22-5179

No. ____________

FILED
NOV 29 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Jon C. Stoune — PETITIONER
(Your Name)

vs.

USA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th Cir. Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jon C. Stoune
(Your Name)

FCI Coleman Medium; Unit B-2
(Address)

POB 1032; Coleman, FL 33521
(City, State, Zip Code)

NA
(Phone Number)

Question(s) Presented

1) Should the 11th Circuit grant a Certificate of Appealability in light of this Courts decisions and the Petitioners three §2255 application grounds, alledging violations of his constitutional and statutory rights?

LIST OF PARTIES

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

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

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TABLE OF AUTHORITIES CITED

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Statute 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

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

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

[X] reported at Stoune v U.S., 2021 U.S. App. LEXIS 16908; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

[X] reported at Stoune v U.S., 2021 U.S. Dist. LEXIS 32197; 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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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

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

The date on which the United States Court of Appeals decided my case was June 7th, 2021.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 3rd, 2021, and a copy of the order denying rehearing appears at Appendix C.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including November 30th, 2021 (date) on October 29th, 2021 (date) in Application No. 21 A 110.

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

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

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

The Petitioner is a Federal prisoner serving a 210-month sentenc, which was imposed after he was found guilty at trial of three counts on a superceeding indictment. Count one: attempted violation of 18 U.S.C. §2422(b). Count two: Violation of 18 U.S.C. §2251(d)(1)(A), (d)(2)(B), and (e). And count three: attempted violation of 18 U.S.C. §2251 (a) and (e). (Part (e) is the penalty language of §2251 and by definition can not be violated.)

After sentencing a timely appeal and petition for certiorari were filed and denied. Petitioner then filed a timely application for a §2255 motion in August of 2018 which was denied Febuary 23, 2021. At the same time the district court denied issuance of a Certificate of Appealability (COA). Petitioner then filed notice of intent to appeal to the district court and sought a COA from the 11th Circuit Court of Appeals. Which was denied June 6th, 2021. A timely reconsideration was filed under rule 35(a)(1) requesting an en banc panel. This motion was misconstrued as a simple reconsideration and denied.

A leter was then sent to Justice Thomas and returned as it violated the Courts rules. Subsaguintly an extension of time to file an application for certiorari was requested and granted, giving the Petitioner until and including November 30th, 2021 to file.

Of particular note is that during the lengthy process to this point is a sagnificant change in the laws enturpertation by the 11th Cir. Whereby under the wording of count two, the rule of lenity as applied invalidates the guilty verdict and sentence. A change made by reasonable jurist who found the issue debatable.

REASONS FOR GRANTING THE PETITION

"The U.S. Supreme Court may review the denial of a COA by lower courts. When lower courts deny a COA and the court concludes that their reason for doing so was flawed, the Court may reverse and remand so that the correct legal standard may be applied." (See Headnote L Ed. Digest: Appeal §1321, 1750.3. Ayestas v Davis

To obtain a COA requires that the Petitioner show that he has made "a substantial showing of the denial of a constitutional right." §2253(c)(2) Explained as the Petitioner must "sho[w] that reasonabe jurists could debate whether (or, for that matter, agree that) the petition should have been resoled in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v McDaniel

This showing, the Court has said, "does not require a showing that the appeal will succeed." Meller-El v Cockrell Rather, "[a] prisoner seeking a COA must prove something more than the absence of frivolity or the existance of meer good faith on his or her part" Id., (internal quotation marks omitted), at 338

Equally the Court has made it clear a COA determination is a "threshold inquiry" that "does not require full consideration of the factual or legal bases adduced (to offer as example, reason, or proof in discussion or analysis" M-W) in support of the claims." Id. at 336

The limited review is predicated on more than just a formality: The COA statute requires "an appeal may not be taken to the court of appeals" absent a COA. §2253(c)(1) "Until a COA has been issued federal courts of appeals lack jurisdiction to rule on the merits of appeals from the habeas petitioner." Id., at 336 (also See Buck v Davis; Wolff v U.S; Broadnax v Lumpkin

