

No 19-8606

ORIGINAL

Supreme Court, U.S.  
FILED

MAY 21 2020

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES.

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ROBERT D THORSON, PETITIONER  
VS.

THE UNITED STATES, RESPONDENT

ON WRIT OF CERTIORARI TO THE NINTH  
CIRCUIT COURT OF APPEALS.

NO 19-35725, NO 17-30100,  
NO 16-CR-277.

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PETITION FOR WRIT OF CERTIORARI

ROBERT THORSON # 48042086  
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## QUESTIONS PRESENTED

- 1) MAY CONGRESS ENACT BROAD AND SWEEPING STATUTES TO PROHIBIT THE PRODUCTION AND POSSESSION OF PERSONAL IMAGES OF INTIMATE AND LAWFUL CONDUCT AND FREE SPEECH IN AN EFFORT TO PROHIBIT AND SUPPRESS UNLAWFUL CONDUCT AND UNPROTECTED SPEECH?
- 2) MAY POLICE SEARCH A SUSPECTS CELLULAR PHONE IN AN ATTEMPT TO OBTAIN PROBABLE CAUSE TO OBTAIN A SEARCH WARRANT TO SEARCH THAT PARTICULAR PHONE?
- 3) MAY A DISTRICT COURT POSTPONE OR DELAY CONDUCTING A FARETTA HEARING UNTIL AFTER ALL PRETRIAL MOTIONS HAVE BEEN HEARD AND RULED UPON?
- 4) DOES A TRIAL COURT VIOLATE THE SIXTH AMENDMENT WHEN IT GRANTS CONTINUANCES AS A MATTER OF NINTH CIRCUIT POLICY IN DIRECT CONFLICT WITH CONGRESS' INTENTION WHEN ENACTING THE SPEEDY TRIAL ACT OF 1974. 18 U.S.C. §. 3161 (h) (7) (c).

## LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF  
THE CASE ON THE COVER PAGE.

## RELATED CASES.

- U.S. V. THORSON. No. CR16-277RSM (W.D. WASH.  
MAY 12 2017)
- US V THORSON No. 17-30100 (CA9 DEC. 06 2018)
- THORSON V U.S. 18-CV-136 RSM (W.D. WASH.  
AUG 09 2019)
- US V THORSON 19-35725 (CA9 MAR 02, 2020)

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## OPINIONS BELOW.

ALL CASES ARE FEDERAL IN NATURE;

THE OPINION OF THE US DISTRICT COURT CR16-277RSM  
IS NOT PUBLISHED.

THE OPINION OF THE NINTH CIRCUIT COURT OF APPEALS IN  
APPENDIX A IS NOT PUBLISHED.

THE OPINION OF THE U.S. DISTRICT COURT THAT APPEARS  
IN APPENDIX B IS NOT PUBLISHED.

THE OPINION OF THE NINTH CIRCUIT COURT OF APPEALS  
IN APPENDIX C IS NOT PUBLISHED.

## JURISDICTION

THE DATE ON WHICH THE NINTH CIRCUIT, UNITED  
STATES COURT OF APPEALS DECIDED MY CASE WAS MARCH  
02, 2020.

NO PETITION FOR REHEARING WAS FILED IN MY CASE.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER  
28 U.S.C. § 1254 (1) AND 28 U.S.C. § 2403 (a) MAY APPLY.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

- 1) FIRST AMENDMENT RIGHT OF FREE SPEECH
- 2) FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES.
- 3) SIXTH AMENDMENT RIGHT OF SELF REPRESENTATION.
- 4) EIGHT AMENDMENT RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT
- 5) TENTH AMENDMENT RIGHT OF FEDERALISM.
- 6) FOURTEENTH AMENDMENT RIGHT OF EQUAL PROTECTION UNDER THE LAW, DUE PROCESS, THE RIGHT TO POSSESS PROPERTY, THE RIGHT OF LIBERTY AND THE RIGHT OF AUTONOMY
- 7) 18 U.S.C. § 2251 AND § 2252 ET SEQ.
- 8) 18 U.S.C. § 3161

### STATEMENT OF THE CASE.

ON MAY 30 2016 PETITIONER WAS ARRESTED BY STATE AUTHORITIES AFTER A WARRANTLESS SEARCH OF HIS CELL PHONE AND HOME TO ACQUIRE PROBABLE CAUSE TO OBTAIN A SEARCH WARRANT TO SEARCH PETITIONER'S CELL PHONE, AND ARREST PETITIONER.

PETITIONER WAS HELD IN STATE CUSTODY UNDER THE AUTHORITY OF SAUSA GREGSON UNTIL THE FEDERAL INVESTIGATION WAS COMPLETED, ON OCT 20 2016, THEN SAUSA GREGSON DISMISSED THE STATE CHARGES AND CHARGED HIM IN FEDERAL COURT. THE STATE CHARGES SHE USED, SIMPLY AS A RUSE, TO DETAIN THE PETITIONER UNTIL THE FEDERAL INVESTIGATION WAS COMPLETED, TO BYPASS THE SPEEDY TRIAL ACT TIME REQUIREMENTS.

ON NOV. 10 2016 PETITIONER REQUESTED TO PROCEED IN PRO SE AND WAS TOLD BY THE DIST. COURT JUDGE, "WHY DON'T YOU JUST PLEAD GUILTY" AND IT WAS MADE CLEAR PETITIONER WOULD BE REQUIRED TO HAVE COUNSEL REGARDLESS OF HIS WISHES. THIS WAS REAFFIRMED ON JAN 24 2017 WHEN PETITIONER AGAIN ASSERTED HIS DESIRE TO REPRESENT HIMSELF.

IN FEB 2017 PETITIONER WAS TRIED AND CONVICTED. PETITIONER TIMELY APPEALED AND THE NINTH CIRCUIT COURT OF APPEALS DENIED HIS MOTION TO PROCEED IN PRO SE ON APPEAL, AND STRUCK DOWN HIS PRO SE APPEAL BRIEF, DENYING HIM ANY CONTROL OVER HIS APPEAL. HIS APPEAL ATTORNEY NEVER CONSULTED WITH PETITIONER IN PERSON, OR BY PHONE, AND SIMPLY MADE A BARE EFFORT TO RAISE A SINGLE ISSUE

THAT WAS WITHOUT MERIT.

ON DEC 11 2018 THE APPEAL WAS DENIED.

PETITIONER FILED A 28 U.S.C. § 2255 BACK TO THE DIST COURT JUDGE WHO TOLD HIM "WHY DONT YOU JUST PLEAD GUILTY?" AND WHO HAD DENIED PETITIONER HIS SIXTH AMENDMENT RIGHTS TO SELF REPRESENT, AND HIS SIXTH AMENDMENT RIGHT TO A SPEEDY TRIAL, THE JUDGE DENIED ANY WRONG DOING AND DISMISSED PETITIONERS § 2255. WITHOUT A C.O.A.

PETITIONER WROTE TO THE NINTH CIRCUIT COURT OF APPEALS TO REQUEST A C.O.A. AND WAS DENIED A C.O.A. ON MAR. 02, 2020.

PETITIONER NOW SEEKS RELIEF FROM THIS MISCHANCE OF JUSTICE IN THE SUPREME COURT.

REASONS FOR GRANTING THIS PETITION.

- 1) MAY CONGRESS ENACT BROAD AND SWEEPING STATUTES TO PROHIBIT THE PRODUCTION AND POSSESSION OF PERSONAL IMAGES OF INTIMATE AND LAWFUL CONDUCT AND FREE SPEECH, IN AN EFFORT TO PROHIBIT AND SUPPRESS UNLAWFUL CONDUCT AND UNPROTECTED SPEECH?

