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No.

ORIGINAL

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

John Killingbeck — PETITIONER  
(Your Name)

vs.

United States — RESPONDENT(S)  
~~Court of Appeals for the Second Circuit~~  
ON PETITION FOR A WRIT OF CERTIORARI TO <sup>824</sup>

U.S. Court of Appeals for the Second Circuit.  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Killingbeck  
(Your Name)

FCI Fort Dix, Box 2000  
(Address)

Joint Base MDL, NJ 08640  
(City, State, Zip Code)

N/A  
(Phone Number)

## Questions Presented

1. May the government investigate and search a private citizen's computer and storage devices for per se illegal speech content obtained through the Internet free speech forums as defined by *Reno v. ACLU*, 521 US 844, 138 L.Ed.2d 874, 117 S.Ct. 2329 for purposes of prosecution under Title 18 USC § 2252A?

2. May the lower courts rule that a private citizen's Internet free speech forum activity and content, as per *Reno v. ACLU*, is, per se, conduct "using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including computer, or that was produced using materials that have been mailed, or shipped, or transported in or affecting interstate or foreign commerce by any means, including computer;" for prosecution under Title 18 USC § 2252A?

3. Did the US District Court and US Court of Appeals follow proper habeas corpus procedures under Title 28 USC § 2255 et. seq. in my cases for relief and a Certificate of Appealability?

## 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:

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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**

☐ 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,  
☐ 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☒ is unpublished.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,  
☒ 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

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 24, 2018.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 20, 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

### Constitutional Provisions

Article I, Section 8, Clause 3. Power of Congress to regulate commerce. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes

Article I, Section 9, Clause 2. Habeas Corpus. The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Amendment 1. Congress shall make no law abridging the freedom of speech

Amendment 4. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated;

Amendment 5. No person shall be deprived of life, liberty or property without due process of law

Amendment 6. In all criminal prosecutions, The accused shall enjoy the right to a speedy and public trial, by an impartial jury, and to have the assistance of counsel for his defense

### Statutory Provisions

All statutory provisions are in Appendix G, start of section through last cited subsection.

Title 18 U.S.C. § 2.252 A (a) (2) (A)

18 U.S.C. § 2.252 A (a) (5) (B)

18 U.S.C. § 2.257 (h) (2) (B) (v)

Title 28 U.S.C. § 2.255 (b)

Title 47 U.S.C. § 231 (b) (4)

## Statement of the Case

I was convicted on charges of child pornography under Title 18 USC §§ 2252A(a)(2)(A) and 2252A(a)(5)(B). I have gone through direct appeal and now habeas corpus Title 28 USC § 2255 proceedings. I have been denied relief and a Certificate of Appealability. The only source of evidence content is the Usenet, or newsgroups, service of the Internet. The status of the newsgroups is the primary issue.

Congress shall make no law abridging the freedom of speech or of the press, First Amendment to the US Constitution. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; Fourth Amendment to the US Constitution.

*Reno v. ACLU*, 521 US 844, 138 L. Ed. 2d 874, 117 S. Ct. 2329, see Appendix D for ruling through Majority opinion, was about content harmful to children on the Internet. "...it was held that §§ 223(a) and 223(d) (Title 47 USC §§ 223(a) and 223(d), since amended, my note) abridged the freedom of speech protected by the Federal Constitution's First Amendment because (1) §§ 223(a) and 223(d) were content-based blanket restrictions on speech which could not properly be analyzed as regulations of the time, place and manner of speech; (2) there was no basis for qualifying the level of First Amendment scrutiny

that should be applied to the Internet; ~~see~~". See Appendix D for ruling through the majority opinion.

"Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox.

Through the use of web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer. As the District Court found, the content on the Internet is as diverse as human thought. 929

F. Supp at 842 (finding 74). We agree with its conclusion that our case provides no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium." *Reno v. ACLU* at 521 US 870.

"The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets.... The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.... Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication is of little value."

*Lovell v. Griffin*, 82 L. Ed 949, (303 US 444-453) 58 S.Ct. 666.

