

NO. 20-6739
IN THE SUPREME COURT OF THE UNITED STATES

LARUN E. MILLER,

v.

UNITED STATES

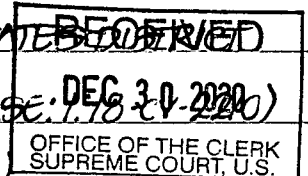
ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES DISTRICT COURT/COURT OF APPEALS
FOR THE SIXTH CIRCUIT

• ON PETITION FOR A WRIT OF CERTIORARI •

LARUN E. MILLER, PROSE-PETITIONER RESPECTFULLY PETITIONS THIS COURT FOR A 'WRIT OF CERTIORARI' TO REVIEW THE DENIAL OF HIS MOTION PURSUANT TO 28 USC 2255, AND THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY BY THE UNITED STATES DISTRICT COURT, AND THE COURT OF APPEALS FOR THE SIXTH CIRCUIT.

• OPINIONS BELOW •

THE PETITIONER SEEKS REVIEW OF THE SIXTH CIRCUIT COURT OF APPEALS DENIAL OF THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY (CASE: 19-3944) (APP.-F); THE 'PETITION FOR REHEARING AND SUGGESTION FOR AN 'EN BANC' REHEARING (APP.-C); THE DENIAL OF 'EN BANC' REHEARING (APP.-A) AND; REHEARING (APP.-B). FURTHERMORE, DUE TO THE IMPORTANCE OF THE ISSUES, HE WOULD SEEK A REVIEW OF THE UNITED STATES DISTRICT COURT'S DENIAL OF HIS MOTION PURSUANT TO 28 USC 2255 (CASE: 19-3944) AND THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY (APP.-F).



• QUESTIONS PRESENTED •

1. DOES THE SIXTH CIRCUIT ERR IN THEIR REFUSAL/FAILURE TO ADDRESS THE CONFLICT AMONGST THE CIRCUITS, WHILE ACKNOWLEDGING A PERSUASIVE SPLIT AMONGST THE CIRCUITS REGARDING THE AMBIGUITY OF 18 U.S.C. 2260A?
2. DOES THE SIXTH CIRCUITS REFUSAL TO ADOPT OR RECOGNIZE THE AVAILABILITY OF THE OUTRAGEOUS GOVERNMENT CONDUCT, AND WHETHER THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT GRANTS DEFENDANTS THE RIGHT TO RAISE OUTRAGEOUS GOVERNMENT CONDUCT AS A DEFENSE, CREATE A CONFLICT WITH THIS COURTS PRECEDENT IN UNITED STATES V. RUSSELL, 411 U.S. 423, 430, AND; UNITED STATES V. HAMPTON, 425 U.S. 484?
3. DID THE SIXTH CIRCUIT HAVE JURISDICTION TO CHARGE PETITIONER WITH 'ATTEMPTED ENTICEMENT' IN VIOLATION OF 18 USC 2422(b) WHERE AN ESSENTIAL ELEMENT OF "FOR WHICH ANY PERSON CAN BE CHARGED WITH A CRIMINAL OFFENSE" CANNOT BE PROVEN WITHOUT A SHOWING THAT HAD THE OFFENSE OCCURRED IT WOULD HAVE OCCURRED WITHIN THE SIXTH CIRCUIT/STATE OF OHIO?
4. DID THE LOWER COURTS ERR IN ASSESSING DUE PROCESS VIOLATIONS, AND INEFFECTIVE ASSISTANCE OF COUNSEL IN DENYING THE GRANT OF 28 USC 2255, INCLUDING THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY?

5. CAN A LOWER COURT FIND ALL ESSENTIAL ELEMENTS OF AN 'ATTEMPTED' VIOLATION OF 18 USC 2251(a) AND (c) WITHOUT A SHOWING OF THE ACHIEVEMENT OF ASSENT, AND MEANS TO HAVE PRODUCED?
6. DOES THE ESSENTIAL ELEMENT OF A 'SUBSTANTIAL STEP' NECESSARY IN ATTEMPT OFFENSES, IN FAILING TO PROVIDE FAIR NOTICE AS TO WHAT IS PROHIBITED BECOME UNCONSTITUTIONALLY VOID FOR VAGUENESS?

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• I. THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CONFLICT AMONG THE CIRCUITS REGARDING THE AMBIGUITY OF 18 USC 2260A / LEGALITY OF 2260A.

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• II. THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CONFLICT BETWEEN THE SIXTH CIRCUIT AND ITS SISTER CIRCUITS (OTHER CIRCUITS AND THE PRECEDENT OF THIS COURT REGARDING ITS REFUSAL OF THE AVAILABILITY / RECOGNITION OF AN OUTRAGEOUS GOVERNMENT CONDUCT DEFENSE UNDER THE DUE PROCESS CLAUSE.

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• III. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW WHETHER ASSERTED JURISDICTION IN COUNT 1 18 USC 2422(b) WAS PROPER.

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• IV. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW THE DENIAL OF PETITIONERS 28 USC 2255, AND THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY.

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• V. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW WHETHER THERE WAS SUFFICIENT EVIDENCE FOR A FINDING OF GUILT IN COUNT 2 CHARGING 18 USC 2251(a) AND (e).

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• JURISDICTION •

THE JURISDICTION OF THIS COURT IS INVOKED PURSUANT TO 28 USC 1254(1).

• CONSTITUTIONAL AND STATUTORY PROVISIONS •

THIS CASE INVOLVES THE 'FOURTH AMENDMENT', TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES IN RELEVANT PART, THAT: "THE RIGHT OF THE PEOPLE TO BE SECURE AGAINST UNREASONABLE SEARCHES, AND, SEIZURES."

THIS CASE INVOLVES THE 'FIFTH AMENDMENT', TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES IN RELEVANT PART, THAT: "NO PERSON 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."

THIS CASE INVOLVES THE 'SIXTH AMENDMENT', TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES IN RELEVANT PART, THAT: "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY TRIAL ...," AND; "TO BE CONFRONTED WITH WITNESSES AGAINST HIM....," AND; "TO HAVE THE ASSISTANCE OF COUNSEL."

• STATUTORY PROVISIONS •

THIS CASE INVOLVES 18 USC 2422(b), WHICH PROVIDES IN RELEVANT PART, THAT: "WHOEVER ENTICES ANY INDIVIDUAL WHO HAS NOT ATTAINED THE AGE OF 18 YEARS, TO ENGAGE IN ANY SEXUAL ACTIVITY FOR WHICH ANY PERSON CAN BE CHARGED WITH A CRIMINAL OFFENSE, OR ATTEMPTS TO DO SO..."

THIS CASE INVOLVES 18 USC 2250.

THIS CASE INVOLVES 18 USC 2251(a), WHICH PROVIDES IN RELEVANT PARTS, THAT: "ANY PERSON WHO PERSUADES, INDUCES, ENTICES, OR COERCES ANY MINOR TO ENGAGE IN ANY SEXUALLY EXPLICIT CONDUCT FOR THE PURPOSE OF

PRODUCING ANY VISUAL DEPICTION OF SUCH CONDUCT"... SHALL BE PUNISHED AS PROVIDED UNDER SUBSECTION (e), IF SUCH KNOWS.... THAT VISUAL DEPICTION 'WAS' PRODUCED OR TRANSMITTED USING MATERIALS THAT HAVE BEEN MAILED..... IN INTERSTATE COMMERCE....."

THIS CASE INVOLVES 18 USC 2251 (e), WHICH PROVIDES IN RELEVANT PARTS, THAT:
 "ANY INDIVIDUAL WHO.... ATTEMPTS.... TO VIOLATE THIS SECTION SHALL BE FINED UNDER THIS TITLE, AND IMPRISONED NOT LESS THAN 15 YEARS, NOR MORE THAN 30 YEARS. BUT.... IF SUCH PERSON HAS 2 OR MORE PRIOR CONVICTIONS UNDER THIS CHAPTER, CHAPTER 71, CHAPTER 109A, OR CHAPTER 117..... OR UNDER THE LAWS OF ANY STATE RELATING TO THE SEXUAL EXPLOITATION OF CHILDREN. SUCH PERSON SHALL BE.... IMPRISONED NOT LESS THAN 35 YEARS."

THIS CASE INVOLVES 18 USC 2260A, WHICH PROVIDES IN RELEVANT PARTS, THAT:
 "WHOEVER BEING REQUIRED BY FEDERAL OR OTHER LAW TO REGISTER AS A SEX OFFENDER, COMMITS A FELONY OFFENSE INVOLVING A MINOR...."

THIS CASE INVOLVES, 19 USC 3161 (b), WHICH PROVIDES IN RELEVANT PART, THAT:
 "ANY INFORMATION OR INDICTMENT CHARGING AN INDIVIDUAL WITH THE COMMISSION OF AN OFFENSE SHALL BE FILED 'WITHIN THIRTY DAYS' FROM THE DATE ON WHICH SUCH INDIVIDUAL WAS ARRESTED OR SERVED WITH A..."

