No. 20-1702

IN THE
Supreme Court of the United States

JIMMY COBB,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

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

PETITION FOR WRIT OF CERTIORARI

JIMMY COBB
Pro se

QUESTION PRESENTED

The Eleventh Circuit, affirming Petitioner's conviction under 18 U.S.C. § 2425, which prohibits enticing, encouraging, offering, or soliciting "any person" to engage in sexual activity with a minor, concluded that Petitioner violated the statute by texting his acceptance of a solicitation of prostitution by an undercover police officer who pretended to be under the age of 18, after drawing Petitioner's interest by advertising adult escort services on the internet using photographs of an adult woman to depict her appearance.

The questions presented are:

1. Does a District Court have the have Jurisdiction to punish and convict conduct that does not fall within a Federal Statute of 18 U.S.C 2422(b) and 18 U.S.C. 2425?

2. Does the District Court and Court of Appeals have the authority to make a statute vague after precedence has been set for that statute ?

3. Can the District Court and Court of Appeals relieve Counsel of his fiduciary duty under the Sixth Amendment of the Constitution, by allowing counsel to advise Petitioner to accept a plea deal where Petitioner's conduct did not violate statutes 18 U.S.C. 2422(b) nor 18 U.S.C. 2425?

PARTIES TO THE PROCEEDINGS BELOW

There are no parties to the proceeding other than those listed in the style of the case.

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The decision of the Eleventh Circuit Court of Appeals, reported at United States v. Cobb, is contained in the Appendix (1a-3a).

STATEMENT OF JURISDICTION

The Eleventh Circuit Court of Appeals affirmed the conviction and sentence on April 2, 2021 and denied rehearing on May 2, 2021 (App. 4a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND OTHER PROVISIONS INVOLVED

18 U.S.C. § 2422(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 not less than 10 years or for life.

18 U.S.C. 2425

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 initiates the transmission of the name, address, telephone number, social security number, or electronic mail address of another individual, knowing that such other individual has not attained the age of 16 years, with the intent to entice, encourage, offer, or solicit any person to engage in 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, imprisoned not more than 5 years, or both.

STATEMENT OF THE CASE

On November 16, 2007, a grand jury indicted Petitioner for Attempted Online Enticement of a minor in violation of O.C.G.A. 16-6-5 and 18 U.S.C. 2422(b). Petitioner was arrested as part of an undercover operation conducted by the Georgia Bureau of Investigation (GBI) and the Georgia Internet Crimes Against Children Task Force in Columbus, Georgia on November 11, 2017. On March 5, 2018, Petitioner showed up for trial, but to the

advice of counsel, pled guilty to a superseding count of the use of facilities and foreign commerce to transmit information about a minor in violation of 18 U.S.C. 2425.

Petitioner agreed that Respondent could prove at trial that on November 11, 2017, a GBI uncover agent (UC) posted an ad on "Backpage .com," an adult website, whereby age must be verified as 18 years or older before entering the site. The ad read "Petite little Bad Girl! Ready to please," "Ready for a night you'll never forget? Call me[.]" The UC also posted a phone number and photos of herself posting as a young girl in a hotel room. The ad listed the UC's age as "69" and "[i]n the training and experience of law enforcement, a posting age of '69' is a code for the fact that a child is being advertised for prostitution. Petitioner contacted the UC by text message and stated that he saw the UC's ad on Backpage. The UC told the Petitioner she was 14 years old, Petitioner "stated that he wished to engage in sexual intercourse with the UC at a rate of $20.00 for five minutes of the UC's time," and Petitioner stated he would bring a condom so the UC would not get pregnant. Petitioner called the UC, the UC stated she was 14 years old, and Petitioner repeated that he wanted to have sex with her. During the conversation, the GBI used information from messages and phone call to identify the caller as Petitioner, who lived in Columbus, Georgia. The UC provided the address for the meeting. Petitioner traveled to that address, and Columbus Police Department officers arrested him upon arrival. A Federal Bureau of Investigation (FBI) agent interviewed Petitioner the same day. During that interview, Petitioner stated it was a bad decision to answer the Backpage ad, indicated he did not visit the site seeking to have sex with an underage girl, but admitted he did not terminate conversation with the UC.

