IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

ROBERT MAILLET

Petitioner

v

UNITED STATES OF AMERICA

Respondent

21-7686

Dist. Ct#: 1:14-CR-00004-MR-DLH-1

Appeal#: 20-6862

PETITION FOR A WRIT OF CERTIORARI

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit who last ruled on the merits of this case.

Robert Maillet
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FCI Fort Dix
PO Box 2000
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New Jersey 08640

QUESTION(S) PRESENTED

UNDER

ISSUE 1: Is §3583 (Supervised Release) as it stands after 3583(k) was found to be unconstitutional, invalid, illegal, and so, void in whole?

Does Lifetime Supervised Release under §3583, using §3583(k), 5D1.2(b) & (d)(7), etc., to justify lifetime supervised release, violate the 8th Amendment's Cruel & Unusual Punishment Clause, when exceeding a statute's maximum punishment range? Does it then mean that 5D1.2, in part or in whole, along with other statutes that single out sex offenders as a group and proscribe punishment(s) in excess of the prison sentence and statute maximum, also violate the 8th Amendment.

Does §3583 (supervised release), paired with a prison sentence or any other restriction(s), punishment(s) (disadvantage(s)), violate the 5th Amendment's Double Jeopardy Clause?

(See Issue 6 for additional concerns under §3583).

ISSUE 2: Does Possession, and the lesser, included charge of Receiving, presented in the same indictment, violate the 5th Amendment's Double Jeopardy Clause?

Is Receiving an invalid, void, statute for prosecution because it cannot stand on its own, but only within the confines of Possession? Is protection under 18 USC §§230(b)(2); and/or 230(c)(1); and/or 231(b)(2) valid for Computer Technicians (like Petitioner), and other computer services personnel, even when providing these services in a non-standard environment?

ISSUE 3: Can the Courts use a dismissed count to enhance Petitioner's sentence without violating the 6th Amendment and dismissing relative

Due Process rights?

If using a dismissed count is in violation of Constitutional Law, does Congress' Prohibiting Punishment of Acquitted Conduct Act of 2021, need to be retroactive, bypass the judge who used acquitted conduct in raising a sentence, and be applied to all cases in which acquitted conduct was used to increase sentence, and not just cases that went to trial, in order to avoid Constitutional violations?

ISSUE 4: Was a Restitution Order, which was not part of the Plea Agreement nor brought to light in the bias of a PreSentence Report (PSR) and which used antiquated information of alleged victim(s) who long ago had been fully compensated, that disregarded the accepted precedent of the DRI method for calculating this type of restitution, in violation of the 8th Amendment's Excessive Fines Clause and therefore invalid?

Should the culpability of someone who was alleged to have viewed (possessed) images of such person(s), miscalculated because "actual cause" by the rapist(s), producer(s), distributor(s), was never entered into the equation, be far less culpable than what has been previously accepted in error for many years now?

ISSUE 5: Is the Registry Cruel & Unusual Punishment under the 8th Amendment when utilizing the standard definitions of Punishment and Penalty as found at the bottom of page 15 of this Writ?

As a punishment because it creates a disadvantage, does the Registry then violate the 5th Amendment's Double Jeopardy Clause?

Does the Registry violate the Nondelegation Doctrine regardless of whether it in "inconvenient" as written or not?

ISSUE 6: (As a subsection to Issue 1) Are the extraneous restrictions, punishments (disadvantages), imposed as part of §3583 (supervised release), which are placed upon the vast majority of sex offenders in a blanketed manner, which are not required of any other offense category, such as but not limited to, polygraph tests, computer monitoring, forced counseling, etc., a violation of the 6th Amendment's Due Process Clause, the First Amendment, the 8th Amendment's Cruel & Unusual Punishment Clause, and the 5th Amendment's Double Jeopardy Clause as expressed under ISSUE 1?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of ceriorari issue to review the judgment below in it entirety.

Cases from federal courts:

The opinion of the United States court of appeals
appears at Appendix "A" to the petition and is unpublished.

The opinion of the United States district court
appears at Appendix "B" to the petition and has been designated for publication but is not yet reported; or, is unpublished.

The notice of supplemental authority to §2255
appears at Appendix "C" to the petition and is unpublished.

The informal preliminary brief for appeal of §2255
appears at Appendix "D" to the petition and is unpublished.

Petitioner is unable to obtain a copy of his §2255 Motion which would appear at Appendix "E" if he had some way to include it, as it has relative information to this case.

CASE BEING CONSIDERED FOR TREATMENT

PURSUANT TO RULE 34(j) OF THE COURT'S RULES

Table of Contents

Table of Authorities

Table of Statutes

Table of Constitutional Issues

Other

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was 12/15/2021.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

Note: The reason petitioner did not petition for rehearing was because the Post Office at Fort Dix illegally opened and then held for fourteen (14) days until it was too late to file. This is a common problem here.

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Jurisdictional Statement

The District Court has jurisdiction under Title 28 §1331 in re to Petitioner's initial §2255 Motion

The Appellate Court has jurisdiction under Title 28 §1291 as an appeal of final order of the District Court.

Statement of Issues

Originally Petitioner's §2255 dealt with his Counsel's failure to provide adequate service. These include, but are not limited to the following: Questioning validity of warrant as it applied, as Petitioner was a guest at the residence, renting a room, and not subject to the terms set in the warrant. Counsel failed to secure document signed off by a DHS Computer Forensic Expert, testifying that after more than 8 hours of searching all computers and drives on the premise, NOTHING was found. Counsel failed to follow through, investigating a connection between the lead DHS Agent and Petitioner's ex-wife, even after presenting her with evidence of this likelihood. Counsel failed to assist in the Plea Agreement process, a critical stage if a satisfactory agreement was to be reached. Counsel pressured Petitioner continuously to sign plea or face the "trial penalty", and did not inform him he could deny individual parts of Presentence Report (PSR), etc. In fact, Petitioner was told it was all or none. counsel failed to argue that Receiving was a lesser, included charge of Possession, which could not stand alone, (See Appendix"A") where the Court even referred to this matter, <u>in reverse</u>! Counsel failed to argue that life-time supervised release was excessive and a second punishment, violating Constitutional Law. Counsel

failed to argue the sentence disparity aside from suggesting that a sentence above 10 years is not handled well by elderly defendants; failed to argue the use of a dismissed charge from indictment, and the Court's misinterpretation of elements in two past cases, making erroneous conjectures, to increase sentence. Counsel knew Petitioner was a Computer Technician yet made no effort to argue his exemption under §230 and/or §231, especially after her own Computer Expert concluded that 21,000 plus and very likely more, of 24,000 images alleged to be child pornography were not attributable to him. Counsel not only did not argue the restitution of $3000 was in excess of what DRI method precedence would have dictated, violating the Excessive Fines Clause, but she pressured Petitioner to sign a document about women he knew nothing about. Counsel failed to argue the Constitutional violations associated with the sex offenders registry. Counsel failed to argue attachments under §3583, such as computer restrictions, etc., are invalid as the sections containing such under §3583, as well as §3583 itself are void.

Here, Petitioner focuses on those issues which directly violate Constitutional law: Life-time supervised release's violation of 8th and 5th Amendments, and supervised release as invalid, void, and illegal; Receiving and Possession in same indictment violating 5th Amendment; a sentence disparity violating 6th and 5th Amendments; Restitution Order arbitrary, not following prescribed precedence; registry violating 8th Amendment and Nondelegation Doctrine; and finally, extraneous additions against sex offenders associated with §3583 invalid, void and illegal.

Statement of Pro Se Leniency

Now comes Robert Maillet, henceforth known as Petitioner, having filed Pro Se, asks this Supreme Court liberally construe this Writ of Certiorari, as has been asked of each lower court prior, in this matter, along any avenue providing relief, Estelle v Gamble, 429 US 97, 106 (1996); Haines, 404 US at 520-21 (Pro Se filing should be liberally construed); Graham, 89 F.3d at 79 (When read liberally a Pro Se habeas corpus petition should be read to raise the strongest argument that they can suggest.); and Sims v Blot, 534 F.3d 117 (2d Cir. 2008). Petitioner prays this Supreme Court will honor this lower court precedent.

Additionally, Petitioner hopes this Supreme Court will take into consideration the following: When the Appeals Court rendered judgment mailing it on December 15, 2021, the US Postal Service here at Fort Dix, not only opened it without Petitioner present, sending along standard mail channels, against policy (typical here), but they proceeded to keep said document for fourteen (14) days until 12/29/2021 so that Petitioner was unable to file for En Banc with the Appeals Court, hence depriving Petitioner of time that could have been spent furthering his Writ of Ceriorari.

Petitioner, here at Fort Dix, has been "locked down" for nearly two (2) years which, beyond being extremely stressful, also prevented use of all resources normally at his disposal. Within the time period, December 15, 2021 to the present, as you may have been aware of, this facility, and the rest of the BOP was on a National Lockdown on top of the standard lockdown, restricting Petitioner even more as all phones and computers (some law resources) were shutdown for almost two (2) weeks.

Petitioner does not ask for any special consideration other than acknowledgment when reviewing this Writ that there were circumstances beyond the normal ninety (90) days preparation time to construct this Writ of Certiorari.

ISSUE ONE (1)

Life-time Supervised Release Violates The 8th Amendment's Cruel & Unusual Punishment Clause.

Supervised Release Paired With The Given Prison Sentence Is A Violation Of The 5th Amendment's Double Jeopardy Clause.

Supervised Release As It Stands Is Invalid, Void, And Illegal.

This Supreme Court in United States v Haymond, 139 S.Ct. 2369, 204 L.Ed.2d 897 (2019), stated in its opinions, the premises as to why Supervised Release as it stands is illegal, violating Constitutional Law, and it follows that based on this Court's written pronouncements these truths need to be addressed as they apply to Petitioner's case, as well as the many others that this error in law affects, since the lower courts refuse to do so.

There are multiple sections to this issue at hand: Supervised Release as a second, illegal sentence, creating a Double Jeopardy violation when paired with a term of imprisonment, Supervised Release, paired or unpaired with the prison term, being excessive, especially life-time, hence violating the Cruel & Unusual Punishment Clause and Supervised Release as illegal, making the statute (§3583) void. See App "A", at 16.

Petitioner was sentenced to twelve (12) years, four (4) months (148 months) of confinement in a federal prison, plus life-time supervised release. This effectively gives him a sentence that exceeds the maximum sentence given his charge. See Alleyne, 570 US 99, S.Ct. 2151 (2013), where the Court held that Apprendi's principle "applies with equal force to facts increasing the mandatory minimum." See App "A" & "B". This disparity becomes even more apparent if other factors brought up in this brief are accepted as valid by this Court. Petitioner was given what equates to a life sentence without a chance, period.

Supervised Release is not part of the same sentence, but rather a second

(and illegal) sentence. See Haymond, 139 S.Ct. 2369, 204 L.Ed.2d 897 (2019); United States v Carson, No. 17-3589 (8th Cir. 5/10/19).

In Haymond, Justices of this Court, apparently citing the Eaton briefs, noted that, "Unlike parole, the releasee [Petitioner] has done all of his time; he has been given no benefit of early release. Whereas termination of parole is merely the loss of a benefit, revocation [termination] of [supervised] release imposes a new penalty." It seems as though this Court has rejected the notion that Supervised Release is part of the penalty for the original crime, calling it both an extension and a new penalty. Never before have we had such a system, and the fact that a conviction, that may be valid (or even if not), does not instruct us to believe Supervised Release is too.

Under 18 USC §3583(k), a Supervised Release violation requires.... The 10th Circuit had declared this provision unconstitutional, raising the question whether ANY Supervised Release violation that includes a prison term could be found unless a jury did so beyond a reasonable doubt. See Alleyne. Under precedent, §3583(k) was declared unconstitutional. The point here is one that is probably stated best by Justice Alito, [The ruling for Haymond could] "bring down the entire Supervised Release system." 3583(k) set sex offenders apart, and by finding that part of this statute (§3583(k)) is unconstitutional it follows that all of it must be.

Justice Sotomayor went on to say of this case, "... like comparing apples

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[1] Note that sex offenders are set apart in other areas of the justice system as well. Within the FSA, sex offenders are barred from receiving "time credit" for programmng. The oddity rest in the fact that the group who has the lowest recidivm rate of all crimes, non-contact sex offenders (pictures) are excluded, sex offenders who intended to have sex with a minor, do get this credit. Petitioner does not suggest these people should not get this "credit" but that those who fall into a category (non-contact) which has the lowest recidivism rates of all crime categories, should be included. It forwards the skewed direction the government incessantly takes in prejudicing one group or another. Here as well as within §3583, people convicted of sex offenses are overburdened and prejudiced against. Petitioner not being treated equally under the law.

to oranges. In parole, a releasee is given leniency in exchange for following a strict set of conditions. Under Supervised Release there is no leniency. You do your entire sentence, minus goodtime, which falls under a completely different statute, and then you're forced to do another sentence." Two facts can be extrapolated here: Justice Alito's concern is based on the reality that, if part of a statute is unconstitutional, §3583(k), then the entire statute is deficient, it holds no validity so is void. Secondly, Supervised Release is a second, separate, and illegal sentence, which whether a violation has occurred or not, Supervised Release as provided by §3583, provokes the Double Jeopardy Clause of the Fifth Amendment because it gives two punishments for one crime.

Justice Breyer agreed that the particular provision at issue, 18 USC §3583(k), is unconstitutional.

In Haymond v United States, the Justices of this Supreme Court, unequivocably stated that the courts could no longer hide behind the validity of a criminal conviction to refuse to address Constitutional infirmities with Supervised Release. The approach in United States v Patrick Burke, (8th Cir. 2019), is the same argument the court rejected in Montgomery v Louisiana, 136 S.Ct. 718, 193 L.Ed.2d, 599 (2016). "The state tried to get finality in a place the process never should've reached to begin with." The court said that, "a conviction under an illegal law or resulting in an illegal penalty could no longer stand, no matter how 'final' it was." Haymond makes clear that this applies to supervised release as well.

In Petitioner's §2255 Motion, he argued that his Supervised Release constituted a violation of Constitutional Law. "While courts have been reluctant to confront this [issue], and their complicity in this matter, glimmers of sanity are starting to make their way through the otherwise

impenetrable fog of the whole mess. The Second and Seventh Circuits have in the past few years, put substantive limits on what the courts may do [in regard to these issues]. United States v Sutton, No. 17-3195, stated that while a revocation hearing is not a criminal trial, the Federal Rules of Civil Procedure give a releasee the opportunity to cross-examine witnesses.

