

No. 22-5221

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

ORIGINAL

FILED

JUL 14 2022

OFFICE OF THE CLERK  
U.S. SUPREME COURT

Jim Scott/Lundi — PETITIONER  
(Your Name)

VS.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals; S.Ct.R.11

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jim Scott Lundi, 19581-1048

(Your Name)

USP McCreary  
330 Federal Way  
P.O. Box 3000

(Address)

Pine Knot, Kentucky 42635-3000

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

QUESTION(S) PRESENTED

Whether appellate court's  
Unconstitutionally enacted 11 Cir. R. 25-1  
and its conflicted-arbitrary denied  
ruling, without finding of facts  
and conclusion of law, violated  
petitioner's pro se self-representation  
On direct appeal?

## 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:

Adeduntan, Rilwan  
Carmon, Katherine  
Caruso, Michael  
Fajardo Orshan, Ariana  
Goodman, Hon. Jonathan  
Howard, David Adrian  
LUNDI, JIM  
McAliley, Hon. Chris M.  
Minor Victim  
Noto, Kenneth  
Obenau, Jessica Kahn  
Otazo-Reyes, Hon. Alicia M.  
Scola, Jr., Hon Robert N  
Smachetti Emily M.  
Sundaram, Sivashree  
Taylor, Kathleen Elena Handin  
Torres, Hon. Edwin G.  
Zloch, William T.

# TABLE OF AUTHORITIES CITED/CASES

Milligan-Hitt v. Bd. of Trs. of Sheridan Cty. Sch. Dist. No. 2  
(10 Cir. 2008), 523 F.3d 1219, 1231-32.

Evitts v. Lucey (1986) 469 U.S. 387

Hanna v. Plumer (1986) 380 U.S. 64

Dickerson v. U.S. (2000) 530 U.S. 428

Christopher v. Harbury (2002) 536 U.S. 403

McCarthy v. Madigan (1992) 503 U.S. 140

Yick Wo v. Hopkins (1886) 118 U.S. 356, 370

Farette v. California (1975) 422 U.S. 806

McKaskle v. Wiggins (1984) 465 U.S. 168

Griffin v. Illinois (1957) 351 U.S. 12

Burns v. Ohio (1959) 360 U.S. 252

Douglas v. California (1963) 372 U.S. 353

Sec v. Sloan (1978) 436 U.S. 103

Martinez v. Court of Appeals (2000) 528 U.S. 152

Hannah v. Laroche (1960) 363 U.S. 420

Sones v. Barnes (1985) 463 U.S. 475

Hurley v. Irish-American Gay Pride (1995) 515 U.S. 557

Fiske v. Kansas (1927) 274 U.S. 380

Leis v. Flynt (1979) 439 U.S. 438

Cox v. U.S. (1947) 332 U.S. 442

## STATUTES AND RULES

11 Cir. R. 25-1

Fed. Civ. R. 52

Fed. App. R. 27

28 USC 2101

S. Ct. R. 11

Fed. App. R. 10 (b) (2)

28 USC 2071

28 USC 2101 (e, f)

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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 \_\_\_\_\_ to the petition and is

☒ reported at Still pending; 20-10898; 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 \_\_\_\_\_ 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.

L.

(iii)

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Still pending.

☐ 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).

☐ 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

This Petitioner has several statutory and, by statutory or rule of law, procedurale due process and equal protections Violations of Article IV, 1<sup>ST</sup>, 5<sup>TH</sup>, 6<sup>TH</sup>, and 14<sup>TH</sup> Ammendments' access to or petitioning the courts are at issue in this case. The fifth Amendment gvarentees the right to due process of the law and the Sixth Amendment gvarentees the right to a meaningful first appeal. These Constitutional provisions have been violated in this case as will be set forth ahead, Also the Right to Trial by Jury Sixth Ammendments Constitutional Right...



