A P P E N D I X A

Fifth Circuit judgement ORDER

United States Court of Appeals for the Fifth Circuit

No. 21-20011

A True Copy
Certified order issued Oct 25, 2021
Clerk, U.S. Court of Appeals, Fifth Circuit

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EDWIN OLAND ANDRUS,

Defendant—Appellant.

Application for Certificate of Appealability from the
United States District Court for the Southern District of Texas
USDC No. 4:20-CV-2042
USDC No. 5:17-CR-78-1

ORDER:

Edwin Oland Andrus, federal prisoner # 22026-479, was convicted of coercion and enticement of a minor, in violation of 18 U.S.C. § 2422(b), and was sentenced to 120 months of imprisonment. He now moves for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion as time barred. He has also filed two requests for a ruling on his COA motion. In his motion, Andrus argues that the Fifth and Tenth Amendments were violated in his case and that he received ineffective assistance of counsel. As to equitable tolling, he asserts that BOP facilities were put on lockdown in February 2020 due to COVID-19, that he only had

APPENDIX
A

access to a computer in the housing unit, rather than the full law library, and that he had to request and wait for the requisite forms to file his motion.

To obtain a COA, Andrus must make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). Because the district court dismissed the § 2255 motion on the procedural ground of untimeliness, Andrus must show "at least, that jurists of reason would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Andrus has not made the requisite showing. Further, this court lacks jurisdiction to issue a COA as to Andrus's COVID-19-related equitable tolling claim because he did not raise it in the district court and, therefore, the district court did not deny a COA as to that claim. *See Black v. Davis*, 902 F.3d 541, 545-47 (5th Cir. 2018).

Accordingly, Andrus's motion for a COA is DENIED. His motions for a ruling on his COA motion are DENIED as moot.

/s/ CARL E. STEWART
CARL E. STEWART
United States Circuit Judge

A P P E N D I X B

Affidavit's of COVID-19 lock down

AFFIDAVIT OF FACTS

I, **Shayne K. Jones**, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost **3** Months in the E housing unit.

Prior to the COVID-19 lock down, access to the law and/or a computer with a portal access point to digital law library was only available in the actual law library in the education building.

Around the last week of **February 2020** or first week of **March 2020**, the B.O.P. in reaction to COVID-19 did a flash lock down. First, confining everyone to there cell, and then, after about 5 to 6 weeks allowed movement within each housing unit.

In the middle to late **MAY**, a single portal to the digital law library was created in the E housing Unit.

This created a **9** to **10 weeks** time frame in which the inmate population here in Texarkana F.C.I., E housing Unit was completely blocked from accessing any form of law library thus blocking our **1st Amendment** Right to access to the Courts.

DECLARATION

I, Shayne K. Jones, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this Affidavit are true and correct to the best of my memory.

Executed on: JUN 15, 2022

Shayne K. Jones
Signature

Shayne K. Jones
Name

AFFIDAVIT OF FACTS

I, **Richard Gorgus**, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost **3** Months in the E housing unit.

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D E C L A R A T I O N

I, **Richard Gorgus**, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this Affidavit are true and correct to the best of my memory.

Executed on: 6/14/2022

Signature

Richard Gorgus

Name

AFFIDAVIT OF FACTS

I, **Bruce Rutherford**, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost **3** Months in the E housing unit.

Prior to the COVID-19 lock down, access to the law and/or a computer with a portal access point to digital law library was only available in the actual law library in the education building.

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DECLARATION

I, Bruce Rutherford declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this Affidavit are true and correct to the best of my memory.

Executed on: 6-14-22

Signature

Bruce Rutherford

Name

AFFIDAVIT OF FACTS

I, **Gary T. Bruce**, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost **3** Months in the E housing unit.

Prior to the COVID-19 lock down, access to the law and/or a computer with a portal access point to digital law library was only available in the actual law library in the education building.

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D E C L A R A T I O N

I, Gary Bruce, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this Affidavit are true and correct to the best of my memory.

Executed on: 6-14-2023

Gary Bruce
Signature

Gary Thomas Bruce
Name

AFFIDAVIT OF FACTS

I, **Edwin O. Andrus**, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost **3** Months in the E housing unit.

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D E C L A R A T I O N

I, Edwin Oland Andrus, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this Affidavit are true and correct to the best of my memory.

Executed on: June 15 2022

Signature

Edwin O. Andrus
Name

AFFIDAVIT OF FACTS

I, **Ronnie Bethly**, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost **3** Months in the E housing unit.

Prior to the COVID-19 lock down, access to the law and/or a computer with a portal access point to digital law library was only available in the actual law library in the education building.

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D E C L A R A T I O N

I, Ronnie Bethly, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this Affidavit are true and correct to the best of my memory.

Executed on: 6-15-22

Signature

Ronnie Bethly

Name

AFFIDAVIT OF FACTS

I, **Steven Haynes**, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost **3** Months in the E housing unit.

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D E C L A R A T I O N

I, Steven Haynes, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this Affidavit are true and correct to the best of my memory.

Executed on: June 15 2022

Steven Haynes
Signature

Steven Haynes
Name

AFFIDAVIT OF FACTS

I, Hernandez Cuellar Jose Victor, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost **3** Months in the E housing unit.

Prior to the COVID-19 lock down, access to the law and/or a computer with a portal access point to digital law library was only available in the actual law library in the education building.

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D E C L A R A T I O N

I, Hernandez Cuellar Jose Victor, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this Affidavit are true and correct to the best of my memory.

Executed on: JUNE 15, 2022

Signature

Hernandez Cuellar Jose Victor
Name

A P P E N D I X C

Fifth Circuit General ORDER for delays

United States Court of Appeals for the Fifth Circuit

ORDER
General Docket No. 2021-3

General Order 2020-7 instructed the clerk's office to extend deadlines for incarcerated pro se filers in 30-day increments because procedures put in place to respond to COVID-19 by the Federal Bureau of Prisons, Louisiana Department of Public Safety & Corrections, Mississippi Department of Corrections, and the Texas Department of Criminal Justice prevented or delayed the ability of incarcerated filers to meet filing deadlines. Conditions in these facilities no longer require a blanket extension of deadlines. Accordingly, the court hereby rescinds the provision of General Order 2020-7 that directed the clerk to extend deadlines in 30-day increments. The clerk will advise incarcerated pro se filers previously granted extensions of this action and establish future deadlines in accordance with Federal Rules of Appellate Procedure or Fifth Circuit Local Rules.

All previous changes ordered in General Docket Nos. 2020-3, 2020-4, 2020-5, 2020-6 remain in effect.

Dated this 22nd day of January 2021.

Priscilla R. Owen

PRISCILLA R. OWEN
Chief Judge, United States Court of Appeals for the Fifth Circuit

APPENDIX
C

A P P E N D I X D

Wrongful Dismissal Appeal

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

EDWIN OLAND ANDRUS
Petitioner,

V.

UNITED STATES OF AMERICA
Respondent,

civil No. 4:20-CV-2042

Crim. No. 5:17-CR00079

APPEAL OF DISMISSAL OF 2255/MOTION TO VACATE ON TIME LIMITATION

I. Grounds for Reversal of Dismissal of 2255

A. Around the end of February 2020 the BOP locked down all facilities for COVID-19 concerns. Initially, they said it would just be for a few weeks. After approximately two months, it became apparent to staff and population that the situation was long term. At that point the staff made available a poor law library, placing only one law computer in the HOUSING UNIT. Only the one computer was there for one inmate at a time without a copy machine or needed forms available. The only way to get needed forms such as a 2255 form or copies was to submit a BP-A0148 to staff, and then wait up to several weeks to get the forms and/or copies that were requested. Taking into account the roughly two months without access to a law library and needed support, the June 4, 2020 submission date to file 2255 falls within the one year window of the Supreme Court denial of certiorari on April 15, 2019. And by researching and showing, through the arguments presented in the 2255 motion to vacate, that the law, Rule of law, logic and multiple case laws supporting the Petitioner's arguments. This clearly "shows pursuing his rights diligently" and the COVID-19 lockdown with loss of access to law library and support for approximately two months creates "extraordinary circumstances preventing a timely filing." **Holland V. Florida, 560 U.S. 631, 649 (2010).** The above arguments raise a viable basis for application fo a certificate of appealability for equitable tolling, which occurred when the jury used constitutionally broad interpretation of the statue's elements to unfairly come to its verdict.

