21-5441

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



17-cr-0234, 0:19-cv-00350-WMW
20-2021

Brandon Mark Bjerknes — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brandon Mark Bjerknes
(Your Name)

P.O. Box 1000
(Address)

Milan, MI. 48160
(City, State, Zip Code)

N/A
(Phone Number)

## QUESTION'S PRESENTED

(1) Under Article I, section 3, Clause 1 of the United States Constitution, does the Senate, through its constitutional construction, link the State Governments directly to the Law making process in the Federal Government?

(2) If the law making process in Congress is the result of State Governmental representation, does the Executive Branch of the Federal Government violate the 5th Amendment to the United States Constitution, when it successively charges a defendant for the same conduct, already charged in the Sovereignty of a State?

(3) Has Judicial Minimalism and the resulting Decision Minimalism by the court led to an improper application of the Constitution as a Whole in the Judicial Branch of the Federal Government?

(4) Does the 6th Amendment to the United States Constitution require that "assistance of Counsel" be a standard that finds its foundation in Articles I-VII and the subsequent Amendments to the Constitution; or should Attorneys be allowed to set their own "objective standard of reasonable competence," even if this, in essence, bars any criminal defendant from arguing that consel was ineffective for failing to note the proper application of the United States Constitution in a manner not noted as "precedent" when counsel was representing the defendant?

(5) Having answered the above questions, is this Courts decision in "Gamble" consistent with the constitutional protection against double jeopardy afforded in the 5th Amendment to the United States Constitution?

## LIST OF PARTIES

[X] 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:

## RELATED CASES

State of Minnesota Case # 04-CR-17-846 , Decided 2-8-2018

State of Minnesota Case # 04-CR-17-1392 , Decided 2-8-2018

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INDEX TO APPENDICES

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

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

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

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished. 2021 U.S. App. LEXIS 14197

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

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.
2020 U.S. App. LEXIS 73519

[ ] 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

The Date on Which the United States Court of Appeals decided my case was May [redacted]. A timely Petition for rehearing was filed in this case. The Timely petition for En Banc rehearing was denied on May 12th 2021, and a copy of the order denying rehearing appears at Appendix iii .

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

(Case Citation's)

## OTHER CITATIONS

"The Federalist Papers"

-Number 45; pg 6, 10

-Number 62, Section II; pg 1

-Number 62, Section III; pg 2

-Number 65 "The Powers of the Senate"; pg 2-3

Statutory Reference

Federal Statute(s)

-Title 18§2251; pg 5, 6, 10 , 12

-Title 18§2422(b); pg 4, 10

-Title 28§2241; pg 10

Title 28§2255; pg 5, 10, 15, 16

Title 28§994; pg 17

State Statute(s): Minnesota

-609.341; pg 8

-609.352.1(b); pg 9

-609.352.2a(2); pg 4, 5, 7-9

-609.352.4; pg 4, 5, 7-9

-617.246; pg 8, 9

CONSTITUTIONAL PROVISIONS

-Article I, Section 3, Clause 1; pg 1, 7

-Article I, Section 2-3; pg 2

-Article I, Section 7; pg 3

-Article I; pg 12

Article III; pg 13, 14

Bill of Rights; 12, 21

5th Amendment to the United States Constitution; 4, 6, 9, 11, 12, 13, 15, 16, 18, 20

6th Amendment to the United States Constitution; 19, 20

14th Amendment to the United States Constitution; 5, 6

17th Amendment to the United States Constitution; 1

## STATEMENT OF THE CASE

The defendant was originally arrested in May of 2017 in Beltrami County Minnesota. The state prosecutor decided that the punishment that was available at the state level was not satisfactory, he therefore choose to contact the Federal Government and initiate prosecution in the Federal Courts, for the same "offense conduct" that was already present in the state indictments.

The State prosecution was the driving factor in the Federal Prosecution. The evidence is all based on state level investigators, with zero federal involvement. The State Prosecution was even so bold as to point out this reasoning to the court when the State of Minnesota Sentenced the defendant. The District Court's Decision, [2020 U.S. Dist. LEXIS 73519] addressed the "joint" prosecution, relying on [Gamble], while ignoring the constitutional construction of the Federal Legislative Branch of Government.

Without even addressing the constitutional construction of the Government, the defendant was denied a Certificate of Appealability. He chose to appeal this decision. This appeal was denied on May 12th 2021, and forms the premis of the defendant's current stance on Judicial Minimalism. The Court of Appeals and the District court in the Eighth Circuit, have ignored their duty to uphold the entire constitution, and make rulings that incorporate all of the sections of the Constitution noted, and have left the defendant with a 300 month sentence as a direct result of a 5th and 6th Amendment violation resulting from a minimalist approach to constitutional application and interpretation.

As a result, the defendant has petitioned to this Court to properly determine Constitutional interpretation and application.

