No. 20-7087

IN THE

SUPREME COURT OF THE UNITED STATES

Brian James Holland — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The united States coart of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brian James Holland
(Your Name)

501 Gary Hill Road P.O. Box 725
(Address)

Edgefeild, SC, 29824
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1) What is the definition of the term "force" under Statute 18 U.S.C.S. 2241; What is the proper Criminal law and procedure used to determine Sufficient evidence of force under 18 U.S.C.S. 2241 when using that definition.

2) What is the proper Criminal law and procedure used by any United States Court of Appeals to make witness credibility determinations.

3) Is there sufficient evidence to uphold the conviction of Brian James Holland under Statute 18 U.S.C. 2241(a)(1), even tho the government failed to present a prima facie case

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

CASES

STATUTES AND RULES

OTHER AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 12/06/2019.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 7-17-20, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Amendment 5 - Protection of Rights of Life, Liberty, and Property
- Amendmet 6 - Rights of Accused Persons in Criminal Cases
- 18 U.S.C. 2241

STANDING

I, Brian James Holland, have standing to bring this matter before the Supreme court of The United States of America.

Brian James Holland

STATEMENT OF THE CASE

I.R. alleges that on February 27th, 2018 She was digitally penetrated in her genital opening by Brian Holland whil on a Carnival Cruise Ship, in a crowded hot tub, in the daylight while celebrating her 18th birthday. The onboard physician performed a sexual assault examination claiming to find abrasions centered around her urethral opening that are (in his opinion) consistent with digital penetration among multiple other things. I.R., who is 18 years old at the time, is believed to have a mental handicap, (that is not visually aparent nor obvious when first meeting her) and is able to do 4th grade School work Her grand mother, Janie Crawford, filed a lawsuit in I.R.'s name against Carnival Cruise Lines before trial. A Grand Jury indicted Mr. Holland on one count of aggravated Sexual abuse by force in violation of 18 U.S.C. 2241 (a) (1). Mr. Holland plead not guilty. At trial, eyewitness testimony did not corroborate I.R.'s allegations. I.R. gave inconsistent testimony. An expert witness shot down the government's allegations as impossible. The Jury found Brian Holland guilty. Petitioner filed a timely appeal and the appeal was denied. Petitioner filed for an en banc re-hearing; the re-hearing was denied.

The court incorrectly deferred to the Jury's decision to convict the Petitioner when at no time was neither Sufficient "force" or "Sexual act" proved at trial pursuant to 18 U.S.C. 2241(a)

and when determined by the court, the use of the term "force was misapplied. The court should render a judgment reversing the District Court's denial of petitioners motion to dismiss.

The petitioner was falsely charged with Sexual abuse, for which he plead not guilty. He was, however, convicted by a Jury without sufficient evidence to prove culpability and was sentenced, and now approaches this court continuing to assert his innocence and wishes that Justice be done. For ground petitioner states as follows: under 18 U.S.C. 2241(a)(1), an individual is guilty of aggravated sexual abuse by force when that person (1) is in the special maritin and territorial Jurisdiction of The United States; (2) Knowingly cause another person to engage in a sexual act and (3) uses force to complete the offense. The petitioner wishes to focus on the statutory definitio of "force" and whether actions described at trial constitute the "force necessary to even charge the petitioner, nevertheless convict him. Whil also addressing the fact there was insufficient evidence of a "Sexual act", which is defined by the statute as "The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object with intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person;" 18 U.S.C. 2246; United States V. Miranda, 348 F.3d 1322, 1325 (2003) (noting that for purposes of 18 U.S.C. 2241, "Sexual act" is defined in 18 U.S.C. 224 ; 11th cir. pattern Jury instructions (crim.) 79.1 (2016). Also the proper Criminal law and procedure that should be used by any United State Court of Appeals to make credibility determinations.

There is insufficient evidence of penetration, however sligh of the vaginal opening, "Sexual act". (This fact is vital to force determina which petitioner will later address in depth.) Dr. Mbuthuma testified "I can't say that there's a specific type of injury that would indicate a digital penetration," See Doc. 79, page 145, and

"abrasions on the urethal opening ... vestibule of the vigina, above the vaginal opening, and around the urethal opening as well." See Doc. 79 page 146. When asked whether were all localized around the urethal opening, he testified "that is correct, yes." See Doc. 79, page 175, which is where females urinate from. He also testified that, "between the urethral orfice and what we call the vaginal orfice, that area is called the vestibule." See Doc. 79, page 148. He states He saw no "cuts", "bleeding", or "bruising". Doc. 79 page 176. Since none of Dr. Mbuthuma's testimony alleged that any abrasions or any other damage was made to the vaginal opening or inside the vaginal vault, her alleged indury cannot be relied on to establish penetration, let alone penetration by force. He even confirmed that "the presence of the hymen in female genitalia will indicate that the female is a virgin ... and hers was present." Doc. 79 page 151. The United States Appellee's brief stated on page 2 "External Genitalia page 7 "no injuries within I.R.'s Vagina", and page 15 "abrasions to her external genitalia." Yet, on page 5 of the unpublished response by the United States Court of Appeals for the Eleventh Circuit the Judge stated, "abrasions on her vaginal vestibule and vaginal opening", establishing that facts were overlooked.

The only evidence supporting penetration is from I.R.'s testimony and on its face, it is so unbelievable that no rational factfinder would use it to determine a verdict. The alleged victims testimony defies the laws of nature and to believe her is to believe a legal impossibility. As stated by expert MS. Judy Malmgren when asked about penetration as described in the allegation, she testified "that would be pretty darn difficult if one is sitting down, difficult if not impossible." Doc. 80, page 31. The court must also consider the length of defendant's fingernails which are shown in government's trial exhibits 2C and 2d, (see appendix E and F) To penetrate the vaginal opening with fingernails the length they

were at the time would have lacerated the soft tissue or left micro abrasions at the minimum. see United States V. Chee, 514 F.3d 1106 (10th Cir. 2008) "Micro abrasions inside the vagina ... such micro abrasions are consistent with vaginal penetration."

The Judges stated in their unpublished opinion that "credibility questions are the province of the Jury and we will assume that the Jury resolved all such questions in a manner supporting its vedict. United States V. Garcia Bercovich, 582 F.3d 1234, 1238 (11th Cir. 2009) This however conflicts with precedent decisions by the United States Court of Appeals for the Eleventh Circuit, as well as the Supreme Court. See United States V. Flores, 572 F.3d 1254, 1263 (11th Cir.), Cert. denied, 130 S. Ct. 568, 175 L. Ed. 2d 389 (2009), "we will not disturb the Jury's verdict on appeal unless the testimon is incredible as a matter of law ... testimony is only incredible if it relates to facts that the witness could not have possibly observed or events that could not have occurred under the laws of nature." (citations and quotations omitted) The courts in United State V. Bracken, 711 Fed. App x. 491, (11th Cir. 2017) held "we defer to the Unite States credibility determinations unless the evidence defies the laws of nature, or is so inconsistent or improbable on its face that no reasonable factfinder could accept it." I. R.'s testimony not only defies the laws of nature, but is so inconsistent and improbable on its face that no reasonable factfinder could accept it.

