenile sex offender registration requirement in *In re C.P.*, 2012-Ohio-1446, 131 Ohio St. 3d 513, 967 N.E.2d 729 (2012).

In 2013, Maryland and Oklahoma invalidated sex offender registration requirements under state constitution *ex post facto* prohibitions. *Doe v. Dep't of Pub. Safety & Corr. Servs.*, 430 Md. 535, 568, 62 A.3d 123, 143 (2013) ("The application of the statute has essentially the same effect upon Petitioner's life as placing him on probation and imposing the punishment of shaming for life, and is, thus, tantamount to imposing an additional sanction for Petitioner's crime."); *Starkey v. Oklahoma Dep't of Corr.*, 305 P.3d 1004, 1030 (Oklahoma 2013) ("We find there is clear proof that the effect of the retroactive application of SORA's registration is punitive and outweighs its non-punitive purpose. The retroactive extension of SORA's registration is inconsistent with the *ex post facto* clause in the Oklahoma Constitution.").

South Carolina, by contrast, steadfastly holds every sex offender registry condition is civil and not punitive. *Nation*; *In re Justin B.*, 405 S.C. 391, 747 S.E.2d 774 (2013); *State v. Dykes*, 403 S.C. 499, 744 S.E.2d 505 (2013);[4] *Hendrix v. Taylor*, 353 S.C. 542, 579 S.E.2d 320 (2003); *In re Ronnie A.*, 355 S.C. 407, 585 S.E.2d 311 (2003); and *State v. Walls*, 348 S.C. 26, 558 S.E.2d 524 (2002).

## I. Jurisdictions are split regarding whether retroactive imposition of satellite monitoring violates the *Ex Post Facto* Clause of our Constitution.

California, Massachusetts, Florida, and New Jersey invalidated retroactive application of satellite monitoring of sex offenders. *Doe v. Schwarzenegger*, 476 F. Supp. 2d 1178 (E.D. Cal. 2007) applied state rules of statutory construction and concluded California's residency

[4] Footnote 9 of *Dykes* rejected the *ex post facto* challenge by merely citing *Smith v. Doe* and without conducting an analysis of the *Mendoza-Martinez* factors. Although *Justin B.* performed a *Mendoza-Martinez* analysis, that case did not implicate the *Ex Post Facto* Clause.

restrictions and satellite monitoring of sex offenders did not apply retroactively. The other three states based their decisions on the United States Constitution.

In 2009, *Cory*, *supra*, held GPS monitoring of certain sex offenders while on probation "is punitive in effect and, under the *ex post facto* provisions of the United States and Massachusetts Constitutions, may not be applied to persons who are placed on probation for qualifying sex offenses committed before the statute's effective date." 454 Mass. at 560, 911 N.E.2d at 189. After weighing the *Mendoza-Martinez* factors, the Court concluded the statute imposed a "substantial burden on liberty." *Id.* 454 Mass. at 572, 911 N.E.2d at 197.

In 2011, Florida held "retroactive application of [a mandatory GPS monitoring requirement] to probationers whose offenses were committed before the [statute's] effective date would violate the *ex post facto* clauses of the United States and Florida Constitutions." *Witchard v. State*, 68 So. 3d 407, 409 (Fla. Dist. Ct. App. 2011). The opinion noted, "Florida courts have consistently treated mandatory electronic monitoring as a sentencing enhancement—i.e., punishment." *Id.* at 410.

Less then three months after the decision in *Nation*, the New Jersey Supreme Court held retroactive application of a GPS monitoring requirement "violates the *Ex Post Facto* Clauses of the Federal and State Constitutions." *Riley v. New Jersey State Parole Bd.*, 219 N.J. 270, 298, 98 A.3d 544, 560 (2014). The Court found two of the *Kennedy v. Menoza* factors "weigh most heavily" in its analysis. *Id.* 219 N.J. at 293, 98 A.3d at 557-58. The monitoring requirement is analogous to "parole supervision for life." *Id.* Additionally, the loss of freedom to travel imposes an affirmative disability on restraint. The Court observed:

> [T]he disabilities and restraints placed on Riley through twenty-four-hour GPS monitoring enabled by a tracking device fastened to his ankle could hardly be called minor and indirect. Riley is tethered to an electronic device that must be recharged every

> sixteen hours, and therefore he cannot travel to places where there are no electrical outlets. In addition to the requirement that he tell his parole officer before he leaves the State, Riley cannot travel to places without GPS reception because his tracker will be rendered inoperable and his parole officer will be unable to monitor his whereabouts.