This court should grant Certiorari for the following three reasons:

(1) The construction of the Legislative Branch of the United States Government, per Constitution, prohibits it from being a "separate sovereign" form any of the States in the Union. "By the victory of Gettysburg, the integrity of the Constitution of the United States was preserved, and patriotism demands that the field of that great battle should be appropriately marked and embellished; but without doing violence to the constitution itself, no court can usurp the legislative power, which that insturment vests exclusively in congress." [United States v. A Certain Tract of Land, 70 F.940 at 943 (6-19-1894)]. "The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature there of. [Article I, Section 3, Clause 1; United States Constitution]. "Among the various modes which might have been devised for constituting this [Senate] Branch of Government, that which has been proposed by the convention is probably the most congenial with the Public Opinion. It is recemmonded by the double advantage of favoring a select appointment, and of giving to the State Government such an agency in the formation of the Federal Government as must secure the authority of the former, and may form a convenient link between the two systems." [Federalist No. 62 "The Senate" :Section II].

On April 8th, 1913 the United States completed Ratification of the 17th Amendment to the U.S. Constitution. This amendment shifted the Election of Senators to the people of the State. This amendment did not change the function of the Senate itself, and it did not change the construction of the Legislative Branch of the United States Government.

The United States Legislative Branch is a Bi-cameral legislature composed of two bodies. First, The House of Representatives; which exists for the sole purpose of representing the people (populus) in the Federal Government. Second, is the Senate, which exists to allow two appointed/elected officials to represent

the State Legislatures at the Federal level. Under Section III of Federalist No. 62, the writer notes that the Republic of the United States is strong and sound as it incorporates proportional representation of the People [House of Representatives] and equal representation of the State Governments [The Senate] into a centrally linked Government.

No state in the Union shall have a larger standing in the Federal Government. This prevents more populous states from dominating the Central Government. It matters not how many Congressional Districts a state has; in the Senate, the State Government has two votes PERIOD! This was to prevent the exact problems that plague the Federal Government now. The United States is not now, nor has it ever been a true Democracy, it is, and has been a Democratic Republic. The people see their representation in the House of Representatives, and the State Governments see their representation in the Senate. That both are elected by the people **DOES NOT CHANGE THE FUNCTION OF THE TWO.** Per Article I, Sections 2 & 3 of the United States Constitution, the two "bi-cameral" houses are assigned different enumerated powers based entirely upon the history of this nation, and the function of the State Governments that existed prior to the ratification of the United States Constitution: Take for instance taxiation, following a nation that saw a revolution based in part of improper taxes, it was only common sense to limit the power to create a tax bill to the "people's house" [The House of Representatives]. The founders also knew; "The delicacy and magnitude of a trust which so deeply concerns the political reputation and existance of every man engaged in the administration of public affairs speaks for themselves. The difficulty of placing it rightly in a government resting entriely on the basis of periodical elections will as readily be perceived, when it is considered that the most conspicuous characters in it will, from that circunstance, be too often the leaders or tools of the most cunning or the most numerous faction, and this account can hardly be expected to posses the requisite neutrality towards those whose conduct may be the subject of scrutiny." [Federalist No. 65, The Powers

of the Senate "Impeachment"]. This is why the power to impeach the President or any other official rests in the "people's house"; while the power to convict and remove said official rests only in the "Republic of the States." [The Senate].

The United States Government consists of a legislature that is designed to prevent "MOB RULE!!!" A summer of Antifa riots, and city occupation of rioters, followed by a mob attack on the Central Government itself, should and better show why our Government will never allow the mob to rule. This ties into number 2.

(2) If the United States Federal Government is composed of representatives, representing the State Legislatures, how can the Federal Government be considered a Separate Sovereign from the States? Every law passed on the Federal Level, must be passed by a majority of both houses [House and Senate]. If that be the case, each state is directly involved in the drafting of federal laws. [Article I, section 7; United States Constitution.] Therefore, it is impossible for the Federal Government to attempt to remove itself from state Legislative Control.

The previous court rulings addressing this issue, namely [Gamble v. United States; 139 S.Ct. 1960], have all attempted to look to the construction of the Executive Branch, and it's ability to enforce laws, independent of the state government's [or sovereigns]. However, in doing so the court has overlooked the single most important factor that it, touched on in [Gamble], and that is that in the United States Government, the Legislative branch, not the executive, drafts and passes the laws. In [Gamble at1965], the court determined that an "offense" is defined by a law and each law is defined by a sovereign. Then is stopped, the court scratched the surface, but through it's stubborn adhearance to "Judicial Minimalism" it did not look to the construction of the "Sovereign" in question. As noted above, the state and the Federal Sovereign, are inextricably related on the Federal level, due to the Constitutional Construction of Congress.

This court has issued rulings in the past that conformed to the Constitutional construction of the legislative branch, however, for reasons unknown, it did an

about-face, now issuing opinions that conflict with the construction of the Consitution itself. In [Gaviers v. United States 55 L.Ed. 489, 220 U.S. 338] the court established a two, not one, two factor test that conformed to the Constitution in relation to the 5th Amendment to the United States Constitution. Not only does one "offense" require elements that the other "offense" does not contain, but it ALSO required that the elements contained in one "offense" could not be used to support the elements that supported conviction in the other "offense." This second factor has been removed from all Court Opinions of late, despite that it has never been over-ruled.

