

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Christopher Schenck — PETITIONER
(Your Name)

VS.

United States — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____
_____, or

a copy of the order of appointment is appended.


(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, _____, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	* \$ 556.00 ⁰⁰	\$ NA	\$ 416.70	\$ NA
Self-employment	\$ NA	\$ NA	\$ NA	\$ NA
Income from real property (such as rental income)	\$ NA	\$ NA	\$ NA	\$ NA
Interest and dividends	\$ NA	\$ NA	\$ NA	\$ NA
Gifts	\$	\$	\$	\$
Alimony	\$ NA	\$ NA	\$ NA	\$ NA
Child Support	\$ NA	\$ NA	\$ NA	\$ NA
Retirement (such as social security, pensions, annuities, insurance)	\$ NA	\$ NA	\$ NA	\$ NA
Disability (such as social security, insurance payments)	\$ NA	\$ NA	\$ NA	\$ NA
Unemployment payments	\$ NA	\$ NA	\$ NA	\$ NA
Public-assistance (such as welfare)	\$ NA	\$ NA	\$ NA	\$ NA
Other (specify): _____	\$ NA	\$ NA	\$ NA	\$ NA
Total monthly income:	\$ 55.00	\$ NA	\$ 416.70	\$ NA

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
USP Psychology Dept Dr. Licata NA	9300 Wilmot Tucson, AZ 85734 NA	NA	\$ 46.40 \$ NA \$ NA

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NA	NA	NA	\$ NA
NA	NA	NA	\$ NA
NA	NA	NA	\$ NA

4. How much cash do you and your spouse have? \$ 2500.00 622.00
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
USP TRUSTFUND NA NA	\$ 2500.00 \$ NA \$ NA	\$ NA \$ NA \$ NA

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value NA

Other real estate
Value NA

Motor Vehicle #1
Year, make & model NA
Value _____

Motor Vehicle #2
Year, make & model NA
Value _____

Other assets
Description Prison property (Approved)
Value \$200

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NA	\$ NA	\$ NA
NA	\$ NA	\$ NA
NA	\$ NA	\$ NA

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
NA	NA	NA
NA	NA	NA
NA	NA	NA

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ NA	\$ NA
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ NA	\$ NA
Home maintenance (repairs and upkeep)	\$ NA	\$ NA
Food	\$ \$50.00	\$ NA
Clothing	\$ 10.00	\$ NA
Laundry and dry-cleaning	\$ NA	\$ NA
Medical and dental expenses	\$ 2.00	\$ NA

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>NA</u>	\$ <u>NA</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>5.00</u>	\$ <u>NA</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>NA</u>	\$ <u>NA</u>
Life	\$ <u>NA</u>	\$ <u>NA</u>
Health	\$ <u>NA</u>	\$ <u>NA</u>
Motor Vehicle	\$ <u>NA</u>	\$ <u>NA</u>
Other: _____	\$ <u>NA</u>	\$ <u>NA</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>NA</u>	\$ <u>NA</u>
Installment payments		
Motor Vehicle	\$ <u>NA</u>	\$ <u>NA</u>
Credit card(s)	\$ <u>NA</u>	\$ <u>NA</u>
Department store(s)	\$ <u>NA</u>	\$ <u>NA</u>
Other: <u>Gov. Fine of 250,000.00</u>	\$ <u>10.00</u>	\$ <u>NA</u>
Alimony, maintenance, and support paid to others	\$ <u>NA</u>	\$ <u>NA</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>NA</u>	\$ <u>NA</u>
Other (specify): _____	\$ <u>NA</u>	\$ <u>NA</u>
Total monthly expenses:	\$ <u>77.00</u>	\$ <u>NA</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 12 - 1, 2021



(Signature)

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER MICHAEL SALISBURY-PETITIONER

VS.

UNITED STATES OF AMERICA-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT.

(USCA-20-7293); (1:19-CV)-00268-GLR); (1:15-CR-00621-GLR-1)

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER SALISBURY #59751-037

U.S.P. TUCSON. P.O. BOX #24550

Tucson, Arizona 85734

QUESTION(S) PRESENTED

I

Whether the fourth circuit stands in error for failure to reach and rule on merits of, and the constitutional violations resulting from the NIT WARRANT deemed VOID AB INITIO. Violative of fourth amendment protections by Jurists of reason.

II

Whether the fourth circuits decision stands in error for failure to reach and rule on the merits of, and the constitutional violations resulting from the indictments failure to state subject matter and personal jurisdiction over the offense charged.

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:

	<u>TABLE OF CONTENTS</u>	<u>PAGE NO.</u>
OPINIONS BELOW		1
	2	
JURISDICTION		2
	3	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED		3
	4	
STATEMENT OF THE CASE		4
	5	
REASONS FOR GRANTING THE WRIT		5
	10	
CONCLUSION		10
	5	
ISSUE-ONE...WIT WARRANT		5
	8	
ISSUE-TWO...JURISDICTION		8
	5	
<u>INDEX TO APPENDICES</u>		<u>PAGE NO.</u>
APPENDIX A	4th Circuit opinion	APPX-1
APPENDIX B	4th Cir. denial of rehearing	APPX-3
APPENDIX C	4th Cir. Mandate	APPX-4
APPENDIX D	District Court denial. (2255)	APPX-5
APPENDIX E	WIT WARRANT	APPX-17

