No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PATRICK J. KILLEN, JR.
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

On Motion for Continuance to file
Petition for Writ of Certiorari to the
United States Court of Appeals
For the Eleventh Circuit

MOTION FOR CONTINUANCE

Respectfully submitted,
/s/ Patrick Killen, Jr.
Patrick Killen, Jr., *Pro Se*

IN THE
SUPREME COURT OF THE UNITED STATES

MOTION FOR CONTINUANCE
TO EXTEND DEADLINE
TO FILE PETITION FOR WRIT OF CERTIORARI

Petitioner Patrick Killen, Jr. respectfully prays that a Motion for Continuance to Extend Deadline to File Petition for Writ of Certiorari issue to review the judgment below.

OPINION AND ORDER BELOW

The order of the Eleventh Circuit Court of Appeals denying a certificate of appealability (Case No. 21-10888) and the reason for this Motion for Continuance.

JURISDICTION

The Eleventh Circuit Court of Appeals (Case No. 21-10888) issued its order on September 8, 2021. This petition is filed within 90 days of that order. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the U.S. Constitution provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause..."

The Fifth Amendment to the U.S. Constitution provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law."

The Sixth Amendment to the U.S. Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."

The Eighth Amendment to the U.S. Constitution provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by indictment in the United States District Court for the Southern District of Florida with multiple counts of child pornography, in violation of 18 U.S.C. §2251 and 18 U.S.C. §2252, when Petitioner was merely 19 years old.

On May 14, 2013, a records request was made via Mutual Legal Assistance Treaty ("MLAT") which produced content information without a search warrant.

On August 26, 2013 the Kitchener Detachment after having received a Mutual Legal Assistance Treaty ("MLAT") request, sent a thumb drive consisting of one (1) electronic folder, two (2) Word documents, one (1) photo of non-child pornography image of young boy's face and one (2) pdf document to FBI Miami. The orange thumb drive had been copied onto a DVD/CD and the orange thumb drive had been deleted which deleted all original evidence. The Canadian Constable never testified at trial.

In *United States vs. Warshak*, 631 F.3d 266 (6th Cir. 2010), the Court held that government agents violated the defendant's Fourth Amendment (U.S. CONST. IV) rights by compelling his Internet Service Provider (ISP) to turn over his emails without first obtaining a Search Warrant based on probable cause.

In the landmark case of *Carpenter vs. United States*, 138 S. Ct. 2206, 201 L. Ed 2d 507 (2018), the Supreme Court held that the government violated the Fourth Amendment (U.S. CONST. IV) of the Constitution by accessing historical records containing the physical locations of cell phones without a Search Warrant. "The Supreme Court held that the government's acquisition of Carpenter's cell phone location records constituted a search, and that the government should have first obtained a warrant."

The Court also held that only 7 days of content information can be obtained with a Search Warrant. In the instant case, 4 months and 25 days of historical content was obtained without a Search Warrant when 54 pages of bind logs were produced. The Defendant was never given the opportunity to examine the 54 pages of bind logs thereby also violating Defendant's Fifth Constitutional Amendment Due Process (U.S. CONST. V) right.

On September 25, 2013, FBI Charlotte received the DVD/CD from Canada pursuant to FBI Charlotte's MLAT request. In that response FBI Charlotte obtained a folder that contained 25 images, 54 pages of bind logs with time stamps that included the internet protocol (IP) addresses from November 8, 2012 to March 25, 2013. And, they received two (2) pages of chat logs with time stamps.

However, the KIK Guide for Law Enforcement makes it clear that

> "The text of KIK conversations is ONLY stored on the phones of the Kik users involved in the conversation. KIK doesn't see or store chat message text in our systems, and **we don't ever have access to this information**." (**Exhibit D** – KIK's Guide for Law Enforcement, page 5).

It would have been inherently impossible for Canada to have access to any chats or chat logs as KIK Interactive does not store this information.