This courts early ruling on dual sovereignty, and double jeopardy did not have to directly address the construction of the Legislative Branch of Government, because the rulings did not run afoul thereof.

Per Article I, Section 3, Clause 1 of the United States Constitution, the Federal Government is directly connected to the State Legislatures throught the Senate. Therefore for the purpose of 5th Amendment Constitutional Protection, the Federal Government and laws created throught the federal legislature, are NOT TO BE CONSIDERED A SEPARATE SOVEREIGN FROM THE STATES!! As this is factually supported by the constitution itself, the defendant asks this court to exercise it's judicial function under Article III of the United States Constitution and realize that the defendant's conviction in the 8th Circuit Federal Court, runs afoul to the protections afforded from the 5th Amendment to the United States Constitution.

(3) The Defendant in this case, was charged in Beltrami County Minnesota, with Engaging in Electronic Communication Relating or Describing Sexual Conduct with a child [Minn Statute 609.352.2a(2)], Solicitation-Solict-Child in person or via Computer or Internet-Sexual Conduct [Minn Statute 609.352.4]. This was the conduct charged in the Minnesota Indictment, and relates to MV-1392: MV-1392 is the same as Minor #1 in the Federal Information, and the conduct charged in Minnesota under the indictment above, is the same conduct that forms the conduct charged in the Federal Information under Title 18§2422(b).

The defendant was also charged in a separate indictment in Minnesota, in Beltrami County as well, with; Engaging in Electronic Communication Relating or Describing Sexual Conduct with a Child. [Minn Statute 609.352.2a(2)]; Solicitation-Solicit-Child in person or via Computer or Internet-Sexual Conduct [Minn Statute 609.352.4]. This conduct was associated with MV-846 in Minnesotta: MV-846 is the same identified as Minor # 2 in the Federal Information. In Federal Court, the conduct that formed the indictment on the counts noted in this paragraph above, formed the basis for the Federal Information charging him with violating Title 18§2251 using Minor #2 as a victim.

The defendant filed a timely 2255 motion presenting the Double Jeopardy allegation to the District Court. This motion was denied (see 17-cr-0234; 0:19-cv-00350-WMW). In his 2255 motion, the defendant notes that the "collusion" between the state and federal Government run afoul of the Constitutional Prohibition against double jeopardy. The Government's reply and the courts order in that instance are proof that the high courts refusal to properly examine the constitutional construction of our Federal Government, have left the lower courts with the ability to make and enforce unconstitutional orders, that defy belief and the constitution itself. [Leathers, 354 F.3d at 960], [Chavez v. Weber, 497 F.3d 796] and [United States v. Turpin, 920 F.2d 1377] all these cases cited by the district court do not at all touch on how the laws in the Federal Government are created. As noted in sections (1) and (2) in this brief, the Federal Legislative branch has it's system of checks and balances, as a result of the two houses in congress in which the state legislatures can check the people and the people can check the states. Without that understanding of our Government, it is impossible to determine what the double jeopardy protection includes, nor why it was not needed in the 14th Amendment.

The 14th Amendment does not include two provisions that the 5th Amendment does, one being the prohibition against self-incrimination, and the other being "double jeopardy". Under the 14th Amendment Section 1 notes "all persons born or naturalized

in the United States, and subject to the jurisdiction thereof, are citizens of the United States AND of the State wherein they reside." Under this section, the amendment did not need to include the provisions against self-incrimination because those rights under the 5th Amendment are guaranteed to the citizens of the United States. As under the 14th Amendment, people of the state are clearly residents of both "sovereigns," this protection was already afforded. However, legislative actions, executive enforcement and judicial oversight in state government's had originally had no Constitutional Control, the states were separate from the Federal Government, they still are. The 14th Amendment was and is an amendment with the sole purpose of extending those wonderful provisions under the Bill of Rights in the United States Constitution, to the state Government's because the drafters knew that the Constitution prevented the new federal Government from encraoching on states rights. More then 85 years lates, the states could see that the new Federal Government was not encroaching on the individual states, and through their representation in the Senate, the states helped ratify the 14th Amendment, ensuring that the furute State Government actions would now follow the same bill of rights that the Federal Government had been.

Double Jeopardy did not need to be included directly, in this amendment, as just like self incrimination, this was already included in rights afforded the "dual sovereign citizens" of the United States AND the States. "The very existance of the Federal Government depends on that of the State Governments. The State Legislatures are to choose Senators. Without a Senate there can be no Congress" [4 Elliot's Debates, p78. See also Federalist No. 45][Newberry v. United States; 256 U.S. 232 at 249]. The prohibition against double jeopardy prosecution and punishment did not need to be added, as for the purpose of law enforcement, the two "sovereigns" are not separate.

