21-6070

ORIGINAL

No. ______________

IN THE

Supreme Court of the United States

Alan Williams - Petitioner

v

United States of America - Respondent

On Petition for a Writ of Certiorari to

The United States Court of Appeals
For the Fourth Circuit

Petition for a Writ of Certiorari

Alan Williams, #72932-087
Federal Correctional Institution-Hazelton
P.O. Box 5000
Bruceton Mills, WV 26525

Questions Presented

1. Whether Court of Appeals abused its discretion in not protecting Petitioner's Constitutional right to not be deprived of liberty, where Petitioner's pro se Supplemental Brief, submitted at suggestion a appellate counsel, claimed and demonstrated lack of subject-matter jurisdiction in the district court, in denying a Motion by Petitioner to file his pro se supplemental brief, and refused to even consider the constitutional and jurisdictional claims in the supplemental pro se brief counsel refused to raise the issues therein.

2. Whether this Court's discretion, in this first impression case, permits the review of the constitutional and jurisdictional claims presented below, and in this petition, to either correct the plain errors committed below and provide an opinion of importance to the public, or remand to the Court of Appeals, or the district court, for the purpose of reaching the merits herein presented, and provided to this Court in the copy of the Supplemental pro se Brief set out as Appendix H to this petition.

Table of Contents

Index to Appendices

Table of Authorities Cited

Cases	Page Number
Harris v. Reed, 489 U.S. 255 (1989)	30
In re Debs, 158 U.S. 564 (1895)	8-9
Kansas v. Colorado, 206 U.S. 46 (1907)	10
Keller v. United States, 213 U.S. 138 (1909)	6
Knox v. Lee and Parker v. Davis, 79 U.S. 457 (1871)	9-10
Lake County v. Rollins, 130 U.S. 662 (1889)	6, 7
McCulloch v. Maryland, 4 Wheat. 316 (1819)	22, 26
McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780 (2011)	32
Monaco v. Mississippi, 292 U.S. 313 (1934)	25
Nat'l Fed'n Ind. Bus. v. Sebelius, 132 S. Ct. 2566 (2012)	4, 13-14
Neitzke v. Williams, 490 U.S. 319 (1989)	29

Other

Page number

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is reported at 2021 U.S. App. LEXIS 21438 July 20, 2021.

Jurisdiction

The date on which the United States Court of Appeals decided my case was July 20, 2021.

No petition for rehearing was timely filed in my case.

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

Constitutional and Statutory provisions involved

United States Constitution, Article III, appears at Appendix B to the petition.

United States Constitution, Amendment V, appears at Appendix C to the petition.

United States Constitution, Amendment VI, appears at Appendix D to the petition.

United States Code, Title 18, section 2251, appears at Appendix E to the petition.

United States Constitution, Article I, section 8, appears at Appendix F to the petition.

Statement Of The Case

Petitioner was charged with violating 18 U.S.C. § 2251(b), for which he pleaded guilty, to wit, producing child pornography and distributing it via an internet channel of communication. He was sentenced to a prison term of 327 months — 65 months above the U.S.S.G.; and a lifetime term of supervised release and numerous supervised release conditions.

On direct appeal, his attorney challenged the sentence as procedurally and substantially unreasonable.

While in prison, and before oral argument in the direct appeal, he communicated, by letter, with arguments set out, for appellate counsel to supplement the appeal with. By return letter, Appendix G to the petition, counsel informed petitioner that he did "not intend to file any supplemental briefs based on the supposed arguments in your letter." Counsel then proceeded to advise petitioner to file the supplemental brief himself, as set out in Appendix H to the petition, relying on Supreme Court case law—determined to be the law of the land, and the lower courts bound to adhere to—to support the contention of the limits on federal power mandated by the Constitution precludes Congress's power of nationwide legislation over any "precise subject-matter" not provided for by the Framers, nor in their intent in limiting the National Government only to certain matters for nationwide enforcement, and especially where the "inferior" Article III courts are incapable of being conferred with criminal case jurisdiction when such a constitutional court sits and operates within a State, unless the court sits in a federal enclave and the offense is committed within such an enclave, under certain statutory conditions, that are totally absent in this case

In affirming the "sentence" in the case, the appellate court denied petitioner's motion to supplement the non-frivolous arguments, because he is represented by counsel, who refused to present, and argue, the constitutional and jurisdictional claims that, according to this Court's precedents, invalidate the entire federal involvement in this case that the Constitution's Due Process Clause is supposed to protect his right not to be deprived of his liberty except, and only, by the exercise on constitutionally lawful power, and requires this Court to, again, remind the Government of such limits the Constitution places on "federal power."

Reasons for Granting The Petition

Time and again, this Court, quoting Mr. James Madison, has reminded one and all, that "[t]he Constitution creates a Federal Government of enumerated powers," with those "delegated... to the federal government [being] few and defined," while those "remain[ing] in the State governments are numerous and indefinite."" United States v. Lopez, 514 U.S. 549, 552 (1995)(citations omitted; emphasis added). See also Artis v. District of Columbia, 199 L.Ed. 2d 473, 497 (2018)(same).

Therefore, with these first principles in mind, this petition's arguments are presented.

I. The Constitution's limits on federal power do not include sex-related or exploitation of minors for nationwide enforcement

As this Court, relying on its precedents, reminds:

> "The Federal Government "is acknowledged by all to be one of enumerated powers." ... That is, rather than granting general authority to perform all the conceivable functions of government, the Constitution lists, or enumerates, the Federal Government's powers. ... The enumeration of powers is also a limitation of powers, because "[t]he enumeration presupposes something not enumerated." ... The Constitution's express conferral of some powers makes clear that it does not grant others. And the Federal Government "can only exercise the powers granted to it." ...
>
> "The Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions."

