No. 21-5922

IN THE
SUPREME COURT OF THE UNITED STATES

Edwin Oland Andrus - **Pro Se PETITIONER**

Vs.

United States of America - **RESPONDENT**

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

ON PETITION FOR REHEARING

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ON PETITION FOR REHEARING
(Sup. Ct. R. 44. (2))

Grounds for Rehearing

A rehearing of the decision in the matter is in the interests of justice because my conviction was based off speculation and conjecture, not off the essential elements of the offence. I am innocent, and this conviction is a miscarriage of justice. There are three grounds that are of intervening circumstances of a substantial or controlling effect and there are substantial grounds not previously presented.

1. The 5th Circuit is in complete conflict with 9th, D.C. and 2nd Circuits.
2. The 5th Circuit, District and Appellate Court violate 28 U.S.C. §2255(f)(2) when it dismissing defendants 28 U.S.C. §2255 Motion to vacate.
3. The 5th Circuit unconstitutionally redefining of statute conflicted with multiple precedents set by this Court.

On Nov 15, 2021 the Supreme Court denied Writ of Certiorari without opinion. I come now to this Supreme Court as Pro Se and pry this petition be given less stringent standard and the conflict of Circuits and miscarriage of justice, of a innocent person unlawfully convicted, are considered when determining GRANTING of petition for rehearing.

First Ground

United States 5th Circuit Court of Appeals has entered with a decision in conflict with the decision of United States Court of Appeals for the D.C., the 9th Circuit, and the 2nd Circuit District Court Rulings.

5th Circuit

1. On December 14, 2018 The United States Court of Appeals for the Fifth Circuit Affirmed the conviction because "I expressed willingness" in sexual activity with Allison's minor daughter. What the Court neglected to add in the opinion, that is factually correct, was that every expression of willingness from myself was prompted and enticed through repetitive erogenous messages from Allison. Where she followed it by questions to induce expression of willingness. The communication from our text back and forth supports my statement to this fact. And actually I never ever directed any commits to the minor. Not even telling Allison, the fictitious mom, "tell Abby(the fake daughter) I said Hi". This was because I had no real interest in the minor and only expressed willingness in my communication with Allison due to my belief to get with Allison, I needed too.

And so by the opinion of the 5th's in United States Vs. Andrus, 745, Fed, Appx 235 (5th 2018) the conviction was affirmed by this expression of willingness to engage in sex with a minor. What was omitted, was that every expression of willingness was enticed or induced by Allison, where my true and only interest was, the Mom.

So the 5th Circuit in United States Vs. Andrus, has criminalized communication expressing sexual interest in minor that was enticed by adult intermediary due to interest she first created in her.

9th Circuit

In the 9th Circuit in District Court, Whitmore had a multi-count conviction where count 37 was based on willingness of a criminal Act. The 9th Circuit Court of Appeals reversed the conviction on count 37 because it was

based on the expression of willingness to commit the act, NOT actually meeting the element of that act in **United States Vs. Miller,** L. Ed. 12320 (9th Cir. 1993).

Also out of the U.S. Court of Appeals in the 9th Circuit is Pochlman, "The appellate Court found that the government agent in her email correspondence with defendant made it clear that she believed that having the defendant a children's "sexual mentor" would be in their best interest" also, the 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 childrens" **United States Vs. Pochlman,** 217 F. 3d 392 (9th Cir. 1999). So the 9th Circuit Appeals Court ruled enticed expression of willingness from undisposed person is NOT enticement of a minor with the Reversal and Vacation of that conviction.

D.C. Circuit

In the D.C. Circuit the line of culpability has being squarely set on the wording of 18 U.S.C. §2422 when it vacated Hite with the opinion that with an adult intermediary the element of enticement of minor has to be met through the adult intermediary "Statute criminalized situations in which defendant transferred or overcome will of minor by way of an adult intermediary, and where adult intermediary was involved, defendant's interaction with intermediary had to be aimed at transforming or overcoming child's will to violate statute" **United States Vs. Hite,** 767 F. 3d 1154, 413 U.S. App D.C. 66 (D.C. Cir.2014).