Properly Applied Test

Having now shown this court the proper construction of Congress and the State Governments; the defendant will now turn to the proper test to determine if the two charged and convicted offenses run afoul of the 5th Amendment. The defendant will

utilize the exact case this court originally ruled on, and should FULLY review when making the determination required. The defendant applies the test established in [Gavieres v. United States; 220 U.S. 338, 342].

> [1] a conviction or acquittal upon one indictment is no bar to a subsequent conviction and sentence upon another, unless the evidence required to support a conviction upon one of them would have been sufficient to warrant conviction upon the other.
> [2] The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense.
> [3] A Single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute statute does not exempt the defendant from prosecution and punishment under the other.
>
> (section 342 from Gavieres, sentences numbered for reference)

In the recent [Gamble v. United States 139 S.Ct. 1960] case, the supreme court stated that for the purpose of Double Jeopardy violations, an "offense" is determined based off the statute that a specific sovereign drafts [id above case]. However, it bases this application of the constitution by cherry picking sentence "[3]" from Gavieres, while ignoring the legislative construction of congress. This is fundamentally flawed, and removes the proper "severablilty" noted in Gavieres. This severability issue is also supported by [District of Columbia v. Buckley; 75 App. D.C. 301, 128 F.2d 17, 21.

Gavieres Test Count 1:

Fed Info:(Minor #1) :The defendant did use a facility and means of interstate and foreign commerce, that is, the internet

Minn Stat(MV-1392) : who uses the internet

Fed Info: knowingly persuade, induce and entice Minor #1(MV-1392), a known 13 year old girl to engage in sexual activity for which a person

can be charged witha criminal offense.

Minn Stat: '2a' "commit any of the following acts.....is guilty of a felony" //(2) "engaging in communication with a child or someone the person reasonably believes is a child, relating to or describing sexual conduct"**

** Sexual Conduct means sexual contact of the individual's primary genital area, sexual penetration as defined in section 609.341, or sexual performance[2] as defined in section 617.246:

Footnote 2:"Sexual performance" means any play, dance or other exhibition presented before an audience for the purposes of visual or mechanical reproduction that uses a minor to depict actual or simulated sexual conduct...(See Exhibit 1).

For the purpose of count one in the Federal Information, everything that constitutes elements of the crime in the state offense, including, production of Child Pornography, overlaps from the State Level prosecution. Furthermore, they are required elements of both to sustain convciton upon either. "A conviction or acquittal upon one indictment is no bar to subsequent conviction and sentence upon another, unless the evidence required to support a conviction upon one of them would have been sufficient to warrant conviction upon the other" [Gavieres at 342]. Employing the "severability test" noted prior, would remove all of the required elements under Title 18§2251, leaving nothing to sustain the current conviction. Count one in the Federal Information fails the true double jeopardy test, reversal and dismissal is required.

Gavieres Test Count 2

Fed Info (Minor #2) :The defendant did knowingly employ, use, persuade, induce, and entice Minor #2(MV-846), a known 12 year old girl to engage in sexually explicit conduct for the purpose of producing a a visual depiction of such conduct.

Minn Stat(MV-846) :(2) engaging in communication with a child or someone the person reasonably believes is a child, relating to or describing sexual

conduct**[see section in Gavieres Test Count 1, noting the definition of sexual conduct per Minn Stat 609.352.1(b), and sexual performance per Minn Stat 617.246]**

Fed Info: knowing and having reason to know that such visual depiction would be transported and transmitted using a means and facility of, and in affecting interstate and foreign commerce, and which visual depiction was transmitted using a means and facility of, and in and affecting interstate and foreign commerce by any means including by computer.

Minn Stat: "2a" a person 18 years of age or older who uses the Internet, a computer, computer program, computer network, computer system, an electronic communication system, or a telecommunications, wire, or radio communication system, or other electronic device capable of electronic data storage.

"2b" [jurisdiction] a person may be convicted of an offense under subdivision 2a if the transmission that constitutes the offense originares within the state or is received within the state.

In this Gavieres review, the state requires that the defendant communicate through electronic means for the purpose of visual reproduction of a sexual performance. The communication can originate in or terminate in the state, clearly allowing the state to punish a defendant for using a Government defined means of interstate commerce. As in Count 1, when the conduct that overlaps Count 2 of the Federal Information is severed from the conduct that sustains the conviction in the State of Minnesota, there is NO conduct left to charge the defendant in Federal Court.

