

7015 1520 0003 0844 2257

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

BRIAN WILLIAM SCHUMAKER — PETITIONER  
(Your Name)

vs.

Hector Joyner, WARDEN — RESPONDENT(S)  
[with David Ortiz, WARDEN, FCI Fort Dix, adjoined]

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, Appeal No.17-7254  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brian-William Schumaker, AGENT for PETITIONER  
(Your Name)

P.O.Box 2000, Joint Base MDL, Bldg.5751, Ste.319-5L  
(Address)

Fort Dix, NEW JERSEY [near 08640-090200]  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## **QUESTION(S) PRESENTED**

- I. WHETHER the lower courts, hearing the petitioner's Constitutional claims of "actual innocence" and "theory of defense" instructions delivered to the trial jury, ERRED Constitutionally by repeatedly recharacterizing and deliberately FAILING to judicially notice the petitioner's actual questions, or providing full prudential consideration to those Constitutional claims?
- II. WHETHER the petitioner is Constitutionally entitled to have the defense proposed instruction, that a full statement of.. "the Law" on the 'theory of defense' be included in the court's charge to the jury; and whether the court's neglect to deliver such full statement is sufficient reason for reversal?

## LIST OF PARTIES

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:

### SUPPLEMENTARY CERTIFICATE STATEMENT

This statement is to be construed as a supplemental Corporate Disclosure that is to be recognized as being consistent with the 'Affidavit of Denial of Corporate Existence' (Doc.331-1) that was completely ignored, and yet filed into the public record of the Eleventh Circuit U.S. District Court underlying criminal case(1:07-cr-00289-JLG).

### ADJOINED PARTY

Between the underpinned 4th Circuit decision and the current filing, the Federal BOP has relocated the Petitioner to FCI Fort Dix, requiring the adjoining of, David Ortiz, WARDEN at the ~~incarcerating~~ facility.

### ORAL ARGUMENT RESERVATION

In aid of the Court's consideration, the AGENT for the Petitioner/Appellant hereby reserves Oral Argument to adequately present both the historical chronology of "ADDing" the legislative definition found at title 1 USC §8 - versus- the contentious and obscure definitions found in the U.S. Sentencing Guidelines (USSG) and their useage; together with the legal-contentions of the Petitioner/Appellant to shine 'the LAW' as universally understood by visitors, citizens, and residents governed by the Common Law. The primary objective to be argued is exactly how the obscure policy considerations being included in the charge to the jury at trial to determine the guilt of the defendant creates a 'VOID FOR VAGUENESS' doctrine violation under the Constitution.

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Alaimalo-v-United States, 645 F.3d 1042(9th Cir.2011) . . . . .	8
Bird-v-United States, 180 US 356(1901). . . . .	9 @fn.4, 21
Boxer-v-Harris, 437 F.3d 1107(11th Cir.2006). . . . .	4 @fn.1
Clisby-v-Jones, 960 F.2d 925(11th Cir.1992) . . . . .	7, 14
Connecticut-v-Johnson, 460 US 73(1983). . . . .	9 @fn.4
Ex Parte Bain, 121 US 1(1887) . . . . .	13
Haines-v-Kerner, 404 US 519(1972) . . . . .	4 @fn.1
In RE:Jones, 226 F.3d 328(4th Cir.2000) . . . . .	7, 8, 9
Johnson-v-United States, 135 S.Ct.2552(2015). . . . .	20
Kolender-v-Lawson, 461 US 352(1983) . . . . .	20
Rodney Class-v-United States, 2018 U.S.LEXIS 1378(2018) . . . . .	13
Rodriguez-v-Ratledger, 715 Fed.Appx.261(4th Cir.2007) . . . . .	4 @fn.1
Schumaker-v-Joyner, 2017 U.S.Dist.LEXIS 111986)(DC S.C.2017) . . . . .	8, 9
Schumaker-v-Joyner, 2017 U.S.Dist.LEXIS 112341)(DC S.C.2017) . . . . .	4, 8, 11, 18
Schumaker-v-United States, 2012 U.S.LEXIS 7713(2012) . . . . .	5
Sessions-v-Dimaya, 138 S.Ct.1204(2018) . . . . .	19, 20
Sosa-Sanchez-v-Mosley, 714 Fed.Appx.757(9th Cir.2018) . . . . .	8
Souza-v-United States, 2013 U.S.Dist.LEXIS 173054(Dec.2,9th) . . . . .	8
Steel Co.-v-Citizens for a Better Env., 523 US 83(1998) . . . . .	13
UBCJ of A-v-United States, 330 US 395(1947) . . . . .	9 @fn.4, 21
United States-v-Cotton, 535 US 625(2002) . . . . .	13
United States-v-Cousar, 538 Fed.Appx 854(4th Cir.1984) . . . . .	9
United States-v-Farley, 607 F.3d 1294(11th Cir.2010) . . . . .	16
United States-v-Garner, 529 F.2d 962(6th Cir.1976) . . . . .	9 @fn.4, 21
United States-v-Goetz, 746 F.2d 705(11th Cir.1984) . . . . .	9 @fn.4, 21
United States-v-Grimes, 413 F.2d 1376(7th Cir.1969) . . . . .	9 @fn.4, 21
United States-v-Hayward, 420 F.2d 142(DC Cir.1969) . . . . .	9 @fn.4, 21
United States-v-Hicks, 748 F.2d 854(4th Cir.1984) . . . . .	9
United States-v-Kahn, 524 F.Supp.2d 1278(DC Wa.) . . . . .	11, 12@fn.5, 15
United States-v-Lively, 803 F.2d 1124(11th Cir.1986) . . . . .	9 @fn.4, 20
United States-v-Martin Linen, 430 US 564(1977) . . . . .	9 @fn.4, 21
United States-v-Morris, 20 F.3d 1111(11th Cir.1994) . . . . .	9 @fn.4, 21
cont'd ...	