The D.C. Circuit makes it perfectly clear that the requirement to meet the element of enticement of minor has to be exactly that, adult intermediary or directly to minor, expression of willingness is not sufficient for conviction of 18 U.S.C. §2422 (b)

2nd Circuit

Out of the 2nd Circuit, is a Ruling that moves the line of culpability to it's proper place in 18 U.S.C. §2422 (b) "Defendant was entitled to a judgement of aquittal on a charge of attempted coercion and enticement of minor under 18 U.S.C. §2422 (b) because he did NOT seek out a minor to entice or persuade; a law enforcement officer initiated the conversation with the defendant via cell phone and initiated the discussion of sexual activity" **United States Vs. Mahannah, 193, F. Supp 3d 151(N.D. N.Y. 2016)** So clearly the element in 18 U.S.C. § 2422(b) in the 2nd Circuit can not be met by willingness, even if that willingness is directly to who they believe to be a minor. If said minor makes initial contact and initiated sexual activity talks, because the defendant did not seek out.

The 5th Circuit Court of Appeals is in such conflict with the 9th, D.C. and 2nd Circuit as to create their own separate law under the same statute with it's own completely different elements to meet. The 5th Circuit is so far away from those Circuits as to urgently need the Supreme Court to GRANT this petition for Rehearing of Writ of Certiorari, to answer the arguments presented, claiming that willingness is a unconstitutionally broad redefining of the statute 18 U.S.C. §2422(b) elements.

I respectfully pry this Supreme Court to GRANT petition of Rehearing and establish a reasonable standard common people can understand, where the elements actually meet the wording of 18 U.S.C. §2422(b). And granting this petition of Rehearing answers the conflict between my cases, in the 5th, and those 9th, D.C. and 2nd Circuit cases. It truly is a matter of fundamental fairness to GRANT this petition of Rehearing and would not unduly burden this Supreme Court

Second Ground

The Fifth Circuit illegally time barred the 28 U.S.C. §2255 That I submitted delayed by a time frame measured in weeks. The Supreme Court denied Cert. on April 14, 2019 in which I was NOT Notified of this denial for over a month. I placed in the prison mail on June 5, 2020 the 28 U.S.C. §2255 to District Court. We will first establish how and what by the statute's plain reading of it's wording for the applicable section and subsection.

28 U.S.C. §2255

> **(f)** A 1 year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of -
>
> > **(2)** The date on which the impediment to making a motion created by the government action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such government government action.

Webster's 9th Collegiate Dictionary (1985 ed.)

Impediment = 1: something that impedes
2: a bar or hindrance.

I stated in Appeal, to 5th Circuit Court of Appeals, for the dismissal of my §2255 on a time barr, Around the end of February 2020 the B.O.P. locked down all facilities for COVID-19. It was well over two months before staff made one computer capable of law library aces, but without copiers or any forms. And just to get simple items, required inmate to fill out BP-A0148 and it was several weeks before that was answered. So at it's best it was three to four months before a inmate had access to the Court's, with the support of the law library. "The inmate was unconstitutionally denied access to the Courts when she was prevented from accessing a law library" **Nolley Vs. County**

776 Supp 715 (WN NY 1991); **United States Vs. Georgia,** 126 S.Ct. 873, 163 L. Ed. 2d 650, 546 U.S. 151 (2005).

Even in the 5th Circuit, they were aware that denial of law library because of COVID-19 lock down, unrelated to the inmates action, caused a denial of the Right to access the Courts, "A substantive right to access to the Courts is one of the fundamental rights protected by the Constitution. Access to the Courts is protected by the First Amendment right to petition the government for redress of grievances of procedural and substantive due process. It has long been recognized in Ryland Vs. Shapire, we characterized that Right as [one of the fundamental rights protected by the Constitution]" **Wilson Vs. Thompson,** 789 F. 2d 307, 311 (5th Cir. 1986).

This impediment that the B.O.P., entity of the United States government, put on the inmate to stop all movement within the compound even within the housing unit, was their action to safeguard from COVID-19.
Being locked into ones units for several months without law library was clearly a denial of the population to access the Courts and such was a violation of Constitutional Rights, not lost with incarceration. The fundamental Constitutional Right to access the Court for redress of grievances.

