22-5231

ORIGINAL

Supreme Court, U.S.
FILED
JUL 13 2022
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Daniel Zulawski — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Daniel J. Zulawski
(Your Name)

Federal Medical Center Devens, P.O. Box 879
(Address)

Ayer, MA 01432
(City, State, Zip Code)

-
(Phone Number)

QUESTIONS PRESENTED

1). Is 18 U.S.C. 2422(b) unconstitutionally vague and/or overbroad due to the statute's use of the phrase "any sexual activity for which any person can be charged with a criminal offense"?

2). Does the Sixth Circuit's "adult intermediary" interpretation of §2422(b) and "substantial step" analysis impermissibly reduce 2422(b)'s burden of proof and render the statute overbroad as applied to Petitioner's case?

3). Is "other acts" evidence properly admitted under Federal Rule of Evidence 404(b)'s "intent" exception when the expressed theory of admissibility as to how the evidence shows that intent is itself an improper propensity / character argument barred by that rule and this Court's decision in Old Chief v. U.S., 519 U.S. 172 (1997)?

4). Does the use of lawful text messages of a sexual nature between consenting adults exceed the "res gestae" exception and violate Supreme Court precedent when courts use those messages to infer criminal intent?

5). Is the efficacy of the Fourth Amendment and cases such as Franks v. Delaware and Riley v. California, diminished by the Sixth Circuit's affirmation of the challenged search warrants due to false/misleading statements, pre-warrant access, and lack of specificity?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

1). Petitioner, is Daniel J. Zulawski. Respondent is the United States.

2). No party is a corporation.

RULE 14.1(b)(iii) STATEMENT

1). This case originated in Kentucky state courts but was dismissed in lieu of federal prosecution. Petitioner is unable to locate state reports or information in prison law library despite due diligence.

2. Petitioner proceeded to a federal criminal trial in the Eastern District of Kentucky in Frankfort, Hon. Gregory F. Van Tatenhove presiding -U.S. v. Zulawski, Case No. 3:18-CR-00005-GFVT-MAS. The trial lasted three days and was by jury. Petitioner was convicted of a single count of attempted online enticement of a minor in violation of 18 U.S.C. 2422(b). He was sentenced to 192 months imprisonment in a hearing in May 2020.

a). A motion to suppress was filed in this case and a hearing conducted before Magistrate Judge Matthew A. Stinnett, whose report and recommendation is publicly available at U.S. v. Zulawski, 2019 U.S. Dist. LEXIS 182712 (E.D. KY., Aug. 26 (2019).

b). The R&R was adopted in part by the district court and available at U.S. v. Zulawski, 2019 U.S. Dist. LEXIS 182167 (E.D. KY., Oct. 15, 2019).

3). Petitioner timely appealed to the Sixth Circuit Court of Appeals which affirmed the district court in it's entirety U.S. v. Zulawski, 2022 U.S. App. LEXIS 2645 (Jan. 27 2022); Rehearing denied (2022 U.S. App. LEXIS 10241 (Apr. 14, 2022)).

4). There are no other proceedings in state, federal, or military trial or appellate courts, or in this court directly related to this case to the best of Petitioner's knowledge.

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IN THE

SUPREME COURT OF THE UNITED STATES

DANIEL J. ZULAWSKI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appelas
for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Mr. Daniel J. Zulawski, Petitioner, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Mr. Daniel J. Zulawski, Petitioner
Federal Reg. No. 22009-032
Federal Medical Center Devens
P.O. Box 879
Ayer, Massachusetts 01432

OPINIONS BELOW

The opinion of the U.S. Sixth Circuit Court of Appeals appears at Appendix A to this petition and is unreported but publicly available at 2022 U.S. App. LEXIS 2645. The order denying rehearing appears at Appendix B.

The opinion of the United States District Court denying judgement of acquittal appears at Appendix C and is unpublished.

The opinion of the U.S. District Court and magistrate denying the motion to suppress appear at Appendix D and E respectively and are unpublished but publicly available at 2019 U.S. Dist. LEXIS 182167 (E.D. KY.), and 2019 U.S. Dist. LEXIS 182712 (E.D. KY.) respectively.

JURISDICTION

The United States Court of Appeals' decision was rendered on January 27, 2022. Petitioner timely sought panel/en banc rehearing, which was denied on April 14, 2022. A copy of the order denying rehearing without opinion appears at Appendix B. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution provides: "Congress shall make no law ... abridging the freedom of speech".

The Fourth Amendment to the U.S. Constitution provides as relevant: "[N]o warrants shall issue, but upon probable cause ... and particularly describing the place to be searched, and the ... things to be seized".

The Fifth Amendment of the U.S. Constitution provides in relevant part "No person shall ... be deprived of life, liberty, or property, without due process of law".

The Sixth Amendment of the U.S. Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right ... to be informed of the

nature and cause of the accusation; [and] to be confronted with the witnesses against him".

The Eighth Amendment of the U.S. Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".

The Tenth Amendment of the U.S. Constitution provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively".

Title 18 U.S. Code § 2422(b) provides:

> "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."

STATEMENT

Introduction

1). Petitioner, Daniel James Zulawski, was federally indicted in May 2018 on a single count alleging a violation of 18 U.S.C. 2422(b) (attempted online enticement of a minor) that arose from an undercover sting operation conducted by the Kentucky Attorney General's Office (KYOAG) in January of that year. SGT Zulawski, a 25 year old active duty soldier stationed at Fort Campbell, KY and on temporary duty in Lexington, KY, replied to a Craigslist ad posted by Detective Heather D'Hondt, who portrayed herself as a 30 year old divorced mom that was "in Lex[ington] for two days only" and seeking "taboo" sex for herself and her two "guests". Neither the ad nor Petitioner's reply to it mentioned or referenced minors (R.155 at 1287).

2). D'Hondt initiated private communications the next day on the Kik messenger application and revealed her "guests" were in fact her fictional minor children. She then began asking Petitioner increasingly sexual questions such

as his "hard limits" and ultimately offered sex with herself and the minors at her hotel room the following evening -Appx. A at 2. All communications were with the purported "mother". Petitioner was arrested when he attempted to meet the woman in nearby Frankfort, KY.