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
United States-v-Murrell, 368 F.3d 1283(11th Cir.2004) . . . . .	15
United States-v-Opdahl, 930 F.2d 1530(11th Cir.1991) . . . . .	9 @fn.4, 20
United States-v-Root, 296 F.3d 1222(11th Cir.2002) . . . . .	15, 16
United States-v-Ruiz, 59 F.3d 1151(11th Cir.1995) . . . . .	9 @fn.4, 21
United States-v-Schumaker, 479 Fed.Appx.878(11th Cir.2012) . . . . .	6, 10, 13, 15, 16
[United States-v-Strauss], 376 F.2d 416(5th Cir.1967) . . . . .	9 @fn.4, 21
United States-v-Vale, 435 F.2d 774(7th Cir.1970) . . . . .	9 @fn.4, 21
United States-v-Vasquez, 839 F.3d 409(5th Cir.2016) . . . . .	11

## STATUTES AND RULES

Title 1 USC §8 set forth @ Appendix 'G' . . . . .	3, 4, 5, 6, 8, 12, 14, . . . 15, 16, 17, 18, 20, 21
Title 18 USC §2241 . . . . .	7, 15, 16, 17, 19
Title 18 USC §2422 . . . . .	7, 15, 16, 17, 18, 19
Title 28 USC §2241 . . . . .	4, 5, 7, 8, 9, 11, 14, 15, 21
Title 28 USC §2255 . . . . .	5, 8, 11, 12

## OTHER

11th Circuit Rules Handbook . . . . .	6 Fn.2
United States Sentencing Guidelines (USSG)	
§2A3.1 . . . . .	17, 18, 19, 20
§2G1.3 . . . . .	17, 18, 19, 20

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT.....	7
CONCLUSION.....	22

## INDEX TO APPENDICES

APPENDIX A	UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT - UNPUBLISHED OPINION - April 25, 2018, 720 Fed.Appx.181, 2018 U.S.App.LEXIS 10439
APPENDIX B	U.S.COURT OF APPEALS FOR THE 4th CIRCUIT Petitioner's INFORMAL BRIEF
APPENDIX C	UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT - Petition for Rehearing, En Banc July 3, 2018 ORDER denying rehearing
APPENDIX D	U.S.COURT OF APPEALS FOR THE FOURTH CIRCUIT - Petition for Rehearing, with Suggestion for Rehearing En Banc
APPENDIX E	U.S.D.C. Petition for Writ of Habeas Corpus (28 USC §2241) OPINION (Adopted D.S.C.,July 19, 2017) 2017 U.S.Dist.LEXIS 111986
APPENDIX F	Petitioner's Original June 1, 2017 filed Petition for Writ of Habeas Corpus under 28 USC §2241
APPENDIX G	Title 1 USC §8, "Person"; "individual" - defined [Congressional INTENT - consideration repeatedly REBUFFED]

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 720 Fed.Appx.181; 2018 U.S.App.LEXIS 10439; or,  
[ ] has been designated for publication but is not yet reported; or,  
[X] is unpublished.

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

reported at 1:17-cv-01473-HMH; 2017 U.S.Dist.LEXIS 111986 or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] 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 April 25, 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 3, 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. Please note cover letter of timely Application for Extension - no response rec'd \*\*\*

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

Constitution of the UNITED STATES for the United States of America :

### AMENDMENT (1) I: Religious and political freedom

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.

### AMENDMENT (5) V: Criminal actions - Provision concerning 'Due Process of Law'

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use; without just compensation.

### AMENDMENT (6) VI: Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for HIS defence.

### AMENDMENT (14) XIV, Section 1: [Citizens of the United States]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

See also APPENDIX 'G' for full text of certain other statutory provisions involved, yet detailed throughout this petition *passim*.

## STATEMENT OF THE CASE

COMES NOW, Brian-William:Schumaker, a recognized Canadian born citizen; in proper person<sup>1</sup>. without prejudice as AGENT on behalf of the petitioner, a federal prisoner; to challenge under writ of certiorari to the U.S. Court of Appeals for the Fourth (4th) Circuit on the decision denying review of petitioner's claims, of "actual innocence" and 'theory of defense' instructions delivered by the trial court to the jury, filed within the original Petition For Writ Of Habeas Corpus (28 USC §2241) Case No. 1:17-cv-01473-HMH (D.S.C., July 19, 2017).

### \*\*\* SPECIAL POINT-OF-ORDER NOTATION \*\*\*

This case presents significant questions of national import, where policy considerations (i.e.- U.S.Sentencing Guidelines) are being masqueraded as... "the law" that have systematically transitioned into being arbitrarily delivered by trial courts within its jury instructions, to determine the guilt or innocence of defendants.