Bruce U. U.S., 394 F.3d 1215 (4th Cir., 2015)	9
Gonzalez U. Richard, 545 U.S. 1 (2005)	8
Burch U. Daubis, 137 S.Ct. 757 (2017)	5
Hoehn U. U.S., 524 U.S. 236 (1998)	5
Tackson U. Virginia, 443 U.S. 307 (1979)	8
Lapides U. McCormick, 986 F.2d 303 (5th Cir., 1993)	9
Miller-El U. Lockridge, 537 U.S. 322 (2003)	5
Pelmann -Cronando U. U.S., 868 F.3d 127 (4th Cir., 2015)	5, 8
Slack U. McDonnell, 529 U.S. 473 (2003)	5
U.S. v. Brocana, 955 F.2d 1403 (10th Cir., 1993)	5
U.S. v. Brasley, 945 F.2d 142 (4th Cir., 2007)	5
U.S. v. Carlson, 2017 U.S. Dist. Lexis 63991.	6
U.S. v. Forrester, 429 F.3d 73 (4th Cir., 2005)	9
U.S. v. Henderson, 218 U.S. App. Lexis 27848	6
U.S. v. Herndon, 863 F.3d 1011 (8th Cir., 2017)	6
U.S. v. McClosan, 916 F.2d 467 (8th Cir., 1990)	9
U.S. v. Kalliesfeld, 236 F.3d 225 (5th Cir., 2000)	8
U.S. v. Krueger, 807 F.3d 1169 (11th Cir., 2013)	5
U.S. v. Lecan, 468 U.S. 897 (1984)	7
U.S. v. Maxwell, 386 F.3d 1303 (11th Cir., 2001)	8
U.S. v. McCoy, 323 F.3d 1114 (5th Cir., 2003)	8
U.S. v. Mecham, 626 F.2d 503 (5th Cir., 1980)	9
U.S. v. Michael Flynn, 2020 U.S. App. Lexis 87900	6
U.S. v. Marzouani, 529 U.S. 578 (2000)	9
U.S. v. Papadopoulos, 64 F.3d 572 (9th Cir., 1995)	8
U.S. v. Peter, 310 F.3d 767 (4th Cir., 2002)	9
U.S. v. Ruggles, 791 F.3d 1281 (4th Cir., 2015)	9
U.S. v. Smith, 402 F.3d 1303 (11th Cir., 2005)	8
U.S. v. Spina, 180 F.3d 314 (3rd Cir., 1990)	8
U.S. v. Taylor, 935 F.3d 1274 (11th Cir., 2019)	6

(VI)

HR. 1761/115th Congress. 1st. sess. (15) Pass. 3/3/2017
HR. — 105th Congress. Amend. of 1998

CONGRESSIONAL STATUTES.

28 USC § 3742
28 USC § 2253
28 USC § 1291
28 USC § 1254 (1)
28 USC § 636
18 USC § 2252
18 USC § 2251

STATUTES AND RULES

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 D 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 10-5-2020.

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).

Hohn v. U.S., 524 U.S. 236 (1998)

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

THE FOURTH AMENDMENT, UNITED STATES CONSTITUTION

Page 5
The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

THE FIFTH AMENDMENT, UNITED STATES CONSTITUTION

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury. Nor shall any person be subject for the same offense to be twice placed in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of the law.

STATEMENT OF THE CASE

On December 3, 2015 Salisbury was charged with seven (7) counts of Production of Child Pornography in violation of the 18 USC 2251(a), and two (2) counts of Possession of Child Pornography in violation of 18 USC 2252(a)(4)(B). The government identified Salisbury through a controversial and nationally contested NIT warrant long before it obtained further warrants or evidence for additional warrants to search his computer (REP) and property (REP). In a conflictive intersection with his trial lawyer, Salisbury was convinced to plead guilty to Count 1 and Count 7, in violation of 18 USC 2251(a).

As part of the agreement the trial lawyer persuaded Salisbury to waive his rights of appeal pursuant to 28 USC 1291 and 3742. The District Court sentenced Salisbury to a total term of 720 months (360 months on each count, to run consecutively). Salisbury filed a direct appeal with the court. His court-appointed appellate lawyer filed an Ander's Brief and on January 28, 2018 the court dismissed Salisbury's direct appeal. On January 28, 2019, Salisbury filed his 2255 Motion and the District Court denied it on August 14, 2020 refusing to issue a COA despite having timely and diligently filed his Notice of Appeal. (APPX-4) On October 5, 2020 Salisbury filed his 28 USC 2253, Certificate of Appealability and the Fourth Circuit denied it on January 22, 2021. (APPX-1) Salisbury filed a Petition to Reconsider and was denied that on June 22, 2021. (APPX-3)

The Supreme Court, having granted a mandate extension of 150 days due to Covid-19, again, mandated another extension on July 15, 2021. Petitioners deadline to file is December 3, 2021. Dues to USP TUCSON'S Covid-19 "Code Red" status, the institution has undergone an excessive amount of lockdowns which has severely limited Salisbury's ability to prepare this application for the court. On November 18, during another lockdown, Salisbury requested an extension of time in which to file his Certiorari. As of December 2, 2021, despite phone calls and messages left with the Supreme Court, Salisbury has not received notification on a ruling for the extension.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit evades the normal course of procedural precedent and furthers conflict among the circuit regardless of Constitutional and Congressional demands followed by the Supreme Courts precedents.

ISSUE ONE:

The Fourth Circuits decision stands in error for failure to reach the merits of, and the Constitutional violations resulting from the "NIT Warrant" which is deemed unconstitutional in United States vs. Krueger 809 F3d 1109 (11th Cir. 2015), et all.

Petitioner respectfully submits that a Writ of Certiorari should issue under Hohn vs. United States 524 US 236, 141 L.Ed. 2d 242, 1185 S.Ct. 1969 (1998), where it was determined that a 28 USC 2255 can be reviewed under Certiorari as a 2255 is civil in nature. Petitioner further submits that his due process right to be applied it 28 USC 2253 (c)(1)(B) as instructed in Buck vs. Davis, 137 S. Ct. 759, 773-74 (2017) was circumvented by the Fourth Circuit. Buck compliments congressional authority that a COA must issue after a substantial showing of a Constitutional right, 28 USC 2253(c)(2). Under this standard. Petitioner must demonstrate that reasonable jurists would find that the District Courts 2255 denial debatable or wrong on the issues and merits, and agree that the issues should have been resolved differently or that the issues deserved review. Slack vs. McDaniel, 529 US 473, 483-84 (2005); Miller-El vs. Cockerell 537 US 322, 337 (2003). Once the petitioner satisfies the "debatable wrong" requisite of Slack, supra, an appeal in the normal course should pursue to assess the Constitutional violations complained of. Buck vs. Davis, supra.