THIS CASE INVOLVES, 18 USC 3161 (c), WHICH PROVIDES IN RELEVANT PART, THAT:
 "IN ANY CASE IN WHICH A PLEA OF NOT GUILTY IS ENTERED, THE TRIAL OF A DEFENDANT CHARGED IN AN INFORMATION OR INDICTMENT WITH THE COMMISSION OF AN OFFENSE SHALL COMMENCE WITHIN SEVENTY DAYS"

THIS CASE INVOLVES 28 USC 2255, WHICH PROVIDES: "A FEDERAL PRISONER MAY FILE A MOTION TO VACATE, SET-ASIDE OR CORRECT A SENTENCE UPON THE GROUND THAT THE SENTENCE WAS IMPOSED IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES, OR THAT THE COURT WAS WITHOUT JURISDICTION TO IMPOSE SUCH SENTENCE, OR THAT THE SENTENCE WAS IN EXCESS OF THE MAXIMUM AUTHORIZED BY LAW, OR IS OTHERWISE SUBJECT TO COLLATERAL ATTACK."

• PROCEDURAL PROVISIONS •

THIS CASE INVOLVES THE FEDERAL RULES OF CRIMINAL PROCEDURE 5(b): (RULE 5(b)): WHICH PROVIDES THAT: "IF A DEFENDANT IS ARRESTED WITHOUT A WARRANT, A COMPLAINT MEETING RULE 4(a)'S REQUIREMENT OF PROBABLE CAUSE MUST BE PROMPTLY FILED..."

THIS CASE INVOLVES OHIO RULES OF CRIMINAL PROCEDURE 4(E)(2): WHICH PROVIDES THAT: "WHERE A PERSON IS ARRESTED WITHOUT A WARRANT THE ARRESTING OFFICER SHALL BRING THE ARRESTED PERSON WITHOUT UNNECESSARY DELAY BEFORE A COURT HAVING JURISDICTION OF THE OFFENSE, AND SHALL FILE A COMPLAINT DESCRIBING THE OFFENSE FOR WHICH THE PERSON WAS ARRESTED."

THIS CASE INVOLVES RULE 11 OF THE RULES GOVERNING SECTION 2255 PROCEEDINGS, WHICH STATES: "A COURT MAY ISSUE A CERTIFICATE OF APPEALABILITY ONLY IF THE PETITIONER MAKES 'A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT.'" 28 USC 2253(c)(2). IN ORDER TO OBTAIN A CERTIFICATE OF APPEALABILITY, THE PETITIONER MUST SHOW "THAT REASONABLE JURISTS COULD DEBATE WHETHER (OR, FOR THAT MATTER, AGREE THAT), THE PETITION SHOULD HAVE BEEN RESOLVED

IN A DIFFERENT MANNER OR THAT THE ISSUES PRESENTED [ARE]
'ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER.'

• STATEMENT OF CASE •

THE CASE RAISES ISSUES OF EXCEPTIONAL IMPORTANCE TO THIS COURT TO RESOLVE CONFLICTS AMONG THE CIRCUITS, AND TO PREVENT FURTHERING SPLITS AMONG THE CIRCUIT, WHOM CHOSE NOT TO ADDRESS QUESTIONS 'AT THIS TIME', WHERE THE INFRINGEMENTS OF CONSTITUTIONAL PROTECTIONS ARE CONCERNED.

A REVIEW BY THIS COURT IS REQUESTED TO ADDRESS THE LOWER COURTS DENIAL OF PETITIONERS 28 U.S.C. 2255, AND THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY. WHERE HE HAS MADE THE "SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT", WHICH IS "DEBATABLE AMONG JURISTS..."

THIS CASE RAISES THE CONFLICT RESULTING FROM THE SIXTH, AND ELEVENTH CIRCUITS REFUSAL TO ADDRESS THE AMBIGUITY OF 18 USC 2260A, AS HELD IN: UNITED STATES V. DAHL, 2015 U.S. DIST. LEXIS 1596 (3rd CIR.).

THIS CASE RAISES WHETHER THE SIXTH CIRCUITS DECISION / STATEMENT OF "REGARDLESS OF THE PROPRIETY OF THE GOVERNMENTS ACTIONS IN THIS CASE", THE SIXTH CIRCUIT HAS NOT ADOPTED THE OUTRAGEOUS GOVERNMENT CONDUCT DEFENSE". CONFLICTS WITH THIS COURTS PRECEDENT OF: RUSSELL, 411 U.S. 423, 431-432 (1973). THE CONDUCT OF GOVERNMENT AGENTS MAY BE "SO OUTRAGEOUS THAT DUE PROCESS PRINCIPLES WOULD ABSOLUTELY BAR THE GOVERNMENT FROM INVOKING JUDICIAL PROCESSES TO OBTAIN

A CONVICTION." FURTHERMORE, WHETHER THE SIXTH CIRCUIT IS IN A CONFLICT WITH THIS COURTS STANDING OF THE "OUTRAGEOUS GOVERNMENT CONDUCT" DOCTRINE PRECEDENT AS THIS COURT HAS HELD IN HUTTO V. DAVIS, 454 U.S. 370: "A PRECEDENT OF THIS COURT MUST BE FOLLOWED BY LOWER COURTS...."

WHETHER THE SIXTH CIRCUIT HAD JURISDICTION TO CHARGE AN 'ATTEMPT VIOLATION' OF 18 U.S.C. 2422(b), WHERE NO ACT IS SHOWN/ PROVEN TO HAVE OCCURRED, OR WAS PLANNED TO HAVE OCCURRED WITHIN THE SIXTH CIRCUIT, OR STATE OF OHIO, TO SUPPORT A HYPOTHETICAL ALLEGATION THAT PETITIONER COULD HAVE BEEN CHARGED WITH (O.R.C) OHIO REVISED CODE 2907.04?

WHETHER THE LOWER COURTS FOUND THE ESSENTIAL ELEMENTS OF AN 'ATTEMPT' VIOLATION OF 18 U.S.C. 2251 (a), AND (c) NECESSARY FOR A CONVICTION, WITHOUT A SHOWING THAT PETITIONER PERSUADED, INDUCED, ENTICED OR COERCED, THEREBY ACHIEVING THE ASSENT OF THE [FICTITIOUS] MINOR, AND WITHOUT THE MEANS TO HAVE PRODUCED ANY SUCH VISUAL DEPICTION?

WHETHER THE ESSENTIAL ELEMENT OF A 'SUBSTANTIAL STEP' NECESSARY IN ATTEMPT OFFENSES IS UNCONSTITUTIONALLY VOID FOR VAGUENESS IN FAILING TO PROVIDE FAIR NOTICE AS TO WHAT IS PROHIBITED?

WHETHER THE LOWER COURT VIOLATED PETITIONERS FEDERAL DUE PROCESS RIGHTS DURING BENCH TRIAL BY COMMITTING SIGNIFICANT SUBSTANTIVE / PROCEDURAL ERRORS IN IMPOSING AN ILLEGAL, AND INAPPLICABLE MANDATORY MINIMUM OF 35 YEARS?

• RELEVANT DATES •

ON JUNE 3, 2014, PETITIONER WAS ARRESTED WITHOUT A WARRANT FOR VIOLATIONS OF 18 USC 2250 (DOC.#1, ID.#2-3, PARA.#6: "ON JUNE 3, DEPUTY (USMS) WILLIAM BOLDIN"....."OFFICERS TOOK MILLER INTO CUSTODY FOR VIOLATIONS OF 18 USC 2250.", AND IN CONNECTION WITH 18 USC 2422, AND 2251(a).

ON JULY 23, 2014, DEPUTY (USMS) WILLIAM BOLDIN FILED CRIMINAL COMPLAINT FOR VIOLATIONS OF 18 USC 2250 (DOC.#1)

ON JULY 25, 2014, PETITIONER (WHILE IN CONTINUOUS CUSTODY) MADE AN INITIAL APPEARANCE ON AN ARREST WARRANT AND CRIMINAL COMPLAINT FOR VIOLATIONS OF 18 USC 2250. (DOC.#7)

ON AUGUST 20, 2014, USA FILED INDICTMENT CHARGING: COUNT 1: 18 USC 2422(b); COUNT 2: 18 USC 2250(a), AND (c); AND COUNT 3: 18 USC 2260A

ON OCTOBER 16, 2014, ATTORNEY DARIN THOMPSON FILED 'MOTION FOR CONTINUANCE'.

ON FEBRUARY 18, 2015: STATUS HEARING (DOC.#82): ASSISTANT U.S. ATTORNEY MICHAEL A. SULLIVAN, INFORMED PETITIONER, DEFENSE COUNSEL AND COURT (ID.#827: 2-6)" IF THIS CASE WERE TO GO TO TRIAL I WOULD SUPERCEDE THE INDICTMENT AND I WOULD SEEK A CHARGE OF ATTEMPTED PRODUCTION OF CHILD PORNOGRAPHY OR ATTEMPTED SEXUAL EXPLOITATION OF CHILDREN IN VIOLATION OF 18 U.S. CODE, SECTION 2251".