The 11th Circuit Coourts order (See Appendix A) denying the Petitioners COA dated June 7th, 2021, in a three page opinion stated reasonable jurists ("one having a thorough knowledge of law" M-W) would not debate the district courts denial of Petitioners claims. Yet jurists of reason in U.S. v Caniff reversed its position on the Petitioners count two conviction violation of §2251(d)(1)(A), (d)(2)(B), and (e). To state that the Petitioners §2255 application "confirms the district court's conclusion that the claim was too conclusory ("consisting of or relating to a conclusion or assertion for which no supporting evidence is offered" M-W), to warrent relief, as his allegations consisted of one-phrase to one-sentence assertions ("Declaration, Affirmation Declaration" to make known formally, officially"; Affirmation "a positive assertion"; allegation 2:"to assert without proof of before proving" M-W) without any supporting laws or facts." See Appendix A The circuit court is making a determination of the merits prior to issuing a COA, which this Court has said is impermissable. See Broadnax v Lumpkin LexisNexis Headnote[] Criminal Law and Procedure > Habeas Corpus > Appeals > Certificate of Appealability

First the circuit court states Petitioner is being to "conclusory", meaning the "one-phrase to one-sentence assertions" are not supported by evidence (1b "something that furnishes proof" Proof 1a: "the cogency of evidence that compels acceptance by the mind of a truth or a fact"; cogency → cogent 1: "having power to compel or constrain" M-W) Assert has (in the M-W) the synonym Affirm, implying conviction bassed on evidence. A "fact" is a thing done, evidence in the dictionary is "something that furnishes proof. As the law an statutes wording is to be given its every day meaning (see Apprendi v New Jersey, Dunn v CFTC, and BFP v Resolution Trust Corp.), the §2255 application states that the applicant is to state the ground and its supporting facts. It also specificaly bars one from "supporting" with law in the application, something the circuit court specificly notes as a short comming in its denial. The application also makes no demand for evidence to give proof to the facts.

Having stated a ground and its supporting facts §2255(b) states that "Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon...", clearly if the fact is not supported by evidence then the court is to hold a hearing to determin if it is indeed a fact.

In the circut courts denial of a rehearing under its rule 35(a)(1), which it misconstrued as a simple request for rehearing, it again denied the Petitioner a COA based on the merits stating "he has offered no new evidence or arguments of merit to warrent relief.

II

Jurists of reason, who with thorough knowledge of the law, could in fact find the Petitioners claims in his three grounds debatable or at least deserving of further development. Much of the evidence supporting the facts stated can be found or infered from the record. Other evidence, particularly that avired to in the Petitioners affidavits (one of which is sealed by the district court)(see Appendix E) is testable for its verasity. Notwithstanding the courts opining that it was contrived.

Claim ones ground: "Appointed counsel failed to provide effective assistance of counsel sufficent and reasonable to meet the minimum standards set by the courts," commonly refered to as IAC. The Petitioner lists a number of facts in support of this claim, which are inturn bolstered by other facts.

IAC itself is a 6th Amendment constitutional right. Many of counsels failures also amount to violations of other constitutional rights. Primarily the 4th Amendment, and the 5th Amendment, some of which are violated via the 14th Amendment, as well as other 6th Amendment rights.

This Court, the 11th circuit, and the ABA all have stated that counsel has a duty to investigate. ABA Criminal Justice Standards 4-4.1, "Duty to Investigate and engage Investigators," requires:

(A) Defense counsel has a duty to investigate in all cases, and to determine whether there is sufficient factual bases for criminal charges,

(B) The duty to, investigate is not terminated by factors such as the apparent force of the prosecutions evidence, a clients alleged admissions to others of facts suggesting guilt, a clients expressed desire to plead guilty or that there should be no investigation or statements to defense counsel supporting guilt,

(c) Defense counsel's investigative efforts should commence promptly and should explore appropriate avenues that reasonably might lead to information relevant to the merits of the matter rather than relying on the court's presentence report, and should seek discovery or relevant information from governmental agencies or other third parties if necessary.

ABA Criminal Justice Standards 4-3.9 entitled, "Prompt and thorough Actions to Protect the client,"

(?) Defense counsel should promptly seek to obtain and review all information relevant to the criminal matter, including but not limited to requesting materials from the prosecution...

(?) Defense counsel should work diligently to develop, in consultation with the client, and investigate any legal defense strategy...