Nat'l Fed'n of Indep. Business v. Sebelius, 132 S.Ct. 2566, 2577, 2578 (2012) (citations omitted).

Since the offense prosecuted in this case is a statutory criminal case, the contention that it is beyond the Federal Government's constitutional authority to enforce nationally can be said to have early on been recognized, when Circuit Justice Chase observed:

> "But the question recurs, when and how have the courts of the united states acquired a common law jurisdiction in criminal cases? The United States must possess the common law themselves, before they can communicate it to their judicial agents. ...
>
> "Upon the whole it may be a defect in our political institutions, it may be an inconvenience in the administration of justice, that the common law authority, relating to crimes and punishments, has not been conferred upon the government of the United States, which is a government in other respects also of a limited jurisdiction[.]"

United States v. Worrall, 2 U.S. 384, 1798 U.S. App. LEXIS 39, *16 (Cir. Ct., D. Penn. 1798).

Mr. Justice Thomas, in Taylor v. United States, 136 S. Ct. 2074 (2016), relying on this Court's relevant precedents, and looking to the provisions in the Constitution, pointed out that "[t]he Government possesses broad authority in territories and federal enclaves. ... But its power over crimes committed in the States is very different," id., at 2082-2083, and, then, quoted the provisions of the Constitution that expressly provided the "precise subject-matters" Congress's power is limited to to either define and punish, or provide the punishment for. (Thomas, J., dissenting). See, e.g., Knox v. Lee and Parker v. Davis, 79 U.S. 457, 535-536 (1871) (stating what conduct Congress is authorized to punish), with this Court emphasizing, "[t]his is the extent of power to punish crime." The American Heritage College Dictionary, 4th ed. 493, defines "extent" as "The range, magnitude, or distance over which a thing extends. The degree to which a thing extends."

As to the police power of the Federal Government, especially over alleged criminal conduct, this Court has made it clear:

> "Generally it may be said, in respect to laws of this character, that, though resting on the police power of the state, they must yield whenever Congress, in the exercise of the powers granted to it, legislate upon the precise subject-matter, for that power, like all other reserved powers of the states, is subordinate to those in terms conferred by the Constitution upon the nation. 'No urgency for its use can authorize a state to exercise it in regard to a subject-matter which has been conceded exclusively to the discretion of Congress by the Constitution.'"

Keller v. United States, 213 U.S. 138, 146 (1909) (quotation marks and citation omitted).

As this Court observed: "The Government frequently defends federal criminal legislation on the ground that the legislation is authorized pursuant to Congress's power to regulate commerce." Bond v. United States, 134 S. Ct. 2077, 2087 (2014).

But, when construing the provisions of the Constitution, the principle has been emphasized by this Court: "The object of construction, applied to a constitution, is to give effect to the intent of its framers, and of the people adopting it." Lake County v. Rollins, 130 U.S. 662, 670 (1889).

And Mr. James Madison, one of the Framers, explained what can be said of the purpose of the Commerce Clause, thus:

> "A very material object of this power was the relief of the States which import and export through other States from the improper contributions levied on them by the latter. Were these at liberty to regulate the trade between State and State,

it must be foreseen that ways would be found out to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former."

The Federalist No. 42 (J. Madison).

Citing various parts of The Federalist, including, supra, this Court found that the Commerce Clause's main purpose was of:

> "preventing a State from retreating into economic isolation or jeopardizing the welfare of the Nation as a whole, as it would do if it were free to place burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear. The provision thus "'reflect[s] a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation.'""

Oklahoma Tax Comm'n v. Jefferson Lines, Inc., 514 U.S. 175, 179-180 (1995)(citations omitted).

Prior to federal prosecutors believing that Congress's power to legislate over criminal conduct, if the conduct had an effect in interstate commerce, this Court found that the Clause, as intended by "its framers, and of the people adopting it," Lake County, supra, prosecutors understood the true purpose of the Commerce Clause, when coupled with another express power of Congess, when this Court found:

> "Among the powers expressly given to the national government are the control of interstate commerce and the creation and management of a postoffice system for the nation, Article I, section 8, of the Constitution provides that "the Congress shall have power ... Third, to regulate commerce with foreign nations and among the several states, and with the Indian tribes. ... Seventh,

to establish postoffices and postroads."

In re Debs, 158 U.S. 564, 579 (1895).

Prior to reaching this Court, Circuit Judge Woods, in United States v. Debs, et al., 64 F. 724 (Cir. Ct., N. D. IL. 1894), addressed both the Commerce Clause and the Postoffice Clause, and pointed out that the Commerce Clause, in conjunction with the Postoffice Clause, served the purpose of protecting the interstate commerce of the mails, "over the channels and agencies of interstate commerce, including railways as well as navigable waters, ... to protect that commerce against interference or obstruction." Id., at 743. Judge Woods made it clear, as far as the Government enjoining the defendants against such obstruction of the interstate commerce of the mails, during the strike of the railway workers, since "the nation owns the mail bags..., and that it pays large sums annually for the carrying of the mails upon the railroads," ibid., merely because:

> "The United States have unquestionably a property in the mails. They are not mere common carriers, but a government, performing a high official duty in holding and guarding its own property as well as that of its citizens committed to its care; for a very large portion of the letters and packages conveyed on this road, especially during the sessions of congress, consists of communications to or from the officers of the executive department, or members of the legislature, on public service or in relation to matters of public concern."