ON MAY 1, 2015, THE COURT CONDUCTED A SUPPRESSION HEARING (DOC.#80): WHERE COUNSEL ARGUED THAT DURING INTERROGATION, PETITIONER INFORMED OFFICERS: "I'M GON' PREFER NOT TO ANSWER ANY MORE QUESTIONS, THEN", AND OFFICERS FAILED TO ACKNOWLEDGE HIS RIGHT TO CEASE QUESTIONING, RATHER (ARRESTING OFFICER) DEPUTY U.S.

MARGHAL WILLIAM BOLDINS RESPONSE WAS: "ALL RIGHT. I MEAN LIKE I SAID, YOU CAN ROLL THE DICE AND SEE WHAT THIS STONEWALLING DOES. BUT YOU KNOW, WHAT IF YOU CAN EXPLAIN SOMETHING. ITS A LOT BETTER THAN JUST WHAT THE EVIDENCE IS." (ID.# 788) IN MEMORANDUM OPINION; (DOC.# 34) DENIED IN PART, AND GRANTED IN PART, STATING THAT "THE ADDITION OF THE WORD "THEN" AT THE END OF THE DEFENDANT STATEMENT IS IN, ITSELF, EQUIVOCAL"...

ON AUGUST 12, 2015, USA FILED SUPERCEDING INDICTMENT CHARGING IN COUNT 1: 18 USC 2422(b); COUNT 2: 18 USC 2251(a) AND (e); COUNT 3: 18 USC 2250 (a) AND (c); AND, COUNT 4: 18 USC 2260A (DOC.# 87)

ON JANUARY 14, 2016, PETITIONER FILED 'PRO SE', MOTION TO DISMISS INDICTMENT, OR IN THE ALT, MOTION TO SUPPRESS EVIDENCE (DOC.# 55) WHEREIN, PETITIONER RAISED: UNNECESSARY DELAY IN PRESENTMENT, PRE-INDICTMENT DELAY, SPEED TRIAL VIOLATIONS, PROCEDURAL / SUBSTANTIVE DUE PROCESS VIOLATIONS, FOURTH, FIFTH AND SIXTH AMENDMENT VIOLATIONS. ON JANUARY 21, 2016, PETITIONER FILED 'PRO SE' MOTION TO SUPPRESS EVIDENCE (DOC# 60): WHEREIN, PETITIONER RAISED: PRETEXTUAL ARREST, AND EVIDENCE OBTAINED IN VIOLATION OF THE FOURTH AMENDMENT.

THESE MOTIONS WERE DENIED NOT UPON MERITS, BUT NOT BEING ENTITLED TO HYBRID REPRESENTATION.

ON JANUARY 25-27, 2016, THE COURT CONDUCTED A BENCH TRIAL BEFORE S. LIOI

ON FEBRUARY 1, 2016, THE COURT RENDERED LARUNE E. MILLER PETITIONER, GUILTY ON ALL COUNTS: 1: 18 USC 2422(b), 2: 18 USC 2251(a) AND (e) 3: 18 USC 2250(a), AND; 4: 18 USC 2260A.

ON MAY 19, 2016, THE COURT SENTENCED PETITIONER TO A MANDATORY MINIMUM OF 35 YEARS IN; COUNTS 1, AND 2 18 USC 2422(b), 2251(a), AND (e), TO BE SERVED CONCURRENTLY; IN COUNT 3 18 USC 2250(c), TO 10 YEARS TO BE SERVED CONCURRENTLY TO COUNTS 1, AND 2. IN COUNT 4: 18 USC 2260A TO 10 YEARS TO BE SERVED CONSECUTIVE TO COUNTS 1, 2, AND 3.

ON JUNE 13, 2017, THE SIXTH CIRCUIT COURT OF APPEALS AFFIRMED (CASE: 16-3557)

ON AUGUST 2, 2017, SIXTH CIRCUIT COURT OF APPEALS, DENIED 'EN BANC'

ON OCTOBER 30, 2017, PETITION FOR WRIT OF CERTIORARI FILED (CASE: 17-6596)

ON APRIL 30, 2018, THE SUPREME COURT DENIED CERTIORARI

ON SEPTEMBER 25, 2018: PETITIONER FILED MOTION TO VACATE UNDER 28 USC 2255 (CASE NO: 1:18-cv-02210-SL) (DOC.# 97)

ON NOVEMBER 26, 2018: PETITIONER FILED MEMORANDUM IN SUPPORT OF 28 USC 2255 (CASE: 1:18-cv-2210) (DOC.#)

ON AUGUST 12, 2019, THE DISTRICT COURT ISSUED ITS MEMORANDUM OPINION AND ORDER DENYING, PETITIONERS 28 USC 2255, IN CASE 1:18-cv-2210 (DOC.# 114) (APP.: -J)

ON SEPTEMBER 25, 2019, PETITIONER FILED A TIMELY NOTICE OF APPEAL.

THE PETITIONER STATES HE FILED A MOTION FOR EXTENSION OF TIME.

IN NOVEMBER , 2019, PETITIONER FILED AN APPLICATION FOR THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY, AND MEMORANDUM IN SUPPORT.. (CASE 19-3944) (APP.: G)

ON APRIL 2, 2020, ORDER OF THE SIXTH CIRCUIT COURT OF APPEALS DENYING ISSUANCE OF A CERTIFICATE OF APPEALABILITY (CASE: 19-3944) (APP.: -F)

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ON APRIL , 2020. PETITIONER FILED MOTION FOR EXTENSION OF TIME
TO FILE PETITION FOR REHEARING (APP.: -E)

ON APRIL 17, 2020, MOTION FOR EXTENSION OF TIME 'GRANTED'
(APP.: -D)

ON MAY 15, 2020, PETITIONER FILED PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING 'EN BANC' (APP.: -C)

ON JULY 21, 2020, ORDER OF THE SIXTH CIRCUIT COURT OF APPEALS
DENYING PETITION FOR REHEARING (APP.: -B)

ON AUGUST 6, 2020, ORDER OF THE SIXTH CIRCUIT COURT OF APPEALS
DENYING 'EN BANC' REHEARING (APP.: -A)

• REASONS FOR GRANTING 'CERTIORARI' •

FIRST: THE SIXTH CIRCUIT IN ITS MEMORANDUM OPINION AND ORDER (APP.: J
) : STATED: "MILLER HAS IDENTIFIED A SPLIT IN PERSUASIVE AUTHORITY." YET,
CREATES A CONFLICT IN ITS REFUSAL TO ADDRESS THE AMBIGUITY IN 18 USC
2260A AS IDENTIFIED IN U.S. V. DAHL, 2015 US DIST. LEXIS 1596 (3rd CIR.): WHERE
THE COURT HELD: "THE PHRASE 'INVOLVING A MINOR' FOUND IN 2260A CLEARLY
MEANS A ~~REAL~~ REAL PERSON... UNDER EIGHTEEN YEARS OLD, AND DOES NOT
ENCOMPASS AN ADULT SUCH AS A GOVERNMENT AGENT..."

THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CONFLICT CREATED
AS THE RESULT OF THE SPECULATIVE INTERPRETATION OF 2260A BY THE
SIXTH AND ELEVENTH CIRCUITS, RATHER THAN ADDRESSING THE FINDINGS
IN 'DAHL'. CERTIORARI IS NECESSARY TO ENSURE THAT COURTS ARE
AWARE THAT HAD CONGRESS INTENDED 2260A TO ENCOMPASS 'ATTEMPT'
IT KNEW HOW TO DO SO.

SECOND: THE SIXTH CIRCUIT STATED: "FAKING A SUICIDE THREAT TO
INDUCE SOMEONE TO RESUME COMMUNICATIONS DURING A STING OPERATION

IS A CONCERNING TACTIC FOR POLICE OFFICERS TO EMPLOY. HOWEVER, THE SIXTH CIRCUIT HAS NOT ADOPTED THE OUTRAGEOUS GOVERNMENT CONDUCT DEFENSE." SUCH CONFLICTS WITH THE PRECEDENTS OF OTHER CIRCUITS, AND THE PRECEDENT OF THIS COURT IN: RUSSELL, 411 U.S. 423: WHERE THIS COURT EXPLAINED: "THAT SOME GOVERNMENT CONDUCT MAY BE SO 'SHOCKING TO THE UNIVERSAL SENSE OF JUSTICE THAT THEY BAR THE GOVERNMENT FROM INVOKING JUDICIAL PROCESSES."

THIS COURT SHOULD GRANT CERTIORARI TO ENSURE THAT THE PRECEDENTS OF THIS COURT ARE FOLLOWED BY THE LOWER COURTS. RATHER THAN ALLOWING THE SIXTH CIRCUIT TO RESPOND TO A DEFENSE OF OUTRAGEOUS GOVERNMENT CONDUCT WITH "REGARDLESS OF THE PROPRIETY OF THE GOVERNMENT ACTION". THE SIXTH CIRCUIT HAS NOT ADOPTED OUTRAGEOUS GOVERNMENT CONDUCT.