APPENDIX D

II. Conclusion

Relief Petitioner seeks is reverse of dismissal of 2255/motion to vacate on time limitation due to extraordinary circumstances the Global Pandemic causes listed above and/or to give the 2255 motion to vacate filed June 5, 2020 a certificate of appealability, and send back to District Court to rule on Arguments in 2255 as presented.

Respectfully submitted

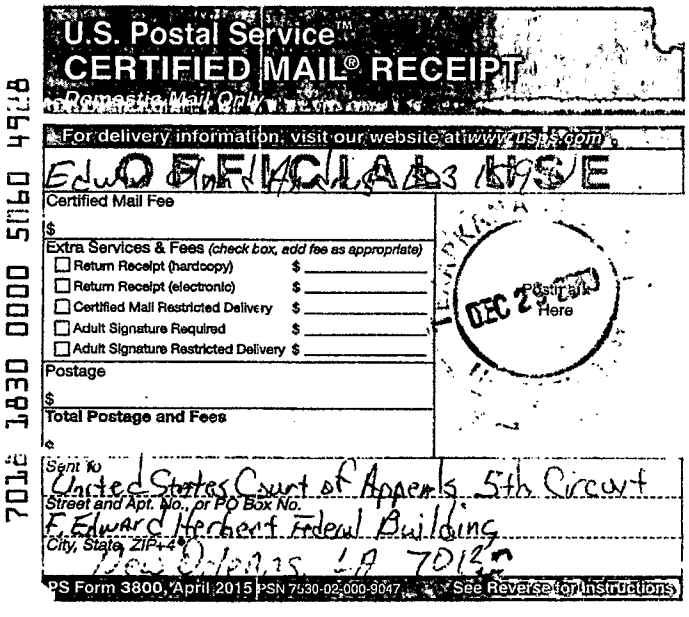
EDWIN OLAND ANDRUS
F.C.I.
P.O. Box 7000
Texarkana, TX 75505

CERTIFICATE OF SERVICE

I certify that on 29 DEC of 2020 a copy of this Appeal of Dismissal of 2255 on time bar was mailed to the Court Clerk of the United States Court of Appeals Fifth Cercuit, 600 South Maestri Place New Orleans, LA 70130. I also certify to be truthful and factual to the best of my knowledge

EDWIN OLAND ANDRUS

C.C.
Honorable Senator TED CRUZ
NEWS MAX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A P P E N D I X E

Court Instructions

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

March 05, 2021

#22026-479
Mr. Edwin Oland Andrus
FCI Texarkana
4001 Leopard Drive, P.O. Box 7000
Texarkana, TX 75505-0000

No. 21-20011 USA v. Andrus
USDC No. 4:20-CV-2042

Dear Mr. Andrus,

We have received the district court's order granting you leave to proceed in form pauperis.

Before your appeal can further proceed you must apply for a certificate of appealability (COA) to comply with 28 U.S.C. § 2253. If you wish to proceed, address your motion for COA to this court. Also send a separate brief supporting the motion. In the brief set forth the issues, clearly give supporting arguments. Your "motion for COA" and "brief in support" together may not exceed a total of 30 pages. You must file 2 legible copies within 40 days from the date of this letter. If you do not do so we will dismiss the appeal, see 5TH CIR. R. 42. Note that 5TH CIR. R. 31.4 and the Internal Operating Procedures following rules 27 and 31 provides the general sense of the court on the disposition of a variety of matters, which includes that except in the most extraordinary circumstances, the maximum extension for filing briefs is 30 days in criminal cases and 40 days in civil cases.

Special guidance regarding filing certain documents:

General Order No. 2021-1, dated January 15, 2021, requires parties to file in paper highly sensitive documents (HSD) that would ordinarily be filed under seal in CM/ECF. This includes documents likely to be of interest to the intelligence service of a foreign government and whose use or disclosure by a hostile foreign government would likely cause significant harm to the United States or its interests. Before uploading any matter as a sealed filing, ensure it has not been designated as HSD by a district court and does not qualify as HSD under General Order No. 2021-1.

A party seeking to designate a document as highly sensitive in the first instance or to change its designation as HSD must do so by motion. Parties are required to contact the Clerk's office for guidance before filing such motions.

APPENDIX E

Reminder as to Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Donna L. Mendez, Deputy Clerk
504-310-7677

cc: Ms. Carmen Castillo Mitchell

A P P E N D I X F

Brief in Support of COA

Case No.: 21-20011

United States Court of Appeals
Fifth Circuit

United States of America Plaintiff-Appellee	)	
	)	Civil No.: 4:20-cv-2042
Vs.	)	
Edwin Oland Andrus Defendant-Appellant	)	Crim. No.: 5:17-cr-00079

B R I E F

IN SUPPORT OF CERTIFICATE OF APPEALABILITY (COA)

By: Edwin Oland Andrus
Reg. No.: 22026479
Federal Correctional Institution
P.O. BOX 7000
Texarkana, Texas 75505

A P P E N D I X F

CERTIFICATE OF INTERESTED PERSONS

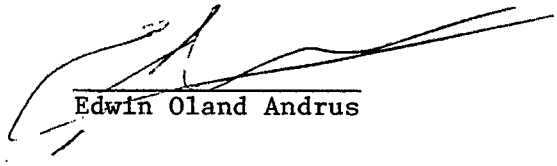
UNITED STATES OF AMERICA
Plaintiff - Appellee,

Vs.

EDWIN OLAND ANDRUS
Defendant - Appellant,

I, Edwin Oland Andrus, certify that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Edwin Oland Andrus - Appellant
2. United States of America, Plaintiff - Appellee
3. Carmen Castillo Mitchell, Counsel for Plaintiff - Appellee
4. Judge Keith Ellison



Edwin Oland Andrus

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TABLE OF CITATIONS

Statutes and Rules

Fed. R. Crim. P. 29

Title 18 U.S.C. §2422 (b)

Bill of Rights 10th amendment

Government's instructions of what is violation of §2422 (b) -Lexis Nexis-

C A S E S

STATEMENT OF THE CASE

On **JANUARY 13, 2017.,** Edwin Oland Andrus was arrested in the Best Buy parking lot in Laredo Texas while attempting to meet Allison, a 30's mother. Then, on **JANUARY 21, 2017** he was indicted on one count of Title 18 U.S.C. §2422. Mr. Andrus hired Roberto Balli shortly thereafter. At which time he expressed his belief in his innocence and that the government entrapped him. Subsequently, Mr. Andrus filed a pretrial motion to dismiss indictment for lack of evidence, which was denied. Mr. Andrus also filed a pretrial motion to dismiss the indictment for lack of venue which was also denied by the Court. The Case was tried before a jury, which were not give conscious instruction on the element of enticement and were lead to believe that comments of willingness on interest constituted that element, making the trial fundamentally unfair.

At the close of evidence, Mr. Andrus made a motion to dismiss pursuant Rule 29 of Federal Rules of Criminal Procedure, arguing that the government failed to present sufficient evidence that a rational fact-finder could find that Mr. Andrus attempted to entice a minor. The Court denied the Motion.