In this case, the issues presented have in one form or another been raised by the petitioner or defense counsel, yet judicial notice of... the law, at title 1 USC §8, has been repeatedly rebuffed by the underlying U.S. District trial court and 11th Circuit Court of Appeals in at least (6) separate appeals:

- the jury instructions review in the afternoon of Wed. March 30th, 2011, the 3rd day of trial; ◦
- objections at sentencing, with regard to the lack of an actual "victim";
- on direct appeal, at Ground 1, pp.4-5, and arguing 1 USC §8 at pp.15-22;

---

1. In Haines v. Kerner, 404 US 519,520(1972)(notes that pro se complaints are held "to less stringent standards than formal pleadings drafted by lawyers."); Boxer v. Harris, 437 F.3d 1107,1110(11th Cir.2006)("Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys."); Rodriquez v. Ratledger, 715 Fed.Appx.261(4th Cir.2017)(quoting Haines, 404 US @ 520-21(construing pro se petitions liberally)).

(See also Petition For Writ Of Certiorari [of direct appeal] S.Ct.12-5892, 133 S.Ct.387, 184 L.Ed.2d 229, 2012 U.S.LEXIS 7713, requesting consideration of the.. "new law @ 1 USC §8, to be applied to statutes of conviction.);

- in the §2255 proceedings at GROUNDS THREE, SEVEN, EIGHT, NINE, TEN, & TWELVE:
- in the appeal of those §2255 proceedings before the 11th Circuit;
- and again in the Request For Rehearing by the 11th Circuit.

Likewise in the 4th Circuit Court of Appeals and the USDC, from where this instant appeal arises, on the petitioner's original 28 USC §2241 Petition for Writ Of Habeas Corpus; the lower courts have AGAIN repeatedly FAILED to either acknowledge that,.. "the law" & Congressional intent of Congress, at title 1 USC §8, has been raised in EVERY proceeding listed above.

NOT ONCE have ANY of the courts given mention that this statutory LAW has IN FACT been raised by the petitioner. Thereto every lower court has completely FAILED to either MENTION, acknowledge, ACCURATELY state, address, or prudentially consider this statute, AND the associated Constitutional infraction(s), in ANY Opinion or ORDER in at least (9) separate proceedings. A classic example of avoiding or FAILING to mention Constitutional Question(s) being raised is repeated in the recent 4th Circuit Opinion (See Appended APPENDIX 'A'), in the second sentence as quoted,

"We have reviewed the record and find no reversible error."

Petitioner here will dispense with repeating the underlying criminal case background to briefly zero in on the key portion of the case giving rise to the Constitutional violations that are HERE raised in the QUESTIONS FOR REVIEW. Petitioner's cautionary reasoning for the Court's consideration is adequately stated in the 4th Circuit Court of Appeals Petition/With Suggestion For Rehearing En Banc (See APPENDIX 'D') at pp.4-5, 'Notable Point-of-Order' ) (noting that it certainly is NOT UN-noticed that during review, the courts

... have had a certain propensity to judicially "punt" consideration of the serious Constitutional violations raised simply to avoid the growing hysteria and media generated sensationalism surrounding the subject-matter on the underlying criminal charges, or of publically appearing as being soft toward the issues.

Having prefaced this, the specific matter raising the Questions now before this honorable Court for review is stated as follows.

#### Statement of Facts

The record clearly shows that, in the late afternoon on the third day of trial, of Wednesday, March 30, 2011, the defense clearly requested that the court include within its charge to the jury the statutory definition of the words, "person" (as used in Count 1), and "individual" (used in Count 2 of the indictment) as specifically stated at title 1 USC §8. However, the trial court omitted the defense request, and further overruled the defense objection to the court's denial. Alternatively, the court instructed the jury that, what "the government must prove beyond a reasonable doubt is that the defendant crossed a state line with the specific intent to engage in a sexual act with a person he.. BELIEVED to be under (the respective statute's specified age of) 12 years old." (See Petitioner's Brief @ pp.4-5 in 11th Cir. direct Appeal 11-13616 and arguing 1 USC §8 at pp.15-22. (unpublished decision, clearly not mentioning argument of the law being raised, 479 Fed.Appx.878). The court delivered this instruction upon commencement of the Thursday, March 31, 2011 proceedings, after which the jury immediately began its deliberations.<sup>2</sup>. Five days later, on April 4th, a guilty verdict was delivered.

---

2. In the afternoon of Mar.31,2011, judge Graham RE-instructed the jury to disregard the word "substantial" from his initial charge. Then judge Duffey; who was removed from the case by Ch.J. John Roberts on Aug.7,2010(see Doc.212 & 213); on Apr.4,2011 similarly answered another jury question about the words "not merely incidental". Together these RE-instructions further aggravated PREJUDICE during deliberations by preventing consideration of ANY elements describing "the purpose of the (defendant's) travel". 11th Cir.Handbook Rules PROHIBIT ANY jury REINSTRUCTION.

## REASONS FOR GRANTING THE PETITION

### I.

THE LOWER COURTS ERRED CONSTITUTIONALLY BY REPEATEDLY RECHARACTERIZING AND DELIBERATELY FAILING TO JUDICIALLY NOTICE THE PETITIONER'S ACTUAL QUESTIONS, OR PROVIDING FULL PRUDENTIAL CONSIDERATION TO THOSE CONSTITUTIONAL CLAIMS.

The most widely recognized instruction on resolving constitutional claims raised within habeas corpus proceedings is, Clisby v Jones, 960 F.2d 925,936 (11th Cir.1992)(instructing "the district courts to resolve all claims for relief in a petition for writ of habeas corpus... regardless whether habeas relief is granted or denied. A claim for relief for purposes of this instruction is any allegation of a constitutional violation.")

Petitioner submits that the lower 4th circuit courts erred both in neither noticing nor resolving what equates to at least (4) constitutional issues raised within the §2241 original petition.

