No. 22-1301

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FRANK CORRIDORE,
Petitioner-Appellant,

v.

HEIDI WASHINGTON,
Respondent-Appellee.

On Appeal from the
United States District Court for the Eastern District of Michigan
No. 2:21-cv-10834

PETITIONER-APPELLANT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

STATEMENT IN SUPPORT OF ORAL ARGUMENT

Petitioner-Appellant Frank Corridore respectfully requests oral argument. This case involves an important question of federal law—namely, whether an individual sentenced to lifetime electronic monitoring (LEM) and registration under Michigan's Sex Offenders Registration Act (SORA) is "in custody" for the purposes of a federal district court's jurisdiction over a habeas corpus petition under 28 U.S.C. §§ 2241 and 2254. Mr. Corridore believes the Court would benefit from the opportunity for the parties to address how the "in custody" requirement applies to LEM, SORA, and the facts of this case.

STATEMENT OF JURISDICTION

The district court's subject-matter jurisdiction is the subject of this appeal. Mr. Corridore maintains that the district court had jurisdiction under 28 U.S.C. §§ 2241(c)(3) and 2254(a).

This Court has jurisdiction over this appeal under 28 U.S.C. §§ 1291 and 2253. This appeal challenges a "final order" in a habeas corpus proceeding. *See* 28 U.S.C. § 2253(a); Op. & Order, R. 8, Page ID # 1910–1920; Judgment, R. 9, Page ID # 1921. And the district court issued a certificate of appealability as to the jurisdictional issue on appeal. *See* 28 U.S.C. § 2253(c)(1); Op. & Order, R. 8, Page ID # 1920; Judgment, R. 9, Page ID # 1921. The notice of appeal was timely filed on April 11, 2022, Notice of Appeal, R. 10, Page ID # 1922–1923, which was within

30 days of the entry of the final order and judgment on March 25, 2022. *See* Fed. R. App. P. 4(a)(1)(A).

ISSUE PRESENTED

Is an individual sentenced to lifetime electronic monitoring and sex offender registration in Michigan "in custody" for the purposes of a federal district court's jurisdiction over a habeas corpus petition under 28 U.S.C. §§ 2241 and 2254?

The district court answered: No.

Petitioner-Appellant Frank Corridore answers: Yes.

INTRODUCTION

This case is about whether an individual convicted of criminal sexual conduct and subjected to lifelong supervision, restraints on his movement, and perpetual surveillance may challenge his state-court conviction through a federal writ of habeas corpus. Consistent with the history of habeas corpus, the reality of contemporary supervision and surveillance, and the importance of preserving access to federal courts, this Court should allow Mr. Corridore's habeas action to proceed.

Habeas corpus is "the judicial method of lifting undue restraints upon personal liberty." *Price v. Johnston*, 334 U.S. 266, 269 (1948). Courts interpret the scope of federal habeas corpus jurisdiction consistent with the historical use of the writ—and the writ was historically used to redress much more than imprisonment. At the height of its use in England, from 1500 to 1800, at least 11,000 people resorted to the writ

to address a variety of restraints such as family custody, naval impressment, and involuntary servitude. Paul D. Halliday, *Habeas Corpus: From England to Empire* 4–5, 32–33 (2010). At bottom, "the great writ of *habeas corpus* has been for centuries esteemed the best and only sufficient defence of personal freedom." *Ex parte Yerger*, 75 U.S. 85, 95 (1868).

Habeas corpus remains vital today in challenging unlawful government action. After Mr. Corridore's attorney failed to present evidence at his second jury trial that he was innocent, Mr. Corridore was convicted of second-degree criminal sexual conduct. In addition to a prison term, Mr. Corridore was sentenced to a lifetime of electronic monitoring and sex offender registration. As his direct appeal wound its way through state courts, Mr. Corridore finished serving most of his prison sentence. By the time he filed his timely federal petition for a writ of habeas corpus, he had already been released from prison, and had begun wearing an ankle monitor and complying with his sex offender registration requirements.

As a result of these obligations, Mr. Corridore is denied a lifetime of access to freedoms otherwise available to the public. He must spend at least two hours each day near an electrical outlet to recharge his GPS tether. When he travels, he must avoid all areas with a poor GPS signal so as not to be accused of absconding. If he ever wants to leave his residence for an extended period of time, he must give the authorities notice of his planned whereabouts. He is subject to increased scrutiny and

embarrassment due to his monitor, and he cannot even wear shorts or go to a swimming pool without being ostracized for having a tether. In sum, lifetime monitoring and registration are tools by which the state limits Mr. Corridore's freedom of movement and otherwise ensures that he is treated as a second-class citizen.

Yet, when it came time for Mr. Corridore to seek federal review of his conviction, the district court concluded that it lacked jurisdiction because there were no restraints on his freedom. This conclusion is plainly at odds with the reality of monitoring and sex offender registration, and the writ's "initiative and flexibility essential to insure that miscarriages of justice" are corrected. *Harris v. Nelson*, 394 U.S. 286, 291 (1969). The ruling also disregards the historical uses of habeas corpus for lifting a variety of restraints on personal liberty beyond incarceration. Moreover, it creates the oddity by which convictions with short enough prison terms become essentially unreviewable in federal court, leaving individuals like Mr. Corridore stuck with lifetime monitoring and registration obligations even when they may have meritorious claims challenging the underlying convictions that created those burdens. In an era in which alternatives to incarceration are increasingly becoming

the norm,[1] such a conclusion is especially troubling. This Court should therefore reverse the dismissal of Mr. Corridore's federal habeas petition.

STATEMENT OF THE CASE

This case concerns whether restraints imposed under two of Michigan's mandatory sentencing laws—lifetime electronic monitoring and lifetime sex offender registration—allow Mr. Corridore to challenge the validity of his state-court conviction in a federal habeas corpus petition.

I. Lifetime Electronic Monitoring in Michigan

The Michigan legislature amended the state's penal code in 2006 to require courts to sentence individuals convicted of certain crimes to lifetime electronic monitoring (LEM) after their release from prison. *See* 2006 Mich. Pub. Act 169 (first-degree criminal sexual conduct); 2006 Mich. Pub. Act 171 (second-degree criminal sexual conduct against younger victims). In addition to other penalties, the

[1] From 2005 to 2015, the number of active electronic monitors in use rose by 140%, with more than 125,000 people in 2015 supervised with such devices. *Use of Electronic Offender-Tracking Devices Expands Sharply: Number of Monitored Individuals More Than Doubled in 10 Years*, PEW (Sept. 7, 2016), http://pew.org/2cpDaNx. Moreover, the COVID-19 pandemic expanded courts' uses of electronic monitoring as a means of releasing and then keeping track of individuals who were nearing the end of their sentences. *See* Cara Tabachnick, *Covid-19 Created a Bigger Market for Electronic Ankle Monitors*, Bloomberg Law (July 14, 2020), https://bit.ly/3QZy79U. In Michigan, 169 new individuals were placed on lifetime GPS monitoring in 2021 alone. *See* Mich. Dep't Corrections, *Report to the Legislature Pursuant to Sec. 611 of 2021 P.A. 87 - Electronic Monitoring Program*, Tbl. 2 (Mar. 2022), https://bit.ly/3QXYhdb.

court "shall sentence" these defendants to lifetime electronic monitoring. Mich. Comp. Laws §§ 750.520b(2), 750.520c(2).