THIRD: THE SIXTH CIRCUIT LACKED JURISDICTION FOR CHARGING 'ATTEMPTED ENTICEMENT' IN VIOLATION OF 18 USC 2422(b), DUE TO THE LANGUAGE OF 2422(b): "CAN BE CHARGED WITH A CRIMINAL OFFENSE". THE LOGICAL INFERENCE IS THAT THE GOVERNMENT BEARS THE BURDEN OF NOT ONLY CITING A CRIMINAL OFFENSE UNDER THE LAWS OF THE STATE, BUT ALSO TO ESTABLISH JURISDICTION. THE GOVERNMENT MUST ALSO BEAR THE BURDEN OF PROOF THAT HAD THE OFFENSE OCCURRED, IT WOULD HAVE OCCURRED WITHIN THE STATE WHERE THE GOVERNMENT ALLEGES PETITIONER "CAN BE CHARGED".

THIS COURT SHOULD GRANT CERTIORARI, IN ORDER TO SET ITS FACE AGAINST JURISDICTION BEING ESTABLISHED, APPLYING A HYPOTHETICAL ALLEGATION OF A INSTANCE WHERE A PERSON MAY BE CHARGED, IN A STATE, WITHOUT PROOF THAT SUCH OFFENSE WOULD HAVE OCCURRED WITHIN SUCH STATE.

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— FOURTH: THE LOWER COURTS IN ASSESSING INEFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS VIOLATIONS, AND SUBSTANTIVE/PROCEDURAL ERRORS, DETERMINED THAT NONE OF HIS CONSTITUTIONAL ^{IN} ~~IN~~ ARGUMENTS HAVE MERIT. IN SUCH DENIAL THE COURTS FAILED TO ADDRESS THE COURT IMPOSING AN ILLEGAL SENTENCE OF AN INAPPLICABLE MANDATORY MINIMUM, BASING THEIR DENIAL OF 'DELAY IN PRESENTMENT' ON A SEPERATE SUBSECTION OF 'RULE 5' OF THE FEDERAL RULES OF CRIMINAL PROCEDURE, AND FURTHERMORE, BASED THEIR DENIAL OF A SPEEDY TRIAL ACT VIOLATION, UPON FABRICATED FACTS MADE WITH A COMPLETE DISREGARD FOR THE TRUTH.

THIS COURT SHOULD GRANT CERTIORARI, TO REVIEW THE DENIAL OF MOTION PURSUANT TO 28 USC 2255, AND THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY.

FIFTH: THE LOWER COURTS FAILED TO FIND ALL ESSENTIAL ELEMENTS IN COUNT 2: CHARGING 'ATTEMPT' VIOLATION OF 18 USC 2251(c) AND (e) 'TO INDUCE OR ENTICE', AS SUCH ONE MUST APPLY AN ORDINARY UNDERSTANDING TO THESE WORDS. THEREBY, THE LOGICAL INFERENCE IS SUCH WORDS MEAN THE CAUSATION OF THE ASSENT OF THE [FICTITIOUS] MINOR. YET, IN THE COURTS FINDINGS OF FACT AND CONCLUSIONS OF LAW (DOC. #61, ID# 59.5) THE COURT STATED: "AFTER THE MINOR APPEARED UNABLE OR UNWILLING TO LOCATE THE CAMERA." THIS IN ITSELF CONTRADICTS ANY ASSUMPTION OF THE ESSENTIAL ELEMENTS BEING MET. FURTHERMORE ONE MUST ALSO INFER THAT TO MEET THE INTERSTATE COMMERCE ELEMENT, THERE MUST BE THE ASSENT OF THE [FICTITIOUS] MINOR TO PRODUCE A VISUAL DEPICTION, AND VIDEO/CAMERA EQUIPMENT TO ENABLE THE

- A PERSON TO KNOW SUCH VISUAL DEPICTION WOULD BE TRANSMITTED
- USING A MEANS OR FACILITY OF INTERSTATE COMMERCE.

THIS COURT SHOULD GRANT CERTIORARI TO REVIEW THE
FAILURE TO PRESENT SUFFICIENT EVIDENCE TO PROVE ESSENTIAL
ELEMENT OF OFFENSE THEREFORE PETITIONERS CONVICTION OF
COUNT 2 18 USC 2251(a) AND (c) IS NOT CONSISTENT WITH THE
DEMANDS OF THE FEDERAL DUE PROCESS CLAUSE.

SIXTH: THE ESSENTIAL ELEMENT OF A 'SUBSTANTIAL STEP'
REQUIRED FOR A CONVICTION IN COUNT 1 18 USC 2422(b) 'ATTEMPT'
AND COUNT 2 18 USC 2251(a) AND (c) 'ATTEMPT', IS UNCONSTITUT-
VAGUE FOR FAILURE TO PROVIDE FAIR NOTICE AS TO WHAT ACT
IS PROHIBITED AS 'SUBSTANTIAL STEP' IS LACKING ANY SPECIFIED
CONDUCT, AND DUE TO SUCH IT ALLOWS FOR ARBITRARY AND
DISCRIMINATORY ENFORCEMENT.

THIS COURT SHOULD GRANT CERTIORARI TO ADDRESS AN ISSUE
OF SUCH IMPORTANCE, AS LOWER COURTS HAVE ONLY DEFINED
THE SUBSTANTIAL STEP AS "MORE THAN MERE PREPERATION". IN
WAYNE R. LAFAVE, CRIMINAL LAW 11.4(a) (5th ed. 2010) IT STATES:
("PRECISELY WHAT KIND OF ACT IS REQUIRED IS NOT MADE VERY
CLEAR BY THE LANGUAGE TRADITIONALLY USED BY COURTS AND
LEGISLATURES"). AS SUCH THE NEED OF THIS COURT IS OVER-
WHELMING TO ASSURE THAT THERE IS NOT A DISCRIMINATORY
INTERPRETATION, THEREBY DEPRIVING A DEFENDANT OF FUNDAMENTAL
FAIRNESS.

SEVENTH: THIS COURT SHOULD GRANT CERTIORARI TO
REVIEW, WHETHER THE COURT CONDUCTING BENCH TRIAL OF

- PETITIONER DEPRIVED HIM OF HIS 'SIXTH AMENDMENT' RIGHT
- TO CONFRONT WITNESS AGAINST HIM, AND RIGHT TO A SPEEDY TRIAL AS WELL AS DID THE COURT COMMIT PROCEDURAL AND/OR SUBSTANTIVE DUE PROCESS VIOLATIONS.

THIS CASE PRESENTS ISSUES OF GREAT IMPORTANCE TO ASSURE UNIFORMITY OF LAW, AND THE PROTECTIONS OF 'OUR' CONSTITUTION

I. THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CONFLICT AMONG THE CIRCUITS REGARDING THE AMBIGUITY OF 18 USC 2260A /LEGALITY OF 2260A.

THE SIXTH CIRCUIT STATED IN ITS MEMORANDUM OPINION AND ORDER (APP.-J)

WHICH DIRECTLY CONFLICTS WITH THE DECISION OF ANOTHER COURT, WHO DID TAKE THE MATTER UNDER REVIEW. IN U.S. v. DAHL, 2015 US DIST. LEXIS 1596 (3d CIR.), PRIOR TO THE THIRD CIRCUIT UNDERTAKING A REVIEW OF 18 USC 2260A, THE ELEVENTH CIRCUIT IN: U.S. v. SLAUGHTER, 708 F.3d 1208: "WE DECLINE MR. SLAUGHTER'S INVITATION TO REACH THE QUESTION OF WHETHER, WITHOUT LIMITATION, A 2260A CONVICTION ALWAYS REQUIRES OFFENSE CONDUCT INVOLVING AN 'ACTUAL MINOR'." "BECAUSE DETERMINATION OF THE ISSUE IS NOT NECESSARY FOR RESOLUTION OF THIS APPEAL." IN 'DAHL', THE COURT IN ITS MEMORANDUM 81 F. SUPP. 3d 406. CONCLUDED: "ACCORDINGLY, WE REITERATE THAT THERE IS NO BASIS TO CONCLUDE THAT "INVOLVING A MINOR" IN 2260A REFERS TO ANYONE OR ANYTHING OTHER THAN A REAL PERSON UNDER THE AGE OF 18 YEARS AS DEFINED IN 2256 (1). SINCE 2260A DOES NOT INCLUDE

AN ATTEMPT CLAUSE, IT DOES NOT APPLY TO AN OFFENSE WHERE THE PERSON BEING ENTICED (81 F. SUPP. 3d 410) IS AN ADULT POSING AS A MINOR." SEE: TYKARSKY, 446 F.3d 464-69. THE COURT ALSO ANALYZES 'SLAUGHTER' "THE 'SLAUGHTER' (2015 U.S. DIST. LEXIS 7) COURT READ INTO 2260A. THE BROADER LANGUAGE OF 2422(b) EVEN THOUGH 2260A USES THE NARROWER LANGUAGE "INVOLVING A MINOR" AND DOES NOT HAVE AN ATTEMPT CLAUSE." "ACCORDINGLY, COURT FACED WHICH AN AMBIGUOUS STATUTE IN A CRIMINAL MATTER MUST "APPLY THE RULE OF LENITY AND RESOLVE THE AMBIGUITY IN [THE DEFENDANTS] FAVOR". SEE: UNITED STATES V. GRANDERSON, 511 U.S. 39 (1994). "WE NEED NOT REACH THIS ISSUE AS THE PHRASE "INVOLVING A MINOR" IN 2260A IS, IN OUR VIEW CLEAR AND UNAMBIGUOUS. IF IT SHOULD SOMEHOW BE DEEMED AMBIGUOUS, THE RULE OF LENITY MUST APPLY, AND ITS LANGUAGE MUST BE CONSTRUED IN 'DAHL'S' FAVOR IN ORDER TO AVOID DENYING HIM FAIR NOTICE AS TO WHAT 2260A PUNISHES". SEE: ASHURCOX, 726 F.3d at 402.