FBI Charlotte then examined the numerous IP addresses that spanned approximately five (5) months and identified three (3) of the mostly used IP addresses.

> "After reviewing numerous IP addresses contained within the supplied information, three (3) IP addresses were subpoenaed on 10/23/2013" (Unclassified FBI document, Bate Stamped document PJK 00082).

This also violated the Stored Communications Act 18 USC § 2703(a) – Contents of Wire or Electronic Communications in Electronic Storage as a Warrant was never issued.

> (a) A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and

eighty days or less, ***only pursuant to a warrant issued*** using the procedures described in the Federal Rules of Criminal Procedure.

Petitioner was also never given the opportunity to review the 54 pages of bind logs, which were obtained illegally without a warrant, thereby violating the Petitioner's Fourth (search warrant was not obtained), and Fifth (due process was not afforded to the Petitioner), Amendments of the Constitution. See also, *Brady vs. Maryland,* 373 U.S. 83 (1963) (the prosecution must turn over all **evidence** that might exonerate the defendant (exculpatory **evidence**) to the defense).

In *United States v. Agurs*, 427 U.S. 97 (1976) the Supreme Court redefined the *Brady* test deciding whether the due process clause requires a new trial when the government withholds exculpatory information from a criminal defendant.

"We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt ***or*** *to punishment, irrespective of the good faith* ***or*** *bad faith of the prosecution."*

On October 23, 2013, an Administrative Subpoena was sent to BellSouth for the three (3) mostly used IP addresses even though ***numerous*** IP addresses were found over a span of approximately five (5) months.

In the landmark decision of *Katz v. United States*, 389 U. S. 347, 351, (1967) the U.S. Supreme Court redefined what constitutes a "search" or "seizure" with regard to the protections of the Fourth Amendment to the U.S. Constitution.. The decision expanded the Fourth Amendment's protections from the right of search and seizures of an individual's "persons, houses, papers, and effects", as specified in the U.S. Constitution, to include as a constitutionally protected area "what [a person] seeks to preserve as private, even in an area accessible to the public".

On October 28, 2013, BellSouth responded to the inquiry and identified the subscriber of the three (3) IP addresses to Patrick Killen who resides at 6880 Pinehurst Drive, Miami, FL 33015.

FBI Charlotte ran an accuint check of this address and learned that two (2) Patrick J. Killen lived at this address. Patrick John Killen, Sr. who was born on November 10, 1942 and Patrick J. Killen, Jr. who was born on May 31, 1993.

On February 11, 2014, after accessing Petitioner's cell phone records and IP address without a warrant, two FBI agents then entered Petitioner's home without a search warrant. Neither FBI agent held any papers in their hands when they entered and Petitioner was not asked to sign any papers when they entered.

When Petitioner asked for a search warrant, the FBI agents threatened Petitioner with returning with SWAT and breaking down his door if he did not relinquish the electronic equipment. An email was sent to Petitioner's attorney 10 days after the incident moralizing the threat by the two FBI agents.

*"Q. You are **not** going with the search warrant, correct?*
A. *Correct."* (Evidentiary Hearing Direct Schwartzenberger, page 15, lines 23 - 24).

The two (2) FBI agents searched Petitioner's electronic equipment without a search warrant even though Petitioner asked for a search warrant.

> *"It is better to voluntarily relinquish the items because we wouldn't want SWAT to knock down your door especially since you are in such a nice neighborhood, you would not want your neighbors to know."* (Email to defense counsel dated February 21, 2014, 10 days after the FBI visit, regarding the threat by FBI after asking them for a Search Warrant).

Neither FBI agent produced a Search Warrant even though the United States Attorney's Office makes it clear that when searching and seizing computers and obtaining electronic evidence in criminal investigations, a Search Warrant is required and the Fourth Amendment **prohibits** law enforcement from accessing and viewing information in a stored computer.