## STATEMENT OF THE CASE

On February 7, 2019, a two-count federal indictment was returned-filed criminally against Defendant/Appellant, JIM SCOTT LUNDI ("appellant", for violating Count 1's 18 USC 1591's sex trafficking of minor elements and Count 2's 18 USC 2251's production of child pornography elements in Southern Florida district court "district court" clerk's office, in case number 1:19-cr-20075 "case or docket" "doc." ; doc. 8..See, Petitioner's ("Petr") Exhibit ("Ex." "A") Criminal District ("CD") Docket attached to Appendix ("Appx."). On February 11, 2019, this petitioner pled "not guilty" to violating elements and verbally demanded a jury trial in the case; doc. 9. On October 15, 2019, this petitioner's jury, after Voir Dire Volume ("Vol.") One "1", was sworn, as empanelled, and released for the day, and is to resume on Monday, October 21, 2019; doc. 52. On Monday, October 21, 2019, this petitioner's jury trial was commenced, the Assistant United States Attorney, Ms. Jessica K. Obenauf ("Ms. Obenauf of AUSA"), began introducing alleged incriminating evidence and calling witnesses to stand, as direct, redirect, and on re-cross-examination of witness's testimony evidence by defense counsel, Mr. David A. Howard ("defense counsel or Mr. Howard"), Vol. 2.; doc. 55-56.

This district court excused, again, the jury for an exhausting day and to report tomorrow for (not discharging) jury's duty and obligation Tuesday, October 22, 2019. That same-day, unbeknownst to petitioner, he didn't know or understand, with any intelligence of, the "nature of the present proceeding", was misrepresented into believing these inquired proceedings and its determination, if he'd plead guilty, what his sentencing risk category level would've been and what sentence he'd receive, was really a change of plea ("COP or charade proceedings) hearing; doc. 70. To this credited charade, not personally inquiry of petitioner's knowledge or understanding COP's proceedings was proceeded (after) without first a knowingly, intelligently, and voluntary verbally colloquy or docketed written waiver of his/jury trial; a written docketed guilty plea-agreement waiver of rights, and, or neither personally pled guilty, and was adjudicated and scheduled

sentencing. On February 26, 2020, the district court sentenced petitioner, as to Count 1, to 300 months (or 25 years) imprisonment, and AUSA dismissed Count 2; doc. 84. After guilty-plea withdraw motion and its confusion, at combined sentencing hearing, this petitioner's defense counsel Mr. Howard's failure to make a timely objection and challenge to - absence verbal colloquy or written waiver of and denied jury trial's conclusion right(s) (first appeal brief issue)) is ineffectiveness of defense (second appeal brief issue).

On March 5, 2020, Mr. Howard timely filed a Notice of Appeal ("NOA") and the district court appointed Mr. Howard to represent petitioner on direct appeal, case number 20-10898 ("appeal"); docket #85. On March 19-20, 2020, defense counsel Mr. Howard timely filed Transcript Information ("TIF") for multiple, including trial vol. 1 (but not Vol. 2 or COP), and pretrial transcript(s), which court reporter prepared, as transcribed, acknowledge and forwarded to the district clerk's office for filing and transmission notification to this Eleventh Circuit Court of Appeals ("COA"); doc. 87-91. After petitioner's several complaint(s) to, with <sup>out</sup> Mr. Howard's timely filing a TIF for, transmission of Vol. 2 trial and COP transcript(s) up to this COA, on July 26, 2021, Vol. 2 magically appeared without TIF's, filed in the district clerk's office (not transmitted to COA's review) docket; doc. # 99. On October 27, 2021, petitioner filed judicial notice to district clerk's office to transmitt Vol. 2 and COP transcript(s) upto this COA, or alternatively, forward attached TIF to court reporter to do anew reordering; doc. 100. And since, absence Mr. Howard's failure to file TIF's ordering of and district clerk's refusal judicial notice duty to transmitt Vol. 2 and COP transcript(s) to COA, on October 15, 2021, this petitioner filed, in pro se, motion for termination/waiver of appellate counsel (along with pro se