3). D'Hondt notified Army CID of Petitioner's arrest, requesting their assistance in the case and that they search his Ft. Campbell residence to seize his electronic devices. D'Hondt also contacted Child Services (DCBS) due to the presence of Petitioner's children in the home. Citing information provided by D'Hondt, including a paraphrased statement from a recorded phone call made by Petitioner, and statements from his spouse, CID obtained a warrant and seized numerous electronics from the home, including an old cell phone from a secured gun locker in the garage that came to be known as the "cage phone". CID deferred prosecution to civilian agencies and transferred the evidence to the KYOAG who -after taking custody of the devices- sought their own warrant on different grounds: mainly the claims disclosed by DCBS in which Petitioner's step-daughter accused him of producing graphic images of her using the "cage phone". No such images or any child pornography was found on any device.

4). After several continuances, counsel for Petitioner filed a motion to suppress the "cage phone" and requested a Franks hearing in May 2019, citing flaws in both warrants, false or misleading statements, and other errors. After a motion hearing before a magistrate judge, the district court denied the motion and a Franks hearing on the magistrate's recommendation.

5). Prior to trial, the Government gave two separate notices of intent to introduce chats from the "cage phone" and Petitioner's phone seized during his arrest, in order to prove his intent under Federal Rule of Evidence (FRE) 404(b). Counsel filed a motion in limine to exclude the "cage phone" chats which was denied in part, as the court did issue a redaction order on some content prior to their admission. The district court admitted the latter chats without

comment or similar redactions.

6). Petitioner proceeded to a three day jury trial in November 2019, during which he testified in his own defense, but was regardless found guilty. Counsel filed a timely Rule 29 motion for judgement of acquittal due to insufficient evidence, which was denied by the district court. Petitioner was sentenced in May 2020 to 192 months imprisonment and filed a timely notice of appeal.

7). After being appointed new counsel Petitioner filed his direct appeal with the Sixth Circuit Court of Appeals, challenging both search warrants, sufficiency of the evidence, admissibility of the 404(b) evidence, cumulative error, and an obstruction of justice enhancement the district court applied at sentencing. On January 27, 2022 the Court of Appeals affirmed the district court in it's entirety. Petitioner timely filed a pro se motion for panel/en banc rehearing which was denied on April 14, 2022. This petition follows and presents the below questions before the Court.

I

2422(b)'s Ambiguous and Overbroad Language

The phrase "any sexual activity for which any person can be charged with a criminal offense" is impermissibly vague under Due Process principles and the Sixth Amendment's Informed clause. The term "sexual activity" is undefined by 2422(b) or anywhere in the U.S. Criminal Code. The only hint to it's context is the included "prostitution" and, per § 2427, the "production of child pornography". Unlike the term "sexual act" which is defined by 18 U.S.C. 2246, this statute's ambiguity leaves open precisely what nature the underlying offense must be to violate it. -See Johnson v. U.S. 576 U.S. 591 (2015); Sessions v. Dimaya, 138 S.Ct. 1204 (2019); U.S. v. Davis, 139 S.Ct. 2319 (2019).

The underlying "sexual activity" must be one for which "any person" can be charged with a criminal offense. This Court has held that the statutory phrase "any person" is broad enough to encompass state, federal, and even a foreign

sovereign -Pfizer Inc. v. India, 434 U.S. 303 (1978). Under "plain language" analysis, the overbroad sweep of chargable conduct underlying 2422(b)'s "any person" liability opens defendants to criminal charges by banning conduct that is lawful in one state, but would constitute illegal activity in another -See U.S. v. Stevens, 559 U.S. 460 (2010). This language invites inconsistent and arbitrary enforcement, imposes a chilling effect on lawful sexual conduct and states rights to set their own laws under the Tenth Amendment, and subjects criminal defendants to liability for legally impossible crimes and the crimes of others.

The qualitative term "criminal offense" is not sufficient to cure "sexual activity"'s ambiguity. That term by it's plain meaning would also include misdemeanors. When this phrase is viewed together, 2422(b) can subject defendants to a 10 year mandatory minimum and potential life sentence for a single instance of misdemeanor conduct in violation of the Eighth Amendment.

This issue requires a categorical approach because case-specific analyses by lower courts continue to allow the statute to apply to conduct it had not been previously understood to reach -Davis at 774.

II

Adult "Intermediaries"

The Appellate Court affirmed Petitioner's conviction based on their previous decision in U.S. v. Vinton, 946 F.3d 847 (6th Cir. 2020). There, they held that the enticement of the minor need not "come from the defendant himself", but that "rel[iance]" on an intermediary was sufficient as Vinton "suggested the mother could help" him prepare the child -Appx. A at 24-25 (emphasis added). Every circuit has held that 2422(b) can still be violated if communications with an adult are aimed at using that adult to entice a minor on the defendant's behalf. Here, the circuit has expanded that view to a position that removes any need to prove actus reus or mens rea and renders the statute overbroad.

The Court's emphasis on "put[ting] the mother's mind at ease", agreeing to the mother's "terms", and their ruling that the mere inference of the "special influence" that parents have over their children was sufficient to show intent to use D'Hondt as an intermediary, is speculative at best and frankly, irrelevant to the charged offense -Appx. A at 25. Likewise, expressions of "excite[ment]" or background "history" (ID) are also irrelevant as those are not actions that "transform or overcome" the minor's mental state- quoting U.S. v. Hite, 769 F.3d 1154 (D.C. Cir. 2014).

Their ruling that merely "rel[ying] on the expertise of the parent in determining how best to entice the child" is sufficient to convict (Appx. A at 25), moots any need to prove that Petitioner ever engaged in enticing behavior, thus negating the statute's required actus reus. Similarly, without direct contact with a minor, or at minimum a clear request/agreement that the intermediary "help" entice the minor (Vinton), any enticement that may occur is not the product of a defendant's "vicious will" and therefore not done "knowingly" by the defendant -Morissette v. U.S., 342 U.S. 246, 250 (1952). The statute punishes the enticement of a minor, not an intermediary and the "whoever" at the beginning of the statute refers to the person who "knowingly" entices that minor. The most natural reading of the statute makes clear that the enticement directed at the minor must originate from the defendant to convict.