Internet speech is the free press. Publication and circulation are as protected as the speech itself. The no scrutiny provision is critical to Internet speech integrity. Computers and storage devices are a necessary part of Internet speech publication and circulation. Newspapers and magazines are not taxable, thus not commerce. The cost of newspapers

and magazines does not entitle the government to control their content,

"... it was held that (1) child pornography, like obscenity, is unprotected by the First Amendment if it involves scienter and a visual depiction of sexual conduct by children without serious literary, artistic, political, or scientific value, (2) ..., and (3) the statute was not so overbroad as forbidding the distribution of materials with serious literary, scientific or educational value, or material not threatening the harms sought to be combated by the state." *New York v. Ferber*, 458 U.S. 747, 73 L. Ed. 2d 1113, 102 S. Ct. 3348. See Appendix E for case through the majority opinion. Defendant Ferber was an adult bookstore proprietor who sold, for profit, two films of children being sexually abused. This is the original child pornography ruling.

The following citations are from *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 152 L. Ed. 2d 403, 122 S. Ct. 1389, 2002. See Appendix F for ruling through the majority opinion. "The case (*Ferber*, my note) upheld a prohibition on the distribution and sale of child pornography as well as its production, because these acts were "intrinsically related" to the sexual abuse in two ways.... Under either rationale, the speech had what the Court in effect held was a proximate link to the crime from which it came." See *Ashcroft* holding item (2).

"First, Ferber's judgment about child pornography was based on how it was made, not what was communicated. The case reaffirmed that where speech is neither obscene nor the product of sexual abuse, it does not fall outside the First Amendment's protection... Second, Ferber did not hold that child pornography is by definition without value. It recognizes some works in this category that might have significant value..." See Ashcroft holding item (2).

"The overbreadth doctrine prohibits the government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process." See Ashcroft holding item (3). I question the government's conduct. I believe statutory laws are already in place to prevent this conduct.

"The government may violate this mandate (Free speech clause, my note) in many ways, ... but a law imposing criminal penalties on protected speech is a stark example of speech suppression." Ashcroft at 535 US 244.

"To preserve these freedoms and to protect speech for its own sake, the Court's First Amendment cases draw a vital distinction between words and deeds, between ideas and conduct. See *Kingsley Int'l Pictures Corp.*, 360 US at 689, 3 L. Ed. 2d 1512, 79 S. Ct 1362; see also *Bartnicki v. Vopper*, 532 US 514, 529, 149 L. Ed. 2d 787, 121 S. Ct 1753 (2001)." Ashcroft at 535 US 253

"In the case of material covered by Ferber, the

creation of the speech is itself the crime of child abuses; the prohibition deters the crime by removing the profit motive. "Ashcroft at 535 US 254. Internet speech is free in unlimited quantities. No profit is possible. No proximate link is possible.

"Even where there is an underlying crime, however, the Court has not allowed the suppression of speech in all cases. E.g. *Barthnick*, *supra*, at 529, 149 L. Ed.2d 787, 121 S. Ct. 1753 (market deterrence would not justify law prohibiting a radio commentator from distributing speech that had been unlawfully intercepted.) "Ashcroft at 535 US 254. Add the Pentagon Papers, 1972; Wikileaks (only Chelsea Manning convicted of obtaining material); and NSA (only Edward Snowden charged). Speech which incites to riot is not protected speech - only for persons involved in the incitement. It is protected conduct to observe, record, send recording to news service, publish recording and then receive and possess the recording of speech which incited a riot. No speech has ever been banned because at some time in the past it had incited a riot.

"The government may not suppress lawful speech as the means to suppress unlawful speech. Protected speech does not become unprotected merely because it resembles the latter. The Constitution requires the reverse." Ashcroft at 535 US 255.

Congress has instituted and amended laws to conform statutory laws to the Reno/Ferber/Ashcroft standards. However, the changed section, Title 18 USC § 2252A, does not refer directly to these other sections, possibly leading to court confusion on this controversial topic.

Title 17 § 512 (a), see Appendix G, covers immunity from copyright fees for file sharing services. Copyright is a Constitutional right under Article I, Section 8, clause 8. Copyright protection is remove only at copyright holder request under 17 USC § 512 (c). 17 USC § 512 (a) (2) is no content selection. 17 USC § 512 (a) (3) is no subscriber selection. 17 USC § 512 (a) (4) is no record keeping. These are the Reno protections at the Constitutional level, above statutory law level. No copyright fees, no commerce.

Title 18 USC § 2257 Record Keeping Requirements, see Appendix G, is part of child pornography law covering age verification records. 18 USC § 2257 (h) (2) (B) -

"In this section the word "produces" does not include activities that are limited to - § 2257 (h) (2) (B) (i)

"photo or film processing, including digitization of previously existing visual depictions, as part of a commercial enterprise, with no other commercial interest in the sexually explicit material, printing and video duplication;" § 2257 (h) (2) (B) (ii) "distribution."