INEFFECTIVE ASSISTANCE OF COUNSEL

In preliminary meetings, I made it be known to my Attorney I felt entrapment should be part of the defense strategy. I followed this up with getting a list of character references, with phone numbers, all respected in the area I reside in and all willing to come down and testify on my behalf. I let wishes be known for this on several occasions , and made sure he had the list, so that he could contact those individuals. I also expressed my lack of understanding how I was charged with Enticement of a Minor when I was enticed or induced by the agent to express interest or willingness but never attempted to entice the fictitious teenage daughter directly or indirectly through Allison.

At trial I was surprised by absences of entrapment defense or of the fact that he did not act on the lack of evidence present in questioning during trial, when applied to the simple reading of the statute I was not in violation of

Title 18 U.S.C. §2422, "Defendant alleged that he twice explained facts to his attorney which he asserts should have at least caused attorney to explain possible defense of entrapment, with which allegation he could possibly prove set of facts sufficient to substantiated claims of ineffective assistance of counsel." **Summers Vs. United States, 538, F 2d 1208 (5th Cir. 1976).** Due to his insistence that he was a good appellate lawyer, I allowed him to handle both aspects. He proved equally ineffective in knowledge, effort and willingness to fight the case as I wished. On top of the affirmed Due Process issue, he also neglected to address the Constitutionally broad definition the Court applied to U.S.C. 18 §2422(b) or the lack of jurisdictional authority that the United Sates possessed over this case. This ineffectiveness in not addressing these major Constitutional issues effected the fundamental fairness of the trial itself.

SUMMARY OF ARGUMENT

1. Mr Andrus's 5th Amendment, Due Process rights were violated in a multitude of ways.

A. The Courts erroneously took a Constitutionally broad or overly vague definition of the key element wording of Title 18 §2422(b). This expanded definition was used due to the insufficiency of evidence, and made the trial itself fundamentally unfair.

B. The situation, in it's worst light was ambiguous in nature, caused by the Courts unconstitutional redefinition of the key element wording of 18 §2422(b). The Rule of lenity should apply.

C. Mr. Andrus was ensnared in a reverse sting where a over aggressive and over zealous agent entrapped him. Useing her beauty and Interest Mr. Andrus expressed in her, she enticed and implanted the commission of the broadly defined crime, compounded by how she said it was beneficial to her and her daughter.

2. The 10th Amendment was violated when Mr. Andrus was wrongly indicted, then convicted by the United States because it lacked judicial authority of this case.

3. The extraordinary circumstances the COVID-19 B.O.P lockdown caused, must be considered especially since it seems the Court have clearly used it, and the Due Process issue that arises from using the time bar to avoid ruling on such valid Constitutional arguments with far reaching implications.

A R G U M E N T S

Constitutionally Broad

1-A. Mr. Andrus's 5th Amendment, Due Process, rights have been violate in a multitude of ways. A pretrial Motion to dismiss indictment for insufficient evidence was wrongly denied by the Court. Upon the conclusion of trial Mr. Andrus made a motion to dismiss pursuant of Rule 29 of Fed. R. Crim. P. showing that by the straightforward reading of statute

Title 18 U.S.C. §2422(b)

(b) whoever, using... any facility of means of interstate commerce, ...knowingly persuade, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in... any sexual activity for which any person can be charged with a criminal offense, of attempts to do so...

that the government failed to present sufficient evidence that a rational factfinding jury could find that Mr. Andrus attempted to entice a minor. Lets look at the government's own conscious instructions of what is a violation of the key elements to persuade, induce, entice, or coerce.

" 18 §2422(b) does not criminalize sexually explicit communication. It criminalizes communication designed to **persuade, induce, entice or coerce** a minor to engage in sexual activity. In other words, criminalizes an intentional attempt to achieve a mental state-A minor's **Assent** to engage in sexual conduct " **Cited LexisNexis**

- Webster's 9th C. D. (1985) -

Persuade: to move by argument, entreaty, or expostulation to a belief, position or course of action.
Induce: to move by persuasion of influence.
Entice: to atract artfully or adroitly or by arousing hope or desire.
Assent: to agree to something esp. after thoughtful consideration.

To truly understand, lets look at the key element words, and how the government say's the minor's mental assent caused by enticement. Persuade, induce, entice and coerce; all are concerted actions to gain leverage ultimately resulting in foreseen results; therefore, manipulated by abroad. While assent clearly shows that a person was guided into an action they where not inclined too.

In **United States Vs. Edwin Oland Andrus**, No. **18-40173** (5th Cir. Dec. 14, 2018) the Court erred by ruling comments suggesting, interest or willingness, met the element of Enticement. For the Court to take such a Constitutionally broad or overly vague definition of the key element words of a statute "Undermines the Constitution's separation of power and the democratic self-governance it aims to protect" **United States Vs. Davis, 139 S. Ct. 2319.204L. ED. 2d 757(2019).** Only the people's elected representational in legislature are authorized to "make an act a crime" **United States Vs. Hudson, 7Cranch 32, 34, 3L. Ed. 259 (1812).** It's not the responsibility for defining crimes, to the relatively unaccountable police, prosecutors, and judges; eroding the people's ability to oversee the creation of laws they are expected to abide "first essential of Due Process of law" fair notice of what the law demand of them. **See Kolender Vs. Lawson, 461 U.S. 352, 357-358, 103 S.Ct. 1855, 75 L. Ed 2d 903 and n.7 (1983); United States Vs. L. Cohen Grocery Co., 255, U.S. 81, 89-91, 41 S. Ct. 298, 656, Ed. 516 (1921); United States Vs. Reese, 92 U.S. 214, 221, 23L Ed. 563 (1876).** It boggles the mind that Congress would have expressed the straightforward plain writing of Title 18 §2422(b) with its corresponding harsh punishment of 10 years to LIFE with Mandatory Minimum 10 Years. Then intend for the Courts to redefine so broad in its plain key element words, as to no longer "give ordinary people fair warning about what the law demands of them" **United States Vs. Davis, 139, S.Ct. 2319, 204 L. Ed. 2d 757 (2019).** Plus, in reverse sting operations where a fictitious mother, who is a trained agent of the government, is involved, all the agent would have to do is induce a person with erogenous comments that suggest willingness or interest, but by no means an attempt to entice. By the government broadly redefining U.S.C. 18 §2422(b) it not only rewrites the statutory text, "would be effectively stepping outside our role as a judge and writing new law rather than applying the one congress adopted" **United States Vs. Davis, 139 S.Ct. 2319, 204 L. Ed 2d 757 (2019)** but it also runs roughshot over the statutory context by expanding the key element words of persuade, entice, induce and coerce which is concerted actions to get a desired result, to the fundamentally different aspect of passive communication suggesting interest or willingness, that a agent of the government enticed through persistent erotica, from Mr. Andrus.

Although Mr. Andrus messages and actions does not represent good precept, it most certainly, by the plain reading of Title 18 §2422(b), does not represent criminality on his part. Based on the above facts, the Court erred in denying Mr. Andrus's motion to dismiss this case for insufficient evidence.
The above arguments raise a viable basis for **granting a certificate of appealability.**

Rule of Lenity

1-B. In a situation with a trained agent using erogenous messages, where the agent is inducing similar messages in return. And by the Court allowing the statute to be expanded beyond its text, to the fundamentally different interest or willingness, the government has created ambiguity. With the evidence showing, Mr. Andrus clearly tried to get Allison (fictitious mother) to meet by herself, it pushes the ambiguous situation his way. Even if the Court were to disregard the Constitution and the Supreme Court's mandate that **only Congress** is to create and define laws **"make an act a crime" United States Vs. Hudson, 7 Cranch 32, 34, 3L. Ed 259 (1819),** and expand the statutory language into ambiguity, the Rule of Lenity would apply: But when there are two equally plausible interpretations of criminal statute, though the statute was drafted clear, the Court created ambiguity with its Constitutionally broad defining of the law, the defendant is entitled to the benefit of the more lenient one. "[T]he tie must go to the defendant[:] The Rule of Lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them" **United States Vs. Santos, 553 U.S. 507, 514 (2008),** see also **Bell Vs. United States, 349 U.S. 81, 83-84 (1955)(Frankfurter,J.)** "This venerable Rule [the Rule of Lenity, as it is called] not only vindicates the fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain, or subjected to punishment that is not clearly prescribed.

