19-6303

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JEFFREY COOPER #58743-004 — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeffrey Cooper
(Your Name)
P.O. Box 1032,
Coleman Federal Correctional Complex
(Address)

Coleman, Florida 33521-1032
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the lower Courts erred in allowing multiple hearsay statements of five alleged witnesses and other non-testifying witnesses whom did not testify in violation of the Petitioner's Fifth and Sixth Amendment rights to hearsay and the Confrontation Clause.

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION .....

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....

STATEMENT OF THE CASE .....

REASONS FOR GRANTING THE WRIT .....

CONCLUSION .....

INDEX TO APPENDICES

APPENDIX A Order from the Court of Appeals for the Eleventh Circuit.

APPENDIX B Re Hearing / En Banc Decision

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

LIST OF PARTIES

[X] 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:

TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER**

Crawford v Washington, 541 U.S. 35, 59, 68-69, 124 S.Ct. 1354, 158 L. Ed. 2d 177 1374

Baker, 432 F. 3d 1189, 1213, (11th Cir 2005)

Ohio V Roberts, 448 U.S. 56, 66, 1980

U.S. v Surondu, 845 F. 2d 945, 11th Cir 1988

Snowden v Singletory, 135 F. 3d 732, (11th Cir 1998)

U.S. v Carrasco, 381 F. 3d 1237 (11th Cir. 2004)

U.S. Monroe, 866 F. 2d 1357, (11th Cir. 1989)

U.S. v Link, 921 F. 2d 1523, (11th Cir. 1991)

U.S. v Nahcom, 791 F. 2d 841, (11th Cir 1986)

U.S. v Chapman, 435 F. 2d 1245, 1247, 5th Cir. 1970-

18 U.S.C. Section 1343

18 U.S.C. Section 1952(a)(3)(A)

18 U.S.C. Section 1951(a)(1)

18 U.S.C. Section 1594(a)

28 U.S.C. Section 404(b)

28 U.S.C. Section 801(c)

28 U.S.C. Section 901

Pattern instruction 2.11

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 N/A; 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 _____ to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 June 10, 2019

[ ] 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: July 16, 2019, and a copy of the order denying rehearing appears at Appendix B.

[ ] 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).

STATEMENT OF CASE

On May 11, 2016 a grand jury returned an eleven count indictment against Jeffrey Cooper. The indictment of 18 U.S.C. Section 1343 (wire fraud) in counts I-III; a violation of 1952(a)(3)(A) (use of Facility in Interstate and Foreign Commerce to Promote an Unlawful Activity. Count IV; a violation of 18 U.S.C. Section 1591(a)(1) (Sex Trafficking by fraud) in count VII-VIII; and a violation of 18 U.S.C. Section 1591(a)(1) and 1594(a) (Attempting Sex Trafficking by Fraud) in counts IX-XI.

Petitioner proceeded to trial and was convicted by a jury and sentenced to 360 months in a Federal United States Prison, where he now currently resides. He has exhausted all of his Appeal Rights with the exception of this Petition.

REASONS FOR GRANTING THE PETITION

Petitioner understands that the Honorable Court has jurisdiction as to whether or not it wants to hear and or accept a Writ of Certiorari. However, Petitioner requests that this Petition be granted based on the basis of the Petitioner being convicted strictly on only hearsay evidence without a single witness testimony against him. Witnesses told the Court that they do not and will not testify in Court and refused to do exactly that. Yet the Lower Court and the Government was allowed to convict a Honest Defendant by strictly hearsay information only in violation of his Fifth and Sixth Amendment rights to Hearsay and the Confrontation Clause.

Petitioner therefore requests that this Honorable Court accept this Petition in order to alleviate the Lower Courts from ever trampling over the Petitioner's Fifth and Sixth Amendment rights to Due Process and the Confrontation Clause of the Sixth Amendment of the United States Constitution. Thereby sending a message to the Judicial System throughout the Nation that this Honorable U.S. Supreme Court will not allow it's citizens to be incarcerated based on false pretense of absolutely no evidence against it's citizens, based on hearsay and total violations of the Confrontation Clause, in violation of the Petitioner's Fifth and

Sixth Amendment rights to fairness and integrity of the Judicial System, though violations of the Petitioner's substantial judicial rights for which were totally violated in this case.

Whether the Lower Courts erred in allowing multiple hearsay statements of five alleged witnesses and other witnesses who did not testify in violation of the Confrontation of the Confrontation Clause.