There is another facet to 3583(k) which begs its further unraveling, and hence all of §3583. §3583(k) in part reads, "Notwithstanding (b), the authorized term of Supervised Release for any offense under section [18 USCS] §1201 involving a minor victim, for ANY offense under..." "is ANY term of years not less than 5, or life. This is vague and invites arbitrary application, and does not conform to any pertinent USSC findings and should be deemed void. See Johnson v United States, 529 US 694, 700; United States v Terrence John McGovern, No. 16-244(GAG), LEXIS 226673 (1st Cir. 2019) Life-time reduced to five (5) years.

The Fourth Circuit holds precedence for allowing challenges for Constitutional issues whether a plea has been signed or not. This issue has been addressed by this Court in Class v United States, US No. 16-424, first argued 10/4/17, where the Honorable Justice Ruth Bader Ginsburg asked the Government whether the Court made "a slip" when it addressed and struck down laws that criminalized interracial marriage 50 years ago, referring to Loving v Virginia. Mildred and Richard Loving pled guilty to violating the Virginia ban on such, but later challenged the Constitutionality of the ban. Justice Neil M. Gorsuch said, "Maybe the most natural and historically consistent understanding of what a guilty plea is", is simply, "you're admitting to what's in the indictment," and nothing more. It does not include a plea-waiver; it does not admit guilt to hearsay within a Pre-Sentence Report (PSR) or any other minutia Prosecution may inject. All these "extras" deny a defendant's Constitutional Rights, because he has not had his day before a

jury of his peers. Also see Blackledge v Perry, and Manna v New York.

This Supreme Court acknowledged in Haymond, that Supervised Release as it stands, is a punishment above, beyond, and separate from the sentence imposed upon Petitioner, as well as the many others erroneously and illegally subjected to it, and therefore constitutes a Double Jeopardy Clause infringement. It also forwards that §3583(k) is levied against sex offenders in an unfair, unconstitutional, illegal manner. Petitioner also addresses the arbitrary application invited by 3583(k), and how its use does not follow United States Sentencing Commission (USSC) findings and further deems it void.

For Petitioner, who is already serving a sentence far in excess of what the United States Sentencing Commission (USSC) has put forth through its findings (statistics) of what various courts throughout the United States have given for similar cases, along with its disavowsing letter to Congress condemning §2G2.2 (which will be brought to light more clearly further in this brief), the combination of sentence and supervised release creates an extreme that should not exist.

Under United States Sentencing Commission (USSC) guidance Petitioner's charge would have warranted a maximum of 36 to 60 months imprisonment with no Supervised Release. Without the illegal statute §3583, he could have started to put his life back together untethered long ago. Without the excesses that 2G2.2 placed upon him, Petitioner would have received a sentence that truly would have been sufficient to foster respect (not fear) for the law, long ago. His family, as is true of many incarcerated, suffer alongside with him, struggling to pay basic bills, raise children, assist with grandchildren. The court could have slapped me on the wrist and it would have been enough and imbued Petitioner with far more respect (not fear) than an overly punitive system ever will.

Director Carvaljac said before the United States Senate, We do not

punish.... I beg to differ. We are still imprisoned, these are not rehabilitation facilities, especially during the last two (2) years under "lockdown" conditions. EVERY prisoner should be given leniency for suffering through two (2) years with certain conditions that not even someone in solitary would face.

2G2.2 invites an "excessive sentence" that prejudices non-contact defendants like Petitioner, leading to sentences that are then by definition, cruel and unusual because they often give sentences greater than what is given to "contact" sex offenders, i.e. rapists, producers, distributors, etc. Petitioner would have received less time had he actually raped a minor.

The 6th Circuit has joined the 4th [Circuit] in ruling that a defendant serving a sentence for violating supervised release can apply for a retroactive sentencing cut under First Step Act. United States v Woods, 2020 US App Lexis 3462 (6th Cir 2020). "Post-revocation penalties relate to original offense," raises "serious constitutional questions, such as double jeopardy concerns." It would seem that if 35 83 is struck down, relief is available through multiple venues like FSA.

USSG 5D1.2(b) & (d)(7) works in conjunction with 3583(k), violating the Cruel & Unusual Punishment Clause, seting sex offenders apart, giving a second sentence beyond the statute maximum.

Punishment: To impose a penalty

Penalty: Present a disadvantage, disability, sanction

ISSUE TWO (2)

Receiving and Possession In The Same Indictment Constitutes A Violation of the Double Jeopardy Clause Of The Fifth Amendment.

There are multiple factors within this issue which need to be addressed.

First, the wording of a statute is to be taken as can reasonably be extrapolated by the average person such where a definition leans in favor of the accused (Petitioner).

For Receiving to take place, two (2) facts must take place: First the Petitioner would need to ask for material to be sent to him, and second, possession has to have taken place prior, for two (2) reasons.

Petitioner never contacted anyone for the purpose of procuring images, whether legal or illegal, in any way, shape, or form, a condition necessary for the term "receive" and the associated statute to be applied.

Receive: To accept something offered into possession. (One can only receive if something is sent, and something is sent when someone is asked.

The second factor that must exist, possession, may at first sound counterintuitive, but for two (2) reasons this is the only way in which receiving can exist. The first, is based on the simple premise that in order to even say a file of any type has been received there needs to be evidence of such. Only by actual possession can this verification take place. Otherwise receiving would not be anything beyond circumstantial evidence at best. By this fact, Possession must actually take place first, meaning that receiving can never stand on its own, but can only reside within the bounds of possession. Other statutes have found similar relationships where one set of circumstances, statute or act, rest within the bounds of another, including other possession statutes. I.E. Possession of Heroin with intent to distribute. Here Receiving is within possession, part of it. To separate them into two separate statute violations violates the Double Jeopardy Clause.

The Government never said that Petitioner's alleged "received" images were not in his possession. First the Government picked images out of those alleged to be possessed by Petitioner, then tried to conclude long after the fact that a certain number of those possessed images were received. But the fact remains that such a conclusion could not be made without the act of possession being present prior. In other words: Possession had to be determined first. Of course, this had to be. It is the proof by which further "conclusions" (receiving), were based. Possession came first and only through that was receiving able to exist. It CANNOT exist on its own, so cannot be a separate charge.

When Petitioner's Counsel's computer expert had determined prior to sentencing that 21,000 plus images were not attributable to Petitioner, this put into question, first, if any were attributable to him, as Petitioner was a computer technician who regularly repaired clients computers on the premise where he rented a room, and thus had multiple harddrives, computers, etc., either being repaired or abandoned by clients for recycling, not in his personal possession but professional. He should have been under the protection of either 18 USC §§230(b)(2) and/or 230(c)(1) and/or 231(b)(2); or second, at the very least, the question of whether those images alleged to be in Petitioner's possession, and somehow had receive attached to them later, well after the fact, were of the 21,000 plus images a computer expert agreed were not attributable to Petitioner, or out of the remainder, which had yet to be determined.