It also places the weight of inertia upon the party that can best induce Congress to speak more clearly and keeps Courts from making criminal law in Congress's stead" **United States Vs. Santos, 553, U.S. 507, 514 (2008).** Therefore, the District Court erred in denying Mr. Andrus pretrial, then post trial motion to dismiss for insufficient evidence.

The above arguments raise a viable basis for **granting a certificate of appealability.**

Entrapment Argument

1-C. Due to the fact these reverse stings are completely made up and employ agents, such as Special Agent Heidi Brower, trained to manipulate or entice a person whose add is in an adult personal classified suggesting they are sexual in nature. This makes targeting these "appear [] highly susceptible to abuse" **United States Vs. Hare, 820 F. 3d 93, 103-104 (4th Cir. 2016) cert. denied 137 S.Ct. 224 (2016).** The agent betrayed as a mother (Allison) in her 30's, with a teenage daughter (Abby), contacted Mr. Andrus through the add he posted. Mr. Andrus had posted the add in the personal section of Craig's List that requires a person to indicate to be 18 years of age or older to access. The agent selected Mr. Andrus's add due to the fact it was sexually suggestive in nature and thus making him susceptible to her enticement skills she gained through training. This was admitted during trial where she testified to manipulating Mr. Andrus. Very early in the communications, Allison sent a picture showing her beauty, and started talking about how she was showing and giving Abby sexual pleasures. She, then through almost constant erogenous stories of her own sexual growth, starting in her early teenage years, talked about how this positively shaped her. she, then commenced with how she desired to have Abby experience this positive sexual growth, with her there to share in the experience. "In their zeal to enforce the law... Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, then induce commission of the crime so that the government may prosecute" **Jacobson Vs. United States, 503 U.S. 540, 548, 118 L. Ed. 2d 174, 112 S.Ct. 1535 (1992).**

Through suggestive and enticing comments she was able to induce Mr. Andrus into making comments suggesting interest or willingness in what Allison wanted. "The United States Court of Appeals for the Ninth Circuit reversed, vacated... The appellant Court found that the government induced defendant to commit the crime referenced where the government agent in her e-mail correspondence with the defendant made it clear that she believed that having the defendant as children's "sexual mentor" would be in their best interest" see also "the appellate court held that the jury's finding that the defendant was predisposed could not be sustained after she kept on, he expressed his willingness to play sex instructor to her children" **United States Vs. Poelman, 217 F. 3d 692 (9th Cir. 1999).**

In the midst of communications, Mr. Andrus attempted to get Allison to come up alone or to rendezvous in San Antonio without Abby. Mr. Andrus attempted to meet with Allison alone several times, showing a clear interest in Allison. She showed no willingness to come up alone so Mr. Andrus agreed to come down to her to meet. Upon which he was arrested by Homeland Security.

With Mr. Andrus being a single dad of his daughter, Courtney Ann Andrus, from when she was 8 years of age, till his arrest, which was 15 years of age, and during that time, as a single dad raising Courtney, she had her friend stay over routinely. If Mr. Andrus would have been predisposed to improper behavior with children, it would have clearly showed up in all those years. What is clear in the case is that the government "originated a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, the induce commission of the crime so that the government may prosecute" **Jacobson Vs. United States, 503 U.S. 540, 548, 118 L. Ed 2d 174, 112 S.Ct. 1535 (1992).** The agent clearly designed the criminal act and entice Mr. Andrus not only to express willingness, but to meet. He has clearly shown no predisposition as a single dad of a daughter.

The above arguments raise a viable basis for **granting a certificate of appealability.**

10th Amendment Argument

2. The power for the United States to prosecute a citizen for a criminal offense is clearly defined under Article 3 Section 2 and in accordance with the **10th Amendment of the Bill of Rights** "The power not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." The Constitution provides no exceptions or previsions for new technology, such as cell phone, due to the fact that technology is always advancing forward and would inevitably give the United States judicial authority over each and every action that occurred wholly within each state. The Commerce Clause does not strip 4th Amendment protection from cell phone. "The U.S. Supreme Court unanimously held that the police officers generally could not, without a warrant, search digital information on the phone." **Riley Vs. California, 573 U.S. 373, 382, 134 S.Ct. 2473, 189 L. Ed 2d 430 (2014).** Correlatively, it does not strip the 10th Amendment away. The United States does not gain authority

over communication that transpires over conventional land line telephone to occur wholly within a State, through the Commerce Clause, even though the phones themselves are made from components from different States and countries. And more commerce transpires on conventional land line phones than cell phones. **"More over, the immense storage capacity of modern cell phones implicated privacy concerns with regard to the extent of information which could be accessed on the phone." Riley Vs. California, 573 U.S. 373, 382, 134 S.Ct. 2473, 189 L. Ed. 2d 430 (2014).** Then, as the immense volume of communication, text video chat and calls that are private in nature between couples, friends, and family on cell phones. It would defy reason and logic for a cell phone not to receive full Constitutional protection, that conventional land line gets. As such, any and all communications that occur wholly within a State, should fall to the judicial authority of the State. Being as Mr. Andrus and Allison engaged in the communication unarguably within the State of Texas, and they both were presumably residing in Texas. Include to this, there was also no territorial or subject matter to give the federal government any judicial authority. With those facts and in the conjunction with the Constitution and the 10th Amendment, the State of Texas has sole jurisdiction of the case involving Mr. Andrus. As such the United States has no judicial authority under the Constitution to prosecute Mr. Andrus.
The above arguments raise a viable basis for **granting a certificate of appealability.**

Wrongful Dismissal

3. Around the middle to end of February 2020 the B.O.P. locked down all facilities for COVID-19 concerns. Initially, they said it would just be for a few weeks. After approximately two months, it became apparent to staff and population that the situation was long term. At that point the staff made available a poor law library, placing only one law computer IN THE HOUSING UNIT. Only the one computer was there, for one inmate at a time, without a copy machine or needed forms. The only way to get needed forms such as a §2255 form or copies was to to submit a BP-A0148 to staff, and then wait up to several weeks to get the forms and/or copies that were requested. Taking into account the roughly two months without access to law library and needed support, the June 5, 2020 submission date of filed §2255 falls within the one

year window of the Supreme Court denial of certiorari on April 15, 2019. And by the defendant researching and showing, through the arguments presented in the §2255 Motion to vacate, that the law, Rule of law, logic and multiple case laws supporting his arguments. This clearly "shows pursuing his rights diligently" and the COVID-19 lockdown with loss of access to law library and support for approximately two months creates "Extraordinary circumstances preventing a time filing." **Hollan Vs. Florida, 560 U.S. 631, 649 (2010).**
The above arguments raise a viable basis for **granting a certificate of appealability.**

CONCLUSION

I respectfully ask the Appellate Court to issue a COA to the §2255 I filed JUN 5, 2020. So the District Court can make a Constitutionally sound ruling on it, and correct a injustice and unlawful conviction. The negative implications to allow a agent to work to reach a point fundamentally different than the statute states. Then a prosecutor defies his oath to the Constitution, to prosecute it. Followed by a judge to affirm. This would result in the complete destruction of the 5th Amendment's Due Process Clause. When the Rule of law concept is applied with this Constitutional broad ruling. The law would be **WHATEVER** the prosecutor or judge decided regardless of its actual words.
The above arguments raise a viable basis for **granting a certificate of appealability.**

Respectfully Submitted,

By: _____

Edwin Oland Andrus
Federal Correctional Institution
P. O. BOX 7000
Texarkana, TX 75505-7000

CERTIFICATE OF SERVICE

I certify that on 24 MAR 2021, two (2) copies of this " brief in support of COA" with Motion for COA, the Court Clerk of the United States Court of Appeals for the fifth Circuit, at F. Edward Hebert Building; 600 S. Maestri Place, New Orleans, Louisiana 70130.