Petitioner was sentenced to 24 months imprisonment and a $100 court assessment. Petitioner was also required to provide a DNA sample and comply with the requirements of the Sex Offender Registration and Notification Act under 34 U.S.C. 10901, et seq. Judgment was entered against him on July 17, 2018, the Court received Petitioner's motion to vacate his sentence under 28 U.S.C. 2255, alleging ineffective assistance of counsel. On December 28, 2018, the Court received Petitioner's motion to supplement alleging actual innocence and lack of Jurisdiction. The Court received his first motion for summary judgment on January 3, 2019, and his motion for default judgment on February 1, 2019, and Respondent responded on February 4, 2019. The Court

received Petitioner's first reply on February 25, 2019, and his identical second reply on March 7, 2019.

REASON FOR GRANTING THE WRIT

1. **Does a District Court have the have Jurisdiction to punish and convict conduct that does not fall within a Federal Statute of 18 U.S.C 2422(b) and 18 U.S.C. 2425**

It is certainly true that each federal criminal statute contains a jurisdictional element which connects the statute to one of Congress enumerated powers, thus establishing legislative authority to punish certain conduct. ***Torres v. Lynch***, 136 S. Ct. 1619, 1630, 194 L. Ed. 2d 737 (2016). This jurisdiction component, as well as the substantive elements, must be proved beyond a reasonable doubt. ***Kozak v. United States***, 2018 U.S. Dist LEXIS 17350 (11th Cir. 2018). Each statute has a purpose that Congress set out to prohibit and punish a given conduct thus giving Federal Courts Jurisdiction.

I

As the offense of 18 U.S.C. 2422 (b) states per the jury instruction, the first element of proof that the government must prove as the Eleventh Circuit Court of Appeals stated, "Combining the definition of attempt with the plain language 2422 (b), the government must prove that [the defendant], using the internet, acted with specific intent to persuade, induce, entice, or coerce a minor to engage in unlawful sex. ***United States v. Murrell***, 368 F.3d 1283 (11th Cir. 2004).

The Court of Appeals stated in the denial of Cobb's COA and agreed with Cobb that he never used the Internet violate 2422 (b) and stated, "Reasonable jurist would not debate the denial of this claim, as both statutes require only that a defendant "us[e] the mail or any facility or means of interstate or foreign commerce," not exclusively the Internet. See 18 U.S.C. 2422 (b) and 2425. Mr. Cobb admitted that he used his cellphone to both text message the UC using the number listed on the Backpage ad. We previously have held that cellular phones are instrumentalities of interstate commerce. ***See United States v. Evans,*** 476 F.3d 1176, 1180-81 (11th Cir. 2007). Therefore, even if he did not use the internet to communicate with the UC, the District Court had jurisdiction to convict and sentence him. App. 3a

Cobb avers, that if the Court of Appeals reliance on the fact that he used a cellphone, and not the internet to communicate with the UC, why is it the first element of proof that the government must establish, which is defined by Congress for this statute. See ***Murrell***. It states nothing about electronic devices or mail system..., it specifically states, that the use of the Internet must be present to sustain a conviction. Therefore, without this element,

and the substantive elements of 2422 (b) there can be no conviction.

Furthermore, the Eleventh Circuit stated, "that if anything, our precedent has acknowledged that offline conduct can form part of the basis for a substantial step." Government must prove that the defendant knowingly intended to commit the crime. ***Syed v. United States***, 2018 U.S. Dist LEXIS 132890 (11th Cir. 2018). If 2422(b) prohibition was aimed at online solicitation of a minor, using the internet, then offline conduct cannot satisfy the basis of the statute, according to Congress and the Eleventh Circuit Court of Appeals.