The Michigan Department of Corrections (MDOC) oversees the LEM program. *See id.* § 791.204(d) (giving MDOC jurisdiction); *id.* § 791.285(1) (explaining that MDOC oversees the program). The LEM program: (1) tracks an individual's movement and location "from the time the individual is released on parole or from prison until the time of the individual's death" and (2) determines an individual's movement and location in real time and recorded time. *Id.* § 791.285(1)(a)–(b). Recorded information may be retrieved upon request by courts or law enforcement agencies. *Id*. § 791.285(b). And Michigan's "Electronic Monitoring Center is staffed 24 hours a day, 7 days a week, 365 days a year." *Report to the Legislature Pursuant to Sec. 611 of 2021 P.A. 87 - Electronic Monitoring Program*, *supra*, at 1.

Michigan's penal code sets out requirements for individuals subject to LEM and attendant criminal penalties. A person sentenced to LEM who (a) intentionally removes, defaces, alters, destroys, or fails to maintain the device in working order, (b) fails to notify MDOC that the device is damaged, or (c) fails to reimburse MDOC or its agent for the cost of the monitoring is guilty of a felony punishable by up to 2 years in prison and/or a fine of up to $2,000. Mich. Comp. Laws § 750.520n(2)(a)–(c). Every person subject to LEM must also pay a $60 monthly fee. *Id.* § 791.285(2).

In addition to these statutory requirements, MDOC has promulgated its own rules for individuals subject to LEM. *See* Mich. Dep't Corrections, *Lifetime Electronic Monitoring Program Participant Agreement*, https://bit.ly/3bumWWu. Notably, the rules require that people charge their device for "two (2) continuous hours in each 24 hour period." *Id.* at 2. Other obligations include, for example, notifying MDOC if the device is ever removed or damaged, responding to indicator lights on the device, allowing MDOC staff to inspect the device at any time, making oneself immediately available to MDOC staff if the device needs to be changed, monitoring MDOC's website for any special instructions, and paying for any damage to the device. *Id.* at 1–2.

The rules also note that exposure to water may damage, or possibly destroy, the monitoring device. *Id.* at 2. And if the device appears to lose its GPS signal, individuals are instructed to avoid anything that may obstruct "a clear view of the sky." *Id.* at 4. The failure to comply with these rules could result in criminal penalties. *See id.* at 1–2.

II. Michigan's Sex Offenders Registration Act

Michigan's sex offender registration requirements entail "significant affirmative obligations." *People v. Lymon*, --- N.W.2d ----, 2022 WL 2182165, at *11 (Mich. Ct. App. 2022). Michigan's first sex offender registration law, passed in 1994, established a non-public law enforcement database containing basic

information about people convicted of certain sex offenses. 1994 Mich. Pub. Act 295. Over time, the legislature imposed more burdens on registrants. By 2004, it had added the requirement of in-person registration, had instituted a fee, and had made the registry available online, providing the public with a list of registrants' names, addresses, physical descriptions, birth dates, and photographs. *See* 1999 Mich. Pub. Act 85, §§ 5a(4), 8(2), 10(2)–(3); 2004 Mich. Pub. Act 237, § 5a(6); 2004 Mich. Pub. Act 238, § 8(2). In 2006, it barred all registrants from working, residing, or loitering within 1,000 feet of a school. 2005 Mich. Pub. Acts 121, 127. In 2011, the legislature added the requirement that all registrants appear in person "immediately" to update minor pieces of information, such as a new vehicle or online account. *See* 2011 Mich. Pub. Acts 17, 18. The 2011 amendments also categorized registrants into tiers, which determined the frequency and duration of reporting requirements. *See* 2011 Mich. Pub. Act 17, § 2.[2]

Recognizing the severity of these burdens, this Court held that the retroactive application of the 2006 and 2011 amendments was punishment that violated the Constitution's Ex Post Facto Clause. *See Does #1-5 v. Snyder*, 834 F.3d 696, 706 (6th Cir. 2016). The Court explained that Michigan's Sex Offenders Registration Act (SORA) required "time-consuming and cumbersome" reporting that had "a

[2] The plaintiffs in a class action constitutional challenge to SORA have summarized the burdens created by the statute. *See* Ex. 1, Summary of SORA 2021's Obligations, Disabilities, and Restraints.

number of similarities to parole/probation" and that mandated registrants interrupt their lives "with great frequency in order to appear in person before law enforcement to report even minor changes to their information." *Id.* at 703, 705. The Court also emphasized that the statute imposed heavy criminal penalties for failing to comply. *Id.* at 703. And by publicizing registration information, it "mark[ed] registrants as ones who cannot be fully admitted into the community," "consign[ing] them to years, if not a lifetime, of existence on the margins." *Id.* at 704–05. In sum, SORA imposed "significant restraints on how registrants may live their lives." *Id.* at 703.

The Michigan Supreme Court reached the same conclusion years later. *People v. Betts*, 968 N.W.2d 497 (Mich. 2021). Like the Sixth Circuit, the Michigan Supreme Court found that the statute resembled the traditional punishment of parole, because registrants had to report in person to law enforcement, pay fees, face prison for the failure to comply, and be subject to investigation and supervision. *Id.* at 510. The in-person reporting requirements, both for periodic verifications and for the updating of information, constituted an affirmative disability. *Id.* at 511. Such "demanding and intrusive requirements," the Court concluded, were excessive and thus violated the Ex Post Facto Clause. *Id.* at 514–15.

After a federal court planned to enjoin much of SORA on a class-wide basis, *see Doe v. Snyder*, 449 F. Supp. 3d 719, 737–38 (E.D. Mich. 2020), the legislature amended the statute. The amended SORA, however, retained most of the old

statute's burdensome obligations. Although the legislature removed the geographic exclusion zones introduced in the 2006 amendments, the new bill retained the tier system, the lengthy (and often lifetime) registration periods, and the virtually identical "cumbersome" reporting requirements and online public registry. *See* 2020 Mich. Pub. Act 295; *Does #1-5*, 834 F.3d at 705.

With respect to reporting, registrants must report changes to addresses, employment, schooling, vehicle information, email addresses, internet identifiers, and telephone numbers, all within three business days. Mich. Comp. Laws §§ 28.724a, 28.725, 28.727. Registrants also must report in advance if they travel anywhere for more than seven days, including providing authorities with 21 days advance notice for foreign travel. *Id.* § 28.725(2)(b), (8). Many of these changes must still be reported in person. *See id.* §§ 28.724a, 28.725(1)–(2), 28.727; Mich. State Police, *Notification Letter to Registrants* (Mar. 24, 2021), https://bit.ly/3OiZOsH. SORA continues to impose lengthy prison terms of up to ten years for non-compliance. Mich. Comp. Laws § 28.729. Recognizing how little SORA has changed, the Michigan Court of Appeals recently held that that the new statute "imposes significant affirmative obligations on registrants by mandating upon pain of imprisonment that they report common life changes within a short period of time, sometimes in person and sometimes in a manner not specified in the statute." *Lymon*, 2022 WL 2182165, at *11.

III. Factual and Procedural History

In 2016, Mr. Corridore was charged with second-degree criminal sexual conduct against his ten-year-old granddaughter. Register of Actions, R. 6-1, Page ID # 339. At his first trial later that year, Mr. Corridore's defense was that his granddaughter's false accusations were the result of her parents' suggestive, albeit well-intentioned, questioning. *See, e.g.*, First Jury Trial Tr. Vol. 5, R. 6-11, Page ID # 671–682. After deliberating for several days, the jury could not reach a verdict, and the court declared a mistrial. Register of Actions, R. 6-1, Page ID # 336.