> "To determine whether an individual has a reasonable expectation of privacy in information stored in a computer, it helps to treat the computer like a closed container such as a briefcase or file cabinet. The Fourth Amendment generally prohibits law enforcement from accessing and viewing information stored in a computer if it would be prohibited from opening a closed container and examining its contents in the same situation."

"Because individuals generally retain a reasonable expectation of privacy in the contents of closed containers, see *United States v. Ross*, 456 U.S. 798, 822-23 (1982), they also generally retain a reasonable expectation of privacy in data held within electronic storage devices.

Accordingly, accessing information stored in a computer ordinarily will implicate the owner's reasonable expectation of privacy in the information. See *United States v. Heckenkamp*, 482 F.3d 1142, 1146 (9th Cir. 2007) (*finding reasonable expectation of privacy in a personal computer*); *United States v. Buckner*, 473 F.3d 551, 554 n.2 (4th Cir. 2007) (same); *United States v. Lifshitz*, 369 F.3d 173, 190 (2d Cir. 2004) (*"Individuals generally possess a reasonable expectation of privacy in their home computers."*); *Trulock v. Freeh*, 275 F.3d 391, 403 (4th Cir. 2001); *United States v. Al-Marri*, 230 F. Supp. 2d 535, 541 (S.D.N.Y. 2002) (*"Courts have uniformly agreed that computers should be treated as if they were closed containers."*); *United States v. Reyes*, 922 F. Supp. 818, 832-33 (S.D.N.Y. 1996) (*finding reasonable expectation of privacy in data stored in a pager*); *United States v. Lynch*, 908 F. Supp. 284, 287 (D.V.I. 1995) (same); *United States v. Chan*, 830 F. Supp. 531, 535 (N.D. Cal. 1993) (same); see also *United States v. Andrus*, 483 F.3d 711, 718 (10th Cir. 2007) (*"A personal computer is often a repository for private information the computer's owner does not intend to share with others. For most people, their computers are their most private spaces."*)"

> *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations: Computer Crime and Intellectual Property Section Criminal Division* - Office of Legal Education Executive Office for the United States Attorneys (2015) Retrieved from

https://www.justice.gov/sites/default/files/criminal-ccips/legacy/2015/01/14/ssmanual2009.pdf

Not only did the two (2) FBI agents search Petitioner's electronic equipment without a search warrant, they also searched his home without a search warrant.

> *"Q. Is it your testimony that Agent Ginther was in Patrick's room was just before you left when he went in there and searched for the Galaxy 5"*
> A. *Yes, that is correct."* (Evidentiary Hearing Direct Ginther, page 83, lines 10 – 13 and Direct Schwartzenberger, page 87, lines 20 - 24).

And, Special Agent Jason Ginther testified during trial

> *A. "Just looking through his drawers and trying – the closest just looking for where this phone might be.*
> *Q. Did you find it?*
> A. No." (DE:140, page 178, lines 1 – 4).

Neither Special Agent Jason Ginther nor Special Agent Laura Schwartzenberger had permission to leave the dining room table, search the home, the drawers, the closet, the electronic equipment, and neither FBI agent produced a Search Warrant.

On that same day, February 11, 2014, Petitioner was interrogated for hours until after the FBI agents told him he was not under arrest. According to the testimony of SA Laura Schwartzenberger, she told him numerous times he would not be arrested that day.

> *"A. To the best of my knowledge, no because I advised him several times both prior to going out to the back patio and while we were out to the back patio that we were not going to take them that day, that he was not under arrest."* (Evidentiary Hearing Direct Schwartzenberger, page 82, lines 22 - 25).