II

The statute 18 U.S.C. 2425 elements are (1) the uses of mail or facility or means of interstate of foreign commerce..., (2) knowingly initiates the name, address, phone number, social security number or electronic mail address of another individual, knowing that individual has not attained the age of 16 year, (3) with the intent to entice, encourage, offer, or solicit any person to engage in any sexual activity with the minor. ***See* 18 U.S.C. 2425.** Its clear that 2425 has three people that are involved to violate this statute according to the plain language of the statute, (1) the defendant, (2) the minor, and (3) the any person (i.e. John) that is being enticed, encouraged, offered, or solicited to have sex with the minor.

The Eleventh Circuit has dealt with this statute and the conduct that Congress prohibits under 2425. James Taylor was fired from a home remodeling job. Mr. Taylor in retaliation, posted a message on an internet bulletin board encouraging men to call the 12-year-

old daughter of the woman who fired him to engage in sexual activities with the daughter. Mr. Taylor was convicted for the use of interstate facilities to transmit information about a minor "with the intent to entice, encourage, offer, solicit any person to engage in criminal activity with the minor. ***United States v. Taylor***, 338, F.3d 1280, 2003 U.S. App. LEXIS 14827 (11th Cir. 2003). Mr. Taylors conduct fail within the scope of 18 U.S.C. 2425 and what Congress sought to punish.

Furthermore, from the Ninth Circuit, in ***United States v. King***, 560 F. Supp. 2d. 906 (9th Cir. 2008), there was a sting operation that suspected prostitution activity into advertisement that were posted on the Craigslist internet website. Upon investigation the agents contacted the information from the site and proceeded to the hotel, where they eventually found that the woman in the ad was a minor accompanied by King. King was charged with violating 18 U.S.C. 1591, sex trafficking of children, and 18 U.S.C. 2425, transmission of information about a minor, for using his computer to post the minors information on the website for others to contact the minor for a sexual encounter.

Even when enhancing an individual for violation of 18 U.S.C. 2425, 2G1.3(b)(3)(B) tracks the same language of the statute 2425. It states that it is used to enhance those that use a computer to entice, encourage, offer or solicit a third party, "john" to engage in sexual conduct with the minor, does not apply without three people- (1) the defendant, (2) the minor, (3) the any person, the person being enticed to have sex with the minor. ***United States v. Murphy***, 530 F. Appx 522, 524 n.1 (6th Cir. 2013)(unpublished)(quoting ***United States v. Lay***, 583 F.3d 436, 448 (6th Cir. 2009)(Merritt dissenting in part)(emphasis added)(internal quotation omitted); ***United States v. Pringler***, 765

F.3d 445 (5th Cir. 2014); ***United States v. Wishman***, 757 Fed. Appx. 391 (5th Cir. 2019)(2G1.3(b)(3)(B) applies only when defendant induces a third party to engage in sexual activity with a minor); ***United States v. Hill***, 783 F.3d 842 (11th Cir. 2015) (Hill used a computer to advertise sexual services of minors).

There is also another case from the Second Circuit concerning 18 U.S.C. 2425. In ***United States v. Giordano***, 442 F.3d 30 (2006), Phillip A. Giordano prosecution on the charges that led to this appeal grew out of an unrelated investigation by the FBI and IRS into political corruption in the city of Waterbury. Giordano, then mayor of Waterbury, was a target of this investigation. On February 18, 2001, the government obtained from United States District Judge Alan H. Nevas of the District of Connecticut an *ex parte* order authorizing it to intercept phone communications of Giordano and other targets of the investigation pursuant to the federal wiretap statute commonly known as "Title III," 18 U.S.C. §§ 2510-2520. Between February and July of 2001, the government continued to monitor calls made to and from Giordano's city-issued cell phones, among others, renewing its Title III application every thirty days and submitting periodic progress reports to the district court. Judge Nevas approved the renewal applications in each instance (a total of seven times).