I also certify to be truthful and factual to the best of my knowledge.

By: _____
Edwin Oland Andrus

Certified Mail:
7018 2290 0000 0978 1842

A P P E N D I X G

Affidavit of Omitted Facts

A F F I D A V I T

of Omitted Facts

I, **Edwin Oland Andrus,** is of sound mind and over the age of 18 present the following information to give what I believe is true and what I should have been allow to present to the jury and Court.

I have been claiming since the beginning, till now, that I am **actually innocent.** I will present facts that were not presented in trial and should have been. Or they were perverted to help the government, not given in their true context and meaning.

1). In 2008 I separated, then divorced, Tiffany Ann Andrus because of a serious and abusive alcoholic addiction she had. Due to the severity of her addiction she was not even in our daughter's life at all for years. So I was a single dad raising Courtney Ann Andrus, my daughter, from when she was 8 year old till she was 15, when Homeland Security arrested me, destroying Courtney's chance at College and her future.

2). Due to past long term relationships, where the woman would be jealous of Courtney and they became verbally abusive, it became necessary I only date short term, just seeking adult female companionship. I felt as a single dad I had to put Courtney and her well-being over girlfriends, so having a girlfriend could wait till my daughter was in college.

3). Working and living in rural Texas, I found it necessary to find adult companionship online, that where short term or "hookups". ((2) and (3) show I was a vulnerable victim for the Agent's manipulation and I see now how vulnerable I was).

4). In all those years raising my daughter Courtney, she routinely had friends stay over. And there was **NEVER** any inappropriate behavior because I was not and [am not] sexually interested in children.

5). The agent answered a sexually natured add I placed in Craig's list personal, **where you MUST be 18 years old to enter.** (The agent targeted me, a lonely single male, a vulnerable victim).

A P P E N D I X G

6). The agent, presented herself as "Allison", a 30's single mom of a teenage daughter. She answered the add by sending pictures showing her body and beauty then very quickly turned the text sexual.

7). Agent went into graphic details of her sexual growth starting in her early teens, over and over. Then said how it was a positive growing experience for her.

8). Then the agent started describing in great detail how she was performing various sexual acts on her daughter and letting her daughter return the act on her.

9). She also went on to explain how she wanted to have her teenage daughter grow sexually like her but with her.

10). Due to my strong interest in "Allison", and the level of effort she use, I believed to have any chance with her, I must express willingness in what she was pushing. She used my interest in her to induce me to express interest in what she said "her and her daughter wanted".

11). In all my text to "Allison" I never once directed any comments to the fictitious minor, nor even a "tell 'Abby' -the fictitious daughter- I said Hi!". This is because I was only interested in "Allison".

12). During the course of our communications I attempted, on multiple occasions, to get "Allison" to come up to me, or meet in San Antonio by herself, without her daughter. I went on to ask "Allison" if me and her could be alone.

13). On the 3rd or 4th such attempt she flipped my request to meet in San Antonio alone by saying "Why don't you come down here" so I agreed to her request, believing that once I was down there, as long as I could show interest of willingness past the meeting, I could just be with "Allison" because I was already there and only planned on being with her -"Allison"-

I believe, if a rational fact-finding jury would have been given [concise] instructions to the element of enticement and **ALL** exculpatory facts, the outcome would have been different. This lack of presented exculpatory information was due to the Constitutionally deficient assistance of Counsel compounded by the prosecutor corrupting minds of the jury with misinformation.

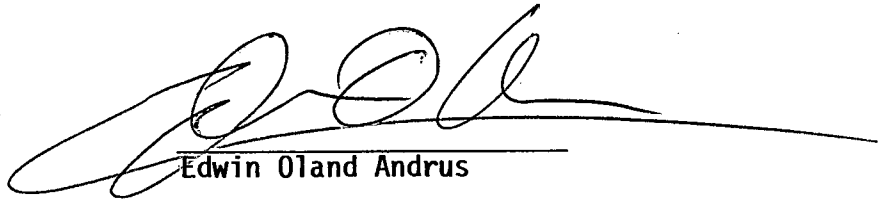
Counsel did not present entrapment defense or put me on stand, as I instructed him to do, so I could tell my side and what I was thinking. To include how the agent went up to my mother at the bond hearing and said "it's not a big deal" "I have gotten dozen's of other guys"... Entrapping dozens of other guys to 10 years each in Federal prison is a big deal to me. It seems to myself its just a game to the said agent to entrap as many guys as possible. Regardless of how many families are destroyed.

Me and my daughter's future have been destroyed by this agent's game.

D E C L A R A T I O N

I, **Edwin Oland Andrus,** declare under penalty of perjury that according to my belief the foregoing information and allegations contained in this affidavit are true and correct.

Executed on:
6 June 2022



Edwin Oland Andrus

A P P E N D I X H

Petition for Rehearing en banc

Case No. 21-20011

United States Court of Appeals
Fifth Circuit

United States of America Plaintiff-Appellee	)	
Vs.	)	Civil No. **4:20-cv-2042**
Edwin Oland Andrus Defendant-Appellant	)	

PETITION FOR REHEARING IN BANC

I, **Edwin Oland Andrus,** Pro-Se Defendant, come at this Court for **"Petition for Rehearing en Banc".** It appears that the Court has misunderstood my previous pleading and as such I ask to not be held to a lawyers standard "to less stringent standard than formal pleadings by lawyers..." **Haines Vs. Kerner,** 404 U.S. 519, 30 L.Ed 2d 652 (1972). I will present two substantial causes as to why my **28 U.S.C. §2255** should be granted a Certificate of Appealability or as timely. **1).** The equitable Tolling assertion is based on the COVID-19 lock-down with a complete loss of access to the Courts.
2). The second substantial cause to grant answering my Habeas Corpus is my claim of actual innocence.

1). Equitable Tolling

In December of 2019, COVID-19 was sweeping through China. It's effects were so horrible that in China they were welding the doors closed on people and families that contracted it. The United States seeing it's danger enacted travel restriction. By January of 2020 it was in the United States. By February, it was all over the Country and it was taking the lives of Americans. At the end of February the B.O.P. in a preemptive effort to protect the almost 200 thousand inmates under their care locked all facilities down, knowing the Courts would account for this impediment.

Here at Texarkana F.C.I. when this lock-down occurred we were confined to our cells. This flash lock-down also caused a complete block to access the Courts (See Exhibit A - G) by **not having any access to any form of law library** "the inmate was unconstitutionally denied access to the Courts when she was prevented from accessing a law library" **Nolley Vs. County of Erie,** 776 Supp 715 (WA, NY 1991); **United States Vs. Georgia,** 126 S.Ct. 877, 163 L.Ed 2d 650, 546 U.S. 151 (2005).

A P P E N D I X H

It is well established "that this right is [one of the fundamental rights protected by the Constitution] **Willson v. Thompson** as we stated" **Jackson Vs. Procunier.** 789 F.2d 307, 311 (5th Cir. 1986).

After I received notice of denial of Certiorari from my lawyer, who was ineffective in trial and in my Direct Appeal, I started going to education. The computers in education were the only ones with a portal to law library, to learn law and do research on my case. I was working at UNICOR due to the B.O.P.'s requirement to maintain a job in prison. This gave me a hour or so in evenings and Saturdays to research and prepare my §2255. So my intent was to do as much research as possible to find applicable cases and draft and complete my §2255 by the end of March, and to mail off by the first of April.