THE QUESTION THIS CASE RAISES IS AN ISSUE OF EXCEPTIONAL NATIONAL IMPORTANCE, AS IT AFFECTS THE RIGHTS AND LIVES OF OVER SIXTEEN MILLION (16,000,000) PERSONS IN THE UNITED STATES DIRECTLY, AND MILLIONS MORE WHO ARE INFLUENCED BY THESE INDIVIDUALS, THROUGH DIRECT FAMILY TIES, OR CLOSE ASSOCIATION THROUGH SOCIAL CUSTOMS, AND RELIGIOUS FELLOWSHIP.

THE STATUTES IN QUESTION ARE 18 U.S.C. § 2251, § 2252, ET SEQ. AND THE OVER BROAD ASPECT OF IT, IN THAT, IT MAKES NO ALLOWANCES FOR MINORS RIGHTS, WHO ARE MARRIED, OR WHO HAVE ATTAINED THE LEGAL AGE OF CONSENT. SEE APPENDIX D; ASHCROFT V FREE SPEECH CO. 535 U.S. 234, 247, 122 S.Ct. 1389, 152 LEd2d 403 (2001); CAREY V POP. SERV. INT'L. 431 US 678, 97 S.Ct. 2010, 52 LEd2d 675, 676 (1977) ("THE RIGHT TO PRIVACY IN CONNECTION TO DECISIONS AFFECTING PROCREATION EXTENDS TO MINORS AS WELL AS ADULTS")

THE SUPREME COURT NEEDS TO WEIGH IN ON THIS ISSUE, AS CONGRESS HAS INADVERTENTLY ENACTED STATUTES THAT ADVERSELY EFFECT LARGE PORTIONS OF LAW ABIDING CITIZENS, AND THEIR CONSTITUTIONAL RIGHT TO BE TREATED LIKE OTHER INDIVIDUALS, WHO POSSESS, AND PRODUCE, THE EXACT SAME TYPES OF IMAGES OF LAWFUL CONDUCT, PERFORMED WITH THEIR SPOUSES, OR LOVED ONES, IN THE PRIVACY OF THEIR HOMES AND MARITAL BEDROOMS. DENYING THESE INDIVIDUALS THEIR RIGHT TO EQUAL PROTECTION AND LIBERTY, UNDER THE FOURTEENTH AMENDMENT, SIMPLY BECAUSE OF THEIR AGE AND CLASSIFICATION AS MINORS.

LIBERTY PRESUMES AN AUTONOMY OF SELF, THAT INCLUDES FREEDOM OF THOUGHT, BELIEF, EXPRESSION, AND CERTAIN INTIMATE CONDUCT. PROTECTED BY THE FOURTEENTH AMENDMENT

THE CONCEPT OF PRESERVING CERTAIN INTIMATE CONDUCT, IN WHATEVER FORM OF MEDIA, OR MATERIAL, THAT IS CURRENTLY AVAILABLE, AND PRODUCING IT, OR POSSESSING IT, FOR PERSONAL REASONS, AND ENJOYMENT, IS CERTAINLY A FORM OF FREEDOM, PROTECTED BY THE FIRST AMENDMENT

CONGRESS MADE THESE STATUTES BROAD AND SWEEPING IN SCOPE, WITH THE NOBLE INTENTION OF, PROTECTING THOSE CHILDREN TO YOUNG TO LAWFULLY MAKE AN INTELLIGENT ADULT DECISION CONCERNING SEXUAL INTIMACY.

UNFORTUNATELY, IN DOING SO, THEY FAILED TO CONSIDER THE FAR REACHING CONSEQUENCES THESE STATUTES WOULD

HAVE ON THOSE MINORS WHO ARE LAWFULLY OLD ENOUGH TO MAKE THOSE, INTELLIGENT ADULT DECISIONS, ABOUT THEIR SEXUALITY, AND FUTURE, SUCH AS MARRIED MINORS, AND/OR UNMARRIED MINORS, WHO HAVE REACHED THE LEGAL AGE OF CONSENT SET BY WHICH EVER STATE THEY RESIDE IN. SEE APPENDIX D.

IN ALL STATES THAT HAVE SET THE LEGAL AGE OF CONSENT, AND/OR ALLOW MINORS TO MARRY, THE ACT OF HAVING SEXUAL INTERCOURSE WITH A MINOR, WHO HAS REACHED THE AGE OF CONSENT, IS LAWFUL CONDUCT AND FREE SPEECH.

THE SIMPLE ACT OF PRODUCING, OR POSSESSING IMAGES, OF A SEXUALLY EXPLICIT NATURE BETWEEN LAWFULLY CONSENTING INDIVIDUALS, PERFORMING WHAT IS LAWFUL CONDUCT, SHOULD BE PROTECTED BY THE FIRST AMENDMENT, THAT ONE OR BOTH INDIVIDUALS HAPPEN TO BE MINORS, WHO MAY LAWFULLY PERFORM THESE ACTS, IS OF NO CONSEQUENCE. AS "THEY ARE SIMPLY PRODUCING, OR POSSESSING, IMAGES OF LAWFUL CONDUCT."

IT MAY RESEMBLE UNLAWFUL CONDUCT NOT PROTECTED BY THE FIRST AMENDMENT, MUCH LIKE HOLLYWOOD MOVIES PORTRAY, <sup>OR</sup> SIMULATE CRIMINAL CONDUCT, BUT THE FACT REMAINS, "THE CONDUCT IS LAWFUL AND BETWEEN LAWFULLY CONSENTING INDIVIDUALS, ... OFTEN MARRIED INDIVIDUALS."

THE PROBLEM WITH STATUTES 18 U.S.C. § 2251 AND § 2252 ET SEQ. IS THAT THEY ARE OVER BROAD AND CHILL

THE FIRST AMENDMENT RIGHTS OF LEGALLY CONSENTING INDIVIDUALS, WHO JUST HAPPEN TO BE MINORS, MARRIED TO MINORS, OR DATING A MINOR, WHO IS THE LEGAL AGE OF CONSENT. SEE AMENDMENT 1; APPENDIX D.

THESE STATUTES MANDATE A 15 YEAR MANDATORY SENTENCE FOR PRODUCTION, AND A 10 YEAR MANDATORY PRISON SENTENCE FOR POSSESSION OF IMAGES, OF WHAT IS LAWFUL CONDUCT, AND MAKE NO EXCEPTION FOR AN INDIVIDUAL WHO IS MARRIED TO A MINOR, EVEN IF HE HIMSELF IS A MINOR, OR JUST TURNED 18.

THIS CONDUCT, AND IMAGES OF THIS CONDUCT, IS FREE SPEECH AND PROTECTED BY THE FIRST AMENDMENT FOR EVERY OTHER LAWFULLY CONSENTING INDIVIDUAL, WHO HAS REACHED THE ARBITRARY AGE OF 18, BUT NOT FOR AN INDIVIDUAL WHO MAY LEGALLY BE MARRIED, AND/OR CONSENT TO SEX, BUT IS ONLY 17 YEARS, 11 MONTHS, AND 29 DAYS OLD. THAT CLEARLY VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

BY CONGRESS USING THE TERMS OF ART "ANYONE WHO" AND "ANY MINOR" UBIQUITIOUSLY THROUGH OUT 18 U.S.C. § 2251-52 ET SEQ THEY HAVE MADE NO EXCEPTION FOR THOSE INDIVIDUALS RECORDING LAWFUL CONDUCT WITH THEIR MINOR SPOUSE, OR SIGNIFICANT OTHER. THUS, HAVE INADVERTENTLY PROHIBITED AND CHILLED THE

FREE SPEECH AND RIGHTS OF MINORS, AND MILLIONS OF INDIVIDUALS, WHO ARE LAWFULLY MARRIED TO, OR DATING MINORS, THROUGHOUT THE UNITED STATES, ALL IN AN ATTEMPT TO STOMP OUT, AN IMMORAL VICE THAT MAY HAVE ENDANGERED CHILDREN TO YOUNG TO LEGALLY CONSENT TO SEX, IN THE FLOW OF COMMERCE. SEE AMENDMENT 1; AMENDMENT 14.