Id., 64 F., at 744 (citation and quotation marks omitted).

In accord with the above, the Debs Court admonished:

> "The national government, given by the Constitution power to regulate commerce, has by express statute assumed juris-

diction over such commerce when carried upon railroads. It is charged, therefore, with the duty of keeping those highways of interstate commerce free from obstruction, for it has always been recognized as one of the powers and duties of a government to remove obstructions from the highways under its control."

Debs, 158 U.S., at 586.

A more recent case, referring to the Commerce Clause, and as its purpose to prevent legislation that obstructs the flow of Commerce, is illustrated in Granholm v. Heald, 544 U.S. 460 (2005), where this Court, in addressing the Eighteenth Amendment to the Constitution, and prior to said Amendment, made clear that:

> "In a series of cases before the ratification of the Eighteenth Amendment the Court, relying on the Commerce Clause, invalidated a number of state liquor regulations.
>
> "These cases advanced two distinct principles. First, the Court held that the Commerce Clause prevented States from discriminating against imported liquor. ...
>
> "Second, the Court held that the Commerce Clause prevented States from passing facially neutral laws that placed an improper burden on interstate commerce."

Id., 544 U.S., at 476-477 (citations omitted).

There could be no other interpretation as to the purpose of the Commerce Clause but to prevent the obstruction of the flow of interstate commerce, and that its use to prevent such obstruction in certain matters requires the Clause to be used in conjunction with another delegated power of Congress, in order to achieve the objectives of federal regulation, as this Court inferred when it made clear:

> "[I]t is to be observed it is not indispensable to the existence of any power claimed for the Federal government that

it can be found specified in the words of the Constitution, or clearly and directly traceable to some one of the specified powers. Its existence may be deduced fairly from more than one of the substantive powers expressly defined, or from them all combined. It is allowable to group together any number of them and infer from them all that the power claimed has been conferred. Such a treatment of the Constitution is recognized by its own provisions."

Knox v. Lee, supra, 79 U.S., at 534.

During the Constitutional Convention, Mr. Edmund Randolph, in his resolutions, proposed that Congress should be able to have the same legislative rights it had under the Confederation, and "[t]he convention, however, declined to confer upon Congress power in such general terms[.]" Carter v. Carter Coal Co., 298 U.S. 238, 292 (1936). When such proposition was also suggested "by counsel in Kansas v. Colorado, 206 U.S. 46, 89," in 1907, "this [C]ourt said:

"But the proposition that there are legislative powers affecting the Nation as a whole which belong to, although not expressed in the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the Amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment. This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the widespread fear that the National Government might, ... attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act.""

Carter, id., 298 U.S., 293-294.

The principle is simple, as Chief Justice Marshall admonished, by pointing out:

> "The people made the constitution, and the people can unmake it. It is the creature of their own will, and lives only by their will. But this superior and irresistible power to make or to unmake, resides only the whole body of the people; not in any sub-division of them. The attempt of any of the parts to exercise it is usurpation, and ought to be repelled by those to whom the people have delegated their power of repelling it[, the Judiciary]."

Cohens v. Virginia, 6 Wheat. 264, 389 (1821)(emphasis added).

Accord, The Federalist No. 49 (J. Madison).

As this Court recognizes:

> "The Constitution is a written instrument. As such its meaning does not alter. That which it meant when it was adopted, it means now. Any other rule of construction would abrogate the judicial character of this court, and make it the reflex of the popular opinion or passion of the day.
>
> "To determine the extent of the grant of power, we must, therefore, place ourselves in the position of the men who framed and adopted the Constitution, and inquire what they must have understood to be the meaning and scope of those grants."

South Caroline v. United States, 199 U.S. 437, 448 (1905)

And the Framers never intended for the Federal Government, with its powers being "few and defined," Lopez, supra, 514 U.S., at 552, to have a "common law authority," in general, over "crimes and punishments," Worrall, supra, at *16, the Commerce Clause notwithstanding, as Mr. Justice Thomas pointed out:

> "The Commerce Clause does not state that Congress may "regulate matters that substantially affect commerce with for-

eign Nations, and among the several States, and with the Indian Tribes," ... Clearly, the Framers could have drafted a Constitution that contained a "substantially affects interstate commerce" Clause had that been their objective."

Lopez, id., 514 U.S., at 587-588 (Thomas, J., concurring).

And, as this Court recognizes, as to "precise subject-matters" not being enumerated in the Legislative Article, U.S. Const., Art. I, §8, for the exercise of a general nationwide "police power" over such conduct, as in this case, sub judice, the people, themselves, "if in the future further powers seemed necessary," certainly have provided the manner for expanding the federal powers, Carter, 298 U.S., at 293-94, and their can be no other inference: "In the absence of a properly passed constitutional amedment," conferring upon Congress a nationwide "police power" over "Sexual Exploitation And Other Abuse Of Children" matters, as defined in Chapter 110 of Title 18 of the United States code, "would thus erode the structure envisioned by the Framers, a structure that was designed, in the words of the Preamble to our Constitution, to form a "more perfect Union."''' U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 838 (1995).