(a)

On June 1, 2017, petitioner filed an original Petition for Writ of Habeas Corpus pursuant to 28 USC §2241 asserting the claim of "actual innocence" by stating at Ground One:

Congress DID NOT intend to punish individuals for victimless crimes (where a real "person" or "individual" being harmed does not exist) under 18 USC §§2241(c) and 2422(b). See Petition appended 'F', Id. @8.

In the supporting Facts and filed Memorandum of Law<sup>3</sup>, petitioner provided full support for filing the petition under, In Re:Jones, 226 F.3d 328,329(4th Cir.

...  
3. Since the recent abrupt and forcible transfer of petitioner in June 2018 from S. Carolina to New Jersey, this Memorandum has mysteriously been either misplaced or destroyed, and could not be reproduced here. However, 4th Cir. Informal Brief (Appendix 'B') adequately recreates petitioner's contentions briefed therein.

... 2000)(that opened "a narrow gateway to §2241 relief for certain prisoners found actually innocent of their offenses of conviction, allowing relief only where the acts for which the defendant was convicted are not a crime in this (4th) circuit.") See Appendix 'B', Id., at 4-6.

Other authority supporting the filing of the §2241 petition was cited in the 9th Circuit decisions affirming Alaimalo, 645 F.3d 1042,1047(9th Cir.2011)§2241 savings clause where petitioner, "has not received an unobstructed procedural shot" at having his constitutional claims prudentially considered on the merits. Cf., Souza v. U.S., 2013 U.S.Dist.LEXIS 173054 (Dec.2,2013 9th Cir.).

The district court simply adopted (July 19, 2017) the magistrate Opinion, (See both Opinions at Appendix 'E')(stating, "Schumaker's argument that he is innocent... because there is no victim is contrary to applicable Eleventh Circuit case law") Id., at 2.

However, neither the magistrate Opinion (2017 U.S.Dist.LEXIS 112341) nor the court's ORDER (2017 U.S.Dist.LEXIS 111986) ever mention that the petition raised.. the law citing title 1 USC §8 in no fewer than (6) 11th Circuit proceedings that were all completely rebuffed. This failure to even mention the legislated law outlining the specific intent of Congress, as submitted in Ground One of the §2241 petition is construed as a 5th Amendment 'Due Process of Law' Constitutional violation.

Petitioner submits that with the repeated recharacterizations on this claim being a §2255 proceeding issue; when the question was also raised there, AND on direct appeal, yet simply avoided on the merits; enabling the court to ultimately deny prudential consideration of the claim on the merits; FULLY demonstrates nothing but repeated procedural obstruction and clearly qualifies the petition under §2241 by establishing he has been denied "an unobstructed procedural shot." See also Sosa-Sanchez v. Mosley, 714 Fed.Appx.757(9th Cir.2018)

Both the 4th Circuit lower courts have repeated avoidance of this constitutional claim with perceived "deliberate indifference" simply to avoid  
...

... consideration of its very own rulings and decisions described in, United States v. Hicks, 748 F.2d 854,857-58(4th Cir.1984) and United States v. Cousar, 538 Fed.Appx.83,85(4th Cir.2013) effectively (stating that the error of a court failing to give a defendant's proposed jury instruction, "is impermissible"; is "an error of CONSTITUTIONAL magnitude"; and "was NOT harmless") (summarized in petitioner's 4th Cir. Informal Brief, see Appendix 'B', id., at 16-17)

This failure by both the 11th and 4th Circuits to give notice of, and provide prudential consideration of the constitutional claims, or for the 4th Circuit to even notice their very own decisions<sup>4</sup> of.. the law actually being raised in no fewer than (9) separate proceedings is not only just a constitutional "due process of law" AND "Equal Protection" guaranty 14th Amendment violation, but is certainly an "abuse of discretion".

(b)

The Question to be answered in the §2241 petition was whether CONGRESS intended to punish victimless crimes... and NOT what either the 11th Circuit intended, or what the 4th Circuit perceived or intended.

The original §2241 petition submitted to the district court that the 4th Circuit had not yet determined this issue based upon the specific facts in the petitioner's case; thus the 4th Circuit had not yet determined if the defendant had actually committed a crime IN the 4th Circuit. Cf., In re:Jones, supra. However, the district court of S.Carolina Opinion (see 2017 U.S.Dist. LEXIS 111986, Appendix 'E', Id., at 2) stated that the argument of being, "actually innocent""because there is no victim is contrary to applicable 11th

...

---

4. (14) other decisions all reversing convictions were also cited from at least (5) other circuits, including (4) from this Court in Bird v. U.S., UBCJ of A. v. U.S., U.S. v. Martin Linen, Connecticut v. Johnson; 7th Cir. U.S. v. Grimes, U.S. v. Vale; 6th Cir. U.S. v. Garner; 11th Cir. U.S. v. Opdahl, U.S. v. Lively, U.S. v. Morris, U.S. v. Goetz, U.S. v. Ruiz; the DC Cir. U.S. v. Hayward; & 5th Cir. U.S. v. Strauss. See citations with addresses in 4th Cir. Informal Brief, id., at 14-17, Appendix 'B'.

... Circuit case law", and then cited (3) 11th Circuit cases. Therefore, the petitioner suggesting that the matter is a case of first impression is supported in that the district court is completely unable to cite any 4th Circuit case law supporting the 11th Circuit's decision in Schumaker.