The pre-planned nature of D'Hondt's ad, which she admitted at trial made no mention of minors (R.155 at 1287), content of the charged communications, and statute's plain language, place Petitioner's conduct outside of it's scope. While Petitioner's communications may have "encourage[d]" the "lawless action" D'Hondt's ad proposed, that ad showed she and her guests were already "in town" for "2 days only" and the "imminen[ce]" of the crime was not the "likely result" of his involvement -Ashcroft v. Free Speech Coalition, 553 U.S. 234, 253 (2002);

Brandenburg v. Ohio, 395 U.S. 444, 447 (1969). The only way Petitioner's conduct satisfies the charged offense is via speculation and a constitutionally impermissible interpretation that punishes the mere "abstract advocacy" of crime, chills adult communications, and fails to provide a person of ordinary intelligence fair notice of what the statute prohibits U.S. v. Williams, 553 U.S. 285 (2008); Johnson v. U.S., 576 U.S. 591 (2015).

Travel as a "Substantial Step"

At Petitioner's trial, the Government referred to his 30 minute drive to Frankfort as the "biggest substantial step" in the case (R.116 at 1634). The Court of Appeals similarly labled it a "significant step" towards the crime's completion -Appx. A at 21, 25.

A "substantial step" in an attempt crime must be an act towards completing the charged offense -U.S. v. Resendiz-Ponce, 549 U.S. 102, 106-07 (2007). In other words, the act "must be necessary to the consummation of the crime" -U.S. v. Bailey, 228 F.3d 637, 640 (6th Cir. 2000). Section 2422(b) punishes the "intent to persuade using a means of interstate commerce" rather than an intent to persuade at some later point in person -Appx. A at 26. Travel to a meeting location, while necessary to engage in sexual acts, which is punishable under a different statute such as § 2423(b), is not required or even an element of an online enticement offense and has no relevance to a crime that occurs -if at all- before travel is even undertaken.

The statute's targeted conduct suggests the irrelevancy of travel for this particular offense and therefore no endorsement should be given to lower courts who deem it a "substantial step".

III

In Old Chief v. U.S., 519 U.S. 172 (1997), this Court expressed that the danger to be addressed by FRE 403 is the "capacity of some concededly relevant evidence" that has the ability to "lure the factfinder into declaring guilt on a

ground different from proof specific to the offense charged" -ID at 180 (emphasis added).

At Petitioner's trial, the district court- over counsel's objection- denied in part a motion in limine to exclude the "cage phone" chats and ruled them admissible for "intent" purposes under Rule 404(b). In admitting the chats, the Court articulated:

> "[Petitioner was] attempting to engage in a crime because here are these prior instances in which ... when faced with the statement someone's underage, [he] go[es] on business as normal, and there's evidence that suggests that [he was] in fact going to continue to try to engage in contact with that particular individual" (R.155 at 2115).

The Court's expressed theory of admissibility followed the exact "he did it before so he probably did it again" logic that is explicitly barred by Rule 404(b). Post admission, the Government twice made the same "propensity" arguments Rule 404(b) and the Old Chief court sought to prevent, arguing the chats showed that "every single time" Petitioner encounters a minor online he pursues them (R.116 at 1648, 1674). The Government also repeatedly referred to this character evidence as "the most powerful evidence" in the case (ID at 1650). The district court's rationale, in essence, improperly licensed the Government to prove "intent" via "character" and circumvent Rule 404(b)'s restrictions.

The Appeals Court affirmed the chat's admissibility, ruling that although the chats were legal under Kentucky law (age of consent is 16), the legality of the chats was "irrelevant" and the Government's use of them to prove an illegal intent was proper relying on U.S. v. Huddleston, 485 U.S. 681 (1988) and the Ninth Circuit case U.S. v. Dhingra, 371 F.3d 557 (9th Cir. 2004) -Appx. A at 17. They further held that "technically lawful conversations with individuals under 18 are still probative of a defendant's intent to engage in sexual activity with those even younger" and that the chats occurring 16 months before Petitioner's first contact with D'Hondt made them "reasonably near in time" to be probative of "intent" on this occasion -ID at 17-18. The Court's rationale is not only

speculative in the extreme, but misstates Huddleston, ignores the district court's improper theory of admission for the evidence, and contravenes this Court's decision in U.S. v. Jacobson, 503 U.S. 540 (1992).

Lastly, the circuit's ruling that the district court's redactions and broad limiting instruction were sufficiently particular to cure any prejudice from the chats (Appx. A at 18-19), disregards the Government's actual use of it at trial and downplays the inherent prejudicial effect of 404(b) evidence -Old Chief.

IV

Although the district court admitted the "Pixel phone" chats under Rule 404(b), the appellate court ruled them admissible as "res gestae" that was "inextricably intertwined with the charged offense" -Appx. A at 20-21. As a preliminary matter, "res gestae", a highly criticized and ambiguous term, does not give carte blanche to introduce any and all information simply due to it's "temporal and spacial proximity" to a crime (ID).

The "time, place, and circumstances" of the charged offense were thoroughly outlined by D'Hondt's ad, Petitioner's reply, and the subsequent Kik chat. The appellate court's concern of the jury having to make their decision "in a void" without these chats is unfounded (ID). This is especially so considering the court fails to even relate those chats to 2422(b)'s proper intent and scope. They stated that the chats "suggest [Petitioner] was singularly focused on finding sexual partners" and "pertain to [his] intent to engage in sexual acts" -ID at 21 (emphasis added). They show nothing of an intent to "entice" a minor, which is the proper and relevant mens rea to convict.

Similar to the "cage phone" chats, the court ruled that their legality was "immaterial" although the interlocutors were adults and their conduct was "in private and consensual" Lawrence v. Texas, 539 U.S. 558, 564 (2003). The court also stated that the age of the participants was "speculative", however such a conclusion ignores their contents and would further give rise to the fact that

admitting the chats without granting Petitioner the chance to question these individuals at trial to confirm their ages, violated his Sixth Amendment confrontation rights -Crawford v. Washington, 541 U.S. 36 (2004).

Further, the circuit never acknowledged the district court's failure to conduct an on-record 403 balancing analysis. The chats were unredacted, sexually graphic, and elicited numerous improper arguments from the Government that prejudiced Petitioner and urged the jury to find a criminal mens rea from a large showing of innocent lawful conduct -Lawrence, Supra.

V

Army/Fort Campbell Warrant

Under Franks v. Delaware, 438 U.S. 154 (1978), a search warrant is rendered invalid and evidence subject to suppression if it's probable cause is predicated on false information. This requires a showing that: 1) the affiant knowingly and intentionally, or with reckless disregard for the truth, included a false statement or material omission in the affidavit; and 2) that the false statement or material omission is necessary to the probable cause finding -Appx. A at 9.

