

No. - _____

IN THE SUPREME COURT OF THE UNITED STATES

FELIPE MATA-
BENAVIDEZ,

Petitioner

v.

UNITED STATES OF
AMERICA,

Respondent

Petition for Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

KEVIN J. PAGE
Counsel of Record
FEDERAL PUBLIC
DEFENDER'S OFFICE
NORTHERN DISTRICT OF
TEXAS
525 GRIFFIN STREET, SUITE 629
DALLAS, TEXAS 75202
(214) 767-2746

QUESTIONS PRESENTED

- I. Whether 18 U.S.C. §2251 authorizes conviction upon proof that materials used to produce child pornography once crossed state lines at an unspecified prior occasion, when there is no evidence that the production or possession of child pornography itself caused such movement?
- II. Whether Article I, Section 8 of the United States Constitution permits Congress to impose criminal sanctions for all conduct undertaken using materials that have moved in interstate commerce, however remotely, whether or not the criminal conduct caused such movement?

PARTIES

Felipe Mata-Benavidez is the petitioner; he was the defendant-appellant below. The United States of America is the respondent; it was the plaintiff-appellee below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Felipe Mata-Benavidez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Fifth Circuit is captioned as *United States v. Mata-Benavidez*, 2022 WL 1262205 (5th Cir. April 28, 2022)(unpublished), and is provided in the Appendix to the Petition. [Appx. A]. A timely petition for rehearing was denied in a summary order on May 24, 2022, which is also attached to the Petition as an Appendix. [Appx. B]. The district court's judgment is also attached in the Appendix. [Appx. C].

JURISDICTIONAL STATEMENT

The instant Petition is filed within 90 days of an order rejecting a timely petition for rehearing, which order was entered on May 24, 2022. *See* SUP. CT. R. 13.1. This Court's jurisdiction to grant *certiorari* is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, RULES, AND STATUTES INVOLVED

Article I, Section 8 of the U.S. Constitution provides in part:

The Congress shall have power... [t]o regulate commerce with foreign nations, and among the several states, and with the Indian [sic] tribes

Title 18, Section 2251(a) of the United States Code provides:

Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or

transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means

(b) or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

STATEMENT

A. Facts and Trial Proceedings

The federal government charged Mr. Mata-Benavides with one count of violating 18 U.S.C.

§2251(a), a statute that forbids the production of child pornography. The indictment pertained to a picture on his phone. As regards interstate commerce, the indictment alleged that parts of the phone had moved in international commerce. At trial, the government offered testimony that the defendant's phone came from China. It offered no other evidence of an interstate nexus to the case. The jury convicted and the court imposed 360 months imprisonment.

B. Appellate Proceedings

On appeal, Petitioner challenged his conviction on two grounds; as relevant here, he contended that the Commerce Clause of Article I, Section 8 did not authorize Congress to criminalize conduct with so tangential a relationship to interstate commerce. The court rejected the claim as foreclosed by circuit precedent. *See* [Appx. A](citing *United States v. Dickson*, 632 F.3d 186, 192 (5th Cir. 2011)).

REASONS FOR GRANTING THE WRIT

This Court should decide whether 18 U.S.C. §2251(a) and the Commerce Clause authorize criminal penalties any time a defendant uses an object whose parts once crossed state lines to create illegal images.

Petitioner's indictment alleged, and the government proved, that parts of the phone used to produce the prosecutable material had moved in international commerce. It did not allege or prove that the offense itself caused the movement of these parts, nor that the movement of the phones was recent, nor any other fact establishing that the offense involved the buying, selling, or movement of any commodity. Petitioner contended below that if 18 U.S.C. §2251 reached this material, it did not comport with the constitution.

This Court should grant certiorari to consider whether 2251(a) comports with the constitution insofar as it is premised on the commission of a crime with an object that once moved in interstate commerce. "In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 533 (2012). Powers outside those explicitly enumerated by the Constitution are denied to the National Government. *See Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 534 ("The Constitution's express conferral of some powers makes clear that it does not grant others.") There is no general federal police power. *See United States v. Morrison*, 529 U.S. 598, 618-619 (2000). Every exercise of Congressional power must be justified by reference to a particular grant of authority. *See Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 535 ("The Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions."). A limited central government promotes accountability and "protects the liberty of the individual from arbitrary power." *Bond v. United States*, 572 U.S. 844, 863 (2011).

The Constitution grants Congress a power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” Art. I, § 8, cl. 3. But this power “must be read carefully to avoid creating a general federal authority akin to the police power.” *Nat’l Fed’n of Indep. Bus.*, 567 U.S. at 536. But rather than read the commerce power carefully to cabin federal power, the

court below held that the federal government could initiate criminal charges any time some piece of an object used to commit a garden variety state crime had once moved in interstate commerce. If every *portion of an object* that crosses state lines authorizes the federal government to initiate criminal charges, there is no effective limit to federal power in the criminal sphere. As applied to the proof in this case, the statute's constitutionality lies in grave doubt, and should be addressed by grant of certiorari.