The results of the medical examination does not corroborate I. R.'s testimony. See Rowan V. Owens, 752 F.2d 1186 (7th Cir. 1984), "a cut on the outside of the female sexual organ is not such a penetration..." Dr. Mbuthma testified that I. R.'s vital Sighns were within normal ranges and that she was not in any acute distress at the time of the medicial examination, DOC 79, pages 172-173, which was performed Shortly after reporting this incident a s

alleged by I.R. to Ship Security, With Janie Crawford acting as her mouth peice and Voice. Compare this to United States V. Rafealito, 946 F.2d 107, (10th cir. 1991), where the court noted "A physician's assistant who examined her testified that she found 'A very tearful young lady' ... the P.A. further testified that 'matilda's vaginal area was so tender that she could not insert a Specalm.'" Also See Viers V. Warden, 605 Fed. Appx. 933 (11th cir. 2015), where the court noted "was badly lacerated ... required corrective surgery." Also See Rodem V. Gibson, 245 F.3d 1130 (10th Cir. 2001) where the "examiner testified ... hymen, labia minor, labia major and vaginal wall were bruised ... bruised and lacerated condition of the victim's hymen and labia minor would sufficiently prove sexual penetration." Also See Tuggle V. Thompson, 57 F.3d 1356 (4th cir. 1995) where the court noted "contusions of the vaginal vault at the posterior aspect and near the bottom ... contusions to the posterior fernix of the vagina which is inside the labia Major ... reddish bruises at the posterior aspects of the vagina" as proof of penetration. And in United States V. Adams, 403 Fed. Appx. 203 (9th cir. 2010), the court Stated the "testimony was ... graphic, specific, detailed and believable." Nothing in the results of the medical examination in the case of Holland V. United States proved that a "sexual act" took place, and I.R.'s testimony is not graphic, Specific, detailed and or believable.

I.R. testified "I went to the hottub, and this guy was With me, like in the hottub. He Keep rubbing my legs three times. That after that, he rubbed his arm on my private area." Doc. 79, page 2(This is not a description of her being over come, or penetration however slight. AUSA washington then asked, "did he do anything else?" I.R. answers "no." Doc. 79, page 20. Although I.R. later States she vocalized her unwillingness and had to remove petitioners

hand, no one heard her, and no witness saw the petitioner touch I.R.'s private area because it just did not happen! No eyewitness describes petitioners hand under the water, or in her lap, let alone her removing it from her private area. I.R.'s testimony was incredible and at no time did the goverment elicit testimony or provide evidence of her being overcome. In response to multiple questions she stated that the petitioners hand was under her swim suit, it felt "hard" and "hurt" "inside". Doc. 79 page 21. I.R. later testified "... the water bubbling nobody can see it." Doc 79. page 23. She also testified that she told her grandmother, "this guy put his hand 'on' my private area." Doc. 79 page 32. When AUSA Washington asked her last question on direct, "did that man over there put his fingers inside your vagina?" She answerd "yes" as if reminded that was what she had to say. Doc. 79, page 33.

I.R. provided inconsistent testimony throughout the trial. None of her testimony is specific, graphic, or detailed in a way that would make it believable to a rational factfinder. This allegation describes a crowded hottub filled with many people, with a crowd around the hottub, in broad daylight, with I.R. sitting down, clothed in a full swim suit and yet not one person saw the petitioners hand below the water, saw any kind of struggle as described by I.R., or heard her say a single word let alone "no", "don't" or "stop!" This conviction defies logic, the laws of nature, and is so inconsistent and improbable on its face that no reasonable factfinder could accept it.

Eyewitness A.T. testified in respect to petitioner pulling I.R. closer to him, "it seemed like he was trying to be polite, making space." Doc. 79, page 88. A.T. further stated that she never saw a struggle and that the petitioner simply had one around I.R. and a beer in the other hand almost the entire time that he was also sitting in the hot tub. Doc. 79 page 89. Eyewitness K.L. testified that she could

See her feet in the hottub, (A fact overlooked by The United States Court of Appeals for the Eleventh Circuit) and that she never saw any crime commited. DOC. 79, page 112. No culpable evidence exists any where in the eyewitness testimony to corroborate I.R., which supports petitioners innocence. I.R. inconsistent and improbable testimony she deem her an incredible witness whose impeachable testimony defies the laws of nature. See United States v. Morgan 555 F.2d 238 (9th cir. 1977), "an inconsistent statement does not have to be completly contradictory in order to be used to impeach."

Further comparison to other cases support petitioners innocence. See Gersten v. Senkowski, 426 F.3d 588 (2nd cir. 2005), "If a medical examination of the alleged victim failed to reveal any evidence clinically indicative of sexual penetration, that failure would constitute strong affirmative evidence that forced sexual penetration did not occur." See House v. Bell, 547 U.S. 518, 126 S. ct. 2064, 165 L. Ed. 2d 1 (2006), "when the only evidence of sexual assault drops out of the case, so too does a central theme in the State's narrative linking (house) to the crime." See United States v. Vetlarde, 216 F.3d 1204 (10th cir. 2000) where the district court erred in failing to make a reliability determination with respect to expert testimony as to whether sexual abuse of a child had in fact occurred, where there was relatively little other evidence besides a young girl's testimony as to a single event or incident of abuse and defendant's credibility was not obviously suspect. In Peters v. Whitely, 942 F.2d 937 (5th cir. 1981) the courts stated, "there is a vast difference between the truth and a lie and understanding the nature and consequences of sexual assault." Also see United States v. Smith, 739 F.3d 843 (5th cir. 2014) which held, "In determining whether the evidence is sufficient to sustain a conviction, we examine all evidence in the light most favorable to the verdict, and consider whether [... A rational trier of fact could have found that the evidence established

the essential elements of the offense beyond a reasonable doubt. In making such a determination we consider the countervailing evidence as well as the evidence that supports the verdict."

This entire case rest on inconsistent statements describing an event that defies the laws of nature from a person whose own grandmother testified that she (I.R.) is a compulsive liar. Janie Crawford Stated "yeah...", after being asked "... told the F.B.I. Agent that she was a compulsive liar, right?" Doc. 79, page 71. In United States V. Red Cloud, 791 F.2d 115 (8th cir. 1986) the courts held, "an Inference is permissible only if it is logical and not a mere conjecture." It would only be logical to conclude that the Jury found Sympathy with I.R. because of her mental condition and the influence of the "#MeToo" Movement. All human being would feel the same, it is the choice to act on these emotions that is a legal issue. AUSA Taylor even suggest the Jury consider emotion after Defense attempted to clarify the Jury could not make a decision dirived from the emotion they would feel for I.R. AUSA Taylor Stated "... you shouldn't consider I.R. crying as evidence of anything. Really?" Doc. 80, page 109.