Mr. Corridore went to trial again in March 2017. Second Jury Trial Tr. Vol. 1, R. 6-18, Page ID # 741. The second trial, however, was rife with errors. Most prominently, trial counsel failed to elicit testimony from an expert on forensic interviews that, in her opinion, the parents' questioning had caused the false accusations. Second Jury Trial Tr. Vol. 6, R. 6-23, Page ID # 1095–1106. The jury eventually found Mr. Corridore guilty. Second Jury Trial Tr. Vol. 9, R. 6-26, Page ID # 1256. The court sentenced him to an indeterminate term of nineteen months to fifteen years in prison and, as required by Michigan law, lifetime monitoring and sex offender registration. Sentencing Tr., R. 6-27, Page ID # 1283; Register of Actions, R. 6-1, Page ID # 332.

Mr. Corridore raised several errors related to his second jury trial in diligently filed state-court pleadings. He moved for a new trial in November 2017, two months

after the trial transcript was filed. Register of Actions, R. 6-1, Page ID # 331. He appealed in August 2018, five months after the post-trial transcript was complete. *Id.*, Page ID # 330. And he sought leave to appeal from the Michigan Supreme Court in August 2019, two months after the Court of Appeals affirmed his conviction. *Id.* He then filed this action within one year of his conviction becoming final. Habeas Pet., R. 1, Page ID # 18.

Despite diligently pursuing his remedies in state court, by the time Mr. Corridore filed this habeas corpus petition, he had been released from prison and was no longer on parole. Op. & Order, R. 8, Page ID # 1913. Because of his conviction, however, he is nonetheless required for the rest of his life to wear an ankle monitor and comply with sex offender registration requirements. *See* Register of Actions, R. 6-1, Page ID # 332. The district court concluded that it lacked jurisdiction over this petition because Mr. Corridore failed to demonstrate that his lifelong monitoring and registration obligations were a "severe restraint" on his liberty. Op. & Order, R. 8, Page ID # 1920; Judgment, R. 9, Page ID # 1921. The court therefore held that Mr. Corridore was not "in custody" for purposes of the federal habeas statutes, but granted a certificate of appealability on this issue. Op. & Order, R. 8, Page ID # 1920; Judgment, R. 9, Page ID # 1921.

Mr. Corridore now appeals. Notice of Appeal, R. 10, Page ID # 1922–1923.

STANDARD OF REVIEW

The dismissal of a habeas petition on jurisdictional grounds is reviewed de novo. *Hautzenroeder v. Dewine*, 887 F.3d 737, 740 (6th Cir. 2018).

SUMMARY OF ARGUMENT

The district court erred in concluding that it lacked jurisdiction. Jurisdiction attaches for a federal habeas corpus petition if the petitioner is "in custody" pursuant to a state-court judgment. Courts liberally construe the "in custody" requirement to capture myriad nonconfinement restraints on an individual's liberty. The "in custody" requirement necessitates only that the petitioner be subject to restraints on liberty that are not shared by the public generally. Here, LEM and SORA registration place significant restraints on freedoms that Mr. Corridore would otherwise enjoy.

LEM in Michigan shares all the hallmarks of restraints that meet the "in custody" requirement. LEM is part of an individual's sentence and thus a direct consequence of a criminal conviction. LEM allows the state to track a person at all hours of the day, both in real and in recorded time. Individuals subject to LEM must comply with a long list of requirements and continuously make themselves open to inspection by state officers. Any failure to comply with these rules is a crime that carries the threat of incarceration. Individuals subject to LEM face many other significant barriers and restraints in their everyday lives. They cannot participate in common recreational activities enjoyed by the public generally, like swimming in

their local pool. They also must avoid all areas where their monitor might lose signal or where electricity is not readily available. And the physical presence of the tether alone exposes individuals to ostracization and jeopardizes professional and social opportunities.

The district court further erred by failing to consider the aggregate burdens of LEM and sex offender registration together. In Michigan, federal and state courts have repeatedly found SORA to be punitive due to its restraints on how registrants may go about their daily lives. Registration, too, entails extensive supervision and surveillance that resembles restraints like parole and probation that traditionally satisfy the "in custody" requirement. Any failure to comply with these requirements can result in significant criminal penalties. Registrants cannot travel freely. And their presence on the registry inhibits their ability to freely reintegrate into society, as much of their personal information is broadcast on a public website that depicts them as dangerous.

In Michigan, therefore, LEM alone, or LEM in combination with sex offender registration requirements, satisfy the "in custody" requirement for federal habeas petitions. Accordingly, the district court's dismissal of Mr. Corridore's petition should be reversed.

ARGUMENT

I. "In custody" for federal habeas purposes is not limited to physical confinement, and includes any significant restraint on liberty not shared by the public generally.

Federal law requires a habeas petitioner to be "in custody pursuant to the judgment of a State court" in order to challenge a state court conviction. 28 U.S.C. § 2254(a). "This language is jurisdictional: if a petitioner is not 'in custody' when she files her petition, courts may not consider it." *Hautzenroeder*, 887 F.3d at 740.[3]

"In custody" does not mean "in prison." The relevant test is whether the petitioner "is subject to conditions that significantly restrain her liberty to do those things which in this country free men are entitled to do." *Id.* (cleaned up).

The foundational case is *Jones v. Cunningham*, 371 U.S. 236 (1963), in which the Supreme Court unanimously held that a Virginia parolee was "in custody" for the purposes of his federal habeas petition. *Id.* at 243–244. In defining the requirement, the Court relied on "common-law usages and the history of habeas corpus both in England and in this country." *Id.* at 238 & n.3 (collecting cases). "English courts ha[d] long recognized the writ as a proper remedy even though the restraint [was] something less than close physical confinement." *Id.* at 238. In England, the writ had been available to a woman who was kept away from her

[3] 28 U.S.C. § 2241(c), part of the general grant of federal habeas authority, contains an "in custody" requirement that is identical to the requirement in § 2254(a). *See Sevier v. Turner*, 742 F.2d 262, 268–69 (6th Cir. 1984).

husband, an indentured woman who had been given by her master to another man, and a parent who sought custody of his child from the other parent. *Id.* at 238–39. Similarly, in the United States, habeas corpus had long been used by immigrants seeking entry into the country and by members of the military questioning the legality of their service. *Id.* at 239–40 & nn.9–10 (collecting cases). Thus, the Court concluded:

> History, usage, and precedent can leave no doubt that, besides physical imprisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought to be sufficient in the English-speaking world to support the issuance of habeas corpus.

Id. at 240.

Jones's parole, the Court held, was custodial for purposes of federal habeas jurisdiction. Jones was confined "to a particular community, house, and job at the sufferance of his parole officer." *Id.* at 242. And he had to periodically report, allow his parole officer to visit him at any time, follow all of his officer's advice, and comply with a vast array of restrictions, all with the possibility that he could be rearrested and incarcerated. *Id.* at 242–43. Keeping with the history of the writ, which "never has been a static, narrow, formalistic remedy," Jones could seek habeas relief. *Id.* at 243.

Following *Jones*, the Supreme Court has repeatedly held that federal habeas jurisdiction extends to a variety of "wrongful restraints upon . . . liberty." *Peyton v.*

Rowe, 391 U.S. 54, 66 (1968) (cleaned up); *see also Schlanger v. Seamans*, 401 U.S. 487, 491 n.5 (1971); *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 349–50 (1973); *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008). This Court, too, has held that habeas jurisdiction extends to anyone "subject to conditions that significantly restrain her liberty to do those things which in this country free men are entitled to do." *Hautzenroeder*, 887 F.3d at 740. Federal habeas jurisdiction is guided by the purpose and the historical uses of the writ, *see Jones*, 371 U.S. at 240, and thus "should be construed very liberally," *Romero v. Sec'y, U.S. Dep't of Homeland Sec.*, 20 F.4th 1374, 1379 (11th Cir. 2021) (cleaned up); *see also* 17B Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 4262 (3d ed. 2022) ("The kind of custody that will suffice is judged by a very liberal standard . . . .").