In *United States vs. Lall*, 607 F.3d 1277, 1284 (11th Cir. 2010), the Supreme Court explained that . . . "even a mild promise of leniency," though not "an illegal act as such," undermines the voluntariness of a confession "; *United States vs. Caster*, 937 F.2d 293 (7th Cir. 1991), where citing *Lall*, the Court held that even if *Lall* was not in custody and *Miranda* was not required, a determination of the voluntariness of his confession was still required pursuant to the

Due Process clause; and *United States vs. Rutledge*, 900 F2d 1127 (7th Cir. 1990), "he observed that through promises of non-prosecution, 'the government had made it impossible for the defendant to make a rational choice as to whether to confess – has made it in other words impossible for him to weigh the pros and cons of confessing and go with the balance as it appears at the time." Thus, 'if the government feeds the defendant false information that seriously distorts his choice . . . then the confession must go out."

According to the testimony of FBI agent Jason Ginther, Petitioner was sequestered from his parents, thereby holding Petitioner in custody. Knowing his mother had emergency surgery later that day due to breast cancer complications, knowing he had to be in class, under duress and forced confession violating 18 U.S.C. §3501, *Miranda*, *United States vs. Lall, 607 F.3d 1277, 1284 (11th Cir. 2010)*, *United States vs. Caster*, 937 F.2d 293 (7th Cir. 1991), and, *United States vs. Rutledge*, 900 F2d 1127 (7th Cir. 1990), Petitioner told the FBI agents what they wanted to hear just to make them go away. The two FBI agents were in Petitioner's home for over six (6) hours.

This coerced involuntary confession is a clear violation of 18 U.S.C. §3501 - Admissibility of Confessions

> In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, **shall be admissible in evidence if it is voluntarily given** and (b) (2) whether such defendant **knew the nature of the offense** with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant **was advised or knew that he was not required to make any statement and that any such statement could be used against him**, (4) whether or not such defendant had been advised prior to questioning of his **right to the assistance of counsel**; and (5) whether or not such defendant **was without the assistance of counsel when questioned** and when giving such confession.

Petitioner did not know the nature of the offense, and although Petitioner asked repeatedly why the two (2) FBI agents were there, the two (2) FBI agents refused to state specifically why they were there, only to state they were investigating a lead out of North Carolina.

> *"I reiterated that we are pursuing a lead out of North Carolina and a lead on the Internet"* (Evidentiary Hearing Direct Schwartzenberger, page 28, lines 23 - 24).

The two FBI agents took Petitioner's Apple laptop, iPhone, and thumb drive where it remains in FBI custody and control to this day. The Bate Stamped evidence the government produced made it clear that no illegal activity was found on any of the electronic equipment seized on February 11, 2014.

On June 13, 2014, the government parsed the Gigatribe evidence, but Petitioner was not arrested until March 6, 2015, because no incriminating evidence was found on the parsed Gigatribe evidence.

On February 2015, during her testimony before the Grand Jury, SA Laura Schwartzenberger failed to disclose pertinent information to the Grand Jury including the fact that the child pornographic videos found on Petitioner's computer were ***automatically downloaded by default*** from GigaTribe onto Petitioner's computer without his permission, knowledge or consent.

> *"Yes. We found many images and videos with a GigaTribe download folder pathway, meaning that these images and videos were in GigaTribe downloads folder, typically a file sharing program. When you install certain programs in your computer it will set up peer folders and* ***download folders automatically by default,"*** (DE:144, page 17, lines 21 – 25 and page 18, line 1).

> "Federal courts have long required almost all criminal statutes defining offenses to include a *mens rea* term. The inclusion of a *mens rea* element helps to sort cases that span a wide range of human behavior and to provide some form of moral evaluation for different individuals and their actions. The Supreme Court considers this function of *mens rea* so important that it may read a state-of-mind component into a criminal statute that lacks an express *mens rea* term. The Court has also recognized that the *mens rea* determination is a question of fact, leaving to the factfinder the responsibility of

> evaluating whether the defendant acted with the requisite intent. The intent element of criminal offenses "serve[s] a key screening function in our criminal justice system. [It] prevent[s] the conviction, punishment, and social disgrace of those who had no intent to engage in any criminal activity, and therefore have shown no need for corrective action." This general motivation for requiring a *mens rea* component is reflected in the legislative history of the knowledge term of § 2252. Congress made its first direct effort to outlaw child pornography with the passage of the Protection of Children Against Sexual Exploitation Act of 1977. The parts of the Act focusing on the trade in pornographic materials depicting children were codified at 18 U.S.C. § 2252. With the rise of the use of personal computers in the late 1980s, Congress moved to expand § 2252's reach, and in 1988 it passed amendments that explicitly added the language "by any means including by computer" to § 2252(a). As the federal child pornography law evolved over time, its core intent requirement — that individuals receive, transport, ship, distribute, or possess child pornography **"knowingly"** — remained the same."
> Retrieved from https://harvardlawreview.org/wp-content/uploads/pdfs/vol_122_child_pornograph_the_internet.pdf

On March 5, 2015, in her Application for Search Warrant, SA Laura Schwartzenberger listed an MLAT request but neither Petitioner, nor his attorneys have ever seen the documents produced by that request. It must also be noted that the Application for Search Warrant does not list an Arrest Warrant, so no arrest warrant was produced and Petitioner was never given an arrest warrant on the date Petitioner was arrested on March 6, 2015.

On March 5, 2015, a Sealing Order was signed by Magistrate Judge William Turnoff, which included a Motion to Seal; Search and Seizure Warrant; Application and Affidavit for Search Warrant dated March 5, 2015; and, This Order. An Arrest Warrant was not listed in the Sealing Order.

On March 6, 2015, Petitioner was arrested without an Arrest Warrant and a Dell laptop and thumb drive were seized on that day. The Bate Stamped evidence the government produced made it clear no illegal activity was found on the thumb drive and during trial the government admitted that the Dell laptop was reimaged by the FBI so all original evidence had been lost and destroyed. On this date the government had no evidence against Petitioner.

On March 6, 2015 Petitioner entered a plea of not-guilty and sentenced to pretrial detention where Petitioner remained in pretrial detention for 122 days which violated 18 U.S.C. §3161 (trial must commence within 70 days when there is a not-guilty plea).

On March 13, 2015 (25 days after Petitioner's arrest) FBI sent a request to Canada seeking evidence as they still had no evidence that Petitioner had committed any crime. This request was made via a Mutual Legal Assistance Treaty ("MLAT") which only sends requested information to law enforcement. Defendants and their counsel cannot access or request this information which violates a Defendant's Due Process right.

On April 13, 2015 (38 days after Petitioner's arrest) the government still did not have evidence that Petitioner committed any crime per the testimony of AUSA Emery.

MR. EMERY: *He was accessing GigaTribe.* ***We don't know what he was doing on GigaTribe*** (Bond Hearing April 13, 2015, page 13, lines 9-10)

On May 10, 2015 (65 days after Petitioner's arrest) Petitioner was placed in solitary confinement after another inmate threatened to kill Petitioner. In *Bell v. Wolfish, 441 US 520 (1979)* the Supreme Court held that pretrial detainees cannot be punished. "A court may permissibly infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees."

On May 11, 2015 (66 days after Petitioner's arrest) Arrest Warrant was finally filed with the Court. Petitioner should not have been arrested on March 6, 2015 without an arrest warrant and without probable cause.

On May 15, 2015 trial should have commenced pursuant to Petitioner's Sixth Amendment right and 18 U.S.C. §3161 (trial must commence within 70 days when there is a not-guilty plea) but trial did not commence until July 6, 2015 as the government still did not have any evidence against Petitioner.

On July 6, 2015 (122 days after Petitioner's arrest) trial commenced but the government still did not have any evidence against Petitioner.

On July 7, 2015 FBI agent Melisa Starman testified that the evidence was manipulated and fabricated as the Bate Stamped evidence produced by the government did not even include Petitioner's name.