THE ANSWER TO THIS QUESTION IS EXCEEDINGLY SIMPLE, AS THE GREAT WEIGHT OF SUPREME COURT CASE LAW HAS ALREADY PROVIDED THE CLEAR ANSWER, IT IS A WELL ESTABLISHED GENERAL RULE, THAT CONGRESS MAY NOT PASS OVER BROAD AND SWEEPING LEGISLATION THAT SUPPRESSES LAWFUL SPEECH, AS A MEANS TO SUPPRESS UNLAWFUL SPEECH OR CONDUCT, AND THAT "MINORS SHARE THE SAME AND EQUAL RIGHTS WITH ADULTS IN THE AREA OF SEXUAL INTIMACY WHETHER MARRIED, OR SINGLE, AS LONG AS THEY ARE LAWFULLY PERMITTED TO CONSENT TO SEXUAL INTIMACY."

"THE RIGHT TO PRIVACY IN CONNECTION WITH DECISIONS AFFECTING PROCREATION EXTENDS TO MINORS AS WELL AS ADULTS" CAREY V POP'L SEX. INT'L. 431 US 678, 97 S.Ct. 2010, 52 LEd2d 675, 676 (1977)

"IN 39 STATES AND THE DISTRICT OF COLUMBIA THE AGE OF CONSENT IS 16 OR YOUNGER, AND 48 STATES PERMIT 16 YEAR OLDS TO MARRY" ASHCROFT V FREE SPEECH COALITION 535 US 234, 247, 122 S.Ct. 1389, 152 LEd2d. 403 (2003)

" IT IS WELL ESTABLISHED THAT AS A GENERAL RULE, THE GOVERNMENT MAY NOT SUPPRESS LAWFUL SPEECH AS A MEANS TO SUPPRESS UNLAWFUL SPEECH. " ASHCROFT SUPRA 535 US AT 255; PACKINGHAM V NORTH CAROLINA 198 LEd2d 273, 283 (2017)

" WE REFUSE TO SANCTION A LAW THAT DISCRIMINATES BETWEEN MARRIED AND UNMARRIED PERSONS ... THE EQUAL PROTECTION CLAUSE NEITHER KNOWS, NOR TOLERATES CLASSES AMONG CITIZENS " LAWRENCE V TEXAS 539 US 558, 581-84 (2003) (CITING EISENSTADT 405 US 438, 447-455 (1972))

THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT IS ESSENTIALLY A DIRECTIVE THAT ALL PERSONS SIMILARLY SITUATED SHOULD BE TREATED ALIKE, REGARDLESS OF AGE, SEX, CREED, RELIGION, RACE, OR COUNTRY OF ORIGIN. SEE LAWRENCE SUPRA 539 US AT 579. (CITING CLUBBURN V C.I.C. INC 473 US 432, 439 (1985); AND PLYLER V DOE 457 US 202, 216 (1982))

THUS, ALL LAWFULLY CONSENTING INDIVIDUALS MUST BE TREATED EQUALLY, AND STATUTE 18 U.S.C. §. 2250 ET SEQ WITH ITS FAR REACHING AND OVER BROAD TERMS OF ART " ANYONE WHO " AND " ANY MINOR, " IS UNCONSTITUTIONALLY OVER BROAD UNDER THE OVER BROAD DOCTRINE, AS IT PROHIBITS THE PRODUCTION AND POSSESSION OF IMAGES OF LAWFUL CONDUCT, AND THEREBY CHILLS THE FREE SPEECH OF MILLIONS OF AMERICANS, MINORS, AND

ADULTS, MARRIED, AND SINGLE, SEE AMENDMENT 1

THESE STATUTES AS WRITTEN, THREATEN TO DESTROY FAMILY UNITS, PUTTING PARENTS IN PRISON, WHO TAKE IMAGES OF THEIR INFANTS BARE BOTTOM, AS MOTHERS HAVE TRADITIONALLY DONE FOR AGES. - PUT SPOUSES, OR SIGNIFICANT OTHERS, IN PRISON FOR TAKING IMAGES OF LAWFUL CONDUCT. WHICH CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT. SEE AMENDMENT 8.

THE FOURTEENTH AMENDMENT GUARANTEES MORE THAN FAIR PROCESS, IT EXTENDS TO A SUBSTANTIVE SPHERE AS WELL, BARRING CERTAIN GOVERNMENT ACTIONS REGARDLESS OF THE FAIRNESS OF THE PROCEDURES USED TO IMPLEMENT THEM. SACROMENTO V LEWIS 523 US 833, 844, 118 S.Ct. 1708, 140 LEd2d 1043 (1998) THE TOUCHSTONE OF DUE PROCESS IS PROTECTION OF THE INDIVIDUAL AGAINST ARBITRARY ACTIONS OF GOVERNMENT. WOLFF V MCDONNELL 418 US 539, 558, 94 S.Ct. 2963, 41 LEd2d 935 (1974)

INDIVIDUAL DECISIONS CONCERNING THE INTIMACIES OF PHYSICAL RELATIONSHIPS, EVEN WHEN NOT INTENDED TO PRODUCE OFFSPRING, ARE A FORM OF LIBERTY PROTECTED BY DUE PROCESS. SEE AMENDMENT 14.

THESE STATUTES ENACTED BY CONGRESS DO IN FACT DISCRIMINATE AGAINST A CLASS OF INDIVIDUALS, "MINORS AND THEIR SIGNIFICANT OTHERS", BASED SOLELY ON THEIR AGE, WITH TOTAL DISREGARD TO THEIR LEGAL STATUS, AND JEOPARDIZING THEIR RIGHTS AND LIBERTY AS WELL AS THE

RIGHTS AND LIBERTY OF THEIR SPOUSE, OR LOVED ONE, AND TRAMITIZING THEIR IMMEDIATE FAMILY AND CHILDREN, IF THEY HAVE ANY, BY IMPRISONING A FAMILY MEMBER FOR DECADES, VIOLATING THE EIGHT AMENDMENT.

CONGRESS MAY STILL ACHIEVE THEIR GOAL BY A REDRAFTING OF THE STATUTE TO SAY "ANY ONE WHO" "ANY MINOR TO YOUNG TO LEGALLY CONSENT" OR "ANY MINOR BELOW THE LEGAL AGE OF CONSENT"

BUT THIS STATUTE AS IT IS ENACTED MUST BE STRUCK DOWN AS UNCONSTITUTIONALLY OVER BROAD, AND THOSE CURRENTLY BEING PUNISHED MUST BE RELEASED FROM THAT OBLIGATION OF PRISON, FINES, SUPERVISION, OR REGISTRATION AS A SEX OFFENDER, AS THIS STATUTE, AS DRAFTED, IS QUITE SIMPLY OVER BROAD AND PROHIBITS THE PRODUCTION AND POSSESSION OF CONDUCT THAT IS LAWFUL IN EVERY STATE WHERE MARRIED MINORS ARE PERMITTED TO LIVE WITH THEIR SPOUSE. AND ALL 50 STATES HAVE LAWS PROHIBITING THE ABUSE OF MINORS, THUS, THESE STATUTES SIMPLY USURP THE STATES AUTHORITY TO GOVERN THEIR CITIZENS, AND VIOLATES THE TENTH AMENDMENT. FEDERAL OVER REACHING UNDER ART 1 SECT 8 CL 3 UNDERMINDS THE CONSTITUTIONALLY MANDATED BALANCE OF POWER BETWEEN THE LOCAL AND NATIONAL GOVERNMENTS.