Due to the "'telephone' game" nature of information exchange between "several law enforcement agencies" (ID at 6, 11) the lower courts ruled that petitioner's alleged comment to his mother that "any evidence against him would be found on his old phones" was not even recklessly misleading, despite D'Hondt listening to the exact wording of Petitioner's call within an hour of conveying it's contents to the Army (ID). The testimony of the Regional Jail Investigator is irrelevant because of D'Hondt's direct access and is at minimum indicative of the lack of reasonableness in D'Hondt's translation or CID's stretching of the truth.

Coincidently, the appellate court cited two other materially misrepresented or patently false statements in the affidavit in addition to the phone call issue. The statement that D'Hondt related that Petitioner "communicated via his mobile device that he 'wanted sex' with [minors]" is a provably false attempt to

convey an alleged direct quote from the Kik conversation. -Appx. A at 10. Also, the statement from Petitioner's spouse that he had the phone "on him before leaving", is a misrepresentation from her sworn statement to CID (R.31-1 at 277). CID Special Agent Jake Hardesty, the warrant's affiant, also omitted the material fact that the phone used in the offense had already been seized by the KYOAG and that the "cage phone" was not even accessible by Petitioner at the time of the offense being investigated. The appellate court's attempts to use the "midst and haste of a criminal investigation" logic from U.S. v. Ventresca, 380 U.S. 102, 108 (1965) to excuse the falsities within the affidavit should not be endorsed as not even Ventresca can excuse the misrepresentation of personal knowledge.

Finally, this warrant authorized only CID or any other "U.S. Law Enforcement Official" to seize and search the "cage phone". KYOAG as a state agency, was not granted authority by this warrant to access or possess the device.

Attorney General Warrant

The extraction report from the "cage phone" that was admitted at trial, reveals that mere hours after KYOAG took possession of the device on 24 January, but before obtaining their own warrant the next day, that the phone was powered on and unlawfully accessed by officers in violation of this Court's decision in Riley v. California, 573 U.S. 373 (2014), (Govt. Tr. Ex. 12, Pg. 3815, Item # 3679).

The appellate and district courts agreed that the affidavit for this warrant granted probable cause to search the "cage phone" on a different basis than the sting operation; namely, the claims of Petitioner's step daughter that he produced child pornography -Appx. A at 14. However the authorized search through the entirety of the phone's data was overbroad and exceeded the scope of probable cause generated by that claim. Under Riley, the need for specificity and limited scope searches is more important than ever due to the massive

amounts and types of data that cell phones hold (ID at 393-96). Any objective and reasonably trained officer should have realized that the requested search through chats, texts, emails, etc. (for evidence of online enticement of a minor), did not match the probable cause the claim provided for that device (evidence of producing child pornography) -citing U.S. v. Hodson, 543 F.3d 286, 292 (6th Cir. 2008). A search for evidence of such production would be limited to image files and not extend to other data such as Facebook, Kik, etc., that were authorized and searched per the warrant. The overbreadth of the authorization violates the Fourth Amendment's particularity requirement.

The claims of Petitioner's step daughter provide the only probable cause for the cage phone, and even then, only in the limited scope as there was no claim images were distributed or received. There is no nexus connecting Petitioner's home and this device with the charged offense or the Lexington/Frankfort scene. To hold that a search for "enticement" through any device not linked directly and specifically to the charged offense, merely because it is owned, rented, or otherwise used by Petitioner, is to utilize the exact type of broad warrant the Fourth Amendment was designed to forclose.

REASONS FOR GRANTING THE PETITION

2422(b) is Facially Invalid

A criminal statute is unconstitutionally vague if "it fails to give ordinary people fair notice of the conduct it punishes" or is "so standardless that it invites arbitrary enforcement" -Johnson. Section 2422(b) threatens long prison sentences, a 10 year mandatory minimum, for defendants who "knowingly" entice "any individual who has not attained the age of 18 years" to engage in "prostitution" or the "production of child pornography" per §2427.

Originating from the Mann Act, 2422(b) was born in 1996 to combat pimping and trafficking of minors by preventing criminals from using the mail/internet as a recruiting tool to lure minors into such exploitation. As shown by the "18 years

of age" quantifier, it is specifically commercial sex acts like the above that the statute was intended to prevent as federal law and 39 states place the age of consent for sex itself at 16 or younger (See 18 U.S.C. 2243(a); Ashcroft v. Free Speech Coalition, at 247). Outside of those two clearly defined offenses, the amalgum of broad and undefined terms in the phrase "any sexual activity for which any person can be charged with a criminal offense" obviates and creates a blanket 10 year mandatory minimum for any sex crime from any jurisdiction that involves someone under 18, excessively broadening it's scope and creating the same ambiguity issues that concerned this Court in Johnson, Davis, and Dimaya.

Over the past 20 years, especially since the creation of the Internet Crimes Against Children (ICAC) Task Force in 2008, the statute's sweep has been greatly expanded by courts and become an almost general purpose "catch all" statute when it comes to internet sex crimes; encompassing everything from large scale human trafficking to mere "sexting" under a single statute. While 2422(b)'s scienter requirement would ordinarily limit it's application, the other ambiguous language included undoes that protection due to it's almost endless field of relevant conduct. Individually the phrases "sexual activity", "any person", and "criminal offense" are all exceptionally broad and vague, but when combined the phrase allows for unfettered arbitrary enforcement. For example:

Urinating in public constitutes a misdemeanor in many states and in several will place anyone who does so on a sex offender registry. Under 2422(b)'s language, if someone's actions resulted in a minor doing so, they face a 10 year mandatory minimum.

In U.S. v. Taylor, 644 F.3d 255 (7th Cir. 2011), the court contemplated "flashing" as an underlying offense due to "sexual activity's ambiguity. Does misdemeanor indecent exposure warrant a potential life sentence?

Suppose a sex ed. teacher gives high school students a powerpoint presentation that urges "if you're going to have sex, make sure you use protection". The

teacher intends to persuade his students to have safe sex if they do so at all.. The overwhelming majority of high school students are under 18 so that sex would be a crime under 2422(b)'s language. That teacher has now violated the statute.

The jurisdictions, laws, and ages of consent in different states are rendered meaningless under this statute's language and deprives defendants of equal protection and due process. This is not just speculative hyperbole:

In U.S. v. Shill, 740 F.3d 1347 (9th Cir. 2013), that defendant was sentenced to the 10 year minimum though his conduct was a misdemeanor under Oregon law.