Since it is without question that the prosecutor was aware of the global pandemic and the inmates were locked down by B.O.P., he knowingly and willfully made a illegal motion for dismiss on the time barr. Then the Court illegally accepted the motion due to the fact it was aware of the situation with the B.O.P. being locked down. To make matters worse with the validity of the Court was the Fifth Circuit Court of Appeals no granting my appeal of dismissal on time barr, where I stated we were locked down denying access to the Courts. By the plain reading of 28 U.S.C. §2255(f)(2) the Courts knew

that at the end of the impediment, the United States caused, the 1 year period of limitation started for me and other's where the lock down occurred any where in their 1 year window for 28 U.S.C. § 2255. It is NOT the choice of the Court to pick and choose what words in a statute it applies. The Court "must presume that [the] legislature says in a statute what it means and means in a statute what it says there" **Conn. Nat. Bank vs. Germain,** 503 U.S. 249, 253-254 (1992).

Since It appears there was bias at a minimal and most likely prejudice toward my case base on the type of statute I was charge with. It is a miscarriage of justice if the Supreme Court does not grant this rehearing of writ of Certiorari so to answer the argument because the 5th Circuit has committed a illegal act to avoid those arguments. I ask one clean shot at the Courts, with the denial of Constitutional arguments I claim.

Because the 5th Circuit used COVID-19 to avoided the argument, I pry this Supreme Court GRANT this Rehearing of Writ of Certiorari as so that my 1st Amendment Right for Redress of Grievances is honored. Answering those arguments they unlawfully avoided.

Third Ground

The 5th Circuit answered a question in a way that conflicted multiple Supreme Court Rulings, by the lower Court making their own law that is fundamentally different than the one our elected officials drafted.

The 5th Circuit has redefined 18 U.S.C. §2422(b) so unconstitutional broad as to create a new law, which "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, 204C. Ed 2d 753 (2019).

It appears that the Fifth Circuit applies a totally different standard on the accusation of a sex crime. And when the Rule of law is applied

differently based on ideology it is violating the equal protection clause of the fourteenth Amendment. "Through the law itself be fair on its face, and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and a unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances ...the denial of equal justice is still with in the prohibition of the Constitution" **Yichwo Vs. Hopkings,** 118 U.S. S.Ct. 356, 373-74 (1886). Not only is my case a miscarriage of justice because I am innocent, but it represents the urgent need of the Supreme Court to police the 5th Circuit's lack of Due process and equal justice when it comes to unpopular statutes.

The 5th Circuit has so unconstitutionally redefined the statute, as to cause a common citizen to no longer understands what the law demands of them.

the Supreme Court should GRANT rehearing of Writ of Certiorari to uphold the Constitution for all Citizens.

I pry the Supreme Court GRANT the Rehearing of writ of Certiorari.

C O N C L U S I O N

In a situation where a Circuit, the 5th Circuit, is in complete and utter conflict with other Circuits, 9th, D.C., and 2nd, it is in the best interest of the justice and consistency for the Supreme Court to answer the questions presented in my writ of Certiorari by granting this Rehearing. Supreme Court justices have life tenure for the benefit of people's Rights when it is a unpopular statute. And when the 5th Circuit from prosecutor to the appelate Court, violates a statute to avoid ruling on arguments of Constitutional nature, especially when a innocent person accused of that statute. All Citizens lose.

I pray the Supreme Court Grant Rehearing so as to answer the conflict between Circuits.

Certification of Counsel (or party unrepresented by Counsel)

I, Edwin Oland Andrus, Pro Se petitioner, certify that this **Petition for Rehearing** is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44 of the Rules of this Court.

Edwin Oland Andrus

Certification of Compliance With Word Limits

As required by Supreme Court Rule 33.1(h), I certify that the document contains Approx. 1,893 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Execute on 29 NOV, 2021

Edwin Oland Andrus

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PROOF OF SERVICE

I, Edwin Oland Andrus, Pro Se Petitioner, do swear or declare that on this date, 29 NOV, 2021 as required by Supreme Court Rule 29 I have served the enclosed **PETITION FOR REHEARING** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. The addresses of those served are as follow:

(1). Solicitor General of the United States
Department of Justice
950 Pennsylvania Ave., N.W., Room 5614
Washington, D.C. 20530-001

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(2). Supreme Court of the United States
Office of the Clerk
1 First Street, N.E.
Washington, D.C. 20543

I declare under penalty of perjury that the foregoing is true and correct

Execute on 29 NOV, **2021**

Edwin Oland Andrus

Certified Mail:

(1). 7020 2450 0000 4633 3856

(2). 7018 1830 0000 5217 9073