Salisbury met this standard thereby meriting him the right to a COA so that he may proceed in his direct appeal. To the extent that the Order is perceived as relying on a total avoidance of the specificity and particular characteristic of the petitioner's Constitutional claims, Salisbury demonstrated that "jurists of reason would find it debatable whether the 2255 motion states valid claims of the denial of Constitutional Rights", and that "...jurists would find it debatable whether the District Court was correct in its procedural ruling. Slack vs./ McDaniel, supra Id.

The Supreme Court does not require a petitioner to prove before the issuance of a COA that some jurists would grant such relief. Rather, that a claim is debatable, thereby authorizing the issuance of a COA even if no jurist would agree that relief should be granted, Miller-El vs. Cockrell, supra. Having then so established actual "debatableness", and jurists encouragement to proceed into appeal, Buck supra, the Fourth Circuit erred in circumventing this duty, to wit.

THE NIT WARRANT ISSUE:

In the District Court, Petitioner established in his 28:2255 that, prior to the ailing search and seizure of his personal computers, privacy and internet access, Salisbury was not suspected of any crime. There was no probable cause to request any search warrant against him. Without an NIT warrant, the FBI committed an illegal electronic trespass onto Salisbury's property (computer and home protected under Reasonable Expectation of Privacy) in order to create, manufacture evidence of and/or predict a future crime. Prior to this electronic trespass or invasion there was no suspicion nor probable cause to search/seize Salisbury's electronic property. The FBI was, in fact, spying on Salisbury (an American citizen) on the basis that it electronically identified his IP address at a random website and found child pornography on his computer which is a violation of the premise of the the Fourth and Fifth Amendments respectfully.

The FBI went one step further by formally requesting the NIT warrant in the District of Virginia during which time Salisbury as a resident of California (Long Beach warrant) despite the fact that the warrant indicates that it is to be executed within the judicial district where the issuing judge presides, a violation of the Federal Magistrates Act 636.

The request for the NIT warrant in the instant case previously found no support for criminal prosecution against Salisbury, and merely suggested that "someone" "any where" may possibly be committing a crime. (APPX-5) Adding insult to injury, the NIT warrant sought and obtained in Virginia authorized the government to HACK Salisbury's computer privacy in California, to obtain "potential" cause; thereafter, and only AFTER, the California warrant was sought and obtained.

As well, the resulting evidence obtained therefrom which resulted in Salisbury's "production" conviction never involved "exploitation" in any way which under Palomino-Coronado vs. United States 805 F 3d 127, 132 (4th Cir. 2015) mandated that the governments evidence must show "purpose" to be "exploitation of the depicted persons," before prosecution to come into consideration. (See, HR 1761 115th Congress 1st Session @15, *passim*, May 31, 2017.) In the instant case law enforcement

never showed a federal "exploitation" nexus of any sort as to Salisbury or anyone. Thus, no probable cause existed to "induce" nor "issue" any warrant at all. Simply put, there was no evidence of a crime at any given place nor by any person as the Fourth Amendment demands.

Petitioner submitted, thus, a Constitutional violation in that it constitutes an "unconstitutional search" (NIT) of his computer resulting in illegally obtaining his intentionally anonymized identity to be later used against him based upon the decisions in United States vs. Krueger, 809 F. 3d 1109, 1123 (11th Cir. 2015) wherein current the Honorable Supreme Court Justice Gorsuch concluded that an "NIT Warrant is akin to no warrant at all" because no probable cause existed to authorize any specific user to be accused of a crime until AFTER the "previous" invasion of their privacy "reports cause". Such methodology follows Justice Gorsuch as espionage in United States vs. Michael Flynn 2020 U.S. App LEXIS 87900 case No. 1:17-cr-232 (DC Dist. 2017), et al.

Having presented this issue as well to the Fourth Circuit, No. 20-7293, in his application for a certificate of appealability petitioner requested the Fourth Circuit to adopt and consider the NIT warrant analysis of Krueger, supra and United States vs. Taylor, 935 F 3d 1279 (11th Cir. 2019), wherein Judge Tjoflat stated, "the evidence obtained as a result of the NIT warrant should be suppressed because the law enforcement officials who SOUGHT the warrant are not entitled to the good faith exception. Those officials knew or should have known that there was an issue with Jurisdiction and that the search warrant would occur outside the district. Yet the official (McFarland) told the Magistrate repeatedly that the search would take place IN the district governed by the signing magistrate, a territory limited to the Eastern District of Virginia. if the law condones this conduct, it makes a mockery of the warrant process."

Just the same, the courts in United States vs. Carlson 2017 US Dist LEXIS 67991 hold that, "...the Government using the NIT malware to collect data from dependents computers, conducted an unlawful search that was not supported by a lawful warrant, and the court and government is not aware of no lawful way to deploy this NIT warrant technique when", "perosn place and thing is not an issue" (Carlson @ Sec A) See also: United States vs. Henderson 218 US App LEXIS 29848 (9th Cir) 17-10230 deeming that a person has a reasonable expectation of privacy in the contents of his personal computer and IP Address, and concluding that the execution of the NIT warrant in this case required a PROPER warrant. Henderson @N.4. quoting United States vs. Horton 863 F3d 1041 1047 (8th Cir. 2017). Likewise Henderson found a 4th Amendment violation due to the Virginia magistrates issuance of an out of state warrant which effectively was a global warrant which reached states and even countries well beyond her jurisdiction and unlawfully authorized an out of state search of Hendersons computer in Minnesota without any probable cause (as to person or thing). The court in Henderson, thus, adopted the Gorsuch opinion and ruling in Krueger that the NIT warrant was void ab initio. Accordingly, similar circumstances occurred in Carlson, supra, Krueger, supra and Salisbury ad hoc. The magistrate violated her jurisdictional boundaries to invade computer privacy of outer state citizens.

The Supreme Court has never changed its view in respect for its citizens rights that the government and FBI cannot "spy on its citizens", see Silberman vs. United States 365 US 505,565 (1961). The Silberman case has long established that physical penetration into private premises with a "spike mike" or any like device constructed in the future that intercepts information by violating 4th Amendment rights of citizens is considered a compilation of evidence that which cannot be used or relied upon. Salisbury establishes that NIT MALWARE of any type deserves the same protections as suggested in Henderson, supra, and Silberman.

