IN THE SUPREME COURT
OF THE UNITED STATES

19-6315

JOHN DAVID STAHLMAN - PETITIONER

VS.

ORIGINAL

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

John Stahlman #68280-018
C1,Federal Correctional Complex-Medium
P.O. Box 1032
Coleman, FL 33521

QUESTION(S) PRESENTED

1.) DID THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, AND SUBSEQUENTLY THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, VIOLATE THE PETITIONER'S FIFTH AMENDMENT RIGHT, UNDER THE CONSTITUTION OF THE UNITED STATES, TO DUE PROCESS OF LAW, WHEN IT ACCEPTED A JURY'S VERDICT OF GUILTY, FOR AN OFFENSE UNDER TITLE 18 UNITED STATES CODE SERVICE, CHAPTER 117, SECTION 2422, SUBSECTION (b), WHERE AN ELEMENT REQUIRED IN OTHER CIRCUITS FOR A CONVICTION WAS NEITHER PROVEN NOR PLEAD TO?

2.) DID THE DECISION, ISSUED BY THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, CONFLICT WITH THE DECISIONS ENTERED IN OTHER COURTS OF APPEALS ACROSS THE COUNRTY, WARRANTING CLARIFICATION BY THE SUPREME COURT OF THE UNITED STATES AS TO WHAT CONDUCT IS PROSCRIBED UNDER TITLE 18 UNITED STATES CODE SERVICE, CHAPTER 117, SECTION 2422, SUBSECTION (b)?

LIST OF PARITES

All parties appear in the caption of the case on the cover page.

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CITATIONS OF THE REPORTS OF THE OPINIONS AND ORDERS

Petitioner respectfully requests that a writ of certiorari be issued to review the judgement below.

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix A to the petition and has been designated for publication but is not yet reported.

The opinion of the United States District Court for the Middle District of Florida appears at Appendix B to the petition and is unpublished.

STATEMENT OF JURISDICTION

The opinion in case D.C. Docket No. 6:17-cr-00045-CEM-DCI-1, appeals Nos. 17-14387, 18-12866, United States of America versus John David Stahlman, by the United States Court of Appeals for the Eleventh Circuit, was issued on August 19, 2019.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 5 TO THE CONSTITUTION OF THE UNITED STATES

"Criminal actions-Provisions concerning- Due process of law and just compensation clauses

No person shall be held to answer for a captial, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

TITLE 18 UNITED STATES CODE SERVICE, CHAPTER 117, SECTION 2422, SUBSECTION (b)

"Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned no less than 10 years or for life."

STATEMENT OF THE CASE

The Petitioner was indicted in the United States District Court for the Middle District of Florida for a violation under Title 18, Chapter 117, Section 2422, subsection (b) of the United Staets Code Service ("18 U.S.C. § 2422(b)," "§ 2422(b)"). His indictment read, in pertinent part, "...the defendant, JOHN DAVID STAHLMAN... did knowingly attempt to persuade, induce, and entice an individual who had not attained the age of 18, to engage in sexual activity..."

After the Petitioner posted an advertisement in the adult section of Craigslist, he was contacted by Special Agent Rodney Hyre ("SARH," "Agent") of the FBI. During the ensuing communications, the Petitioner played the role of a father of a notional daughter and the Agent played the role of a father of a notional minor daughter.[1] After a lengthy email and instant message conversation, spanning 85 days, a period of 46 days of no contact, and two proposed meetings to which the Petitioner backed out of, the Petitioner drove nine miles from his home and attempted to meet with SARH so that "as long as we are good, we go to meet her" because SARH "want[ed] to meet away from her, for [his] safety." (See Appendix C, specifically emails 84 and 90). Upon arrival, the Petitioner was promptly placed under arrest.

The Petitioner pled "not guilty" and proceeded to trial.

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[1]The Petitioner maintains that he was under the belief that the role of the Agent's notional minor was going to be portrayed by an adult female and any reference to a "minor" or a "daughter" is done under that premise.

After a three-day trial, the jury returned a verdict of guilty. The district court accepted the verdict. (See Exhibit B, pages 2-3).

The Petitioner timely appealed his conviction and sentence. In the opinion from the Court of Appeals for the Eleventh Circuit, as to a challenge to the verdict reached by the jury, the court of appeals found, "...in reviewing the sufficiency of the evidence supporting the jury's verdict..." (See Appendix A, page 49) the court affirmed the jury's, and the district court's, conviction of the Petitioner.

The Court of Appeals for the Eleventh Circuit, in light of the court "reviewing the sufficiency of the evidence supporting the jury's verdict", "entered a decision in conflict with the decision[s] of [other] United States court[s] of appeals [, the D.C. Circuit and the Fourth Circuit,] on the same important issue." Supreme Court rule 10(a).