In the course of this surveillance, the government intercepted 151 calls on Giordano's cell phones to or from Guitana Jones, a prostitute with whom Giordano had a long-term sex-for-money relationship. On July 12, 2001, the government reviewed the contents of a brief July 9 call between Jones and Giordano that suggested that Jones was bringing a nine-year-old girl to Giordano for sex. In another, equally brief July 12 call, Giordano asked if Jones would have with her the nine-year-old or another female

whose age was not discussed. The government had an undercover police officer call Giordano's cell phone on the afternoon of July 12 and leave an anonymous message telling him, in threatening and profane but vague terms, that the caller knew about the little kids and would tell the media if Giordano did not desist. On July 13, the government intercepted a call between Giordano and Jones in which Giordano told Jones about the message and discussed who might have left it. Giordano asked if the father of the second individual was alive, to which Jones replied: "No, [she] don't say nothin'. . . . [T]hey, them kids haven't said anything. They do not say nothing." Giordano answered, "Well someone said something to someone because this dude knew." Later in the same conversation, Jones said: "Nobody knows about them. Nobody. Nobody knows about them at all `cause they don't even say nothing `cause I got them to the point where they're scared, if they say somethin' they're gonna get in trouble. They don't say anything."

The government advised the district court, in filings on July 13 and 18, that it believed that Jones might be procuring for Giordano the sexual services of Jones' daughter and another minor female relative. On July 20, 2001, the government filed a criminal complaint against Jones charging her with violations of 18 U.S.C. §§ 371 and 2425 and obtained a warrant for her arrest. In the early hours of July 21, 2001, state authorities removed Jones' nine-year-old daughter (whom we refer to as "V1") and her eleven-year-old niece ("V2"), from the Jones household. The FBI intercepted a call soon after in which Jones advised Giordano that state authorities had removed the girls. Jones falsely told Giordano that a driver who had taken Jones, V1 and V2 to see Giordano was demanding $200 not to tell the authorities. Giordano placed this sum in an

envelope in the mailbox outside his house. The FBI arrested Jones shortly after she retrieved the money.

At the behest of the FBI, Jones then called Giordano and falsely told him the driver was demanding additional payment. Giordano and Jones agreed to meet in a commuter parking lot on July 23, where Giordano would give her $500. On that date, after Giordano had given Jones money at the parking lot, agents approached him and informed him that they had evidence of his sexual misconduct and other corrupt activities not relevant to the instant appeal. Over the next seventy-two hours, Giordano cooperated with the agents in the ongoing investigation of other targets of the original corruption investigation. On July 26, Giordano was arrested.

Its clear in this case that Giordano, was using Jones via cellphone messages and calls to procure the sexual services of the minors. There is no mention in either Taylor, King, or Giordano where the arrest, prosecution came via them having direct communication with the minor. Meaning that there were always three parties involved the: (1) the defendant (Taylor, King, Giordano), (2) the minors and (3) the men or parties being influenced to have sex with the minor or procure services of the minor (i.e. Jones or the men contacting the minors via phone calls from the information placed on the ads. If this was not the case the statute would have dealt with the prosecution of the men who contacted the minor via the information provided on the ads. But it did not, because that conduct deals with direct communication with the minor which is strictly prohibited under 18 U.S.C. 2422 (b), via the Internet.

The Court of Appeals has not cited any authority to justify the denial of Cobb's COA only that Cobb "initiated the transmission of the UC's information." App. 3a Never stating who Cobb was

trying to entice, encourage, solicit, or offer the minor to a third party to have sex with the UC.