These standard has been held by the courts as well. In Goodwin v Balkom the "[t]otality of trial councel's unprofessional errors and omissions constitute IAC)." Even if defendant could not show by perponderance of the evidence that counsel's errors undermined the trial, counsel's errors were grave enough to undermine the fundamental fairness and warranted a new trial" (Nealy v Cabana) "[F]ailure to file any pre-trial motions on defensive issues warranted an evidentiary hearing to resolve the IAC claim" Clark v Blackburn "Trial counsels failure to move to suppress evidence obtained during illegal search may constitute IAC and requires an evidentiary hearing to develop the record on claim" Kirkpatrick v Blackburn; "Failure to secure expert may constitute IAC" Miller v. Wainwright; "Failure to utilize Title 18 U.S.C. §3006(a) to obtain the funds for an expert at the governments expense, constitutes IAC" U.S. v Fessel; "Complete failure to investigate witnesses can hardly be considered a tactical decision. As the Supreme Court noted in Strickland, '[c]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Quoted in U.S. v Debango; "[F]ailure to secure witnesses for trial amounted to IAC" Nealy v Cabana; "Failure to conduct a pre-trial investigation amounted to IAC and warranted a new trial" Cody v Montgomery; "Failure to conduct investigation into petitioner's background, to uncover mitigatory, psychiatric, and childhood information at penalty phace was IAC and actually prejudiced petitioner" Middleton v Duggar; 4th Amendment claim raised through IAC Kimmelman v. Morrison; "No defense at all constitutes IAC" Young v Zant; "duty to familiarize himself with reguard to the specific scientific area in which an expert is needed, he must conduct a minimal investigation of background work in order that he may intelligently move the court for the need for an expert" Stephens v Kemp; "Failure to prepare for trial, failed to prepare a defense, constituted IAC" Kemp v. Leggett; "Failure to investigate impeachment evidence for attacking the credability of state's witness may constitute IAC" Miller v. Wainwright; "Failure to adequately cross-examine state's witness, may constitute IAC" Id.; "Petitioner was deprived of his right to effective assistance of counsel and his right to testify, where his counsel threatened" & "defendant not allowed to testify constituted IAC and entitled defendant to a new trial" Nicholas v Butler; "Counsel's performance fell below an objective standard of reasonableness where counsel was virtualy silent, there was no need for a showing of prejudice as IAC was established per se" Harding v. Davis; "Failure to develop strategy of consequence, amounted to having no representation at all, and constituted IAC" House v. Balcom; "Duty to inform defendant of all available strategies and discuss those strategies with defendant" Florida v Nixon; Rhode v U.S, Santa v U.S, Clisby v Jones "District Court must resolve all claims for relief - defined and regardless of whether the claims for relief arise out of the same operative facts"; "Counsels performance fell below an objective standard of reasonableness where counsel was virtually silent, there was no need for a showing of prejudice as IAC was established, per se" Harding v Davis; "Failure to develope a strategy of consequence, amount to having no representation at all, and constitutes IAC" House v Balkom; "Failure to investigate impeachment evidence for attacking the credibility of states witness, may constitute IAC" Miller v Wainwright; "Failure to investigate, present at sentencing phase any evidence of petitioners mental history and condition constituted error so sereious that counsel was not functioning as guaranteed by the 6th Amendment". Stephens v. Kemp; "The Supreme Court has repeatedly held that failure to performe mitigation investigation constitutes deficient performance" Wissinger v Vannoy; "search warrent on bad oath requires a hearing" Franks v Delaware; "locked trunk 4th Amendment issues" Florida v Wells; "Prevent 'general,' rummaging in a person's belongings" Anderson v Maryland see also U.S. v Blake; "... may not appeal to a juries passions" U.S. v Phillips see also U.S. v Rodriguez "A prosecutor is... forbidden to make improper suggestions, insinuations and assertions calculated to mislead the jury and may not appeal to the juries passions or prejudice"; "Warrantless arrest reqires probabal cause" Ortega v Christian; "has is or is about to commite a crime" Williams v Mills; "Seizure of personal property (vehichal) with out warrent per se unreasonable" U.S. v Virden; "address claims of cumulative error/examine trial as whole to determine fairness" U.S. v Calderon; "Officers moving defendants vehicle without permission was seizure exceeding bounds of terry stop and was unreasonable..." US v Virden; "Intimidation of a witness" U.S. v Perez-Oliveros

The cases listed above are all related to the facts in support of their legal validity. They are only Supreme Court and thouse in the 5th and 11th circuit that are belived to be precidental.