The Fourth Circuit twists the authority of Buck, supra and Slack, supra, implying that Buck require the "debatable or wrong" standard [applied in Slack] and that Slack relies on "procedural grounded showings" in order to gain relief on "Constitutional violations" (APPX-1 @ 9-1). Thus, ignoring petitioners showing that Justice Gorsuch's decision in Krueger, supra, Taylor, supra, and Flynn, supra found the district courts denial of the NIT warrant violation was debated by Krueger et al, supra, as palpably wrong. Further, the Fourth Circuits denial of petitioners "COA" suggests they have independently reviewed the record and can conclude that Salisbury has not made the requisite showing and accordingly deny hi Certificate of Appealability ans dismiss the appeal. (APPX-1)

In addition to the Fourth Circuit error of failing to recognize petitioners showing of the "debatable or wrong" standard, and constitutional violation, supra, as to the NIT warrant violation, the Fourth Circuit also erred finding no "Constitutional violation", (ie...the requisite showings)(APPX-1) and dismissed the appeal. Ibid. which violates the Supreme Courts Buck, supra, rulings in that the court must first assess (1) Whether the substantial standard was shown, and (2) if so, the, an appeal must follow in the normal course of , ie,briefing. Buck, Id @773-774.

Considering thus, that the Fourth Circuit deemed both, (1) no substantial showing and (2) dismiss appeal without having and actual appeal, the court concedes a "Constitutional determination" without jurisdiction, as prohibited by the Buck precedent, supra, Ibid. As well, considering the USA was "not invited to brief, respond, etc, by the appellate court, nor had any documents of record been admitted to the Appellate Court, they simply could not have made an "independent review of the record" to justify

a Constitutional violation. Thus, violating Salisbury's due process guarantees, Buck, supra. US Constitutional Amendment 5. Case to point, the NIT warrant has been judicially deemed and shown in petitioners case "COA" to be hacked device, invading the privacy rights and violating the Fourth and Fifth Amendment US Constitutional Rights to due process and search warrant procedures of issuance.

The district courts decree as to the NIT warrant issue, supra, was evasive and circumvented the violations, by deeming law enforcement acted in good faith. (APPX-4). Thus, not on the merit of petitioners claim. As petitioner presents at 2255 the fault does not stop at the actions of law enforcement, but points directly at actions of the magistrate. United States VS. Leon 468 us 897,923 (1984), the enforcer of the "good faith doctrine", test includes not only weather officers actions could be relied on, but rather the magistrate, et al, issuing the warrant could reasonably rely on the officer sworn application and affidavits. Id. which the district nor appellate court adhere to in there decrees.

The appellate court never elaborated on whether counsel was ineffective in not defending, yet inducing a guilty plea on this issue. Counsel should have known, supra. Regardless petitioners case presents a hallmark example of the Krueger, supra prohibition of NIT warrant and Krueger should govern here as Leon exceptions failed.

The petition for Writ of Certiorari should be granted here on, as the merits were never determined, but circumvented.

ISSUE TWO:

The fourth circuit decision stands in error for failure to reach the merits of the constitutional violations resulting in lack of subject matter jurisdiction. The factual circumstances surrounding the illegally obtained evidence in this case again reflect purely personal rather than any exploitations mens rea. Specifically, the fourth circuit ignores these facts with respect to their own precedent set out in Palomino-Coronado VS. United States 805 f3d 127,132 (4th cir 2015), and congressional involvement in Palomino, HR. 1761 115th congress first session @ 15 passim, 5/31/17, which mandates that the United States is without jurisdiction to prosecute any person who only has child pornography ("cp") for personal use, and for the government to obtain jurisdiction there must be proof of intent to exploit a child involved in a sex act under 18 USC 2251 (a) production of CP. However, the evidence of this nature is devoid in this case as would be prohibited by due process to maintain a conviction as shown in Jackson VS. Virginia, 443 US 307, 312 (1979). Further, the 4th circuit having this wisdom evaded to rule on Salisbury's claim that the court lacked subject matter jurisdiction because the indictment was defective by failing to state the valid jurisdiction element of an offence under 18 USC, 2251 and 2252 in light of Gonzales VS. Raich 545 US-1 (2005). These two cases work hand in hand so as to analyze the "commerce" difference.

Salisbury's 28:2255 claim regarded the defectiveness of the indictment on the basis that it was removed from the district court's subject-matter jurisdiction; and the district court's failure to decide on the merits having avoided any opinion on the defectiveness of the indictment and the counts against Salisbury listed therein. Salisbury, having no degree of criminal experience was coerced by his private counsel to believe that his only option was to plead guilty to count 1 and count 7 of the indictment (18 USC 82251(a) which contains an explicit jurisdictional element stated in 105th congress' Amendment of 1998: "The use of any materials which traveled by interstate or foreign commerce". Such jurisdictional element allows jurisdiction to the federal authorities over every person who produced and or possessed an image of child pornography (1) that was mailed or shipped or transported through interstate commerce by any means, by computer; or (20 was produced or stored using materials that were mailed, shipped or transported by computer, does not matter if such production/possession never moved across state lines and it was merely interstate, non-economic and domestic conduct. Thus, the very concept requisites's demands by congress and Palomino supra, in 2017.

A significant number of Courts of Appeals and District Courts have ruled that "jurisdictional element" to be unconstitutional and in turn revised a high number of convictions. It was not until precedence was set by the Supreme Court decision of Gonzalez VS. Raich, 595 US 1 (2005) whereby the court established that Congress can regulate purely interstate activity that is not in and of itself "commercial" in that it is not produced for sale on the basis of aggregation "Aggregate Effect; Cumulative effect" on interstate commerce. Those reversed cases were later reinstated based on the Raich Court's "Aggregate Effect" on interstate commerce. However, thus, and alarming conflict between the circuits, the statutory interpretations, and the states invitation limitations in Raich. Supra.et al.