In U.S. v. Lopez, 4 F.4th 706 (9th Cir. 2020), the circuit adopted a literal "any person, anywhere" view saying that the laws of Guam applied to the defendant even though they would not have had jurisdiction to prosecute him where the sexual activity would have occurred.

In this case, the district court instructed the jury that a valid underlying offense was "incest"; a crime that is legally impossible as applied to Petitioner. Even if he didn't intend sexual acts himself, because of Det. D'Hondt's pre-planned conduct with her fictional "children", the Court said he could be convicted.

Under the "any person" liability, the statute "set[s] a net large enough to catch all possible offenders, and leave[s] it to the courts to step inside and say who can be rightfully detained, and who should be set at large" as long as someone somewhere could be charged, even if the defendant couldnt -U.S v. Reese, 92 U.S. 214, 221 (1876).

Section 2422(b), while noble in mission, is unfortunately written in a vague manner that places far too many liberties at risk. It subjects first offense "sexting" or "cybersex" cases in which defendants may never even speak to minors to the same statute and penalties as the Jeffrey Epstiens and Ghislaine Maxwells of the world who serially recruit, abuse, and traffic countless victims. The sheer diversity in offense conduct that has spanned conviction after conviction

since the statute's inception has shown it's capacity for vagueness and overbroad interpretation. Under our laws, when a statute is vague, no matter how well intended, the Court's only option is to treat it as a nullity and invite Congress to try again -Davis. With 2422(b) this Court should do so.

6th Cir.'s Decision Broadens 2422(b) and Violates Due Process

Respect for Due Process and the separation of powers suggests that courts may not construe a criminal statute to penalize conduct it does not clearly describe -U.S. v. Davis, 139 S.Ct. at 2333 (2019); See also U.S. v. Wiltberger, 5 Wheat 76, 95 5 L Ed 37 (1820). In Petitioner's case, the Sixth Circuit has done exactly that. The plain language of 2422(b) says nothing of "intermediaries", "parents", or third party communications. It mentions neither travel nor a defendant's intent to engage in sexual acts and it's verbage requires more than mere pandering or asking for illegal sex; yet all of this was alleged and deemed "sufficient" to convict in Petitioner's case.

The actus reus verbs persuade, induce, entice, and coerce in the statute, refer to the different means by which a defendant undertakes to get the minor to act by deploying various arguments, pressures, or incentives, and not to the degree of enthusiasm, indifference, or hostility the minor brings (or the defendant thinks he brings) to the situation -U.S. v. Waquar, 997 F.3d 401 (2nd Cir. 2021). The word "whoever" in the statute modifies the act of criminal enticement and if "rel[ying] on the expertise of the parent ... to entice the child" is sufficient to convict, then the "whoever", the defendant of the offense, need never commit actus reus for this crime. This logic by the court cannot be allowed to stand.

The court's ruling of "travel" as a "substantial step" to the 2422(b) offense, presents not so much an issue of circuit split as one of inconsistent and arbitrary rulings in these cases. Most, if not all circuits have upheld convictions in the absence of travel stating none is necessary, while at the

same time ruling travel a "substantial step" when it does occur. Simply put, the Government cannot have it both ways. To apply travel to 2422(b) exceeds it's scope and places it in overlapping conflict with other statutes that do target travel (2423(b), 2241, etc.). It would and has disparately applied 10 year mandatory minimums to intrastate travel while 2423(b)'s interstate travel carries none.

Under U.S. v. Rehaif, 139 S.Ct. 2191 (2019), a statute's scienter requirement encompasses the premise that all elements of an offense must be satisfied "knowingly" -See also U.S. v. X-Citement Video Inc., 513 U.S. 64 (1994). Section 2422(b) requires a defendant to "knowingly" entice a minor. If Petitioner never spoke to a minor or asked the intermediary to "help" him entice the minor (Appx. A at 24 citing Vinton), then how can he be aware of any "enticement" that may occur between the two? It is patently unfair to hold Petitioner "blameworthy in mind" for that intermediary's sua sponte actions -Elonis v. U.S., 135 S.Ct. 2001, 2009 (2015).

Petitioner responded to a public ad that Det. D'Hondt admitted contained no mention of minors (R.155 at 1287). At no time did he contact or ask to speak to a minor, nor did he enlist the adult to entice or prepare the minors on his behalf. Importantly, no reason, threat, incentive, or pressure as to why the "minors" should assent to sex is demonstrated in the chats by either party. Neither child pornography nor "prostitution", the only crimes that 2422(b) clearly identifies, were ever suggested or discussed.

Attempts to "put the mother's mind at ease" (Appx. A at 25) or persuade the intermediary to "grant the defendant sexual access to a child" is not sufficient to convict as the gravamen of 2422(b)'s attempt offense is "the intention to achieve the minor's assent" -U.S. v. Roman, 795 F.3d 511 (6th Cir. 2015) at 513, 519. While the Sixth Circuit attempts to equate Petitioner's "interest[]" (Appx. A at 3, 16) with "intent to entice", this Court has ruled that a person's

interests and "fantasies are his own and beyond the reach of the government" - Jacobson, 545, 551-52; Stanley v. Georgia, 394 U.S. 557, 565-66 (1969). At the very most, Petitioner's conduct "encourage[d]" or constituted "abstract advocacy" of D'Hondt's "imminent ... lawless action" -Ashcroft, Williams, Brandenburg.

To allow the "intermediary" theory -something already outside the statute's plain language- to be construed in the manner done here, would effectively permit the enforcement of 2422(b) as a strict liability offense in which an attempt is a fait accompli the moment one replies to an ad or speaks to a parent online, merely because that parent could theoretically use their "special influence" against their children. While there is a valid governmental interest in preventing the online victimization of minors, the circuit's interpretation of the statute in this case strains credulity, implicates too much uncovered or lawful conduct, and mocks the phrase "proof beyond a reasonable doubt". Mere knowledge or advocacy of another individual's crime has been set as the benchmark for principal liability here and the fundamental fairness principles of due process demand more. While judges and prosecutors may dig into the roots of an "intermediary" theory like this, an "ordinary person" or disinterested party could not rationally say that Petitioner's conduct violated this statute within it's plain language -Johnson. Petitioner's conviction should be overturned due to the Sixth Circuit's overbroad interpretation of 2422(b).

6th Cir.'s 404(b) Ruling Contravenes Precedents of This Court

The Sixth Circuit's affirmation of the "cage phone" chats as probative, downplays the spirit and intent of this Court's Old Chief ruling. The chats were located on a device that was not used or even accessible during the charged offense and occurred over 16 months before the alleged crime they were offered to prove. The district court's own words invited and articulated an improper "propensity" or "accordance with character" line of reasoning for the evidence. They were not "specific to the charged offense" and their probative value -if any

- was unbalanced by their improper theory of admission and use, posing a dangerously high potential to call for "preventative conviction" even if Petitioner was innocent momentarily -Old Chief at 180-81.

The Circuit's ruling that the legal nature of the chats was "irrelevant" and reliance on Huddleston is misplaced. While that decision did hold that a "preliminary ruling" that the acts occurred is not required, it did not disturb that the act must still be relevant to the crime charged to be admissible (ID at 689; "[T]he evidence that petitioner was selling the televisions was relevant under the Government's theory only if the jury could reasonably find that the televisions were stolen"). In Jacobson, this Court ruled that a defendant's prior legal conduct, even if similar to the charged crime, cannot be used to show an intent to engage in illegal acts (ID at 551). Here, the logic that seeking or arranging for a consensual sexual encounter with someone of a lawful age is "probative of a defendant's intent to engage in sexual activity with those even younger" (Appx. A at 17), sets a dangerous precedent based entirely on speculation that can make any legal activity seem probative of a crime. Even if Petitioner "believed" the users' stated ages (ID at 16), that belief would not be criminal, nor have any relevance of an intent, motive, or plan to violate the law over a year later.

The appeals court again erroneously appears to equate "interest" with "intent to entice" and seems to reason that Petitioner accidentally acted within the law, but his actions should be considered criminal regardless (ID, cf Jacobson at 545 (while he stated he was interested in "good looking young guys (in their late teens and early 20's) doing their thing together", Jacobson "made no reference to child pornography")). In practice however, the presentation of chats with individuals at or above the state's age of consent, knowingly or not, "merely indicates a generic inclination to act within a broad range, not all of which is criminal, [and] is of limited probative value" Jacobson at 550. That minimal

value did not outweigh the propensity arguments the evidence elicited.

Limiting Instructions Cannot Cure Improperly Admitted Evidence

The district court's broad limiting instruction cited six of the nine authorized uses for 404(b) evidence when only one, "intent" was at issue (Appx. A at 19). First, such a broad instruction fails to "limit[]" use of the evidence for a proper purpose (ID).

Even if given a limiting instruction, or when offered for a legitimate purpose, courts have ruled that the likelihood is very great that jurors will use the evidence precisely for the purpose it may not be considered and take it as raising the odds that a defendant did the latter bad act now charged -U.S. v. Johnson, 27 F.3d 1186, 1194 (6th Cir. 1994); Old Chief at 180-81.

While Petitioner recognizes that there is normally a presumption that juries follow the court's instructions (Richardson v. Marsh, 481 U.S. 200, 206 (1987)), one can hardly assume the jury did not engage in propensity logic when the district court itself fell prey to such rationale and the Government urged the same line of reasoning no less than twice during closing arguments (R.116 at 1648, 1674). The Government repeated references to the chats as "the most powerful evidence" in the case (R.116 at 1650), further reinforced their urging of the jury to convict Petitioner because of these uncharged and unverified messages rather than the content of his communications with D'Hondt.

No limiting instruction or amount of redaction to evidence that was improperly admitted to begin with can cure the resulting prejudice from that evidence's introduction. Even a redacted copy of the evidence carries undue prejudice when the jury should properly have seen none of it.

The Lower Court's Rulings/Logic Contravenes Rule 404(b)

Rule 404(b) is not Rule 414, 413, or 415. Nor are those rules applicable in Petitioner's case. Under the plain language of those rules, §2422(b) is not a "child molestation" crime, a "sexual assault", nor do the chats contain mention

of a "minor" (citing Rule 413(d), 414(d)). Propensity evidence, especially when showing lawful conduct, had no place in Petitioner's trial.

This issue is not merely one of abuse of discretion in a 403 balancing analysis, but rather if the efficacy of Rule 404(b) could be negated simply by courts labeling character and propensity arguments as "intent evidence" in order to subvert the rule. Petitioner submits that when the articulated theory of admissibility as to how the evidence shows "intent" is in itself a propensity or character argument, it is inadmissible and should be excluded under Rule 403. This is especially so when it is the district court itself that emphasized the improper reasoning immediately before admitting the challenged evidence.

If this Court were to allow lower courts to circumvent the restrictions of Rule 404(b) in the manner done here, the limitations and purpose of 404(b) and 403 would effectively be eviscerated; emboldening future violations and denying Petitioner and countless future defendants their rights to face only properly admitted and relevant evidence at a fair trial.

Res Gestae is Ambiguous, Antiquated, and Prejudicial

Due to the existence of the Federal Rules of Evidence, the doctrine of res gestae is superfluous, "antiquated", and "should be left to oblivion" -Blacks Law Dictionary (11th Ed.) 2019 citing John H. Wigmore A Student's Textbook of the Law of Evidence 279, (1935). If the first question in determining the admissibility of evidence is relevancy (Huddleston at 687), then the Sixth Circuit has failed to ask the proper question.

The "Pixel phone" chats never mentioned D'Hondt, the fictional "minors", or the meeting in Frankfort. They exist as wholly separate and severable communications that are not "necessary to complete the story" of the charged offense" -Appx. A at 30. To the extent that they mention the "winter weather and severe road conditions" (ID at 31), such information was included in the D'Hondt chat and the admission of almost 30 transcript pages worth of unredacted explicit

material was not necessary for that needlessly cumulative factoid to place the offense into context (See R.156 at 2328-56). The chats show nothing of an intent to entice minors or even commit a crime, as one chat even shows Petitioner rejecting a prostitute's solicitation.

In invoking this doctrine, the lower court has dismissed the modern rules of evidence including Rule 403's prejudice balancing analysis as well as this Court's Lawrence v. Texas holding, and allowed the Government to assassinate Petitioner's character by presenting tasteless but lawful communications to "prove" criminal intent. The court's description of that lawfulness as "speculative and immaterial" (Appx. A at 21), is exactly what undercuts their relevancy. First, many of these chats include mentions of having jobs, being married, or owning a car. The preponderance of facts at minimum shows the individuals are of a lawful age or portrayed themselves to be. Second, as there is no mention of minors, these chats merely show "a generic inclination to act within a broad range" of sexual conduct and was innocent behavior that gave no indication of a criminal mens rea -Jacobson at 550; Lawrence v. Texas, supra.