A BALANCE DESIGNED TO PROTECT OUR FUNDAMENTAL LIBERTIES. THE FEDERALIST No 45 AT 313 (JAMES MADISON)

2) MAY POLICE SEARCH A SUSPECTS CELLULAR PHONE IN AN ATTEMPT TO OBTAIN PROBABLE CAUSE TO OBTAIN A SEARCH WARRANT TO SEARCH THAT PARTICULAR PHONE ?

ON MAY 30, 2016 OFFICER R. GALLAGHER WAS DISPATCHED ON A POSSIBLE SEX OFFENSE CALL. UPON REACHING THE LOCATION, HE WAS INFORMED THAT THE WITNESS HAD FOUND WHAT SHE BELIEVED WAS A SEX VIDEO ON THE SUSPECTS PHONE, AND THE SUSPECT WAS NOT AT HOME. APPENDIX E

THE WITNESS THEN HANDED OFFICER GALLAGHER THE SUSPECTS PHONE WITH A VIDEO CUED UP IN A TEXT MESSAGE, SHOWING NOTHING OF AN INCRIMINATING NATURE.

OFFICER GALLAGHER NOT FEELING HE HAD PROBABLE CAUSE AT THIS TIME TO EITHER ARREST THE DEFENDANT, OR OBTAIN A SEARCH WARRANT, TOOK INDEPENDANT GOVERNMENT ACTION AND PLAYED THE CUED UP VIDEO, AS THE ICON THAT WAS DISPLAYED DID NOT DEPICT WHAT THE VIDEO CONTAINED, THUS, DID NOT PROVIDE ENOUGH PROBABLE CAUSE TO OBTAIN A WARRANT TO SEARCH. SO OFFICER GALLAGHER TAPPED THE ICON TO PLAY THE VIDEO, SO HE AND OFFICER DUNCAN COULD SEARCH THE VIDEO.

AFTER SEARCHING THE CONTENTS OF THE VIDEO ON THE SUSPECTS CELLULAR PHONE, OFFICER GALLAGHER INFORMED OFFICER DUNCAN AND SERGEANT GUEST THAT HE HAD THE

NECESSARY PROBABLE CAUSE TO OBTAIN A WARRANT TO ARREST THE PETITIONER AND OBTAIN A WARRANT FOR THE CELL PHONE. SEE OFFICERS INCIDENT REPORT APPENDIX E, F, AND EXCERPT OF MOTION HEARING TRANSCRIPTS APPENDIX G

AT THIS POINT THE THREE OFFICERS WAITED ABOUT 15 MINUTES FOR PETITIONER TO RETURN HOME FROM WORK. AT NO TIME DURING THIS PERIOD DID ANY OF THE OFFICERS ATTEMPT TO OBTAIN A TELEPHONIC WARRANT TO ARREST, OR SEARCH, THE SUBJECTS HOME, OR CELLULAR PHONE. BUT OFFICER GALLAGHER OBTAINED HIS DIGITAL CAMERA AT SOME POINT, AND TOOK IMAGES OF OTHER ITEMS, AS HE WALKED THROUGH PETITIONERS HOME. AND SERGEANT GUEST AFTER PETITIONER WAS SECURED IN THE BACK SEAT OF A POLICE CAR, UNLOCKED PETITIONERS CAR, AND GOT IN TO THE DRIVERS SEAT, AFFECTING A SEARCH OF THE VEHICLE, BEFORE HAVING IT IMPOUNDED FROM PETITIONERS DRIVEWAY WITHOUT A WARRANT. IT SHOULD BE NOTED PETITIONER WAS ARRESTED WITHOUT A WARRANT AND AN ARREST WARRANT WAS NOT SOUGHT UNTIL MORE THAN 72 HOURS LATER. SEE APPENDIX H SEE ALSO AMENDMENT 4; US V JACOBSON 466 US 109, 130 (1984)

THE DISTRICT COURT AND GOVERNMENT ATTORNEY HOLD THAT THIS WARRANTLESS SEARCH OF PETITIONERS CELL PHONE, CAR AND HOME, FALL WITHIN THE PRIVATE SEARCH DOCTRINE EXCLUSION.

THAT HOLDING IS FLAWED IN LIGHT OF SUPREME

COURT HOLDINGS AND CASE LAW, SO MUST FAIL.

OFFICER GALLAGHER IS A WASHINGTON STATE, POLICE OFFICER, AND WAS ACTING UNDER COLOR OF STATE LAW AT THE TIME HE SEARCHED PETITIONERS CELL PHONE, WITHOUT EVEN ATTEMPTING TO OBTAIN A WARRANT, HE KNEW HE LACKED SUFFICIENT PROBABLE CAUSE TO OBTAIN A SEARCH WARRANT. THE DISTRICT COURT AND GOVERNMENT ATTORNEY RECOGNIZE THIS FLAW. SO RELY ON THE PRIVATE SEARCH DOCTRINE TO OVERCOME THIS ISSUE. BUT UNDER THE WASHINGTON STATE CONSTITUTION, ARTICLE 1, SECTION 7, THE PRIVATE SEARCH DOCTRINE <sup>IS NOT AN EXCEPTION TO STATE LAW.</sup> \*SEE STATE V HINTON 179 WN 2d 862, 878, 319 P.3d 9 (2014) (CITING STATE V EISFELDT 163 WN. 2d 628, 185 P.3d 580 (2008)) (UNDER THE PRIVATE SEARCH DOCTRINE A WARRANTLESS SEARCH BY A PRIVATE ACTOR DOES NOT OFFEND THE FOURTH AMENDMENT, BUT IS CONTRARY TO THE WASHINGTON STATE CONSTITUTION ARTICLE 1, SECTION 7.). SEE APPENDIX G Pgs 9-11

THUS, THE SEARCH WAS ILLEGAL UNDER COLOR OF STATE LAW WHEN CONDUCTED BY OFFICERS GALLAGHER AND DUNCAN, AND THUS, THE LATER STATE SEARCH AND ARREST WARRANTS WERE ILLEGALLY OBTAINED. SEE UTAH V STRIETFF 195 LEd2d 400, 412 (2016); US V GRUNDSTAFF 813 F2d 1353, 1355 (CA9. 1987) (CITING SEGURA V US 468 US 796, 813-15, (1984); US V SCOTT 2016 US DIST LEXIS 93372 (9<sup>th</sup> CIA) (COLLECTING CASES)

THE SUPREME COURT'S HOLDING IN US V JACOBSEN IS VERY INSTRUCTIVE IN THIS MATTER, WHERE IT STATED

" IF EVIDENCE, OR CONTRABAND, IS NOT IN PLAINVIEW, AND NOT IN A CONTAINER THAT CLEARLY ANNOUNCES ITS CONTENTS AT THE END OF A PRIVATE SEARCH, THE GOVERNMENT'S SUBSEQUENT EXAMINATION OF THE PREVIOUSLY SEARCHED OBJECT NECESSARILY CONSTITUTES 'AN INDEPENDANT GOVERNMENTAL SEARCH' THAT INFRINGES FOURTH AMENDMENT INTERESTS." *Id* AT 466 US AT 133;

THE NOTION THAT PRIVATE SEARCHES INSULATE THE FOURTH AMENDMENT SCRUTINY, OR SUBSEQUENT GOVERNMENTAL SEARCHES "OF THE SAME OR LESSOR SCOPE," IS INCONSISTANT WITH TRADITIONAL FOURTH AMENDMENT PRINCIPLES. *Id* 466 US AT 116.

