

No. 19-1084

IN THE
SUPREME COURT OF THE UNITED STATES

DAYTON MICHAEL CRAMER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for Writ of Certiorari
to the Eleventh Circuit Court of Appeals**

PETITIONER'S REPLY TO BRIEF IN
OPPOSITION

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B. ARGUMENT

The Petitioner continues to rely on the arguments set forth in his certiorari petition in support of his contention that there is a circuit split over the proper application of 18 U.S.C. § 2422(b) and whether communications with an adult intermediary to persuade, induce, entice, or coerce a minor are punishable only if “the defendant’s interaction with the intermediary is aimed at transforming or overcoming the minor’s will in favor of engaging in illegal sexual activity.” *Compare United States v. Hite*, 769 F.3d 1154 (D.C. Cir. 2014), *with United States v. Cramer*, 789 Fed. Appx. 153 (11th Cir. 2019). In its brief in opposition, the Government asserts that there is no conflict between the District of Columbia Circuit’s opinion in *Hite* and the Eleventh Circuit’s opinion below. (Brief in Opp., pp. 11-17). The Government’s

assertion is refuted by the plain language of the Eleventh Circuit's opinion:

Cramer also asks us to endorse the United States Court of Appeals for the District of Columbia Circuit's interpretation of § 2422(b) that communications with an adult intermediary to persuade, induce, entice, or coerce a minor are punishable only if "the defendant's interaction with the intermediary is aimed at transforming or overcoming the minor's will in favor of engaging in illegal sexual activity." See *United States v. Hite*, 769 F.3d 1154, 1160 (D.C. Cir. 2014). *But this court has already rejected that interpretation of § 2422(b).* See *Murrell*, 368 F.3d at 1287.

In *Murrell*, we considered the meaning of the term "induce" for purposes of § 2422 when deciding whether a defendant could be convicted for inducing a minor to engage in illegal sex acts by communicating only through an adult intermediary. See 368 F.3d at 1287. Our court acknowledged "induce" could mean "to lead or move by influence or persuasion; to prevail upon,' or alternatively, 'to stimulate the occurrence of; cause.'" *Id.* (alterations accepted) (quoting *The Am. Heritage Dictionary of the English Language* 671 (William

Morris ed., 1st ed. 1981)). We endorsed the latter definition because the former would essentially render the term “persuade” superfluous. *See id.* *Therefore, our binding precedent forecloses a reading of the statute that would make interactions with an adult intermediary punishable only if such interactions were aimed at transforming or overcoming the minor’s will in favor of sexual activity.*

(A-14-16)¹ (emphasis added) (footnote omitted). As explained in the certiorari petition, if the District of Columbia Circuit’s interpretation of § 2422(b) is applied to the Petitioner’s case, the Petitioner would be entitled to relief (i.e., the record in this case is clear that the Petitioner’s ultimate interaction with the adult intermediary was *not* aimed at transforming or overcoming the minor’s will in favor of engaging in illegal sexual activity).

¹ References to the appendix to the certiorari petition will be made by the designation “A” followed by the appropriate page number.

Accordingly, the Petitioner requests the Court to grant his certiorari petition to the resolve the circuit split between the District of Columbia Circuit and the Eleventh Circuit – a split that was specifically acknowledged by the Eleventh Circuit in the opinion below. By granting the petition in the instant case, the Court will have the opportunity to clarify the proper interpretation/application of § 2422(b) to cases that involve adult intermediaries. As explained in the certiorari petition, this issue is important – as numerous states around the country are currently engaging in internet sting operations that involve the use of “adult intermediaries” (i.e., law enforcement officers posing as the parent of a fictitious minor).

Respectfully Submitted,

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