Evidence supporting a majority of the facts can be found in the record or their absense from the record. The Petitioner has none of the documents needed to show the Court where in the record to look. However, specific documents to look at are:

1) The search warrent for Petitioners camera. It spacificaly states the affiant observed the Petitioner "taking photographs of obviously young girls." However, when the camera was turned on, NO photographs much less any taken April 21st, 2015 where on the cameras external memory card. Even the FBI running file recovery software and recovering more than 14k images found no images from the card to enter into evidence

2) Interview video - Shows Petitioner being formaly arrested after 13ØØ, when records and testimony shows he was taken into custody at gun point between 11ØØ and 112Ø. (Petitioner has stated this was an arrest since he certainly did not feel free to go. And also this is when he was illegaly seized without probable cause, his property from his person was seized illegaly, Which among other things included his vehical keys that facilitated the warrentless search of that property during the period between 112Ø

and his being placed in the interview room more than an hour and a half later. Also it allowed them to move the vehical without permision.

3) Impeachment evidence of the states primary witness included the fact he has a criminal record, mislead the jury about the time frame he participated in the 2015 sting operation and testified to the Petitioners intent on both the "request for photos" and his use of an alias on line.

4) Another officer testified to non merandized "question and its answer" that was in violation of the Petitioners rights and though seemingly inocent his recall to the stand to correct a "mistatement" on whether he asked the question or not was a prime opurtunity to impeach or at least question him further on what else he may have "misremembered", yet counsel was silent.

5) Counsel had no preperation of a defense even though Petitioner had been requesting expert witnesses, evidence collection, and spent seven months giving him the same information that is in both the open affidavit and sealed affidavit attatched to his §2255 application. A letter to the court in November of 2015, which the court construed as a pro se motion criminal document 20 followed by a hearing December 7th, 2015 specified a number of issues:

A) Expert witnesses in Polygraph/Sexual history polygraph, palismagraph, psycology, Medical (due to the tumor in my brain this directly addressed the sexual component), as well as others

B) Other witnesses who could testify to sexual issues as well as character.

C) Evidence collection, in particular states suposed time line versus the Petitioners, State investigation, and performance of the application "whisper" to support other statements by Petitioner.

D) Other issues such as speedy trial & application of STA, states lack of legal case against Petitioner, selective prosecution.

Petitioner may have other issues in thouse letters, however, its been nearly 7 years since they were writen.

6) The superceeding indictment charged the Petitioner with two additional counts each carying a mandatory 15 year sentence. (See U.S. v Castronuvo, also U.S. v Lovasco where the Supreme Court "[Found] that after 1 month following crime, the government had all the information relating to the defendant's alleged commission of the offense and that the ... delay before bringing charges had not been explained or justified and was unnecessary and unreasonable." Here the government had all pertenant evidence prior to the first grand jury in June of 2015. And only brought superceeding indictment only after the Petitioners refusal to accept a "plea" and go to trial. The grand jury in January, 2016 was read the testimony of the state witness by the FBI Agent from the June 2015 grand jury proceedings. And U.S. v Barner "However, a superseeding indictment adding new charges that increase the potential penalty would violate due process if the prosecutor obtained the new charges out of vindictiveness. Vindictiveness in this context means

the desire to punish a person for exercising his rights." "Changes in charging decisions are quite usual early in the proceedings when the prosecutor's view of the case may not have crystallized..." Which is not the case here. Trial was set to start in early 2016 (Posibly late January or Febuary) and the new charges were quite late and based on no new information other than Petitioners refusal to plead guilty. In Blackledge v Perry The Supreme Court ruled for Perry stating the circumstances presented a "realistic likelihood of vindictiveness", which at the very least describes the situation here.

7) No surpresion motion was made even after the Petitioner pointed out the 4th amendment issues with both the seizure and the search warrent, as well as the lack of probable cause to arrest without a warrent, the illegal seizure at gunpoint and the state having no legal charge that was actualy violated.

