

No. 18-8038

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

James P. Burke — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)

PETITION FOR REHEARING  
ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

James P. Burke, Reg.#93973-379

(Your Name)

Federal Satellite Low Elkton. PO Box 10

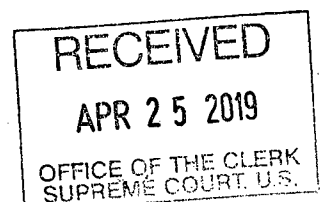
(Address)

Lisbon, OH 44432

(City, State, Zip Code)

(330)420-6200

(Phone Number)



PETITION FOR REHEARING

As an incarcerated pro-se litigant proceeding in FORMA PAUPERIS the petitioner is limited in many ways regarding legal matters. It is disheartening to continuously read about cases involving politicians, celebrities, and the wealthy in which they receive minimal to no sentence despite committing crimes far worse than the majority of those currently incarcerated in this country. This dual justice system was not what the founding father's intended when they created and signed the Constitution. The majority of those currently incarcerated in America do not have the financial means, nor the knowledge, to afford high profile attorneys and/or present motions to the courts. Those few of us who do understand the legal system (albeit limited) recognize the system is broken on both ends; defendant's are limited in their ability to a fair trial (government has unlimited funds to prosecute while threatening substantial periods of incarceration - there's a reason 99% of cases are plead out) and the courts are so overwhelmed with cases they are forced to forego cases they may otherwise review. That being said this petition for rehearing focuses on highlights of the "Questions Presented" in petitioner's initial petition for a writ of certiorari, as well as key factors that may persuade this court to reconsider and review said petition as there are many issues of constitutional magnitude presented that affect the privacy and rights of citizens of this great nation.

**Question One:** NIT warrant violated Rule 41(b), rendering it and subsequent warrants "void ab initio", causing warrantless searches in violation of 4th Amendment. "Good-Faith Exception" should not apply as FBI (government) was aware prior to NIT malware installation of magistrate judge jurisdictional issues. Since petitioner's original petition for writ of certiorari there have been decisions by this court (reversed and remanded) that are of a substantial and controlling effect to petitioner's case; specifically the decision in Carpenter v. United States. Carpenter affects petitioner's case in that the government's violation is arguably "two-fold" in that the FBI (government) conducted "warrantless" searches of property petitioner had a reasonable expectation of privacy to (due to Rule 41(b) violation) and acquired third party information (via IP address) to identify petitioner's name/location from data collected from said "warrantless" search. The petitioner hopes this court takes into account other cases that have been "reversed and remanded" presenting similar questions as petitioner in light of Carpenter decision.

**Question Two:** In addition to government demonstrating deliberate, reckless, disregard for constitutional rights from violations presented in previous question, they also overwhelmingly committed "Due Process" violations while administ-

relatively in control of "Playpen". The FBI (government) became a "Criminal Enterprise", violated 18 U.S.C. §3509(m) by losing control of thousands (possibly millions) of child pornography images/videos, arguably "used child victims as bait" by allowing the continued sharing/distribution of child pornography when there was no need to do so in establishing probable cause, and did not act in exigent manner in targeting suspects (once identified) and possibly saving child victims. The petitioner will not re-state everything already presented in previous petitions, motions, or briefs but feels the FBI (government) violated not only his "Due Process" rights from their actions (and those of thousands of other Americans), but harmed those they were attempting to protect and/or save to such a degree that the deterrent benefits of "exclusion" outweigh any and all claims of "good faith". Ultimately there is no "statutory exception" for the government to distribute child pornography, a crime they (the government) committed while the petitioner did not.

**Question Three:** The petitioner objected to CJA counsel's strategy throughout case and as in McCoy (McCoy v. Louisiana, U.S., 16-8255, reversed and remanded, 05/14/18) it was petitioner's individual liberty at stake and should have been his prerogative to decide objective of defense. The petitioner feels had he been aware of the information presented within petition for writ of certiorari (and supplemental brief), information mostly available to counsel during pre-trial, pre-sentencing, and during Appeals process, he would have made different decisions on how to move forward in case (trial instead of pleading guilty, presentation of pre-existing knowledge of Title III jurisdictional issues, etc.). The petitioner met **none** of the Sentencing Commission's "offense characteristics", had **no** intent towards victims, accepted responsibility, and yet faced harsh sentencing disparities compared to those with similar records **-no criminal record-** and charged with similar crimes (or worse) due to PSR errors (unchallenged by CJA counsel), lack of downward departures (military service, acceptance of responsibility, mitigating role, etc.), and criminal monetary payment errors (special assessment). The petitioner highlights these points as not only were two cases recently reversed and remanded (Carpenter and McCoy) that have similarities to his case but also because as a pro-se litigant (incarcerated) submitting this petition in FORMA PAUPERIS he has experienced first hand the disparity in "Justice" as it pertains to those with money and means, with the ability to hire attorney's that exhaust any and all means in defense, while those such as he, despite service to this country for over twenty years, have no "luck" in also receiving the the same "Justice".

CONCLUSION

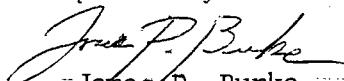
The petitioner would appeal to this court to review his petition for writ of certiorari as the questions presented are of a constitutional magnitude that will affect fundamental rights to due process and expectation of privacy for all Americans (especially given the continued technological advancements in law enforcement methods). These very rights are what the founding fathers wished to uphold and pass onto future generations, rights this court has protected in the past when the government intrudes into the private lives of American citizens. In Sherman, Supreme Court Justice Frankfurter stated, "Even where the defendant admits his guilt, it is the methods which the government uses that cannot be tolerated...If the acts of the police authorities are so reprehensible, the problem transcends the individual defendant and the crime."

In closing the petitioner apologizes once again for his actions, regardless of stated intent, and hopes this court takes into account his many years of service to this country. The petitioner is asking for a chance at redemption and to continue mental health treatment through the Veteran's Administration, treatment the Bureau of Prisons does not provide, so he can reunite with his wife and children.

Once again the petitioner would seek this Honorable Court to apply to petition all the benefits of the "liberal construction standard" generally made available to pro-se litigant cases - See, Haines v. Kerner, 404 U.S. 519 (1972). Additionally if any portion of this petition has been completed incorrectly but Clerk determines was submitted timely and in good faith, petitioner would ask Clerk to please return with letter indicating mistakes and/or deficiencies.

On the basis of this new material, as well as previously submitted material (original petition, supplemental brief, original petition for rehearing), petitioner requests that this Honorable Court grant petition for writ of certiorari.

Respectfully submitted,

  
James P. Burke

Date: April 18, 2019