III

It is clear, that the party being punished under 18 U.S.C. 2425, is the party who is trying to directly influence a third party to have a sexual encounter with a minor by initiating the transmission of the minor's information to or for a third party to have access to. Not set to punish the minor nor the third party who is contacting the minor. In the statutes plain language it is clearly trying to keep others from using the minor's information to introduce them into a world on sexual activity with others and is set the punish only those who initiated this sequence for the purpose of exposing the minor, for others sexual pleasures or using others to gain access to the minor, regardless of if the minor is contacted by the third party or not. The statutes plain language is not ambiguous and easily understood, and case law shows that in this circuit and Sister Circuits. The Government, District Court and the Court of Appeals, in Cobb's case, has punished conduct that's not prohibited by statute 18 U.S.C. 2425.

Its unequivocal based on the factual basis of Cobb's case, that the Government posted the ad to encourage others to call the number placed on the Backpage Ad for a sexual encounter which is exactly what Congress sought to punish. Its also clear that Cobb only communicated with the UC through text and phone call that were provided by the Government on the ad. Therefore, if Cobb and the UC were only communicating with one another and there was no third person involved for Cobb to entice, encourage, offer or solicit to have a sexual encounter with the minor, there is no way Cobb conduct fail within the scope of the 2425. Therefore, the District

Court relinquishes jurisdiction because Cobb's conduct does not fall within 18 U.SC. 2425 there could not have been a violation of either statute.

If the Court of Appeals is going to hang its hat on the fact the Cobb used a cellular phone to text and call the UC and disregard the substantive side of the law the District Courts will always be able to overreach and punish conduct that does not violate federal law. If that is the case O.C.G.A 40-6-241, which is Georgia's text and driving statute, could be punished in the District Courts only on the basis that a cellphone was used. Conduct with the cellphone would be irrelevant. This would abolish the states authority to punish any crime where a cellphone is used. However, outside of the use of the cell phone, the conduct does not violate any federal statute, so therefore the District Court does not have jurisdiction to punish and convict.

III

The Court of Appeals uses Evans as the case to justify denying Cobb Certificate of Appealability, App. 3a, Cobb think its only right to examine Evans's conduct and crime of conviction to if Cobb and Evans conduct and crimes are the same.

In ***United States v. Evans***, Evans was convicted of enticing a minor to engage in commercial sex act in violation of 18 U.S.C. 1591 (a)(1) and enticing a minor to engage in prostitution in violation of 2422 (b). (476 F.3d 1176 (11th Cir. 2007)). Evans ran a prostitution ring in the State of Florida whereby he employed a minor, 14-year-old as a prostitute, serving as her pimp. Evans would set up meeting with the client meeting by calling and

receiving phone calls from those interested. Evans's argument was that since his phone calls were intrastate the District Court never had jurisdiction to punish and convict and that it was purely a state matter. The Court ruled that because the phone lines were an instrument of interstate commerce, even if the calls were intrastate, under the Commerce Clause and because there is a national interest to put an end to sex trafficking of children, the court had jurisdiction over the charge.

There are two distinct differences between Cobb and Evans case. First, Evans was a completed act and was never indicted or charged with Attempted Online Enticement. Two, Cobb argument has never been that intrastate calls, as in Evans's case, were not of the District Courts jurisdiction.

IV

The Sixth Circuit has also dealt with this issue and the use of mail and interstate commerce when prosecuting defendants for violation of 2422(b).

In ***United States v. Spencer***, 2013 Dist LEXIS 77522 (6th Cir. 2013), Mr. Spencer had an ongoing relationship with his daughter. Spencer text his daughter about having sex with her again and mailed letters from jail describing sex act he wanted to participate with her.

In Honorable Judge Terrance P. Kemp Opinion to the court, he stated that:

"this is a very difficult case, at least in part, because, based on the history of the statute

and on the legislative history, which does exist, there is no evidence that Congress was concerned with this type of conduct when it enacted and amended 2422(b). Its would be hard to argue that Mr. Spencer is an "online predator" or that he was a pedophile in active search of a child victim. Further, the criminality of his conduct appears to lie primarily in his relationship with his daughter, a matter of state law punishes as sexual battery; texts and letter, sent well after sexual relationship was established, were not means to the end of finding a sexual partner.