THE PETITIONER STATES THAT THIS COURTS PRECEDENT IN EPIC SYS. CORP. V. LEWIS, 138 S. Ct. 1612, 200 L. Ed 2d.: PROVIDES COMPLETE SUPPORT TO GRANT CERTIORARI, IN ORDER TO REMAND FOR FURTHER PROCEEDINGS AND THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY TO VACATE 18 USC 2260A. "THIS COURT HELD: "CONGRESS COULD HAVE INCLUDED AN ATTEMPT PROVISION IN THE STATUTORY FRAMEWORK, BUT DID NOT. WHEN CONGRESS WANTS TO CRIMINALIZE THE ATTEMPT TO COMMIT A CRIME, IT KNOWS EXACTLY HOW TO DO SO."

II. THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CONFLICT BETWEEN THE SIXTH CIRCUIT AND ITS SISTER CIRCUITS

(OTHER CIRCUITS) AND THE PRECEDENT OF THIS COURT REGARDING ITS REFUSAL OF THE AVAILABILITY/RECOGNITION OF AN OUTRAGEOUS GOVERNMENT CONDUCT DEFENSE UNDER THE DUE PROCESS CLAUSE.

IN THE PRESENT CASE, THE SIXTH CIRCUITS RESPONSE TO THE ARGUMENT OF 'OUTRAGEOUS GOVERNMENT CONDUCT' WAS "REGARDLESS OF THE PROPRIETY OF THE GOVERNMENT ACTION", THE "SIXTH CIRCUIT HAS NOT ADOPTED OUTRAGEOUS GOVERNMENT CONDUCT"

THIS STANDING IS IN DIRECT CONFLICT WITH OTHER CIRCUITS AND DISREGARDS THE PRECEDENT OF THIS COURT IN: RUSSELL, 411 U.S. 423, 431-32 (1973). THE CASE BEFORE THIS COURT PRESENTS THE OPPORTUNITY TO ADDRESS AND RESOLVE THE CIRCUIT SPLIT AND THE SIXTH CIRCUITS REFUSAL TO RECOGNIZE THIS COURTS DECISIONS. SHOULD THIS COURT DECLINE CERTIORARI, THE ENSUING RESULT WILL NOT ONLY BE ^{LESS} UNIFORMITY ON IMPORTANT CONSTITUTIONAL ISSUES, BUT ALSO, SET A PRECEDENT TO OTHER CIRCUITS, THAT THIS COURTS DECISION IN HUTTO V. DAVIS, 454 U.S. 370 "A PRECEDENT OF THIS COURT MUST BE FOLLOWED..." IS OPEN TO INTERPRETATION. IN OLMSTEAD, 277 US 438, 470: JUSTICE HOLMES STATED: "THE FEDERAL COURTS HAVE AN OBLIGATION TO SET THEIR FACE AGAINST ENFORCEMENT OF THE LAW BY LAWLESS MEANS."

THE NEED FOR CERTIORARI IS OVERWHELMING. DUE TO SEVERAL CIRCUITS QUESTIONING THE VIABILITY OF THE OUTRAGEOUS GOVERNMENT CONDUCT DEFENSE, WITHOUT THIS COURT TO STAND UPON ITS PRECEDENT, THESE CIRCUITS WILL WHOLLY ABANDON IT, AND ALLOW FOR THE POSSIBILITY OF UNFETTERED CONDUCT BY

GOVERNMENT AGENTS.

THE SIXTH CIRCUITS DECISION CONFLICTS WITH ALMOST EVERY CIRCUIT, EACH OF WHICH RECOGNIZE SOME FORM OF THE DEFENSE BASED UPON THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT. SEE: UNITED STATES V. GUZMAN, 282 F.3d 56, 59 (1st CIR. 2002); UNITED STATES V. AL KASSAR, 660 F.3d 108, 121 (2nd CIR. 2011); UNITED STATES V. TWIGG, 588 F.2d 373, 377 (3d CIR. 1978); UNITED STATES V. HASAN, 718 F.3d 338, 343 (4th CIR. 2013); UNITED STATES V. JOHNSON, 68 F.3d 899, 902 (5th CIR. 1995); UNITED STATES V. BOONE, 437 F.3d 829, 841 (8th CIR. 2006); UNITED STATES V. GUROLLA, 333 F.3d 944, 950 (9th CIR. 2003) ("DISMISSAL FOR OUTRAGEOUS GOVERNMENT CONDUCT IS APPROPRIATE ONLY IN 'EXTREME CASES IN WHICH THE GOVERNMENT'S CONDUCT VIOLATES FUNDAMENTAL FAIRNESS AND SHOCKS CONSTITUTIONAL JUSTICE')"; UNITED STATES V. MOSLEY, 965 F.2d 906, 909 (10th CIR. 1992) ("MOST CIRCUITS INCLUDING THE TENTH RECOGNIZE 'OUTRAGEOUS GOVERNMENT CONDUCT' AS A VIABLE DEFENSE"): AT 356 U.S. 380: JUSTICE ROBERTS SAID: "IF THE ACTS OF THE POLICE OR PROSECUTOR OFFEND THE TRIBUNAL THE DEFENDANT MAY NOT BE PROSECUTED."

DESPITE THE CONSIDERABLE PERSUASIVE AUTHORITY, THE SIXTH CIRCUIT MADE IT CLEAR THAT IT DOES NOT RECOGNIZE THE OUTRAGEOUS GOVERNMENT CONDUCT DOCTRINE. INSTEAD, IN THE INSTANT CASE THE SIXTH CIRCUIT MERELY STATES: "REGARDLESS OF THE PROPRIETY OF THE GOVERNMENT ACTION IN THIS CASE"

THE SIXTH CIRCUITS REFUSAL TO RECOGNIZE AN OUTRAGEOUS

— GOVERNMENT CONDUCT DEFENSE . NOT ONLY CONTRADICTS DUE PROCESS —
 — PROTECTIONS, IT CONFLICTS WITH THE DECISIONS OF THIS COURT. AND —
 DEPRIVES PETITIONER OF CONSTITUTIONAL RIGHTS TO A FAIR TRIAL .
 THE SIXTH CIRCUIT MUST AFFORD DEFENDANTS THEIR CONSTITUTIONAL
 PROTECTIONS, AS THIS COURT HAS STOOD BINDING PRECEDENT
 BEFORE THE SIXTH CIRCUIT.

THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE
 CIRCUIT SPLIT, ENSURE THE UNIFORMITY OF CONSTITUTIONAL PROTECTIONS
 AND REMEDY THE SIXTH CIRCUIT CONFLICT WITH THIS COURTS
 DECISION.

III. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW
 WHETHER ASSERTED JURISDICTION IN COUNT /
 18 USC 2422(b) : WAS PROPER.

THE SIXTH CIRCUIT ASSERTED JURISDICTION OVER COUNT /
 18 USC 2422(b): CHARGING "ATTEMPTED ENTICEMENT" WHERE SUCH
 REQUIRES AS AN ELEMENT "FOR WHICH ANY PERSON CAN BE
 CHARGED". THE GOVERNMENT ALLEGED MILLER [PETITIONER]
 COULD HAVE BEEN CHARGED WITH OHIO REVISED CODE (O.R.C.) 2907.04
 YET, SUCH IS MERELY HYPOTHETICAL AS THE BURDEN OF PROOF THAT
 THE OFFENSE WOULD HAVE OCCURRED WITHIN THE STATE OF OHIO
 WAS NEVER MET. IN FACT THE GOVERNMENT BEARED NO BURDEN
 THAT ANY OFFENSE BY PETITIONER COULD HAVE OR DID OCCUR
 WITHIN THE SIXTH CIRCUIT.

THIS COURT SHOULD GRANT CERTIORARI TO REVIEW WHETHER
 THE FEDERAL COULD ACQUIRE JURISDICTION APPROPRIATELY IN

- COUNT 1 OF THE INDICTMENT 18 USC 2422(B).