Alternatively, this Court should determine whether Section 2251(a) may be construed to reach conduct with so tenuous a relationship to interstate commerce. Section 2251 of Title 18 authorizes conviction when the defendant produces a sexually explicit visual depiction of a minor, "if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer " 18 U.S.C. §2251(a).¹ To be sure, the statute may be read to include conduct that has little or nothing to do with the movement of commodities in interstate commerce, such as the production of child pornography with a telephone that crossed state lines years ago for entirely innocent purposes. Under this view of the statutes, Petitioner's conduct represented a federal offense. But *Bond v. United States*, U.S. , 134 S. Ct. 2077 (2014), suggests that this is not the proper reading.

Bond was convicted of violating 18 U.S.C. §229, a statute that criminalized the knowing possession or use of "any chemical weapon." *Bond*, 134 S.Ct. at 2085-2086; 18 U.S.C. §229(a). She placed toxic chemicals – an arsenic compound and potassium dichromate – on the doorknob of a romantic rival. *See id.* This Court reversed her conviction, holding that any construction of the statute capable of reaching such

conduct would compromise the chief role of states and localities in the suppression of crime. *See id.* at 2093. It instead construed the statute to reach only the kinds of weapons and conduct associated with warfare. *See id.* at 2090-2091.

Notably, §229 defined the critical term “chemical weapon” broadly as “any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.” 18 U.S.C. §229F(8)(A). Further, it criminalized the use or possession of “any” such weapon, not of a named subset. 18 U.S.C. §229(a). This Court nonetheless applied a more limited construction of the statute, reasoning that statutes should not be read in a way that sweeps in purely local activity:

The Government’s reading of section 229 would “alter sensitive federal-state relationships,” convert an astonishing amount of “traditionally local criminal conduct” into “a matter for federal enforcement,” and “involve a substantial extension of federal police resources.” [*United States v. Bass*, 404 U.S. [336] 349-350, 92 S. Ct. 515, 30 L. Ed. 2d 488 [(1971)]]. It would transform the statute from one whose core concerns are acts of war, assassination, and terrorism into a massive federal anti-poisoning regime that reaches the simplest of assaults. As the Government reads section 229, “hardly” a poisoning “in the land would fall outside the federal statute’s domain.” *Jones [v. United States]*, 529 U.S. [848,] 857, 120 S. Ct. 1904, 146 L. Ed. 2d 902 [(2000)]. Of course Bond’s conduct is serious and unacceptable—and against the laws of Pennsylvania. But the background principle that Congress does not normally intrude upon the police power of the States is critically important. In light of that principle, we are reluctant to conclude that Congress meant to punish Bond’s crime with a federal prosecution for a chemical weapons attack.
Bond, 134 S. Ct. at 2091-2092.

¹Other portions of the same statutory Subsection authorize conviction only when the defendant’s offense conduct is more closely related to interstate commerce, as

when the depiction itself travels in interstate commerce, or in the channels of such commerce. Those parts of the statute are not at issue here.

As in *Bond*, it is possible to read §2251(a) to reach the conduct admitted here: use of an object that once moved across state lines to commit a criminal act, without proof that the crime caused the instrumentality to move across state lines, nor even proof that the instrumentality moved across state lines in the recent past. But to do so would intrude deeply on the traditional state responsibility for crime control. Such a reading would assert the federal government's power to criminalize virtually any conduct anywhere in the country, with little or no relationship to commerce, or to the interstate movement of commodities.

It is plain that Congress intended the "interstate movement" requirement to bind §2251 to federal interests in interstate commerce. This prong of the statute should therefore be read in a way that accomplishes this purpose. The better reading of the phrase "produced ... using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer" therefore requires a meaningful connection to interstate commerce. Such a reading would require either: 1) proof that the defendant's offense caused the materials to move in interstate commerce, or, at least, 2) proof that the relevant materials moved in interstate commerce at a time reasonably near the offense.

The court below rejected these claims, however, because it found them foreclosed by its own precedent. *See* [Appx. A]. The broad reading of the 2251 afforded by the court below, and its remarkable intrusion on areas of state criminal law, can therefore only be remedied by this Court. This Court should grant certiorari in an appropriate case, and hold the instant Petition if this case is not the appropriate vehicle. *See Lawrence on behalf of Lawrence v. Chater*, 516 U.S. 163, 167-168 (1996).

CONCLUSION

FOR THESE REASONS, Petitioner asks that this Honorable Court issue an order granting the writ of *certiorari* to review the decision below.

Respectfully submitted this 22d day of August, 2022.

/s/ Kevin Joel Page

Kevin J. Page

Counsel of Record

FEDERAL PUBLIC

DEFENDER'S OFFICE

NORTHERN DISTRICT OF

TEXAS

525 GRIFFIN STREET, SUITE 629

DALLAS, TEXAS 75202

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