THE PRIVATE SEARCH DOCTRINE THUS, HAS MUCH IN COMMON WITH THE PLAINVIEW DOCTRINE, WHICH IS GROUNDED IN THE PROPOSITION THAT ONCE POLICE ARE "LAWFULLY IN A POSITION TO OBSERVE AN ITEM FIRST HAND," ITS OWNER'S PRIVACY INTEREST IN THE ITEM IS LOST.

BUT, "IF GOVERNMENT AGENTS ARE UNWILLING, OR UNABLE TO RELY ON THE INFORMATION PROVIDED BY A PRIVATE PARTY CONCERNING THE RESULTS OF A PRIVATE SEARCH, AND THAT SEARCH HAS NOT LEFT INCRIMINATING EVIDENCE IN PLAINVIEW—THE INFORMATION PROVIDED BY THE PRIVATE PARTY CLEARLY WOULD GIVE AGENTS PROBABLE CAUSE TO SECURE A WARRANT." *id* 466 US 109, 130, 104 S.Ct. 1652, 80 LEd2d 83 (1984)

THERE WAS NOTHING IN PLAINVIEW OF AN INCRIMINATING NATURE WHEN THE WITNESS HANDED THE CELL PHONE TO THE OFFICER, AND IT IS UNCONTESTED BY THE GOVERNMENT'S ATTORNEY, THAT THE OFFICER "DID NOT HAVE PROBABLE CAUSE TO SEARCH THE PHONE" UNTIL AFTER HE SEARCHED THE VIDEO IN THE TEXT MESSAGE. APPENDIX 6 Pg 14

THE DISTRICT COURT'S RULING, THAT THE OFFICER HAD TO SEARCH THE PHONE TO OBTAIN PROBABLE CAUSE TO GET A WARRANT TO SEARCH, THE VIDEO ON THE CELL PHONE, IS CONTRARY TO, OR CONSTITUTES AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW. SEE RILEY V CALIFORNIA 134 S.Ct. 2473, 2493 (2014)

OBTAINING A TELEPHONIC WARRANT IN WASHINGTON STATE LITERALLY TAKES TEN MINUTES. SEE APPENDIX I ,

OFFICERS INVOLVED IN THE CASE MADE NO ATTEMPT TO OBTAIN A WARRANT TO SEARCH PETITIONERS CELLULAR PHONE, CAR, AND HOME UNTIL JUNE 01 2016, 3 DAYS AFTER THEY HAD ALREADY SEARCHED ALL THREE PLACES AND SEIZED PETITIONERS, PHONE, CAR, AND PERSON, CLEARLY IN VIOLATION OF THE SUPREME COURTS RULINGS IN MISSOURI V MCNEELY 569 U.S. -, 133 S.Ct. 1552, 1557, 1561-64, AND 1574 WHERE IT CLEARLY STATES "

" IF CELL PHONES AND E-MAIL MEAN THAT THERE IS TIME TO CONTACT A MAGISTRATE AND SECURE A WARRANT, THAT MUST BE DONE."

THE NINTH CIRCUIT HAS HELD " THAT SEARCHING AN ARRESTEE'S PHONE ' BEYOND WHAT IS IN PLAINVIEW ' IS AN UNREASONABLE SEARCH UNDER THE FOURTH AMWDMENT." US V LUSTIG 830 F3d 1075, 1078 (CA9 2016)

ONCE THE OFFICER HAD SECURED POSSESSION OF THE CELL PHONE, THERE WAS NO NEED TO SEARCH IT, WITHOUT FIRST AT LEAST, ATTEMPTING TO OBTAIN PROBABLE CAUSE BY INTERVIEWING WITNESSES AND ATTEMPTING TO OBTAIN A TELEPHONIC SEARCH WARRANT, AND THERE WAS SUFFICIENT TIME.

BY NOT RULING ON THIS ISSUE IT WILL SET A BAD PRECEDENCE IN THE NINTH CIRCUIT BY CAUSING OFFICERS

TO BELIEVE THEY MAY SEARCH A SUSPECTS CELLULAR PHONE IN AN EFFORT TO OBTAIN PROBABLE CAUSE TO OBTAIN A WARRANT TO SEARCH THAT PARTICULAR PHONE, AND THAT ANY EVIDENCE FOUND, DURING THAT ILLEGAL WARRANTLESS SEARCH, MAY BE USED TO OBTAIN A VALID SEARCH WARRANT AND BE ADMISSABLE IN COURT DURING CRIMINAL TRIALS, REGARDLESS OF WHETHER THERE WAS TIME TO OBTAIN A WARRANT OR NOT. MENEELY SUPRA 133 S.Ct AT 1561

PETITIONER PRAYS THIS HONORABLE COURT WILL FIND THAT OFFICERS MAY NOT SEARCH A SUSPECTS CELLULAR PHONE BEYOND WHAT IS IN PLAINVIEW, IN AN ATTEMPT TO OBTAIN PROBABLE CAUSE, TO OBTAIN A WARRANT TO SEARCH THAT PARTICULAR PHONE. AND WILL ORDER THE EVIDENCE FOUND ON PETITIONERS PHONE SUPPRESSED AS WELL AS ANY OTHER SUBSEQUENT EVIDENCE THAT WAS OBTAINED AS FRUIT OF THE POISONOUS TREE OBTAINED THROUGH THE WARRANT OBTAINED THROUGH ILLEGALLY OBTAINED EVIDENCE.

WHICH INCLUDES THE ILLEGAL SEARCH, SEIZURE, AND ARREST. AS THE FOURTH AMENDMENT REQUIRES, "THAT GOVERNMENT OFFICIALS MUST OBTAIN A DETERMINATION OF PROBABLE CAUSE BY A JUDICIAL OFFICER WITH IN 48 HOURS OF ARREST." PETITIONER WAS ARRESTED MONDAY MAY 30 2016 AND AN DETERMINATION OF PROBABLE CAUSE FOR THE ARREST WAS NOT SOUGHT UNTIL THURSDAY JUNE 2 2016 WELL BEYOND THE 48 HOUR REQUIREMENT SEE SERRANO V LONG BEACH 2016 US DIST LEXIS 59412 (9<sup>th</sup> C.I.R.); APPENDIX H.

3) MAY A DISTRICT COURT POSTPONE OR DELAY  
CONDUCTING A FARETTA HEARING UNTIL AFTER  
ALL PRETRIAL MOTIONS HAVE BEEN HEARD AND  
RULED UPON?

THIS IS AN ISSUE OF GREAT NATIONAL AND CONSTITUTIONAL IMPORTANCE, AS WHILE A DEFENDANT IS FORCED TO ENDURE THE ATTENTIONS OF INEFFECTIVE COUNSEL, THE DEFENDANT IS ALSO PROHIBITED FROM PRESENTING ANY MOTIONS IN HIS DEFENSE, AND HAVING ANY CONTROL WHAT-SO-EVER, DURING THE MOST CRITICAL PORTION OF THE TRIAL, - THE PRETRIAL HEARINGS AND PROCEEDING, - THUS, BEING PREJUDICED BY AN ATTORNEY WHO FAILS TO SUBMIT THE NECESSARY MOTIONS TO ALLOW THE DEFENDANT TO PURSUE THE DEFENSE HE CHOOSES. THEREBY PREVENTING THE DEFENDANT THE OPPORTUNITY TO PRESENT CERTAIN EVIDENCE AT TRIAL AND DENYING HIM A FAIR CHANCE TO PRESENT HIS CASE IN HIS OWN WAY, UNDERMINING THE FUNDAMENTAL FAIRNESS OF A CRIMINAL PROCEEDING AS A WHOLE. McKASKLE V. WILGINS 465 US 168, 178 (1989)

THUS, THIS COURT SHOULD HEAR THIS ISSUE AND AFFIRM FOR THE NINTH CIRCUIT, AT WHAT POINT THE DISTRICT COURT MUST UNDERTAKE AN APPROPRIATE FARETTA HEARING. AS THE NINTH CIRCUIT IS INCONSISTANT IN ITS HOLDING IN THIS PARTICULAR AREA.