- IV. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW
THE DENIAL OF PETITIONERS 28 USC 2255, AND THE
ISSUANCE OF A CERTIFICATE OF APPEALABILITY.

THE SIXTH CIRCUIT IN ITS MEMORANDUM OPINION AND ORDER
(APP.-J), DETERMINED THAT PETITIONERS CLAIM OF INEFFECTIVE
ASSISTANCE OF COUNSEL WERE "BASELESS AND LACKS MERIT"

THE PETITIONER WOULD ASK OF THIS COURT A REVIEW OF
THE FACTS, AND RECORD, AS IT IS PETITIONERS BELIEF THAT THE
DENIAL OF HIS 28 USC 2255, AND THE ISSUANCE OF A CERTIFICATE OF
APPEALABILITY WAS INCORRECT.

THE PETITIONER NOW ASKS THIS COURT WAS COUNSEL
INEFFECTIVE, IS FAILING TO INVESTIGATE, CHALLENGE / FILE
MOTION / AND RAISE BEFORE THE COURT ISSUE'S OF MERIT, TO
WHICH COUNSEL DONALD MALARCIC HAS SINCE ACKNOWLEDGED.
APPLYING 'STRICKLAND, 466 U.S. 668, PETITIONER STATES THAT
BUT FOR COUNSEL'S UNREASONABLE / UNPROFESSIONAL ERRORS
THE PETITIONERS TRIAL WOULD HAVE RESULTED IN A DIFFERENT
OUTCOME, AS PREJUDICE RESULTED THROUGH THE DEPRIVATIONS
OF DUE PROCESS, AND THE ADMISSION OF ILLEGALLY OBTAINED
EVIDENCE.

A.) WAS COUNSEL INEFFECTIVE IN FAILING TO CHALLENGE
JURISDICTION IN COUNT 1, CHARGING OF 'ATTEMPT' VIOLATION / OF 18 USC 2422(b)

DID THE GOVERNMENT PROPERLY ALLEGE 'INJURY IN FACT', PARTICULARIZED AND SUFFICIENT ENOUGH THAT THE COURT COULD ACQUIRE JURISDICTION? AS PREVIOUSLY DISCUSSED HEREIN, SECTION II, 18 USC 2422(b) 'ATTEMPT REQUIRES: 1.) PROOF OF SUBSTANTIAL STEP, AND; 2.) USE OF STATE CRIMINAL CODE. IN UNITED STATES V. GORDON, 713 F.2D 424 (6TH Cir); IT STATES: "THE PLAIN LANGUAGE OF (713 F.2D 430) THE SAME PHRASE "ANY SEXUAL ACTIVITY FOR WHICH ANY PERSON CAN BE CHARGED" IN 2422(b) "LIMITS ITS APPLICATIONS TO SITUATIONS IN WHICH AN INDIVIDUAL COULD ACTUALLY BE PROSECUTED.". THE LOGICAL INFERENCE ONE MUST MAKE HERE IS TO ESTABLISH JURISDICTION, THE GOVERNMENT BEARS 2 BURDENS: 1.) CITING A STATE CRIMINAL CODE, AND 2.) PROOF THAT OFFENSE WOULD HAVE, HAD IT OCCURRED OCCURRED WITHIN SUCH STATE. WITHOUT SUCH BURDENS BEING PROVEN THERE IS INSUFFICIENT EVIDENCE TO ESTABLISH JURISDICTION.

B.) WAS COUNSEL INEFFECTIVE IN FAILING TO CHALLENGE/FILE MOTION TO SUPPRESS FOR VIOLATIONS OF 'FOURTH AMENDMENT'; IN/;

1.) THE ILLEGAL SEIZURE AND SEARCH OF CELL PHONE:

ON JUNE 3, 2014, PETITIONER WAS TAKEN INTO CUSTODY WITHOUT A WARRANT "FOR VIOLATIONS OF 18 USC 2250", FOLLOWING SUCH PETITIONER WAS TRANSPORTED FROM THE SCENE, AS OFFICERS BEGAN SEARCHING HIS LEGALLY PARKED VEHICLE WITHOUT CONSENT, WHERE OFFICERS SEIZED HIS CELL PHONE, WHICH WAS UNRELATED TO THE OFFENSE OF ARREST. IN THE 'AFFIDAVIT IN SUPPORT OF AN APPLICATION UNDER 'RULE 41' FOR A WARRANT TO SEARCH AND SEIZE (DATED: JUNE 4, 2014)

D.I.U.S.M. BOLDIN STATES IN PARA. #10: "AFFIANT WAS ABLE TO DETERMINE THAT THE GREY SAMSUNG PHONE UTILIZING THE MOBILE IDENTIFICATION NUMBER 216-703-3146 WAS THE PHONE NUMBER USED TO CONTACT THE UNDERCOVER OFFICER IN COLORADO. THIS WAS DONE BY CALLING THE NUMBER AND OBSERVING THE PHONE RING." IT IS PETITIONERS ADAMANT ASSERTION THAT SUCH WOULD HAVE BEEN IMPOSSIBLE BEING THAT PETITIONER HAD THE POWERED THE PHONE OFF DURING HIS WORK DAY. IN RILEY V. CALIFORNIA, 134 S. CT 2473: THIS COURT HELD: "WARRANTLESS SEARCH INCIDENT TO ARREST OF CELL PHONE NOT PERMISSIBLE..."; UNITED STATES V. SHANKLIN, 2013 US DIST LEXIS 161947 (4th CIR.): "THE COURTS FINDS THE WARRANTLESS SEARCH OF CELL PHONE UNCONSTITUTIONAL. THE SEARCH INCIDENT TO A LAWFUL ARREST EXCEPTION TO THE WARRANT REQUIREMENT DOES NOT APPLY BECAUSE THE CELL PHONE WAS NOT ON DEFENDANTS PERSON... AT THE TIME OF HIS ARREST. THEREFORE, NO INTEREST IN PRESERVATION OF EVIDENCE WAS AT STAKE, THE CONSENT EXCEPTION TO THE WARRANT REQUIREMENT APPLIES, BUT DEFENDANTS CONSENT DID NOT PERMIT INVESTIGATION OF THE ENTIRE CONTENTS OF THE CELLPHONE OUTSIDE OF DEFENDANTS PRESENCE": STATE V. SMITH, 124 OHIO ST. 3d 163, 2009 OHIO 6426, 920 N.E 2d 949, 953-54, 956 (OHIO 2009): "BECAUSE AN INDIVIDUAL HAS A HIGH EXPECTATION OF PRIVACY IN THE CONTENTS OF HER CELL PHONE, ANY SEARCH THEREOF MUST BE CONDUCTED PURSUANT TO A WARRANT."; UNITED STATES V. ARELLANO, 410 FED. APPX 603 (4th CIR) "HOLDING THAT EVEN THOUGH A SUSPECT CONSENTED TO

A SEARCH OF HIS PERSON LEADING TO THE DISCOVERY OF A CELL PHONE. AN OFFICERS SUBSEQUENT TURNING ON AND USING THE CELL PHONE TO ACQUIRE EVIDENCE WAS UNCONSTITUTIONAL."

THE FACTS SHOULD SHOW THAT REGARDING THE ISSUE ~~OF~~ THE ILLEGAL SEIZURE AND SEARCH OF CELL PHONE, COUNSEL'S PERFORMANCE WAS DEFICIENT, AND PREJUDICED PETITIONER DUE TO THE UNCHALLENGED ADMISSION OF INADMISSIBLE EVIDENCE.

2.) WARRANTLESS ARREST AND DETENTION WITHOUT DUE PROCESS
THE PETITIONER STATES THE THE ISSUE SPOKEN OF HERE RELATES TO RULE 5(b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE, WHICH PROVIDES: "REQUIRES THAT WHERE A DEFENDANT IS ARRESTED WITHOUT A WARRANT, THEN THE GOVERNMENT MUST FILE THE COMPLAINT 'PROMPTLY'"; AND AFFORD THE DEFENDANT A 'GERSTEIN' HEARING (GERSTEIN V. PUGH, 420 US 103: WHERE IT PROVIDES: "BEYOND A BRIEF PERIOD OF DETENTION, THE 'FOURTH AMENDMENT' REQUIRES A JUDICIAL DETERMINATION OF PROBABLE CAUSE AS A PRE-REQUISITE TO EXTENDED RESTRAINT OF LIBERTY FOLLOWING [THE] ARREST."

THE COURT IN ITS DENIAL (APP.: -J.) (ID.#1876: FOOTNOTE 5: STATES: "MILLER WAS ARRESTED AND TAKEN INTO FEDERAL CUSTODY ON JULY 25, 2014" AND: "MILLER WAS IN STATE

FROM JUNE 3, 2014 - JULY 25, 2014."