My arguments shows a substantial denial of constitutional rights by the Prosecutor, redefining the statute so unconstitutionally broad as to cause two other substantial Constitutional issue also presented in my **28 U.S.C. §2255** and allowed by the District Court.

My Equitable Tolling is simple. The government caused a impediment which blocked my access to the Courts, for at least 9 to 10 weeks at no fault of my own, by the flash lock-down in an attempt to protect us from COVID-19. I was suppose to have 12 Months to research and draft and file my §2255. It would only be fair and Equitable for my §2255 to be considered timely. To support this logic, is the wording of **28 U.S.C. §2255(f)(2)** which, if is interpreted in the light most favorable to the government, as opposed in the light favorable to defendant, my §2255 should be considered TIMELY due to the impediment the government caused, was the reason it was delayed in the first place.

Because the flash lock-down with absolutely no access to a law library, or computer with portal to law library, cause a complete block to the Courts for 9 to 10 weeks and the substantial loss of Constitutional rights are support by applicable case law, COA SHOULD be GRANTED.

It shall be considered timely due to the statute plain reading of 28 U.S.C. §2255(f)(2) "[The] legislature say in a statute what it means and means in a statute what it says there" **Conn. Nat. Bank v. Germain,** 503 U.S. 249, 253-254 (1992). If interpreted in light most favorable to government, the 9 to 10 weeks of blocked Court access **does not** count toward my year, 365 days, not a day shorter and thus the §2255 must be considered TIMELY.

A T T A C H M E N T
E 2

2) ACTUAL INNOCENT

I have been claiming since the beginning till now that I am actually innocent. I will present facts that were not presented in trial and should have been. Or they were perverted to help the government, not given in their true context and meaning.

1). Single dad, raising Courtney Ann Andrus, my daughter, from when she was 8yr till my arrest when she was 15.

2). Due to past long term relationships, where the woman would be jealous of Courtney and they became verbally abusive, it became necessary I only date short term, just seeking adult female companionship .

3). Working and living in rural Texas, I found it necessary to find adult companionship online.((2) and (3)) show I was a vulnerable victim for the agent's manipulation.

4). In all those years raising my daughter Courtney, she routinely had friends stay over. And there was **NEVER** any inappropriate behavior because I was not and am not sexually interested in children.

5). the agent answered a sexually natured add I placed in Craig's list personals, **where you must be 18 years old to enter.** (The agent targeted a lonely single male vulnerable victim).

6). Agent, presented herself as "Allison", a 30's single mom of a teenage daughter, answered add by sending pictures showing her body and beauty then very quickly turned the text sexual.

7). Agent went into graphic details of her sexual growth starting in her early teens, over and over.

8). The agent started describing in great detail how she was performing various sexual acts on her daughter and letting her daughter return the act on her.

ATTACHMENT
E 3

9). She also went on to explain how she wanted to have her teenage daughter grow sexually like her but with her.

10). Due to my strong interest in "Allison", and the level of effort she use, I felt to have any chance with her I must express willingness in what she was pushing. She used my interest in her to induce me to express interest in what she said "her and her daughter wanted".

11). In all my text to "Allison" I never once directed any comments to the minor, nor even a "tell 'Abby' -the fictitious daughter- I said Hi!".

12). During the course of our communications I attempted, on multiple occasions, to get "Allison" to come up to me, or meet in San Antonio by herself, without her daughter.

13). On the 3rd or 4th such attempt she flipped my request to meet in San Antonio alone by saying "why don't you come down here" **so I agreed to her request.**

Of all these relevant facts only **5, 10,** and **13** were given to jury and the government piecemealed or twisted those by omitting exculpatory evidence.

*** **1, 4,** and **5,** shows **NO PREDISPOSITION ...**
*** **6, 7, 8, 9,** and **10** establishes where agent implanted and induced the expression of a criminal act.

*** where items **11, 12** and **13** shows by my attempt to just meet "Allison", I was interested in "Allison", NOT her minor daughter.

If a rational fact-finding jury would have been given conscious instruction to the element of enticement and all exculpatory fact, the outcome would have been different. This lack of presented information was due mostly to the Constitutionally deficient assistance of Counsel compounded by the prosecutor corrupting minds of the jury with misinformation. Counsel did not present entrapment defense or put me on stand so I could tell my side and what I was thinking.

The jury mind was prejudiced when the prosecutor told the jury that by me agreeing to meet "Allison" -the adult "Mom"-, that I meet the element of Enticement. Then at the end of trial, the jury's mind was further prejudiced against me when my Counsel, in open Court room, jumped up at close of the trial, and verbally called out to "Dismiss under Rule 29 for lack of evidence" and Judge Ellison responded with "there is more than enough evidence...". Essentially telling the jury that I was guilty in the judge's eyes.

The **28 U.S.C. §2255** I presented Pro-Se, becomes MY FIRST CHANCE to show the Court **I am ACTUALLY INNOCENT!** The ineffective assistance of Counsel was so Constitutionally deficient as to result in an innocent person being found guilty, resulting in a MISCARRIAGE OF JUSTICE were **Herrera v. Collins,** 506 U.S. 390, 404, 113 S.Ct. 853, 122 L. Ed. 2d 203 (1993). Should carry weight in my case...

CONCLUSION

Wherefore I respectfully request this Honorable Court to **GRANT** me **Equitable Tolling** for the duration of time that the B.O.P caused a governmental impediment by completely denying me access to the law library between the last week of February 2020 through the end of May 2020, and/or rule that my §2255 petition timely, or **GRANT** any other relief the Court deems necessary and appropriate.

CERTIFICATE OF SERVICE

I, **Edwin Oland Andrus,** certify that on 4 NOV 2021 [1], a copy of this **"PETITION FOR REHEARING IN BANC"** was mailed to the United States Court of Appeals for the Fifth Circuit **at;** F. Edward Hebert Building; 600 S. Maestri Place; New Orleans, LA 70130.

Under Penalty of Perjury I declare that the above is true and correct on the best of my knowledge.

Edwin Oland Andrus
Reg. No. 22026479
F.C.I. Texarkana
P.O.BOX 7000
Texarkana, TX 75505-7000

1. Pursuant to the Prison mailbox rule, a Pro-Se Prisoner's pleadings are deemed to have been file on the date that the prisoner submits the pleading to the prison authorities for mailing. (Casuy v. Cain, 450 F.3d 601, 604 (5th Cir. 2006)(citing Huston v. Lack, 487 U.S. 266 (1988).

ATTACHMENT
E 5

AFFIDAVIT OF FACTS

I, Jose Victor Hernandez Cuellar provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost 3 Months in E housing unit.

Prior to the COVID-19 lock down, access to the law and/or a computer with a portal access point to digital law library was only available in the actual law library in the education building.

Around the last week of February[1] or first week of march, the B.O.P. in reaction to COVID-19 did a flash lock down. First confining everyone to their cell and then after about 5 to 6 weeks allowed movement within each housing unit.

In the middle to late May[2] a single portal to the digital law library was created in the E housing unit.

This created a 9 to 10 week time frame in which the inmate population here at Texarkana F.C.I. E housing unit was completely blocked from accessing any form of law library thus blocking our 1st Amendment Right to meaningful access to the Court.

DECLARATION

I, Jose Victor Hernandez Cuellar, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this affidavit are true and correct to the best of my memory.

Executed on: November 3, 2021

Jose Victor Hernandez Cuellar
(Name)

ATTACHMENT E 6

1. 2020
2. 2020

AFFIDAVIT OF FACTS

I, Steven Haynes, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost 3 Months in E housing unit.

Prior to the COVID-19 lock down, access to the law and/or a computer with a portal access point to digital law library was only available in the actual law library in the education building.