*Id.*, 219 N.J. at 295, 98 A.3d at 559 (internal quotations and citations omitted).

Massachusetts, Florida, and New Jersey, therefore, have reached very different conclusion than South Carolina in this case and others. *See Justin B.* 405 S.C. at 395-404, 747 S.E.2d at 776-81 (applying the *Mendoza-Martinez* factors, held "electronic monitoring requirement is a civil obligation similar to other restrictions the state may lawfully place upon sex offenders"). Other jurisdictions have reached the same conclusion as South Carolina. *Doe v. Bredesen*, 507 F.3d 998, 1004 (6th Cir. 2007); *State v. Trosclair*, 89 So. 3d 340 (La. 2012); *Hassett v. State*, 12 A.3d 1154 (Del. 2011); *State v. Bowditch*, 364 N.C. 335, 700 S.E.2d 1 (2010); *Neville v. Walker*, 376 Ill. App. 3d 1115, 878 N.E.2d 831 (2007); *State v. Bare*, 197 N.C. App. 461, 467, 677 S.E.2d 518, 524 (2009).

Including the seven states discussed in the introduction, at least ten states have held retroactive application of certain sex offender registry conditions is punishment and violates the *ex post facto* prohibition. Because jurisdictions are split over the implementation of *Smith v Doe*, this Court should provide guidance about when retroactive application of a sex offender registry condition—in this case, satellite monitoring—violates the *Ex Post Facto* Clause of the United States Constitution.

## II. This Court's intervention is needed to provide guidance for when the Double Jeopardy Clause bars imposition of satellite monitoring that extends after the expiration of a sentence imposed prior to the effective date of the statute.

As noted above, South Carolina uses satellite monitoring for monitoring probation, parole, and home detention as an alternative to incarceration. The Supreme Court of South Carolina, nevertheless, rejected Nation's Double Jeopardy challenge in a footnote:

> We acknowledge that *Dykes* and *Justin B.* did not explicitly reject Appellant's Double Jeopardy challenge; however, the prohibition on double jeopardy protects against, *inter alia,* multiple *punishments* for the same offense. As *Dykes* and *Justin B.* both hold that the GPS monitoring requirement is a civil penalty and not a punishment, Appellant's argument that Jessie's Law increas[es] and expand[s] his punishment as a violation of double jeopardy is without merit.

*Nation*, 408 S.C. at 482 (fn. 8), 759 S.E.2d at 432 (fn. 8) (emphasis original; internal quotations and citations omitted).

The lower court's decision on this issue, therefore, is contingent on the application of this Court's precedent in *Smith v. Doe* and *Mendoza-Martinez* to determine whether satellite monitoring is punitive. As seen, states reach different conclusions regarding the application of this precedent. This Court's guidance, therefore, is needed to determine when a state's sex offender registry conditions constitute punishment and implicate the Double Jeopardy Clause.

## III. This Court's intervention is needed to provide guidance for when Due Process requires an individualized determination before the State can impose satellite monitoring.

Prior to *Nation*, in *Dykes, supra*, the Supreme Court of South Carolina considered whether Due Process requires an individualized determination before imposing satellite monitoring. The court below relied on *Dykes* in denying Nation's appeal. *Dykes* "flow[ed] in part from the premise that satellite monitoring is predominantly civil." 403 S.C. at 506, 744 S.E.2d at 509 (citing *Smith v. Doe*, 538 U.S. at 123). This assumption allowed the court below to

reject the contention that a fundamental right was involved. "Notwithstanding the absence of a fundamental right, [the majority of a sharply divided court found] that lifetime imposition of satellite monitoring implicates a protected liberty interest to be free from permanent, unwarranted governmental interference." *Id.* As seen in Section I, *supra*, Massachusetts, Florida, and New Jersey reached a very different conclusion. Massachusetts, for example, found it significant that the requirement "applie[d] without exception . . . regardless of any individualized determination of [the person's] dangerousness or risk of re-offense." *Cory*, 454 Mass. at 572, 911 N.E.2d at 197.