THE LOWER COURT CLEARLY RECEIVED MIS-CONSTRUED FACTS, AS THE RECORD CLEARLY CONTRADICTS SUCH, AND SUPPORTS PETITIONERS ARGUMENT, AS IN (DOC. #1, PG. 2-3, PARA. #6: DUSM BOLDIN STATES: "ON JUNE 3, 2014 OFFICERS TOOK MILLER INTO CUSTODY FOR VIOLATIONS OF 18 USC 2250" FOLLOWING THIS ARREST WITHOUT A WARRANT, JUDGE DAN A. PULSTER ISSUED AN EMERGENCY ARREST WARRANT AT 10:36A (3 1/2 HOURS AFTER MILLER WAS TAKEN INTO CUSTODY) FOR VIOLATIONS OF SUPERVISED RELEASE "OFFENDER HAVING BEEN CHARGED WITH NEW CRIME 18 USC 2250"

ON JULY 25, 2014, PETITIONER MADE AN INITIAL APPEARANCE ON AN ARREST WARRANT AND CRIMINAL COMPLAINT FOR VIOLATIONS OF 18 USC 2250

THE PETITIONER STATES THAT THE FACTS DEMONSTRATE THAT AN OBJECTIVE STANDARD OF REASONABLENESS WOULD/ SHOULD HAVE CONVINCED COUNSEL TO PURSUE SUCH AN ARGUMENT. NOW PETITIONER WAS ARRESTED WITHOUT A WARRANT ON JUNE 3, 2014, HELD FOR 52 DAYS THEN ARRESTED PURSUANT TO A WARRANT FOR THE SAME OFFENSE ON JULY 25, 2014.

C.) WAS COUNSEL INEFFECTIVE IN FAILING TO CHALLENGE/ OBJECT TO VIOLATIONS OF THE FIFTH AMENDMENT DUE PROCESS CLAUSE: OF:

1.) IN THE COURTS IMPOSING OF AN ILLEGAL SENTENCE IN COUNT 2: 18 USC 2251(a) AND (c):

THE PETITIONER STATES THAT COUNSEL'S PERFORMANCE WAS OBJECTIVELY UNREASONABLE DUE TO THE FAILURE TO OBJECT TO THE COURTS IMPOSING AN ILLEGAL AND INAPPLICABLE MANDATORY MINIMUM PURSUANT TO 18 USC 2251(c)'S RECIDIVIST ENHANCE OF 'NOT LESS THAN 35 YEARS. WHICH PROVIDES "IF SUCH PERSON HAS 2 OR MORE PRIOR CONVICTIONS UNDER THIS CHAPTER, CHAPTER 71 CHAPTER 109A, OR CHAPTER 117, OR UNDER THE LAWS OF ANY STATE 'RELATING TO' THE SEXUAL EXPLOITATION OF CHILDREN', SUCH PERSON SHALL BE IMPRISONED NOT LESS THAN 35 YEARS."

THE PETITIONER STATES THAT ONLY HIS PRIOR CONVICTION IN CASE NO. 5:05-CR-300 FOR VIOLATIONS OF 18 USC 2423 QUALIFY, AS HIS PRIOR STATE CONVICTIONS, DO NOT RELATE TO THE SEXUAL EXPLOITATION OF CHILDREN"

IN SUPPORT OF THE ILLEGAL MANDATORY MINIMUM / ABOVE GUIDELINES SENTENCE, HE WOULD ASK THIS COURT TO TAKE NOTICE OF: UNITED STATES V. SCHOPP, 2019 US APP. LEXIS 27797 (9TH CIR.) THE COURT STATED: "APPLYING THE CATEGORICAL APPROACH, THE PANEL HELD THAT THE FEDERAL GENERIC DEFINITION OF 'SEXUAL EXPLOITATION OF CHILDREN', REQUIRES THE PRODUCTION OF VISUAL DEPICTIONS OF CHILDREN ENGAGING IN EXPLICIT CONDUCT. THE PANEL EXPLAINED THAT THE 'RELATING TO' LANGUAGE IN 2251(c) ENCOMPASSES STATE OFFENSES THAT ARE A CATEGORICAL MATCH TO THE FEDERAL FORN PRODUCTION CHARGE, AND DOES NOT INCLUDE OFFENSES THAT LACK THE VISUAL DEPICTIONS ELEMENT THAT SEPERATES 'SEXUAL EXPLOITATION OF CHILDREN' FROM OTHER

FORMS OF CHILD ABUSE IN THE FEDERAL CRIMINAL CODE."

THE COURT IN IMPOSING AN ABOVE THE GUIDELINES SENTENCE UPON SENTENCING PETITIONER TO A MANDATORY MINIMUM OF 35 YEARS, APPROXIMATELY 10 YEARS ABOVE THE HIGH END OF THE GUIDELINES, IN COUNTS 1 AND 2, SHOULD MEET THE BURDEN OF PREJUDICE AS HELD IN: GLOVER V. UNITED STATES, 531 U.S. 198: "AN INCREASE IN MOVANTS SENTENCE FROM 6 TO 21 MONTHS AS A RESULT OF COUNSELS ERROR CONSTITUTED PREJUDICE FOR ESTABLISHING INEFFECTIVE ASSISTANCE OF COUNSEL UNDER STRICKLAND V. WASHINGTON, 466 US 668"

THE COURT HELD THIS ARGUMENT WAS FORFEITED, BUT PETITIONER CONTENTS THAT SUCH WAS PREVIOUSLY UNAVAILABLE.

2.) THE PETITIONER WOULD ASK THIS COURT WAS COUNSEL ^{FAILING TO} INEFFECTIVE IN CHALLENGING THE CONSTITUTIONALITY OF 18 USC 2260A, AS ADDRESSED IN I. OF THIS HEREIN PETITION. AS IT RELATES TO THE CONFLICT AMONG THE CIRCUITS REGARDING UNITED STATES V. DART, 81 F. Supp 3d 405

D.) WAS COUNSEL INEFFECTIVE IN FAILURE TO RAISE BEFORE THE COURT VIOLATIONS OF THE SIXTH AMENDMENT RIGHTS TO:

1.) A SPEEDY TRIAL.

THE PETITIONER STATES THAT THE 'SPEEDY TRIAL ACT' PROVIDES IN 18 USC 3161 (c): IN ANY CASE IN WHICH A PLEA

OF NOT GUILTY IS ENTERED. THE TRIAL OF A DEFENDANT CHARGED IN AN INFORMATION OR INDICTMENT WITH THE COMMISSION OF AN OFFENSE SHALL COMMENCE WITHIN SEVENTY DAYS...."

THE PETITIONER STATES THE RECORD IS CLEAR, THAT MEMBERS OF THE UNITED STATES MARSHALS SERVICE ARRESTED THE PETITIONER WITHOUT A WARRANT ON JUNE 3, 2014 AT 07:00 A "FOR VIOLATIONS OF 18 USC 2250" AND IN CONNECTION WITH 18 USC 2422, AND 18 USC 2251. DUE TO THE UNREASONABLE DELAY BY THE GOVERNMENT, THE PETITIONER WAS NOT AFFORDED A 'PROBABLE CAUSE HEARING OR THE FILING OF A CRIMINAL COMPLAINT UNTIL JULY 25, 2014, RESULTING IN THE FILING OF AN INDICTMENT ON AUGUST 20, 2014, WITH THE FIRST TRIAL DATE TENTATIVELY SET FOR OCTOBER 16, 2014.

THE COURT IN ITS DENIAL (APP: -J) WAS/IS OF THE BELIEF THAT THE PETITIONER WAS IN STATE CUSTODY FROM JUNE 3, 2014 - JULY 25, 2014, WHEN A ARREST WARRANT WAS ISSUED AND EXECUTED, AND A CRIMINAL COMPLAINT FILED FOR VIOLATIONS OF 18 USC 2250, THAT OCCURRED ON JUNE 3, 2014. YET, THE PETITIONER WAS IN THE CUSTODY OF THE US MARSHALS AT ALL TIMES.

THE PETITIONER WOULD PRAY THAT SUCH ABHORENT BEHAVIOR BY OFFICERS OF THE COURT IN CIRCUMVENTING PRESENTMENT AND OTHER DUE PROCESS PROTECTIONS SHOULD NOT BE TOLERATED TO ALLOW SPEEDY TRIAL RIGHTS TO BE TOSSED ASIDE.

THE PETITIONER BELIEVES UPON THIS ISSUE HE HAS MET THE STANDARDS OF 'STRICKLAND', DUE TO COUNSELS

FAILURE TO ADDRESS AN ISSUE OF SUCH IMPORTANCE.

2.) WAS COUNSEL INEFFECTIVE IN FAILURE TO CHALLENGE PRE-INDICTMENT DELAY.

18 USC 3161(b) PROVIDES: "ANY INFORMATION OR INDICTMENT CHARGING AN INDIVIDUAL WITH THE COMMISSION OF AN OFFENSE SHALL BE FILED 'WITHIN THIRTY-DAYS' FROM THE DATE ON WHICH SUCH INDIVIDUAL WAS ARRESTED OR SERVED WITH A SUMMONS IN CONNECTION . . ."