1) The Sixth Amendment's Confrontation Clause gives the accused "[i]n all criminal prosecutions.....the right to be confronted with witnesses against him", "In **Crawford v Washington, 541 U.S. 36, 59, 124 S.Ct. 1354, 158 L.Ed. 2d 177,** this Court heard that the Clause permits admission of "[t]estimonial statements of witnesses absent from trial... only where the declarant is available and only where the Defendant has had a prior opportunity to cross-examine.

2) In Petitioner's case in point, at his trial, none of the five witnesses in his case testified against him. Even though they had never been cross-examined and had prior opportunity to do so, and yet they never did.

3) Yet a witnesses was allowed to testify for them as if they were their witnesses in violation of the

Petitioner's Fifth and Sixth Amendment rights under the United States Constitution's Confrontation Clause.

Witness testimonies should never have been introduced in a Criminal Court of Law at Petitioner's trial, though in-court testimony of whom did not make the witness statements. Because Petitioner had a right to be confronted on the witness stand by the five witnesses against him, and to cross examine all five of them.

4) The witnesses statements were out of court statements, that were testimonial, that were introduced against the the Petitioner by Agent Nguyen, Agent Wolynetz and Detective Costa, and could not be introduced against the Petitioner under his Fifth and Sixth Amendment rights because such statements may not be introduced against the Petitioner at trial unless the witnesses who made the statements were unavailable and the accused has had a prior opportunity to confront those witnesses.

5) The Sixth Amendment does not extrapolate from the words of the (Confrontation Clause) to the values behind it, and then to enforce it's guarantees only to the extent they serve (in the Court's views) those underlying values. (The Sixth Amendment is to ensure a fair trial). The Sixth Amendment does not suggest any open-ended exceptions from the confrontation

requirement to be developed by the courts. Nor is it the rule of the Courts to enforce the Sixth Amendment guarantees only to the extent they serve (in the Court's views) those underlying values. The Confrontation Clause does not tolerate dispensing with confrontation simply because the Court believes that questioning witnesses about another's testimonial statements provides a fair enough opportunity for cross examination.

6) The Sixth Amendment contemplates two classes of witnesses. Those against the Petitioner and those in his favor. The Government must produce the former; the Defendant may call the latter. There is not a third category of witnesses, helpful to the Government, but somehow immune from confrontation.

7) In this case of the Petitioner, the Lower Courts erred in admitting multiple "testimonial" statements made to Agent Nguyen, Agent Wolynetz and Detective Costa in violation of Petitioner's Confrontation Clause rights and the Federal Rules of Evidence excluding hearsay. Since none of the five alleged victims testified, the Government introduced their testimony over defense objections through multiple witnesses and exhibits.

8) Hearsay and Confrontation Clause violations:

The following testimonial statements made to Law Enforcement were erroneously admitted in violation of the Petitioner's Fifth and Sixth Amendment rights.

9) Error 1:

Agent Nguyen traveled to Trio, a restaurant to corroborate statements made to him from AO and ZR that they went to America looking for employment. **DE-113: 183-184.**

10) Error 2:

Agent Nguyen testified that AO and ZR wanted to go back home, that they were students in Kazakhstan and that their state of mind was that they wanted to get away from the whole experience that they just went through, that they were humiliated and embarrassed about what happened. **DE-114: 46-48.**

11) Error 3:

Agent Nguyen testified that he went to Kazakhstan in 2014 and AO and ZR's state of mind was very much the same, that they were afraid that people in their

Country or their family would find out why they would be traveling to the U.S. and their representative told Nguyen they just wanted to leave it behind. AO and ZR told Agent Nguyen who testified for them that they did not want to revisit this conversation again and that they just wanted to move on.

12) Error 4:

Agent Nguyen spoke to the names on the visitor logs for Bayshore Yacht and Tennis Club and that they told him they went to the condo to receive sexual services from the Backpage ads. **DE-114: 59**

13) Error 5:

Agent Nguyen testified that ZR's job offer in North Dakota was actually rejected because the hourly amount was below minimum wage and that there was a falling out between the restaurant partners. **DE-116: 117-118.**

14) Error 6:

Agent Nguyen testified that Diyana was pregnant and was supposed to have a baby at the time of her deposition and she did not want to stress out. **DE-116: 123-125.**

15) Error 7:

Agent Nguyen testified that AO and ZR wanted to just get pass this and did not want to testify.