8) A potentialy biased juror was improperly veted by both counsel and the court. "Failure to challenge venireperson who stated she could not be fair constituted inneffective assistance of counsel, and presumed prejudice from violation of right to impartial jury warrented new trial." "Both the district court and counsel failed to conduct the most rudimentary inquiry into her statatement ... and such failure violated petitioner's right to impartial jury." "Prejudice to the petitioner was therefore presumed, and petitioner was entitled to a new trial." Hughes v U.S. "...[T]he reality of their biased attitudes must be revealed by circumstantial evidence." Id. The prospective juror,

who eventualy wound up acting as Forman and haveing an enormouse potential for influancing the other jurors and the outcome of the verdict, was hardly questioned on two key issues. First the fact that he was a middle school teacher, who presumably had female students who where in the age group of the Notional victim, Which places a unique preasure on him since he would have to answer for the verdict even if to no one other than himself on a not guilty. Petitioner can also imagine guilt of thought could have played a substantial roll in his verdict. The second factor is his lawschool experiance. Which would have influanced both his virdict and given him substantial authority among the jurors. Petitioner having the same lawschool background where neither of us complected lawschool can see how he would have reached the verdict he did considering the defense and reason group dynamics would have made him the prime candidat for Forman. Clearly his potential bias should have been persude and yet was not.

9) The defense being silent at stages prior to trial and at trial, where counsels defense consisisted of "Defense rests" and sitting down is by definition IAC and rises to presumptive IAC.

All of the forgoing is on record to the best of the Petitioners ability to remember. Many issues presumptivly requirering a new trial and collectively represent such agregious errors on the part of counsel that IAC is presumptive.

III

The Supreme Court as well as the 11th cir. has often said that statutes are to be read as congress wrote them and that the courts can not make them say more or less. See Dunn v CFTC, BFP v Resolution trust Corp., Beras v Johnson, U.S v Jordan, Sessions v Dimaya Explaines even further "This command to follow ordinary meaning is not just one among the many rules of statutory interpretation. It is 'the most fundamental semantic rule of interpretation.' Indeed, the notion that there are special, lawyers-only grammar rules for reading statutes is at odds with the principle that, in a democracy, laws should be easily understood by the people they govern." See generally Note, Textualism as Fair Notice, 123 Harv. L. Rev. 542 (2009)

§ 2422(b) reads:

> Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

Under the Amendments section there are four listed amendments

1996 added subsection (b).

1998 substituted subsection (b) for one that read: "(b) Whoever, using any facility or means of interstate or foreign commerce, including the mail, or within the special maritime and territorial jurisdiction of the United States, knowing persuades, induces, entices, or coerces any individual who has not attained the age of 18 years to engage in prostitution or any sexual act for which any person may be criminaly prosecuted, or attempts

to do so, shall be fined under this title or imprison-
ed not more than 10 years, or both."

2003 subsection (b) was modified (It is unclear in what way however, it appears there is an amendment to subsection (b) missing between 1998 and 2003.)(Upon consulting several persons with college degrees it appears that is incorrect. 2003 modifies the prison term from "not more than 10 years" to "not less than 5 years and not more than 10 years" and deleted "; or both" before the period.)

2006 Amended subsection (b) to "imprisoned not less than 10 years or for life".

Which means that subsection (b) should read:

Whoever, using any facility or means of interstate or foreign commerce, including the mail, or within the special maritime and territorial jurisdiction of the United States, knowingly persuades, induces, entices, coerces any individual who has not attained the age of 18 years to engage in prostitution or any sexual act for which any person may be criminally prosecuted, or attempts to do so, shall be fined under this title or imprisoned not less than 10 years or for life.

This begs the question, for fair notice, wich wording is correct? Which is just the first issue with this statute lacking fair notice. To further understand the statutes subsection (b) an understanding of the everyday use of the language as the latin phrase:

Est ipsorum legislatorum tanquam viva vox - The voice of the legislator themselves is like the living voice; that is, the language of a statute is to be understood and interpreted like ordinary spoken language

eloquently puts it, what are the everyday meanings of the statutes wording. Since § 2422(b) has two wordings and the Petitioner believes he was convicted under the first of the two he will only speak to the wording of that one.

[2]Mail - 2a: material sent or carried in the postal system

Facility of interstat or foreign commerce

Facility - 4a(1): something that makes an action, operation, or course of conduct easier

[1]interstate - of, connecting or exesting between two or more States esp. of the U.S.

foreign - 1 situated outside a place or country

[1]Commerce - 2: the exchange or buying and selling of commodities on a large scale involving transportation from place to place.