Petitioner asserts his innocence. Two eyewitness even said a crime did not occur. This crime as alleged was shot down by an expert witness who deemed it would be impossible to have happened the way the government theorized. This is an allegation of a crime that was at no time corroborated by medical evidence, nor corroborated by any one witness, even though there were atleast 9 people all inside a crowded hottub, right next to each other for any one person to have observed. To have touched I.R. private parts in any way would have had the petitioner make atleast some furtive movement that any other person in the hottub could have seen. Petitioner understands that insufficient evidence of a "sexual act" was not address on direct appeal only insufficient evidence of "force", yet it is necessary to provide this court

a better understanding of the arguments which were addressed and wich were not addressed to the petitioners detriment. Also insufficient evidence of "sexual act" is insufficient evidence of force, because if the "sexual act" did not take place it could not of taken place by "force." Due to the reasonable probability that the petitioner was falsely charged and convicted, the petitioner respectfully request that this court exercise its interest of Judicial discretion in order to meet the "greater ends of Justice," to grant the petitioner a new trial. The court in Griffen V. Warden, Marland correctional Adjustment Center, 970 F.2d 1355 (4th cir. 1992) held, "A reasonable probability is a probability sufficient to undermine confidence in the outcome."

The government has not met the burden of proof to support that evidence exists of force which is nessessary to charge pursuant to 18 U.S.C. 2241; As such voids Judgement in the herein case. There are material, factual, and legal matters overlooked in the decision regaurding sufficient evidence of "force." 18 U.S.C 2241 does not provide a definition for the word "force." The word "force" has a vast amount of definitions from Websters Dictionary, Black's law Dictionary, case law and the common understanding in form of physics most Americans are familiar with. Websters Third New International Dictionary list (9) definitions for force 1 and (11) for force 2, with (64) different variables of force from force to forcive. Most Americans believe "force" is defined as "a push or pull on an object that results from its interaction with another object." See Houghton Mifflin Harcourt Student Book Steck-Vaughn Science test Preparartion for the G.E.D. Test. This is what is taught in government operated public schools and can be applied to everyday consensual acts such as a hand-shake or giving gifts. As the Statute itself does not provide a definition from the multitude available it is ambiguous at best. See Sparks V. Republic

National Life Insurance Company, 132 Ariz. 529, 534, 647 P.2d 1127, 1132 (1982), which held "Ambiguity exists when language can be reasonably construed in more than one sense." Also See United State V. Amy, Unknown ("In re: Amy unknown"), 701 F.3d 749 (5th cir. 2012) "A court considers a statute ambiguous when a statute is subject to more than one reasonable interpretation or more than one accepted meaning." This allows for statutory interpretation. See State V. Sweet, 143 Ariz. 266, 693 P.2d 921 (1985), "only where a statute is ambiguous or unclear is the court at liberty to resort to rules of statutory interpretation."

The Supreme court has already laid the foundation on how to find a definition for "force". See Johnson V. United States, 559 U.S. 133, 130 S.Ct. 1265, 176 L.Ed. 2d. 1 2010 U.S. LEXIS 2001, "For present purposes, we can exclude its specialized meaning in the feild of physics: a case of acceleration of mass... We do not assume that a statutory word is used as a term of art where that meaning does not fit. Ultimately, context determines meaning, and we do not force term of art definitions into context where they plainly do not fit and produce nonsense." (Internal quotations and citations omitted). This "algorithm as set forth by the Supreme Court when applied to the element "force" as used in 18 U.S.C. 2241 would result in some form of interpretation along the lines of "make no other option available" or "prevent all other possibilites," therefore making it impossible to "force" someone to engage in an act they can simply get up and walk from at anytime. Exampels of "force" being used in such a way can be found in other legal contexts as well as Johnson V. United States, Id. itself. See Johnson V. United States, Id. "we do not 'force' term of art definitions into context..." (emphasis added) See United States V. Roy, 855 F.3d 1133 (11th cir. 2017), "The Supreme court explained in some detail why it would be impossible to apply the harmless error rule and gauge the

prejudicial effect of depriving a defendant of the attorney he had retained and 'forcing' him to use a different one during the entire trial and post-trial stages." (emphasis added). See Texas Department of Housing & Community Affairs V. Inclusive Communities Project, Inc., 135 S.Ct. 2507 (2015) "... ambiguous about teacher assignments, thus 'forcing' the court to look closely at the structure and content of the statute..." (emphasis added).

In the brief for the United States the government states on page 18 "The requirment of force may be satistied by a showing of the use, or threatend use, of a weapon; the use of such physical force as is sufficient to overcome, restrain or injure a person; or the use of a threat to harm as is sufficient to coerce or compel submission by the victim." Sexual Abuse Act of 1986, H. Rep. No. 594, 99th cong., 2d Sess. 14 n. 54(a), reprinted in 1986, U.S. code cong. & Admin. News 6186, 6194 n54a; Dickerson, 567 F. Appx. at 755 (to establish a Section 2241(a) offense, evidence must show that defendant used 'some sort of force or threats to cause another person to engage in a sexual act"). This was overlooked in the unpublished decisions by the Appeal Judges. As previously established, I.A.'s testimony is incredible; overlooking the necessity to make a credibility determination in this kind of situation contradicts precedent set forth in United States V. Flores, Supra, and United States v. Bracken, supra. It is also in conflict with decisions of other United States Courts of Appeals. The court must also consider that the testimony provided by I.A. does not meet the Standard provided in the governments brief, and most courts and the U.S.S.G. elaborate on said Standard. This elaboration is in line with the previously stated interpretation of "force" as used in 18 U.S.C. 2241 using the "algorithm" derived from Johnson V. United States, Supra

There is no evidence even in the form of testimony that

There was a threat of any kind or that I.R. felt fear. As previously established, there is no evidence of penetration, therefore the alleged injuries observed in the medical examination (Abrasions around the urethal opening) cannot be used to prove "force." Nor do these alleged abrasions prove over come, restrain, threat, or fear. The Statute 18 U.S.C. 2241(a)(1) is not ambiguous about the fact that penetration must result from force, ("sexual act" by "force"). See State V. Viramounte, 204 Ariz. 360, 64, P.3d 188 (2003), which held "in the absence of ambiguity the Court must give effect to the language of the statute and may not employ means of statutory interpretation." Therefore "sexual act" by "force" is equal to "injury" from "penetration". Since none of the alleged abrasions described by Dr. Mbuthma were on the vaginal opening or inside the vaginal vault, these injuries are not evidence of penetration and cannot be used to determine "force". In determining whether these injuries show overcome, restrain, threat, fear, or a struggle that could be interpreted as "force", we can look to the expert witnesses testimony at trial. The expert witness MS. Malgrem testified "well, in the description of the findings, I don't see anything that goes along with force, because in order to get where he said he found the injuries, anatomical locations, if there were force - if there were force to get there, then I would have an expectation that there would be findings on other anatomical locations, stuff that comes first. You have to go through certain areas to get where these findings were found." The alleged abrasions seem to be indicating a woman who scratched her itchy crotch. I.R. never states to anyone that petitioner caused these abrasions or injured her. A logical inference as permitted by the United States V. Red Cloud, Supra, would be that had she not made allegations of digital penetration, Dr. Mbuthma would agree that minor superficial abrasions centered around the urethal opening indicate self-infliction due to irritation of the area causing I.R. to

"itch" herself.