Again, what the 11th Circuit intended was NOT the question to be answered, because the 11th Circuit and its district courts are NOT the legislative body that establishes the LAW. The representatives of CONGRESS establish and positively enact what IS or IS NOT.. the Law of the Land; NOT the 11th Circuit, OR the 4th Circuit, or ANY of their respective district courts! The duty of the courts is to recognize and apply the will and intent of Congress, NOT the mere contradictory dicta or personal opinions of a court's presiding officer(s). Failing to either recognize or apply the intent of Congress in an attempt to establish 'a new law' that satisfies a personal psychosis is a further clear Constitutional violation to the Separation of Powers principles embedded within the American system of justice.

Notwithstanding, the 4th and 11th Circuits attempt to legislate from the bench, another impermissible and prejudicial act. Restructuring and failing to recognize the.. ACTUAL law and intent of Congress in a habeas corpus proceeding can easily be perceived as a sly insidious demonstration of circumventing,

- 1) the inherent right to free access and exercise of petitioning the government for redress of a grievance, a First Amendment violation;
- 2) Fifth and Fourteenth Amendment 'due process of law';
- 3) Sixth Amendment of having the accused's defense heard and considered and ascertained according to the law;
- 4) Fourteenth Amendment deprivation of life, liberty, and property, together with being protected by the 'Equal Protection of the Laws' guaranty, and
- 5) being judged clearly WITH prejudice, without impartiality, and with the

...

... actual law and intent of Congress being impartially considered.

(c)

The magistrate Opinion of June 28, 2017 (See Appendix 'E', 2017 U.S.Dist.LEXIS 112341, id., at 3) states, "Petitioner cannot demonstrate that the conduct for which he was convicted has been deemed non-criminal by a substantive law change since he filed his §2255 motion."

Although the actual case law was not cited; as recommended in the §2241 petition's filing instructions of citing no case law; petitioner contends that with the court's failure to order a hearing or discovery into the matter, yet proceeding to then make its decision, the court prevented the petitioner from actually citing two (2) applicable cases; relevant authority from the 9th Circuit (decided a few months after the arrest of defendant Schumaker) and more recently (1) being of the 5th Circuit decided nearly thirteen (13) months AFTER the §2255 Motion was filed. This 5th Circuit case, United States v. Vasquez, 839 F.3d 409(5th Cir.2016) was cited however in the petitioner's brief objecting to the magistrate's Report and Recommendation. See also Appendix 'B' 4th Cir. Petitioner's Informal Brief, id., at 18.

However, and again the court in it adopting the R&R on July 19, 2017 (See Appendix 'E') it completely FAILS to recognize the petitioner actually then citing Vasquez, supra, as well as United States v. Kahn, 524 F.Supp.2d 1278(DC Wa.2007), both of which are not only specific to the issue raised, but directly relate to the petitioner's statutes of conviction. Further, Vasquez also explains how the absence of an actual ...

victim vacated the sentence and one count stating, "for enhancement to apply under these circumstances, the minor MUST be a REAL PERSON")(emphasis added), 839 F.3d @ 409. In Kahn<sup>5</sup>, the decision prevented the accused from being held for bond due to the specific language in the statutes within the indictment compared with the plain meaning of those words with the evidentiary facts versus the government contentions.

Petitioner submits that this decision in Kahn, and the high probability of it being reiterated in the pre-trial proceedings would have resulted in the case being ultimately dismissed since there is no other record of the case.

In short, and contrary to the district court's contentions, the petitioner in fact DID provide intervening citations supporting the claim of the lack of an actual victim. Notwithstanding, in the 11th Circuit §2255 proceedings, on page 10.2 of the Motion at GROUND NINE, the petitioner clearly cited that the NEW LAW at 1 USC §8 had been "Added" by Congress just 26-days AFTER the 11th Circuit case law, or rather mere opinion/dicta that was being relied upon by the district courts to deny the petition.

Although not specifically occurring after the filing of the §2255 Motion, it is none-the-less "intervening" law never before considered in either the 11th Circuit, 4th Circuit, or any other court of record for that matter since 1 USC §8 was enacted into law on August 5, 2002. Not even mentioning in ANY decision that Congressional NEW LAW has clearly been established that has NEVER been considered is perhaps the most flagrant 'abuse of discretion' conceivable toward a constitutional right of being judged according to.. the LAW!

(d)

In almost every proceeding in the 11th Circuit of the underlying case, the petitioner has in one form or another raised 'Standing' or 'jurisdictional' grounds for relief. See §2255 (Doc.341) Motion at GROUNDS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, ELEVEN, & TWELVE.

'Standing' is defined as the Article III, "irreducible federal constitutional minimum" THRESHOLD requirement enabling an action to first

---

5. Kahn is extremely relevant since the decision takes into account similar characteristics, circumstances, and charges in this case, and that it occurred just 2.5 mths after arrest of this petitioner, but records reveal the case was not even prosecuted.

... even enter a federal courtroom. "STANDING" is therefore a constitutional jurisdictional matter that MUST be considered and resolved 'sua sponte' on EVERY appeal, and can never be forfeited, waived, or 'procedurally barred' or ignored without a fundamental 'structural' Constitutional defect occurring. Cf., Rodney Class v. United States, 2018 U.S.LEXIS 1378, S.Ct.16-424 (Feb.21,2018). See also United States v. Cotton, 535 US 625,630(2002)(holding, "The Court's authority to issue a writ of habeas corpus was limited to cases in which the convicting "court had no jurisdiction to render the judgment which it gave." quoting Ex Parte Bain, 121 US 1, @3. "[T]herefore, this [Supreme] Court could examine constitutional errors in a criminal trial only on a writ of habeas corpus, and only then if it deemed the error "jurisdictional".") Id., at 630.

