No. _____

SUPREME COURT
OF THE UNITED STATES

United States of America,

Respondent,

vs.

Thomas Leslie Carr,

Appellant.

On Appeal from the United States Court of Appeals
for the Eleventh Circuit
Appeal No.: 18-10952-FF

MR. CARR'S MOTION REQUESTING 60-DAY EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI

Mr. Carr's appeal was denied by the Eleventh Circuit Court of Appeals on November 28, 2018. Mr. Carr is not proceeding to file for writ of certiorari with the Supreme Court and is doing so as an incarcerated and pro se individual. As such, he must overcome the many obstacles associated with prison life that hinder an otherwise earlier filing with this Court. Therefore, Mr. Carr requests an extension of time to include April 28, 2019 to file for writ of certiorari with this Court.

Mr. Carr is currently incarcerated in federal prison at FCI Coleman Low in Coleman, Florida. This prison is subject to many recalls and lockdowns for reasons to include weather (including frequent fog), staff shortages, staff training, staff parties, census counts, institution counts, shakedowns

to ensure inmates only have 2 blankets and 2 sheets, security breaches, fights, and many other things that inmates are never informed about.

These situations prevent inmate access to the education department that houses the 6 working non-memory typewriters, the one copy machine available for 30 minutes 3 times a day 4 days a week, and the 12 law library computers, all necessary for inmates to properly prepare legal filings. Therefore, Mr. Carr respectfully requests an extension of time to include April 28, 2019 to overcome these known and unknown obstacles that prevent him from filing an otherwise earlier filing with this Court.

Respectfully submitted on this 5th day of February, 2019 by:

Thomas Carr
Reg.No.: 67547-018
FCI Coleman Low
P.O. Box 1031
Coleman, FL 33521-1031

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have mailed, via U.S. Mail, this motion to:

United States Supreme Court
Office of the Clerk
1 First Street, NE
Washington, DC 20543

on this 5th day of February, 2019.

Thomas Carr

VERIFICATION

Under the penalty of perjury pursuant to 28 U.S.C. § 1746, I declare that the factual statements contained in this motion are true and correct to the best of my knowledge.

Thomas Carr

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10952-FF

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS LESLIE CARR,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

Before: MARTIN, JORDAN and ROSENBAUM, Circuit Judges.

BY THE COURT:

Thomas Carr appeals from his convictions, following a jury trial, for two counts of producing child pornography, in violation of 18 U.S.C. § 2251(a). He argues that the statute is unconstitutional because it does not include knowledge of the victim's age as an element of the offense and does not permit him to present ignorance of the victim's age as a defense. In response, the government has moved for summary affirmance and a stay of the briefing schedule.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be

no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Ordinarily, we review challenges to a statute's constitutionality *de novo*, "applying a strong presumption of validity." *United States v. Ruggiero*, 791 F.3d 1281, 1284 (11th Cir. 2015). Under the prior precedent rule, we are "bound to follow a prior binding precedent unless and until it is overruled by this Court *en banc* or by the Supreme Court." *United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008).

The government may sustain a conviction under 18 U.S.C. § 2251(a) by proving that a defendant (1) knowingly produced, (2) images of a minor, (3) depicting her engaged in sexually explicit conduct, (4) using a facility of interstate or foreign commerce. *United States v. Grzybowicz*, 747 F.3d 1296, 1305 & n.5 (11th Cir. 2014). Knowledge of a victim's age is not an element of § 2251(a), and ignorance of the victim's age is not an affirmative defense. *Ruggiero*, 791 F.3d at 1285.

In *Ruggiero*, the defendant argued on appeal that § 2251(a) violated the Fifth Amendment's Due Process Clause because it eliminated the element of *mens rea* and was not a public welfare offense and carried a significant penalty. *Id.* at 1284. He also argued that the statute violated the Sixth Amendment right to a jury trial because it deprived him of the right to have a jury decide the one fact that made otherwise legal conduct illegal. *Id.* We first rejected Ruggiero's facial challenges because we were not convinced that the statute would be unconstitutional even where a producer of child pornography indisputably knew that his victim was a minor. *Id.* at 1285-86.

Turning to Ruggiero's as-applied challenges, we found that the "public-welfare-offense" doctrine had no bearing on Congress's ability to enact strict-liability schemes, but instead it was a tool of statutory interpretation. *Id.* at 1286-87. We added that, in the case of sex offenses against

minors, Congress had "nearly unfettered discretion to exclude knowledge from the definition of statutory crimes." *Id.* at 1287. Similarly, we stated that the Due Process Clause did not generally concern itself with Congress's "wide latitude" to exclude knowledge from statutory definitions. *Id.* We also found that nothing in the Supreme Court's decision in *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994), which addressed a violation of 18 U.S.C. § 2252, called into question the constitutionality of § 2251(a). *Id.* Ruggiero also cited to the legislative history of § 2251(a), arguing that the statute should not be applied to him because it targeted commercial producers of child pornography. *Id.* at 1289. We rejected the argument. *Id.* at 1289-90.

As to Ruggiero's Sixth Amendment arguments regarding the guarantee to a trial by jury, we held that the Sixth Amendment did not require that the jury be allowed to hear evidence that was not relevant to any element of the crime or an affirmative defense. *Id.* at 1290. Finally, we held that § 2251(a) was not unconstitutionally vague because a person of ordinary intelligence would know that it prohibited persuading a minor to engage in sexually explicit conduct for the purpose of photographing her. *Id.* at 1290-91.

Here, Carr's arguments on appeal are foreclosed by our decision in *Ruggiero*. *See Vega-Castillo*, 540 F.3d at 1236. The defendant in *Ruggiero* raised almost identical arguments to those that Carr has raised in the present case, and we rejected each one. *See generally Ruggiero*, 791 F.3d at 1284-91. We determined in *Ruggiero* that: (1) § 2251(a) is not facially invalid; (2) Congress did not intend to target only commercial producers of child pornography; (3) the Fifth Amendment Due Process Clause does not require the statute to include a *mens rea* element; (4) the statute is not unconstitutionally vague; (5) the public-welfare-offense doctrine does not limit Congress's ability to eliminate *mens rea* from criminal statutes; and (6) the Sixth Amendment does not require that a defendant be permitted to present evidence that was not relevant to an element

of the offense or an affirmative defense. *See id.* at at 1284-91. Because all of Carr's arguments are foreclosed, there is no substantial question as to the outcome of this appeal.

Accordingly, the government's motion for summary affirmance is GRANTED, Carr's conviction is AFFIRMED, and the government's motion for a stay of the briefing schedule is DENIED as moot.