> **Melisa Starman**: *"A. Again, I took the information and put it into an Excel spreadsheet. And from that point, I was able to filter the conversation between Chanel Izzabel and Masonlikescake and then I* ***created this summary chart*** *so that it would present more like the Kik chats with the bubbles.*
> ***Q. But this is not exactly how it appears on Kik, correct?***
> ***A. No, but it's a similar representation.*** (DE:141: page 212, lines 9 – 12; page 232, lines 16 – 22).

Summaries are not allowed in criminal proceedings and the government had no right to use altered and fabricated evidence that had been manipulated into an Excel spreadsheet and then added bubble chats and in so doing violated 18 USC §1519 (destruction, alteration or falsification of records in Federal investigations – 20 years imprisonment) and *Brady v. Maryland*, 373, U.S. 83 (1963) but the government chose to use the altered and fabricated evidence at trial knowing they had no evidence against Killen.

> **Melissa Starman**: *"Q. And you organized it on a Excel spreadsheet for organizational purposes?*
> *A. That's correct.*
> *Q. Now, in the KIK chat room, were there – was it often a public chat room with two, three, four, five people having accesses to the conversations?*
> *A.* ***There were nearly 33,000 messages. . . we isolated those conversations.*** *And instead of flipping through 131 pages to piece that conversation together, it was easier to present it in a* ***summary chart*** *using Excel."* (DE141: page 220, lines 4 – 20).

Out of 33,000 messages where numerous individuals were chatting simultaneously FBI Agent Melissa Starman somehow telepathically was able to determine which chat belonged to Petitioner even though Petitioner's name is not on any of the Bate Stamped evidence violating 18

USC §1519 (destruction, alteration or falsification of records in Federal investigation – 20 years imprisonment); Federal Rules of Evidence 1002; *Brady vs. Maryland*, 373 U.S. 83 (1963).

The Supreme Court, has also explained the provision of Fed.R.Civ.P. 60(b), not so much in terms of whether the alleged misconduct prejudiced the opposing party but more in terms of whether the alleged misconduct "harms" the integrity of the judicial process:

> *"Tampering with the administration of justice in the manner undisputedly shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."*

On October 22, 2015, with only three (3) alleged victims in the Superseding Indictment, who refused to testify at trial, violating Petitioner's Fifth Constitutional Amendment and Due Process Right, and *Giglio v. United States*, 405 U.S. 150 (1972), the Supreme Court held that the prosecution's failure to inform the jury that a witness had been promised not to be prosecuted in exchange for his testimony was a failure to fulfill the duty to present all material evidence to the jury, and constituted a violation of due process, requiring a new trial, Petitioner was sentenced to 139 years in prison violating Petitioner's Eighth Constitutional Right and 18 U.S.C. §3553 (imposition of a sentence). Petitioner had never before been in trouble with the law, and is a law-abiding citizen.

On January 11, 2018 (almost 3 years since Petitioner's arrest), oral argument was heard and AUSA Wu testified that the government had a very incomplete set of records (which clearly indicates the evidence they did produce was fabricated) and the government did not know who said what to whom acknowledging that the government still had no evidence against Petitioner.

> *"I'm glad you asked me that Judge Martin, they did not, so this goes to part of my point about why* ***we have a very incomplete set of Mr. Killen's victims*** *in this case is because a large portion of the records are from the company directly,* ***they did not store the chats*** *they only stored images and metadata so in other words* ***we do not know what Mr. Killen said to many of these people and we do not know what they said to him."*** (AUSA Wu, Killen Oral Argument)

On March 29, 2018, the Court of Appeals for the Eleventh Circuit reduced Petitioner's sentence to 50 years in prison citing the decision on *United States v. Kapordelis*, 569 F.3d 1291, 1315 (11th Cir. 2009) where Mr. Kapordelis had a 20-year history of drugging and molesting young boys but was only given a 35-year sentence which was an upward variance and a much lower sentence compared to Petitioner's 50-year sentence.