The first and most important jurisdictional hook for establishing 'Standing' in a federal court is... "injury-in-fact" that is "actual or imminent", "concrete", "particular" and is NOT "conjectural" OR "hypothetical". Cf., Steel Co. v. Citizens for a Better Environment, 523 US 83, Id., @103.

There is no question that the record in Schumaker repeatedly shows a complete lack of an "actual victim", as is repeatedly admitted by the government and the 11th Circuit courts. See magistrate R&R, Doc.361, (stating, "Neither... actually exist.") Id.,@4 (cited also in 4th Cir. Petitioner's Informal Brief, id., at 15, see Appendix 'B'). It therefore cannot be successfully argued that since "Neither [a victim] actually exist", logically speaking there can NEVER be an "injury-in-fact"... er-go then a complete and utter lack of 'Standing' exists in the underlying criminal case.

In order to maintain 'Standing'; which persists in every proceeding in federal court; again the lack of any "actual victim", or any potential for such, by fortiori then causes complete failure in meeting the, "irreducible minimum" threshold Constitutional requirement of, "an injury-in-fact". How this most basic requirement can EVER be simply overlooked, sua sponte, by ANY

...

... reputable court of record is simply beyond comprehension. This complete failure to judicially notice and consider this clear 'abuse-of-(judicial)-discretion' is so repugnant in this case, due to so many objections being raised, that it casts a VERY dim view with regard to the public perception on the integrity of Constitutional federal judicial process. It also causes the most "fundamental miscarriage of justice", since 'Standing' creates the foundational cornerstone upon which all jurisdictional elements and power to proceed with the case rests. (emphasis added)

In summary to this question, with these four Constitutional issues being raised repeatedly; notwithstanding the §2241 petition further challenging a Constitutional 'Void-for-Vagueness' Doctrine argument; and FAILING to either judicially notice, discuss, or even mention whether ANY constitutional issues were raised in the habeas corpus proceeding; especially in light of the nationally accepted instructional standard quoted earlier in Clisby v. Jones, supra; it cannot EVER be considered as ANYTHING other than judicial plain error.

## II.

THE PETITIONER IS CONSTITUTIONALLY ENTITLED TO HAVE THE DEFENSE PROPOSED INSTRUCTION, THAT A FULL STATEMENT OF.. "THE LAW" ON THE 'THEORY OF DEFENSE' BE INCLUDED IN THE COURT'S CHARGE TO THE JURY; AND THE COURT'S NEGLECT TO DELIVER SUCH FULL STATEMENT IS SUFFICIENT REASON FOR REVERSAL.

The statutory law and Congressional intent, at title 1 USC §8 (complete text set forth at Appendix 'G') clearly defines, *inter alia*, in pertinent part, to wit:

§8 "(a) In determining the meaning of any Act of Congress, or of any ruling... or interpretation of.. the words "person"... and "individual"... is born alive at any stage of development." -and in-  
"(c) Nothing.. shall be construed to.. deny, expand, or contract any legal status or legal right applicable...", Id.

It is long overdue that the annotation, "(Added Aug.5, 2002, P.L.107-207, §2a, 116 Stat.926) should NOW be recognized and judicially noticed by ALL courts; that Congress "Added" only this single statute, the 8th statute to the entire U.S. Code Service, after more than 220 years of lawmaking, when it enacted the "Born Alive Infant (Child) Protection Act of 2002" in order to remove ANY and ALL ambiguities to its, Congress', legislative intent for the stipulated and particular words being used in "ANY Act.." that is unrepealed. This includes both the Adam Walsh Act (18 USC §2241(c)) and the Mann Act (18 USC §2422(b)). This never before applied, or judicially considered NEW LAW.. was added a mere 26-days AFTER the 11th Circuit court in United States v. Root, 296 F.3d 1222(11th Cir. July 10, 2002)(decided that, "Defendant's belief that a minor was involved was sufficient to sustain the attempt conviction.") Id., @1222.

Here in Root, the courts also combined or comingled influence with the words, "hypothetical", "minor", and "victim"; id.,@1233,1235,& 1237; to assert their own personal prejudice, or satisfy some psychosis that it is faithfully upholding the(ir) 'perceived' law. However, no where within the language of the indictment, the statute, or the respective Act of Congress are these words ever used. The cardinal principle of statutory construction is that courts must give effect to every clause and word of the STATUTE. cf., Kahn, 524 F.Supp.2d at 1283. In other words, "Where the statutory language at issue is plain, the sole function of the court is to enforce the language according to its terms. Courts do not sit as super-legislatures. Where the result is not absurd, the plain language controls." Id., 524 F.Supp.2d at 1284 (emphasis added).

In fact, in the indictment and statutes of conviction in Schumaker, we find the word, "knowingly". The word "knowingly" then qualifies its own application to every word in the sentence that it precedes within the statute. The word does not mysteriously play 'judicial hopscotch' within a statute.

For instance, "knowingly" does not just apply to the words in the statute, "persuades", "induces", "entices", "coerces", and then 'jumps over' "any individual" to then somehow land again on the words "who has not attained the age" respective to the statute. cf., 18 USC §2422(b) (Count 2 in Schumaker). The same principle applies in Count 1 of the indictment of not 'jumping over' the word "person".

