

No. 21-8238

FILED
JUN 15 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

James Seeley – PETITIONER
(Your Name)

VS.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Seeley #25688052
(Your Name)

FCI Texarkana P.O. Box 7000
(Address)

Texarkana, Tx 75505-7000
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) What is the concise and correct United States Sentencing Guideline for 18 U.S.C. § 2422(b)?
- 2) Did the Sentencing Commission exceed its authority by expressly and implicitly broaden a conviction for 18 U.S.C. § 2422(b) by broadening its definition of a minor?
- 3) Is an actual minor necessary for a conviction under 18 U.S.C. § 2422(b)?
- 4) Is stating in the indictment the Article or Section of the State Penal Law that it is based upon sufficient for the indictment?
- 5) Does a Hobson's Choice deprive the petitioner of his Sixth Amendment rights?
- 6) Did the district court commit plain error in denying the Petitioner's pro se arguments?
- 7) Does ineffective assistance of counsel before pleading guilty violate the petitioner's Sixth Amendment?
- 8) Is an open-ended consent to search, when seizing the petitioner's cell phones and tablet while at the police barracks without a search warrant illegal and violating the Petitioner's Fourth Amendment?
- 9) Is "belief" a requirement for a conviction under 18 U.S.C. § 2422(b)?
- 10) Did the district court's imposition of an adult pornography based on ~~his~~ personal belief prejudice and/or violate the Petitioner's 14th Amendment Rights?

LIST OF PARTIES

☒ 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

None.

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TABLE OF AUTHORITIES CITED

CASES		PAGE NUMBER
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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was November 1, 2021.

[] 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: March 16, 2022, and a copy of the order denying rehearing appears at Appendix B.

[] 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).

[] 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. 2422(b)

5th Amendment to the United States Constitution

6th Amendment to the United States Constitution

United States Sentencing Guidelines (2018) 2G1.1(c)(2)

United States Sentencing Guidelines 2G1.3, Cmt. n.1

United States Sentencing Guidelines 2A3.1

14th Amendment to the United States Constitution

United States Sentencing Guidelines Manual Appendix A

4th Amendment to the United States Constitution

STATEMENT OF THE CASE

The petitioner was arrested on October 23, 2018 in a FBI sting operation and charged with one count of Attempted Coercion of a Minor, 18 U.S.C. § 2422(b).

On December 23, 2019 the petitioner was sentenced to 262 months of imprisonment and lifetime supervision.

The petitioner filed for an appeal in a timely manner.

On November 1, 2021 an order was reached affirming the conviction and sentence by the Second Circuit Court of Appeals (Appendix A). The petitioner's former counsel, Sarah Kuntzler, filed an Anders brief and was relieved of counsel. The petitioner filed for a rehearing or en banc hearing and was denied on March 16, 2022. (Appendix B).

REASONS FOR GRANTING THE PETITION

- 1) The petitioner's case is the only one in the Second Circuit, in which an 18 U.S.C. § 2422(b) case is quoted by United States v. Balde, 943 F.3d 73 (2d Cir. 2019), a 18 U.S.C. § 242(g) case regarding an indictment.
- 2) There is a split among the Circuit Courts as to whether an actual minor is a prerequisite to a conviction under 18 U.S.C. § 2422(b).
- 3) This Court has never addressed whether a deficient indictment renders an open plea invalid.
- 4) This Court has not heard whether an underlying state offense must be stated in the indictment.
- 5) No Court has ruled on the ambiguity of the Sentencing Commission's definition of "minor."
- 6) Can a district court violate the petitioner's Sixth Amendment by giving him a Hobson's Choice and deny his prose arguments including his request to withdraw his guilty plea.
- 7) This Court has not heard if a "lifetime supervision" is unreasonable under Appendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

In United States v. Gagliardi, 506 F.3d 140 (2d Cir. 2007), the Appellate Court stated that it agreed with the "Third, Fifth, Eighth, Ninth, Tenth and Eleventh Circuits that an actual minor is not a prerequisite" for a conviction under 18 U.S.C. § 2422(b). Therefore, the First, Fourth, Sixth, and Seventh Circuits have declared that an actual minor is a prerequisite.

Since there is an ambiguity in whether there is for an actual minor to be involved, it is of judicial importance for this case and many others that are similarly situated for a clear and definite decision that this Court should make.

Furthermore, since most case indictments use the word "believe" in them under 18 U.S.C. § 2422(b) which states as follows: "Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, knowingly persuade, induce, entice, or coerce any individual who has not attained the age of 18 years to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life."

There is no mention of the word "believe," and in United States v. Hicks, 457 F.3d 838 (1st Cir. 2006) the Court upheld that the indictment failed to charge the

defendant with criminal conduct because the "plain language of the statute requires... and belief was insufficient to support a conviction."

This Court in *Hamling v. United States* 418 U.S. 87, 117, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974) stated that "an indictment is sufficient if it first contains the elements of the offense charged and fairly informs a defendant of the charge against him which he must defend, and second enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." Since the Petitioner's indictment only states "Article 130 of the New York State Penal Law," then the Petitioner's Fifth, Sixth, and Fourteenth Amendment Rights to the United States Constitution were violated.

In *United States v. Cordoba-Murgas*, 422 F.3d 65 (2d Cir. 2005) stated that "an indictment cannot be waived by entering a guilty plea; formal procedures must be followed." *Milner v. Department of Navy*, 562 U.S. 562, 572, 131 S.Ct. 1259, 179 L.Ed.2d 268 (2011) this Court stated that "clear legislative history can 'illuminate ambiguous text,' won't allow 'ambiguous legislative history to muddy clear statutory language.'" Finally, *Russello v. United States* 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983) held that "where Congress included particular language in one section of a statute but omits it in another statute within the same title, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion."

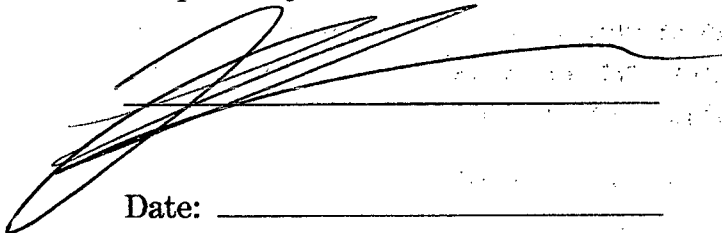
Since Roe v. Flores-Ortega 528 U.S. 484, 120 S.Ct. 1029, 145 L.Ed. 2d 985 (2000) and Rodriguez v. United States 395 U.S. 327, 330, 89 S.Ct. 1715, 23 L.Ed. 2d 340 (1969) are both followed by the Second Circuit, it stands to reason that his right to appeal his indictment, which was waived by his trial counsel, who did not subject the prosecution's case to meaningful adversarial testing, should have been allowed by the Appellate Court, and that Fed. R. Crim. P. 51 should have been applied.

There are no databases, as of June 12, 2022, on Lexis Nexus that show whether (1) an unspecified consent to search a defendant's cellphone without a search warrant while being interrogated at a police station is constitutional; (2) whether an open plea renders a deficient indictment invalid; (3) whether an underlying state offense must be delineated in an indictment; (4) whether a ban on adult pornography is unconstitutional; and (5) whether or not the Sentencing Commission abused its authority.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A large, stylized handwritten signature in dark ink, written over a horizontal line.

Date: _____