Petitioner never came in contact with any young boys and never wanted the child pornography on his computer to which the FBI testified that all images and videos (although she does not specifically state what those images and videos were) had been automatically downloaded without Petitioner's consent.

> *"Yes. We found many images and videos with a GigaTribe download folder pathway, meaning that these images and videos were in GigaTribe downloads folder, typically a file sharing program. When you install certain programs in your computer it will set up peer folders and* ***download folders automatically by default.***" (DE:144, page 17, lines 21 – 25 and page 18, line 1).

Additionally, the 44,000 videos had been deleted by Petitioner prior to the FBI seizing the electronic equipment which proves there was no intent and a violation of the basic tenet of *mens rea*.

It would have been impossible for Petitioner to have more than a 20-year history as he was only 20-years old at the time, and the evidence produced by the government consisted of only three (3) alleged victims, who refused to testify at trial, Bate Stamped evidence listing dates of a few months ***not*** 20 years and Petitioner's name is **not** on any of the evidence violating Petitioner's Eight Constitutional right and 18 U.S.C. §3553 (imposition of a sentence).

Additionally, the Mutual Legal Assistance Treaty ("MLAT") request in the instant case was obtained without a search warrant and contained 5 months of IP addresses most of which IP addresses did not even belong to Killen and in *Carpenter vs. United States*, 138 S. Ct. 2206, 201 L. Ed 2d 507 (2018) the court ruled only 7 days of content information is allowed to be obtained ***without*** a Search Warrant.

All original evidence produced by the MLAT had been deleted by the Canadian Constable and Petitioner was unable to ascertain the original evidence.

The Public Defender of the Southern District, Michael Caruso, testified before the Honorable Kathleen Cardone on December 23, 2015 that the use of a Mutual Legal Assistance Treaty ("MLAT") as was used in the instant case, violates a Defendant's Fifth Amendment and Due Process Constitutional right as the Defendant cannot obtain the information as the information is sent to law enforcement only. (December 23, 2015 - Testimony of Michael Caruso, Public Defender before the Honorable Kathleen Cardone).

Retrieved from:
https://cjastudy.fd.org/sites/default/files/hearing-archives/miami-florida/pdf/michaelcarusomiamiwritten-testimony-done.pdf

This type of case using a Mutual Legal Assistance Treaty ("MLAT") request is a case the Supreme Court should hear as it is an area of law that is unsettled and a conflict of law as it violates a Defendant's Fifth Amendment Constitutional and Due Process right.

REASONS FOR GRANTING THIS MOTION

On November 25, 2019, Petitioner filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, raising multiple grounds of constitutional violations including the violation of Defendant's Fourth, Fifth, Sixth and Eighth constitutional rights. The lower court Ordered Petitioner to reduce the number of pages from 288 page to 30 pages.

On December 23, 2019 Petitioner filed an amended motion to vacate but was then Ordered to file yet another amended motion reducing the pages even further.

On October 23, 2020 Petitioner filed a second amended motion to vacate having been ordered to reduce his number of pages yet again. The second amended motion to vacate was denied.

On April 16, 2021 Petitioner filed a Certificate of Appealability continuing to cite the multiple constitutional, federal statute and case law violations but his Certificate of Appealability was denied on September 8, 2021.

Petitioner's Fourth, Fifth, Sixth and Eighth Constitutional rights have been violated and Petitioner respectfully requests this Honorable Court grant him an extension to file the Writ of Petition of Certiorari for an additional 60 days.

Petitioner has been in maximum security prison during COVID-19 and Petitioner is continuously in lockdown without any access to computers to research additional case law.

CONCLUSION

For the reasons stated herein, Petitioner prays that the motion for continuance to extend time to file the petition for a writ of certiorari be granted.

Dated this 15 day of November, 2021 and served on all parties of record.

Respectfully submitted,
/s/ Patrick Killen, Jr.
Patrick Killen, Jr., *Pro Se*