The important issue in conflict is the interpretation of what conduct is proscribed under, and/or constitutes a violation under, 18 U.S.C. § 2422(b), because:

> "The statute at issue defines a federal crime, and it should be applied uniformly throughout the United States. Yet, because of conflicting interpretations, defendants in some parts of the country may be punished for violations without proof or pleading of an element required in another judicial circuit. Criminal culpability should turn on uniform law, not geography. I would grant certiorari to resolve the conflict among the circuits."

Wilkes v. United States, 469 U.S. 964, 83 L. Ed. 2d 299, 300-01 (1984)(See also Smith v. United States, 52 L. Ed. 2d 324, 431 U.S. 291, 294 (1977); United States v. Donnelly, 25 L. Ed. 2d 312, 397

U.S. 286, 294 (1970); CCNV v. Reid, 104 L. Ed. 2d 811, 490 U.S. 730 (1989) "Headnotes"; and Wolf v. Weinstein, 10 L. Ed. 2d 33, 372 U.S. 633, 654 (1936)(If this remedy seems harsh in this case, it is wholly consistant with the uniform application of this statute by the lower courts.")).

In the instant case, SARH made the following statements, to the Petitioner, regarding his notional minor daughter's experience, willingness to engage in sexual activity, and even went so far as to speak **for** her and convey her "hopes" during the planned sexual encounter.

The Agent wrote, "I enjoy watching her play, have done it before" and "yes a couple of times found it to be incredible" in reference to the Agent's daughter "playing" "with the right person." "We call it play time." Then, "she has **played** in every way but anal... can't be too big or rough if you **want** straight sex with her." Then, in regards to anal, "I haven't tried yet, just the tip." Then, SARH wrote, "I really think she enjoys being the center of attention. And likes that I am there to enjoy it she lives to please." Also, "She is active," meaning sexually active. "She likes gentle kissing." Then, through the intermediary, the daughter sets her own **hopes** during the **planned** sexual activiy, "... she said I hope he kisses soft and is slow with me." Then, "she likes that." And lastly, "she is very happy," to skip school and have sex. (See generally Appendix D).

SARH presented his daughter as an experienced, willing, and even **hopeful** participant. **She** was "active" "in every way but anal." **She** had had sex, or "played," "with the right person" "a couple of times"

and "she **enjoys** being the center of attention" and "**lives** to please." Also, his daughter "**likes** gentle kissing" and when prompted about going slow, the Agent replied with "She **likes** that." Lastly, the Agent stated that his daughter **hoped** that the friend of her father's, that was "coming over" to have sex with her, "kisses soft and is slow with [her]." The daughter was presented as an individual who needed no persuasion or influence to lead her to engage in sexual activity and the Petitioner made no statements aimed at transforming or overcoming her will as she was presented as a willing participant.[2]

However, at the Petitioner's trial, the jury was given the following instruction on the charged offense, in pertinent part:

> "The defendant could be found guilty of this crime only if the following facts are proved beyond a reasonable doubt... the defendant knowingly persuaded, induced, or enticed an individual to engage in sexual activity, as charged... The defendant need not communicate directly with an individual under 18 years of age. It is sufficient if the defendant **induces** or attempts to **induce** the individual to engage in unlawful sexual activity by communicating with an adult intermediary for that purpose. As used in this instruction, "induce" means to stimulate the occurrance of or to cause."

(See Appendix E, Jury Charge).

Under this instruction, the jury could have found the Petitioner guilty if they found that he attempted to **cause** the individual to engage in unlawful sexual activity by communicating, or negotiating, with the purported father, SARH, for that purpose, without any attempt to overcome, or persuade her to engage in such activity.

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[2]The Third Circuit even asked the question, "Can a person be guilty [under § 2422(b)] if the minor has already indicated that he or she wants to engage in sexual activity?" United States v.Tykarski, 446 F.3d 458, 482-83 (3rd Cir. 2006)

This interpretation, and subsequent verdict and decision, accepted by the district court and accepted and affirmed, after review, by the court of appeals, is in direct conflict with the interpretation and decision in the D.C. Circuit.

On appeal, a defendant, in the D.C. Circuit, challenged his jury instructions. Among others, the following instruction was issued. "[The] government must only prove that the defendant believed he was communicating with someone who could arrange for the child to engage in unlawful sexual activity..." In the court's decision, it went beyond just addressing the instruction itself.

> "As discussed supra, the preeminent characteristic of the conduct prohibited under § 2422(b) is transforming or overcoming the minor's will, whether through "inducement," "persuasion," "enticement," or "coercion." Although the word "cause" is contained within some definitions of "induce," cause encompasses more conduct; simply "to cause" sexual activity with a minor does not necessarily require any effort to transform or overcome the will of a minor... Thus, although most of the instruction was correct, the additional launguage that the "government must only prove that the defendant believed that he was communicating with someone who could arrange for the child to engage in unlawful sexual activity" was erroneous. The district court's error was highly prejudicial. Following this flawed instruction, the jury could have convicted the defendant without necessarily finding that he intented to transform or overcome the will of either ficticious minor, so long as they found that he sought to arrange for sexual activity with them."