16) Error 8:

AO and ZR told Agent nguyen that they were living at the Bayshore Yacht and Tennis Club during the summer up until August 4, 2011. **DE-113: 177-178.**

17) Error 9:

Agent Nguyen testified that neither AO nor ZR were hired by Trio. **De-113: 189-190.**

18) Error 10:

Agent Nguyen learned that Petitioner went by different names.

19) Error 11:

Agent Nguyen testified that AO was able to recognize Petitioner's voice. **DE-115: 41-42.** AO statements were simply hearsay because she never testified on the witness stand in a Court of Law at any

time at all, even though she and the others were all available to do so.

20) Error 12:

Detective Costa testified that he received a complaint that a tenant was running an illegal business out of the units. **DE-115: 22-23,** yet the complainant never testified to this statement at all nor swore to it in a Court of Law under the penalty of perjury.

21) In **Crawford v Washington, 541 U.S. 36, 68-69, 124 S.Ct. 1354, 1374** (The Supreme Court wrote, "[w]here testimonial statements are at issue, the only indication of reliability sufficient to satisfy constitutional demands is the one the constitution actually prescribes: Confrontation" This means that the prosecution may not introduce "testimonial" hearsay against a criminal defendant, regardless of whether such statements are deemed reliable , unless the defendant has an opportunity to cross examine the declarant or unless the declarant is unavailable and the defendant had prior opportunity for cross examination. **Id. at 53-54, 68, 1124 S.Ct. at 1365-66, 1374.** If the statement being offered by the prosecution was made by the declarant in the context of an investigation of the defendant, then the statement may

not be introduced at the defendant's trial if declarant is unavailable, notwithstanding any "indicia or reliability" or "Particularized guarantees of trustworthiness."

"Hearsay is a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. **Fed. R. Evid. 801(c).** All of the statements made to Law Enforcement were "testimonial" hearsay as they were made in the context of the government's investigation of the Petitioner. **See Baker, 432 F.3d 1189, 1213 (11th Cir. 2005).**

22) The Lower Courts also erred in admitting non-testimonial hearsay which is not governed by **Crawford,** but still violates the Confrontation Clause unless the statement falls within a firmly rooted hearsay exception, or other wise carries a particular guarantee of trustworthiness. **Ohio v Roberts , 448 U.S. 56, 66 (1980).**

23) The following non-testimonial statements were hearsay and violated the Confrontation Clause:

24) Error 13:

Defendant's testimony **DE-113: 126-127; Govt. Exhibit 3.** The admission of Exhibit 3 was also hearsay.

25) Error 14:

Mamaeva's testimony **DE-114:190-191.**

26) Error 15:

Mamaeva's offer to reside somewhere other than Petitioner's apartment. **DE-114: 192-193.**

27) Error 16:

Mamaeva's testimony regarding **DE-114: 214-215.**

28) Error 17:

Cortina's Testimony regarding **DE-114: 237-238.**

29) Pena's Testimony according to **DE-114: 255-257, 258.**

30) Delany's Testimony to **DE-113: 137-141 and Government Exhibits 6A-6F.**

31) The Government's Exhibits 75 also contained hearsay as it was a Facebook excerpt that also contained conversations of Diyana. **DE-113: 242-244.**

Each an everyone of these stated errors made by this Court were not harmless as almost everyone of them dealt with the central issue in this case, whether the five alleged victims were supposedly defrauded by Petitioner.

32) The Lower Courts erred in allowing Agent Nguyen to be allowed to opine on whether the alleged victims were untruthful with Kazakstan authorities. Over the defense objections, Agent Nguyen invaded the province of the jury when he testified that it happened that D.K X.M and B.A were not truthful to Kazakstan authorities. **DE-116: 119-120.** Over further objections, Agent Nguyen was allowed to opine that witnesses may not be candid because they are afraid, embarrassed, shameful. **DE-116: 121-122. United States v Surondu, 845 F. 2d 945 (11th Cir. 1988); Snowden v Singletory, 135 F. 3d 732 (11th Cir. 1998).**

33) The Lower Courts made several other Evidentiary error's.