Thus, just as Mr. Justice Stevens pointed out, that it took "the views of a sufficiently large majority of the population to warrant the rare exercise of the power to amend the Constitution, ... [end] [t]he Eighteenth Amendment entirely prohibited commerce in "intoxicating liquors" for beverage purposes throughout the United States," Granholm, 544 U.S., at 495 (Stevens, J., with whom O'Connor, J., joins, dissenting), by the same token, it takes "the views of a sufficiently large majority of the population to warrant the rare exercise of the power to amend the Constitution," ibid., before Congress may prohibit commerce in child pornography, or any sexual abuse conduct that is currently defined in Chapter 110, 18 U.S.C., and, as Justice Thomas, in an unrelated matter, but apropos in the circumstances presented in this case: "Petitioners, like many other criminal defendants, have done their part by specifically presenting this Court with opportunities" to require the lower federal courts to check the subject-matter jurisdiction of the cases before them. "It is time for this Court to do its part.

"The Court's duty to resolve this matter is particularly compelling, because we are the only court authorized to do so." Rangel-Reyes v. United States, 547 U.S. 1200, 126 S.Ct. 2873, 2874 (2006)(Citation omitted)(Thomas, J., dissenting). Especially when it is presented, in a petition for a writ of certiorari, with claims the Government, and the district court in the underlying case, overstepped its constitutional boundaries, in exercising police powers not given to the Government by the Constitution, where this Court has found:

> "Because the police power is controlled by 50 different States instead of one national sovereign, the facets of governing that touch on citizens' lives are normally administered by smaller governments closer to the governed. The Framers thus ensured that powers which "in the ordinary course of affairs, concern the lives, liberties, and properties of the people" were held by governments more local and more accountable than a distant federal bureaucracy. The Federalist No. 45, at 293 (J. Madison). The independent power of the States

also serve as a check on the power of the Federal Government: "By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.""

Nat'l Fed'n Indep. Bus., 132 S.Ct., at 2578 (citation omitted).

And, speaking of federalism, this Court, referring to Bond v. United States, 131 S.Ct. 2355 (2011), instructs:

> "The federal system rests on what might at first seem a counterintuitive insight, that "freedom is enhanced by the creation of two governments, not one." ... The Framers concluded that allocation of powers between the National Government and the States enhances freedom, first by protecting the integrity of the governments themselves, and second by protecting the people from whom all governmental powers are derived.
>
> "Federalism has more than one dynamic. It is true that the federal structure serves to grant and delimit the prerogatives and responsibilities of the States and the National Government vis-a-vis one another. The allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States. The federal balance is, in part, an end in itself, to ensure that States function as political entities in their own right."

Id., 131 S.Ct., at 2364 (citation omitted).

And it can fairly be said that, in order to "preserve[] the integrity, dignity, and residual sovereignty of the States," the Framers drafted the Constitution in such a way that ensures that any other purported federal criminal offense, other than those expressly enumerated Mr. Justice Thomas described in Taylor, supra, cannot be enforced within the States, when this Court admonished:

> "Generally speaking, within any state of this Union the preservation of the peace and the protection of person and property are the functions of the state government, and are not part of the primary duty, at least, of the nation. The laws of Congress

in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government."

Caha v. United States, 152 U.S. 211, 215 (1894).

Thus, not even the Commerce Clause saves a federal criminal law, just because Congress decided to enact any commerce-related criminal law because it has a "substantial effect" on interstate commerce, as the provisions in Chapter 110 of 18 U.S.C., as well as scores—if not hundreds—of other federal criminal laws this Court finds are permitted to Congress under the unchangeable real limits of the Commerce Clause, which has been overlooked, and ignored, by this Court in the past, and it is past the time, —but never too late, for this Court to heed the admonition of Justice Thomas, when in his concurring opinion in United States v. Morrison, 529 U.S. 598 (2000), opined:

> "I write separately only to express my view that the very notion of a "substantial effects" test under the Commerce Clause is inconsistent with the original understanding of Congress' powers and with this Court's early Commerce Clause cases. By continuing to apply this rootless and malleable standard, however circumscribed, the Court has encouraged the Federal Government to persist in its view that the Commerce Clause has virtually no limits. Until this Court replaces its existing Commerce Clause jurisprudence with a standard more consistent with the original understanding, we will continue to see Congress appropriating state police powers under the guise of regulating commerce."

Id., 529 U.S. 627 (Thomas, J., concurring).

Especially when considering what Chief Justice John Roberts, Jr., so succinctly warned, in Obergefell v. Hodges, 135 S.Ct. 2584 (2015):

"The Judiciary, including this Court, is the most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or even the design of the Constitution."

Id., 135 U.S. 2618 (citing Moore v. East Cleveland, 431 U.S. 494, 544 (1977) (White, J., dissenting)(Roberts, C.J., with whom Scalia, and Thomas, JJ., join, dissenting).

Justice Thomas's dissenting opinion, in Alderman v. United States, 562 U.S. 1163, 131 S.Ct. 700 (2011), should provide more than enough reasons to grant certiorari review, when borrowing his essertion: "It is difficult to imagine a better case for certiorari." Alderman, 178 L.Ed.2d 799, 802. Especially when he warned: "Congress arguably could outlaw "the theft of a Hershey Kiss from a corner store in Younstown, Ohio, by a neighborhood juvenile on the basis that the candy once traveled ... to the store from Hershey, Pennsylvania, ... The Government actually conceded at oral argument in the Ninth Circuit that Congress could ban possession of french fries that have been offered for sale in interstate commerce." Ibid. (citation omitted).

