No. 18-6900

IN THE

SUPREME COURT OF THE UNITED STATES

Jacob Scott Watters — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jacob Scott Watters #15228-030
(Your Name)

United States Penitentiary
(Address)
P.O.Box 24550
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QUESTION(S) PRESENTED

(1). As written, and by the actual language used in the Statute, is 18 U.S.C. §2251(a) in excess of Congress' Powers under the Commerce Clause to regulate visual depictions of child pornography as the current revision of the statute does not "contain" any actual visual depictions of child pornography in the subject-matter of of the statute?

(2). Did the District Court for the Southern District of Iowa, Davenport, abuse its discretion when it miscalculated the Guideline Range, resulting in a 210-262 month sentence, instead of a 188-235 month sentence, resulting in the Petitioner receiving a 240 month sentence, by employing an incorrect interpretation of "relevant conduct" under U.S.S.G. §2G2.1(d)(1)?

(3). Did the District Court for the Southern District of Iowa, Davenport abuse its discretion when it incorrectly determined that the Petitioner's prior Iowa Conviction qualified as a predicate offense under 18 U.S.C. §2252(b)(1)?

(4) If 18 U.S.C. §2251(a) is unconstitutional as written and applied to the Petitioner's offense, then are any U.S.S.G. sections that were created as a result of this unconstitutional law applicable until such time as Congress corrects the language in §2251(a) to conform with its limited/enumerated powers?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 02, 2018.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 18, 2018, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

* Fifth Amendment of the Constitution of the United States, "Due Process of Law" under the "Fair Notice Doctrine".

* Eighth Amendment Prohibition of "Unusual Punishment", as the Fifth Amendment prohibits certain prior events from being used to cause an enhancement of Sentence.

* 18 U.S.C. §2251(a): "Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate of foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce." (underlined phrase is the phrase challenged in this Petition)

* 18 U.S.C. §2252(b)(1): "if such person has a prior conviction under this chapter, section 1591, Chapter 71, chapter 109A, or Chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale,distribution, shipment, or trnasportation of child pornography, or sex trafficing of children, such person shall be fined under this title and impriusoned for not less than 15 years nor more than 40 years."

STATEMENT OF THE CASE

Nature of the Case: The Petitioner is filing for a Petition for a Writ of Certorari from his Direct Appeal from Eighth Circuit. The Government used a U.S.S.G. enhancement based upon an Unconstitutional law thereby negating any enhancements resulting thereof.

Factual and Procedural Background:

A. Search Warrant

In August 2014, law enforcement in Davenport, Iowa, received information that Jacob Watters was sending nude pictures of himself to a minor. (PSR ¶ 10-11)[1]. Based on this information, law enforcement obtained a search warrant for Watters's residence. (PSR ¶ 12). During the search, law enforcement retrieved several electronic devices. (PSR ¶ 12). Watters provided law enforcement with the passwords, email addresses, and other necessary identifiers to allow access to these devices. (PSR ¶ 16; DCD 53, p. 3). Law enforcement later conducted a forensic examination of the various devices. (PSR ¶ 18). The forensic examination revealed child pornography. Law enforcement identified six minors in the pictures. The conduct relating to each minor is detailed below.

T.W.: Law enforcement retrieved a four-GB micro SD card containing various photographs, including "nude photos" of T.W. (PSR ¶ 13, 23). The photos were taken between June 2, 2010, and August 31, 2010. (PSR ¶ 23). At that time, T.W. was 17-years old. (PSR ¶ 13, 23). Watters was also 17-years old. (PSR ¶ 23). The two were in high school and were dating. (PSR ¶ 110).

A.L.: Watters and A.L. met on social media in 2012 and the two began dating. (PSR ¶ 89). At the time, A.L. was 12-years old and Watters was 19-years old. (PSR ¶ 89, DCD 53, p. 4). Watters had sexual intercourse with A.L. (PSR ¶ 89). A.L.'s mother had Watters move into their home, knowing that Watters and A.L. were having sexual intercourse. (PSR ¶ 89). Watters was arrested for this conduct on February 13, 2013, and he eventually pled guilty to lascivious acts with a minor in Iowa state court. (PSR ¶ 89).

During the forensic examination in 2014, law enforcement discovered pictures of A.L. on a cell phone. (PSR ¶ 20). These pictures were taken between January 7, 2013, and January 19, 2013—before Watters's arrest and conviction for lascivious acts with a minor. (PSR ¶ 20).