There is no evidence even in the form of testimony establishing I.R. was overcome. I.R. was asked "didn't you get out, go to the bathroom and come back?" She responded "yes." Doc. 79, page 39. I.R. testified she "moved his arms out of my private area." Doc. 79, page 21. Not She was overcome and this resulted in digital penetration. I.R. testified "Like, I got his hand and moved hand out of my private area. After that I-- he keep doing it just keep doing it, then I scoot over the kids was." Doc. 79, page 50. This is not a discription of her being overcome in a way that resulted in digital penetration. By stating that she moved petitioners hand out of her private area She does not make clear what the hand was doing there and as She never explains what "it" is there is no proof of an "act" only testimony that may be interpred as contact. However for the sake of arguement this Statement would also mean the "act" has already began. Resistince after the alleged "act" has begun does not meet the standard of the Statute "act" by "force". Her alleged movement of petitions hand stops the alleged "act". Her testimony "After that I-- he keep doing it," is an allegation that the "act" began again at a later time and She does struggle or fight but allegedly moves away to stop it. This testimony nor a push/slap after the "act" has allegedly taken place meet the Standard of the Statute, "act" by "force". Nevertheless if She had to remove petitoners hand from her private area in a crowded hottub it would have been seen and reported by eyewitnesses. By Stating "He keep doing it... then I scoot over where the kids was." Doc. 79 page 50. She is claiming this happened in front of A.T. and K.L., yet both agree that they could see my hands above the water and that no crime was committed. When I.R. was asked did anybody hear you say "stop" She said "no." Doc. 79, page 42. Anybody includes petitioner. When asked "you know that if somebody tries to touch you when you don't want to be touched what you're supposed to do. right?"

I.R. responded "yes." Doc. 79, page 43. Then when asked "okay and you're supposed to say 'no', and get up and leave or runaway, right?" I.R. responded "Doc. 79, page 43. When asked "now when he gets up and goes to get his beer, you don't leave the hottub, do you? you stay in the Hottub right?" I.R. responded "yes." Doc 79, page 43. Then when asked "and he does that three times, right?" I.R. responded "yes." Doc 79, page 42. None of I.R.'s Testimony describes her being over come. She admits to getting up and going to the bathroom, then coming back and sitting next to petitioner, and not leaving when petitioner left to get beer. This proves she was not in fear or felt a threat of any kind, and could have gotten out and walked away at any time. As her testimony defies the laws of nature, because someone would have seen this alleged interaction, or heard her say something, petitioner's fingernails would have left injuries on the vaginal opening and inside the vaginal vault, and to penetrate her vaginal opening while she is sitting on top of it, with her legs closed, and in a full swim suit is impossible, it is logical to infer she is lying. See United States V. Red Cloud, Supra. When I.R. was asked "you've told lies before, right?" She responded "yes." Doc. 79, page 46. K.L. testified "the girl was sitting next to me, and he was next to her." Doc. 79, page 103. Q: "you never heard her say anything, right?" A: "Yes." Doc. 79, page 112. Q: "And when you looked down into the hottub, you can see your feet, even though the water is babbling, right?" A: "Yeah." (A fact that was overlooked by the United States Court of Appeals for the Eleventh Circurit.)

There is no evidence even in the form of testimony of I.R. being restrained in a way that resulted in sexual contact or a sexual act. As previously quoted testimony makes clear, I.R. could have and even did at one point get up and walk away. Eyewitness A.T. testified in respect to petitioner pulling I.R. closer to him, "It seemed like he was trying to be polite, making space." Doc. 79. Page 88. Restraining a person in

a way that results in a "sexual act" by "force", as the statute requires for a conviction can not be confused by eye witnesses as being polite. Also consider United States v. Fool Bear, 903 F.3d 704 (8th Cir. 2013) where the courts state "even with the support of all reasonable inferences the use of the words 'grab' and 'pull' is inadequate to prove beyond a reasonable doubt that the requisite degree of fore was used." Therefore the standard set forth by the government ("overcome, restrain or injure) to prove "force" is not met.

There is insufficient evidence of I.R. being overcome, restrained or injured in away that resulted in a "sexual act." Most districts and the U.S.S.G. however elaborate on this standard and set precedent interpreted similar to the conclusion reached when using the "algorithm" from Johnson v. United States, Supra, (make no other option available / prevent all other possibilties). See United States v. Jones, 104 F.3d 193, 197 (8th Cir. 1996), "Force is not specifically defined in the Statute. 18 U.S.C. 2246. Our court has held, however that the amount of force required under the statute need be only restraint ... Sufficient that the other person could not escape the sexual contact ... thus, the force requirment is met when the 'sexual contact' resulted from a restraint upon the other person that was sufficient that the other person could not escape the sexual contact." (internal quotations and citations omitted); See United States v. Fire Thunder, 908 F.2d 272 (8th cir. 1990), "The force requirment of section 2241(a)(1) is met when sexual contact resulted from a restraint upon the other person that was sufficient that the other person could not escape the sexual contact." (internal quotations and citations omitted); United States v. Fulton, 987 F.2d 631, (9th Cir. 1992), "Section 2241(a)(1) requires a showing of actual force ... thus, the force requirment is met when the sexual contact resulted from restraint upon the other person that was sufficient that the other person could not escape the sexual contact." (internal

quotations and citations omitted); United States V. Morris, 494 Fed. Appx. 574 (6th cir. 2012) "Force' is not defined by the Statute, but exists when the sexual contact resulted from a restraint upon the other person that was sufficient that the other person could not escape the sexual contact."; United States V. Lucas, 157 F.3d 998, (8th cir. 1998), "A defendant uses force within the meaning of 18 U.S.C. 2241 when he employs restraint sufficient to prevent the victim from escaping the sexual contact."

Most circuits apply an enhancement for "force" at sentencing for a sex crime with the element of force. In justifying the enhancemen the above stated Standard is used. See United States V. Webb, 214 F.3d 962 (8th cir. 2000), "No published case has construed the term "use or threat of force" in the specific context of 2H1.1(a)(3)(A), but we have considered Similar language in other context... See 18 U.S.C. 2241(a)(1)(1994). That Statute does not define the term "force", but courts have concluded that the force requirment is satisfied by the use of such physical force as is Sufficient to ... restrain ... aperson. We have repeatedly held that force Sufficient to prevent the victim from escaping the sexual contact satisfies the force element.... we conclude that the proper standard under 2H1(a)(3)(A) for Judging whether the defendand used or theatened force during a sexual assault is whether any force involved was Sufficient to prevent the victim from escaping the sexual contact." (internal quotations and citations omitted). There are an abundance of recent cases in multiple circuits either using or referencing to this Standard. See United States v. H.B., 695 F.3d 931, (9th cir. 2012); United States V. Morris, 494 Fed. Appx. 574, (6th cir. 2012); United States V. Bowman, 632 F.3d 906, (5th cir. 2011); United States V. Holly, 488 F.3d 1298 (10th cir. 2007); United States V. Volpe, 224 F.3d 72, (2nd cir. 2000); United States V. Lee, 2000 U.S. App. LEXIS 23827 (4th cir. 2000); United States V. Wayka, 21 Fed. Appx. 489 (7th cir. 2001); The dissent in United States V. Cabenais, 868 F.3d 731. (8th cir. 2017); and United States V.

Dickerson, 567 Fed. Appx. 754 (11th Cir. 2014). There fore there is insufficien evidence of "force" as interpreted in the context of 18 U.S.C. 2241 because I.R. was able to escape the alleged "sexual act" at any time, was fully aware of her ability to escape the alleged "sexual act" and felt no fear or threat. See United States v. Joe, 696 F.3d 1066, (10th Cir. 2012) where the Courts Stated "that keeping victims from 'even considering an escape' is to physically restrain them." And held "The restraint-of-the-victim is an element of the offense of aggravated sexual abuse under 18 U.S.C.S. 2241(a)(1) itself. It appears to be impossible to commit the offense of aggravated sexual abuse under 2241(a)(1) without applying force that, in the tenth circuit, constitutes physical restraint of the victim."

Previous case law from the 4th circuit attempts to negate this but it ultimetly fails. See United States v. Johnson, 492 F.3d 254, (4th Cir. 2007), where the Judge states, "The use of force does not necessarily entail physical restraint. For example, a rapist could inflict blows upon his victim until she submits to a sexual act without restraining her in a mannar contemplated by the physical restraint guideline, 3A1.3... Similarly an application of force to open the victim's legs for intercourse has been deemed sufficient to satisfy 2241(a)(1)'s force element, See United States V. Williams, 89 F.3d 165, 166, 168, (4th Cir. 1996), but this force would not constrain the victim's movement in a manner comtemplated by the physical restraint guidelines. Finally 2241(a)(1)'s force element may be satisfied by inference when the offender has disporportionately greater Strenghth than, or Coercive power over, the victim.... An offenders ability to commit forcible rape without resort to physical restraint leads us to conclude that unlawful restraint is not an element of the 2241(a)(1) offense or specifically incorporated in the offense guidelines." (Internal quotations and citiations omitted.)

The statute reads by "force or threat". These are two different things. Just like left or right and North or South. Therefore when an

offender has disproportionaly greater strength than, or coercive power over the victim, or inflicts blows upon his victim until she submits to a sexual act, this constitutes a threat. Installing fear in any way could constitute a threat; and if that threat led to the sexual act the burden of proof would be met. There is no evidence even in the form of testimony to support threat or fear in this case. Petitioner did not have disproportionaly greater strength than, or coercive power over the victim, or inflict blows. I.H. weighed about 200 lbs and is about 5'8. (exact hight and weight is unknown to petitioner.); Petitioner is 5'11 and weighed 155 lbs when arrested. This size difference is visually apparent. Nor did petitioner have any knowledge of her mental imparment and therefore could not of used it for coercive power. At petitioners sentencing hearing the court stated to Janie Crawford "the facts in this case do not establish that Mr. Holland knew of your granddaughters disability." Further more if a defendant is inflicting blows it is obvious the victim could not escape at that moment. While the "victim's eventual escape does not prevent finding of the sexual contact occurring immediately prior to escape", See United States V. Allery, 139 F.3d 609, 611 (8th Cir. 1998), if these blows resulted in penetration or fear or threat that resulted in penetration they are force that the victim could not escape from.

In the case of United States v. Williams, 89 F.3d 165, (4th Cir. 1996 the court States "Felicita Guerrero's uncontradicted testimony establishe that she awoke to find Williams in her room when he tried to pull her underpants off, she pulled them back on, she attempted to close her legs after he forced them open." There fore she could not escape. She awoke to a man on top of her pulling at her clothing and fought him off, then escaped after he had commited the act. She obviously would have escaped before hand had she been able to. For these reasons and those presented in United States V. Joe, Supra the arguments in United States V. Johnson supra fail to negate the fact that there is insufficient

evidence of "force" as interpreted in the context of 18 U.S.C. 2241 because I.R. could have gotten up and walked away at any time and was fully aware of the possibility to escape the alleged sexual act.

The unpublished decision of Judge Marcus, with the concurrence of Judge's Jorden and Rosenbaum is insufficient to vindicate the violation of due process rights and the right to equal protection of the law in this case. There were material, factual and legal matters overlooked in the decision and this proceeding involved multiple questions of exceptional importance involving novel questions of law and facts. Credibility questions should have been addressed. This verdict was reached by an irrational jury. The jury's determination to give credit to testimony that defies the laws of nature, is extremely inconsistent, not corroborated by eyewitess or medical examination, and was shot down by an expert witness, shows the jury found sympathy with I.R. The jury failed to see that the lawsuit filed by Janie Crawford against Carnival Cruise Lines in I.R. name, Doc. 79, page 72, was the final goal and Brian James Holland was just an innocent pawn. Had petitioner not been detained in a cabin without the opportunity to gather witnesses in his favor (a violation of the 5th and 6th Amendment), he may have been able to undermine the shaky foundation this verdict stands on. Doc. 79, page 196-197.

The multiple incosistencies in the testimony of I.R. and Janie Crawford prove they are lying. There is no evidence of a sexual act. See United States v. Reddest, 512 F.3d 1067, (8th Cir. 2007) were the "evidence was insufficient to prove penetration of the genital opening because it was not clear 'where [the defendant] finger was or how 'close' it was to the genital opening." The issue of force was not properly addressed. There exists no evidence of I.R. being overcome, restrained, or injured resulting in penetration however slight of her genital opening. The petitioner cannot overcome the will of an entire body (a bigger body) with one arm. Nor can petitioner restrain an entire body with one arm. To penetrate the genital opening of a woman sitting down with her legs closed wearing a full

Swim Suit with a stomach protruding (she is slightly overweight) and therefore blocking access defies the laws of nature. To penetrate the genital opening of a woman with fingernails the length of the petitioners at the time this allegation was made, and not atleast result in micro abrasions on the genital opening and inside the vaginal vault defies the laws of nature. To penetrate the genital opening of a woman in a crowded hottub without atleast one eyewitness describing a furtive movement or even the petitioners hand under the water defies the laws of nature. These allegations are physically impossible! As Sherlock Holmes would say, "once you have eliminated the impossible, whatever remains, no matter how improbable, must be the truth."