Applying this standard, courts have recognized "that a variety of nonconfinement restraints on liberty satisfy the custodial requirement." *Nowakowski v. New York*, 835 F.3d 210, 216 (2d Cir. 2016) (collecting cases). In *Hensley*, for example, the Supreme Court held that a petitioner released on his own recognizance was still "in custody," because he was subject to significant restraints on his freedom and remained at large only at the grace of the state. *Hensley*, 411 U.S. at 349–53; *see also Justs. of Bos. Mun. Ct. v. Lydon*, 466 U.S. 294, 300–01 (1984) (reaffirming *Hensley*). Generally speaking, courts have used the following four benchmarks to structure their analysis.

First, courts inquire whether the "restrictions were imposed as part of [the] sentence." *Piasecki v. Ct. of Common Pleas*, 917 F.3d 161, 173 (3d Cir. 2019). The actual sentence imposed matters, because 28 U.S.C. § 2254 expressly requires that the petitioner be in custody pursuant to the "judgment" of a State court—and in a criminal case, "[t]he sentence is the judgment." *In re Stansell*, 828 F.3d 412, 416 (6th Cir. 2016) (quoting *Berman v. United States*, 302 U.S. 211, 212 (1937)); *see also Piasecki*, 917 F.3d at 173. Focusing on the sentence thus helps courts discern whether the restraint is merely a collateral consequence (e.g., the loss of the right to vote, to serve as a juror, or to engage in certain businesses), which is generally insufficient, *Hautzenroeder*, 887 F.3d at 740, as opposed to "a direct consequence of the challenged conviction," *Stanbridge v. Scott*, 791 F.3d 715, 719 (7th Cir. 2015).

Second, courts consider whether the restraint subjects the petitioner to ongoing supervision. Historically, continuing governmental supervision has been the hallmark of a custodial restraint. *See Barry v. Bergen Cnty. Prob. Dep't*, 128 F.3d 152, 160–61 (3d Cir. 1997). Both *Jones* and *Hensley* emphasized that supervision requirements greatly limit a petitioner's freedom to do those things which the public is entitled to do. *See Jones*, 371 U.S. at 243; *Hensley*, 411 U.S. at 351. These requirements typically mandate that a petitioner appear at specific places at specific times, receive permission or give notice before undertaking certain activities, provide their custodian with personal information, and faithfully comply

with extensive conditions. *See Jones*, 377 U.S. at 242–43; *Romero*, 20 F.4th at 1379. These requirements are usually backed by the threat of incarceration, as a petitioner "must live in constant fear that a single deviation, however, slight" might result in their re-incarceration. *Jones*, 377 U.S. at 242. Acknowledging the severity of restraint imposed by most supervision, this Court has found that supervised release, probation, and community service all satisfy the "in custody" requirement. *See In re Stansell*, 828 F.3d at 416 (supervised release); *Lawrence v. 48th Dist. Ct.*, 560 F.3d 475, 480 (6th Cir. 2009) (probation and community service). Only minor supervision requirements, such as a requirement merely to provide personal information, are non-custodial. *See Leslie v. Randle*, 296 F.3d 518, 522 (6th Cir. 2002).

Third, courts query "whether the legal disability in question somehow limits the putative habeas petitioner's movement." *Id.* (quoting *Williamson v. Gregoire*, 151 F.3d 1180, 1183 (9th Cir. 1998)). As noted in *Jones*, immigrants historically could use the writ to test the validity of their exclusion, because their "movements" had been "restrained by the authority of the United States." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 213 (1953). And the Supreme Court subsequently emphasized that many post-release conditions practically confine petitioners to particular places. *See Maleng v. Cook*, 490 U.S. 488, 491 (1989). Echoing this focus, circuit courts have explained that community service and other mandatory programming satisfy the "in custody" requirement by compelling the petitioner's

physical presence at a particular location. *See, e.g.*, *Lawrence*, 560 F.3d at 480–81 (500 hours of community service); *Dow v. Cir. Ct. of First Cir. ex rel. Huddy*, 995 F.2d 922, 923 (9th Cir. 1993) (per curiam) (14-hour alcohol rehabilitation program); *Nowakowski*, 835 F.3d at 217 (one day of community service). Importantly, the restraint need not completely restrict the petitioner's movement, as immigrants testing the validity of their exclusion were still "free to go anywhere else in the world." *Jones*, 371 U.S. at 239; *see also Kelsey v. Pope*, 809 F.3d 849, 854 (6th Cir. 2016) (finding the "in custody" requirement satisfied because the petitioner was "prevented from traveling outside of Michigan without Tribal Court permission"). Mere "limits" or "impingement" on movement will typically suffice. *Williamson*, 151 F.3d at 1183.

Fourth, courts consider how severely the challenged restraint impacts the petitioner's daily life. *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2d Cir. 1996), is illustrative. In *Poodry*, members of a federally recognized Indian tribe petitioned for habeas corpus under an analogous federal statute, challenging their banishment from the tribe. *Id.* at 877–79. The Second Circuit, in finding the "in custody" requirement satisfied, focused on "the severity of the sanction." *Id.* at 895. The banishment orders had subjected the petitioners to threats and assaults, the loss of basic services, and the harsh consequence of losing tribal citizenship. *Id.* at 895–97. Other courts, too, have analyzed all the cumulative impacts of the challenged

restraint. *See Piasecki*, 917 F.3d at 170–71; *see also Lewis v. Randle*, 36 F. App'x 779, 781 (6th Cir. 2002) (citing *Poodry*). In a similar context, the Third Circuit considered impacts that went beyond ongoing supervision and restrictions on movement, including rules prohibiting the petitioner from using the internet, to conclude that the "in custody" requirement was satisfied. *See Piasecki*, 917 F.3d at 170.

In sum, "any restraint on a petitioner's liberty because of his conviction that is over and above what the state imposes on the public generally will suffice" to satisfy the "in custody" requirement of 28 U.S.C. § 2254. 17B Wright & Miller, *supra*, § 4262. As discussed below, Mr. Corridore's LEM and sex offender registration requirements meet that standard.

II. Lifetime electronic monitoring implicates all the relevant factors and thus satisfies the "in custody" requirement.

A. Lifetime electronic monitoring is part of the sentence.

In Michigan, when a person is convicted of certain criminal sexual conduct offenses, the court "shall sentence the defendant to lifetime electronic monitoring." Mich. Comp. Laws §§ 750.520b(2), 750.520c(2). Other relevant statutes also refer to LEM as a sentence. For example, the statute that articulates penalties for someone who damages their tether applies to a "person who has been *sentenced* to lifetime electronic monitoring." *Id.* § 750.520n(2) (emphasis added). And the statute that creates the LEM program uses the same language, requiring MDOC to "implement

a system [for] monitoring individuals . . . who are *sentenced* by the court to lifetime electronic monitoring." *Id.* § 791.285(1) (emphasis added); *see also id.* § 791.285(2) ("An individual who is *sentenced* to [LEM] shall wear or otherwise carry an electronic monitoring device . . . ." (emphasis added)).

The Michigan Supreme Court confirmed this understanding of LEM as a sentence in *People v. Cole*, 817 N.W.2d 497 (Mich. 2012). *Cole* concerned the constitutional requirement that a "defendant must be apprised of the sentence that he will be forced to serve as the result of his guilty plea and conviction." *Id.* at 501–02. After undertaking "a plain reading of the relevant statutory text," the court concluded that mandatory LEM is "an additional punishment and part of the sentence itself," thus rendering it "a direct consequence" of any conviction or plea. *Id.* at 503.