USING THE INSTANT CASE AS AN EXAMPLE AS OPPOSED TO US V RICE 778 F3d 1021, 1048-49 (CA9 2014) TO SHOW THE INCONSISTENCY IN TWO ANALOGOUS CASES.

IN THE INSTANT CASE:

UPON FIRST APPEARING IN COURT WITH HIS APPOINTED COUNSEL ON NOV 10, 2016 DEFENDANT MADE AN UNEQUIVOCAL REQUEST TO PROCEED IN PRO SE AND HAD PRETRIAL MOTIONS WITH HIM TO PRESENT TO THE COURT, INCLUDING A MOTION TO PROCEED IN PRO SE. SEE APPENDIX J AND G

PETITIONER CLEARLY STATED HIS INTENTION TO PROCEED IN PRO SE ON AT LEAST TWO OCCASIONS IN OPEN COURT, AND WHEN IT BECAME CLEAR TO HIM THE DISTRICT COURT WOULD NOT ALLOW HIM TO PROCEED WITHOUT COUNSEL, HE CONTINUED TO TRY TO SUBMIT IMPORTANT PRETRIAL MOTIONS. THE DISTRICT COURT REFUSED TO ENTERTAIN ANY MOTIONS AND HAD DIFFERENT COUNSEL APPOINTED.

ON JAN 24 2017, AGAIN TRIED TO ASSERT HIS SIXTH AMENDMENT RIGHT TO PROCEED IN PRO SE AND WAS DENIED.

PETITIONER WAS FINALLY, ONE WEEK BEFORE TRIAL, GIVEN A FARETTA HEARING, - AFTER ALL PRETRIAL HEARINGS WERE CONCLUDED, AND A NUMBER OF ISSUES WERE NOT PRESENTED TO THE COURT. PETITIONERS COUNSEL DID NOT SUBMIT A FEW OF PETITIONERS PRETRIAL MOTIONS TO THE COURT, AFTER ALL PRETRIAL HEARINGS WERE CONCLUDED...

ALL OF WHICH WERE DISMISSED AS UNTIMELY.

THE NINTH CIRCUIT RULED THAT PETITIONER HAD THE FARETTA HEARING, SO HIS RIGHT TO PROCEED IN PRO SE WAS AFFORDED HIM.

NOW, IN US V RICE THE SAME SITUATION AROSE AND THE NINTH CIRCUIT HELD THE COURTS DUTY WAS TO HOLD A HEARING AS SOON AS THE DEFENDANT RAISED THE ISSUE:

" ONCE A DEFENDANT MAKES AN UNEQUIVOCAL REQUEST TO PROCEED PRO SE, THE COURT 'MUST' HOLD A HEARING - COMMONLY KNOWN AS A FARETTA HEARING - " id 778 F3d at 1048-49 (CITING US V FARIAS 618 F3d 1049, 1051-52 (CA9 2010)

" ALTHOUGH RICE CLEARLY REQUESTED TO REPRESENT HIMSELF ON MARCH 6, THE DISTRICT COURT DID NOT CONDUCT A FARETTA HEARING UNTIL JULY 28, AND IN THE INTERIM STRUCK A DOZEN PRETRIAL MOTIONS... THE DISTRICT COURT SHOULD HAVE TAKEN UP THE SELF-REPRESENTATION REQUEST MORE EXPEDITIOUSLY. " SEE RAULERSON V WAINWRIGHT 469 US 966, 970, 105 S.Ct. 866, 83 LEd2d 302 (1984) (" ONCE A DEFENDANT

AFFIRMATIVELY STATES HIS DESIRE TO PROCEED PRO SE, A COURT SHOULD CEASE OTHER BUSINESS AND MAKE THE REQUIRED INQUIRY..." BUHL V COOKSEY 233 F3d 783, 794 (CA3 2000) ("ONCE BUHL PROPERLY ASSERTED HIS RIGHT TO PROCEED PRO SE, THE TRIAL COURT WAS OBLIGATED TO UNDERTAKE AN APPROPRIATE INQUIRY..." BROWN V WAINWRIGHT 665 F2d 607, 612 (CA5 1982) (EN BANC); MCKASKLE V WIGGINS 465 U.S. 168, 174 (1984); US V DIVILA 133 S.Ct. 2139, 2149 (2013) *ibid.*

THIS CASE WAS A MERE TWO YEARS PRIOR TO THE INSTANT CASE AND THE NINTH CIRCUIT HELD - THAT THE PROPER PROCEDURE WAS TO "CEASE OTHER BUSINESS AND MAKE THE REQUIRED INQUIRY." BUT IN THE INSTANT CASE THEY HELD "DELAYING UNTIL ALL CRITICAL PRETRIAL MOTIONS WERE CONCLUDED WAS PERMISSIBLE."

IF THIS NEW NINTH CIRCUIT PRECEDENCE IS ALLOWED TO STAND, IT NOT ONLY DENIES A DEFENDANT HIS SIXTH AMENDMENT RIGHTS, BUT CAUSES A CONFLICT IN THE CIRCUITS, AS THIS RULING BY THE NINTH CIRCUIT IS CONTRARY TO, AND CONSTITUTES AN UNREASONABLE APPLICATION OF CLEARLY

ESTABLISHED FEDERAL LAW.

"A VIOLATION OF THE SIXTH AMENDMENT STANDS AS A JURISDICTIONAL BAR TO A VALID CONVICTION AND SENTENCE," JOHNSON V ZERBST 304 US 458, 468, 58 S.Ct. 1019, 82 LEd 1461 (1938); CURTIS V US 511 U.S. 485, 494, 128 LEd2d 517 (1994) ("THE JUDGEMENT OF CONVICTION PRONOUNCED BY A COURT WITHOUT JURISDICTION IS VOID...") Id 304 US AT 468.

THE CORE OF THE FARETTA RIGHT, IS THE RIGHT TO PRESERVE ACTUAL CONTROL OVER THE CASE THE DEFENDANT PRESENTS, SEE McKASKLE V WILGINS 465 US 168, 178 (1989)

FORCING A LAWYER UPON AN UNWILLING DEFENDANT IS CONTRARY TO HIS BASIC RIGHT TO DEFEND HIMSELF. SEE FARETTA V CALIFORNIA 422 US 806, 817 (1976)

PETITIONER PRAYS THIS HONORABLE COURT WILL TAKE THE TIME TO CLARIFY FOR THE NINTH CIRCUIT WHICH OF ITS RULINGS ARE CORRECT, AS TO EXACTLY WHEN THE DISTRICT COURT MUST CEASE OTHER BUSINESS, AND MAKE THE REQUIRED INQUIRY, - "BEFORE ALL CRITICAL PRE-TRIAL MOTIONS ARE HEARD," AS IN THE RICE CASE, OR AFTER, AS IN THE INSTANT CASE.

PETITIONER WAS PREJUDICED BY NOT BEING ALLOWED TO REPRESENT HIMSELF AND SUBMIT OTHER SUSPECT MOTIONS

AND EVIDENCE TO PROVE HIS ACTUAL INNOCENCE BY BEING UNABLE TO POINT OUT THAT:

- 1) BECKY LUKSANS BROTHER CHARLES HAD ACCESS TO PETITIONERS COMPUTER AND CELL PHONE, SINCE JAN 11 2015.
- 2) THAT CHARLES HAD MOLESTED BECKY LUKSAN, AND HER SISTERS, LUKSAN'S DAUGHTER, AND NEICES, AND THE NEICES CHILDREN, CONTINUOUSLY OVER THE PRIOR 60 PLUS YEARS.
- 3) THAT THERE WAS 13 YEARS OF DATA ON PETITIONERS COMPUTER, AND NO PORNOGRAPHY OF ANY KIND, UNTIL ONE MONTH AFTER PETITIONER MET BECKY LUKSAN AND CHARLES IN JAN. 2015. THE FIRST PORNOGRAPHIC IMAGE APPEARS FEBRUARY 19 2015.