Around the last week of February[1] or first week of march, the B.O.P. in reaction to COVID-19 did a flash lock down. First confining everyone to their cell and then after about 5 to 6 weeks allowed movement within each housing unit.

In the middle to late May[2] a single portal to the digital law library was created in the E housing unit.

This created a 9 to 10 week time frame in which the inmate population here at Texarkana F.C.I. E housing unit was completely blocked from accessing any form of law library thus blocking our 1st Amendment Right to meaningful access to the Court.

D E C L A R A T I O N

I, Steven Haynes, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this affidavit are true and correct to the best of my memory.

Executed on: Nov - 3 - 2021

Steven Haynes

Steven Haynes
(Name)

A T T A C H M E N T
E 7

1. 2020
2. 2020

AFFIDAVIT OF FACTS

I, L Prince, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost 3 Months in E housing unit.

Prior to the COVID-19 lock down, access to the law and/or a computer with a portal access point to digital law library was only available in the actual law library in the education building.

Around the last week of February[1] or first week of march, the B.O.P. in reaction to COVID-19 did a flash lock down. First confining everyone to their cell and then after about 5 to 6 weeks allowed movement within each housing unit.

In the middle to late May[2] a single portal to the digital law library was created in the E housing unit.

This created a 9 to 10 week time frame in which the inmate population here at Texarkana F.C.I. E housing unit was completely blocked from accessing any form of law library thus blocking our 1st Amendment Right to meaningful access to the Court.

DECLARATION

I, L. Prince, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this affidavit are true and correct to the best of my memory.

Executed on: Nov. 3. 2021

LaVonte Prince

(Name)

ATTACHMENT
E 8

1. 2020
2. 2020

AFFIDAVIT OF FACTS

I, Bruce Rutherford, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost 3 Months in E housing unit.

Prior to the COVID-19 lock down, access to the law and/or a computer with a portal access point to digital law library was only available in the actual law library in the education building.

Around the last week of February[1] or first week of march, the B.O.P. in reaction to COVID-19 did a flash lock down. First confining everyone to their cell and then after about 5 to 6 weeks allowed movement within each housing unit.

In the middle to late May[2] a single portal to the digital law library was created in the E housing unit.

This created a 9 to 10 week time frame in which the inmate population here at Texarkana F.C.I. E housing unit was completely blocked from accessing any form of law library thus blocking our 1st Amendment Right to meaningful access to the Court.

DECLARATION

I, Bruce Rutherford, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this affidavit are true and correct to the best of my memory.

Executed on: Nov 3, 2021

Bruce Rutherford

Bruce Rutherford
(Name)

ATTACHMENT
E 9

1. 2020
2. 2020

AFFIDAVIT OF FACTS

I, Ronnie Bethly, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost 3 Months in E housing unit.

Prior to the COVID-19 lock down, access to the law and/or a computer with a portal access point to digital law library was only available in the actual law library in the education building.

Around the last week of February[1] or first week of march, the B.O.P. in reaction to COVID-19 did a flash lock down. First confining everyone to their cell and then after about 5 to 6 weeks allowed movement within each housing unit.

In the middle to late May[2] a single portal to the digital law library was created in the E housing unit.

This created a 9 to 10 week time frame in which the inmate population here at Texarkana F.C.I. E housing unit was completely blocked from accessing any form of law library thus blocking our 1st Amendment Right to meaningful access to the Court.

D E C L A R A T I O N

I, Ronnie Bethly, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this affidavit are true and correct to the best of my memory.

Executed on: November 3, 2021

(Name)

A T T A C H M E N T
E 10

1. 2020
2. 2020

AFFIDAVIT OF FACTS

I, Edwin Olmond Andrus, provide this affidavit for the purpose of establishing the fact that the inmate population was without any law library access for almost 3 Months in E housing unit.

Prior to the COVID-19 lock down, access to the law and/or a computer with a portal access point to digital law library was only available in the actual law library in the education building.

Around the last week of February[1] or first week of march, the B.O.P. in reaction to COVID-19 did a flash lock down. First confining everyone to their cell and then after about 5 to 6 weeks allowed movement within each housing unit.

In the middle to late May[2] a single portal to the digital law library was created in the E housing unit.

This created a 9 to 10 week time frame in which the inmate population here at Texarkana F.C.I. E housing unit was completely blocked from accessing any form of law library thus blocking our 1st Amendment Right to meaningful access to the Court.

DECLARATION

I, Edwin Olmond Andrus, declare under penalty of perjury that according to my belief, the foregone information and allegation contained in this affidavit are true and correct to the best of my memory.

Executed on: 3 NOV 2021

(Name)

ATTACHMENT
E 11

1. 2020
2. 2020

A P P E N D I X I

Judicial Notice

Case No. 21-20011

United States Court of Appeals
Fifth Circuit

United States of America Plaintiff-Appellee	)	
Vs.	)	Civil No. 4:20-cv-2042
Edwin Oland Andrus Defendant-Appellant	)	

JUDICIAL NOTICE

I, **Edwin Oland Andrus,** Pro-Se Petitioner, come to this Court in regards to the **"Petition for Rehearing in Banc"** I placed in the unit mail Box on **NOV 4, 2021.** I followed with a request for status on Dec 20, 2021 With no response. I sent **2nd Request for status** on **Feb 20, 2022.**

On **Feb 22, 2022** I sent a request to District Court for Docket Sheet. I received a copy of current Docked Sheet, **Mar 8, 2022** and discovered that the Appeal's Court had no filed the **"Petition for Rehearing en Banc"** I put in unit mailbox on **Nov 4, 2020.** Due to the constant discrimination I receive from staff, based off being here on Sex Offense (S.O.), it is my belief they also decide if I can access the Courts, delivering their own punishment.

I am sending a copy of my original **"Petition for Rehearing en Banc"** and Attachments, resigned, sent **Nov 4, 2021** Shall the Court please File and date as timely **-[Nov 4, 2021]-** per mailbox Rule[1]. The Court if necessary, may carry out a evidentiary hearing into whether there is **"Discrimination"** based on S.O. Charges that effect our Constitutional Rights under the 14th Amendment, Equal Protection of Law, and 1st Amendment, Right to Access the Court.

---

1. Pursuant to the Prison mailbox rule, a Pro-Se Prisoner's pleadings are deemed to have been file on the date that the prisoner submits the pleading to the prison authorities for mailing. (Casuy v. Cain, 450 F.3d 601, 604 (5th Cir. 2006)(citing Houston v. Lack, 487 U.S. 266 (1988).

Please inform petitioner if Court is to file the copy as mailed **Nov 4, 2021,** per mailbox Rule and "the Appellate Court found that the Louisiana's Court would apply the prison mailbox Rule even when the timely pleading was never received by the Court... On remand, the District Court was made a factual inquiry into whether the inmate submitted a timely petition even if was never received." **Stoot v. Cain,** 570 F d 36, 669 (5th Cir. 2009). Or if it and conduct a evidentiary hearing into whether discrimination exist from staff to S.O. inmates per **Washington v. United States,** 243 F.3d 1299, 1309, (11th Cir.2001).

REQUESTED ACTION

I respectfully ask for the copy of **"Petition for Rehearing en Banc"** with Attachments, be filed and dated on docket as **-[Nov 4, 2021]-** when it was placed in the prison mailbox.

CERTIFICATE OF SERVICE

I, **Edwin Oland Andrus,** certify that on 9 Mar 2022[2] a copy of this "JUDICIAL NOTICE" was mailed to the United States Court of Appeals for the Fifth Circuit **at;** F. Edward Hebert Building; 600 S. Maestri Place; New Orleans, LA 70130.

Under Penalty of Perjury I declare that the above is true and correct on the best of my knowledge.