Not only is there clealy no conduct left in either count in the Federal Information, but the true nature of the federal charge is clearly an attempt to violate the defendant's constitutional rights against dual punishment for the same offense, through expansion

of imporper constitutional application. "Referral and cooperation between Federal and State officials not only do not offend the Constitution 'they' are commonplace and welcome"[Bartkus, 359 U.S. at 123]. The problem is this court has seemed to forget what referral means. It means to transfer to another. Cooperation means to work with one another. Utilizing the basic meaning of these english words, the state is either referring a criminal defendant to another venue for thier porsecution or they are working in tandem. Either way, double jeopardy would not be offended if done properly. "We knew fairly early on that the state statutes addressing this behavior could not compare to the sentences that the prosecution could get at the federal level. And we knew faily early on that we wanted to enlist the assistance of the United States Attorney's Office and prosecute the bulk of this case federally in light of the exposure of the sentences, including exposure to life imprisonment with the defendant" [Transcripts Minn State hearing, 2-8-18, Pg. 4 LN.9-18](See Title 28§2255 motion exhibit# 4)

The state Government, through cooperation between the two sovereigns, had the ability, per constitution, to refer the defendant's criminal case to the United States Attorney's Office for prosecution, as long as the state would have dismissed the indictment before it for the same conduct, the State choose not to. The State could have worked with the federal Government to prosecute the defendant for crimes other then what the state had, the state choose not to. "The very existance of the Federal Government depends on that of the State governments." [Federalist No. 45]. On Feburary 8th 1978, the United States Government (through the consensus of two houses of congress), enacted Title 18§2251. The Senate at the time represented the State of Minnesota, and was responsible for the laws passing. On June 25th, 1948 the United States Government (through the consensus of two houses of Congress) enacted Title 18§2422. Again, the state of Minnesota was represented in the Federal Government through the Senate, and was responsible for the laws passing.

When the state of Minnesota choose to pick a state statute to charge the defendant

in state court, then to pick a federal statute that covers the exact same offense conduct and charge the defendant for the same offense conduct under a Federal Statute it violated the 5th Amendment to the United States Constitution, and the State of Minnesota did this not once, but twice: Count 1 and 2 in the Defendant's Federal Information. This argument is presented to the Federal Courts, because it is those courts that have been utilized by the state of Minnesota as a means to violate the defendant's constitutional rights, and it is those in which the second successive prosecution began.

"The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense." [Gaviers at 342, line [2] from reference]. The [Blockburger] test, requires this court to determine if each of the defendant's offenses "requires proof of..different element[s]" [Blockburger 284 U.S. 299, at 304]. In the defendant's case, as shown above in the two "gavieres tests," the elements are identical. Therefore, the defendant was already "in jeopardy" for the same offense, when the Federal Government returned it's Information. The defendant's stance is not new either. In 1948, the defendant's own circuit ruled that, " to sustain the plea of double jeopardy, it must appear that appellant upon the first charge could have been convicted of the offense in the second." [Michener v. United States; 157 f.2d 616, 618].

In the most recent case of [Gamble v. United States; 204 L.Ed 2d. 322] Justice Thomas stated, "Our judicial duty to interpret the law requires adherence to the original meaning of the text. For that reason, we should not invoke stare decisis to uphold precedents that are demonstrably erroneous. Because petitioner and the dissenting opinions have not shown that the Court's "dual-sovereignty" doctrine is incorrect, much less demonstrably erroneous," [justice Thomas concurred in the majority's opinion]. The justice was right. However, at some point in the past the court began looking to it's own previous interpretation of the Constitution rather then to the actual Text of that document when attempting to resolve cases and contraversies. In doing so it has completly Ignored Article I of the U.S. Constitution.

The defendant wonders if, in light of Ariticle I and the constitutional construction presented in this Brief, if Justice Thomas would reconsider those words, and that decision. "The fifth Amendment to the Constitution protects all against double punishment for the same offense. Its enforcement and its application demand a test which is practical, not a theoretical one. It is the evidence, and not the theory of the pleader, to which we must look to determine this issue."[Michener at 619]. "A free society does not allow its government to try the same individual for the same crime until it's happy with the result."[Gamble; dissent by Gorsuch, *at 1996].

The United States Constitutions Bill of Rights is not intended to offer protection to the Government, it is to restrict the Government, "and it is needless to add that one accused of crime, regardless of kind or magnitude of the offense, is entitled to the protection of this section [5th Amendment] of the Constitution"[Michener; at 619]. The defendant is accused and convicted, and has admitted to, using social media accounts ficticiously created, and his position of trust to solicit the production of child pornography. This does not negate his constitutional protection. If anything, just the accusation, prior to any admission of guilt should have guaranteed his protection, as his lawyer, and the courts should have been well aware of the stigma that a conviction based off of the conduct that the defedant was accused of, would carry.

The courts stubborn adhearance to this mis-application of the constitution not only allows successive prosecution in multiple different districts, but as worded, it allows multiple applications of the same statute, utilizing different statutory elements, in the same district. Take for instance, the statute the defendant was charged under in Federal Court (Title 18§2251).

(1) Knowingly persuade MV-1 to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, knowing and having reason to know that such visual depiction would be transported using any means of interstate commerce.

(2) Knowingly used MV-1 to engage in sexually explicit conduct for the purpose of

producing a visual depiction of such conduct, using materials that had been mailed, shipped and transported in and affecting interstate commerce by any means.
(3) Used a facility or means of interstate commerce to induce MV-1 to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct.