Here, pursuant to his conviction under Mich. Comp. Laws § 750.520c(2)(b), Mr. Corridore was sentenced to, among other things, "lifetime GPS." Register of Actions, R. 6-1, Page ID # 332; *see also* Sentencing Hearing Tr., R. 6-27, Page ID # 1283 (imposing, as part of the sentence, "lifetime GPS as required"). His LEM is thus a direct, rather than collateral, consequence of his conviction.

B. Lifetime electronic monitoring subjects individuals to extensive supervision and surveillance.

LEM is also analogous to other forms of post-conviction supervision that traditionally have been found to meet the "in custody" requirement.

To begin, the Michigan legislature has conceived of LEM as similar to parole and probation. The legislature has housed the supervision of individuals on parole and probation and people on LEM all within MDOC. *See* Mich. Comp. Laws § 791.204 (providing MDOC with jurisdiction over probation, parole, and the LEM program). And MDOC's authority to promulgate rules over LEM appears in the same provision that grants the agency authority over parole and probation. *See id.* § 791.206.

Importantly, LEM-specific requirements resemble the standard supervision rules for parole and probation. Probationers and parolees in Michigan must obtain permission before leaving the state, report to their supervising officer as required, and satisfy all legal and financial obligations. *See id.* § 771.3(1) (probation); *id.* § 791.236 (parole). Individuals on LEM must similarly open themselves up to inspection by law enforcement personnel, cover all costs related to the program, and comply with instructions given by their supervising agent. *See Lifetime Electronic Monitoring Program Participant Agreement*, *supra*, at 2–3.

At minimum, LEM implicates the same concerns that this Court found significant in concluding that non-reporting probation satisfies the "in custody" requirement. *See Lawrence*, 560 F.3d at 480–81. Even when a supervision regime does not compel regular check-ins, post-release control is custodial for federal habeas purposes when the state is given "supervisory authority" over a petitioner.

Id. at 480 n.5. This supervisory authority, in turn, subjects a petitioner to incarceration should they fail to comply with any conditions of the program. *Id.* at 481. Like the non-reporting probation at issue in *Lawrence*, LEM jeopardizes Mr. Corridore's liberty; failing to comply with any of the governing requirements is a felony. *See* Mich. Comp. Laws § 750.520n. This burden, coupled with the other onerous requirements specific to the program, render LEM similar to traditional forms of supervision and surveillance.

Although the LEM program omits a few standard probation and parole conditions, like the requirement that individuals provide advance notice before they travel, LEM has supplanted that traditional form of supervision with the even more intrusive requirement that individuals wear a physical device that tracks their movements, day in and day out. The LEM program was designed to track an individual's movement, both in real and recorded time, until their death and with the information retrievable at any time. *See id.* § 791.285(1).

In the Fourth Amendment context, the Supreme Court has explained that continuous location monitoring and surveillance implicate serious individual privacy interests. The information gathered by these methods reveals not only "particular movements" but also "familial, political, professional, religious, and sexual associations." *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018). Indeed, by tracking "its owner beyond public thoroughfares into private residences,"

the monitor "achieves near perfect surveillance" of the individual and thus allows the state to reconstruct a person's whereabouts. *Id.* at 2218. Moreover, the physical attachment of the device implicates additional privacy concerns by trespassing onto the body of the person being monitored. *See Grady v. North Carolina*, 575 U.S. 306, 307–10 (2015). Such diminished expectations of privacy are hallmarks of custodial restraints. *See United States v. Manfredonia*, 341 F. Supp. 790, 795 (S.D.N.Y. 1972), *aff'd*, 459 F.2d 1392 (2d Cir. 1972).

C. Lifetime electronic monitoring significantly restricts a person's movement.

Additionally, the LEM program contains several requirements that significantly restrict an individual's movements.

First, the LEM program's rules require the device to be charged for two hours every single day. *See Lifetime Electronic Monitoring Program Participant Agreement*, *supra*, at 2. This burdensome requirement effectively prevents an individual on LEM from traveling to or staying in any location that does not have reliable access to electricity. *See Riley v. N.J. State Parole Bd.*, 98 A.3d 544, 558 (N.J. 2014) (explaining how the appellant "cannot travel anywhere his GPS device does not operate or where it cannot be charged within a sixteen-hour period"). Recreational activities such as camping and occupations such as long-haul truck driving, for instance, are completely out of the question for persons subject to LEM.

The need to be near an accessible charging port for two hours per day unquestionably restricts movement.

Second, as noted in the LEM program rules, water can damage the LEM device, which as a practical matter restricts movement by effectively barring individuals from swimming and other similar activities, whether they be recreational or employment-related. Otherwise, an individual would risk criminal prosecution for damaging their tether. *See* Mich. Comp. Laws § 750.520n.

Third, LEM requires supervised individuals to monitor MDOC's website and be responsive to their device's indicator lights. *See Lifetime Electronic Monitoring Program Participant Agreement*, *supra*, at 3. The website monitoring requirement restricts movement by preventing individuals from traveling anywhere without reliable internet access for a prolonged period of time for fear of missing any changes in their requirements. Movement is likewise restricted by the potential for device malfunctions, as the LEM rules list everyday objects—such as trees and awnings—that could set off the monitor's alarms. *Id.* at 4. The device may lose signal in fortified structures, especially those made of concrete, like warehouses and parking garages, interfering with all sorts of employment. *See* Electronic Frontier Foundation, *Electronic Monitoring*, https://www.eff.org/pages/electronic-monitoring (last accessed July 27, 2022) ("Electronic monitoring . . . can create challenges for landscaping, construction, or delivery jobs. Some buildings, such as

warehouses, interfere with GPS signals, so people may need to leave work to pick up signal . . . ."). If the red light on the device goes off erroneously, an individual must immediately move to an uncovered area "with a clear view of the sky." *Lifetime Electronic Monitoring Program Participant Agreement*, *supra*, at 3.

D. Lifetime electronic monitoring severely burdens participation in civic and social life.

LEM also severely constrains and burdens daily life. An individual subject to monitoring lives with the constant knowledge that their most intimate affairs are being tracked, "revealing not only his particular movements, but through them his familial, political, professional, religious, and sexual associations." *Carpenter*, 138 S. Ct. at 2217 (cleaned up). Such surveillance deters individuals from engaging in meaningful activities. The bulk of social science research in fact reveals that surveillees are increasingly "divorced from the civic life of their community, divorced from opportunity for social mobilization, and divorced from political and educational life and opportunities," often avoiding institutions altogether. *See* Chaz Arnett, *From Decarceration to E-Carceration*, 41 Cardozo L. Rev. 641, 675 (2019). Indeed, a 2011 U.S. Department of Justice study found that almost half of individuals being monitored believed that it had a negative impact on their relationships, due to the intrusions and inconveniences of the program. *See* U.S. Dep't of Just., *Electronic Monitoring Reduces Recidivism* at 2 (Sept. 2011), https://www.ojp.gov/pdffiles1/nij/234460.pdf.

Monitoring also causes serious psychological harm. People on LEM report that they cannot visit the beach, for example, without enduring public humiliation. *See* Olivia Thompson, Equal Justice Under Law, *Shackled: The Realities of Home Imprisonment* (June 14, 2018), https://equaljusticeunderlaw.org/thejusticereport/2018/6/12/electronic-monitoring (citation omitted). After all, LEM functions as "a modern-day scarlet letter" that "remind[s] the public that the person has been charged with or convicted of a crime." *Commonwealth v. Norman*, 142 N.E.3d 1, 9 (Mass. 2020) (cleaned up). Thus, LEM has "the additional punitive effect of exposing the offender to persecution or ostracism, or at least placing the offender in fear of such consequences." *Commonwealth v. Goodwin*, 933 N.E.2d 925, 935 (Mass. 2010). Coupled with restricted movement, continuous surveillance creates significant trauma and stress for those being monitored. *See* Thompson, *supra*.

