

SCOTUS Opinion: Court Upholds Sex Offender Registration and Notification Act Against Delegation Challenge

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The [Sex Offender Registration and Notification Act](#) required all convicted sex offenders to register with the government. For those offenders convicted of a sex offense before the Act was enacted, the Act authorized the Attorney General to specify the applicability of the Act's registration requirements and prescribe rules therefore. The Attorney General issued a rule applying the Act's requirements to all such previously convicted offenders. Herman Gundy, a pre-Act offender, was convicted of failing to register under the Act. Gundy argued that the Act unconstitutionally delegated legislative power to the Attorney General. He lost before the district court and the Second Circuit, and on appeal to the Supreme Court, lost again by a 5-4 margin. Justice Kagan, joined by Justices Ginsburg, Breyer, and Sotomayor, held that the Act did not violate the nondelegation doctrine because the Act was limited in scope: Congress wanted pre-Act offenders to be registered as soon as possible, but realized that there could be practical problems in requiring immediate registration, and so granted the Attorney General a limited role in determining how to accomplish that goal in a feasible manner. Thus, there was an intelligible principle guiding the Attorney General that did not amount to an unconstitutional delegation of power. Justice Alito concurred in the judgment, stating that he was willing to reconsider the Court's approach to the nondelegation doctrine, but that the current case was not out of line with prior instances where the Court had similarly rejected nondelegation arguments. Justice Gorsuch, joined by Chief Justice Roberts and Justice Thomas, dissented, arguing that the Act violated the nondelegation doctrine by granting the Attorney General the power to write his own criminal code governing the lives of a half-million citizens and taking up Alito's desire to reconsider the doctrine as a whole. Justice Kavanaugh was recused, indicating that this issue may be before the Court again in the near-future. A link to the opinion in *Gundy v. United States* is [here](#).

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