These three crimes can all stem from one single act..the same act the defendant stands convicted of. However, because the "offense" is defined by a statute [Gamble], despite that it is the exact same conduct, the three contain elements that the others do not[Blockburger]. It is time that this court sees the error in what this ruling has done and how far it has come. Derik Shovin was convicted of three crimes that are all directly connected to one another. That trial saw the old "Russian Doll" conviction, Manslaughter forms most of the elements required to convict of 3rd Degree Murder, which in turn forms most of the elements required to concivt of 2nd Degree murder. This very year the nation saw, in live realtime TV, a trial play out that violates the very premis of the 5th Amendment to the United States Constitution, and it was allowed because of this courts studdorn adhearance to an inaccurate application on the United States Constitution, that was decided based on review of a previous ruling, not on a review of the Constitution itself.

JUDICIAL MINIMALISM

In 1999 the courts began following an approach called "Judicial minimalism." This ideal sees no constitutional founding, and the defendant believes that it in effect limits Article III Judicial function. It is based off of a book by Cass R. Sunstein, called "One Case at a Time; Judicial Minimalism on the Supreme Court 3-6" This wonderful book has led to a practice called "Decisional Minimalism", "that is, saying no more then necessary to justify an outcome, and leaving as much as possible undecided"...[United States v. Whatley; 719 F.3d 1206, 1224 (11th App. 2013)]. The court began this as it felt that (1) it was likely to reduce the burdens of judicial decisions, and (2) it was likely to make judicial errors less frequent and (above all) less damaging [id at 1224]. This good intention defies logic as in the courts

of the United States generally a "case arises within meaning of Constitution, when any question respecting Constitution, treaties or laws of United States has assumed such form that judicial power is capable of acting on it; declaration of rights as they stand must be sought, not on rights which may arise in future, and there must be actual controversy over issue, not desire for abstract declaration of law; form of proceeding is not significant, but it is nature and effect which is controlling." [re Summers, 325 U.S.561, 65 S.Ct. 1307, 89 L.Ed. 1795]. Under Article III, Section 2, Clause 1, better known as the "case or controversy clause," the Court is granted its jurisdiction on specific subject matter. Nowhere in the Constitution can the Court draw the power to "minimalize" it's jurisdiction. The defendant feels that this court, somewhere in history, has made a determination, that"case or controversy" meant the court could either make a determination as to the outcome of a specific case, OR determine the controversy presented in the preceedings associated with that specific case. The defendant feels that this is in error and not consistent with the Constitution, and is has led to "Judicial incoherence" [Justice Scalia and Thomas, in concurring opinion, Nasa V. Nelson; 562 U.S. 134, 178 L.Ed. 2d 667, 690] on the courts as a whole.

As the defendant stated in his request to the Eighth Circuit, this "minimalistic" approach has not made judicial errors less frequest, and less damaging....it has made judicial errors impossible to identify, and more constitutionally damaging. For reference, the defendant would note that should this court take up this case and rule as the constitutional construction requires, the defendant directs this court to review all of the 8th Circuit Appellate Decisions issued in response to this "controversy" and ask, how is it possible for a superior court to review that decision for error, and how that decision in any way would instruct a lower court. Therefore, this "minimalistic" approach does not reduce the judicial burden, it substantially increases the burden, as lower courts are operating with no instruction from the superior courts, therefore, making constant decisions that should have clearly

established constitutional precident; and then requiring superior courts to conduct a far more indepth review then should be required, as the superior courts have no idea what the lower courts considered before issuing a "one-line" decision. This is the very essance of "judicial incoherence." The defendant does agree with the court when it states, "it is of course acceptable to reserve difficult constitutional quiestions, so long as answering those questions is unnecessary to coherent resolution of the issue presented [in the specific case]" [Nelson, id at 691]. The problems is and has been in this case, that the courts refusal to address the constitutional issues at all, is due to a perceived ability to deny the specified request, based entierly on some other reason. This and other courts have created a judicial system in which "one loose thread in the sweater can destroy the entire garmet, even if the thread does not unravel the remaining threads in the shirt." This is not how our courts are to work, but it has become common place, as a result of what the defendant will cite as "incoherent judicial obscurity," and "constitutional redaction." The defendant notes constitutional redaction, as when this court reviews the decision in [Gamble],[Gaveiers], and [Blockburger], it is clear that this court resuses to look to the document itself, or looks to one portion, while ignoring the whole document and how it should apply to the case before it.

This court understands this, yet it seems to only focus on this when it is against the accused. In the current case before this court; not only must the defendant prove that his legal argument is sound, thus showing that his 5th Amendment Rights were in fact violated, but as it is being presented to this court as a Title 28§2255 motion, he must prove that his defense counsels actions were below the standard established in [Strickland], or the court will refuse to look to the merits of his fifth amendment challenge. "Appellate court will not review on appeal from denial of motion to vacate sentence under Title 28§2255, issues not timely raised on appeal from conviction." [Hallman v. United States, 490 F.2d 1088 (8th Cir 1973)]. This stance is binding, on 11 Circuits. Yet in the 73 years since the enacement of Title