PETITIONERS LAWYER REFUSED TO RAISE ANY OF THESE ISSUES AS A DEFENSE IN FRONT OF THE JURY, AND PETITIONER WAS BARRED FROM RAISING THESE IMPORTANT ISSUES HIMSELF, AS HE WAS UNABLE TO SUBMIT ANY MOTIONS AS LONG AS HE WAS REPRESENTED BY COUNSEL.

4) DOES A TRIAL COURT VIOLATE THE SIXTH AMENDMENT WHEN IT GRANTS CONTINUANCES AS A MATTER OF NINTH CIRCUIT POLICY IN DIRECT CONFLICT WITH CONGRESS' INTENTION WHEN ENACTING THE SPEEDY TRIAL ACT OF 1974. 18 U.S.C. § 3161 (h) (7) (c).

IN THE NINTH CIRCUIT IT HAS BECOME A MATTER OF CIRCUIT POLICY TO GRANT "ENDS OF JUSTICE" CONTINUANCES AS A MATTER OF COURSE, ANY TIME ONE IS REQUESTED, REGARDLESS OF THE REASON, AND FOR THE DISTRICT COURT JUDGE TO SIMPLY PARROT "THAT THE ENDS OF JUSTICE WOULD BEST BE SERVED BY GRANTING THE CONTINUANCE" EVEN WHEN THE REASONS FOR GRANTING THE CONTINUANCE FALLS OUTSIDE THE SPECIFIC EXCLUSIONS SET OUT IN 18 U.S.C. § 3161 (h) AND ARE IN DIRECT CONFLICT WITH THE REASONS CONGRESS SET OUT THAT CONTINUANCES MAY-NOT BE GRANTED IN § 3161 (h) (7) (c).

IN THE INSTANT CASE A CONTINUANCE WAS GRANTED AGAINST PETITIONERS WISHES, BECAUSE DEFENSE COUNSEL REQUESTED ONE, SIMPLY BECAUSE, "THE GOVERNMENTS ATTORNEY HAD FAILED TO DILIGENTLY PREPARE FOR TRIAL", BY PRESENTING DEFENSE WITH THE REQUIRED DISCOVERY, AND THAT WAS COMPOUNDED BY "THE COURTS OVERLY CONGESTED COURT CALENDER". SEE APPENDIX I.

THE REASON THE DEFENSE REQUESTED THE CONTINUANCE WAS, FAILURE OF THE GOVERNMENT TO PROVIDE THE REQUIRED DISCOVERY, THAT SAUSA GREGSON HAD IN HER POSSESSION, AS SHE HELD PETITIONER IN STATE CUSTODY FROM MAY 2016 UNTIL OCT 2016, AS SHE PREPARED HER CASE AGAINST HIM IN THE FEDERAL COURT. THUS, SHE HAD NO EXCUSE FOR NOT DILIGENTLY PREPARING AND PRESENTING A DISCOVERY PACKET TO THE DEFENSE, THAT SHE POSSESSED FOR THE PRIOR SIX MONTHS.

THIS EXCUSE FOR A CONTINUANCE, IS NOT INCLUDED IN § 3161 (4), BUT IS EXCLUDED SPECIFICALLY AT § 3161 (4) (7) (C).

THE SUPREME COURT HAS RECOGNIZED THAT DEFENSE COUNSEL MAY NOT SIMPLY WAIVE APPLICATION OF THE ACT AS "THE ACT DEMANDS THAT DEFENSE CONTINUANCE REQUESTS FIT WITHIN ONE OF THE SPECIFIC EXCLUSIONS SET OUT IN SUBSECTION (4)". SEE ZEDNER V US 126 S.Ct. 1976, 1985 (2006). AND THE NINTH CIRCUIT HOLDS "AN ATTORNEY CANNOT WAIVE A SUBSTANTIVE RIGHT OF HIS CLIENT UNLESS SPECIFICALLY AUTHORIZED TO DO SO." HARRIS V BLODGETT 853 F.SUPP. 1239, 1264 (9<sup>th</sup> CIR 1994).

IN THE INSTANT CASE PARTICULARLY, THE DISTRICT COURT GRANTED A CONTINUANCE IN DIRECT VIOLATION OF THE SPEEDY TRIAL ACT, WHERE CONGRESS SPECIFICALLY STATED

"NO CONTINUANCE UNDER SUBSECTION (A) OF THIS PARAGRAPH 'SHALL' BE GRANTED BECAUSE OF A GENERAL CONGESTION OF THE COURTS CALENDAR, OR LACK OF DILIGENT PREPARATION ON THE PART OF THE ATTORNEY FOR THE GOVERNMENT"  
SEE 18 U.S.C. § 3161 (h) (7) (C).

IN THE NINTH CIRCUIT, IN ORDER TO COMPLY WITH THE SPEEDY TRIAL ACT, THE DISTRICT COURT MUST SATISFY TWO REQUIREMENTS:

- 1) THE CONTINUANCE MUST BE SPECIFICALLY LIMITED IN TIME; AND
- 2) IT MUST BE JUSTIFIED ON THE RECORD WITH REFERENCE AS TO THE FACTS, AS OF THE TIME THE DELAY IS ORDERED. 18 U.S.C. § 3161 (h) (7) (1); US V ALVAREZ-PEREZ. 629 F3d 1053; US V LLOYD 128 F3d 1265, 1268 (CA9 1977)

THE ONLY REFERENCES THE DISTRICT COURT MADE IN THE INSTANT CASE, WERE IN DIRECT CONFLICT WITH CONGRESS' MANDATE, AND INTENTION, AS PROVIDED IN § 3161 (h) (7) (C).

- 1) THE COURT REFERENCED THAT GIVEN THE AMOUNT OF INITIAL DISCOVERY PROVIDED, A CONTINUANCE IS WARRANTED. SEE APPENDIX J, PG 8-11

CLEARLY STATING THAT THE GOVERNMENTS LACK OF DILIGENCE IN PROVIDING DEFENSE, WITH DISCOVERY, IT HAD IN ITS POSSESSION FOR SIX MONTHS WAS THE CAUSE OF THE DELAY. SEE ANALOGOUS CASE US V RODRIGUEZ 2014 US DIST LEXIS 84429 (9<sup>TH</sup> CIR) (IN WHICH GOVERNMENT FAILED TO PROVIDE DISCOVERY IN TIMELY FASHION). THE VOLUME OF THE TOTAL DISCOVERY INVOLVED IN THE INSTANT CASE WAS LESS THAN 300 PAGES OF DOCUMENTS. CLEARLY NOT EXCESSIVE. THUS, THERE WAS NO EXCUSE FOR THIS LACK OF DILIGENCE ON THE GOVERNMENTS PART.

- 2) THE COURT THEN STATES "MADAM CLERK, I BELIEVE WE HAD LOOKED AT OUR CALENDAR, DO WE HAVE A POTENTIAL TRIAL DATE THAT WE CAN CONTINUE THIS TO?" MADAM CLERK RESPONDS "YOUR HONOR, I DO NOT HAVE A TRIAL DATE AVAILABLE." IBID.

CLEARLY INDICATING THE NEED FOR THIS CONTINUANCE WAS ALSO, "THE GENERAL CONGESTION OF THE COURTS CALENDAR."