THE PETITIONER CAN ONLY RELY ON THE SIMPLEST FACTS OF THE RECORD (DOC.#1, PG:2-3, PARA#6 (DUSH BOLDING):

"ON JUNE 3, 2014," "OFFICERS TOOK MILLER INTO CUSTODY FOR VIOLATIONS OF 18 USC 2250" THIS ARREST OCCURRED WITHOUT A WARRANT. THE PETITIONER WAS NOT ALLOWED AN MAGISTRATE UNTIL JULY 25, 2014, AT WHICH TIME, HE WAS INFORMED (DOC.# 30, ID# 133: "MR. MILLER, YOU'VE BEEN BROUGHT HERE TODAY ON AN ARREST WARRANT AND COMPLAINT FOR A VIOLATION OF TITLE 18 USC 2250"

(THE PETITIONER WOULD PRAY THIS COURT TO TAKE NOTICE THAT THIS IS THE SECOND ARREST FOR THE SAME OFFENSE WHILE BEING IN CONTINUOUS FOLLOWING INITIAL ARREST WITHOUT A WARRANT.)

ON AUGUST 20, 2014, USA FILED INDICTMENT CHARGING 18 USC 2422(b), 18 USC 2250 AND 18 USC 2260A.

THE PETITIONER WOULD PRAY THIS COURT REVIEW SUCH AND THE DENIAL OF THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY, AND ASSESS THAT PETITIONER WAS ENTITLED TO RELIEF AND A CERTIFICATE OF APPEALABILITY.

V. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW WHETHER THERE WAS INSUFFICIENT EVIDENCE FOR A FINDING OF GUILT IN COUNT 2 CHARGING 18 USC 2251(a) AND (c).

THE LANGUAGE OF 18 USC 2251(a) IS UNEQUIVOICAL "ANY PERSON WHO ... PERSUADES, INDUCES, ENTICES OR COERCES ANY MINOR TO ENGAGE IN ... ANY SEXUALLY EXPLICIT CONDUCT FOR THE PURPOSE OF PRODUCING ANY VISUAL DEPICTION OF SUCH, ..."

THESE FOUR WORDS ARE THE MOST IMPORTANT FOR A FINDING OF GUILT, AS ALL ARE REFERENCES TO THE ASSENT OF THE PERSON [FICTITIOUS OR OTHERWISE]. THE PETITIONER CONTENTS THAT WITHOUT PROOF OF ASSENT, THE GOVERNMENT AND BENCH TRIAL HAS FAILED IN PROVING AN EXCEPTIONALLY IMPORTANT ESSENTIAL ELEMENT OF 2251(a) AND (c).

IN BROXMEYER, 616 F.3d @ 125; IT STATES: "THE SECOND CIRCUIT, HAS NOTED THAT "PERSUADE", "INDUCE", AND "ENTICE" ARE ALL WORDS OF CAUSATION," AND: IN UNITED STATES V. NAIM,

2015 U.S. DIST. LEXIS 65976; IT STATES: SECTION 2251(c) PROHIBITS CONVINCING A MINOR TO ENGAGE IN SEXUAL ACTIVITY"

YET, IN THE PRESENT CASE THE COURT IN ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW (DOC #61) ID.# 594, PARA.#1 THE COURT MERELY STATES THAT "MILLER EXPRESSED INTEREST IN OBTAINING PICTURES OF JORDAN NAKED OR DRESSED IN A SEXUALLY PROVOCATIVE WAY..." SUCH SHOULD BE CONSIDERED NOTHING MORE THAN OFFENSIVE SPEECH.

THEN IN ID#595 PARA.#6 THE LACK OF ASSENT IS

CONVINCING AND CLEAR * WHERE THE COURT BASED ITS
SUBSTANTIAL STEP UPON: " MILLER ALSO INSTRUCTED JORDAN
TO LOCATE HER MOTHERS CAMERA AFTER THE MINOR
APPEARED UNABLE OR UNWILLING TO LOCATE CAMERA .
STEPPED UP COERCIVE TACTICS" AGAIN THIS IS OFFENSIVE , BUT
TO ALLEGE 'PERSUADE, INDUCE, ENTICE, OR COERCE' THERE
MUST BE THE ASSENT, WHICH IS IN ITSELF THE AGREEMENT.
TO DO SO, AND WITHOUT SUCH THERE IS INSUFFICIENT EVIDENCE.
THE PETITIONER WOULD PRAY THIS COURT TO GRANT
CERTIORARI.

VI. THIS COURT SHOULD GRANT CERTIORARI TO ADDRESS
AND RESOLVE THE QUESTION OF WHETHER THE
ESSENTIAL ELEMENT NECESSARY FOR A CONVICTION
IS SUBSTANTIAL STEP UNCONSTITUTIONALLY VAGUE?

THE PETITIONER STATES THAT THE 'SUBSTANTIAL STEP'
ELEMENT 'NECESSARY IN ATTEMPT OFFENSE FAILS TO PROVIDE
FAIR NOTICE AS TO WHAT ACT(S) ARE PROHIBITED: AND FINDS
SUPPORT IN BECKLES V. UNITED STATES, 137 S.C. 886 "THE
VOID-FOR-VAGUENESS DOCTRINE REQUIRES THAT A PENAL
STATUTE DEFINES A CRIMINAL OFFENSE WITH SUFFICIENT
DEFINITENESS THAT ORDINARY PEOPLE CAN UNDERSTAND
WHAT CONDUCT IS PROHIBITED AND IN A MANNER THAT DOES NOT
ENCOURAGE ARBITRARY (DEFINED AS: SELECTED AT RANDOM)
(WHICH IS THE LOGICAL DESCRIPTION OF COURTS INTERPRETATION)
... ENFORCEMENT."

THEN IN UNITED STATES V. REDLINSKI, 58 M.J. 117, 119

(C.A.A.F. 2003) ("THE DISTINCTION BETWEEN PREPERATION AND ATTEMPT HAS PROVEN DIFFICULT FOR COURTS AND SCHOLARS ALIKE"); WAYNE R. LAFAYE, CRIMINAL LAW 11.4(a) (5th Ed. 2010) ("PRECISELY WHAT KIND OF ACT IS REQUIRED IS NOT MADE CLEAR BY THE LANGUAGE TRADITIONALLY USED BY COURTS AND LEGISLATURES")

CERTIORARI IS NECESSARY TO ASSURE FUNDAMENTAL FAIRNESS IN PROVIDING FAIR NOTICE AS TO WHAT ACTS VIOLATE A STATUTE, RATHER THAN ALLOWING THE CONTINUATION OF AN ARBITRARY INTERPRETATION OF WHAT CONSTITUTES A SUBSTANTIAL STEP.

VII. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW WHETHER THE SIXTH CIRCUIT COMMITTED SIGNIFICANT PROCEDURAL / SUBSTANTIVE ERRORS. IN:

A.) IN IMPOSING AN ILLEGAL SENTENCE OF A 35 YEAR MANDATORY MINIMUM PURSUANT TO 2251(c), WHERE SUCH REQUIRES "2 OR MORE PRIORS RELATING TO THE SEXUAL EXPLOITATION OF CHILDREN"

THE COURT DID NOT APPLY THE FORMAL CATEGORICAL APPROACH TO DETERMINE IF THE PETITIONERS 'PRIOR' CONVICTIONS MATCH THE FEDERAL GENERIC DEFINITION OF SEXUAL EXPLOITATION OF CHILDREN. SEE: SCHOPP, 2019 U.S. APP. LEXIS 27797 (9th CIR)

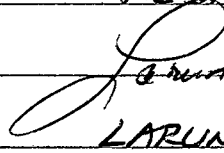
B.) DENYING PETITIONERS RIGHT TO CONFRONT AND CROSS EXAMINE CASSANDRA HARRIS, WHO PORTRAYED FICTITIOUS MINOR, AND WHO'S RECORDED CONVERSATIONS WERE USED TO CONVICT PETITIONER.

CONCLUSION

THIS COURT SHOULD GRANT CERTIORARI TO REVIEW THE

INFRINGEMENTS UPON THE PETITIONERS CONSTITUTIONAL RIGHTS
AND THE SIXTH CIRCUITS DENIAL OF THE ISSUANCE OF A
CERTIFICATE OF APPEALABILITY.

RESPECTFULLY SUBMITTED:

 Larune E. Miller 'Pro Se'
LARUNE E. MILLER - PRO SE - PETITIONER

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SUBMITTED: DECEMBER ¹⁴ 2020

NO

IN THE SUPREME COURT OF THE UNITED STATES

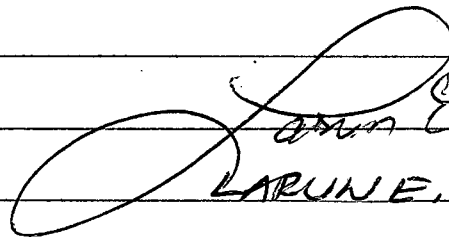
LARUN MILLER, PRO SE-PETITIONER

v.

UNITED STATES, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

APPENDIX TO THE
PETITION FOR A WRIT OF CERTIORARI

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SUBMITTED DECEMBER 14 2020