In the instant case, the due process clause of the(5th amend.u.s.const.) protects Salisbury's rights against being indicted under the federal jurisdiction based on jurisdictional elements never alleged in the indictment. Noting however, Salisbury's case had nothing to do with a commercial or economic act, or elements. Salisbury was accused of having used a device that was imported from out of state to produce and to store child pornography. The "jurisdictional hook" alleged in Salisbury's indictment contained no meaningful evidence that his production and or possession of child pornography substantially affected interstate commerce. Such indictment failed to allege a valid "jurisdictional hook" of an offense under 18 USC 82251(a): Aggregate effect in interstate commerce; see United States VS. Spinner, 180 f.3rd 514-515 (3d Cir. 1990) (failure to allege interstate commerce elements in indictment required reversal of conviction"); United States VS. Papadopoulos, 64 f.3d 572 (9th Cir. 1995); see also United States VS. Denalli, 73 f.3d 328 (4th Cir. 1996). The judge misapprehended that the "Petitioner contends that Congress cannot prosecute the production of child pornography based on the interstate travel of the material used to produce the visual depictions". Salisbury never took such a contrary position, instead challenged the indictment based on the lack of a necessary jurisdictional element which did not pass constitutional muster. See United States VS. McCoy, 323 f.3d 1114, 1118 (9th Cir. 2003); United States VS. Kallested, 236 f.3d 225, 228-31 (5th Cir. 2000); United States VS. Corp., 236 f.3d 325 (6th Cir. 2001); United States VS. Maxwell, 386 f.3d 1042 (4th Cir. 2004); United States VS. Smith, 402 f.3d 1303 (11th Cir. 2005),

Salisbury could not have prepared a defense before an aggregated or cumulative effect of his conduct on interstate commerce when such aggregate of cumulative effect of his conduct was never alleged in the indictment.

"Aggregation" is the valid and crucial jurisdictional element of an offense under section 2251(a). The Raich court case

produced a rotation of almost 180 degrees in the constitutional analysis of that section; see United States VS. Smith, 402 f.3d supra at 617. In Maxwell, 386 f.3d 1042 (11th Cir. 2004) the government relies on a statutory jurisdictional hook to establish jurisdiction over Smith's offenses: The pictures were produced using materials that have been mailed, shipped or transported in interstate or foreign commerce, 18 USC 82251(a); 2252(a)(b)(B). In Maxwell, the jurisdictional hook was patently insufficient to ensure the statutes constitutional application. The jurisdictional element used in both 2251(a) and 2252(a)(5)(B) not only fails to limit the reach of the statutes to any category or categories of cases that have a particular effect on interstate commerce, it contrarily encompasses virtually every case imaginable, so long as any modern day photographic equipment or material have been used; see United States VS. McCoy, 323 f.3d 1114, 1124 (9th Cir. 2003). The fact that Salisbury's pictures were allegedly produced using materials that have been mailed, shipped or transported through interstate or foreign commerce does not affect our constitutional analysis.

That opinion was overruled by the Raich case with the new jurisdictional element: Aggregation on interstate commerce", see United States VS. Maxwell, 446 f.3d 1210 (4th Cir. 2006) on remand from the Supreme Court of the United States in light of the court's recent decision in Gonzalez VS. Raich, 545 US 1 (2005). The Supreme Court reinstated Maxwell's conviction. See also United States VS. Smith, 439 f.3d 1276 (4th Cir. 2006) on remand from the Supreme Court of the United States in light of the court's recent decision in Gonzales VS. Raich, 545 US 1 (2005). The Supreme Court reinstated Maxwell's conviction. See also United States vs. Smith, 459 f.3d 1276 (4th Cir. 2006). Further, Congress could nationally conclude that homegrown child pornography affects interstate commerce in aggregation. See United States vs. Sullivan, 797 f.3d. 623, 632 (9th Cir. 2015).

Aggregation is the valid jurisdictional hook of section 2251(A); see United States vs. Silverman, 430 f.3d. 100, 112 (2nd Cir. 1978). Jurisdiction would have been lacking if the indictment did not allege a federal crime through failure to allege a valid connection with interstate commerce. The government failed to allege same in the indictment, the District Court lacked subject matter jurisdiction to convict Salisbury under federal jurisdiction. Additionally, Salisbury submits that the aforementioned decisions are in conflict with the approved reinforced concept of Palomino, supra, and Congress, and this Court must step in to solve the confusions, misinterpretations of the statutory languages and wantonness of jurisdiction in order to stop the Constitutional violations.

Specifically, all indictments must allege their jurisdictional boundary. The Government prohibits Marijuana use in Federal jurisdiction. Yet, the 10th Amendment allows the state Government to grant such use as happened in Raich. "Medicinal use", supra. California actually invited the Federal government to assist in regulation of Medicinal use, although the Federal government still does not allow any economics to apply Federally to marijuana in any way without invitation, the Federal Government could not invade California Marijuana Use. In 1978 However, child pornography was outlawed in the United States and stripped by the government as an economic commodity of the US. See United States VS. Jacobson, 916 commodity 467,469. Thus, the government relinquished and abandoned any rightful jurisdiction to child pornography pursuant to their jurisdictional commerce clause of Article 1. clause 3 8 of the U.S. constitution. No state, for this matter, has ever requested the governments "assistance in regulating" child pornography traffic.

The federal government alleges their jurisdiction to "control" cp, is in "protecting the children" through and by the Adam Walsh Act. However, in the United States VS. Morrison, 529 us 598, 616 (2000) even in the aggregate affects Morrison Id.529 US@617. The Supreme Court deems that sex crimes are the province of the states, another fourth circuit borne case from Virginia, in concurrence.

These conflicting interpretations of jurisprudence, interfere with statutory language Wantonness and impede on due process guarantees, befalling the indictment language negligence and who knows what's next when unmonitored?

Indictment language is very important to, "the people", especially to the Federal Court systems as shown in magnitudes of cases supra, as well as Indian Jurisdiction VS. federal jurisdiction. Bruce VS. United States, 394 f.3d 303 308 (9th Cir. 1993)

Salisbury did not waive his claim by entering the guilty plea; see United States VS. Brasley, 495 f.3d.142, 147 (4th Cir. 2007).