Lastly, the monitor impedes employment opportunities. Because the monitor reveals a person's criminal status to anyone who sees it, individuals report that they must go to great lengths to hide the device. *See* Arnett, *Decarceration to E-Carceration* at 642. Not only does the monitor's physical presence make it difficult for people to socialize at work and remain employed, the monitor also makes it difficult for individuals to be hired in the first place. "Rules governing both monitoring and general court supervision often act at cross purposes and undermine the ability of people to seek and maintain a job." Kate Weisburd et al., George

Washington Univ. Law School, *Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System* 14 (Sept. 2021), https://issuu.com/gwlawpubs/docs/electronic-prisons-report?fr=sOGI5NDcxODg3. As explained above, individuals are deterred from pursuing certain jobs because some employment locations interfere with the device's GPS signal. Moreover, potential employers are likely to notice the device and inquire about the reason for its imposition. Arnett, *Decarceration to E-Carceration*, at 642; William Bales et al., Fl. State Univ., *A Quantitative and Qualitative Assessment of Electronic Monitoring* 93 (Jan. 2010), https://www.ojp.gov/pdffiles1/nij/grants/230530.pdf.

E. The district court erred in relying on an out-of-circuit case that did not properly analyze the "in custody" factors.

In dismissing Mr. Corridore's petition, the district court principally relied on the Ninth Circuit's decision in *Munoz v. Smith*, 17 F.4th 1237 (9th Cir. 2021),[4] which dismissed a habeas petition involving Nevada's electronic monitoring program. In finding that LEM in Nevada did not satisfy the "in custody" requirement, the court focused on whether it restricted the petitioner's movement. *Id.* at 1245. In only two

[4] The district court also cited *Doe v. Bredesen*, 507 F.3d 998, 1010 (6th Cir. 2007), but that case did not involve the "in custody" requirement for habeas petitioners. Rather, in the context of a § 1983 lawsuit, the court in *Doe* rejected the argument that Tennessee's GPS monitoring program was a punishment that ran afoul of the Ex Post Facto Clause. Michigan's LEM program, by contrast, is part of Mr. Corridore's criminal sentence, imposes significant barriers to Mr. Corridore's freedom of movement, and satisfies the other factors of the "in custody" analysis that *Doe* did not address. *See*, *supra*, Sections II.A–D.

paragraphs, the court concluded that it did not, asserting that Nevada's LEM program did not strictly compel the petitioner's attendance at, or categorically bar him from, any specific locations. *Id.*

The district court's reliance on *Munoz* is misplaced here, for several reasons. First, unlike in *Munoz*, where the court noted that a mere "subjective chill" in one's desire to travel is not "so severe," *id.* at 1242, LEM in Michigan actually prevents Mr. Corridore from traveling to places without electricity, engaging in activities that could damage his tether, visiting locations without internet access, and entering areas with poor GPS signal. These barriers to places and activities otherwise legally available to him are movement restrictions that satisfy the "in custody" requirement. *See Leslie*, 296 F.3d at 522. Moreover, because state officials can "demand his presence at any time" to inspect the monitoring device and prosecute any non-compliance with the terms of his program, Mr. Corridore is subject to restraints on his freedom of movement that distinguish this case from the conditions deemed dispositive in *Munoz*. *See Hensley*, 411 U.S. at 351.

Separately, *Munoz* did not even address the other considerations relevant to the "in custody" analysis. *Munoz* did not place any weight on whether LEM was part of the sentence, nor did it compare Nevada's program to other forms of post-release control. *See Stansell*, 828 F.3d at 416 (making this analysis relevant). And *Munoz* only briefly addressed the overall severity of the restraint. *See* 17 F.4th at 1244. Here,

LEM implicates significant privacy interests and harms the development of both personal and professional relationships. These burdens are only amplified by the restraints created by his lifetime reporting obligations under SORA, discussed further below. Indeed, these reporting obligations more closely resemble "the much more burdensome conditions" in *Piasecki*, which *Munoz* expressly distinguished. *Id.*[5] Therefore, it is *Piasecki*, rather than *Munoz*, that should control here. Under that analysis, and considering all the relevant factors, Mr. Corridore is "in custody" within the meaning of the federal habeas statutes.

III. Sex offender registration in Michigan, either alone or in combination with lifetime electronic monitoring, satisfies the "in custody" requirement.

The district court also erred by failing to analyze whether the combined burdens and restraints of LEM and sex offender registration in Michigan satisfy the "in custody" requirement. The district court concluded, in a footnote, that because this Court had held that sex offender registrants in Ohio are not "in custody" for federal habeas purposes, Mr. Corridore was basing his "in custody" argument

[5] *Munoz* left open the possibility that the petitioner there could challenge the constitutionality of his supervisory conditions in a civil rights action under 42 U.S.C. § 1983. *Id.* at 1246. But Mr. Corridore is not arguing that his supervisory conditions are inherently unconstitutional. *See* Pet. for Habeas Corpus, R. 1, Page ID # 29 n.2. Rather, Mr. Corridore's habeas petition challenges the legality of his underlying conviction, *see generally id.*, Page ID # 1–95, claims which must be brought in habeas. *See Carr v. Louisville-Jefferson County*, 37 F.4th 389, 392–93 (6th Cir. 2022).

"solely on the fact that he is subject to LEM."[6] Op. & Order, R. 8, Page ID # 1914 n.4. But the "in custody" analysis must consider all "post-incarceration burdens imposed" on Mr. Corridore, *Lee v. Rios*, 360 F. App'x 625, 628 n.2 (6th Cir. 2010), and thus involves analyzing "the combined effect of these conditions," *Munoz*, 17 F.4th at 1244 (citing *Piasecki*, 917 F.3d at 171). As explained below, Michigan's SORA, alone and combined with LEM, satisfies the "in custody" requirement.

A. Sex offender registration is a component of a sentence in Michigan.

When determining "whether sex offender registration requirements are part of the state court judgment of sentence," courts consider "if the state construes sex offender registration as a punitive aspect of a criminal sentence or a remedial measure imposed collaterally." *Piasecki*, 917 F.3d at 173. In *Piasecki*, because the Pennsylvania courts had considered its registration requirements as a punitive aspect of a criminal sentence, not a remedial measure, these requirements were "part of the judgment of sentence." *Id.* at 175 (citing *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017)).

The same is true here. Michigan courts have long held that registration under SORA is not simply a "collateral consequence" of a conviction but rather a core part

[6] Although Mr. Corridore acknowledged before the district court that this Court had found Ohio's registration scheme to be non-custodial, *see* Pet. for Habeas Corpus, R. 1, Page ID # 29, he nonetheless argued that the "twin burdens" of LEM and lifetime registration under SORA satisfy the "in custody" requirement, *id.*, Page ID # 28.

of an individual's sentence. In *People v. Fonville*, 804 N.W.2d 878 (Mich. Ct. App. 2011), the Michigan Court of Appeals considered whether attorneys must advise their clients of SORA registration obligations that result from guilty pleas. In answering yes, the court recognized that, "[l]ike the consequence of deportation"—which attorneys must relay to clients prior to guilty pleas—SORA "is a particularly severe penalty" that subjects people to "unique ramifications" and is "'intimately related to the criminal process," making it "difficult 'to divorce the penalty from the conviction.'" *Id.* at 894 (quoting *Padilla v. Kentucky*, 559 U.S. 356, 365–66 (2010)). Indeed, SORA's "unique and mandatory nature" distinguishes it "from the common, potential, and incidental consequences associated with criminal convictions." *Id.* at 895.