The multiple inconsistencies in the testimony of I.R. and Janie Crawford prove they are lying. Janie crawford admitted on the record she will and has "bucked the system" to work in her favor. Doc. 79, page 57. Janie's testimony of I.R.'s hysteria was contradicted by Ship Security officer Marabie Sanchez and the medical examination of her vital Signs a short time later. Marabie also testified that I.R. was calm and not crying in the Ship's Security office. Doc. 79, page 223. MS. Benson's testimony of seeing I.R. crying at 8:00 pm in the hallway in a bathing suit (Doc. 79, page 99) is impossible because she was with Dr. Mbuthma at 8:00 pm with dry clothes on. See Doc. 79, page 134. The Camilation of all these facts are enough to vacate and remand. However even if all of this was overlooked due to human error, the fact remains that the proper standard for determining whether a defendant used "force" under 18 U.S.C. 2241 was not properly addressed and therefore should be. The caselaw and the U.S.S.G. have shown that the proper standard for Judging whether a defendant used "force" during a sexual assault is whether any "force" involved was sufficient to prevent the victim from escaping the sexual contact. United States V. Suarez, 2019 U.S. App. LEXIS 15284 (11th Cir. 2019) hold "the rule of lenity requires

ambiguous criminal laws to be interpreted in favor of the defendants subjected to them

There is insufficient evidence of a "sexual act" by "force"; petitioner asserts his innocents. The courts in United States V. Plenty Arrows, 946 F.2d 62 (8th cir. 1991) state "although the government is entitled to all reason inferences supporting the verdict, we cannot sustain a conviction based on a mere suspicion or possibility of guilt." (Internal quotations and citations omitted) In Holloway V. Tansy, 1993 U.S. App. LEXIS 1071 (10th cir. 1993) the court state "The evidence must be substantial; that is, it must do more than raise a mere suspicion of guilt." (Internal quotations and citations omitted.) The courts in United States V. Davis, 139 S.Ct. 2319 (2019), held "In our Republic, a speculative possibility that a man's conduct violated the law should never be enough to justify taking his liberty." And in respect to determining the standard for "force" petitioner respectfully reminds this court "the consequences cannot change our understanding of law." Id. Wherefore, petitioner respectfully request this Honorable Court to right the wrong that has transpired in this case and vacate this Judgement to further the "greater ends of justice," therefore honoring the Judge's SF-61 Oath of office.

STANDING

I, Brian James Holland, hereby assert standing to bring this matter before the Supreme Court of the United States of America.

Brian Holland

REASONS FOR GRANTING THE PETITION

The reasons for granting this petition are not only found in Rule 10 of the Rules of the Supreme Court of the United States but can be found at foundations establishing this country as well as the social media crazed society of today. As every American knows, the first part of the Declaration of Independence establishes the rights to life, liberty, and the pursuit of happiness. Nothing.

it seems, could be more fundamental to Americans than the protection of these rights. We are well aware of them, and these days not shy about asserting them. However, few Americans pay enough attention to the last line of the Declaration of Independence There Jefferson wrote: "we mutually pledge to each other our lives, our fortunes, and our sacred honor." Granting this petition is upholding that pledge. While the topics in this case may seem taboo to most and put a person making an important decision regaurdin them feel uneazy remember "when my Contry demands the Sacrifice, personal ease must always be a Secondary consideration." - George Washington.

When an innocent American citizen is held against his will inside a Federal Correctional Institution an injustice has been done and there is a violation of Due Process somewhere. The United States of America must have an answer to the questions presented in this petition not only to correct said injustice and honor the Constitution, but to also honor the pledge made to each other established in the Declaration of Independence. In George Washington's farwell address on 9/19/1796 he states, "the basis of our political system is the right of the people to make and to alter their constitutions of government. But the constitution which at anytime exsist, till changed by an explict and authentic act of the whole people, is sacredly obligatory upon all." Rights of Due Process have not been removed from the constition and must be honored, and "to establish Justice" is, according to the preamble to the constitution, one of the first priorities of forming these United States. It is not just the petitioner who needs justice but every american citizen. With out an answer to questions presented regaurding witness credibility the potential for further violations of Due process is abundant. The fact that A Jury could make an obviously

errones decision and get a innocent American inprisoned and there is no way to appeal, which is a clear error of Due Process, would make any true patriot sick. In respect to the importance of Justice to humanity as a whole I think Benjamin Rush said it best in his leter to John Adams, written 9/4/1811. There he wrote "I think I have observed that integrity in the conduct of both the living and the dead takes a stronger hold of the human heart than any other virture. It is placed before mercy by the name of Justice in the Scriptures, and Just men are in many parts of the inspired writings placed upon very high ground. It is right it should be so. The world stands in more need of Justice than Charity, and indeed it is the want of Justice that renders charity every where so necessary." Benjamin Rush. The question of Justice is what James Madison held to be our "first" duty-our obligation to God. Grant Justice to the petitioner by granting this petition. Grant Justice to all United States Courts of Appeals by Clarifying the procedure for Credibility determinations. Grant Justice to America by clarify the statute in question. Grant Justice to the Supreme Court by honoring your pledge and oath of office.

Not only does the petitioner, an American Citizen, need help only the Supreme Court can provide, but the world needs help with this very same topic. "The phrase 'meToo' was tweeted by Alyssa Milano around noon on October 15, 2017, and had been used more than 200,000 times by the end of the day, and tweeted more than 500,000 times by October 16. On Facebook, the hashtag was used by more than 4.7 million people in 12 million post during the first 24 hours. The platform reported that 45% of users in the United States had a friend who had posted using the term... The MeToo (or #MeToo) movement, with variations of related local or international names, is a movement against sexual harassment and sexual abuse where

people publicize allegations of sex crimes committed by powerful and/or prominent men.""" Similar to other social justice and empowerment movements based upon breaking silence, the purpose of 'metoo', as initially voiced by Burke as well as those who later adopted the tactic, is to empower women through empathy and solidarity through strength in numbers, especially young and vulnerable women, by visibly demonstrating how many woman have survived sexual assault and harassment, especially in the workplace"- wikkapedia.com

The information from this website must not be ignored. All of humanity needs to farfill there responsibility and get on board with this beautiful, majestic, and positive movement. In doing so we must include weighing all of the facts and not letting are emotions dictate are decisions. Every person on this planet has a mother and there mother should be respected, not abused, harassed, and/or assaulted. Most have multiple family members and friends who are female who deserve the same respect. Any female who reads this should be and deserves respect and proper treatment. To further understand the vast importance and magnatude of this movment we can look to Time magizen march16/ march23 2020 issue discussing "2017 PERSON OF THE YEAR: The Silence Breakers, voices that lanched a movement 'the hashtag #MeToo went viral in October 2017 after Hollywood mogul Harvey Weinstein was accused of sexual misconduct by dozens of women. But the movement had been brewing all year. That February Susan Fowler blew the whistle on a culture of harassment at Uber and inspired hundreds of women in silicon vally to share their own stories. In August, Taylor Swift testified in court about being groped by a Denver DJ. That same month, seven females employees sued the plaza hotel in New York City alleging sexual harrassment by co-workers. In october a woman using the pseudonymn Isbel pascual helped plan a rally for agricultural workers who were being harassed

or threatend. A few weeks later, Adama Iwu organized an open letter Sighed by 150 women about harassment in the California State capitol, leading to an investigation. In a matter of months, the #MeToo movement felled hundreds of men accused of harassment or assault, from Matt Lauer to Kevin Spacey, and spurred the lanch of organizations like times that aim to create lasting change in the workplaces Progress has been neither quick nor liner. The plaza suit is ongoing. Survivors and activists expressed righteous indignation when Supreme Court Justice Brett Kavanaugh was confirmed despite allegations of assault. Still, the ripples of #MeToo have not dissipated. Weinsten was found guilty of rape in February 2020 and ordered to await sentencing from Jail, a Signal to women that their Stories can be believed and that even the most powerful men can face consequences. Using the name coined by TIME in its 2017 person of the year issue, a group of weinsten accusers now call themselfs the Silence Breakers. 'what I wanted to do was cause a massive cultural reset,' Rose McGrown, one of the accusers Said on there verdict. 'we achived that today.' —Eliana Dockerman naming Tarana Burke, Rose Mcgown, Juana Melara, Lindsey Reynolds, crystal washington."