The omission of the crucial jurisdictional element is such a critical omission that the Federal Rules of Criminal Procedure require it to be noted by the Court of Appeals sua sponte; see United States VS. Brown, 995 f.2d.1403, 1504 (10th Cir. 1993); United States VS. Meacham, 626 f2d.503, 509 (5th Cir. 1980); see also United States VS. Peter, 310 f3d. 709, 713-714 (4th Cir. 2002). Yet the district and the appellate court fourth circuit evaded this duty.

The petitioner for writ of certiorari, should be granted here on, as the merits were never determined, and the conflicts affecting due process guarantees continue

RELIEF

I.

This court should grant Certiorari, bring this case to its merits, considering ordering this case evidence Fruit of the Poisonous Tree and vacate, with further instructions prohibiting, or perfecting the NIT warrant process.

II.

This court should grant certiorari, bring this case to its merits, consider ordering this case vacated for failure to state jurisdiction in the indictment, in cumulation to issue-I, Supra.

Both of these issues should be resolved due to a conflict in the circuits regarding these procedures which befall defendants.

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully Submitted,



Date: 12-1-81

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-7293

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTOPHER MICHAEL SALISBURY,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
George L. Russell, III, District Judge. (1:15-cr-00621-GLR-1; 1:19-cv-00268-GLR)

Submitted: January 19, 2021

Decided: January 22, 2021

Before AGEE, WYNN, and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Christopher Michael Salisbury, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

APPENDIX-A
APPX1

PER CURIAM:

Christopher Michael Salisbury seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Salisbury has not made the requisite showing. Accordingly, we deny Salisbury's motion for a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILED: June 22, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7293
(1:15-cr-00621-GLR-1)
(1:19-cv-00268-GLR)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CHRISTOPHER MICHAEL SALISBURY

Defendant - Appellant

O R D E R

The court denies the petitions for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petitions for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Wynn, and Judge Diaz.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX-B
APPX-3

FILED: June 30, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7293
(1:15-cr-00621-GLR-1)
(1:19-cv-00268-GLR)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CHRISTOPHER MICHAEL SALISBURY

Defendant - Appellant

M A N D A T E

The judgment of this court, entered January 22, 2021, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

APPENDIX-C
APPX-4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CHRISTOPHER MICHAEL
SALISBURY,

*

Petitioner,

*

v.

* Civil Action No. GLR-19-268
(Related Crim. Case GLR-15-621)

UNITED STATES OF AMERICA,

*

Respondent.

*

ORDER

Pending before the Court is Petitioner Christopher Michael Salisbury's ("Petitioner") Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. ECF No. 74. The Motion is ripe for disposition, and no hearing is necessary. See Rule 8 of the Federal Rules Governing § 2255 cases. For the reasons stated below, the Court will deny the Motion.

On December 3, 2015, Petitioner was charged with seven counts of production of child pornography in violation of 18 U.S.C. § 2251(a) and two counts of possession of child pornography in violation of 18 U.S.C. § 2252(a)(4)(B). ECF No. 17. These charges were the result of Petitioner sexually abusing and producing child pornography of two prepubescent girls. As part of his victimization, Petitioner used digital cameras manufactured outside of the United States to produce visual depictions of the minor girls engaged in sexually explicit conduct. See id.

APPENDIX - D
APPX - 5

On July 6, 2016, Petitioner pled guilty to Counts One and Seven of the Indictment, both charging Petitioner with production of child pornography. ECF No. 32. As part of the plea agreement, Petitioner waived his right to appeal the conviction and sentence. ECF No. 33 at 7. On January 13, 2017, Petitioner was sentenced to a term of 720 months imprisonment to be followed by a lifetime of supervised release. ECF No. 56.

On January 24, 2017, Petitioner filed a Notice of Appeal, despite having waived his right. ECF No. 58. Appellate counsel was appointed on April 25, 2017. ECF No. 62. On January 30, 2018, the United States Court of Appeals for the Fourth Circuit affirmed the conviction. ECF No. 70.

On January 28, 2019, Petitioner filed his Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. ECF No. 74. On August 5, 2019, the government filed a Response. ECF No. 87. Petitioner filed a Reply on October 29, 2019. ECF No. 91.

Pursuant to 28 U.S.C. § 2255(a), a prisoner in federal custody may “move the court which imposed the sentence to vacate, set aside or correct the sentence” if the petitioner can show “that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack” A pro se movant is entitled to have his arguments reviewed with appropriate deference. See Gordon v. Leeke, 574 F.2d 1147, 1151–53 (4th Cir. 1978). However, if the § 2255 motion, in addition to the files and records, conclusively show that the prisoner is entitled to no relief, then no hearing is required, and the motion may be summarily denied. See 28 U.S.C. § 2255(b).

In his § 2255 Motion to Vacate, Petitioner raises multiple ineffective assistance of counsel claims. See ECF Nos. 74, 80. To successfully challenge a conviction under § 2255 based on a Sixth Amendment claim of ineffective assistance of counsel, a petitioner must satisfy the two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984). Under Strickland, a petitioner must demonstrate that (1) defense counsel's performance "fell below an objective standard of reasonableness" and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 688, 694. Because of the inherent difficulties in evaluating counsel's performance, judicial scrutiny is highly deferential. Id. at 689. A petitioner must overcome the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance" and "might be considered sound trial strategy." Id. Further, even assuming an error occurred, a petitioner is not entitled to post-conviction relief "if the error had no effect on the judgment." Id. at 691.

Petitioner alleges that he received ineffective assistance from defense counsel based on counsel's failure to: (1) pursue a defense due to a conflict of interest with Petitioner; (2) challenge the constitutionality of the indictment; (3) object to the unlawful use of Petitioner's proffer statements; (4) challenge the search warrant; (5) raise a double jeopardy claim; and (6) object to the sentencing enhancements. ECF No. 74 at 17; ECF No. 80 at 4–13, 20–25, 28–38, 43–45. Petitioner also contends that appellate counsel provided ineffective assistance by failing to effectively communicate with him during his appeal. ECF No. 80 at 1–4. Finally, Petitioner raises two additional grounds to support his allegation that he is being held unlawfully, including that: (1) the statute of conviction

violates the Commerce Clause; and (2) the government lacked jurisdiction to prosecute him. Id. at 14–19, 26–27, 39–42. The Court will address these arguments in turn.