34) Unnoticed and / or inadmissible 404(b) Evidence:

The Lower Court allowed error in allowing unnoticed and or inadmissible 404(b) evidence by

admitting Government's Exhibits. **United States v Carrasco, 381 F. 3d 1237 (11th Cir. 2004)**

The Government introduced Exhibits 72 and 72A-72H. Viber and Whits App's were the applications that were used for the conversations. DE-116: 45-46. Exhibit 72A-72H. The conversations were no earlier tan late 2015 and ended in 2016. **DE-116: 49-51.** There's unnoticed conversations that were used to show that Petitioner had the propensity to be involved in the prostitution business and had no other purpose. This Exhibit also contained inadmissible hearsay in the form of chats from other individuals who did not testify.

35) The Government admitted Exhibit 69 which was a book found during Petitioner's arrest in 2016 that contained names, ages, weight, heights and categories. **DE-115: 237-239.** The items were not tied to any woman in this case and did not contain any duties. **DE-115: 238.** This was also admitted for the improper purpose to show Petitioner has a propensity to engage in prostitution.

36) The Courts lack of authentication of the call:

The Court erroneously admitted a controlled call between Agent Velez and a speaker that was purportedly

Petitioner's voice over a call, yet no one at all ever authenticated the voice on the controlled phone call. **DE-115: 157-159,** Government Exhibit 59A-B in violation of Federal Rules of Evidence 901.

37) The Evidence was Totally Insufficient to Convict Petitioner on Counts I-III (Wire Fraud).

38) There was insufficient evidence to prove that Petitioner was the individual representing himself as Dr. Janardana Dasa on the phone calls that formed the basis of counts I-III. Arca could not identify Petitioner as the person on the other end of the phone call on, May 12, 2011 (count I) **DE-113: 155.** Brennan could not identify Petitioner as the person on the other end of the call on May 24, 2011 (Count II). Delaney could not identify Petitioner on the other end of the phone call on June 9, 2011 (Count III), with respect to count III, misrepresentation was not material as CCI has already agreed to the five alleged victims employment with Petitioner.As of June 9, 2011, AO, ZR, BA and XM had already entered the United States and CCI did not rely on any misrepresentations to influence their decisions on whether to approve Petitioner as an employer.

39) Counts VII-XI (Sex Trafficking and Attempted Sex Trafficking by Fraud)

40) To prove Sex Trafficking charges in counts VII and VIII, the Government had to prove that Defendant (1) did knowingly, (2) in or affecting interstate and foreign commerce, (3) entice, recruit, harbor, transport, provide, obtain or maintain by any means a person, (4) knowing, or in reckless disregard of the fact, (5) that fraud would be used to cause such person to engage in a commercial sex act. 18 U.S.C. Section 1591(a)(1), United States v Flanders, 752 F. 3d 1317, 1331 (11th Cir. 2014). In order to convict Petitioner of an attempt to commit sex trafficking by fraud (counts IX through XI), the Government was required to prove that Petitioner knowingly intended to commit the crime of Sex Trafficking by fraud and Petitioner's intent was strongly corroborated by his taking a substantial step towards committing the crime. **United States v Monroe, 866 F 2d 1357 (11th Cir. 1989); 18 U.S.C. Section 1594(a).**

Government's evidence on counts IX-XI, was lacking because the Government never even interviewed DK, BA or XM to see if they were ever defrauded by the Petitioner. Defense Exhibit 8, in which all three DK, BA and XM gave similar statements denying ever having any conversation with Petitioner or ever knowing him as

Janardana Dasa. Further establishing the fact that they were not defrauded.

41) The Court's Jury Instructions were Erroneous.

42) Count IV (use of a Facility for Unlawful Activity)

The Court gave an incorrect statement of the Law on Count IV. Instead of modifying pattern offense instructions which was legally incorrect. Eleventh Circuit Pattern Jury Instructions (Criminal 2010). First, the unlawful activity charged in the Indictment was prostitution, "not prostitution and related acts". Second, the statute does not prohibit related acts, just prostitution. 18 U.S.C. Section 1952(a)(3)(A). Therefore, it was error to include "related acts" in the definition of "unlawful activity". The instruction's were also incorrect as to the second element as it deleted the "specific intent requirement" from the elements in the pattern and it was incomplete as to the definition of prostitution under Florida Law. Florida Statute 796-07 specifically excludes acts done for a bona fide medical purpose, and massages that do not include commercial sex acts would fall into that definition. Therefore, the conviction on this count is unconstitutional and incorrect.