A.G.: Watters and A.G. met online in May 2014. (PSR ¶ 32). The two messaged on the Kik Messenger application. (PSR ¶ 32). Eventually, the two exchanged nude pictures and sexually explicit videos. (PSR ¶ 32). At the time, A.G. was 15-years old. (DCD 53, p. 4).

J.L.: Watters and J.L. met online when Watters was 21-years old and J.L. was 16-years old. (PSR ¶ 33). The two texted and exchanged nude pictures. (PSR ¶ 33).

S.Z.: S.Z. sent Watters pictures of herself masturbating when she was 16-years old. (PSR ¶ 21; DCD 53, p. 4). S.Z. sent pictures in May and June of 2014. (DCD 53, p. 4). S.Z. was 16-years old when the pictures were taken. (PSR ¶ 21).

R.V.: Watters and R.V. met online. (PSR ¶). R.V. was 15-years old. (PSR ¶ 11). The two exchanged sexually explicit images in early August 2014. (PSR ¶ 17; DCD 53, p. 3).

B. Indictment

On February 19, 2015, Watters was indicted on one count of possession of child pornography, in violation of 18 U.S.C. §§ 2252(a)(4)(B) & 2252(b)(2), and one count of receipt of child pornography, in violation of 18 U.S.C. §§ 2252(a)(2) & 2252(b)(1). (DCD 1). Count I alleged the possession was on or about August 20, 2014. (DCD 1). Count II alleged the receipt occurred on or between May 2014 and August 2014. (DCD 1).

Pursuant to a plea agreement, Watters pled guilty to receipt count, with the possession count to be dismissed at sentencing. (DCD 53). The plea agreement did not include any agreements on sentencing enhancements. (DCD 53). The

agreement included a limited appeal waiver, which allowed Watters to only appeal his sentence. (DCD 53).

C. Sentencing

In preparation for sentencing, a presentence investigation report ("PSR") was created. The PSR noted that the guideline for 18 U.S.C. § 2252(a)(2) offenses is USSG § 2G2.2. (PSR ¶ 40). However, because Watters's offense conduct involved causing a minor to engage in sexually explicit conduct, the PSR stated that the cross-reference to USSG § 2G2.1 applied. (PSR ¶ 40). Further, because the offense involved more than one victim, under § 2G2.2(d)(1), each victim would be treated as if they were in a separate count of conviction; this meant the separate victims would not "group." (PSR ¶ 41). Therefore, the PSR calculated the offense level for each victim separately. (PSR ¶ 42).

The PSR calculated each "group" as follows:

- T.W.
  - Base Offense Level 32
  - **Adjusted Offense Level 32**
- A.L.
  - Base Offense Level 32
  - Specific Offense Characteristic (age) +2
  - **Adjusted Offense Level 34**
- A.G.
  - Base Offense Level 32
  - Specific Offense Characteristic (age) +2
  - **Adjusted Offense Level 34**

- S.Z.
  - Base Offense Level 32
  - **Adjusted Offense Level** **32**
- J.L.
  - Base Offense Level 32
  - **Adjusted Offense Level** **32**
- R.V.
  - Base Offense Level: 32
  - Specific Offense Characteristic (age) +2
  - **Adjusted Offense Level** **34**

The PSR started with the highest offense level—34. The PSR then added a five-level increase to the offense level to account for the number of "units," in this case, the six victims treated as separate counts of conviction. (PSR ¶ 79-82); USSG § 3D1.4 (calling for a five-level increase when there are more than five units). Watters's combined adjusted offense level was 39. With a three-level decrease for acceptance of responsibility, Watters's total offense level was 36. In sum, the PSR calculated Watters's guidelines range as 210-262 months', based upon a total offense level of 36 and a criminal history category of II. (PSR ¶ 139).

Further, the PSR determined Watters's was subject to a higher statutory range because he had a prior qualifying conviction under 18 U.S.C. § 2252(b)(1). (PSR ¶ 138). The PSR relied on Watters prior state of Iowa conviction for lascivious acts with a minor. (PSR ¶ 89). Therefore, instead of the standard statutory range of 5-20 years' for receipt of child pornography, his statutory range of imprisonment was increased to 15-40 years'. (PSR ¶ 138).

Watters filed several objections to the PSR. (DCD 64). First, Watters objected to the finding that he was subject to the enhancement under 18 U.S.C. § 2252(b)(1) for having a prior conviction. (DCD 64). He objected to the narrative in the PSR describing the offense and argued that under *Mathis v. United States*, 136 S. Ct. 2243 (2016), his conviction was not a qualifying predicate. He also objected to the offense level computation because of the number of victims. (DCD 64).

The case proceeded to sentencing. The court found Watters's prior conviction subjected him to the enhanced statutory penalties, making his statutory range 15-40 years of imprisonment. (Sent. Tr. pp. 7-8). The district court then determined the PSR correctly calculated Watters's guideline range at 210-262 months of imprisonment. (Sent. Tr. p. 7).

The hearing proceeded to argument on the ultimate disposition. Watters asked for a downward variance to fifteen-years of imprisonment. (Sent. Tr. p. 7). The government requested a sentence at the high end of the guidelines range. (Sent. Tr. p. 12).

The district court sentenced Watters to 240 months of imprisonment. (Sent. Tr. p. 15). After pronouncing the sentence, the district court stated that the sentence "is the same decision the court would have reached even if [Watters's prior conviction] does not qualify to enhance the mandatory minimum or maximum sentence. This sentence was largely driven by, of

course, the behavior and the court's belief in the reasonableness of the Guideline range." (Sent. Tr. pp. 15-16).

On December 15,2017, a timely Appeal was submitted to the United States Court of Appeals for the Eighth Circuit. Appellate Counsel assigned to the Appeal only argued (in the initial brief), the miscalculated Guideline Range and inappropriate use of a prior offense during statutory sentencing.

The Government responded to the Appeal. Appellate Counsel chose NOT to reply to the Governments arguments. Instead, she merely stated that she was reasserting her prior arguments.

The Petitioner moved the Court of Appeals to allow for a pro se Reply and to raise an issue Appellate Counsel failed to litigate.

Permission was GRANTED to file the pro se brief in the form of a Motion for Reconsideration.

The Petitioner filed within the allotted time. On July 18, 2018, the Petitioner's motion for reconsideration was DENIED.

The Petitioner now files for permission to file a Writ of Certorari in this Honorable Court in the interests of equity and justice.

One argument is the fact that § 2251(a), the statute used to justify the Guidelines Enhancements, is unconstitutional. As such, the Petitioner was NOT eligible to be sentenced to an increased punishment as a result of any alleged conduct related to this section.

REASONS FOR GRANTING THE PETITION

Congress for certain, has the Commerce Clause Power to regulate the interstate market of child pornography. Title 18 of the U.S. Code Sections 2251A, 2252 both regulate this product. However, as it is currently written, section §2251(a) does not.

As a result of this Unconstitutional Statute, thousands of the citizens of the United States, and specifically the Petitioner, have been deprived of their liberty for at least 15 years and up to Life in Federal Prison. The Petitioner is serving a 20 year deprivation liberty.

According to the Constitution, Congress may regulate the commerce between the several states. In order to regulate visual depictions of child pornography, the actual product of visual depictions of said child pornography must exist.

> "It is essential to a regulation, that it have something to regulate." Phila. & Reading R.Co. v. Pennsylvania, 21 LED 146,157, 82 U.S. 232

18 U.S.C. §2251(a)'s, subject-matter language does not contain any actual images of child pornography. To wit:

> "(a) Any person who employs, uses, persuades, induces, entices or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct...shall be punished as provided under section (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted...,[or] if that visual depiction was produced or transmitted using materials that have been..., or if such visual depiction has actually been transported ..." 18 U.S.C. §2251(a) (underline mine)

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Every Federal District and Circuit Court apparently are unanimous in the fact that, as found in §2251(a), the portion of the statute that is the "subject-matter" Congress is seeking to regulate, is the first portion of the statute. "Any person who... uses...any minor...with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction...". Based upon the actual language used in this statute, Congress has exceeded it powers under the Commerce Clause.

> "We are not here confronted with a question of the extent of the powers of Congress, but one of the limitations imposed by the Constitution on its action, and it seems clear tht the same rule and spirit of construction must also be recognized." Fairbank v. United States, 181 U.S. 283,288;"Presumption that statute is enacted in good faith, for the purpose expressed in title, cannot control the final determination whether it is repugnant to the Constitution." Minnesota v. Barber, 136 S.Ct. 313;"The best evidence of the purpose [of a statute] is the statutory text adopted by both Houses of Congress and submitted to the President." Wyeth v. Levine, 555 U.S. 555,559

Using the actual language that was signed into law, and by applying the accepted and actual definitions of the words and the phrases, §2251(a) does not contain any language which indicates that there are any actual visual depictions of child pornography in the subject-matter of the statute. In fact, when applying this language, "Any person who...uses...any minor...with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction..." , it is clear that the Statute does NOT require any actual "visual depiction" to actually be produced.