appendix and merit brief containing two federal question(s)) Mr. Howard's ineffectiveness, ie, not using COA's Fed.App.R. 10(b)(2)'s TIF for ordering transcript(s) and record transmission of factual, as prejudicial, violation(s) of meritourious constitutional issue(s), and pro se self-representaiton, on direct appeal as of right; Ad # 49. See, Petr's. Ex. "B" (Appeal Docketing Statement ("Ad")); and Ex. "C" (Motion for Termination/Waiver of Appellate Counsel ("motion's explanation")) attached to Appx. On October 18, 2021, this COA's clerk, Mr. David J. Smith's ("clerk or Mr. Smith"), office received, as not retrune or filed of, and in its receipt denial of refusal to file petitioner's merit brief and appendix that: "No Action Will Be Taken 11 Cir. 25-1 Filing from Party Represented by Counsel. When a party represented by counsel, the clerk may not accept filings from the party." See, Petr's. Ex. "C" (Merit Brief Receipt); Ex. "D" (Pro se Appendix) attached to Appx. On October 29, 2021, the COA's, in a single-judge setting, who's error knew (Fed.App.R. 27(c) violates, without finding of facts and conclusions of law with motion's explaantion why and what ~~made~~ conduct made his appellate counsel Mr. Howard's ineffectivenesss to and petititioner's legal reasoning to self-representation, in pro se, on direct appeal, ruling that: "Additionally, Lundi's suseguently motion to proceed on appeal pro se is DENIED." See, Petr's. Ex. "E" (COA's Single-Judge Order) attached to Appx.

## REASONS FOR GRANTING THE PETITION

Within petitioner's motion explaining, as shown demonstration, of and its reasoning to COA, factually explains appellate counsel Mr. Howard's "ineffectiveness conduct" not using 11 Cir. TIF's ordering Vol. 2's and COP's transcript(s), which consist of two (2) record constitutional issue(s) violation, of record's transmission, its waiver thereof, and to proceed pro se, on direct appeal determination, compare. Milligan-Hitt v. Bd. of Trs. of Sheridan Cty. Sch. Dist. No. 2 (10 Cir. 2008), 523 F.3d 1219, 1231-32, citing Fed.App.R. 10(b)(2). And Mr. Howard's conduct not filing that TIF's ordering Vol. 2's and COP's transcript(s) is, by CD's comparison proof to Ad's record transmission, a proven fact that constitutes ineffectiveness on direct appeal. Evitts v. Lucey (1986), 469 US 387. After petitioner's submission of pro se motion's explanation, along with his merit brief and appendix, to be filed with the COA -- its clerk Mr. Smith's receipt of refusla to "file" brief and appendix as explained by Local Cir.R. 25-1, Local 11 Cir. R. 25-1, provides in full that:

"When a party is represented by counsel, the clerk may not accept filings from the party." See, Petr's Ex. "F"

(Copy 11 Cir. R. 25-1) attached to Appx.

As this petitioner's challenging 11 Cir. R. 25-1's (above) unconstitutionality, any congressional's or federal court's 28 USC 2071's enact[ed] local appellate rules, statutes and, or rules of law which [is] in conflict with or in violation of the Constitution or Supreme Court's interpretation decision(s) ".... such rules shall not abridge, enlarge or modify any substantive right...", compare. 28 USC 2072; <sup>HANNA</sup> Hana v. Plumer (1965), 380 US <sup>460</sup> ~~64~~, , with Dickerson v. US (2000), 530 US 428, . This petitioner has several statutory and, by statutory or rule of law,

procedural due process and equal protection of Article IV, 1, 5, and 14 amendment'(s) access to or petitioning the courts. Christopher v. Harbury (2002), 536 US 403, 415, fn. 12; McCarthy v. Madigan (1992), 503 US 140, 153, citing Yick Wo v. Hopkins (1886), 118 US 356, 370; right to pro se representation at trial. Faretta v. California (1975), 422 US 806; McKaskle v. Wiggins (1984), 465 US 168, 187 (pro se with stand-by counsel); right to first criminal direct appeal. Griffin v. Illinois (1957), 351 US 12, 21; Burns v. Ohio (1959), 360 US 252 (indigency status); right to appellate counsel's effectiveness on direct appeal. Douglas v. California (1963), 372 US 353; and right to raise appeal question of counsel's ineffectiveness transmission (like this petitioner's case) paper notice of statement of record in first criminal direct appeal, compare. Evitts, supra. At first sight, a long time ago, these legal ideas or theories were just only of substance, not of practice or procedure, of discretionary, not mandatory, questionable right(s) in light, until one-day a pro se self-representation litigant argued, briefed, and prevailed before this Court. SEC v. Sloan (1978), 436 US 102; Rutledge v. US (1996), 517 US 292, 296. As petitioner's contender-standing right, this is a substantive-substance pro se self-representation, in some (not all yet) circumstances or proceedings of practice and procedural rule of law; itself has become a judiciary's government-prosecution's play-ground using the very same shield and sword of nonfictional lawful checks, and balances cherishing the pro pro se defense right [that's] unconstitutionality conflicting rule of law per se other proceedings (or combined appeal) right(s), Christopher-Sloan, supra, decisions, e.g., just on point of constitutionality-conflict rule of law and is challenged. Martinez v. Court of Appeals