Edwin Oland Andrus
Reg. No. 22026479
F.C.I. Texarkana
P.O.BOX 7000
Texarkana, TX 75505-7000

7020 2450 0000 4633 3566

2. Pursuant to the Prison mailbox rule, a Pro-Se Prisoner's pleadings are deemed to have been file on the date that the prisoner submits the pleading to the prison authorities for mailing. (Casuy v. Cain, 450 F.3d 601, 604 (5th Cir. 2006)(citing Houston v. Lack, 487 U.S. 266 (1988).

A P P E N D I X J

ORDER of DENIAL

United States Court of Appeals for the Fifth Circuit

No. 21-20011

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EDWIN OLAND ANDRUS,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-2042

ON PETITION FOR REHEARING EN BANC

Before STEWART, HAYNES, and HO, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

APPENDIX J

A P P E N D I X K

Lisa Report

FROM: Legal, Lisa
TO: 26800045
SUBJECT: BOP Director Largely Unchallenged At House Subcommittee Hearing LISA Newsletter for February 7, 2022
DATE: 02/06/2022 10:06:23 PM

LISA publishes a free newsletter sent every Monday to inmate subscribers in the Federal system.

Edited by Thomas L. Root, MA, JD

Vol. 8, No. 6
<><>

BOP Director's Final House Oversight Hearing
BOP Shorts
Do-Over Required
Mirabile Dictu
<><>

BOP DIRECTOR'S FINAL HOUSE OVERSIGHT HEARING

Bureau of Prisons Director Michael Carvajal dumped numbers on a largely uncritical House Subcommittee on Crime, Terrorism, and Homeland Security last Thursday in what is likely the retiring Director's final oversight hearing.

Committee chair Rep Sheila Jackson-Lee opened the session with fireworks, wondering how the BOP could justify turning down inmates for compassionate release who later died of COVID. But the fireworks were essentially a dud, as hard questions raised in the past several months about BOP staff misconduct, lax security, and decrepit facilities went unasked.

The Director's play with numbers went unchallenged as well. His written statement reported that the BOP has transferred "over 37,000 inmates to community custody, with more than 9,000 transferred directly pursuant to the authority granted by the CARES Act." Still, in his testimony, he truncated that to the BOP having "released over or transferred over 37,000 under the CARES Act to home confinement and community placement." In other words, the BOP found less than 7% of BOP inmates qualified for CARES Act placement over 22 months, with the remaining 28,000 going to halfway house or home confinement under normal end-of-sentence placement.

Carvajal assured the Subcommittee that the BOP "continue[s] to screen inmates for appropriate placement on CARES Act" and that while the 50%-of-sentence standard is one of the "four hard criteria," but the BOP has "discretion there usually is a higher-level review if the staff of the institution feels that it is appropriate outside of the CARES Act, we have procedures in place to review cases such as that "

Responding to questions from Rep Karen Bass (D-California), Carvajal said that 80% of the BOP staff was vaccinated, but only 95,000 out of 135,100 in-custody inmates with the jab). His numbers are way off the BOP's website, which reports that 119,500 inmates are vaccinated 78% but only 70.4% of the BOP's 36,739 employees have gotten the shot.

The tensest moment came when Rep Cori Bush (D-MO) braced Carvajal on conditions brought to her attention by the National Council for Incarcerated and Formerly Incarcerated Women and Girls. Bush said

"In these emails, women in federal custody detail horrifying accounts of not being allowed to get out of their beds all day because of COVID lockdowns, being forced to eat expired food, having little to no access to medical services to treat cancers, and other underlying conditions, having to pay $2.00 to file a sick complaint. This is all happening under your watch. These are complaints coming from not one or not two facilities but five different facilities, which makes clear that these issues are not isolated These women cannot hold you accountable, Mr. Carvajal, they cannot, but we can, and I would like to use this opportunity to ask you questions that they cannot directly ask you out of fear of retaliation."

The Director denied knowing about the complaints, but "if that happened, I find it unacceptable." He assured Bush that "we take all allegations seriously " He explained to the legislators, "I'd like to stress something we're not here for punishment, the taking of their time by the courts and the criminal justice system, that's the punishment, we're here to house people that are remanded to our custody and more importantly to prepare them to reenter society, keep them safe while they're here. We're not here as punishment; that's not how we look at this agency."

APPENDIX K

United States District Court
Southern District of Texas
ENTERED
December 17, 2020
David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL ACTION NO. L-17-78
	§	
EDWIN OLAND ANDRUS.	§	

MEMORANDUM OPINION AND ORDER

Defendant Edwin Oland Andrus, proceeding *pro se*, filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. (Docket Entry No. 92.) The Government filed a motion to dismiss the section 2255 motion predicated on expiration of limitations (Docket Entry No. 96), to which Defendant filed a response (Docket Entry No. 97).

Having considered the section 2255 motion, the motion to dismiss, the response, the record, and the applicable law, the Court **GRANTS** the motion to dismiss and **DISMISSES** the section 2255 motion as barred by limitations.

I. BACKGROUND AND CLAIMS

A jury convicted Defendant of one count of attempted coercion and enticement of a minor in violation of 18 U.S.C. § 2422(b). The Court sentenced him to a term of 120 months in federal incarceration, to be followed by a seven-year term of supervised release. (Docket Entry No. 82.) Judgment was entered on March 5, 2018. *Id.* The judgment was affirmed on appeal, and the Supreme Court denied a writ of certiorari on April 15, 2019.

Defendant filed his pending section 2255 motion on June 5, 2020, claiming that (1) the Court erred by denying his motion to dismiss the indictment; (2) the rule of lenity should have been applied in his favor; (3) trial counsel rendered ineffective assistance of counsel by failing to raise an entrapment defense; and (4) his conviction violated the Tenth Amendment.

The Government argues that the motion should be dismissed as barred by limitations.

II. ANALYSIS

A one-year statute of limitations governs section 2255 proceedings. 28 U.S.C. § 2255(f). Under section 2255(f)(1),[1] a section 2255 motion is due one year from "the date on which the judgment of conviction [became] final." Here, the judgment became final for purposes of section 2255 on April 15, 2019, when the Supreme Court denied certiorari, and expired one year later, on April 15, 2020. As alleged by the Government, Defendant's section 2255 motion, filed on June 5, 2020, is untimely by approximately seven weeks.

In his response to the Government's motion to dismiss, Defendant argues that his habeas petition should be heard. In support, he states that his case has "clear Constitutional issues," and that any rule or law that would bar resolution of his claims is "inherently unconstitutional." No legal authorities are cited in support, and the Court finds none. Defendant further argues that equitable tolling should apply because it would be

[1]The alternative commencement dates for the one-year limitations period provided in 28 U.S.C. §§ 2255(f)(2), (3) and (4) do not apply in this case, and Defendant argues nothing to the contrary. Defendant's allegations show that he was aware of the facts underlying his claims at the time they occurred prior to trial and during trial.

"inequitable" not to address his significant constitutional issues. The Supreme Court has stated that a habeas petitioner is entitled to equitable tolling only if he shows that: (1) he has been pursuing his rights diligently, and (2) some extraordinary circumstance prevented a timely filing. *Holland v. Florida*, 560 U.S. 631, 649 (2010). Defendant's arguments do not raise a viable basis for application of equitable tolling.

Defendant pleads no factual or legal basis that would support the timeliness of his section 2255 motion, and the Government is entitled to dismissal of the motion.

III. CONCLUSION

The Government's motion to dismiss (Docket Entry No. 96) is **GRANTED** and Defendant's section 2255 motion (Docket Entry No. 92) is **DISMISSED WITH PREJUDICE** as barred by limitations. A certificate of appealability is **DENIED**. The related civil case, *United States v. Andrus*, C.A. No. 4:20-CV-2042 (S.D. Tex.), is **ORDERED ADMINISTRATIVELY CLOSED**.

Signed at Houston, Texas, on this the 15th day of December, 2020.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE