

No. 21 - 5922

ORIGINAL

In the
Supreme Court of the United States

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

In re Edwin Oland Andrus - Petitioner
Vs.

United States of the United States - Respondent

On petition for a writ of
Certiorari to

United States District Court
of the Southern District of Texas

Petition for Writ of Certiorari

Edwin Oland Andrus
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Q U E S T I O N S P R E S E N T E D

1. Should this Court grant writ of Certiorari addressing constitutional issues, correcting a miscarriage of justice that occurred when lower Court unconstitutionally defined the key elements of a statute so broadly as to make a new law, destroying the Due Process rights for 35 millions citizens and eliminating their awareness of what the law demands of them ?

2. Does the Constitution and Bill of Rights protect individuals regardless of sexual orientation, race, gender, social status or the type of statute the persons is accused of ?

3. When the lower Courts, either use procedural dismissals or just doesn't rule to avoid ruling on Constitutional issue that caused a jury to find guilty a factually innocent person. Should the Supreme Court grant Certiorari to maintain confidence in the judicial process for the people ?

L I S T O F P A R T I E S

[X] All parties appear in the caption of the case on Cover Page

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* N O N E *

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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 judgement/case below due to District and Appellate Courts refusal to address the Constitutional issue presented.

O P I N I O N S B E L O W

For cases from Federal Courts

The opinion of the United States Court of Appeals is not available due to it's refusal to Rule on my Constitutional issues presented leaving my only option to the Supreme Court

The opinion of the United States District Court appears at **Appendix A** to the petition. Where time bar of seven weeks for procedural dismissal was used to avoid Constitutional issues that cause conviction.

Is unpublished

J U R I S D I C T I O N

For cases from **Federal Courts:**

The date on which the United States Court of Appeals decided my case was Not Ruled on

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT VI

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATUTORY PROVISION

Title 18 U.S.C. §2422(b)

(b) Whoever, using... any facility of means of interstate commerce, ...Knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in... any sexual activity for which any person can be charged with a criminal offense, of attempts to do so...

STATEMENT OF THE CASE

Around the last week of **December 2016** or first week in **JAN 2017**, I received a replay to a add I posted in a personal section of Craig's list. The personals listing requires a person to acknowledge they are 18 years of age or older. Being a single male living in the country and working in areas where it is unlikely to meet women interested in having adult fun. I found this site a good place for this.

Homeland security Agent Heidi Brower, trained in art of manipulation which she admitted in trial, contact me through this add. She presented as a single mom in her early 30's with a teenage daughter. Then she very quick turned her communication to me sexual. She went into great detail of how she, at her daughter's age, started having sexual relationships with old men. Also she went into graphic detail the acts she performed and how they positively effected her growth. Then she went into extreme detail of how her and her daughter where performing sexual acts on themselves.

All the while, I made several attempts to get her to meet me along, without her daughter, because I was truly interested in her. Through constant erogenous stories and due to my interest in her, was able to induce me in to expressing interest in what she claimed her and her daughter wanted. After several attempts on my part to get her to meet alone at my home or in San Antonio I agreed at her request to come down to her.

On **JANUARY 13, 2017.**, Mr. Edwing Oland Andrus was arrested in the Best Buy parking lot in laredo Texas while attempting to meet "Allison", a 30's mother. Then, on **JANUARY 21, 2017** he was indicted on one count of title 18 U.S.C. §2422(b). Mr. Andrus hired Roberto Balli shortly thereafter. At which time he expressed his belief in his innocence and that the government

entrapped him. Also include was a list of favorable witness I provided for character references. Subsequently, Mr. Andrus filed a pretrial Motion to Dismiss Indictment for lack of evidence, which was denied. Mr. Andrus also filed a pretrial Motion to Dismiss the Indictment for Lack of Venue which was also denied by the Court. The Case was tried before a jury, which were not given conscious instruction on the element of enticement and were lead to believe that **comments** of willingness or interest constituted that element, making the trial fundamentally unfair.