This conclusion has been reinforced by subsequent decisions of both this Court and Michigan state courts. In analyzing the prior, yet substantially similar version of SORA, this Court explained that SORA "meets the general definition of punishment" by imposing "direct restraints on personal conduct." *Does #1-5*, 834 F.3d at 703. The Michigan Supreme Court similarly found that "SORA bears significant resemblance to the traditional punishments" like parole through its "imposition of significant state supervision." *Betts*, 968 N.W.2d at 510. In applying this reasoning to the current version of SORA, the Michigan Court of Appeals likewise concluded the statute had "an aggregate punitive effect" and thus "requiring

an individual to comply with the 2021 SORA imposes a criminal punishment on a registrant." *Lymon*, 2022 WL 2182165, at *14.

B. Sex offender registration entails extensive supervision and surveillance.

In Michigan, SORA registrants have to comply with a dizzying array of obligations and restrictions that resemble supervision conditions of probation and parole. Individuals like Mr. Corridore must regularly report in person to law enforcement every three months for life, *see* Mich. Comp. Laws § 28.725a(3)(c); disclose extensive personal information for internet publication, *id.* § 28.727; report many changes in information in person within three business days (such as enrolling in a college class or volunteering), *id.* § 28.725(1); and report various other minor changes in information (like opening a new email account) within three business days either in person or by mail, *id.* § 28.725(2). Registrants are also subject to ongoing supervision, including home visits and compliance sweeps. *See Betts*, 968 N.W.2d at 510. Those searches can lead to incarceration for technical violations.

This Court has explained that these requirements "put significant restraints on how registrants may live their lives." *Does #1-5*, 834 F.3d at 703. In fact, "it belies common sense to suggest that a newly imposed requirement to report to a police station every ninety days to verify identification, residence, and school, and to submit to fingerprinting and provide a current photograph, is not a substantial disability or restraint on the free exercise of individual liberty." *Betts*, 968 N.W.2d

at 511-12 (cleaned up). With respect to reporting changes in information, "[g]iven the ubiquity of the Internet in daily life, this requirement [may be] triggered dozens of times within a year." *Id.* at 511. None of this has changed with the recently amended statute. "[T]he reporting obligations still impose an onerous restriction on registrants," and the burdens from reporting changes in information are still "significant." *Lymon*, 2022 WL 2182165, at *11.

Moreover, violations of any of these obligations can trigger years of incarceration. *See* Mich. Comp. Laws § 28.729. Recognizing the severity of this risk, this Court has explained that SORA's requirements surely are 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." *Does #1-5*, 834 F.3d at 703 (quoting *Smith v. Doe*, 538 U.S. 84, 100 (2003)).

SORA is therefore comparable to other custodial regimes. As this Court and the Michigan Supreme Court have explicitly recognized, SORA "resembles the punishment of parole/probation," *Does #1-5*, 834 F.3d at 703; *accord Betts*, 968 N.W.2d at 508–10, which satisfy the "in custody" requirement, *Lawrence*, 560 F.3d at 480–81 & n.5. Indeed, SORA's requirements alone—and certainly combined with LEM—often "are more intrusive and more difficult to comply with than" probation.

Does #1-5, 834 F.3d at 703. And the "[f]ailure to comply [with SORA] can be punished by imprisonment, not unlike a revocation of parole." *Id.*

SORA also mirrors Pennsylvania's registration requirements, which the Third Circuit held "were sufficiently restrictive to constitute custody" for federal habeas purposes. *See Piasecki*, 917 F.3d at 170–71 (registration "custodial" where individuals must report in person "at least four times a year," report "[a]ny change of address" within three days, and personally report changes to their phone number, email address, or vehicle). The Third Circuit also emphasized that "any failure to abide by the restrictions was 'itself a crime,' just like the situation facing the petitioner in *Hensley*." *Id.* at 171. As SORA is effectively no different, registrants should be considered "in custody" for purposes of federal habeas review.

C. Sex offender registration significantly burdens a person's freedom of movement.

Being on the registry also severely restricts a registrant's ability to travel. Registrants must provide advance notice if they intend to leave their residence for an extended period of time. If a registrant intends to travel anywhere domestically for more than seven days, they must notify law enforcement, three days in advance, of where they are going, where they will stay, how long they will be there, and when they will return. *See* Mich. Comp. Laws §§ 28.725(1)(e), 28.727(1)(e). If a registrant intends to travel outside the country for more than seven days, they must report in person at least 21 days before their trip. *See id.* § 28.725(8). These sort of

requirements that prevent travel on an impromptu or emergency basis, or any deviations from one's stated travel plans, satisfy the "in custody" requirement. *See Kelsey*, 809 F.3d at 854 (finding custodial a requirement that an individual could not leave Michigan without permission).

Registrants also must restrict any travel so that they are able to register in person during their required verification periods. For example, Mr. Corridore, who was born in March, must report quarterly in March, June, September, and December. *See* Mich. Comp. Laws § 28.725a(3)(c). He could not travel for the entirety of any of those months, because he would need to appear in person at the police station during that time. *See id.* § 28.725a(3). Indeed, these travel restrictions exceed standard probation and parole rules—already held to be "custodial." *See Lawrence*, 560 F.3d at 480–81. And "[e]ven in the absence of those ostensibly elective choices" to travel, the fact that Mr. Corridore is compelled "to report to a police station every three months for the rest of his life" is sufficiently restrictive of movement to "clearly rise to the level of custody." *Piasecki*, 917 F.3d at 172–73.

Registration creates other significant burdens on a registrant's ability to travel freely. "Travel to other states may also trigger a requirement to register on those states' sex offender registries, sometimes even for relatively short stays," thereby deterring such travel "to avoid the hassle of the notification requirements." *Prynne v. Settle*, 848 F. App'x 93, 98, 104 (4th Cir. 2021); *see also* Shawn Rolfe, *When a*

Sex Offender Comes to Visit: A National Assessment of Travel Restrictions, 30 Crim. Just. Pol'y Rev. 1, 7–16 (2019) (explaining that registration requirements and residence restrictions vary significantly from state to state for nonresident registrants). These burdens imposed by law are often supplemented by private threats. Because registration information is widely publicized in many jurisdictions, registrants face "community scorn" and are "vulnerable to harassment" wherever they may go. *See Doe v. Dep't of Pub. Safety*, 444 P.3d 116, 128 (Alaska 2019).

D. Sex offender registration severely burdens participation in civic and social life.

SORA requires public dissemination of wide-ranging and highly personal information. An individual's weight, height, hair and eye color, tattoos and scars, birthdate, home, work, and school addresses, vehicle information, email addresses, and internet identifiers are publicly available on the internet. Mich. Comp. Laws § 28.728(2). Michigan's SORA website is easily searchable. Rather than requiring specific information about an identified person, users can simply search by city, county, or even zip code, with a radius as large as five miles. *See* Mich. State Police, *Michigan Sex Offender Registry*, https://mspsor.com/Home/Search (last visited Aug. 4, 2022). Moreover, registry information is routinely scraped and re-posted to private websites, meaning that a person's registration status shows up from a simple web search and on real estate and other public records websites. Sarah Lageson, *Digital*

Punishment: Privacy, Stigma, and the Harms of Data Driven Criminal Justice 19 (Oxford Univ. Press, 2020).