§ 2257 (h) (2) (B) (iv) "the provision of a telecommunications service, or of an Internet access service, or Internet information location tool (as these terms are

defined in section 231 of the Communications Act of 1934 (47 USC § 231)); "

§ 2257(h)(2)(B)(v) "the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 (47 USC § 230(c)) shall not constitute such selection or alteration of the content of the communication; " This is file sharing. Person A sends the service content. The service then stores for later retrieval (newsgroups and web based file sharing) or directly passes it on (chat rooms) to Person B. There is no limit on the number of Persons B. There is to be no mandatory content selection, 47 USC § 230(c) is optional, and no age/identity records. This is again consistent with Reno requirements applied here to child pornography law. Note that file sharing is the Internet version of non-commercial copying from § 2257(h)(2)(B)(i). It is also not production and separate from distribution. Title 18 USC §§ 2252A and 2257, are in Appendix G.

Title 47 USC § 231. Restrictions of access by minors to materials commercially distributed by means of the World Wide Web that are harmful to minors, see Appendix G, was ultimately held violative of the

First Amendment on overbreadth grounds for 47 USC § 231(c).

However, 47 USC § 231(b) remains active through

18 USC § 2257(h)(2)(B)(iv) above Title 47 USC § 231(b) " " " " " "

"Inapplicability of carriers and other providers. For purposes of subsection (a), a person shall not be considered to make any communication for commercial purposes to the extent that such person is--"

§ 231(b)(4) "similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the content of the communication, except that such person's deletion of a particular communication or material made by another person in a manner consistent with subsection (c) of section 230 [47 USC § 230] shall not constitute such selection or alteration of the content of the communication." This section defines file sharing

Internet speech as non-commercial, for purposes of content harmful to children, thus not subject to Title 18 USC § 2252A prosecution. Again, Reno protection.

Title 47 USC § 1101, the Internet Tax Freedom Act, see Appendix G, duplicates 47 USC § 231(b)(4), minus the last "exception" clause, that Internet speech is non-commercial and adds: 47 USC § 1101(d)(3)(F)(iii):

"(3) Definitions. In this subsection: (F) Material that is harmful to minors. The term 'material that is harmful to minors' means any communication,

picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene, or that-- (ii) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual conduct, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and (iii) taken as a whole, lacks serious literary, artistic, political or scientific value for minors." This puts the content of child pornography in the category of content harmful to children in statutory law.

All of the above statutory laws forbid content selection of non-commercial communications over the Internet. 18 USC § 2257(h) defines file sharing as neither production nor distribution. They also denote file sharing as separate from commercial conduct for distribution, copyright fees and taxation purposes.

I searched the Lexis database of all Circuit Courts for rulings on 18 USC §§ 2252 and 2252A for the various file sharing services and Web-based file sharing host programs. I used the search 2252\* & ("file sharing" or "chat room\*" or newsgroup\* or gnutella or ares or "peer-to-peer" or p2p or gigafrbie or limewire or frostwire or shareaza or edonkey or emule or bittorrent or napster). This circuit court search and several sample citations are in <sup>2K</sup>Appendix.

Appendix L. I then added, one at a time, Reno, Ashcroft, Ferber, 2257 and 231 at the end of the above search to find cases citing the above Supreme Court rulings and Federal laws. This search is readily duplicatable and is all public court record information.

The results show 823 Lexis records of internet file sharing cases. A hand count of Second Circuit cases showed about 3 cases for every 4 records. So there are about 600 cases of internet child pornography file sharing. I then manually checked all of the cases in which Reno, Ashcroft, Ferber, 2257 or 231 were mentioned for relevant citations.

No cases mentioned 47 USC § 231 and the 3 cases of 2257 were not to the above cited subsection. And, of the cases citing Reno/Ashcroft/Ferber, not one single case cited any of this courts rulings, cited above, not a single case. No circuit court in this nation recognizes internet speech as free speech and press. Every circuit court has ruled, in hundreds of cases, that all internet speech is commercial speech and that the government has the right to control its content through criminal prosecution. Every circuit court has ruled that no otherwise law abiding citizen has the right to see children being the victims of crimes.

The Federal Bureau of Investigation (FBI) has an Internet Crimes Against Children Task Force. The Department of Homeland Security (DHS) has a Child Exploitation Group.

Immigrations and Customs Enforcement (ICE) has a Homeland Security Investigations unit. Various states have other task forces and separate undercover operations. All are actively patrolling Internet speech services and file sharing host programs <sup>PK</sup> for per se illegal content for child pornography prosecution.

"During trial, Lieutenant Lang (Maine State Police Computer Crimes Unit supervisor, my note) explained that the vast majority of child pornography cases he handles are peer-to-peer sharing network (p2p network) cases. First they download the p2p network software and search for contraband like regular p2p network users. Id at pp 22 & 51. Second, his investigators and he use national databases where thousands of police officers contribute information about possible pieces of child pornography that they see and the particular IP addresses that were used to access the information." *US v. Alejandro Figueroa-Lugo* 915 F. Supp 2d 237, 2013 US Dist Lexis 1674

By public court records and statutory laws, for the last 15 years, since 2003, not one single Circuit Court of Appeals child pornography/Internet speech/file sharing case, out of hundreds, even recognizes, much less obeys, three Supreme Court rulings and associated acts of Congress. By these same records, the FBI, DHS, and ICE, multiple state law enforcement task forces, and independent undercover

operations nationwide work outside these statutory laws and Supreme Court rulings. They have been doing so unmolested for the past 15 years.

Every Circuit Court of Appeals has ruled that use of the Internet *per se* proves commerce and that the commercial value of computers and storage devices manufactured overseas also proves commerce. That commerce allows the Federal government to control the content of Internet speech. Thus, free speech does not exist on the Internet.

No Internet Service Provider has ever been convicted of child pornography. No content has ever been blocked or removed. The newsgroup service providers legally receive, store, and resend all newsgroup content. File sharing services host computers control access to files stored on subscriber computers. If the content were truly illegal access to the files can be prevented at these points.

Law enforcement and the lower courts target the end user only, those without telecommunication attorneys, in their investigations. They search for, and use, information which would be readily available from providers and hosts if searching were legal. They investigate and prosecute the private citizens for posting and receiving content which is legally received, stored and transmitted by the newsgroup service providers. They claim it is illegal for private citizens to receive and possess what the newsgroup service providers receive, possess, and

transmit legally in far greater quantities to millions of users.

Content neutrality and anonymity are both well established components of free speech and press. Law enforcement and the courts are both routinely violating these components in their Internet speech and child pornography prosecutions. As long as this continues free speech does not exist on the Internet. I believe this answers questions 1 and 2.

Question 3 regards the District Court and Circuit Court of Appeals handling of my case. I have multiple issues. One key item is that in my District Court filing on which the Court ruled, the prosecution responded only to timeliness and found no issues otherwise out of my 11 grounds in my motion, showing no objection to a vacation of my verdict on grounds of actual innocence. The District Court had to extend the prosecution's filing time from the original 4 weeks to an additional 8 weeks just to get that much from the prosecution. I was not allowed any reply.

In my Certificate of Appealability request I countered the timeliness issue and the prosecution offered no objection at all to my motion. This brings into question of why is the Court blocking my case from vacation when even the prosecution concedes.

My Supreme Court motion for a writ of certiorari, case 15-9009, from my direct appeal, was denied on 5/23/2016. When I filed a Notice of Intent to file for

habeas corpus relief under Title 28 USC § 2255 and requested attorney assistance my attorney request was denied. I appealed, Second Circuit Court of Appeals case 16-3972. That case was ruled moot, need final ruling before appeal, on 3/28/2017. I filed a motion to reconsider the appointment of an attorney, with 10 grounds available at that time, and included a possible finding of vacation of verdict on actual innocence grounds for First Amendment violation. There was still about 6 weeks to go in my 1 year from my Supreme Court denial. The District Court never ruled on the substance of the motion.

On 12/29/17, after three requests, the District Court finally ruled that my motion for reconsideration or relief, D.C. docket #101 dated 4/12/17, was rendered moot by mandate on 5/3/17. This demonstrates that I had no court in which to file a 28 USC § 2255 petition prior to 5/3/17

I then filed the final motion, the one the District Court ruled on, on 1/29/18, D.C. Docket #108. The District Court accepted this motion, gave the prosecution until 3/2/18 to respond, no reply allowed, hearing set for 3/23/18. On 2/28/18 the prosecution requested, and the District Court granted, an 8 week extension to the response, filing by verbal order. Again, the District Court denied any reply to the government response. I filed motions to suppress the government response before and after the response filing. Title 28 USC § 2255(b), supported by *U.S. v. Hayman*

(1952), 342 US 205, 96 L.Ed 232, 72 S.Ct. 263, requires habeas corpus proceedings to be held promptly, at once, without delay.

The 8 week delay, no reply allowed, let the prosecution file its only objection to my motion, untimeliness, and to do so without my reply. The District Court's ruling upheld the prosecution's untimeliness issue before I could file my last suppression motion. The Court did not address my previous motion for relief at all.

The District Court further upheld the direct appeal ruling without referring to my citations from *Reno* (ground 1) or *Ferber and Ashcroft* (ground 2). See Appendix J for my citations in the Memorandum. This shows that the Court never conducted a de novo review. I believe this demonstrates a biased court, which, under the Fifth Amendment's due process clause, invalidates the ruling. As this is a Fifth Amendment violation involving the trial judge the integrity of the whole trial comes into question. The court's ruling in re usenet/newsgroup content is a statement of content-based blanket suppression of speech. This is explicitly forbidden under *Reno* and is presumptively a First Amendment violation. The ruling is Appendix B.

My motion for a Certificate of Appealability, US Court of Appeals for the Second Circuit, *Killingbeck v. US* case #18-1611 was decided on 10/24/18. See Appendix A for the ruling and Appendix I for my motion. In this single sentence ruling, the court ruled that I "have not made a substantial showing of the denial of a constitutional

right." Again, no reference was made to Reno/Ashcroft/Ferber. Again, the prosecution offered no response at all to my vacation of verdict on actual innocence grounds.

McQuiggin v. Perkins, 569 US 383, 133 S.Ct. 1924; 185 L.Ed.2d 1019, 2013 cites "Actual innocence, if proved, held to be gateway through which state prisoner <sup>PR</sup> ~~may~~ petitioning for federal habeas corpus relief might pass, regardless of whether impeded by procedural bar or expiration of 28 USC § 2244 (d)(1)'s limitation period."

Both courts failed to justify their blanket rejections, so the public, with nothing to see, cannot properly tell if justice has been done. "Guarantee of public trial is reflection of notion, deeply rooted in common law, that justice must satisfy appearance of justice." Levine v. US (1960) 362 US 610, 4 L.Ed.2d 989, 88 S.Ct. 1038. "Failure to afford such Sixth Amendment guarantees as public trial, impartial jury, notice of charges, or compulsory service can ordinarily be cured by providing those rights at a new trial. Strunk v. US, (1973) 412 US 434, 37 L.Ed.2d 56, 93 S.Ct. 2260.

This blanket denial keeps this court's rulings from Reno/Ashcroft/Ferber from public view. It also shows a refusal by both courts to recognize the possibility that the pictures and images produced by child pornography may be published and circulated as free speech.

under the hundreds of published Appellate Court cases in my study in Appendix L, the law enforcement involvement documented in that study and the courts' blanket failure to address Reno/Ashcroft/Ferber in my habeas corpus proceeding, the lower courts and law enforcement have universally removed the Constitution, the Supreme Court and laws passed by Congress to comply with the Supreme court rulings from the entire child pornography investigation and prosecution process.

The whole process is so secretive as far as public disclosure of information that it virtually guarantees legally produced content is considered child pornography. The common National Center for Missing and Exploited Children database is derived from their own private standards, for their own purposes, has unknown and unknowable content, and their filename/hash code standard is easily defeated. File names and slight content edits are easily made by using software normally included with home computers. IP addresses are easily masked by using public WiFi Hotspots and anonymous prepaid cell phones for Internet connections.

No lower court has answered this simple question: if you are forbidden from scrutinizing it, as per Reno, how do you know what is in it?

## Reasons for Granting the Writ.

Congress shall make no law abridging the freedom of speech or of the press, Federal Constitution's First Amendment. Anonymity and content neutrality are well established components of First Amendment protection. *Reno v. ACLU* ruled that content harmful to children, when published and circulated in the Internet speech for; free public Web services, chat rooms, newsgroups and mail exploders; is First Amendment protected free speech.