28§2255, and the 27 years since the time limit was placed on a filing, not one single time has this court or any other acknowledged how the statute, as a whole violates the Equal Protection Principle of the Fifth Amendment to the United States Constitution. In its current form, a criminal defendant has one year to file his timely petition under Title 28§2255, based on subsection (f) as long as he is an incarcerated individual. Think about that for one second, the average inmate who lacks highschool education, has less then 12 months from the issuance of his judgement, to file his petition. Does this court even consider, that once sentenced, an incarcerated individual spends 2 to 5 months in transit, en route to his designated prison. If he fails to meet that time limit, absent a justified showing for delay, he is done, no more arguing that issue, unless there is a change in consittutional law. A defendant with a 30 year sentence will serve out his three decades in prison, then be released. The day he is released, he can file a "writ of coram nobis" to the court because he could not benifit from a Title 28§2255 or a §2241 motion. "A void conviction does not gain validity with age" [United States v. Morgan; 98 L.Ed 248, 252, 346 U.S. 502]. This is important with the current case, as a conviction like the defendant's in federal court will result in sex offender registration, long after the term of imprisonment has expired. However, it makes the point noted above, a person incarcerated has no ability to apply for a "writ of corum nobis" and is instead bound by the terms of Title 28§2255 or §2241, and the associated time limits, and general filing restrictions.

The current application of Title 28§2255 and the Writ of Corum Nobis, violate the equal protection principle of the 5th amendment, by unconstitutionally limiting access to the courts only while an individual is incarcerated, while at the same time allowing, untimely, successive petitions to be filed by those who are not deemed by the court to be "in custody."[Morgan, id above footnote 1]. The Defendant does not cite these things now for this court to determine, although he feels it is time that it should, these things are cited for reference mainly to show this court how its

application of "decision" and "judicial minimalism" have let the court, the executive branch and the legislative branch, slowly erode the constitutional protection afforded "We The People".

INCONSISTENT DECISIONS

The defendant next notes that the decision, which currently the Courts are utilizing to Govern their own interpretation of Double Jeopardy, is not only inconsistent with the Constitution as a whole, it is at odds with the entire premesis of the United States Sentecing Guidelines. If an offense is the "statute" as determined by the sovereign, how does a court apply the United Sentencing Guidelines? The current understanding of "offense" would limit the united States Sentencing Guideline application to a categorical approach, or more specifically, one in which only the actual statutory elements of the offense can form the base of application to any of the United States Sentencing Guidelines themselves.

Title 28§994 under subsection (c) establishes parameters in which the Sentencing Commission is to establish the guidelines. All of these parameters look to the actual conduct, not some basic statutory language. Subsection (c) is not alone, subsections; (d), (e),(h),(i),(l),and (n) just to name a few. To prove this the defendant will apply the "categorical" Sentencing Guideline, to his own offense of conviction under count 1 of his federal information, (Coercion and Enticement) :
Base level 2G1.3(a)(3)...base level 28; oddly, not a single other guideline would see its applicaiton under the Defendant's Information (0:17-cr-00234-WMW, document # 20), as none of the "conduct" covered in the Sentencing Guidelines, is present in Count 1 of the defendant's informaiton. ...

This courts inconsistent decisions seem to defy logic in most instances, and most if not all relate to the "categorical approach" method being used to determine current offense conduct. Applying the categorical approach in order to determine if a statute itself is of a specified type is logical. Applying this approach to determine if a specific offense or violation of said statute is of a specific type

defies logic. "As originally understood, 'an offence is defined by a law, and each law is defined by a sovereign. Thus where there are two sovereigns, there are two laws and two offenses'"[Gamble at 1962]. This is the supreme court taking a categorical approach to the word offense in the 5th Amendment to the United States Constitution, while wholy ignoring the Seven full Articles, the multiple Sections contained in them, and the multiple Clauses contained in the Sections, and how that "approach" is inconsistent with the rest of the Constitution.

STRICKLAND "STANDARD"

(1) Per advice of counsel, the defendant had NO pretrial phase in the current Federal Proceeding at all. Mr Wold's decision to direct the defendant to waive the filing of an indictment on the same day in which he plead guilty to a two count information, was part of the plea signing that the Defendant was told, was in his best interest (Document #26, pg 6 of 12, DKT# 0:17-cr-00234-WMW). When could the defendant, one who lacks the 8 plus years required for knowledge in the law, have been able to present any of the issues noted in this brief? "The proper measure of attorney performance remains simply reasonableness under prevailing professional norms [Stickland v. Washington; 104 S.Ct. 2052, 80 L.Ed 2d. 674, 466 U.S. 668, at 688].