Note the Government's use of deceptive language to insinuate that child pornography existed where there was none. Also additional wording was added, that was not in the original as presented to Petitioner. And what is said here is nothing but heresay contained in the Presentence Report (PSR), put together by the prosecution. (App "A", pp 1-3).

Petitioner will present two arguments here: First, that Possession and Receiving present a Double Jeopardy Clause violation in general and more specifically in Petitioner's case, and second, that receiving has to be the charge discarded as it is an included part of Possession. See Jolly v United States, 170 US 402, 408, 18 S.Ct. 624, 42 L.Ed 1085 (1898); and Selvester v United States, 170 US 262, 269, 18 S.Ct. 580, 42 L.Ed 1029 (1898).

In United States v Flack, 2019 WL 5406477 (No. 18-1676)(6th Cir. 10/23/2019), "Flack argued that the district court erred when it failed to hold a resentencing hearing after, at our direction, the district court vacated one of Flack's convictions. The Reason why the district court did not hold a sentencing hearing, in all likelihood, is that this Court's remand order seemed to suggest that the court did not need to. But on this record that suggestion was mistaken." In 2013, Flack pled guilty to one count of receipt of child pornography and one count of possession of child pornography. After sentencing Flack moved to vacate his sentence under 28 USC §2255, arguing that his counsel had been ineffective. The district court denied the motion. On appeal, "this Court held that Flack's convictions for both receipt and possession of the same pornography violated the Double Jeopardy Clause. This Court therefore issued what ...."

Flack's right to a resentencing hearing was indeed an error but, the more important fact here is that, like many other circuits, the 6th Circuit Court of Appeals acknowledged that possession and receiving constituted a Double Jeopardy Clause violation, and as a secondary consideration, that his counsel had been ineffective by not arguing this fact, same as in Petitioner's case.

The Fifth Amendment to the Constitution forbids more than one punishment for any offense. Since that is exactly what separating possession and the lesser included charge of receiving does, receiving paired with possession as two separate charges is unconstitutional. See Montgomery v Louisiana, where

the court said, that a conviction under an illegal law or resulting in an illegal penalty can not stand, no matter how "final" it is. See United States v Stewart, 2020 US Dist LEXIS 1183 (NDOH E.Div. 2020).

"Factually applying two separate enhancements for the same behavior will result in a greater than is necessary and unjust sentence."

For years government has used Receiving as a means to enhance the punishment for possession.

In United States v Jenkins, 2017 BL 1232676, (No. 14-4295)(2d Cir. 4/17/2017), the judge commented that possession and receiving, at best can only be attached in the "most narrow and technical sense." Here Judge Barrington D Parker went on to say that the sentence imposed was excessive and that "The 25-year term [of supervised release] itself was 'unusually harsh' and unreasonable, particularly when Jenkins... would be 63 years old upon release..." See 8th Amendment's Cruel and Unusual Clause.

United States v McManus, 734 F.3d 315, 319 (4th Cir. 2013). (Around the time Petitioner was sentence). McManus received 72 months with 10 years Supervised Release, given 5 extra points for distributing. Charges included possession, distribution, was remanded and his sentence reduced to 63 months.

Judge Pooler in United States v Brown, indicated that the "sentence was overkill because [defendant] unlikely to reoffend," "because defendants become less active when the reach their 60's..."

Compact Edition of the Oxford English Dictionary

Receive: To take into one's possession (something offered by another)

American Dictionary of English Language

Receive: To take, as a thing offered or sent

Accept: To take or receive what is offered with a consenting mind

Another: Any different person Get: Obtain, gain, acquire

Petitioner could not receive unless he asked for something to be sent, otherwise he has not consented to the receipt. If Petitioner went online and downloaded an image, then he gets, acquires, not receives. If he is sent something he has not asked for, then there can be no consent.

ISSUE THREE (3)

Sentence Disparity: Dismissed Count Used To Enhance Sentence Violates The Sixth Amendment, And Dismisses Relative Due Process Rights

A defendant accused of wrongdoing determines the value of accepting a plea by judging various factors that effect the outcome, his life, and if he is a husband, father, grandfather as the Petitioner is, his family too. One major consideration was brought to light by Petitioner's Counsel as what is commonly referred to as "Trial Penalty".

Petitioner cites a letter written on March 9, 2020, by nearly fifty (50) bipartisan US House of Representatives, to then Acting Pardon Attorney Director, Rosalind Sargent Burns. It states a commonly known fact about the "significantly harsher" sentences defendants are sentenced to if they do not take the "original sentence" as offered by the prosecuting attorney in exchange for a guilty plea.

"These harsher sentences, also referred to as "Trial Penalty", can be [are] imposed when a criminal defendant decides against accepting a guilty plea." "The trial penalty results in a significantly longer prison sentence."

"Harsher trial sentences have been used to deter people from exercising their Sixth Amendment rights to a "trial". Because of the threat of a significantly harsher sentence, often presented to a defendant by their counsel in an effort to secure a plea, a defendant is left with little choice but to take the plea." This amounts to nothing less than coercion and violates the basic principles on which this nation was founded, Due Process.

Petitioner had to weigh the sentence his Counsel stated he could probably expect (36 to 60 months) versus the excess brought about by 2G2.2, §3583(k), and the addition of the lesser included charge of Possession, Receiving. Each is utilized to enhance a prison sentence, and then again Supervised Release far above what it should be according to the United States Sentencing Commission (USSC). Had Petitioner maintained his innocence and gone to trial

before a jury NOT of his peers, he was told to expect the maximum, twenty (20) years imprisonment and lifetime Supervised Release. When Petitioner spoke to his wife, THE greatest major consideration, her words were, "Just come home to me as soon as you can." Thirty-six to sixty (60) months or, 240 with lifetime Supervised Release. There is no choice in this. Petitioner's family needed him as soon as possible. Petitioner is not a wealthy man by any means so, innocent or not, or as often is the case, somewhere in between, he signed the plea.[2]

If Congress intended for statutory facts to be sentencing factors, then courts found that intent dispositive under McMillan, regardless of the practical effect of the factual finding. See e.g. Almendarez-Torres, 523 US at 234 ("A title that contains the word "penalties" more often... signals a provision that deals with penalties for a substantive crime.").

Since the 1980's our laws routinely required a defendant's sentence to be based upon what a judge believed an offender "really" did, as opposed to the actual crime of which he was convicted [by a jury], is nothing less than offensive, let alone Unconstitutional.

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[2] Typically everyone from Homeland Security, FBI, prosecutors all the way to judges turn minor violations into major violations by adding to and manipulating so called "evidence" then presenting it under the guise of "factual basis". So even though, as in Petitioner's case, he was innocent of most of what he was charged with, with the exception of viewing a small amount of illicit pornography sent to him by Homeland Security (who along with the FBI is known to be the largest supplier of Child Pornography in the world), in two zip folders attached to anonymous emails, which could not be viewed until downloaded and opened. Petitioner could not consent.

Petitioner was not allowed to review any material said to be evidence against him. Maybe since Petitioner is a Computer Technician he could have determined where they originated from, if the alleged illicit images were even child pornography, of which he has his doubts. Nonetheless, Petitioner should have been protected under §§230 and 231 like any other computer personnel.

What is the point of accepting a plea if at the end a judge is still going to count dismissed indictment count(s) in fashioning a sentence.

"The notion that a defendant's sentence is based upon his "real offense" begs the question; real according to who? And according to what standard?" As we can see vagueness ensues.

"In truth, "real offense" sentencing as embodied in the guidelines, is simply punishment for acts not Constitutionally proven. The system relies on the "findings" that rests on a mishmash of data, including blatant, self-serving hearsay largely served up by the prosecution and placed in the Presentencing Report (PSR). It should go without saying that, if sentencing policies conflict with safeguards enshrined in the Constitution for the protection of the accused, these policies have to yield to Constitutional guarantees."

A fundamental promise of our Constitution is that it is not what one "really" does that can be punished, but only that conduct which is proven at trial. The mandate of the US Constitution is simple and direct: If the law identifies a fact that warrants deprivation of a defendant's liberty or an increase in that deprivation, such fact MUST be proven to a jury beyond a reasonable doubt. See, US Const. Art. III, Sect. 2, cl 3. The rule has three essential components: (1) Every fact necessary to punishment; (2) proven to a jury; and (3) beyond a reasonable doubt.

In Alleyne v United States, 133 S.Ct. 2151 (2013), this Supreme Court dropped a bombshell on the legal landscape of McMillan. This Court overturned nearly 27 years of precedence, which had concluded that an increase in the mandatory minimum sentence based on judicial fact-finding did not run afoul of the Due Process Clause. The Alleyne court announced a new Constitutional rule be redefining what a "crime" is in the context of the Sixth Amendment. Acknowledging that the historic "relationship between crime and punishment"

compels that any fact which by law increases the range of punishment to which a criminal defendant is exposed "[IS AN ELEMENT OF A NEW OFFENSE, A DISTINCT AND AGGRAVATED CRIME]". These elements are entitled the full panopoly of Constitutional protections under the Sixth Amendment "in conjunction with due process". Thus, use of the term, "sentencing factor" to describe a fact which alters a legally prescribed range, is a legal misnomer. This is also supported by the fact under the Mcmillan sentencing regime, courts refer to Section 841(b)(1)(A) and (B) as "sentencing factors" today the Act's definition is a "covered offense, meaning "a violation of a Federal Criminal Statute". See the Act, Section 404(a). United States v Nelson, (2017). ... cannot use "dismissed cases" to add to sentence.

Congress has said it is taking steps to prevent judges from using dismissed counts, etc., from being used to enhance a defendant's sentence, but as we have seen with the FSA, Congress tends to add its prejudices while in committee, which bring about undue penalties to certain groups, and then again not to others.

In Petitioner's case, the District Court Judge makes two statements that are relevant here. He states he did not go by the sentencing guideline range created by the 2G2.2 increases, and that he used a count that had been dismissed to enhance the minimum sentence provided by "receiving", an included, "lesser offense" of Possession. App"A", pg 11.

If the Court ignored 2G2.2 as it says, the Petitioner would have had the expected offense level of between 18 and 22, warranting a guideline range of 36 to 48 months incarceration within level II. If as the Court says, "[it] did not take 2G2.2 into account", then the 148 months Petitioner received far exceeded the appropriate guideline range of 36 to 48 months, that ignoring 2G2.2 would suggest and was inline with USSC recommendations.

"Except for the criminal penalties for crack cocaine offenses, no

specific federal non-capital penalty structure has been more widely criticized than USSG section 2G2.2 and the corresponding federal penal statutes, 18 USC §§2252 & 2252A, ("non-production offenses"). One of the leading sources of criticism has been the United States Sentencing Commission (USSC), whose 300-plus-page report to Congress in December 2012, "Federal Child Pornography Offenses", made a compelling case for changing both the guidelines and to the statutes. The Second Circuit interpreted the Commission's report as "effectively disavow[ing] section 2G2.2." "The best solution would be to completely scrap the current guidelines and rewrite it from scratch..." For now it is best the courts use the authority granted by the Supreme Court in United States v Booker, [554 US 220 (2005)] and Kimbrough v United States, [552 US 85 (2007)] and ignore 2G2.2." In United States v Darby, 2018 US App. Lexis 12013 (4th Cir 2018)(Opinion by Judge Robert G. Doumar), this injustice is further clarified. "The Sentencing Guidelines covering non-production child pornography seems to solely be concerned with the seriousness of the offense and need for deterrence. However, this appears to be at the expense of differentiating between prototypical non-production of..." The enhancements of 2G2.2, "however justifiable in the abstract, do little to differentiate defendant's conduct from other non-production cases."

Judge Doumar goes on to quote, Section 3553(a)(6) which requires a court to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." The extensive disparities in sentences given for non-production child pornography offenses under USSG §2G2.2 has been well documented by the United States Sentencing Committee (USSC) and others. (See 2012 Report to Congress: Chapter 8: Examination of Sentencing Disparities in 2G2.2 cases, at 207; 4 Melissa Hamilton, Sentencing Adjudication: Lessons From Child Pornography Policy Nullification, 30 Geor. St. U.L. Rev. 375 (2013). See

Weiner v United States, 17-cr-00307 (SDNY), who received just three (3) years incarceration and three (3) years of supervised release for contact sex offenses. Also see United States v Jackson, 952 F.3d 492, 497 (4th Cir 2020). "A district court abuses its authority when it acts arbitrarily or irrationally, fails to consider judicially recognized factors constraining its exercise discretion, relies on erroneous factual or legal premise or commits error of law, (United States v Dillard, 891 F.3d 151, 158 (4th Cir 2018)(Internal quotes omitted)(First Step Act - reduction as "sentence modification"). It is obvious that many judges through out the circuits have found grave issues with not only 2G2.2 but §§2252 and 2252A as well. Congress created unjust statutes that overly punish, violating the Constitution's Cruel and Unusual Punishment Clause.

So then we must look at what else might increase Petitioner's sentence. If both the District and Appeals Court of the Fourth Circuit stood on the position that receiving was not an "inclusive lesser offense" of possession (as even the district judge referred to it as), opposing what many other circuits have concluded, at least to the point of acknowledging that Possession and Receiving present a Double Jeopardy Clause infringement, then the District Court still would have had a working range at or about 60 months following the precedence of Alleyne. Because Petitioner accepted a plea, if only to avoid the infamous "Trial Penalty", he must be given the least possible sentence. Because elements such as quantity, authenticity of evidence, etc., were never rendered valid by a jury, because there was no trial in which evidence would be proven or disproven through expert testimony, etc., the court "must presume that the conviction rested upon nothing more than the least of acts criminalized." Moncrieffe v Holder, 133 S.Ct. 1684 (2011). As previously stated, it is known that Presentence Reports (PSR) are constructed by the Prosecution to their advantage and even as they may contain

a modicum of truth, they far more often than not, contain heresay evidence, exaggerations, misinformation, deceptions, and thinly disguised manipulations of so-called "evidence". "Although US sentencing guidelines are only advisory, improper calculation of guidelines range constitutes significant procedural error, making sentence procedurally unreasonable and subject to be vacated." Also see, United States v Streater, 70 F.3d 1314 (DC 1995).

Note that throughout the Court's response "factual basis" is expressed multiple times. It is here where "factual basis" falls to the wayside and why a judge should not be able to "guess" the reasoning behind past charges, obviously coming to wrong conclusions, using these to enhance a sentence.

The Prosecutor and Court manipulate two incidences, one, when Petitioner was young and he turned away a teenage girl's advances and she threatened to hurt him in front of witnesses, then proceeded to follow through with the threat. Petitioner only accepted the terms when promised that if he was "good" for four years everything would "go away". Petitioner would assume this to be some form of adjudication.

The second was following Petitioner's divorce from his first wife, which he initiated, who was privy to the first incident and threatened to either "come home" or she would destroy his life. She threatened a neighbor, telling her she would lose her child if she did not submit. Prosecution was about to dismiss this case until the ex-wife and her girlfriend, who had just gone through a messy divorce, agreed to testify (lie) in court. A female officer said of the ex-wife at pretrial, "She was not forthcoming. In my opinion she lied."

For an increase from this dubious amount this Supreme Court as well as the Petitioner must assume the additional seven plus years (88 months) was arbitrarily added to Petitioner's sentence because of what the District Court assumed without evidence or the following of basic law, being found guilty by

his peers beyond a reasonable doubt, using a charge that had been dismissed and imaginings from Petitioner's past, to enhance Petitioner's sentence from 60 months to 148 months. The District Judge stated that he did just that.

In United States v Edmond, 780 F.3d 1126 (11th Cir. 2015), the court explained the grave mistake of modifying statutory elements of the charged offense, in order to find someone guilty of an unindicted crime, violating the Fifth Amendment. "The view of actual innocence focuses on the ELEMENTS of conviction. Since the Act alleged is NOT within the scope of the charged statute, neither can the FACTS support the elements unless the elements are altered to appear as though the correct offense had been charged. In other words, as emphasezed in Edmond, the court could not accept a plea to an offense not contained in the indictment."

For too long some courts have gotten away with padding the offense level to increase the guideline range so that it "appears" they have given defendants a break at sentencing, yet if one follows the logic which Petitioner's District Court stated, that they did not use the antiquated, draconian, precepts of 2G2.2, disavowed by the United States Sentencing Commission (USSC), in making their decision, one would expect 36 to 48 months up to the mandatory minimum for receiving (60 months), not 148 months incarceration plus the additional punishment of lifetime Supervised Release.

Petitioner is accused of a non-contact offense that many courts still set in writing, "has no victim". Here we get back to blanket responses. Some authorities on the subject have posited that two groupings exist within the group of individuals charged with possession: Those who found illicit pornography, sometimes as much as 20 years old, free on the web, or contained within a Trojan (virus).; and, those who contacted a supplier/producer of such. The first "having little to no effect on the illicit porn market because that individual never asked for such nor exchanged goods, nor gave monetary

compensation". The second distinction involves commerce (an exchange of goods or services for compensation) and thus perpetuates a market. Petitioner as charged is said to be within the first grouping.

Many victims who were raped and exploited by a producer/distributor of illicit material, like Rose Kalemba, a trafficking survivor, whose underage videos had been previously posted, often when talking about lawyers, law enforcement agents, prosecutors, and others who profit from these victims in one way or another, say, "just one more person who exploits me". They make them feel, "violated, exploited, used, then discarded", when they have used them up. Very few included those who found their images on the web, viewers (possessors), as exploiters, and those few who did, did so only when hounded by these unscrupulous groups, "professing disingenuous and dangerous" assistance.

Petitioner has the utmost empathy for these women, and men, who have to endure such assaults against their persons and minds, as he is one of them. But the viewers (possessors) take the brunt of the blame, when others are either ignored or in some instances, praised for their abusive tactics towards these victims. When he was given information about one woman who was supposedly found within the images said to belong to Petitioner, though he had no idea who she was, it stated that her uncle, who had raped her for years, produced and distributed these rape videos, received ten (10) years period. And somehow it is supposedly fair, supposedly just, that Petitioner rots in prison for 12 years, 4 months (148 months), and then after it is all over, he will be punished again with lifetime supervised release, and $3000 in restitution, and having to register as a sex offender so he and his family and friends can become targets, and restriction after restriction for necessities in this day and age like computer use, that not even a murderer has to endure. And it is not finished. Petitioner's livelihood will be decimated unlike any

other post-conviction individual. Petitioner is NOT a child rapist, is NOT a child molester, but he has been grouped with such as though he is such, and will be considered such for the rest of his life. This is not justice. This is finding an easy target to hate. This is finding a scapegoat for the ills of this country.

In Commonwealth of Massachusetts v Feliz, the Massachusetts Supreme Court struck down the GPS monitoring of a level one (tier one), non-contact sex offender on probation. The Court said that this constituted a search, an especially severe one, that overly infringed on the probationer's rights and was unconstitutional. Despite this being a state case, it has merit as it distinguishes between non-contact (pornography), and other sex offenders (contact), noting that [non-contact] offenders are unlikely to reoffend. This Supreme Court found that the state's interest in regulating them and limiting their constitutional rights is not substantial and is not the same as other sex offenders. Moreover, sex offenders cannot simply be stripped of rights, and the Court seemed to suggest that these conditions had to be individualized and based on evidence, not imposed by label. See United States v Simpson, No. 18-3716, 2019 US App Lexis 35447 (8th Cir. 2019; United States v Kelly, 625 F.3d 516, 519-20 (8th Cir. 2010)(quoting United States v Davis, 452 F.3d 991, 995 (8th Cir. 2006)), [The Courts] "may not impose conditions categorically on all individuals convicted of certain offenses," id at 520. Yet many including Petitioner's court did and still does. (More on this later in this brief.).

ISSUE FOUR (4)

Restitution Arbitrary

Restitution Invalid Over Time

Petitioner was subject to a Restitution Order after submission of plea, and not as part of the plea. As with sentencing, Petitioner's Counsel approached him with documents and stated that if I did not agree to pay $3,000 for two or three women who allegedly were found amongst the many client's drives, etc., in Petitioner's professional possession, that he would pay much more at sentencing. Petitioner informed Counsel he knew none of these women by name nor description. I signed fearing what additional hardship a greater amount would be for my family. I was never informed about the 8th Amendment's Excessive Fines Clause, nor the precedent for most circuits, including the Fourth, used in determining restitution under §2259, the DRI (District of Rhode Island) method. The DRI method held precedence at the time of Petitioner's sentencing. Petitioner's restitution as it stood was arbitrary and excessive by the DRI Method. Note: The District Judge did not argue this point, only stating that his hands were tied because the Court did not have jurisdiction in this matter. The alleged image(s) of these women were not brought to light in either the Presentencing Report (PSR) nor within the plea nor ever determined to exist by a jury. Their existence is hearsay at best.

In Paroline v United States, 133 S.Ct. (2014), the issue was whether §2259 limited restitution to those losses proximately caused by defendant's offense conduct. The lower courts held that it did not. This Supreme Court concluded that the proximate cause requirement applied to all the losses described in 2259. Restitution was therefore proper under §2259 only to the extent defendant's offense proximately caused victims losses...

This was not a cut and dry case, as both district and appeals courts initially denied relief to a victim of sexual abuse stating there was no

proximate cause. It was only after this Supreme Court 5/4 decision that this was changed.