43) Counts V-VI (Importation of and Attempted Importation of an Alien for Immoral Purpose).

The Court erred in giving the jury instruction for counts V and VI. In order to avoid Petitioner from being convicted for the jury's subjective opinion on morality, the defense objected to the term "other immoral purpose" being included in the elements of the offense. **DE-116: 165-167.**

Furthermore, once the request was denied it was error to deny Petitioner's request to further define "other immoral purpose", Petitioner requested that the Court instruct the jury that "performing a massage without a commercial sex act is not an immoral purpose." **DE-116: 166-167.**

Finally, the instruction was also erroneous because the Court gave an incomplete definition of prostitution in count IV as argued. The jury could have convicted Petitioner, simply if the girls were imported for the purposes of performing massages without a commercial sex act.

44) The Court erred in giving the missing witness instruction.

The Court erred in failing to give the missing witness instruction. The missing witness instruction

was appropriate for all five alleged witnesses (victims). The instruction was a correct statement of Law and was not covered in any other part of the jury charge. First Circuit Pattern Instructions 2.11, **DE-72.** The Court denied the instruction based on **United States v Link, 921 F 2d 1523 (11th Cir 1991), in Link,** the Court denied the requested instruction because the missing witnesses testimony would be harmful rather than helpful to the Appellant. In fact, it would have destroyed the Appellant's defense because of the overwhelming showing of Appellant's participation with the missing witness in the drug transaction. Id. **United States v Nahoom, 791 F. 2d 841 (11th Cir. 1986); See Also, United States v Chapman, 435 F. 2d 1245, 1247 (5thCir. 1970),** all five witnesses were within the control of the Government, as the Government allowed AO and ZR to leave the United States in 2011, and were able to maintain contact with AO and ZR after they returned to Kazakhstan.

The jury evidence in this case from DK, BA or XM was that they had never met nor spoken to Petitioner. And that their were no misrepresentations made to them, facts that are clearly favorable to Petitioner and clearly supported Petitioner's defense. Defendant's Exhibit 8. As a result the Court totally abused it's discretion in refusing to give the instruction.

45) The Court erred in admitting Petitioner's statements. The Court erred in admitting the Petitioner's statements to Law enforcement on April 30, 2016. During the interview Petitioner requested counsel at least once and on two other occasions. **DE-115: 253-254.** And he was told by Agent Nguyen that he was not under arrest, nor in custody. The Court denied Petitioner's request to exclude the statements, even though he was never told that he was not under arrest, and even though he never received counsel upon being interrogated and not being able to walk away from Agent Nguyen because he was never told that he could leave. Therefore, he was involuntarily restrained by the Agent and not told he could leave or was free to depart from the Agent's presence. Thereby denying Petitioner's 14th and Fifth Amendment rights from the Government's use of an involuntary confession of the Petitioner. **Miller v Fenton, 474 U.S. 104 (1985); and Harris v Dugger, 874 F. 2d 756 (11thCir. 1989); and Schreckloth v Bustamonte, 412 U.S. 218 (1973). See Also, Columdo v Connery, 479 U.S. 157 (1986).**

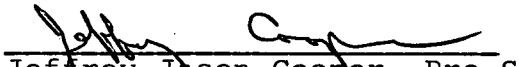
CONCLUSION

Petitioner states to the Honorable United States Supreme Court, that this was a case with absolutely no testimony from the victims, a case that was based on

total hearsay. A case that totally violated the Confrontation Clause and Hearsay clause of the Fifth and Sixth Amendments of the United States Constitution, a case that admitted testimonial statements from five witnesses that repeatedly refused to testify to the Court against the Petitioner. This was a case that violated the United States Fifth Amendment of the United States Constitution to Due Process to be treated fairly in a Court of Law, to be able to confront the witnesses against you, and you against them under the Sixth Amendment to Hearsay and the Confrontation Clause.

Your Honorable Justice, this was a case that would shock the consciences of the Nation if the Honorable Justices would accept it and never allow this type of unfair treatment to ever be presented again against any American Citizen in this Country. This is the very reason why the Honorable Court should accept this case. Because it is of National Importance to the United States Supreme Court. And so, Petitioner asks that this Honorable Court use it's discretion to accept this case, so that in the future of all Americans will be treated fairly and equally when subjected to such very unfair practices and circumstances, as the Petitioner was by the Lower Courts and the United States Government in this case.

Respectfully Submitted,



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