AS these Sarces have Shown the Subject Speaks of its own importance, by Comprehending in its consequences, nothing less then the existence of the safety and welfare of the parts of which it is composed. AS horriable as it is for someone to take advantage of this for financial gain it is being done, but granting this petition can help stop it. Every person in the world from Hollywood Celeberties, minimum wage workers, and even Honorable Justices of the Supreme Court need the questions in this petition answered. We all need to know exacly what it means to force a person to engage in a sexual act. IS it force that can be measures by newtons laws? IS 10N downward the proper definition? And

if an American citizen is falsly convicted by a factfinder caught in a movement making a decision based on emotion by believing testimony from a person choosing to capitalize on said movement for finicial gain or some other personal interest, can said person still have there rights of Due Process honored by any and all United States Courts of Appeal? We need a definition for force in the context of Sexual Assault, and we need to Know the proper procedure for credibility. By granting this petition the Supreme Court can give America the answers it needs, and set an example for the rest of the world. Without these answers we will create a world where lies send innocent people to prison without proper Due process for a crime that can not be defined. The Statute 18 U.S.C. 2241 (a)(1) may even be void for vaugness. Lets not be vaugh! Lets protect are people and honor our constitution, therefore Setting a positive example we can be proud of. A positive example others will be proud to follow. A legacy to the next generation to remember us by as we remember "our obligations to our country never cease but with our lives." - John Adams 1806

Further reasons to grant this petition can be found under rule 10 of the Rules of the Supreme Court of the United States. The United States Court of Appeals for the Eleventh Circuit has so far departed from the accepted and usual course of Judicial proceedings, and sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court of the United States supervisory power. This was done in various ways, all of which alone should be enough to grant this petition. The Cumlanation of these abundant departures is undoubtly enough. These departures include upholding the district courts decision that the government provided sufficient evidence for a prima facie case of the crime, denying petitions motion for a J.O.A. AS I.R.is testimony contradicted itself, Dr. Mabuthma's testimony also contradicts itself, the eyewitness said they saw no crime, and the expert witness said the crime is impossible establishing a prima facie

case is impossible. It is obvious to any rational person, not allowing emotions to effect there reasoning, who reads the trial transcripts that the petitioner is innocent and a prima facia case was not established.

These departures include the failure to grant a rehearing en banc after petitioner proved, in his timely filed memorandom of law regaurding en banc request, that legal and factual matters where overlooked. The unpublished opinion from the United States Court of Appeals for the Eleventh circuit Looks as if they did not even read petitioners Initial Brief on direct appeal and skimed threw the governments. Multiple important factual and legal matters were not addressed when they should have been. Further information regaurding these issues was precented in the statement of the case and is hereby included by refference. These departures include not following the accepted and usual course of judicial proceedings regaurding credibility determinations, from precedent case law. The Court of Appeals stated "credibility questions are the province of the jury, and we assume that the jury resolved all such questions in a manner supporting its verdict. See United States V. Garcia-Bercovich, 582 F.3d 1234, 1238 (11th cir. 2009)" Yet precedent case law from United States V. Bracken, 711 Fed. Appx. 491 (11th cir. 2017) held, "we defer to the United States credibility determinations unless the evidence defies the laws of nature, or is so inconsistent or improbable on its face that no reasonable factfinder could accept it." Had they followed the accepted and usual course of judicial proceedings regaurding credibility determinations from precedent case law they would of vacated and remanded. Further information on this matter was presented in the Statement of the case and is hereby included by refference. These departures include not following the accepted and usual course of judicial proceedings regaurding sufficient evidence of "force". Petitioner in no way overcame, restrained, or injured I.A. in anyway that resulted in a "sexual act". Nor was there any kind of threat. Had the court of appeals followed the accepted and usual course

of Judicial proceedings regaurding Sufficient evidence of "force" they would of Vacated and remanded. Further information on thise matter was precented in the Statement of the case and is hereby included by reference. Only an exercise of the Supreme Coart of the United States Sapervisory power can correct this. Petitioner's Initial Breif on direct appeal argument one States "the government did not produce Sufficient evidence to warrant a Conviction for Aggravated Sexual abuse by force." Yet the court of appeals seems to have completly ignored the term "force" and all facts reguarding Sufficient evidence, Just as they ignored the en banc rehearing request. This departure from the accepted and usual course of Judicial proceedings and the sanctioning of the departure by the district court needs correction from the Supreme Court. Therefore establishing Justice for America and honoring petitions constitutional right to Due Process.

The United States Coart of Appeals for the Eleventh circuit has also entered two decisions in conflict with the decision of other United States Courts of Appeals on the Same important matter therefore calling for an exercise of the Supreme Court of the United States. One is in regaurd to credibility determinations by any United States court of appeals. The other is in regaurd to the proper criminal law and procedure that should be Used to prove Sufficient evidence of the element of force in Statue 18 U.S.C. 2241 (a)(1).

The United States Court of Appeals for the Eleventh Circuit in there Unpublished response regarding United States V. Holland decided December 6, 2019 States "credibility questions are the province of the Jury, and we will assume that the Jury resolved all such questions in a manner Supporting its verdict. See United States V. Garcia-Bercovich, 582 F.3d 1234, 1238 (11th cir. 2009). Importantly, the evidence need not exclude every reasonable hypothesis of innocence for a reasonable Jury to find guilt beyond a reasonable doubt. See United States V. Cruz-Valdez, 773 F.2d

1541, 1545 (11th cir. 1985) (en banc). A Jury is free to choose among alternative, reasonable interpretations of the evidence. See Id." This leaves no option for a person falsely convicted by a Jury the possibility to win on appeal, when there is a question of witness credibility. This alone is a violation of Due Process and should be enough to call for the exercise of the Supreme Court of the United States. No American Citizen should have to remain incarcerated because the factfinder choose to believe a lie. Yet some other circuits support this. See United States v. Sweargin, 935 F.3d 1116 (10th Cir. 2019) which held, "an appellate Court will not second guess a district court's credibility determination." United States V. Bright, 789 Fed. Appx. 947, (4th cir. 2019) held, "The appellate Court defers to a district Court's credibility determinations."