United States v. Hite, 796 F.3d 1154, 1166-68 (D.C. Cir. 2014).

The D.C. Circuit's decision could be used to overturn the Petitioner's conviction by simply replacing the words "arrange for" with the word "cause".

Also, the Eleventh Circuit's decision is in conflict with a decision in the Fourth and Second Circuits on the same important issue.

> "Although the terms "persuade," "induce," and "entice" are not statutorily defined, we have found that they are words of common meaning and have afforded them their ordinary meaning... Moreover, these terms are effectively synonymous, conveying the idea of one person leading or moving another by persuasion or influence, as to some action or state of mind."

United States v. Clarke, 842 F.3d 288, 296 (4th Cir. 2016)(Internal Citations Omitted)(See also United States v. Broxmeyer, 616 F.3d 120, 125 (2nd Cir. 2010).

The Eleventh Circuit's precedential case on this issue is United States v. Murrell, 368 F.3d 1283, 1287 (11th Cir. 2004).

> ""Induce" can be defined in two ways. It can be defined as to lead or move by influence or persuasion; to prevail upon," or alternatively, "to stimulate the occurrance of; cause."... We must construe the word to avoid making § 2422(b) superflous... To that end, we disfavor the former interpretation of "induce," which is essentailly synonymous with the word "persuade." By negotiating with the purported father of a minor, Murrell attempted to stimulate or cause the minor to engage in sexual activity with him."

Murrell at 1287.[3] (See also United States v. Lanzon, 639 F.3d 1293, 1299 (11th Cir. 2011)("... to cause assent on the part of a minor.") See also the same or similar languge at United States v. Berg, 640 F.3d 239 (7th Cir. 2009) and United States v. Roman, 795 F.3d 511 (6th Cir. 2015).).[4]

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[3]Both Petitioner's Trial and Appellate Counsel were procedurally foreclosed from challenging the specific jury instruction in light of the circuit's standing precedent.

[4]One could argue, alternatively, that with so many vastly differing and conflicting interpretations, the statute is unconstitutionally vague as not even circuit judges, with years of judicial experience, can uniformly understand and agree on what conduct is proscribed. United States v. Gagliardi, 506 F.3d 140, 147 (2nd Cir. 2007) and United States v. Williams, 170 L. Ed. 2d 650, 553 U.S. 285, 304 (2008)

The interpretations, as expressed in the circuits' decisions, of what conduct is proscribed under § 2422(b) conflict widely. As noted supra, a violation is interpreted to mean communications: aimed at "transforming the will of a minor," Hite at 1160; "cause the minor to engage," Murrell at 1287; "lead[] or mov[e] another by persuasion of influence," Clarke at 296 and Broxmeyer at 125; and "cause assent[5] on the part of a minor," Lanzon at 1299.[6]

The Petitioner was found guilty under the interpretation of the statute in the Eleventh Circuit when, had he been indicted and tried in the D.C. Circuit, he would have likely been acquitted. Perhaps he would have been acquitted even under the less stringent interpretations in the Fourth and Second Circuits as well.

Petitioner believes his case is an appropriate case, given the facts and the elements presented to him during the 'reverse sting operation,' to challenge and correct the conflict among the circuits.

He also believes this Court's intervention is not just warranted, but required. See United States v. Montgomery, 746 Fed. Appx. 381 (5th Cir. 2018) where a defendant argued the Hite court's interpretation of what conduct is proscribed under § 2422(b). The Court of Appeals for the Fifth Circuit, in its decision, dismissed the defendant's argument stating, "...our circuit requires only that

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[5]"Assent is defined as "approval or agreement" or "agree to a request or suggestion." Oxford American Dictionary & Thesaurus. Third Edition, 2010.

[6]See Appendix F for additional conflicting interpretations, expressed in the circuits' decisions, specifically centered around the four terms: persuade, induce, entice, and coerce; of 18 U.S.C. § 2422(b).

defendant take "action directed toward obtaining the child's assent..."." Montgomery at 385.

The Supreme Court's intervention is necessary as this important issue affects defendants across the country; past, present, and future; and correction of this conflict is within this Court's discretion and is warranted, and required, based on the necessity for constitutional clarity and uniform application of the statute.

REASON(S) FOR GRANTING THE PETITION

Writ of Certiorari should be granted to resolve the conflict among the circuits and ensure the uniform application of the law across the land and the criminal cuplability for a violation under 18 U.S.C. § 2422(b) turn on uniform law and not geography.

The case at bar is an adequate fit to express how the Petitioner would have been acquitted in another circuit, the D.C. Circuit, but was found guilty in the Eleventh Circuit.

Certiorari would give the Supreme Court the opportunity to clarify Congress's intent in enacting § 2422(b) and to express, for uniform application, what conduct, either "transforming or overcoming a minor's will" or "caus[ing] assent on the part of a minor" or "leading or moving another person through persuasion or influence" or "caus[ing] the minor to engage" constitutes a violation under such.