This was compounded by the fact that Mr. Balli lead me to believe he was going to use entrapment defense and put me on the stand to tell my side of the story, but he didn't, almost guaranteeing a guilty verdict because the jury has only one side of story and never considered I was the only person enticed "Defendant alleged that he twice explained facts to his attorney which he asserts should have at least caused attorney to explain possible defense of entrapment, with which allegation he could possibly prove set of facts sufficient to substantiated claims of ineffective assistance of Counsel" **Summers Vs. United States**, 538, F 2d 1208 (5th Cir. 1976).

At the close of evidence, Mr. Andrus made a Motion to Dismiss pursuant Rule 29 of Federal Rules of Criminal Procedure, arguing that the government failed to present sufficient evidence that a rational fact-finder jury could find that Mr. Andrus attempted to entice a minor. The Court denied the Motion...

On Direct Appeal, I allowed Mr. Belli to stay as Counsel because he claimed that appellate law was his specialty. He made his entire brief around an appeal, that was ruled against. Essentially guaranteeing the appeal lost, not properly arguing the huge Constitutional issues present in the case. He was equally ineffective out of either pure incompetence or out of a position induced by the government.

I personally researched and discovered that the Court made such a large Constitutional violations as to eliminate the Due Process for all 35 millions people on the fifth Circuit. They ruled that **comments** of interest or willingness, that themselves **was actually induced by the agent**, "met" the element of enticement. Clearly to express willingness to someone that made such a effort to get that is to be the one being enticed, just opposite of the element of **18 U.S.C. §2422(b)**.

I presented the Constitutional issue so clear as that the lower Court could not rebut it since it was supported by the Constitution, the statute's wording, Rule of Law, and case Law; so they avoided addressing these Constitutional issues even when there are case laws and rules [See Appendix B] that support my Constitutional arguments getting ruled on.

I come now to this great Court because the lower Courts have either used procedures or just refuse to rule on the far reaching Constitutional issues I presented and that leaves only this highest Court!

If this Court fails to GRANT writ of Certiorari and allows this unconstitutional and negative precedent to stand, the people of this Union would lose confidence in our Judicial System, because each and every judge just make the law what ever they want at that moment, NOT what our elected officials wrote and passed.

REASONS FOR GRANTING THE PETITION

1. 5th Amendment Violations

Unconstitutionally Broad

1-A. Mr. Andrus's 5th Amendment Due Process rights have been violate in a multitude of ways. A pretrial Motion to Dismiss Indictment for insufficient evidence was wrongly denied by the Court. Upon the conclusion of trial Mr. Andrus made a Motion to Dismiss pursuant of Rule 29 of Fed. R. Crim. P. showing that by the straightforward reading of statute that the government failed to present sufficient evidence that a rational factfinding jury could find that Mr. Andrus attempted to entice a minor.

Title 18 U.S.C. §2422(b).

(b) Whoever, using... any facility of means of interstate commerce, ...knowingly persuade, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in... any sexual activity for which any person can be charged with a criminal offense, of attempts to do so...

Lets look at the **government's own concise instructions** of what is a violation of the **key elements to persuade, induce, entice, or coerce...**

"...18 U.S.C. §2422(b) DOES NOT criminalize sexually explicit communication. It criminalizes communication [designed] to persuade, induce, entice or coerce A MINOR [to] engage in sexual activity. In other words, criminalizes an INTENTIONAL ATTEMPT TO ACHIEVE A MENTAL STATE-A MINOR'S ASSENT TO ENGAGE IN SEXUAL CONDUCT" Cited : LexisNexis

- Webster's 9th College Dictionary (1985) -

Persuade: to move by argument, entreaty, or expostulation to a belief, position or course of action.

Induce: to move by persuasion of influence.

Entice: to attract artfully or adroitly or by arousing hope or desire.