The principle that if a power is not expressly provided to the National Legislature to exercise—much less for the Executive Branch to enforce nationally—has been made clear is verboten to the Federal Government, when Mr. Justice Sutherland, writing for the Court, made admonishingly clear:

"The determination of the Framers Convention and the ratifying conventions to preserve complete and unimpaired state self-government in all matters not committed to the general government is one of the plainest facts which emerges from the history of their deliberations. And adherence to that determination is incumbent equally upon the federal government and the states. State power can neither be appropriated on the one hand nor abdicated on the other. As this court said in Texas v White, 7 Wall 700, 725, ... — "the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." Every journey to a forbidden end begins with the first step; and the danger of such a step by the federal government in the direction of taking over the powers of the states is that the end of the journey may find the states so despoiled of their powers, or—what may amount to the same thing—so relieved of the responsibilities which possession of the powers necessarily enjoins, as to reduce them to little more than geographical subdivisions of the national domain. It is safe to say that if, when the Constitution was under consideration, it had thought that any such danger lurked behind its plain words, it would never have been ratified."

Carter, supra, 298 U.S. 295-296 (complete citation omitted).

And the difference—or distinction— between "power and discretion—is not only very plain but very important," as to the authority of Congress to legislate over certain matters.

"For while the powers are rigidly limited to the enumerations of the Constitution, the means which may be employed to carry the powers into effect are not restricted, save that they must be appropriate, plainly adapted to the end, and not prohibited by, but consistent with, the letter and spirit of the Constitution. ... Thus, it may be said that to a constitutional end many ways are open; but to an end not within the terms of the Constitution, all ways are closed."

Id., 298 U.S. 291 (citation omitted).

Therefore, with no language in the Commerce Clause permitting to either "provide the punishment" for, or to "define and punish" matters that "substantially effect" commerce among the several States, in contrast with the Counterfeiting Clause and the Offences Clause in Art. I, § 8, cls. 6 and 10, the Framers' intent, under the Commerce Clause, to regulate interstate commerce so as to prevent the interruption or obstruction of interstate commerce, and leave conduct, such as this case presents, exclusively to the States, as was, and is, the intent of the Framers.

II. Federal Criminal Law Enforcement Does Not Extend Into the Territorial Limits of the States.

Ever since Chief Justice Marshall, in United States v. Bevans, 3 Wheat. 336 (1818), declared that the "jurisdiction of a state is co-extensive with its territory; co-extensive with its legislative power," Id., at 386-87, and admonished that in order for "the courts of the union" to be able to exercise its criminal "jurisdiction" over a purported crime, the offense "must have been committed in a [place] out of the jurisdiction of any state," because "[i]t is not the offense committed, but the [place] in which it is committed, which must be out of the jurisdiction of the state," Id., at 387-88, and is in accord with the principle that the federal criminal laws are territorial in their application and enforceability. Compare, e.g., United States v. Flores, 289 U.S. 137, 152 (1933) (citing Bevans and Wiltberger as examples).

That the Federal Government, under the Constitution, has "the entire dominion and sovereignty, national and municipal, federal and state, over all the territories" it has "rightfully acquired" is "well settled," "so long as they remain in a territorial condition." Shively v. Bowlby, 152 U.S. 1, 48 (1894) (citations omitted).

Naturally, when a territory becomes a State, there is "a transfer of sovereignty; a territory became a state, and it was held "the territorial government [meaning federal jurisdiction] ceased to exist and all authority under it[.]" Bird v. United States, 187 U.S. 118, 124 (1902) (emphasis added, citations omitted).

In other words: "upon admission of a state into the Union, the state doubtless acquires general jurisdiction, civil and criminal ... except where it has ceded exclusive jurisdiction to the United States. The rights of local sovereignty ... vest in the State, and not in the United States," Van Brocklin v. Anderson, 117 U.S. 151, 167-68 (1886) (citations omitted), merely because "title, jurisdiction, and sovereignty, are inseparable incidents, and remain so till the State makes some cession. A cession of territory is essentially a cession of jurisdiction," Rhode Island v. Massachusetts, 12 Pet. 657, 733 (1838), and cession of "territory" is required, since "[n]either consent nor submission by the States can enlarge the powers of Congress; none can exist except those which are granted" in the Constitution. Ashton v. Cameron County W. I. Dist. No. One, 298 U.S. 513, 531 (1936) (citations omitted).

And the Constitution limits the United States to enforcement of its laws only within lands expressly ceded by the States to the United States, as many of this Court's case opinions make clear, e.g., in New Orleans v. United States, 10 Pet. 662 (1836), expressing what this Court always makes clear as to the limited powers of the United States pointed out:

> "The government of the United States, as was well observed in the argument, is one of limited powers. It can exercise authority over no subject[-matter] except those which have been delegated to it. Congress cannot, by legislation, enlarge the federal jurisdiction, nor can it be enlarged under the treaty-making power....
>
> "Special provision is made in the Constitution for the cession of jurisdiction from the States [U.S. Const., Art. I, §8, cl. 17] over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction."

Id., 10 Pet., 736, 737 (emphasis added).

In Bowen v. Johnston, 306 U.S. 19 (1936), this Court observed: "Crimes are thus ~~cognizable~~ — "when committed within or on lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State." Id., at 22 (citation omitted).

As to the alleged federal offense in this case, having occurred within the State of West Virginia, and not within any land ceded to the United States, judicial notice is directed to the West Virginia Code, Annotated, Chapter 1, article 1, §3 (as amended), that allows, and limits, the

United States to exercise its general jurisdiction only within property acquired by the United States, for the purposes expressly enumerated in the West Virginia Code, as this instant alleged offense did not occur within, and, therefore, jurisdiction was lacking

Thus, "[t]he provision of the Constitution above referred to," U.S. Const., Art. I, §8, cl. 17, "shows that no such power can be exercised by the United States within a State. Such a power is not only repugnant to the Constitution, but it is inconsistent with the spirit and intention of the deeds of cession." Pollard v. Hagan, 3 How. 212, 224 (1845).