The Sixth Circuit's reliance on res gestae for this evidence "pretends so much but means so little" -Louisell & Mueller, Federal Evidence, Vol. 2, pg. 124. While perhaps demonstrating Petitioner's intent to "find[] sexual partners" or "engag[e]" in sexual acts" (Appx. A at 21), it requires a leap-of-faith to conclude that he was "specifically seeking minors" (Appx. C at 7), in the face of such voluminous evidence proving otherwise. The facts more reasonably show that Petitioner "inadvertently" encountered minors while seeking consenting adult partners in a public forum -See U.S. v. Bailey, 228 F.3d 637, 639 (6th Cir. 2000).

Res Gestae has been used as an excuse in this case to allow the Government to infer criminality from nicknames (R. 156 at 2335-40, 2353-54; R.116 at 1639), adult sex, and even sexual orientation (R. 156 at 2349, 2394). It should be clear from this case that if res gestae has the power to make lawful acts look

criminal, then the Rules of evidence such as 403 should nullify that unrestricted power and exclude unduly prejudicial evidence and arguments such as the "Pixel phone" chats from ever seeing a jury. The district and appellate courts failed to do so and this Court should exercise it's supervisory authority to remand Petitioner's case, with the chats excluded, to send a strong but necessary message to lower courts that the Rules and duties they encompass should be taken seriously, and not just paved over by using the obsolete "res gestae" doctrine.

6th Cir.'s Decision Erodes the 4th Amendment

·Army Warrant

The Appellate Court's affirmation of the Army warrant effectively rules that personal knowledge of the truth may be discarded for third party hearsay and that prudence doesn't matter. In Franks the search warrant affiants misrepresented that they had personal knowledge of the information that granted probable cause (ID at 157-58). Here, and perhaps more troubling, officers did have personal knowledge of facts that they intentionally or recklessly misrepresented in a way that manufactured probable cause because the truth didn't provide it.

Detective D'Hondt, the officer who communicated with and arrested Petitioner, informed Army CID that Petitioner allegedly "communicated via his mobile device that he 'wanted sex' with [minors]" -Appx. A at 10. The use of quotation marks around the passage "wanted sex" indicates to the reader that Petitioner communicated those words "verbatim" -Masson v. New Yorker Magazine Inc., 501 U.S. 496, 511 (1991). That phrase, nor the word "sex" appears even once in any communication between Petitioner and D'Hondt. This blatant lie that D'Hondt imparted to Agent Hardesty, the affiant, created the entire basis of the crime to be investigated and determined the specific evidence to be sought. Her own personal knowledge of the chats makes any belief in this quote unbelievable and intentionally false -Franks at 165.

The contemporaneous access of Petitioner's phone calls as they occurred, shows that D'Hondt possessed personal knowledge of their contents rather than just what was imparted by the Regional Jail Investigator. She even admitted to listening to the calls during the suppression hearing. One need not be a lawyer to accurately recount information as they heard it, and even "in the midst and haste of a criminal investigation" a "reasonable and prudent" person would review readily available facts before swearing to an affidavit under oath -Appx. A at 11-12 citing Ventresca; Illinois v. Gates. Instead of conveying her personal knowledge of the calls, she paraphrased the Jail Investigator's vague conclusion before presenting her version to CID and in turn, Agent Hardesty paraphrased it himself. Contrary to the lower court's conclusions, the exact wording of Petitioner's statements was not "lost" (Appx. A at 6). The call was recorded and available for review at any time; D'Hondt and Hardesty simply decided to ignore it and draw reckless conclusions instead. During the call in question, Petitioner clearly expressed concern over the unregistered weapons that CID had discovered (Appx. E at 4-5). While the courts attempted to cherry-pick the almost 20 minute call, the only "concern" Petitioner expressed about a phone was that his previous phone was broken and that he could not recover baby photos of his daughter from it. He made no statement suggesting any illegal content was located on the device and how concern over getting arrested for "guns" turned into "SGT Zulawski told his mother that any evidence against him would be found on his old cellular phones" is too far a stretch to be acceptable. The thought that an officer could neglect their own personal knowledge in lieu of a third party paraphrase that creates probable cause when the actual quote did not, flies in the face of Franks and the Fourth Amendment and is the epitome of reckless.

Agent Hardesty's mis/malfeasance did not cease at the phone calls however. Petitioner's spouse, in a sworn statement to CID, stated that she had "seen [the

cage phone] out" in the marital bedroom "a week or two" before Petitioner's arrest (R.31-1 at 277). CID took this statement almost immediately before applying for their warrant, yet somehow this became Petitioner had the phone "on him before leaving" for training (Appx. A at 10). This intentional or reckless characterization was clearly intended to increase the phone's importance, making it seem like the device was used in the offense, and create a nexus between it and the crime being investigated that did otherwise not exist. This statement was not even a result of the "telephone" game with D'Hondt, but rather a product of Hardesty's own stretching of the truth.

As the phone used in the offense being investigated was seized during Petitioner's arrest (Appx. A at 3), the circumstances of which D'Hondt presented to Hardesty the day before he sought the warrant (R.6--3 at 575), Hardesty was aware of this fact and either intentionally omitted it from the affidavit, or was reckless in presenting the facts surrounding the offense to the magistrate. Given the dates of the alleged offense -which were also omitted from the affidavit- the cage phone was not even accessible during Petitioner's chat with D'Hondt as he had already departed from for training, leaving this phone behind, before D'Hondt had even posted her ad.

No neutral and detached magistrate if presented with the above information, could reasonably conclude that evidence of an offense allegedly committed on a device that was already seized, would be found on a separate device over 200 miles away that Petitioner had not accessed since before the sting even began. This was a case where "haste" outweighed "prudence" and the failure or refusal of law enforcement officers to exercise even a minimal amount of diligence resulted in a magistrate judge being presented with a "totality of the circumstances" based on lies and misimformation -Franks, Ventresca, Illinois v. Gates.

Paraphrasing seems to be a constant theme in this case and this Court should

not endorse it. If it did,k there would be nothing to stop law enforcement from continuing to modify the statements of defendants until they finally achieve a version that grants probable cause and Fourth Amendment protections would be eviscerated by overzealous law enforment officers who do so. If a single paraphrase of a statement was the warrant's only flaw, then it would be reasonable to say that officers may have acted in "good faith" -Leon. However, the sheer volume of errors shows that good faith was nowhere to be found and securing the warrant at any cost was the more realistic motivation.