As written, section 2251(a) only regulates against people who "use" minors that engage in "sexually explicit conduct" and NOT

actually producing any images of child pornography. Had Congress included the phrase "and produced," or, "and produces" a visual depiction, an actual image would exist to regulate. "For the purpose of producing", is not actual production of a visual depiction.

> "our task is to apply the text, not to improve on it." Westside Community Schools v. Mergens, 496 U.S.226,241; "Congress is the body to amend [$2251(a)] and not this court by a process of judicial legislation". United States v. Trans-Missouri, 106 U.S. 290,340

Absent the actual "visual depiction", there is nothing that is "in interstate commerce" or that even affects the commerce of actual child pornography that might exist in the market. Therefore, §2251(a) is only regulating the "sexually explicit conduct" of a minor. This is an offense that is outside the Commerce Clause and the Powers of Congress to regulate."

> "The broad authority to proscribe child pono-graphy is not, however unlimited." United States v. Williams, 553 U.S. 285; "Congress cannot punish felonies generally." Bond v. United State, 134 S.Ct. 2077,2087

The last few decades of Commerce Clause rulings from the SCOTUS, are unambiguous..."the federal commerce power does not extend to such noneconomic activity, as noneconomic violent criminal conduct that signifigantly affects interstate commerce only if we aggrigate the interstate effects of individual instances." United States v. Morrison, 529 U.S. 598,656.

Attempting to regulate the product of child pornography through a statute that does not require any child pornography to be produced, but instead regulates only the potential of child pornography when any person "uses any minor...for the purpose of producing", must be determined to be an unconstitutional exercise of the powers of Congress. As written, §2251(a) is ONLY regulating persons who intend that any

"visual depiction" be produced, and not the actual production of some actual visual depiction. This, may be what the public refers to as a "technicality", however as this Court has noted "When the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally than a party who has availed himself to the full of what the law permits." Bullen v. Wisconsin, 240 U.S. 625,630.

When the "law" that draws this line of what is "legal", is the actual "Law of the Land", The Constitution of the United States, this exactitude of what is "legal" under Federal Law's powers to proscribe, and what is not "legal" must be that much more protected.

> "[The Petitioner] Seeks to raise a claim, "judged on its face" based upon the existing record, would extinguish the government's power to "constitutionally prosecute" the defendant if the claim were successful." Class v. United States, 138 S.Ct. 798,806

The lines are clear. Congress cannot punish persons for crimes that are not squarely under their Constitutional powers. Stretching the meaning of language to say something it does not violates Due Process of Law. At the point in the alleged crime when "Any person" actually "uses any minor" with "the intent that such minor engage in , any sexually explicit conduct", there is not any crime that is punishable under the limited and enumerated powers of Congress as written in the Constitution. The "purpose" of this sexually explicit conduct of this minor is not punishable by Congress under the laws of Federalism and the Tenth Amendment.

> "When a choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in a language that is clear and definite." Dowling v. United States, 473 U.S. 207,214

The Government and Courts have been reading the existence of visual images in the language, where no such images actually do exist in the language of the statute. Absent the actual requirement of an image being "produced", there is no "visual depiction" as is defined by this statute. Absent this "visual depiction" of actual child pornography in the statute, this statute must be determined as UNCONSTITUTIONAL as it is in excess of the powers of Congress.

UNLAWFUL GUIDELINES

Miscalulating the Guidelines Range is a plain error that must be corrected. Failing to confine Federal Courts whom in reliance of the Guidelines when pronouncing their sentence, is clearly an obvious and prejudicial error. This Court has declared as such in the last decade.

The Petitioner is serving a sentence based upon the Guidelines Range of 210-262 month sentence. The correct Guidelines Range of 188-235 months was not used as the Judge's advisory sentence range. In fact, the Petitioner was sentence to 240 months, 5 months greater than the maximum advisory guideline, if the Guidelines Range were to have been correctly calculated.

> "In most cases, a defendant who has shown that the district court mistakenly deemed applicable an incorrect,, higher Guidelines Range, has demonstrated a reasonable probability of a different outcome." Molina-Martinez v. United States, 136 S. Ct. 1338,1346

In Molina-Martinez, this Court made it clear that incorrect Guidelines Range's were a signifigant procedural error that MUST be corrected.