*New York v. Ferber* and *Ashcroft v. Free Speech Coalition* define, and limit, child pornography to conduct, not the picture/image, of providing a proximate link to the commercial for profit production, distribution and sale of pictures/images of real children being the victims of child sex crimes. It is the proximate link of providing real commercial support for the child abuse that is child pornography. *Ashcroft* rules that, under *Bartnicki v. Vopper*, the pictures/images, when published and circulated in the free press, are core free speech as the truthful publication of truthful information of a public concern.

For the last 15 years, as documented in my study in Appendix L, in hundreds of published cases mentioning Internet file sharing as the source of evidence, <sup>the lower courts OK</sup> has ruled that Internet speech is child pornography. These courts have universally ruled that either use of the Internet or the use of computers and storage devices manufactured

overseas proves commerce. This ruling, according to these courts, allows Congress to control Internet content. Thus these courts rule that free speech does not exist on the Internet. The Internet carries and publishes virtually every type of communication or expression. If free speech does not exist on the Internet then it does not exist.

These same courts limit prosecutions to individual private citizens. Newsgroup providers receive, possess, and transmit the same content in far larger quantities than any individual, yet remain untouched. File sharing services control access to these files, yet remain untouched. Chat room operators likewise remain untouched. No newsgroup or chat room, even when clearly labelled as child sex oriented, has been closed down. No content has ever been blocked or removed from these services.

The FBI, Department of Homeland Security, Immigration and customs enforcement, multiple state task forces and independent undercover operations nationwide all investigate Internet speech for per se "illegal content" of child pornography.

In all of these investigations and court cases not one single penny has changed hands from receiver to sender. Not one single penny has gone to those who abuse children. Not even one. As the Maine task force supervisor stated at trial in *US v. Figueroa-Lugo*, the vast majority of his child pornography cases are file sharing cases. This shows that commercially for-profit

produced child pornography is greatly reduced. These cases give this court, Congress and we, the people a highly misleading view of the situation.

In the history of this nation pictures and descriptions of criminals and victims have been a powerful crime fighting tool. From old west 'wanted' posters to the FBI's 10 most wanted pictures displayed in post offices, to TV shows like 'America's Most Wanted', to the endless stream of criminals caught on video and broadcast on local and national TV news programs, to child victim pictures posted on milk cartons and Wal Mart bulletin boards the mass publication of pictures of criminals and victims has been a tremendous law enforcement and victim recovery tool. To criminalize the free press publication of children being the victims of crimes is to deny these children the benefit of this crime fighting tool. It also provides a real benefit to the abuser as that person can rest easy knowing the pictures will not be made public.

The pictures broadcast on TV news services are often graphic and brutal beyond that of child abuse. The recent murders of Heather Heyer in Charlottesville and the mass murder in Las Vegas are both graphic, violent and real, yet are broadcast on national news networks at all hours. Recent bloody bodies of child war victims in Yemen have also been broadcast.

One of the most famous pictures in history, the 1972 Pulitzer Prize winning picture, is of a naked 9 year old girl running down the road in Vietnam. The girl is naked because an American pilot dropped a napalm bomb. The napalm hit the girl's hat, burned it to the ground, cooked her mother alive in front of her eyes and burned all her clothing off. She was covered in second degree burns. The photographer took the picture then got her lifesaving medical help.

She and the photographer still travel around the world a few times a year talking about the picture. Every year on its publication anniversary, the national news services still celebrate that picture, more than 45 years later.

The lower courts and law enforcement nationwide have determined that law abiding citizens, parents, caregivers, etc. are forbidden to see children being the victims of crimes. This was done with no authority from the Constitution, this court or Congress. These cases deprive the child victims of these crimes of a powerful and effective tool in fighting these crimes. Every time the lower courts and law enforcement agencies "protect the victim" they protect the criminal. These cases hide the truth about this court's rulings, laws passed by Congress and the rights of we, the people from the public.

These convictions chill Internet speech beyond just the content. It can chill other controversial speech and

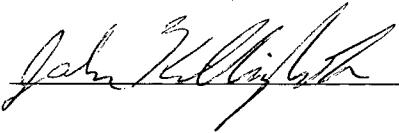
mundane use of the Internet as the level of government intrusion into Internet speech makes ordinary citizens wary of its use.

A house divided against itself cannot stand. Nothing short of a ruling by this court can bring the lower courts and law enforcement back under control of this court, Congress and we, the people. And there does not appear to be anyone else but me and this case for this court to repair the damage done and future damage.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
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Date: 1/18/19