Means of interstate of foreign commerce

[1]Means - 1a: to have in the mind as a purpose: INTEND

Knowingly - 1: having or reflecting knowledge, information, or intelligence

Persuades - 1: to move by argument, entreaty, or exposulation to a belief, position, or course of action

argument - 1b: discourse intended to persuade

[1]discourse - 2: verbal interchange of ideas

interchange - 2: exchange

Induces - to move by persuasion or influence

[2]influence - 1: to affect or alter by indirect or intangible means

Entices - to attract artfully or adroitly or by arousing hope or desire: TEMPT

artfully - 1: performed with or showing art or skill

adroitly - : having or showing skill, cleverness, or resourcefulness in handeling situations

arousing - 2: to rouse or stimulate to action or physiological readiness

rouse - 2: to stir up

Individual - 2c: intended for one person

person - 1: HUMAN, INDIVIDUAL.

²human - a bipedal primate mammal

mammal - any of a class of warm-blooded higher vertebrats that nurish their youn with milk secreted by mammary glands, have the skin usualy more or less covered with hair, and include humans.

Person - HUMAN, INDIVIDUAL

Charger: 6a: a formal assertion of illegality

²Attempt - 1a: the act or instance of allempting; especialy: an unsuccessful effort

The phrase "who has not attained the age of 18" is, accord to § 2256 "Definitions for Chapter" as there does not appear to be definitions to § 2422's chapter, has the meaning "minor."

²Minor - 1: a person who is not yet old enough to have the rights of an adult

person - 1: HUMAN, INDIVIDUAL

All definitions above are taken from Merriam-Webster's: Collegiate Dictionary - Eleventh Edition copy right 2020 (M-W).

The statute by its common sense meaning of the language used lacks fair notice in a number of ways and particularly under the facts of the Petitioners case. First the use of "commerce" indicates that some sagnificant amount of the "exchange or buying and selling of commodities on a large scale involving transportation from place to place" was involved. Petitioners camera fails to meet the "means" of requirement. In point of fact, nor can it be a "facility of" commerce. No other facility or means was offered. Nitler was use of "the mail" spoken of in regards to Petitioners alleged intent of words or actions.

The word "knowingly" seems to modify the words persuades, induces, entices, or coerces to engage in prostitution or any sexual activity for which any person can be charged with a crime. This encomposes all speach. What might seem like an inocuious statement to one person may in fact be an expected lead in to something compleatly different to another. It would be a matter of expectation and perspective on the part of the hearer. Which means any speach potentialy persuades, induces, entices, or coerces. This is so vauge that it can not give fair notice as to the proscribed behavior.

"can be charged with a crime" is a phrase that also fails to offer fair notice. It relies on a future event that lacks certinty. Also it lacks specifity as to the "crime". And in the Petitioners case creates a "legal impossibility" which "occurs when the actions which the defendant performs or sets in motion, even if fully carried out as he desires, would not constitute a crime." U.S. v Ballinger If one is presumed to be inocent until proven guilty then even being charged with a crime at some point in the future is no garantee of being found guilty.

Finaly "or attempts to", which refers to the unsuccessful persuasion, inducment, enticement, or coersion of a "person under the age of 18," as that seems to be the "proscribed" behavior. Which has the same fatal vaugness that encompases all speach.

In either case this statute requires a person who is under 18 years of age, ie a minor. No where in the statute or the definitions does or can a person mean ficticious or notional (1: THEORETICAL, SPECULATIVE -M-W) victim. "A 'minor' is defined as '[a] person who has not reached full age... A 'victim' is a 'person harmed by a crime, tort, or other wrong.' Accordingly, a "minor victim" is a child harmed by a crime. In the case at bar, the plain meaning of the term