"It is difficult to imagine a better case for certiorari," Alderman, supra, 178 L.Ed.2d at 802 (Thomas, J., dissenting), where:

> "As the Court has observed in the past, "it is very important that we be consistent in... granting the writ of certiorari ... in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties[.]""

Powell v. Nevada, 511 U.S. 79, 86-87 (1994) (in relevant parts, citation omitted)

The issues presented in this case, and the questions, are "of importance to the public," who have been, and are, subjected to the Federal Government's over-reach of its federal criminal jurisdiction the Constitution, by its express terms, forbids such unconstitutional enforcement of the federal criminal laws within the several States, who have their own laws and courts to enforce them.

III. The Inferior Article III Courts Are Incapable of Being Conferred With Criminal Case Jurisdiction Within the States.

Applying the "first principles" of constitutional powers, and limits, this Court pointed out:

> "The powers of the general government are made up of concessions from the several states; whatever is not expressly given to the former, the latter expressly reserve. The judicial power of the United States is a consistent part of those concessions; ... of all the courts, which the United States may, under their general powers, constitute, one only—the Supreme Court—possesses jurisdiction derived immediately from the Constitution, ... All other courts created by the general government possesses no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the general government will authorize them to confer."

United States v. Hudson, 7 Cranch 32, 33 (1812).

As it has been presented that the power to punish is extended to only those "precise subject-matters" enumerated in the Constitution that expressly provides Congress with the power to punish, Chief Justice Marshall provided the admonition as to the limits of Congress in that respect: "The powers of Congress may exist, in a very imperfect state, to be sure, but they may exist and be carried into execution, although no punishment should be inflicted in cases where the right to punish is not expressly given" in the Constitution, McCulloch v. Maryland, 4 Wheat. 316, 417 (1819), since "the common law authority, relating to crimes and punishments, has not been conferred upon the government of the United States," under the Constitution, "which is a government... of a limited jurisdiction," Worrell, supra, in its courts.

In Cohens, supra, Chief Justice Marshall inferred that the "judicial Power" in Article III, thus in such courts ordained and established thereunder, does not extend to criminal cases at all, admonishing:

> "Had any doubt existed with respect to the just construction of this part of the section [Art. III, §2], that doubt would have been removed by the enumeration of those cases the jurisdiction of the federal courts is extended in consequence of the character of the parties."

Cohens, supra, 6 Wheat. 383.

Since the argument as to the extent, and limits, of the "judicial Power" of the United States kept raising its ugly head, again this Court broke it down elementarily, in Williams v. United States, 289 U.S. 553 (1933), explaining that:

> "[T]he judicial power is extended to all cases in law and equity arising under the Constitution, etc.; to all cases affecting ambassadors, other public ministers and consuls; and to all cases of admiralty and maritime jurisdiction. Then the comprehensive word "all" is dropped, and the enumeration continues in terms to apply to controversies (but not to "all") to which the United States shall be a party; to controversies between two or more states, etc. The use of the word "all" in some cases, and its omission in others, cannot be regarded as accidental, under the rule stated in an early case, ..., and ever since fully accepted, that "In expounding the Constitution of the United States, every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needless added."

Id., 289 U.S., 572-573 (citation omitted).

Which brings us to the topic of punctuation, and the fact that, "in dealing with a subject as technical as the jurisdiction of the courts, the Framers, predominently lawyers, used precise, differentiating and not redundant language," Romero v. Int'l Term. Operat. Co., 358 U.S. 354, 364 (1959), and knew how, when, and where to use a comma.

Therefore, when it involves Art. III, §2, its "reading is also mandated by the grammatical structure of the" provision, United States v. Ron Pair Enterprises, 489 U.S. 235, 241 (1989), and if the Framers had intended the "judicial Power" to extend to two distinct cases, in law or in equity, "they would have employed the comma consistently," Primate Protection League v. Tulane, 500 U.S. 72, 80 (1991) (citation omitted), to separate the terms "law" from "equity," meaning two classes of cases. But, since that is not the case, the word "and" as used in the relevant phrase, "in Law and Equity," is used conjunctively, Am. Bankers Ins. Group v. United States, 408 F.3d 1328, 1332 (11th Cir. 2005) (citation omitted), and means the sort of cases the "judicial Power" extends to must be, as the plain reading refers to, both "in Law and Equity," and, therefore, the "rule of the last antecedent" applies, where the "limiting clause or phrase," the phrase "in Law and Equity" in the conjunctive, "should ordinarily be read as modifying ... the noun ... it immediately follows" — "Cases." Barnhart v. Thomas, 540 U.S. 20, 26 (2003). Thus, as "singular as it may appear, it really is the fact..., that... men's lives may depend upon a comma," United States v. Palmer, 16 U.S. 610, 636 (1818), or, as in this case, the absence of a comma, where the conjunctive phrase, "in Law and Equity," requires both elements to be present in a particular "Case," in order for the "judicial Power" of the United States to extend to it and, because the United States is the opposing party, it is only in a "controversy" that is civil in nature and class. See, e.g., City of Rome v. United States, 446 U.S. 156, 172 (1980)(elements in the charge phrased conjunctively require all to be present); and Welling v. Gen. Indus. Co., 330 U.S. 545, 547 (1947)(same).

