

No. 25-1413 / 25-1414

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

MARY DOE; JOHN DOE A; JOHN DOE B; JOHN DOE C; JOHN DOE D;
JOHN DOE E; JOHN DOE G; JOHN DOE H; and MARY ROE,
Plaintiffs - Appellants Cross-Appellees

v.

GRETCHEN WHITMER, Governor of the State of Michigan;
JAMES GRADY, II, Colonel,
Defendants - Appellees Cross-Appellants

On Appeal from the United States District Court
for the Eastern District of Michigan,
Case No. 2:22-cv-10209 (The Honorable Mark A. Goldsmith)

**MOTION TO REMAND COUNTS I AND II FOR POTENTIAL
DISMISSAL BASED ON MOOTNESS**

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, Plaintiffs – Appellants Cross Appellees
make the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation?

Answer: No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a
financial interest in the outcome?

Answer: No.

On September 9, 2026, the Michigan Supreme Court held that under the federal and state ex post facto clauses, “2021 SORA is [] an ex post facto punishment” and thus “may not be retroactively applied to registrants whose criminal acts subjecting them to registration occurred before enactment of the 2011 SORA amendments, and severance or revival of prior versions of the SORA is not appropriate.” *People v. Smith*, --- N.W.3d ---, Nos. 168200 & (69), 2026 WL 2658449, at *1 (Mich. Sept. 9, 2026); *see also* Plaintiffs-Appellants/Cross-Appellees’ Rule 28(j) Letter re *People v. Smith*, Doc. 91. In response to that decision, the Michigan State Police (MSP) began “taking the necessary steps to implement the ruling.” Official Statement, Michigan State Police, Michigan State Police Begins Removing Sex Offenders from Registry to Comply with Michigan Supreme Court Order (Sept. 11, 2026) (Exhibit A).^{*} According to the MSP’s statement, as of September 11, 2026, the MSP had removed more than 20,000 registrants. *Id.*

Consistent with counsel’s duty of candor, Plaintiffs write to inform the Court that two of the claims on appeal—Count I (that SORA 2021’s application to pre-2011 registrants violates the Ex Post Facto Clause) and Count II (that SORA 2021’s retroactive extension of registration terms violates the Ex Post Facto Clause)—may already be or may soon become moot. *See Bd. of License Comm’rs of Town of*

^{*} <https://www.michigan.gov/mspnewsroom/news-releases/2026/09/11/sor-compliance-official-statement>.

Tiverton v. Pastore, 469 U.S. 238, 240 (1985) (requiring disclosure of any developments that “could have the effect of depriving the Court of jurisdiction due to the absence of a continuing case or controversy”).

Plaintiffs have been unable to obtain further information from Defendants to confirm whether the two ex post facto claims are moot. But the MSP’s official statement indicates that it has removed or is removing registrants ““who committed their relevant crime prior to July 1, 2011.”” Official Statement (quoting MSP director, Col. James Grady) (Exhibit A). That group appears to be the same as the pre-2011 ex post facto subclass in this litigation—the subclass that brought Count I. *See* Stipulated Order Granting Class Certification, R. 35, PageID #1117 (defining “pre-2011 ex post facto subclass” as “members of the primary class who committed the offense(s) requiring registration before July 1, 2011”). The group being removed also appears to encompass the retroactive extension of registration subclass—the subclass that brought Count II. *Id.* (defining “retroactive extension of registration subclass” as “members of the primary class who were retroactively required to register for life as a result of amendments to SORA”).

“If events occur during the case that make it impossible for the court to grant any effectual relief whatever to a prevailing party,” the appeal is moot. *Kanuszewski v. Mich. Dep’t of Health & Hum. Servs.*, 141 F.4th 796, 802 (6th Cir. 2025) (citation modified). Here, it appears that the MSP’s removal of pre-2011 registrants in

compliance with the Michigan Supreme Court’s decision may have already, or may soon, moot Counts I and II, as a court cannot grant relief from registration to people who are not subject to registration. Without further information, however, Class Counsel cannot confirm whether the two affected subclasses have been removed from the registry. *Cf.* Am. Judgment, R. 177, ¶ M.1, PageID #9389 (requiring Defendants to periodically provide class list, thereby allowing Plaintiffs’ counsel to monitor compliance with judgment).

Accordingly, Plaintiffs ask this Court to remand Counts I and II to the district court. On remand, the district court can engage in any fact-finding necessary to confirm that the claims are indeed moot. *See* 13C *Wright & Miller’s Federal Practice & Procedure* § 3533.10.3 (3d ed. Apr. 2026 update) (“If the appellate court is unsure of the facts, it is common to remand for consideration of mootness by the lower court.”); *FemHealth USA, Inc. v. Williams*, 83 F.4th 551, 557-59 (6th Cir. 2023) (remanding to district court to resolve factual issues regarding whether case is moot).

In addition, since Counts I and II were brought on behalf of a certified class, the district court can determine what procedures may be necessary under Federal Rule of Civil Procedure 23(e) in order for those counts to be dismissed, if those counts are indeed moot. The district court can also consider whether and how to address any implementation issues (e.g., what procedures may be needed to ensure

that both registrants and law enforcement understand that SORA may no longer be enforced against pre-2011 registrants).

Remanding Counts I and II for potential dismissal would not affect the other claims which remain pending before this Court. *See Howard v. Wilbur*, 166 F.2d 884, 885-86 (6th Cir. 1948) (“[A]n appeal will not be dismissed where only a part of the controversy has become moot and other questions remain for decision.”).

Plaintiffs invited Defendants to join this motion, but they declined to do so.

Respectfully submitted,

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Dated: September 18, 2026

CERTIFICATE OF SERVICE

This document will be served on September 18, 2026, on all counsel of record via the Court's ECF system.

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