'Minor victim' does not encompus the undercover detective or her fictitious thirteen year-old daughter. The former, though perhaps a victim, is not a minor. The latter is not a person, and thus neither a victim nor a minor under the 'ordinary, contemporary [and] common meaning' of those terms. U.S. v Kahn citing U.S. v Smith see also "All parties agree § 2259 imposes some causation requirement. The statute defines a victim as 'the individual harmed as a result of commission of a crime under this chapter.' § 2259(c). The words 'as a result of' plainly suggests causation. see Pacific Operators Offshore, LLP v Valladolid, 565 U.S. —, —, 132 S. Ct. 680, 181 L. Ed 2d 675, 692 (2012); see also Burrage v United states, 571 U.S. —, —, S.Ct. 881, 187 L.Ed. 2d 715, 725 (2014). And a straightforward reading of § 2259(c) indicates the term 'a crime' refers to the offense of conviction. CF. Hughey v U.S., 495 U.S. 411, 416, 110 S.Ct. 1979, 109 L.Ed. 2d 408 (1990). So if the defendant's offense conduct did not cause harm to an individual, that individual is by definition not a 'victim'..." 134 S.Ct. 1720

As no person or minor exists ther can be no victim and thus no crime nor harm in the Petitioners conviction subsaquently the conviction should be overturned on both the fatal flaws of the statute and the lack of a victim to commit a crime or harm against.

Additionaly as no person or minor exists "[t]here can be no message or communication to that which is not in existance." U.S. v Goode see also U.S. v Denicke Also the Supreme Court has stated "[g]overnment regulation of free speach is subject to higher 1st Amendment scrutiny." Rosenberg v Rector & Visitors of the Uni. of VA,

Since no person or minor exists this statute alse has no posability, as applied, to allow for the confrontation clause which in Bullcomings v New Mexico it was stated that the Confrontation Clause does not allow suspension of it as a right. Which is part of 6th Amendment rights. see also Crawford v Washington Nor does it affect in any way commerce, substantialy or otherwise. National Federation of Independant Business v Sebelius see also Poore v Glanz, U.S v Guite, and U.S. v Smith

Just as in U.S. v Morrison §2422(b) seems, with the exception of the inclusion of "prostitution" which appears to be surplusage as subsection (a) already deals with prostitutions, to be devoid of any kind of commerce, much less commerce that would reach a level of "substantial commerce." As such "Congress had no authority to enact §2422(b) any more than §13981 for the same reasons.

(1) gender-motivated crimes of violence were not-in any sense of the phrase-economic activity; (2)... contained no jurisdictional element establishing that a federal cause of action was in persuance of Concress' power to regulate interstate commerce; (3) the Constitution required a distinction between what was truly national and what was truly local; (4) there was no better example of state police power than the suppression of... crime and vindication of victims; and (5)... was directed a individuals who had committed criminal acts motivated by gender bias, rather than at a state or state actor.

Thomas, J., concurring, however expressed the concrern that "the Supreme Court encouraged the Federal Government to persist in the view that the commerce clause had virtually no limits." Which over 20 years later certainly appears to be the Federal Governments view.

Though this speaks only to the wording and some particular applications to the Petitioners case, there is an extensive argument to be made as to how the different circuits have interperted §2422(b) and applied it.

IV

The Petitioner both requests oral arguments if the Court should desire them as well as requests appointment of counsel under § 3006A for further proceedings on this matter and or for proceedings at the circuit level, should the Court grant this application and reverse and remand for the issuance of a COA. Both for the ends of justice and the fact the Petitioner is a layman of the law and unskilled in its practice. He also request this be construed liberaly per Haines v Kerner

Petitioner belives that given the limited information above jurist of reason could actualy find the district courts finding debatable and baring that at least deserving of further development. Clearly counsel was ineffective as shown by the record and as such Petitioners 6th Amendment was violated potentialy presumptivly. That other constitutionl rights and legal protections were also violated deserves to have the record expanded to determine which ones and to what extent.

That the §2422(b) is unconstitutionaly vague and defective under the plain reading and everyday meaning of its language, thus lacking fair notice. The circuits them selves can not agree on what the language means nor what is actualy proscribed. Leading to confusion in its application accross circuits. It also lacks a sagnificant relation to commerce, and has a unpermited impact on free speach as it gives no indication of what level or nature of speach is proscribed and as writen "chilles" all speach, Even if that speach has a "Meer tendancy to encurage unlawful acts", it is protected speach under the 1st Amendment. Ashcroft v Free Speach Colalition

§2422(b) as it stands is ripe for this courts consideration as to fair notice, vaugness, and its misapplication to thousands of incarcerated indaviduals.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: November, 29th, 2021