I. Ineffective Assistance

A. Conflict of Interest

Petitioner alleges that defense counsel failed to zealously represent him due to a conflict of interest with Petitioner. The alleged conflict of interest was based on Petitioner's previous romantic relationship with defense counsel's ex-wife. Petitioner claims that the conflict of interest is demonstrated by defense counsel's expression of disapproval of the charged conduct and insistence that Petitioner sign a plea agreement. *F* *in not claim the*

“To establish ineffective assistance of counsel on conflict of interest grounds, a petitioner must establish that (1) his attorney labored under ‘an actual conflict of interest’ that (2) ‘adversely affected his lawyer’s performance.’” Mickens v. Taylor, 240 F.3d 348, 355 (4th Cir. 2001) (en banc), aff’d, 535 U.S. 162 (2002) (quoting Cuyler v. Sullivan, 446 U.S. 335, 348 (1980)). To demonstrate an actual conflict of interest, a petitioner “must show that his interests ‘diverged with respect to a material factual or legal issue or to a course of action.’” Williams v. French, 146 F.3d 203, 212 (4th Cir. 1998) (quoting Sullivan, 446 U.S. at 356 n.3). Further, the standard for showing an adverse effect requires that (1) “the petitioner . . . identify a plausible alternative defense strategy or tactic that his defense counsel might have pursued[;]” (2) “the petitioner . . . show that the alternative strategy or tactic was objectively reasonable under the facts of the case known to the attorney at the time of the attorney’s tactical decision[;]” and (3) “the petitioner . . . establish that the

defense counsel's failure to pursue that strategy or tactic was linked to the actual conflict.”

Mickens, 240 F.3d at 361.

Here, Petitioner has failed to establish an actual conflict of interest, as he has not shown how his previous relationship with defense counsel's ex-wife affected counsel's defense strategy. Further, Petitioner learned of the alleged conflict in the spring of 2016, months before signing the plea agreement. ECF No. 80 at 4–5. Yet, not only did Petitioner continue with defense counsel, but he also testified at his rearraignment that he was “110%” satisfied with the counsel's representation. Id. at 5–6; ECF No. 87-1 Ex. 1 at 27.

Even assuming there was an actual conflict, Petitioner has not shown any adverse effect resulting from it. Under the circumstances, it would not have been objectively reasonable for defense counsel to have refrained from negotiating a plea agreement. Based on the charges and overwhelming evidence against Petitioner, surely electing a trial would have resulted in a conviction and a higher sentence. Moreover, as discussed below, Petitioner was not prejudiced by counsel's failure to object to the factual assertions in the presentence report (“PSR”), as the conduct described was based on the government's investigation of Petitioner, rather than from his proffer session. Contrary to Petitioner's assertion of “abandonment,” the record demonstrates that defense counsel vigorously represented Petitioner throughout his case. See, e.g., ECF Nos. 33, 49. As a result, Petitioner is entitled to no relief on this claim.

B. Failure to Challenge the Sufficiency of the Indictment

Petitioner contends that defense counsel was constitutionally deficient for failing to challenge the sufficiency of the indictment.

“One of the principal purposes of an indictment is to apprise the accused of the charge or charges leveled against him so he can prepare his defense.” United States v. Fogel, 901 F.2d 23, 25 (4th Cir. 1990). As such, an indictment “must be a plain, concise, and definite written statement of the essential facts constituting the offense charged.” Fed.R.Crim.Pro. 7(c)(1). Generally, an indictment that tracks the statutory language will survive any allegation that there is a defect. See Fogel, 901 F.2d at 25.

Here, Petitioner’s indictment was sufficient as it contained the essential elements of the charged offenses and apprised Petitioner of the allegations against him so he could prepare a defense. See ECF No. 17. Any motion by counsel challenging the indictment would have been futile. As a result, Petitioner’s claim is without merit.

C. Failure to Object to the Use of Petitioner’s Proffer Statements

Did not address the previous wage
Petitioner alleges that defense counsel was ineffective for failing to object to the use of his proffer in the fact section of the plea agreement and during sentencing.

Contrary to Petitioner’s assertion, the facts contained in the PSR and the stipulated facts found in the plea agreement were based on the government’s investigation of Petitioner prior to the proffer session and were also provided during discovery. Further, as Petitioner concedes, defense counsel did challenge the use of the proffer during sentencing, and his motion was successful. As a result, the proffer information was not considered by the Court in imposing Petitioner’s sentence. Thus, Petitioner cannot show that counsel performed deficiently or that he was prejudiced. As such, his claim is without merit.

D. Failure to Challenge the Search Warrant

Petitioner claims that defense counsel provided ineffective assistance by failing to challenge the government's use of a Network Investigative Technique ("NIT") as part of its investigation.

There have been a multitude of challenges in federal courts regarding the validity of the NIT warrant, yet its use has been consistently upheld, including by the Fourth Circuit.
we could not overturn 2-3 years into future!
See, e.g., United States v. McLamb, 880 F.3d 685, 690 (4th Cir. 2018). Given these rulings,
In 2016, evidence was surprised on several
no it was
it was reasonable for counsel to refrain from challenging the search warrant. Accordingly,
Petitioner is entitled to no relief on this claim.

E. Failure to Challenge the Sentencing Enhancements

Petitioner alleges that his counsel was ineffective for failing to object to sentencing guidelines enhancements, which he claims increased the mandatory minimum sentence in violation of Alleyne v. United States, 570 U.S. 99 (2013).

However, the Court's application of the sentencing guidelines did not violate Alleyne because the enhancements did not increase Petitioner's mandatory minimum penalty. Rather, the mandatory minimum sentence of fifteen years was set by statute. See 18 U.S.C. § 2251(e). As such, there was nothing for defense counsel to object to, and Petitioner's claim is without merit.

F. Failure to Raise a Double Jeopardy Claim

Petitioner argues that his criminal conduct only constitutes one violation of 18 U.S.C. § 2251(a) for production of child pornography instead of two, and thus, defense counsel was ineffective for failing to challenge the government's use of multiple charges.

Petitioner reasons that the unit of prosecution for production of child pornography under § 2251(a) is based on the number of victims involved, rather than the number of images of the same victim.

The Double Jeopardy Clause of the Fifth Amendment states that no person shall “be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. Therefore, “[w]hen a defendant is charged with multiple violations of the same statute arising from the same course of conduct, the court must consider ‘[w]hat Congress has made the allowable unit of prosecution.’” United States v. Shrader, 675 F.3d 300, 313 (4th Cir. 2012) (quoting Bell v. United States, 349 U.S. 81, 81 (1955)).

Section 2251(a) prohibits using “any minor to engage in . . . any sexually explicit conduct for the purpose of producing any visual depiction of such conduct.” (emphasis added). As such, multiple federal appellate courts have held that the proper unit of prosecution of a § 2251(a) violation is each visual depiction of the child. See, e.g., United States v. Smith, 919 F.3d 1, 15–16 (1st Cir. 2019); United States v. Fee, 491 F.App’x 151, 157–58 (11th Cir. 2012) (per curiam); United States v. Tashbook, 144 F.App’x 610, 614–15 (9th Cir. 2005); United States v. Esch, 832 F.2d 531, 541–42 (10th Cir. 1987), cert. denied, 485 U.S. 908 (1988). And in any event, in the instant case, the counts of conviction relate to Petitioner’s victimization of two different minors at different points in time. Defense counsel was not unreasonable for failing to challenge the number of charges brought by the government, and Petitioner was not prejudiced by counsel’s decision. Accordingly, Petitioner is entitled to no relief.

G. Appellate Counsel's Failure to Effectively Communicate

Petitioner claims that the United States Department of Justice, through his correctional counselor, colluded to obstruct his communication with appellate counsel, rendering counsel ineffective. Alternatively, Petitioner alleges that appellate counsel provided ineffective assistance by "abandoning" him on direct appeal.

How?, what record?, untrue?
However, the record explicitly contradicts Petitioner's claim. A review of the appellate brief shows that appellate counsel diligently investigated Petitioner's case and consulted with him. Appellate counsel was not ineffective for failing to raise the claims that Petitioner currently raises in his § 2255 motion, as Petitioner's claims would have been either without merit, barred by his plea agreement, or improper on direct appeal. Accordingly, Petitioner's claim of ineffective assistance of counsel on this ground fails.

II. Violations of the Commerce Clause

Petitioner also challenges the constitutionality of 18 U.S.C. § 2251(a) under the Commerce Clause of the U.S. Constitution. Although Petitioner concedes that Congress may regulate the production of child pornography under the Commerce Clause, he argues that § 2251(a) does not prohibit actual production and instead regulates conduct that may lead to production. Also, Petitioner contends that Congress cannot prosecute the production of child pornography based on the interstate travel of the materials used to produce the visual depictions.

However, in United States v. Buculei, 262 F.3d 322 (4th Cir. 2001), the Fourth Circuit determined that Congress validly exercised its authority under the Commerce Clause in enacting § 2251(a). Id. at 330. Multiple other circuits have reached the same

conclusion. See, e.g., United States v. Humphrey, 845 F.3d 1320, 1322 (10th Cir. 2017); United States v. Sullivan, 797 F.3d 623, 632 (9th Cir. 2015), cert. denied, 136 S.Ct. 2408 (2016); United States v. Parton, 749 F.3d 1329, 1331 (11th Cir. 2014); United States v. Rose, 714 F.3d 362, 371 (6th Cir. 2013); United States v. Randolph, 364 F.3d 118, 121 (3d Cir. 2004). As such, the Court finds no constitutional error, rendering Petitioner's claim without merit.

III. Jurisdiction

Finally, Petitioner contends that the government lacked jurisdiction to prosecute him for violating 18 U.S.C. § 2251(a) because the visual depictions contained on his storage devices were copies. Petitioner claims that the visual depictions must be the original depictions in order for the government to assume jurisdiction.

As stated, the indictment was constitutionally sound as it contained the elements of the offenses, including a statement of jurisdiction. Further, in the stipulated facts of the plea agreement, Petitioner agreed that he produced images and videos of the minor victims “using digital cameras that were manufactured outside of the United States,” and thus, the visual depictions were “produced using materials that ha[d] been mailed, shipped, and transported in and affecting interstate and foreign commerce.” ECF No. 33 at 13. Furthermore, the jurisdictional nexus can be established by showing that a defendant copied the visual depictions onto electronic media produced in interstate or foreign commerce. See, e.g., United States v. Schene, 543 F.3d 627, 638–39 (10th Cir. 2008). Therefore, Petitioner's claim is without merit.

IV. Certificate of Appealability

Under Rule (a) of the Rules Governing Proceedings pursuant to 28 U.S.C. § 2255, the Court is required to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A certificate of appealability is a jurisdictional prerequisite to appeal from the Court's Order. United States v. Hadden, 475 F.3d 652, 659 (4th Cir. 2007). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(B)(2). A certificate of appealability will not issue unless the petitioner can demonstrate both "(1) that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and (2) that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Rose v. Lee, 252 F.3d 676, 684 (4th Cir. 2001) (internal quotation marks omitted). Where the court denies a petitioner's motion on its merits, the petitioner satisfies this standard by demonstrating that reasonable jurists would find the court's assessment of the constitutional claims debatable or wrong. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

*MJS
PJS
Tun
WWD*

The Court, for the aforementioned reasons, concludes that Petitioner has not provided a basis to issue a certificate of appealability because reasonable jurists would not find Petitioner's claims debatable. Thus, the Court will not issue a certificate of appealability.

For the foregoing reasons, Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (ECF No. 74) is DENIED and the Court WILL NOT ISSUE

a certificate of appealability. The Clerk is directed to PROVIDE a copy of this Order to all parties of record and to CLOSE the case.

So ORDERED this 14th day of August, 2020.

/s/
George L. Russell, III
United States District Judge

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Christopher Salisbury PETITIONER
(Your Name)

VS.

United States — RESPONDENT(S)

PROOF OF SERVICE

I, CHRIS SALISBURY, do swear or declare that on this date, 12-1, 2021, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States, Room 5614,
DOJ, 950 Pennsylvania Avenue, N.W. Washington, D.C.
20530 - 0001.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12-1, 2021