Assent: to agree to something esp. after thoughtful consideration.

To truly understand, lets look at the key element words, and how the government say's the minor's mental assent caused by enticement. Persuade, induce, entice and coerce; all are concerted actions to gain leverage ultimately resulting in foreseen results; therefore, manipulated by abroad. While assent clearly shows that a person was guided into an action they where not inclined too.

In **United States Vs. Edwin Oland Andrus**, Case No. 18-40173 (5th Cir. Dec. 14, 2018)., The Court erred by ruling ."comments suggesting interest or willinges, met the elements of enticement". For the Court to take a unconstitutionally broad or overly vague re-definition of key element words of a statute "undermines the Constitution's separation of power and the democratic self-governance it aims to protect" **United States Vs. Davis**, 139 S.Ct. 2319.204L. Ed. 2d 757 (2019). Only the people's elected representational in legislature are authorized to "make an act a crime" **United States Vs. Hudson**, 7Cranch 32, 34, 3L Ed 259 (1812). It's not the responsibility for defining crimes, to the relatively unaccountable police, prosecutors, and judges; eroding the people's ability to oversee the creation of laws they are expected to abide "first essential of Due Process of law" fair notice of what the law demand of them. See **Kolender Vs. Lawson**, 461 U.S. 352, 357-358, 103 S.Ct. 1855, 75 L. Ed 2d 903 and n.7 (1983); **United States Vs. L. Cohen Grocery Co.**, 255 U.S. 81, 89-91, 41 S.Ct. 298, 656, 516 (1921); **United States Vs. Reese**, 92 U.S. 214, 221, 23L Ed. 563 (1876). It boggles the mind that Congress would have expressed the straightforward plain writing of the title **18 U.S.C. §2422(b)** with its corresponding harsh punishment of 10 years to life with Mandatory minimum 10 years. Then intend for the Courts to redefine so broad in its plain key element words, as to no longer "give ordinary people fair warning about what the law demands of them" **United States Vs. Davis**, 139 S.Ct. 2319, 204 L. Ed. 2d 757 (2019). Plus, in reverse sting operations where a

fictitious mother, who is a trained agent of the government, is involved, all the agent would have to do is induce a person with erogenous comments that suggest willingness or interest, but by no means an attempt to entice. By the government unconstitutionally redefining **title 18 U.S.C. §2422(b)** it not only rewrites the statutory text, "would be effectively stepping outside our role as a judge and writing new law rather than applying the one congress adopted" **United States Vs. Davis**, 139 S.Ct. 2319, 204 L. Ed 2d 757 (2019). But it also runs roughshod over the statutory context by expanding the key element words of persuade, entice, induce and coerce; which is concerted actions to get a desired result, to the fundamentally different aspect of passive communication suggesting interest or willingness, that a agent of the government enticed through persistent erotica, from Mr. Andrus. A rational factfinding jury, if given **concise instructions** of what constitutes a violation of the key element of **title 18 U.S.C. §2422(b)** would have found Mr. Andrus innocent of charged statute, if presented in a fundamentally fair and without prejudice .

Although Mr. Andrus messages and actions does not represent good precept, it most certainly, by the plain reading of **title 18 U.S.C. §2422 (b)**, **DOES NOT represent criminality on his part**. Based on the above facts, the Court erred in denying Mr. Andrus's Motion to Dismiss this case for insufficient evidence. Followed by the Appellate Court's ruling that lower Courts **can** violate Due Process by fundamentally redefine statutes to affirm a unlawful conviction. This issue is in urgent need of Supreme Court's correction.

I pray for Supreme Court to **GRANT** petition for Writ of Certiorari then use it's judicial authority to correct lower Courts departure from the Constitution.