NO OTHER REASONS ARE GIVEN EXCEPT THE GENERIC REASON PARROTED BY THE COURT THAT "THE ENDS OF JUSTICE WOULD BEST BE SERVED BY GRANTING THE CONTINUANCE." AND NO EXPLANATION OF HOW THE COURT ARRIVED AT THIS CONCLUSION, OTHER THAN THE PROSECUTOR'S LACK OF DILIGENCE.

THE COMFORT AND EASE WITH WHICH THIS CONTINUANCE WAS GRANTED WITHOUT CONSIDERATION OF, AND IN DIRECT CONFLICT WITH, § 3161 (h) (7) (C) IMPLIES THAT THIS IS A STANDARD POLICY IN THE NINTH CIRCUIT, AND THE FACT THAT THE NINTH CIRCUIT COURT OF APPEALS REFUSED TO EVEN ADDRESS THIS ISSUE WHEN RAISED, FURTHER IMPLIES THAT THE ISSUE OF DENYING DEFENDANTS THEIR SPEEDY TRIAL ACT RIGHTS, IS COMMON PLACE IN THE NINTH CIRCUIT AND NOT HELD WORTHY OF ACKNOWLEDGEMENT. THUS, THE SIXTH AMENDMENT RIGHTS OF DEFENDANTS ARE ROUTINELY VIOLATED IN THE NINTH CIRCUIT AS A MATTER OF NO CONCERN, THAT AMOUNTS TO A CIRCUIT POLICY OF CONSTITUTIONAL INDIFFERENCE.

THE SUPREME COURT HAS LONG HELD THAT "A VIOLATION OF THE SIXTH AMENDMENT STANDS AS A JURISDICTIONAL BAR TO A VALID CONVICTION AND SENTENCE." JOHNSON V ZERBST, 304 US 458, 468 (1938); CURTIS V U.S. 511 US 485, 494 (1994)

IN THE INSTANT CASE PETITIONER WAS HELD IN STATE

CUSTODY UNDER THE AUTHORITY OF SAUSA GREGSON, FROM MAY 30 2016 UNTIL THE FEDERAL INVESTIGATION WAS COMPLETE, AND SHE WAS PREPARED TO CHARGE HIM FEDERALLY. THE STATE CHARGES SAUSA GREGSON HELD PETITIONER ON WERE SIMPLY A RUSE TO DETAIN THE PETITIONER UNTIL SAUSA GREGSON WAS PREPARED TO PROCEED FEDERALLY, BUT THEN REALIZING THE HOLIDAY SEASON HAD ARRIVED, SHE WITH HELD A PORTION OF THE DISCOVER TO FORCE THE DEFENSE TO REQUEST THE CONTINUANCE SHE DESIRED, THEREBY MANIPULATING THE COURT TO ALLOW HER TO BY PASS THE REQUIREMENTS OF THE SPEEDY TRIAL ACT. SEE US V BOYD 416 FED APPX 539, 600 (CA9 2008) (AN ANALOGOUS CASE)

THERE WAS NO INTENTION OF PURSUING THE STATE CHARGES, BECAUSE OF THE ILLEGAL SEARCH OF PETITIONERS CELL PHONE, THUS, THE STATE CHARGES COULD NOT HAVE SURVIVED A PRETRIAL SUPPRESSION HEARING. THEY WERE SIMPLY A RUSE TO DETAIN PETITIONER UNTIL SAUSA GREGSON WAS PREPARED TO CHARGE PETITIONER FEDERALLY.

THUS, THE SPEEDY TRIAL CLOCK IN THIS CASE BEGAN TO RUN ON MAY 30 2016, AND RAN UNTIL FEB 6 2017. A TOTAL OF 252 DAYS, WELL IN EXCESS OF THE 70 DAYS PERMITTED, 18 U.S.C. § 3161 (C) (1).

THE SUPREME COURT SHOULD RULE ON THIS ISSUE AS

PETITIONERS CASE IS NOT THE ONLY CASE WHERE DEFENDANTS IN THE NINTH CIRCUIT ARE ROUTINELY HELD IN STATE CUSTODY UNDER STATE CHARGES, THAT CAN NOT BE PROVEN, UNTIL FEDERAL PROSECUTORS CAN CONDUCT THEIR INVESTIGATION AND ARE PREPARED TO CHARGE THE DEFENDANT, AND THEN THE STATE CHARGES ARE DISMISSED, IT IS A REOCCURRING ISSUE IN THE NINTH CIRCUIT, THAT IS RANDOMLY DECIDED FOR, OR AGAINST, THE DEFENDANT WITHOUT REASON, AS EVIDENCED BY NUMEROUS CASES DATING BACK DECADES. 522 US V KARTALA 2017 US DIST LEADIS 76556 (9<sup>TH</sup> CIR) (COLLECTING CASES) IN CONTRAST WITH THE INSTANT CASE. AND BOYD SUPRA WHICH IS ANALOGOUS TO THE INSTANT CASE BUT DECIDED FOR NO OBVIOUS REASON FOR THE DEFENDANT IN CONTRAST TO PETITIONERS CASE. RODRIGUEZ SUPRA ALSO STARKLY IN CONTRAST TO PETITIONERS ANALOGOUS CASE.

THE NINTH CIRCUIT DEFENSE ATTORNEYS, ALSO MAKE IT A POLICY TO REQUEST CONTINUANCES, AND NEVER TELL THEIR CLIENTS OF THEIR SPEEDY TRIAL ACT RIGHTS, NOR DO THEY RAISE THE ISSUE, TO PROTECT THE DEFENDANTS RIGHTS BEFORE TRIAL. THUS, PROVIDING INEFFECTIVE ASSISTANCE OF COUNSEL, ALLOWING THEIR CLIENTS SIXTH AMENDMENT RIGHTS TO BE WAIVED WITH OUT THE DEFENDANT EVER KNOWING THOSE RIGHTS EXISTED, UNTIL AFTER THEY HAVE BEEN EFFECTIVELY WAIVED, TAKING UNFAIR ADVANTAGE OF UNEDUCATED

CLIENTS UNAWARE OF THEIR RIGHTS, AND BYPASSING CONGRESS' INTENTION IN DRAFTING 18 U.S.C. § 3161, THE PROTECTION OF THE INDIVIDUALS SIXTH AMENDMENT RIGHTS TO A SPEEDY TRIAL AND DUE PROCESS OF LAW.

IF THE FEDERAL COURTS ARE ALLOWED TO BYPASS THE SPEEDY TRIAL ACT REQUIREMENTS BY SIMPLY NOT INFORMING DEFENDANTS THEY HAVE THESE RIGHTS, AND BY GRANTING CONTINUANCES AS A MATTER OF COURSE, EVEN WHEN IN DIRECT CONFLICT WITH CONGRESS' EXPRESSED INTENTION IN § 3161 (A) (7) (C), THEN THE ENTIRE SPEEDY TRIAL ACT OF 1974 IS MEANINGLESS.

THUS, IT IS NECESSARY FOR THE SUPREME COURT TO ADDRESS THIS ISSUE AND GET IT SETTLED, AS AT THIS POINT THE NINTH CIRCUIT RULES ONE WAY SOMETIMES AND RULES ANOTHER WAY AT OTHER TIMES WITHOUT LOGICAL REASON.

LEAVING THE COMMON MAN NO WAY TO KNOW WHAT TO EXPECT IN THE AREA OF HIS SIXTH AMENDMENT RIGHTS, OR EVEN IF HE HAS SIXTH AMENDMENT RIGHTS TO A SPEEDY AND PUBLIC TRIAL IN THE NINTH CIRCUIT.

CONCLUSION.

PETITIONER RESPECTFULLY PRAYS THAT A PETITION  
FOR A WRIT OF CERTIORARI WILL ISSUE ON THE GROUNDS  
RAISED.

RESPECTFULLY SUBMITTED THIS 20<sup>th</sup>  
DAY OF MAY 2020.

x Robert Thorson  
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