In United States v. Krilich, 209 F.3d 968 (7th Cir. 2000), the Circuit Court stated:

> "The subject-matter jurisdiction in every federal criminal prosecution comes from 18 U.S.C. §3231, and there can be no doubt that Article III permits Congress to assign federal criminal prosecutions to federal courts. That's the beginning and the end of the 'jurisdictional inquiry.'"

Id., 209 F.3d, at 972.

And many federal courts have taken the same position. See, e.g., Garrett v. United States, 2019 U.S. Dist. LEXIS 136859, *6 (S.D. Ind. 2019); United States v. Smalls, 2018 U.S. Dist. LEXIS 197391, *9 (D.S.C. Charleston, 2018); United States v. Loga, 2013 U.S. Dist. LEXIS 92069, *4 (M.D. La. 2013).

Undoubtably, they have overlooked the fact this Court, in Keller, supra, has made clear that the "precise subject-matter" must be expressly enumerated in the Legislative Article to confer the Government with the "police power" over such 'subject-matter" to be enforced by the United States, so therefore for its courts to sit in judgment over such "precise subject-matter," but only if its in a controversy to which the United States shall be a Party. And one year after Williams, this Court, in Monaco v. Mississippi, 292 U.S. 313 (1934), reiterated what it had stated before: "Clause one of §2 of Article 3 extends the judicial power "to Controversies to which the United States shall be a Party." Literally, this includes such controversies, whether the United States be party plaintiff or defendant." 292 U.S., at 321 (citing Williams, supra).

And this Court hit the proverbial nail on the head, and closed the lid on the coffin of Article III, §2, not extending the "judicial Power" to criminal cases, when it wrote:

> "Article III, §2, of the Constitution extends the "judicial Power" of the United States only to "Cases" and "Controversies." We have always taken this to mean cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process. ... Such a meaning is fairly implied by the text, since otherwise the purported restriction upon the judicial power would scarcely be a restriction at all. Every criminal investigation conducted by the Executive is a "case," and every policy issue resolved by congressional legislation involves a "controversy." These are not, however, to sort of cases and controversies Article III, §2, refers to, since "the Constitution's central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts.""

Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 102 (1998) (citations omitted).

As has been asserted, supra, the Constitution enumerates the powers of Congress, and sex-related or exploitation is not a "precise subject-matter" that Congress may exercise a national "police power" over, and the Steel Court, in accord with Williams, McCulloch, and Cohens, supra, has made more than clear that the Article III, §2, "judicial Power" does not extend to criminal cases at all, supra.

This Court did not stop at such a declaration, but went on to explain what types of cases and controversies the "judicial Power" of the United States extends to, pointing out:

"Standing to sue is part of the common understanding of what it takes to make a justiciable case. ...

"The "irreducible constitutional minimum of standing" contains three requirements. ... First and foremost, there must be alleged (and ultimately proved) an "injury in fact"—a harm suffered by the plaintiff that is "concrete" and "actual or imminent, not 'conjectural' or 'hypothetical.'"... Second, there must be causation—a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant. ... And, third, there must be redressability—a likelihood that the requested relief will redress the alleged injury. ... This triad of injury in fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement, and the party invoking federal jurisdiction bears the burden of establishing its existence."

Id., 523 U.S., 102-104 (citations omitted).

Applying Steel, supra, this argument need not go beyond "in the first place," simply because the United States, as plaintiff cannot come near to satisfying the "first and foremost" requirement that constitutes the core of Article III's case-or-controversy requirement, since the Government has not suffered any "injury in fact" that is "actual or imminent" in the least, and even much less one that is 'conjectural' or 'hypothetical,' and renders the remaining requirements moot; since there is no "judicial Power" or jurisdiction in the inferior Article III over criminal cases.

And it must be deemed an abuse of discretion of both the district court, and the Court of Appeals, not to have followed this Court's instruction, that "federal courts are under an independent obligation to examine their own jurisdiction," and "every federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review.'" FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990) (citations omitted), and consider what this Court stated as to the Constitution's limits on the federal courts, that "it is appropriate to restate certain basic principles that limit the power of every federal court. Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." Bender v. Williamsport Area School Dist., 475 U.S. 534, 541 (1986) (citation omitted). And with the Steel Court finding that criminal cases are not within the "judicial Power" of the United States, that's the real beginning and the end of the "jurisdictional inquiry."

IV. Subject-Matter Jurisdiction Challenge May Be Raised At Any Time

"[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court." United States v. Cotton, 535 U.S. 625, 630 (2002) (citations omitted).

When petitioner urged appellate counsel, who also was counsel in the district court proceedings, to include the issues that show just such lack of jurisdiction of the district court on direct appeal, he refused to do so, and suggested petitioner to submit his own "supplemental brief" to the Court of Appeals for its consideration, and the Fourth Circuit denied petitioner's motion for leave to file his supplemental brief, that simultaneously sent to the appellate court, which was presumably perused and a decision made to avoid, thus evade, the jurisdictional and constitutional issues that should have resulted in the reversal of the conviction, and petitioner's release from unconstitutional deprivation of his liberty, thus forcing this petition to this Court.

As this Court more recently observed:

> ""Jurisdiction," the Court has observed, "is a word on many, too many, meanings."... the word "jurisdictional" is generally reserved for prescriptions delineating the classes of cases a court may entertain (subject-matter jurisdiction) and the persons over whom the Court may exercise adjudicatory authority (personal jurisdiction). ...
>
> "... Unlike most arguments, challenges to subject-matter jurisdiction may be raised by the defendant "at any point in the litigation," and courts must consider them sua sponte."