Rule of Lenity

1-B. In a situation with a trained agent using erogenous messages, where the agent is inducing similar messages in return. And by the Court allowing the statute to be unconstitutionally expanded beyond its text, to the fundamentally different interest or willingness, the government has created ambiguity. With the evidence showing, Mr. Andrus clearly tried to get Allison (the fictitious mother) to meet by herself, it pushes the ambiguous situation his way. Even if the Court were to disregard the Constitution and the Supreme Court's mandate that **only Congress is to create and define laws "make an act a crime"** **United States Vs. Hudson**, Cranch 32, 34, 3L. Ed. 259 (1819).., and **expand the statutory language into ambiguity**, the Rule of lenity would apply But when there are two equally plausible interpretations of criminal statute, though the statute was drafted clear, the Court created ambiguity with it's **unconstitutionally broad re-definition of the Law**, the defendant is entitled to the benefit of the more lenient one. "[T]he tie must go to the defendant [:] The Rule of Lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subject to them" **United States Vs. Santos**, 553 U.S. 507, 514 (2008), See also **Bell Vs. United States**, 349 U.S. 81, 83-84 (1955)(**Frankfurter, J.**) "This venerable Rule [the Rule of Lenity, as it is called] not only vindicates the fundamental principle that no citizen should be held accountable for a violation of a statute **whose commands are uncertain**, or subject to punishment that is not clearly prescribed.

It also places the weight of inertia upon the party that can best induce Congress to speak more clearly and keeps Courts from making criminal law in Congress stead" **United States Vs. Santos**, 553 U.S. 507, 514 (2008).

Therefore, the District Court erred in denying Mr. Andrus pretrial, then post trial Motion to Dismiss for insufficient evidence.

I pray for Supreme Court to **GRANT** petition for Writ of Certiorari then use it's judicial authority to correct lower Courts departure from the Constitution.

Entrapment Argument

1-C. Due to the fact these reverse Stings are completely made up and employ agents, such as Special Agent Heidi Brower, trained to manipulate or entice a person whose add is in an **adult personal classified** suggesting they are **sexual in nature**. This makes targeting these "appear [] highly susceptible to abuse" **United States Vs. Hare**, 820 F. 3d 93, 103-104 (4th Cir. 2016) Cert. denied 137 S.Ct. 224 (2016). The Agent betrayed as a mother (Allison) in her 30's, with a teenage daughter ("Abby"), contacted Mr. Andrus through the add he posted. Mr. had posted the add in the personal section of Craig's List that requires a person indicate to be 18 years of age or older to access. The agent selected Mr. Andrus's add due to the fact it was sexually suggestive in nature and thus making him susceptible to her enticement skills she gained through training. this was admitted during trial where she testified to manipulating Mr. Andrus. Very early in the communications, "Allison" sent a picture showing her beauty, and started talking about how she was showing and giving "Abby" sexual pleasures. She, then through almost constant erogenous stories of her own sexual growth, starting in her early teenage years, talked about how this positively shaped her. she, then commenced with how she desired to have "Abby" experience this positive sexual growth, with her there to share in the experience. "in their zeal to enforce the law... Government agents may not originate a **criminal design**, implant in an innocent person's mind the disposition to commit a criminal act, then induce commission of the crime so that the government may prosecute" **Jacobson Vs. United States**, 503 U.S. 540

548, 118 L. Ed. 2d 174, 112 S.Ct. 1535 (1992).

Through suggestive and enticing comments, she was able to induce Mr. Andrus into making comments "suggesting interest or willingness" in what "Allison" wanted. "The United States Court of Appeals for the 9th Circuit **REVERSED AND VACATED...** The Appellant Court found that the government **induced defendant to commit the crime** referenced where the government agent in her e-mail correspondence with the defendant made it clear that she believed that having the defendant as children's "sexual mentor" would be in their best interest" see also "the appellate Court held that the jury's finding that the defendant was predisposed could not be sustained after she kept on, he expressed his willingness to play sex instructor to her children" **United States Vs. Poelman**, 217 F. 3d 692 (9th Cir. 1999).

In the midst of communications, Mr. Andrus attempted to get "Allison" to come up alone or to rendezvous in San Antonio **without "Abby"**. Mr. Andrus attempted to meet with "Allison" **alone** several times, showing a clear interest in "Allison". She showed no willingness to come up alone so Mr. Andrus agreed to come down to her to meet. Upon which he was arrested by Homeland Security.

With Mr. Andrus being a single dad of his daughter, Courtney Ann Andrus, from when she was 8 years of age, till his arrest, at which time she was 15 years of age, and during that time, as a single dad raising Courtney, she had her friend stay over routinely. If Mr. Andrus would have been predisposed to improper behavior with children, it would have clearly showed up in all those years. What is clear in the case is that the government "originated a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, the induce commission of the crime so that the government may prosecute" **Jacobson Vs. United States**, 503 U.S. 540, 548, 118 L. Ed 2d 174, 112 S.Ct. 1535 (1992).

The agent clearly designed the criminal act and enticed Mr. Andrus not only to express willingness, but to meet. He has clearly shown NO predisposition as a single dad of a daughter.

I pray for Supreme Court to **GRANT** petition for Writ of Certiorari then use it's judicial authority to correct lower Courts departure from the Constitution.

2. 10th Amendment Violation

Lack of Jurisdiction

The power for the United States to prosecute a citizen for a criminal offense is clearly defined under **Article 3, Section 2** of the Constitution, and in accordance with the **10th Amendment of the Bill of Rights** "The power not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." The Constitution provides no exceptions or previsions for new technology, such as cellphone, due to the fact that technology is always advancing forward and would inevitably give the United States judicial authority over each and every action that occurred wholly within each State. The Commerce clause does not strip 4th Amendment protection from cellphone. "The U.S. Supreme Court unanimously held that the police officers generally could not, without a Warrant, search digital information on the phone." **Riley Vs. California**, 573 U.S. 373, 382, 134, S.Ct. 2473, 189 L. Ed 2d 430 (2014). Correlatively, it does not strip the 10th Amendment away. The United States does not gain authority over communications that transpires over conventional land line telephone to occur wholly within a State, through the commerce clause, even though the phones themselves are made from components from different States and countries.

And more commerce transpires on conventional land line phones than cellphones. "More over, the immense storage capacity of modern cell phones implicated privacy concerns with regard to the extent of information which could be accessed on the phone." **Riley Vs. California**, 573 U.S. 373, 382, 134 S.Ct. 2473, 189 L. Ed 2d 430 (2014). Then, as the immense volume of communication, text video chat and calls that are private in nature between couples, friends, and family on cellphones. It would defy reason and logic for a cellphone not to receive full Constitutional protection, that conventional land line gets. As such, any and all communications that occur wholly within a State, should fall to the judicial authority of the State. Being as **Mr. Andrus and "Allison" engaged in the communication unarguably within the State of Texas**, and they both were presumably residing in Texas. Include to this, there was also no territorial or subject matter jurisdiction to give the federal government any judicial authority. "The prosecution **must** always prove territorial jurisdiction over a crime to sustain a conviction therefor, and thus territorial jurisdiction and venue are 'essential elements' of any offense in the sense that the burden is on the prosecution to prove their existence" **United States Vs. White**, 611 F2d 531, 536 (CA5, 1980)(Citations omitted). Where again the Court errored in failing to GRANT a pretrial "Motion to Dismiss" on lack of venue". With those facts and in the conjunction with the Constitution and the 10th Amendment, the State of Texas has sole jurisdiction of the Case involving Mr. Andrus. As such the United States has NO judicial authority under the Constitution to prosecute Mr. Andrus.

I pray for Supreme Court to GRANT petition for Writ of Certiorari then use it's judicial authority **to correct lower Courts** departure from the Constitution.

C O N C L U S I O N

The petition for a writ of Certiorari should be GRANTED

Respectfully submitted,



Edwin Oland Andrus

Date: 22 Sep 2021