However, even though there is little evidence that Congress was concerned about criminalizing incestuous relationships which involve, in some fashion, the use of text messages or letters, the Court must divine Congress' intent not from remarks in legislative reports but from the words Congress chose; the latter received the necessary votes to become law, while the former did not. It is the "rare case[] [where] the literal interpretation of a statute will produce a result demonstrably at odds with the intentions of its drafters" so that the courts must consider the drafters' intentions, rather than the words of the statute, to be controlling. ***Griffin v. Oceanic Contractors***, 458 U.S. 564, 571, 102 S. Ct. 3245, 73 L. Ed. 2d 973 (1982). That result is usually reserved for cases where the statutory language is clear but the result of applying the statute, as written, would "lead to internal inconsistencies, and absurd result, or an interpretation inconsistent with the intent of Congress..."

V

Given Murrell, where the Eleventh Circuit expressly stated Congress intent when it came to 2422(b) and the Sixth Circuit in Spencer, it clear that the plain language of the statute not followed with Congress intent is set to produce inconsistencies of law and absurd results. The Eleventh Circuit made it clear in Taylor, under 18 U.S.C. 2425, where that Taylors conduct fell within the scope of the statutes plain language.

2. Does the District Court or Court of Appeals have the authority to make a statute vague after precedence has been set for that statute

[T]he terms of a penal statute [...] must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties...and a statute which either forbids or requires the doing of an act in terms of vague that men of common intelligence must necessarily guess at its application violates the first essential of due process of law. ***Connally v. General Construction Co.***, 269 U.S. 385, 391 (1926), Justice Sutherland. It is held that a "penal statute must define the criminal offense (1) with sufficient definiteness that ordinary people can understand what conduct is prohibited and (2) in a manner that does not encourage arbitrary and discriminatory enforcement. ***Skilling v. United States***, 561 U.S. 358 (2010).

Cobb argument is not that statute 18 U.S.C. 2422(b) and 2425, is vague, the plain language makes it clear what the statutes prohibitions are. Congress prohibition of each law has been clearly defined.

However, it seems that 2422(b) is 2-fold. One side deal with an attempt and the other deals with the completed act. Which leaves to arbitrary prosecution and combining of a 2-fold statute whenever it is convenient as the Government and the Lower Courts have done in Cobb's case.

I

The statute 18 U.S.C. 2422(b) attempt, provides that, the first element of proof that the Government must have is that they must show that the defendant used the internet to persuade, induce, entice, or coerce the perceived minor into sexual activity. *See* ***Murrell***. Statute 2422(b) completed side seems to punish any use of instrumentalities or means of interstate commerce or foreign commerce. *See* ***Evans***.

As here in Cobb case, the Government provided no proof that Cobb used the internet to communicate with the UC, and the Court of Appeals agreed that not reasonable jurist would debate this fact, App 3a. However, the Court of Appeals has stated that internet use is not necessary to convict for Attempted Online Enticement when the jury instructions clearly states that that is the first element of proof to sustain a conviction for the statute 2422(b). If this is the case, how can any defendant properly prepare himself to defend against this statute or let alone jury instructions, if they disprove an element that must be proven but still be sent to prison for a mandatory minimum of 10 years.

So, the question becomes, is Attempted Online Enticement, 18 U.S.C. 2422(b), set to punish all forms of sexual activity dealing with minors or is it set out only to punish online solicitation under the Attempt portion of the statute. Congress made it clear that it aimed to prohibit online solicitation. Even when Shepardizing 2422(b) in the Eleventh Circuit, all cases involving 2422(b) deals expressly with cases where defendants were using the internet in some form (chat rooms, instant messaging, or email) to communicate with minors to solicit them directly or through an intermediary for sexual acts. The case of Evans is the outlier only

because it did not deal with Attempted Online Enticement however, Evans still managed to be convicted for 18 U.S.C. 2422(b), but on the completed side of the statute.