(2) Per the above standard in "Stickland" the courts have allowed Attorney's to set and abide by their own code of conduct with no oversight. The induction of "incoherent judicial obscurity" and "constitutional redaction" have had an adverse affect on that "standard" as now attorneys who spend years studying the constitution in law school, must now learn how to apply multiple different "interpretations" of the Constitution, now matter how contradictory they are. "The general rule that ignorance of the law or a mistake of the law is not a defense to criminal prosecution is deeply rooted in the American Legal System." [United States v. International Minerals and Chemical corp. 402 U.S.558, 563]. Not only should this be the truth for criminal defendants but it should be the standard for attorneys

who currently have the ability to create their own standards, and comply with only those, as long as they are the professional norms. That Mr. Wold is ignorant to the Constitution as a whole, and the protection it affords his client is no excuse, to allow this to be considered acceptable is to create a two-tiered justice system, in which an attorney's ignorance to the constitution is accetable and allowed, while an accused's ignorance to the laws drafted under the enumerated powerd of the constitution is not, and is punishable by up to and including death. "In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering ALL the circumstances"[Strickland at 688]. Again, the minimalistic approach misses what that says. Is the true construction of the entire constitution concluded in "all the circumstances?" It should be.

(3) As noted in the original 2255 and again repeated in the Appellate Brief, in 1973 this court ruled in [Ash; 413 U.S. 300, 309-310, 93 S.Ct. 2568, 378 LED 2d 619]"that counsels 'assistance' would be less meaningful if it were limited to the formal trial itself" The courts have noted since that decision, that with the ever evolving criminal justice system, a defendant has a right to counsel during "critical stages of the proceedings". The time for Mr. Wold to step up to the plate, was at the federal detention hearing and ask how his client was being charged twice...He did not. He was then presented with the ability to file an appeal, based on new information [When the state prosecutor said in open court, that the decision to double charge was made for the sole purpose of increased punishment, the vindictive nature of the federal prosecution was revealed, as was the "sham that it was being furthered under"(Bartkus v. Illinois 359 U.S. 121, 123)], still Mr Wold did noting.

(4) With no avenue to actually correct any deficient conduct by Mr. Wold, open to the defendant; which would offer correction of the Constitution Violations he has suffered, and the liberty he has lost, this court is the final stop in requesting a remedy.

(5) The continued constitutional misintrepretation by this court has allowed

the "field" of criminal defense attorney's to degrade into a field, in which no single attorney attempts to look to the constitution they are charged to uphold,. and instead relys blindly upon any and all judicial rulings to be guiding, despite the constant minimalistic approach to the issuance of those rulings, and the lack of guidance assocaited with those rulings. Mr. Wold could not meet the Strickland standard due to the lack of proper constitutional instructing from this court in the areas in which the brief alleges. As such, there is no way Mr. Wold's assistance could be interpreted as constitutionally effective, in relation to protecting the defendant's 5th Amendment Right against Double Jeopardy. The defendant has established his evidence required; to show the 6th Amendment Violation required, to allow full review on the merits.

## CONCLUSION

The defendant, in this petition, alleges that the current Supreme Court Rulings in relation to "Dual Sovereignty" violate the constitution of the United States, as a direct result of this court employing a "minimalistic" review of only the Bill of Rights, while putting blinders on and "redacting" the remaining 7 Articles of the United States Constitution. As a result of this continued "minimalist" approach, the Executive Branch of the Federal Government, has the ability to intentionally prosecute citizens [like the defendant] in violation of the prohibition against "Douple Jeopardy" punishment and conviction established in the 5th Amendment to the United States Constitution.

This court, through "incoherent judicial obscurity" and "constitutional redaction," has refused to acknowledge that the construction of the Federal Legislative Branch of Government prohibits it from being a "separate sovereign" from the States, which would in turn destroy it's current stance on "dual sovereignty" as it relates to the 5th Amendment to the United States Constitution.

The Defendant begs this court to grant Writ of Certiorari and correct the issues noted in this petition. The defendant respectfully request this court acknowledge

that a response from the Attorney for the Executive Branch of Government, citing "no response" to this petition is irrelevant to the issues presented herein, and should not be at all considered as reasons for denial, as per proper constitutional application, the Executive Branch of Government should not be asked to determine the Constitutional Construction of the Legislative Branch of Government, and therefore the executive's own power. As the Bill of Rights is to prevent Government Over-reach, the defendant feels it may be in the interest of Justice to have this court appoint an Amicus Curiae to "independently" defend any position offered by the Executive Branch of the United States Government in this proceeding.

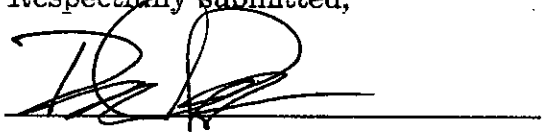
The Defendant, Brandon Mark Bjerknes respectfully request this court grant Writ of Certiorari, and should the court issue a ruling in his favor, he respect that this court bar any successive prosecution in Federal Court, as any further Federal Prosecution would be clearly vindictive.

The issues presented in This Writ are foundational; meaning they have to do directly with the application of the Amendments to the Constitution in the Bill of Rights and beyond, and how those rights are interpreted in relation to Article I of the United States Constitution. The determination of controversies noted in this brief establish limits of Executive Authority under Article II of the United States Constitution, and the proper reach of Federal Law under United States Code Service. Therefore, this court is required to exercise it's Article III Constitutional function and issue a ruling that will properly instruct all lower courts in a binding manner.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 8-10-21