The 11th Circuit panel on direct appeal of Schumaker used Root, 296 F.3d @1227-29(11th Cir.2002) and its progeny in United States v. Murrell, 368 F.3d 1283,1286-88(11th Cir.2004), together with United States v. Farley, 607 F.3d 1294,1325(11th Cir.2010)(see Schumaker, 479 Fed.Appx. at 884(11th Cir.2012)) to further frustrate and conflate the lack of actual "existence of an actual child victim", in order to bury, or further distance the foundation of associating the words "hypothetical" or "fictitious" or "minor" or "victim" or combining terms "minor victim" in opposition to the actual words "person", in Count 1, and "any individual", used in Count 2 of Schumaker, or otherwise to assert the panel's prejudice and personal will that it voiced in Root.

NONE of these cases have ever recognized that Congress has flatly rejected any of these 11th Circuit contentions when it enacted P.L.107-207 on August 5, 2002, being the Born Alive Infant (Child) Protection Act of 2002; and again just 26-days AFTER Root was decided on July 10, 2002. Neither has ANY other court ever given consideration to the congressional enactment of this statute, title 1 USC §8, nor Congress' legislative intent of the respective words used. NO CASE, known to the petitioner that is available in the public record, has EVER been argued that considers the Congressional legislative intent, or title 1 USC §8, or its effect on the statutes of conviction in Schumaker.

THIS IS THEREFORE A CASE OF FIRST IMPRESSION IN THE FEDERAL COURTS!

Over the years since Root was decided, opinions of several courts have further morphed the words 'created' in Root of "hypothetical", "minor", ...

... "victim", and "minor victim" into "fictitious", or even "imaginary".

While none of these words are ever used in the unrepealed Acts of Congress, the statutes, or normally the indictments associated specifically with either the Adam Walsh or Mann Acts, the courts rather seamlessly, yet insidiously have managed to transport or convey similar language used in the United States Sentencing Guidelines (USSG) "Commentary Application Notes" to be used within jury instructions to determine the actual guilt or innocence of the defendant at trial. The courts appear to be simply oblivious of how such manifestations by the court and its useage might prohibitively 'direct the verdict' against the defendant, by completely removing from the jury's consideration his primary "theory of defense". This is very important because Congress did not employ the terms "minor", "victim", or "minor victim", or associate these words in 18 USC §2241(c) (Count 1) or 18 USC §2422(b) (Count 2). The U.S. Sentencing Commission did.

The respective USSG §§2A3.1 and 2G1.3 "Commentary" Application Note (1) defines the term, "Minor" every year since 2004 as, to wit:

"(A) an individual who had not attained the age of 18 years; (B) an individual, "whether FICTIONAL or not" who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant had not attained the age of 18 years." id., (emphasis added)

Moreover however, even earlier than Congress "ADDING" the positive law of title 1 USC §8 in 2002, in 1998 Congress was faced with and considered the following language in a proposed amendment to 18 USC §2422 in the House of Representatives, to wit: "Whoever, using the mail or any facility or means of interstate or foreign commerce.. knowingly contacts an individual, who has been represented to the person making the contact as not having attained the age of 18 years..." - H.R.3494, §101, 105th Cong. 2d Sess. (1998)(emphasis added)

Though given the opportunity to amend the statute(s) to include the emphasized above language, Congress flatly declined. Thus Congress refused to either broaden §2422(b), or allow for convictions under the statutes based solely on a defendant's mere "belief" that a minor was involved to sustain a conviction.

Particular attention must be drawn to the emphasized language above as to how close the language is in the respective USSG compares with the REJECTED language considered by Congress in the 1998 proposed amendment. See also 4th Circuit Informal Brief, pp.6-7 at Appendix 'B' for further clarification.

(a)

Void-for-Vagueness where "Belief" is used in Jury Instructions

The above legislative history sheds glaring light upon the intentions of Congress in imposing upon what in fact is.. the LAW,

- 1) by rejecting the notion that a mere "belief is all that is required to sustain a conviction" under these statutes, -and-
- 2) then 'doubling down' by positively enacting the "Added" NEW LAW at title 1 USC §8 in 2002.

Even assuming after 1998 that Congress intended courts to have some prior power to extend the "belief" notion being applied to the statutes of conviction in Schumaker, and not just 18 USC §2422 of the Mann Act, such rationale is completely misplaced in that Congress felt it necessary to further punctuate its intent , and 'quash' any such judicial notion in 2002; by including in 1 USC §8 the words at "(a)... in ANY Act of Congress", "ruling", "interpretation", and the phraseology in "(c) Nothing.. shall be construed.. expand, or contract any legal status or legal right..."

The congressionally REJECTED language currently in the USSG "Commentary Application Notes" of, "Minor" and "whether fictitious or not" is again, with purpose, a POLICY matter associated by the court to apply to the petitioner's 'theory of defense' on the "lack of an actual victim", and to further imply

... "the mere belief that a minor was involved is all that is required to sustain a conviction" notion be imposed upon the jury by the court in its jury instruction.

It should first be noted that the phrase "whether fictitious or NOT" is foremost predicated upon the word "individual". Resort then MUST first be had to the definition and Congressional intent of "any individual" in 18 USC §2422(b) (and "person" in 18 USC §2241(c)) since these are the precise words used in the respective Act of Congress, the statute, AND the indictment; and NOT the word "minor" or "minor victim" for that matter. Comparing these (4) words, "whether fictitious or not.." with the definition intended by Congress is what causes confusion and vagueness by judicially creating an "absurd" definition that can NEVER be reconciled with the legislative intent of Congress or a person with ordinary common understanding relying upon their own conscience and understanding of the meaning of "individual" and "person". This is the first prong in the review standard for the Void-for-Vagueness Doctrine.