Fort Bend Cnty. v. Davis, 139 S. Ct. 1843, 1848, 1849 (2019) (citations omitted).

And because "[t]he jurisdictional defect is not subject to waiver or forfeiture and may be raised at any time in the court of first instance and on direct appeal," Hamer v. Neighborhood Hous. Servs., 138 S. Ct. 13, 17 (2017) (citation omitted), the Court of Appeals' refusal to address the supplemental pro se brief, appellate counsel advised petitioner to submit, after having it in its possession before oral aguments in the appeal, and, presumably, having perused it and finding the claims non-frivolous, cf., e.g., Neitzke v. Williams, 490 U.S. 319, 325 (1989) (defining the standard for frivolousnous), such avoidence by the appellate court to reach the constitutional issues that this Court instructs only "to avoid decision of constitutional issues unless avoidance becomes evasion," Rice v. Sioux City Cemetery, 349 U.S. 70, 74 (1954) (citation omitted), because there comes in to play the admonition of Mr. Justice Stevens, that "the federal courts — and particularly this Court — have a primary obligation to protect the rights of the individual that are embodied in the Federal Constitution." Harris v. Reed, 489 U.S. 255, 267 (1989) (Stevens, J., concurring).

And, since federal courts' judges are predominently lawyers, the Court has observed that "legal "[t]raining is what differentiates attorneys from average public employees."" Connick v. Thompson, 563 U.S. 51, 179 L.Ed.2d 417, 429 (2011) (citation omitted). Thus, judges, like attorneys, "are trained in the law and equipped with the tools to interpret and apply legal principles, understand constitutional limits, and exercise legal judgment," Ibid., it appears the Fourth Circuit evaded the constitutional issue to allow this Court to address and reach the novel constitutional issues on the merits, especially, as Mr. Justice Stevens infered:

> "[O]nce a case has been briefed, ..., and studied in chambers, sound principles of judicial economy normally outweigh most reasons ... for dismissing a case. Indeed, in many cases, the majority may remain convinced that the case [unlike this one] does not present a question of general significance warranting this Court's review, but nevertheless proceed to decide the case on the merits ...
>
> "A decision on the merits does, of course, have serious consequences, particularly when a constitutional issue is raised, and most especially when the constitutional issue presents questions

of first impression. The decision to decide a constitutional question may be the most momentous decision that can be made in a case. Fundamental principles of constitutional adjudication counsel against premature consideration of constitutional questions and demand that such questions be presented in a context conducive to the most searching analysis possible."

New York v. Uplinger, 467 U.S. 246, 250-51 (1984) (Stevens, J., concurring).

From the arguments presented herein, "the most searching analysis" of this Court's precedents has been conducted in petitioner's research for the legal constitutional reasons his conviction cannot stand, and begs for this Court to, once and for all, "involving principles the settlement of which is of importance to the public," Powell, supra, or, if the constitutional issues are too hot, "to remand for consideration of th[ese] issue[s], rather than decide ... novel constitutional question[s] that may be avoided," Wood v. Georgia, 450 U.S. 261, 265 (1981), and becomes an "evasion" by this Court.

In deciding whether to grant the writ of certiorari, it is important for those sworn to uphold the Constitution to remember the words of a Justice of this Court:

> "When they enter such a domain in dealing with the citizen's rights, they do so at their peril, whether that be created by state or federal law. For their sworn oath and their first duty are to uphold the Constitution, ..."

Screws v. United States, 325 U.S. 91, 129-30 (1944) (Rutledge, J., concurring).

Because the constitutional issues presented, in chief, are want of jurisdiction in the district court, this Court has instructed, and admonished:

> "Questions of jurisdiction, of course, should be given priority —since if there is no jurisdiction there is no power to sit in judgment of anything else."

Vermont ANR v. U.S. ex rel. Stevens, 529 U.S. 765, 778 (2000) (citation omitted).

And because of the presumption that the district court judge knows the law, especially the limits of it "judicial power" not extending to criminal cases, Steel Co., supra, and Walton v. Arizona, 497 U.S. 639, 653 (1990) ("Trial judges are presumed to know the law ..."), it must be considered being imprisoned, thus deprived of liberty, under constitutionally unlawful power is a Due Process Clause violation of the highest order. See, e.g., McIntyre Mach., Ltd. v. Nicastro, 131 S.Ct. 2780, 2786 (2011) ("The Due Process Clause protects an individual's right to be deprived of..., liberty, ... only by the exercise of lawful power.") (citation omitted).

And such deprivation of liberty by unlawful power can be deemed cruel and unusual punishment, in violation of the Eighth Amendment, and it follows, as Justice Stewart found, in Robinson v. California, 370 U.S. 660, 667 (1962), and relied on and reiterated in Atkins v. Virginia, 536 U.S. 304, 311 (2002): "Even one day in prison would be cruel and unusual punishment for the 'crime' of having a common cold," how much more cruel and unusual punishment is it to be deprived of liberty, and subjected to years of imprisonment by a government shown, as this petition shows, to lack the "police power" over a "precise subject-matter" not within said government's charter—the United States Constitution?

Conclusion

The petition for a writ of certiorari should be granted.

October 13, 2021

Respectfully submitted,

Alan Williams, # 12932-087
Petitioner pro se
Federal Correctional Institution - Hazelton
P.O. Box 5000
Bruceton Mills, WV 26525