Finally, it is commonly understood that the phrase "U.S. Law Enforcement Official" refers to members of the federal law enforcement community and those employed by the United States Government. This warrant, even if valid, never gave authority to the Kentucky Attorney General's Office or any agent thereof, to seize or search the "cage phone" or any other device secured by CID. This fact did nothing to deter the KYOAG from taking custody of the phone and even powering it on and accessing the device shortly after taking custody of it (R.60-3 at 585-86), but before obtaining a warrant that authorized them to do so -Riley. This pre-warrant access is a blatant Fourth Amendment violation and standing alone should render the device unusable as evidence. The KYOAG clearly exceeded their authority and this Court should make it clear that while affidavits need not be drafted with technical perfection, a judge's authorization cannot be exceeded.

·Attorney General Warrant

Under the Fourth Amendment's particularity requirement, a nexus must exist between the evidence sought and the place to be searched for probable cause to exist -Appx. A at 13-14. The sting operation that resulted in Petitioner's arrest, as previously explained, had nothing to do with the cage phone. The sole allegation of criminal conduct that was tied to that particular device was the statements of Petitioner's step daughter.

This Court's Riley decision respected the vast amounts of data that cell phones hold and articulated the privacy concerns inherent in law enforcement's search of them. So if the only claim of criminal activity on a cell phone is producing unlawful photos, why would a court rationally authorize a full analysis of all data the device holds? The compartmentalization of different types of data files in different locations in the phone shares the same specificity concerns as searching one's home versus their business versus their car etc.. For example:

In U.S. v. Grimmett, 439 F.3d 1263 (10th Cir. 2006), while searching for child pornography the agent "specifically searched for files with images, with file extensions such as 'jpg', 'mpg', 'bmp', and 'gif'" so the court ruled that the performed search was specific to the probable cause (ID at 1270).

In Hodson, the Sixth Circuit ordered a warrant invalid and the evidence suppressed because the search requested did not match the probable cause described (ID at 292).

If the probable cause that supported the Frankfort warrant was "producing child pornography" (Appx. A at 14), the exploratory rummaging through Petitioner's Kik chats and text messages that led to the discovery of chats admitted at trial, showed no respect for the Riley decision or the Fourth Amendment's particularity requirement.

Although in cases of this nature there is always a temptation to let the end justify the means, the guarantees of the Fourth Amendment do not expire merely because an individual is suspected of a crime; indeed it is in such a situation that it's protections become most meaningful. The Circuit's affirmation of this overbroad warrant and the related excusing of the falsities in the Army warrant, should not be allowed to stand. The occasional benefits that compliance with the Fourth Amendment confers upon those accused of serious crimes must be recognized as a necessary consequence of guaranteeing constitutional protections

for all members of our society -citing U.S. v. Ivy, 165 F.3d 397, 404 (6th Cir. 1997).

Importance of This Case

Since it's inception, Petitioner's case has been an example of the problems our justice system faces today. Accused of a sex offense, the always "hot button" issue and one of the most rapidly growing crimes in the federal system, he was convicted in the minds of law enforcement and the court of public opinion since the night of his arrest.

The fundamental unfairness such defendants experience in the fast lane to conviction in over 95 percent of these cases is staggering. Subjected to overbroad and vague statutes like 2422(b), courts contimue to expand the crime's scope in case after case whenever a defendant like Petitioner states their conduct is beyond the scope of the Court's previous ruling. Section 2422(b) has been expanded to the point that the charge is essentially indefensible.

Rule 404(b) and "res gestae" was used to drown Petitioner in unsavory sexually explicit material despite the fact that it was legal. Of the six witnesses presented at trial, only one, Detective D'Hondt herself, had anything to do with the crime actually charged, the online Kik chats.

The search warrant issues outlined here show that truth can be ignored, paraphrases be legally sufficient for representing someone's words, and the shock value of an allegation can be used to justify an unrestrained search through the entirety of someone's life.

The "tenderness of the law for the rights of individuals" (Wiltberger) has calloused over in the Government's quest for convictions. Lower courts, overzealous law enforcement, and ambitious prosecutors, have disregarded the wisdom of this Court in almost every way. Unless a strong message is sent back that the rights of individuals, the U.S. Constitution, and the precedents of this Court are to be honored. Petitioner will become just another stepping stone

that allows for an even broader application of §2422(b) and a source of encouragement for law enforcement to give less than due diligence in their work. The deterrent factor that reversing Petitioner's conviction and/or ordering the suppression of the questioned evidence will certainly prevent future displays of such blatant and reckless actions by those sworn to uphold the truth -Dimaya .

Reversing Petitioner's conviction will not result in the legalization of child abuse or allow criminals to go unpunished. There are other offenses that could be applied in almost every case. It will result in Congress being held accountable for the language of the statutes they draft. It will remind them of the danger of ambiguous "catch all" laws -Reese. Nothing prevents them from writing a new law to fill any inadequacies that 2422(b) may leave behind. They amended the CPPA after Reno v. American Civil Liberties Union, 521 U.S. 844 (1997). They moved on after the Johnson decision as well. They can do so here as well. But as things are now, legally innocent individuals like Petitioner are being incarcerated en masse by a statute that effectively has a residuary clause that encompasses every sex crime everywhere under this single offense. -Johnson.

The Government in this case has abused 2422(b), the Fourth Amendment, and the Rules of Evidence, in a show to continue the facade of holding people accountable for their actions while they escape their own justice. However, it is time that the Government be held accountable as well.

CONCLUSION

The Petition for a Writ of Certiorari respectfully should be granted.

Date: 13 July 2022

Respectfully Submitted,

Daniel Zulawski

Daniel J. Zulawski, Pro Se
Reg No. 22009-032
FMC Devens, Ayer, MA

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Daniel Zulawski
_____ — PETITIONER
(Your Name)

VS.

United States of America
_____ — RESPONDENT(S)

PROOF OF SERVICE

I, Daniel James Zulawski, do swear or declare that on this date, July 13, 2022, 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 5616, Department of Justice, 950 Pennsylvania Ave. N.W. Washington, DC 20530-0001

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

Executed on 13 July 2022, 20__

Daniel Zulawski
(Signature)