This public notification function severely impedes reintegration into society and constrains the lives of registrants in ways that would be deemed intolerable if experienced by the general public. As this Court recognized, public registration "brands registrants as moral lepers" and "consigns them to years, if not a lifetime, of existence on the margins, not only of society" but often from "their own families." *Does #1-5*, 834 F.3d at 705. Public registration "mak[es] it hard for registrants to get and keep a job, find housing, and reintegrate into their communities." *Id.* at 705. Employers, even those that hire people with past convictions, often automatically exclude individuals on the sex offender registry "in order to avoid publication of the employer's name/address on the registry and the accompanying negative publicity." *Doe v. Dep't of Pub. Safety & Corr. Servs.*, 62 A.3d 123, 142 (Md. 2013) (cleaned up); *see also* Mich. Comp. Laws § 28.728(2)(d) (listing a registrant's employer's address as information that must be available on Michigan's public registry website). Many landlords cite similar concerns in either evicting or refusing to rent to registrants. *See Starkey v. Okla. Dep't of Corr.*, 305 P.3d 1004, 1024 & n.81 (Okla. 2013); *see also* Mich. Comp. Laws § 28.728(2)(c) (making the registrant's residential address available on Michigan's public registry website).

Moreover, "[t]he breadth of information available to the public . . . increase[s] the likelihood of social ostracism based on registration." *Betts*, 968 N.W.2d at 509. Presence on the registry means that "[a]ll registrants, including those who have successfully rehabilitated, will naturally be viewed as potentially dangerous persons by their neighbors, co-workers, and the larger community." *State v. Letalien*, 985 A.2d 4, 23 (Me. 2009). Registrants therefore report harms "ranging from public shunning, picketing, press vigils, ostracism, loss of employment, and eviction, to threats of violence, physical attacks, and arson." *Doe v. Pataki*, 120 F.3d 1263, 1279 (2d Cir. 1997). And "the registrant is subjected to both ostracization in his or her community as well as while he or she [interacts] with individuals using Internet-based communications and interactions." *Lymon*, 2022 WL 2182165, at *10. These sort of harms—threats, assaults, and harassment—are exactly of the type the Second Circuit found sufficient to meet the "in custody" requirement in *Poodry*. *See* 85 F.3d at 895. The situation here is no different.

E. Although not all states' sex offender registration laws satisfy the "in custody" requirement, Michigan's does.

The district court principally relied on two decisions about Ohio's sex offender registration statute in summarily concluding that Michigan's registry does not satisfy the "in custody" requirement. *See Leslie*, 296 F.3d at 521–23; *Hautzenroeder*, 887 F.3d at 741–44; Op. & Order, R. 8, Page ID # 1914 n.4 & 1918–1919. Neither case is persuasive.

Leslie is the most far afield. Modern registry statutes like Michigan's SORA impose burdens and constraints that are far more onerous than the first-generation statute at issue in *Leslie*. *See Piasecki*, 917 F.3d at 172. As discussed above, this Court has recognized that these differences are far from trivial: in Michigan, registrants must "interrupt [their] lives with great frequency in order to appear in person before law enforcement to report even minor changes in information." *Does #1-5*, 834 F.3d at 705. Moreover, SORA, unlike the statute at issue in *Leslie*, requires extensive dissemination of this information via the internet, which severely limits where registrants may go, what they can do, and how they can live their lives. *See*, *supra*, Sections III.B–D.[7] Further, *Leslie* relied on the Ohio Supreme Court's conclusion that registration under that state's law was "more analogous to collateral consequences" than punishment. 296 F.3d at 522–23 (quoting *State v. Cook*, 700 N.E.2d 570, 585 (Ohio 1998)). By contrast here, both this Court and Michigan state courts have found SORA to be punitive. *See Does #1-5*, 834 F.3d at 705; *Betts*, 968 N.W.2d at 515; *Fonville*, 804 N.W.2d at 890–96; *Lymon*, 2022 WL 2182165, at *14.

[7] Under Ohio's statute, a registrant could "obtain[] a court determination that [he] is no longer a sexual predator" and thus be relieved of their registration obligations. *Leslie*, 296 F.3d at 521 (quoting *State v. Cook*, 700 N.E.2d 570, 575 (Ohio 1998)) (second alteration in original). But in Michigan, tier III registrants like Mr. Corridore are never eligible to be removed from the registry and thus are saddled with these burdens for life. *See* Mich. Comp. Laws § 28.725(13).

Hautzenroeder is also inapposite. To begin, the petitioner there only argued that the Ohio statute's reporting requirements "chills" freedom of movement. *Hautzenroeder*, 887 F.3d at 741. By contrast, the effects of Michigan's SORA stretch far beyond a subjective chill on Mr. Corridore's ability to travel freely. SORA's requirements actually prevent him from traveling on an emergency or impromptu basis or being away during his four in-person verification months. *See*, *supra*, Section III.C. Moreover, the fact that these reporting and verification requirements compel Mr. Corridore's "physical presence at a specific location" means that they "severely condition[] his freedom of movement." *Piasecki*, 917 F.3d at 171.

The severity of SORA's other burdens and constraints also meet the "in custody" requirement for reasons not applicable in *Hautzenroeder*. Relying principally on *Smith v. Doe*, 538 U.S. at 98–99, *Hautzenroeder* characterized public access to registration information in Ohio as a mere collateral consequence of conviction, because it made Ohio's statute effective at protecting the public. 887 F.3d at 742. But this Court has explained that Michigan's registry "is something altogether different from and more troubling than Alaska's first-generation registry law" upheld in *Smith* and relied on in *Hautzenroeder*. *Does #1-5*, 834 F.3d at 705. SORA's internet-based, widespread public dissemination of private information about registrants severely disrupts their lives, subjecting them to constant

harassment and undermining their ability to maintain employment, find housing, and reintegrate into the community. *Id*; *see*, *supra*, Section III.D. As this Court has recognized, SORA may in fact increase the risk of future offenses (rather than protect the public), undermining any contention that its restrictions are merely regulatory and collateral, as opposed to punitive. *Does #1-5*, 834 F.3d at 704–05. Indeed, the burdens and constraints imposed by SORA are much more like those analyzed in *Piasecki*, in which the Third Circuit held that Pennsylvania's registration requirements were severe restraints on liberty not shared by the public generally and therefore satisfied the "in custody" requirement. 917 F.3d at 173–76.

Finally, federal habeas jurisdiction here is not based on SORA alone, but rather SORA plus the burdensome requirements of LEM. Thus, even if SORA or LEM standing alone would not put Mr. Corridore "in custody" for habeas purposes, SORA and LEM *combined* are sufficiently restrictive to satisfy the requirement.

CONCLUSION AND RELIEF REQUESTED

The district court's order and judgment dismissing Mr. Corridore's habeas corpus petition should be reversed, and the case remanded for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 10,218 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). I further certify that this brief complies with the typeface and type-style requirements of Rules 32(a)(5) and (6) of the Federal Rules of Appellate Procedure: it was prepared in proportionally spaced typeface using Microsoft Word in Times New Roman, 14-point typeface.

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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2022, I electronically filed this motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF users of record.

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DESIGNATON OF RELEVANT DISTRICT COURT DOCUMENTS

E.D. Mich. Case No. 2:21-cv-10834

Record Entry	**Description**	**Page ID Range**
1	Habeas Pet.	1–95
6 6-1 6-11 6-18 6-23 6-26 6-27	Notice of Filing Rule 5 Materials Register of Actions First Jury Trial Tr. Vol. 5 Second Jury Trial Tr. Vol. 1 Second Jury Trial Tr. Vol. 6 Second Jury Trial Tr. Vol. 9 Sentencing Tr.	325–329 330–341 634–694 741–806 1044–1122 1252–1261 1262–1283
8	Op. & Order	1910–1920
9	Judgment	1921
10	Notice of Appeal	1922–1923