Based upon the Sentencing Guidelines §2G2.1(d)(1), the Probation Department sought to apply Chapter Three, part D Relevant Conduct. In order to apply this enhancement, the conduct must have "occured

during the commission of the offense of conviction, in preparation for that offense, or in thd courseof attempting to avoid detection or responsibility for that offense."

The Probation Office found, and the Court applied, conduct which occured before the instant offense, and was in no way a part of this offense. Literally the "production" of images of T.W. and A.L.. To begin, the production of T.W. occured in 2010 when both T.W. and the Petitioner were 17 years old). This can in no way be considered an action related to the commission of the instant offense. Not only did this production occur when the Petitioner was a minor, but it happened 4 years prior and was not attached to any of the instant act of conviction. A.L.'s images were produced prior to the instant crime of conviction. This production was in no way related to the other victims of the instant offense.

The mere possession of these images, after they had been produced before the instant timeframe, does not infer that the fact they were produced in connection with the current offense. The only tenuous link the T.W. and A.L. images had with the current offense, is the fact that the Petitioner plead Guilty to "production" of specific images, and he happened to still possess these unrelated images from the past. The Petitioner NEVER plead guilty to the production of the images of T.S. and A.L.. The Government NEVER charged the Petitioner with any crimes related to the images of A.L. and T.W.. These victims cannot be legally calculated as relevant conduct to the instant crime of conviction. The Petitioner was sentenced based upon the incorrect Guidelines Range.

> "The Guidelines central role in sentencing means that an error related to the Guidelines can be particularly serious. A district court that "improperly calculaded" a defendant's Guideline Range for example, has committed a signifigany procedural error." Molina -Martinez, @ 1345-46

The Probation Department determined and the Court applied a conviction that was based upon an overbroad statute, as a predicate offense which increased the liberty risk against the Petitioner.

Relying on the Supreme Court's Descamps v. United States, 133 S.Ct. 2276,2283; Mathis v. United States, 136 S.Ct. 2243; Lockhart v. United States, 136 S.Ct. 958,964, the Petitioner's Iowa State conviction does not meet the "generic" version of any Federal Offense as required by definition.

Under the Iowa Supreme Court's ruling in State v. Thorndake, 860 N.W.2d 316,318-21 (Iowa 2015), the statute of State conviction contains "alternative means", and not "alternative elements" (Iowa Code § 708.9). The divisibility of the State Statute procludes the use of such a conviction to trigger an enhancement under §2252's mandatory minimum. At best, the State Statute is overbroad and is fatally flawed on its face. It cannot be used under Due Process to cause an extended deprivation of liberty of defendant's facing such sentences.

The Petitioner's prior does NOT qualify as a predicate offense and therefore, the Petitioner MUST be resentences absent this mandatory minimum sentence playing any potential part of the Petitioner's sentnece.

IN SUMMARY

The actions of this Court will affect many similarily situated defendants and petitioners. The Eighth Circuit courts cannot be,allowed even passively by this Court, to apply sentences based upon erroneous information and prior actions.

UNLAWFUL USE OF PREDICATE OFFENSE

Watter's State of Iowa conviction does not fall within the definitions of 18 U.S.C. §2252(b)(1). The terms "aggravated sexual abuse", "sexual abuse", and "abusive sexual conduct" are not defined within the §2252 statute or Chapter 110. Chapter 109A does have the definition for these terms.

This Honorable Court in Lockhart v. United States, 136 S.Ct. 958,964, noted that the definitions in §§2252(a) and 2252(b) closely follow the structure and language of the definition contained in Chapter 109A.

Although not definitive, this Court proposed a definition. The Petitioner's statute of conviction does not relate to the trilogy of sex-related offenses that trigger the §2252(b) minimum. Either version of the Iowa prior Offense can be satisfied by merely the "toughing of the pubes" and without skin-skin contact. Using this Court's proposed definition as found in Chapter 109, the Petitioner's prior IOWA convictions does not ipso facto mean it "relates to" the class of crimes for which Congress intended to trigger the mandatory minimum. If Congress had intented for 'all' simple contact crimes to trigger §2252's mandatory minimum, then Congress knows how and would have made the enhancement applicable to 'all' crimes relating to "sexual contact" and not just "abusive sexual contact". Therefore, the Petitioner's prior cannot trigger this enhancement.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: _____