Given the nature of the restriction, including the implication of a liberty interest, an individualized determination would weigh in favor of holding the requirement civil. Consider the South Carolina's sexually violent predator commitment procedure, found at S.C. Code Ann. §44-48-30, *et. seq.*, which has consistently been found to be civil commitment procedure and not punishment. *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 568 S.E.2d 338 (2002); *In re Matthews*, 345 S.C. 638, 550 S.E.2d 311 (2001). *See also Kansas v. Hendricks*, 521 U.S. 346 (1997).

Other sates require an individualized determination. Arkansas, for example, requires, "Upon release from incarceration, a sex offender determined to be a sexually dangerous person whose crime was committed after April 7, 2006, is subject to electronic monitoring for a period of not less than ten (10) years from the date of the sex offender's release." Ark. Code Ann. § 12-12-923(a)(1). The prosecutor provides notice the state seeks "a determination that the defendant is a sexually dangerous person." Ark. Code Ann. §12-12-918(a)(1). "If the defendant is adjudicated guilty, the court shall enter an order directing an examiner qualified by the Sex Offender Assessment Committee to issue a report to the sentencing court that recommends

whether or not the defendant should be classified as a sexually dangerous person." Ark. Code Ann. §12-12-918(a)(2)(A).

Georgia requires its Sexual Offense Registration Review Board to determine "the likelihood that a sexual offender will engage in another crime against a victim who is a minor or a dangerous sexual offense." Ga. Code Ann. §42-1-14(a)(1). The statute provides for a three level "risk assessment classification." Ga. Code Ann. §42-1-14(a)(2). Offenders classified as a "sexually dangerous predator shall be required to wear an electronic monitoring system." Ga. Code Ann. §42-1-14(e).

In Idaho, "Any individual designated as a violent sexual predator shall be monitored with electronic monitoring technology for the duration of the individual's probation or parole period." Idaho Code Ann. §18-8308(3). A "'[v]iolent sexual predator' means a person who was designated as a violent sexual predator by the sex offender classification board where such designation has not been removed by judicial action or otherwise." Idaho Code Ann. §18-8303(17). Idaho's scheme provides for a court-ordered psychosexual evaluation upon conviction." Idaho Code Ann. §18-8316.

Just this week, the Supreme Court of Pennsylvania held "lifetime [sex offender] registration requirements upon adjudication of specified offenses violates juvenile offenders' due process rights by utilizing an irrebuttable presumption" that the juvenile would likely reoffend. *In the interest of J.B.*, Penn. S. Ct. Case No. J-44A-G-2014 (filed December 29, 2014), p. 35.

If satellite monitoring is truly civil, then this Court should provide guidance about whether a state court should make an individualized determination before imposing the requirement.

## CONCLUSION

This Court should grant the writ.

Respectfully submitted,

By 

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CERTIFICATE OF FILING BY MAIL

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I hereby certify that I am a member of the Bar of this Court and that on January 2, 2015, I filed the petition for writ of *certiorari* in the above-referenced case, together with a motion for leave to proceed *in forma pauperis*, by causing the originals and ten copies of the same to be deposited in the United States Mail, postage prepaid, and properly addressed to the Clerk of this Court.

By _____

E. Charles Grose, Jr.
***Attorney of Record for Petitioner***

SUBSCRIBED TO AND SWORN TO before me
This 2nd day of January, 2015.

_____
Notary Public for South Carolina
My Commission Expires: 11/30/22

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion for Leave to Proceed *In Forma Pauperis* and Petition for Writ of *Certiorari* to the South Carolina Supreme Court has been served upon opposing counsel by mailing one (1) copy in an envelope properly addressed with postage prepaid this 2nd day of January, 2015, to:

Matthew C. Buchanan, Esquire
S. C. Department of Probation, Parole & Pardon Services
PO Box 50666
Columbia, SC 29250

By _____

E. Charles Grose, Jr.
***Attorney of Record for Petitioner***

SUBSCRIBED TO AND SWORN TO before me
This 2nd day of January, 2015.

_____
Notary Public for South Carolina
My Commission Expires: 11/30/22