In accordance, cause, both actual and proximate, one must view the factors involved. First, an alleged victim's damages. (We will use the median of $1,000,000 as an example). "Defendant's fines/restitution must be 'reasonable and comport' with defendant's relative role." United States v Miltier, 882 F.3d 81, 89 (4th Cir. 2016). Also see, United States v Burdulis, 209 Supp.3d 415 (DMass 2016), "... failure to meaningfully account for differences in culpability...", and Paroline, 134 S.Ct. 1710, 1716 188 L.Ed.2d 714 (2014), "We must be careful least the 'excessive' fines clause of the Eight Amendment be violated."

In Paroline, a structure was setup for courts to follow. The refined DRI method was quickly adopted. Prosecution for Petitioner failed in following this precedence and arbitrarily chose an amount that far exceeded what the DRI method would have produced. See United States v Zakazewski, US 2017 W.Dist. Lexis 36349 (4th Cir. 2017). Petitioner challenged his sentence including restitution. Court noted the order. The judgment as pertains to the restitution order was vacated as excessive. The lower court entered an order reducing the restitution.

What has been missed and again prejudices the possessor is the matter of culpability. The matter of damages was determined by a victim's lawyer, it was a total sum of a victim's needs. Up until now the burden of this sum rested solely on those accused of proximate cause, the possessor. But the bulk of that sum should be owed by the person(s) most culpable, the one(s) who raped, filmed, and distributed the illicit images in question. Should they not hold at least say, 80% culpability, leaving less than 20% to be paid by the far less culpable, those accused of proximate cause?

Within the DRI Method, the amount of damages paid decreases as those

accused of proximate cause pay an amount to a victim's lawyer. Through inquiry as well as by the original document provided, the women cited had been on the web for approximately fifteen (15) years when Petitioner's restitution order was issued, and they had existed in other forms long before that. It is not difficult to see that the amount owed to those victims has long been paid, and the original net amount defendants accused of proximate cause was grossly overinflated, as the bulk of the determined needs should rest with the far more culpable, the rapist(s), producer(s), distributor(s).

As such, out of (example) $1,000,000, $800,000 should be paid by these most culpable, then the DRI Method should take the remainder, $200,000 for collection.

The DRI Method approximates through statistics the overall number of defendants expected to view. One thousand to 1,500 is typical over a period of time. At the start a defendant might owe 1,000th/$200,000. That amount reduces with each defendant, i.e. 1000th/199,800 and so on. After a time the amount is paid in full. The amount demanded by prosecution for Petitioner was far in excess of what the DRI Method would require, which would have reduced to zero after some years of collections for these particular women.

The prosecution blankets all that pass with a §2259 restitution order using an antiquated document of women who were victimized long ago, first by their rapist(s), producer(s), distributor(s), then by the lawyers, prosecutors, and agents of the law, and at the end of this long chain, the defendants who viewed them, though many question the latter.

Someone who views a violent act on the web/TV is not held accountable, the perpetrator(s) are. The news thrives on the violence. By the logic of the courts, all should be held accountable for viewing all the injustices all are privy to in the news.

ISSUE FIVE (5)

Registry Is Cruel & Unusual Punishment Under The 8th Amendment
Registry Violates The Nondelegation Doctrine

This Supreme Court has argued the validity of the registry before. In Gundy v United States, US No. 17-6086, 139 S.Ct. 2116 L.Ed.2d 522, 2019 US Lexis 4183, the argument was that SORNA by granting the Attorney General unfettered discretion to determine who is subject to criminal legislation without an 'intelligible principle' to guide the discretion, violates the Nondelegation Doctrine. This argument still stands here in its full depth and scope, and is viable to be reviewed once more.

Then, newly appointed Justice Kavanaugh stated that, if this issue rose again he would vote in favor, giving a majority vote in favor, not only to dissolve SORNA but also limiting the powers under which Congress operates.

An argument presented is that the Government could not function in this day and age without the delegation of authority. That is all fine and good but, the reality is that if such is so, the an Amendment should have been drawn, as has been in the past for other antiquated Amendments to negate and rewrite this Amendment which holds this Nondelegation Doctrine. Until such time, this argument should be moot. The Delegation Doctrine should stand as written, and is to be followed as it is written. Just because time has passed does not negate that a Constitutional infringement exists, until such time as this Supreme Court is presented with a new Amendment the rescinds and replaces the old.

Petitioner further argues that SORNA also violates precedence found in United States v Simpson; United States v Kelly (quoting United States v Davis), [The courts] "may not impose conditions categorically on all individuals convicted of certain offenses", id at 520.

In Piasecki v Court of Common Pleas, No 16-4175 (3rd Cir. Court of Appeals), "sex offenders under Pennsylvania registration laws are "in custody"

for habeas purposes. "In custody" along with all the other restrictions levied against sex offenders is the equivalent of being incarcerated." So again, it is punishment above, beyond, and separate from the sentence. Registration is punishment, violating the 5th Amendment's Double Jeopardy Clause, and the 8th Amendment's Cruel & Unusual Punishment Clause.

A federal lawsuit was also filed (WDMissori) arguing that their registry constituted a breach of the Cruel & Unusual Clause as well. In this case it was not just limited to those subject to the registry, but, for their family members as well, who were never convicted or charged with a crime. "The registry results in retribution for past offenses, more than the public safety it was originally intended to promote." In effect both registrants and their families are "serving" a life sentence because, once relegated to the registry, so do you remain, if not directly, indirectly.

In Tennessee a suit filed by a "John Doe", a registrant, argued that the registry violated the Ex Post Facto and Due Process Clauses of the Constitution. John Doe's Motion was granted for his Due Process claim. See United States v Harper, 502 F.Appx. 447 (6th Cir. 2012)(per curiam); Felts, 674, F.3d 599 (6th Cir 2012); United States v Trent, 654 F.3d 574 (6th Cir. 2011); United States v Englehart, No. 21-8007 (10th Cir. 2022).

The fact remains that the registry is a punishment levied on a generalized group, with the lowest recidivism rate of all crime categories, it remains by manipulating empirical data, serving no purpose other than to enslave. That in the case of non-contact offenders actually, as it stands, hinders law enforcement, hurts offenders and their families, and fails to protect the public. Do we use the absurdity of "rational basis" to further promote that which any sane person would question as valid? Petitioner would hope we are better than that.

ISSUE SIX (6)

Extraneous Additions Associated With Supervised Release As It Stands, Are Invalid, Void, and Illegal

Like §3583(k), which has been deemed unconstitutional by members of this Supreme Court and various lower courts, because it "set sex offenders apart", §3583 holds other restrictions placed upon the vast majority of federal sex offenders in a blanketed manner, as it is for Petitioner. Petitioner does not even know what all of these extraneous conditions are as they had never been stated at the time of sentencing. The only way Petitioner knows they exist is through the Court's responses when the validity was challenged.

First, Polygraph Tests, which are standardly used with all sex offenders should be deemed no longer valid. They are not admissible in court as evidence, and as Petitioner has a right if he violates supervised release as it stands now, to Due Process, these test cease to serve a purpose, if they ever did. Polygraph tests are invasive in a nightmarish Orwellian guise. Petitioner's thoughts, hopes, dreams and even fantasies should be of no concern of the government or anyone else. Petitioner has paid his price tenfold. They create undue duress and hardship upon the multitudes like Petitioner who are subjected to such. (See Haymond v United States).

Computer monitoring is an invasion of privacy, and has been found to violate the First Amendment. See Packingham v North Carolina, This Supreme Court "invalidated..." on access to social media and expressed concern that statute applied even to persons who already served their sentence. Because supervised release is part of defendant's sentence, Packingham does not render a district court's restriction on access to internet during term of supervised release plain error. 18 USC §3583(d) ... and be pertinent with USSC. As part of §3583, which has, at least in part, been found to be unconstitutional, thereby void in whole, all of these added conditions, "set sex offenders apart" and as §3583(k) violates the Constitution, so do all sex offender

specific entries.

All such "punishments" all derived from §3583, focused on sex offenders, serve no purpose other than to further stigmatize, subject Petitioner and others labeled sex offenders, to violations of the Constitution's Double Jeopardy Clause and Cruel & Unusual Punishment Clause. Petitioner is grouped together with all sex offender violators from someone who relieves themself in public to child rapists, etc., all subject to these same cookie-cutter set of restrictions (punishments) as dictated under §3583.

As study after study shows that the recidivism rates and post-conviction rearrests of sex offenders is amongst the lowest, and is the lowest for non-contact offenses like Petitioner's, punishments still persist that no other homologous group is subjected to, not murderers, drug traffickers, none.

"Rational speculation" based on completely unsupported empirical data (FCC v Beach Communications, Inc), advances ignorance and should have no place in our justice system, yet it still runs rampant, still pervades.

In United States v Kebodeaux, the court found that Congress could rationally regulate sex offenders based on a BELIEF that sex offenders had a high recidivism rate, no matter how untrue and against known empirical evidence to the contrary. Petitioner is sorry, but this is absurd, if not, quite frankly, insane.

In App."A" the Prosecutor/Court use the term "rational basis" as if just the BELIEF that the manipulated, unproven data is true, makes it so. By this, rational basis review "then is perfectly irrational. It allows the government to withdraw or burden daily decision-making of the populous basis so patently nonsensical that the average person would not use them to decide between brands of toilet paper or soda. And, by placing the burden on the individual (which is exactly what Petitioner was expected to do) to argue against every conceivable argument, using not commonsense or logic, but Alice in Wonderland

backwards thinking, the courts abandon any pretense of holding the government to account, or to confine them to responsible use of their powers." See Kimel v Florida Board of Regents; Lambert v Yellowly; Taylor v United States. That the law may not even be a good way to advance the stated interests, well, that just doesn't matter. Choosing a reason out of a hat or throwing a dart to pick is obviously no better than having no reason at all.

At the SMART (SO Monitoring, Apprehension, Registration & Tracking) symposium held in July 2019, they released actual statistics which to no ones surprise stated, "Sex offenders have one of the lowest recidivism rates of any offenders." Non-Contact Sex offenders are the lowest when separated out.

In the "USSC Report to Congress on Child Pornography Offenses" the recidivism rate was 1.5% to 2.3% for non-contact sex offenders. Again the lowest of all offenders. Only murder came even close.

CPORT, whose interests lie in perpetuating the myths of a high recidivism rate amongst sex offenders, still states a mere 9% of study's population had a connection to a new sexual offense. The problem with this study is that it does not state if any were arrested, convicted, or simply violated, which would suggest their numbers (actual recidivism rates) within this group to be much lower.

The BJS (Bureau of Justice Statistics) shows that yet again, the Government is so wedded to its narrative of, sex offender=bad, that it will go to virtually any length to avoid admitting error; even when its own data gets in the way. Just like every other analysis on the subject, theirs shows sex offenders have lower reoffense rates and lower rearrest rates than any other category of offenders, but, reporting this, however, would undermine this narrative. "Rational Speculation!" Pick out some obscure data and manipulate it until it says what you want regardless of what the empirical data presents. Petitioner guesses one should note their study only included "hands on",

contact offenses, knowing that including pornography offenders would destroy any chance they might have of matching obscure, manipulated data, with their new found "reality". Even the BJS could not hide that most of the reoffenses within their study by "hands on" offenders were for non-sex offenses.

Various prestigious law colleges like the University of North Carolina Law School, Chapel Hill; and Melissa Hamilton, Sentencing Adjudication, agree with the low recidivism rates for sex offenders in general and moreso for non-contact sex offenders.

Add to this other facts, supported by empirical data, that as individuals age the recidivism rates of sex offenders drops far lower than the averages presented by the USSC (1.5% to 2.3%). A slap on the wrist would have been enough incentive at his age to prevent reoccurrence and promote respect for the law.

CONCLUSION

WHEREAS Petitioner has broken down this document into six (6) issues to facilitate upon specific concerns, some data overlaps and is applicable to multiple issues.

Life-time supervised release is an extremely harsh punishment that should only be reserved for the most hardened criminals, if ever, otherwise it triggers the 8th Amendment's Cruel & Unusual Punishment Clause. Because Life-time supervised release, a punishment, along with the given prison sentence exceeds the maximum the statute allowed there is both a 5th and 8th Amendments violation.

Supervised release (3583) has taken so much from so many and Petitioner will be another. This Supreme Court once was instrumental in the abolishment of parole and the abuses and corruption that went with it, forwarding not a replacement it but as an alternative punishment to incarceration, still bound by limits set by statute(s). Petitioner asks that his Life-time Supervised release be rescinded and Supervised release in part or in whole be abolished as unconstitutional.

Possession and receiving for the reasons given create a Double Jeopardy situation, whereas receiving is a lesser included statute of possession that cannot stand on its own. Many courts have agreed with this; Petitioner takes it a step further showing that receiving is the only possible statute to be dismissed. Petitioner asks this Court to dismiss the receiving charge from his record and reduce receiving to where it belongs, a lesser included subcategory of possession.

Congress has noted the disparity caused by a Court being allowed to use dismissed and past history to enhance a sentence. Petitioner asks this Supreme Court to reduce his sentence to that which it would be without these

"assuptions", and bring finality to how a Court proceeds in regard to this issue.

Petitioner is not arguing restitution here, though, many courts and members of this Supreme Court have not deemed that proximate cause exists between someone who is sexually abused and a viewer of such. And if this Court sees fit to reverse Paroline, or at least divide true culpability equably, it would alleviate the burden to many. Petitioner would ask this Court to apply the DRI method in this case and instruct that it be followed in the future.

State after state have had the registry challenged and have been slowly changing how it is viewed. The Article of the Constitution, Nondelegation Dotrine is said to be obsolete. Petitioner submits that this is all well and good, but it is as written until otherwise changed by a new Amendment. Note, the argument presented was not questioned, only how the Amendment should be manipulated to fit what was wanted. SORNA violates Due Process, Cruel & Unusual Punishment and Double Jeopardy Clauses as shown. Rescind the antiquated, draconian registry for Petitioner and all who are hurt by it.

This last issues rests within the confines of §3583, and are terms levied only upon a certain homologous groups. These like §3583 needs to end, and as these restricions affect Petitioner, and his family as the punishment they were intended to be. Hold "rational basis" as an invalid as it is used to create misinformation and debases our justice system.

I pray this Supreme Court will give all the relief it is in its power to give.

Respectfully submitted,

Robert Maillet