II

Analyzing 18 U.S.C. 2425, its clear that the statute is set out to punish conduct whereby the defendant initiating the minor's information, via mail, cellphone, or internet, to entice, encourage, offer, or solicit others (any person) to participate in sexual acts with the minor. ***See Taylor, King or Giordano***. If the Eleventh Circuit Court of Appeals and the District Courts can convict and sentence defendants by eliminating the third party out of the statute that is being enticed, encouraged, solicited, o offered the minor for a sexual act then they have basically eliminated an element from the statute and created it on statue to procure a convenient conviction. Punishing direct communication under 2425 will create two meanings for the statute. It does not make sense to interpret 2425 otherwise, if so, Congress would have written it without the "any person" as it did in 18 U.S.C. 2422(b). The Court of Appeals argued that Cobb conflated statutes, but it seems that the Court has done the same by conflating 2422(b) and 2425 when they are clearly two separate statutes that stand on their own and have two different prohibitions. The substantive plain language makes that clear and the penalty for violating each statute is drastically different.

First, it would not make sense for the "any person" to be the defendant, because he would be sending himself/herself the information of the minor to seduce himself. Secondly, the "any

person" would not be the minor, because it would not make sense to transmit the minor own information to the minor to seduce the minor. Statute 2425 is not punishing the seducing of the minor, but a third party. Lastly, the "any person" is only left to be anyone besides the defendant or the minor as precedent shows and the plain language of the statute reads. It only makes sense that way. If that's not the plain language of the statute then how can anyone read that statute and be forewarned about what conduct is set out to be punished.

III

The Supreme Court has dealt with the issue of a vague law. The court states that a vague law is no law at all. The vagueness doctrine rests on the twin constitutional pillars of due process and separation of powers. ***United States v. Davis***, 139 Ct 2319 (2019). Relying on the canon of constitutional avoidance, ...the Court's duty is to adopt any "fairly possible" reading to save the criminal statute from being unconstitutional....To expand or restrict a criminal statute in order to save it would risk offending the very same due process and separation of powers principle on which the vagueness doctrine itself rests and would sit uneasily with the rule of lenity's teaching that ambiguities about a criminal statutes breath should be resolved in the defendants favor. ***United States v. Rumely***, 345 U.S. 41, 45, 47, 73 S Ct. 543, 97 L. Ed. 770 (1953).

And here it seems that the Court of Appeals have made both statutes vague.

3. Can the District Court and Court of Appeals relieve Counsel of his fiduciary duty under the Sixth Amendment of the Constitution, by allowing counsel to advise Petitioner to accept a plea deal where Petitioner's conduct did not violate statutes 18 U.S.C. 2422(b) nor 18 U.S.C. 2425

"In absence of a clearly expressed legislative intention to the contrary, the language of the statute itself must ordinarily be regarded as conclusive." ***United States v. James***, 478 U.S. 597, 606, 106 S.Ct. 3116, 92 L. Ed. 2d 483 (1986)(quoting ***Consumer Product Safety Comm'n v. GTE Slyvania Inc.***, 447 U.S. 102, 108, 100 S. Ct. 2051, 64 L.Ed. 2d. 766 (1980)). "Where the language of a statute is not ambiguous and does not lead to absurd results, the job of the courts is to apply it as written." ***Arline v. School Bd. of Nassau County***, 772 F.2d 759, 762 (11th Cir. 1985), aff'd, 480 U.S. 273, 107 S. Ct. 1123, 94 L. Ed. 2d 307 (1987). This is a basic jurisprudence of law that must be followed by the Courts, consequently counsel is held to the same standard for knowing such.