Such an assertion by the court also "promotes arbitrary and discriminatory enforcement" against the accused that involves the sensationalized subject-matter, and despite the absence of a "born alive" REAL victim. This promoting discriminatory enforcement of course is the second prong in the review standard for the Void-for-Vagueness Doctrine.

These (2)-prongs of the 'Void-for-Vagueness' Doctrine were argued in the original §2241 petition's Memorandum of Law<sup>3</sup>; (ref. previous fn.3 herein) and again generally (see Appendix 'B') in the petitioner's 4th Cir. Informal Brief, id., pp.6-12.

This Court has very recently given considerable instruction on the constitutionality of statutes and the U.S. Sentencing Guideline (USSG) being "unconstitutionally vague" by highlighting this 2-prong review standard in cases such as, Session v. Dimaya, 138 S.Ct.1204(2018)(summarizing, "And the ...

... doctrine guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers, prosecutors, juries, and judges." [referencing] Kolender v. Lawson, 461 US 352,357-358(1983));

where the Court relied heavily on its decision in Johnson v. United States, 576 US \_\_\_, 135 S.Ct.2551, 192 L.Ed.2d 569.

Here in this instant appeal to the "actual innocence" claim and instructing the jury on policy considerations found only in the USSG §§2A1.3 and 2G3.1, the trial court instigated a decision that, "produces more unpredictability and arbitrariness than the Due Process Clause tolerates"! Cf., Johnson, Id., at 135 S.Ct.2551,2558, 192 L.Ed.2d 569,579. Yet, the 4th Circuit has completely failed to discuss or analyze how applying irreconcileable uncommon definitions found ONLY in the policy considerations of the USSG being used AGAINST common definitions intended by Congress that is actually found in the statutory law, 1 USC §8; and/or how withholding that statutory Congressional intent from the jury instructions at trial; might cause confusion due to such instruction being potentially VAGUE under 'the Doctrine'.

(b)

Failing to provide the defendant's 'theory of defense' to jury results in a prejudicial 'directed verdict' against the defendant.

The underlying criminal case from where this instant appeal originates is from the 11th Circuit. It is this same 11th Circuit that, REVERSED a conviction quoting the respective jury instruction review standard in United States v. Opdahl, 930 F.2d.1530(11th Cir.1991)(stating, "The district court's refusal to deliver a jury instruction requested by defendant constitutes reversible error if the instruction, (1) is correct, (2) is not substantially covered by other instructions that were delivered, and (3) deals with some point in the trial so 'vital that the failure to give the requested instruction seriously impaired the defendant's ability to defend.'")

In United States v. Lively, 803 F.2d 1124(11th Cir.1986), the Circuit reversed  
...

... a conviction when it, "found reversible error in the district court's failure to give defendant's proposed instruction."

See also United States v. Morris, 20 F.3d 1111,1117(11th Cir.1994); and United States v. Ruiz, 59 F.3d 1151,1154(11th Cir.1995),similarly REVERSED convictions.

As stated previously at p.6 in the 'Statement of Facts', the record clearly shows that at trial the defendant proposed that the court instruct the jury on... the law; and the definitions or Congressional intent to the definitions to certain words used in the statute(s) and indictment; specifically directing the trial court to title 1 USC §8. However, the trial court refused to instruct the jury on the defendant's primary 'theory of defense'.

In the 4th Circuit §2241 petition, especially in petitioner's Informal Brief to the 4th Circuit panel, (see Appendix 'B') the petitioner strenuously argued the Supporting Facts and Argument to this Question; primarily because he had recognized that it is the 4th Circuit who have labelled this error as being, "an error of constitutional magnitude", "... the error was NOT harmless", and "This is impermissible"; while respectively REVERSING convictions. See 4th Cir. Informal Brief, Appendix 'B', pp.13-19.

What needs to be emphasized in this petition for certiorari is how many other accumulated cases<sup>6</sup>.all reversing decisions have been quoted to the district and circuit courts of the 4th Circuit, from almost every circuit on cases that have departed from the issue raised here in the Questions for Review, including from the 4th Circuit. Yet, the 4th circuit has simply refused to acknowledge any of this in their reviews. Neither have they mentioned or cited any opposing opinions for departing from what this Court stated in Bird v. United States, 180 US 356, 21 S.Ct.403(1901)(explaining that, "[t]he defendant has a full right to a full statement of the law from the court, and that a neglect to give such full statement, when the jury subsequently fall into error, is sufficient reason for reversal.")

---

6. See cases cited at fn.4., and Appendix 'B', 4th Informal Brief, pp.14-17

### Summary to Questions Presented

The petitioner, of course, is fully cognizant of the fact that this Court's decision in this case to "reverse the conviction" in Schumaker constitutes much more than an academic discussion, and that other indictments will likely be dismissed on the basis of this opinion. It may well be that criminal proceedings which would be in the public interest will be frustrated and that those who might be found guilty will escape trial and conviction. However, it is fundamental to American jurisprudence that the rule of law must prevail and that the prosecution of those suspected of crime must itself proceed according to, the LAW, and NOT otherwise.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, All Rights Reserved, Without Prejudice

  
\_\_\_\_\_, AGENT for Petitioner  
Brian-William Schumaker  
by restricted signature  
Date: November 21, 2018