(2000), 528 US 152, 159 ("Historically silence, however, has no probative force in the appellate context because there simply no longer-respected right of self-representation on appeal."), and including COA's 11 Cir. R.25-1's "new" [non]historical silenced entactment-execution on non-interpretation or its intentions, as only dangerously fictionally used for discretionary action, which combinely threatens self-representation, in pro se, merit brief's and appendix's "filing", as "preservation", of constitutional issue(s) during the appellate process-proceedings defense, such as present case on direct appeal of petititioner's right(s). <sup>HANNA</sup> Hana-Dickerson, supra, with ~~Christop~~ Christopher-Slaon, supra. And that "right" to "self-representation pro se on direct appeal", madatedly should be reinforcefully recognized, as a statutory or rule of law, right being part of the nature of that proceeding, or a "record voluntary waiver on appeal, in pro se, self-representation right defense". <sup>HANNAH</sup> ~~Hana~~ v. Lacrche (160), 363 U US 420, 442. In fact, within subduing this petittitioner's substantive-, as should've already been recognized along-time ago and, procedural pro se self-representattrion right on direct appeal too, ie, the COA's bright-idea to promulagat[ed] and enacted 11 Cir.R.25-1's action, its awareness, and its intentions were to cause prejudicial appeal harm as: 1) to assist appellate counsel Mr. Howard's ineffectiveness (as he's already done) to, undebatable with, full authority, without oversight and his control what, if any, appeal transcript or records are or aren't to be transmitted, Fed.App.R.10(2) by Evitts, supra; 2) with his awareness that no or not one reversable-colorable record factual statutory or constitutional issue(s) violation is to be ignored and isn't to be raised within his "filing" brief and ~~—appendix—record~~

• appendic record; 3) which [11 Cir.R.25-1] rule is designed and intended to procedurally and substantively prohibit or prevent this petitioner's, pro se, self-representation (not his COA's appearance) "filings", including appeal counsel Mr. Howard's ineffectiveness, • constitutional violation(s) on direct criminal first appeal, upto • COA's determination, compare. <sup>Jones</sup>~~Jones~~ v. Barnes(1983),463 US 745,754, fn. 7, with Christopher-Slaon,supra, by Hand-Dickerson,supra. This Court should review, consider, and determining ruling on 11 Cir.R. 25-1 unconstitutionality and OVERRULE Martinez, supra, as constitutionally-conflicting with Christopher-Slaon,supra.

And finally, in fact, after petitioner motion's explanation of appellate counsel Mr. Howard's ineffectiveness, ie., failure to TIF record transmission (Vol. 2 trial transcripts) [and] unconstiitonality 11 Cir.R.25-1's conflict to proceed pro se, which this certiorari's • taken, along with circuit judge's arbitrarinessly, <sup>without</sup> with findings of • facts or conclusions of law, conclude<sup>d</sup> petitiitoner's "...subsequent • motion on appeal pro se is DENIED", which is, too, biolative of law, compare Fed.App.R.27(c);Fed.Civ.R.52(a); Hurley v. Irish-American Gay Pride(1995),515 US 557,567[3-6], citing Fiske v. Kansas(1927),274 US 3 380,385-86; Leis v. Flynt(1979),439 US 438,440-41; Cox v. US(1947),332 US 442,451-55. So, with an 11 Cir.R. 25-1's creation, inter alia, • of cinstitutional-conflict with the law and petititoner's substantive- • procedural pro se self-representation on appeal right violastion(s), • is everyone's "imperative public impo<sup>R</sup>tance" reasoning, requires this Court's intervention, jurisdictional acceptance, and determination before COA's judgment. S.Ct.R.10(a)(c);R. 11 and 28 USC 2101(e), respectfully.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jim Lench

Date: JULY 13, 2002