These decisions ignore the possibility of human error, and human error is possible in all aspects of human life. To ignore the fact that credibility determinations can contain human error and deny any reveiw by any United States Court of Appeals is a plain error, a reversable error, and a denial of an appelants constitutional rights to due process. Other courts of appeals acknowledge this and provide wiggle room. See United States v. Cates, 897 F.3d 349, (1st cir. 2018) which held, "an appellante court will not disturb a credibility determination absent a definite and firm conviction that a mistake has been commited." United States v. Conley, 2020 U.S. App. LEXIS 3489, (2nd cir. 2020) held, "the appellate court pays Special deference to the district court's credibility determinations and only overturns them for clear error. Where there are two permissible views of the evidence, the factfinders choice between them cannot be clearly erroneous." United States V. Kellam, 751 Fed. Appx. 184, (3rd cir. 2018) held "the appellate court reviews factual findings for clear error. The appellate Court's review is more deferential with respect to determinations about the credibility of witnesses. When the district Court's decision is based on testimony that is coherent and plausible, not

internally inconsistent and not contradicted by external evidence, there can almost never be a finding of clear error." Torres v. MacLaren, 2020 U.S. App. LEXIS 4810 (6th. Cir. 2020) held, "A district court is not required to accept the testimony of a witness merely because it is uncontradicted. The court need not accept even uncontradicted and unimpeached testimony if it is from an interested party or is inherently improbable. The court of appeals affords great deference to the district courts credibility determinations." United States v. Williams, 774 Fed. Appx. 871, (5th Cir. 2019) held, "... while a conviction will be affirmed if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, the appellate courts will not affirm a conviction that is based on mere suspicion, speculation, or conjecture, or on an overly attenuated piling of inference on inference. ... A court accepts all credibility determinations by the jury, with few exceptions." The cases that acknowledge the possibility of human error in credibility determinations and allow for appeal courts to consider these determinations honor the constitutional right to Due process. The various criminal laws and procedures held by various courts of appeal, some of which are in conflict with the decision of the United States Court of Appeals for the Eleventh Circuit, can be resolved only by the Supreme Court of the United States. Granting this petition with give the Supreme Court and opurtinity to do so.

The decision by the United States Court of Appeals to uphold the conviction of petitioner, under statute 18 U.S.C. 2241 (a)(1), when there is no evidence of restraint is in conflict with other United States Court of Appeals on this same important matter, and therefor calls for an exersice of the Supreme Court of the United States. See United States V. Morris, 494 Fed. AppX. 574, (6th cir. 2012) which held, "force is not defined by the statute, but exists when the sexual contact resulted from a restraint upon the other person that was sufficient that the other person could not escape the sexual contact. Force may be inferred by

Such facts as disparity in size between victim and assailant, or disparity in coercive power. The element of force does not require the brute force commonly associated with rape. The United States Court of Appeals for the sixth circuit has likewise held that the element of force is satisfied if the sexual contact resulted from a restraint upon the other person that was sufficient that the other person could not escape the sexual contact." United States v. H.B., 695 F.3d 931, (9th cir. 2012), held "18 U.S.C.S. 2241(a)(1) requires a showing of actual force. While the Statue does not define 'force' or specify how much force is necessary to amount to a violation, Congress has stated that the requirment of force may be satisfied by a showing of the use, or threatened use, of a weapon; the use of such physical force as is sufficient to overcome, restrain, or injure a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim. A few judicial decisions interpreting the term 'force' have held that the foce requirment is met when the sexual contact resulted from a restraint upon the other person that was sufficient that the other person could not escape the sexual contact. Force is sufficient if it restrains the victim and allows the defendant to engage in sexual contact."

The United States Court of Appeals for the Eleventh Circuit's decision to sustain a conviction of petitioner under 18 U.S.C. 2241(a)(a) when there is insufficient evidence of defendant overcoming, restraining or injurying a person is in conflict with other United States Courts of Appeal on this same important matter, therefore calling for the exersice of the Supreme Court of the United States Supervisory power. See United States v. Volpe, 224 F.3d 72, (2nd cir. 2000) which held "A force sufficient to sustain a conviction under 18 U.S.C.S. 2241(a) includes the use of such physical force as is sufficient to overcome, restrain, or injure a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim ... U.S. Sentencing Guidelines Manual 2A3.1(b)(1) punishes the

actual use of force or other means listed in 18 U.S.C.S. 2241(a),(b), used to overbear the will of another in perpetrating aggravated sexual abuse." United States V. Fool Bear, 903 F.3d 704, (8th cir. 2018) held, "Force is an element of the offense of aggravated sexual abuse under 18.U.S.C. 2241(a). The requisite force is established 'if the defendant overcomes, restrains, or injures the victim or if the defendant uses a threat of harm sufficient to coerce or compel submission.'" United States v. Willis, 826 F.3d 1265, (10th cir. 2016) held "18 U.S.C.S. 2246(3) and the level of force necessary under 2241(a)(1) includes such physical force as is sufficient to overcome, restrain, or injure aperson; or the use of a threat of harm sufficiant to coerce or compel submission by the victim."

There are other interpretations of 'force' in the context of 18 U.S.C. 2241(a)(1) in the 7th circuit that are in conflict with the decision by the United States Court of Appeals for the Eleventh Circuit, Therefore calling for the exercise of the Supreme Court of the United States Supervisory power. See Cates v. United States, 882 F.3d 731, (7th cir. 2017), which held "aggravated sexual abuse is knowingly causing another person to engage in a sex act by using force against that other person. 18 U.S.C. 2241(a)(1). Force under 2241(a)(1) means physical force, not psychological Coercion or threats... The Boyles decision describes force as the exertion of physical power upon another to overcome that individual's will to resist. Threats and fear on the other hand, are not classified as physical power, but rather overcoming one's will to resist through mental and emotional power." As these cases, and the information in respect to this same topic precented in the statement of the case hereby included by refference, make Clear there is more than one criminal law and procedure being used to determine Sufficient evidence of "force" under Statute 18.U.S.C. 2241(a)(1). (This further establishes the ambiguity of the term "force" that should be resolved in defendants favor/and Shows you cannot overcome or injure a person in a way that resulted in a sexual act without preventing escape.) We

as Americans should be ashamed that in the year 2020 after the explosion of the the #MeToo movement we still do not have a federal definition for the term "force" in this context. America needs the Supreme Court of the United States to establish a definition for us, therefore clearifing its meaning to all. By granting this petition that can be done.

Ideals of substantial justice and fairplay require that this court grant this petition for writ of Certiorari to advance the "greater ends of Justice." The Supreme Court has decided diffirent definitions for the term "force" in diffirent specific context and for spicific statutes in the past (further establishing the ambiguity of the term "force") see Johnson V. United States, 559 U.S. 133, 130 S.Ct. 1265, 176 L.Ed.2d. 1 2010 U.S. LEXIS 2001; United States V. Castleman, 572 U.S. 157, (2014); Kingsley V. Hendrickson, 576 U.S. 389, (2015); Voisine V. United States, 136 S.Ct. 2272 (2016); Sessions V. Dimaya, 2020, 138 S.Ct. 1204 (2018); Stokeling V. United States, 2020, 139 S.Ct. 544 (2019); and United States V. Davis, 2020, 139 S.Ct. 2319 (2019). Therefore the cause of Justice shall be served by granting this petition, because to do so otherwise will prejudice the petitioner and deprive him of meaningful access to the Court. Petitioner agrees to follow all Federal and Supreme Court Rules in his submissions before this Honorable Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted, _____, December 14, 2020

Brian James Holland
Reg. No. 70151-018
Federal Correctional Institution
501 Gary Hill Rd
P.O. Box 725
Edgefeild, SC 29824