As the Sixth Circuit has framed it, the question is not whether the counsel was inadequate, but rather counsel's performance was so manifestly ineffective that "defeat was snatched from the hands of the probable victor." ***Beneby v. United States***, 2018 U.S. Dist. LEXIS 81726 (11th Cir. 2018).

I

Given the above facts about Cobb's case and authority the set for lower courts by this Court, its clear that counsel was ineffective.

It is clear, that regardless of what plea charge, the government should not have been able to procure a conviction for the charge of 18 U.S.C. 2422(b). Congress expressed its legislative intent and agreed to by the Eleventh Circuit Court of Appeals, that "Combining the definition of attempt with the plain language 2422 (b), the government must prove that [the defendant], using the internet, acted with specific intent to persuade, induce, entice, or coerce a minor to engage in unlawful sex. ***United States v. Murrell***, 368 F.3d 1283 (11th Cir. 2004). With this being so and agreed to by the Court of Appeals that "no reasonable jurists would debate the denial of this claim, App 3a, why would counsel advise Cobb to plead guilty to anything if it could be shown that there was no violation of 2422(b), because Cobb never used the internet to communicate with the UC.

Further, given that counsel did advise Cobb to plead guilty to a lesser charge of 2425, counsel is still responsible for advising Cobb, under the presumption that Cobb's conduct violated 18 U.S.C. 2425. Its clear that 2425 requires three parties:(1) the defendant (Cobb), (2) the minor (UC), and (3) the any person, which Cobb initiated the transmission of the minors information to someone to entice, encourage, offer, or soliciting them to have sexual activity with the minor (UC). The facts of the case clearly show that Cobb only responded to the ad on Backpage that was posted by the Government in the sting operation. And there was only direct communication between the Cobb and the UC, and Cobb never transmitted the UC's information to anyone for the purposes of enticing that individual to have sex with the minor (UC). ***Id. Taylor, King, Giordano.***

If counsel has no knowledge of what is required to violate each statute, which is their responsibility, how can he properly advise the defendant whether to go to trial or plead guilty.

II

Only a voluntary and intelligent plea is constitutionally valid. ***Bousley v. United States***, 523 U.S. 614 (1998); ***Brady v. United States***, 397 U.S. 742, 748 (1970). A plea is not intelligent unless he receives a real notice of the nature of the charge against him. ***Smith v. O' Grady***, 312 U.S. 329, 334 (1941).

Justice Stevens in ***Bousely*** made it perfectly clear, the fact that all of the petitioner's advisors acted in good faith does not mitigate reliance on existing precedence impact of that erroneous advice. Its consequences for the petitioner were just as severe, and just as unfair, as if the court conspired to deceive him to induce him to plead guilty to a crime that he did not commit. *Id.* @ 626. Our cases make it perfectly clear that a guilty plea based on misinformation is constitutionally invalid. ***Smith v, O'Grady***, 312 U.S. 329, 334 (1941); ***Henderson v. Morgan***, 426 U.S. 637, 644-645 (1976). There can be no room for doubt that such a circumstance 'inherently results in a complete miscarriage of justice' and present[s] exceptional circumstances' that justify relief under [28 U.S.C. 2255." ***Davis v. United States***, 417 U.S. 333, 346-347 (1974).

CONCLUSION

For under our Federal System, it is only Congress, and not the courts, which can make conduct criminal. ***United States v. Lanier***, 20 U.S. 259, 267-268, n.6 (1997): ***United States v. Hudson***, 7 Cranch32 (1812). Its clear in Cobb's case that the Court of Appeals have completely ignored this rule of law which is the foundation of the Federal system.

If Courts are allowed to go against this rule of law then any person or conduct is subject to Federal jurisdiction even if their conduct did not violate a federal statute.

For the foregoing reasons, Mr. Cobb respectfully request that this court issue a writ of certiorari to review the judgment of Eleventh Circuit Court of Appeals.

DATED this 30th day of May, 2021.

Respectfully Submitted,

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Pro Se