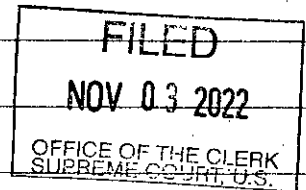


22-6274

ORIGINAL

Docket #



Supreme Court of the United States

John Killingbeck

v.

United States of America

On Petition for a Writ of Certiorari in the
United States Court of Appeals for the
Second Circuit

Petition for a Writ of Certiorari

John Killingbeck, pro se

Inmate # 18895-052

Unit H-A

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Questions

I have been convicted of downloading "illegal content" from the newsgroups, a.k.a Usenet, service of the Internet. The newsgroups is an Interactive Computer Service (ICS) of the Internet. Starting with my Title 28 USC § 2255/Habeas Corpus petition I have asserted, and the Government has filed no objection to, the following, or any response at all. 1. I am actually innocent of any wrongdoing.

2. statutory laws and a Supreme Court ruling specific to ICSs guarantee blanket immunity to all providers and users of ICSs who do not create or modify content. 3. the Government has terminated my case as a wrongful prosecution and ceased all related activity. 4. time and procedural bars are inoperative under the actual innocence exception. The courts have ignored, rejected or defied all of the above over repeated motions; raising their own objections with no opportunity for me to reply. Based on this scenario:

1. - What is the correct way for the Government to correct, post conviction, its error and enforce a blanket immunity law?

2. - Are the Government and courts acting within their constitutional jurisdiction?

Directly Related Case History

Original Criminal Court Case: US District Court for the Northern District of New York, 5:12-CR-63, United States v. John Killingbeck, decided 12/3/2013

Direct Appeal: US Court of Appeals for the Second Circuit, 14-1898-CR, United States v. John Killingbeck, Published: 616 Fed Appx 14, 2015 US App. Lexis 17428, decided 10/5/2015

Title 28 USC § 2255/Habeas Corpus Petition: 5:18-CV-120, US District Court for the Northern District of New York, ~~Unit~~^{of} John Killingbeck v. United States, decided May 3, 2018

COA Appeal: US Court of Appeals for the Second Circuit, 18-1611, John Killingbeck v. United States, decided 10/24/2018

Motion for Second or Consecutive Habeas Corpus Petition, US Court of Appeals for the Second Circuit, 20-3388, John Killingbeck v. United States, decided 10/2/2020

Motion for Second or Consecutive Habeas Corpus Petition

US Court of Appeals for the Second Circuit, 21-994,

John Killingbeck v. United States, decided 5/17/2021

Motion for Second or Successive Habeas Corpus Petition

US Court of Appeals for the Second Circuit, 21-2687,

John Killingbeck v. United States, decided 10/23/2021

Motion for Government Enforcement of Laws and Federal

Court Jurisdiction Determination, US District Court

for the Northern District of New York, 5:12-CR-63,

United States v. John Killingbeck.

Appeal of District Court Ruling above, US Court of

Appeals for the Second Circuit, 22-1257, United

States v. John Killingbeck, decided 9/21/2022

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US Court of Appeals 18-1611

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Bartnicki v. Vopper, 149 L. Ed. 2d 787, 121 S. Ct. 1753 pp. 19

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Buckley v. American Constitutional Law Found. 525 US 182, 200,
142 L. Ed. 2d 599, 119 S. Ct. 636 pg. 27

Central Soya Co. v. Consolidated Rail Corp. 614 F.2d 684
(7th Cir., 1980), 1980 US App Lexis 19377 pg. 23

Columbia Ins. Co. v. Sees candy.com, 185 F.R.D. 573, 578
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Zeran v. America Online, Inc. (4th Cir. 1997), 129 F.3d 327, US

App Lexis 31791, pg 20

Citations, see Rule 14(d)(d), all rulings are in Appendix A

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Title 28 USC § 1254 (1): Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. pg. 14

Statutes in Appendix B

Title 17 USC § 512 (a) pp. 16, 28

Title 18 USC § 2252A (a) pp. 15, 20

Title 28 USC § 2241 pg. 24

Title 28 USC § 2255 pp. 1, 17, 18, 25, 31

Title 47 USC § 230 pp. 15, 16, 19, 20, 21, 23, 29, 32, 33

Table of Constitutional Issues

Article I, § 9, Clause 2. Habeas Corpus. The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it. pp. 22, 24, 25, 27, 30, 31, 32

Article II, § 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures

as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed; and shall Commission all Officers of the United States.

pp 22, 24, 25, 26, 27, 32

Article III, §2, Clause 1. Subjects of Jurisdiction. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Counsels; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State or Citizens thereof, and foreign States, Citizens or Subjects. pp 22, 23, 24, 26, 27, 31, 32

Amendment 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. pp 17, 18, 19, 21, 23, 27, 28, 29, 31, 32, 33

Table of Federal Court Rules

Federal Rules of Civil Procedure, Rule 8(b)(6) General Rules of Pleadings; Defenses; Admissions and Denials; Effect of Failing to Deny. An allegation - other than one relating to the amount of damages - is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided. pp 22, 25

Federal Rules of Criminal Procedure; Rule 48(a); Dismissal; By Government. The government may, with leave of the court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent. pp 22, 25, 26

Rules Governing Section 2255 Proceedings, Rule 5 (b) and (d);

The Answer and the Reply; (b) Contents. The answer must address

the allegations in the motion. In addition, it must state whether the moving party has used any other federal remedies, including any prior post-conviction motions under these rules or any previous rules, and whether the moving party received an evidentiary hearing.

(d) Reply. The moving party may file a reply to the respondent's answer or other pleading. The judge must set the time to file unless the time is already set by local rule. pp 22, 25

Supreme Court Jurisdiction

The case for which this Petition for a Writ of Certiorari is being requested is United States Court of Appeals for the Second Circuit case 22-1257, United States v. John Killingbeck, decided 9/21/2022.

Supreme Court jurisdiction is conferred by Title 28 USC § 1254 (1), Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

Statement of Case

All laws and court citations in this case from the court of first instance, the United States District Court for the Northern District of New York, to this petition are Federal. See Rules of the Supreme Court, Rule 14(g)(ii).

I have been convicted of violating Title 18 USC §§ 2252A (a)(2)(A) and 2252A (a)(5)(B) in re receiving and possessing child pornography. No other illegal conduct is alleged. The only source of evidentiary content, admitted by me and confirmed by the forensic examiner, is the newsgroups, a.k.a. "Usenet," service of the Internet. This is one of the Internet's Interactive Computer Services, (ICS). Web pages, social media, file sharing, mail exploders, and chat rooms are other ICSs. Private communications, such as emails and commercial order forms, are not ICSs.

ICSs, are covered by their own law, Title 47 USC § 230 (c). The overall public Internet is covered by 47 USC § 230 (b)(2). There is no indication within 18 USC § 2252A that these laws or the Internet exist. 18 USC § 2252A mentions "by computer" but nothing more. Therein lies the problem.

At its most basic, this case is about the legal status of the newsgroups and its content. 47 USC § 230 (b)(2) states "It is the policy of the United States to preserve the vibrant and competitive free market that presently

exists for the Internet and other interactive computer services, unfettered by federal or state regulation."

47 USC § 230 (c) (1) states "Treatment of publisher or speaker. No provider or user of an interactive computer service shall be treated as the speaker or publisher of any information provided by an information content provider."

In addition the newsgroups is a "safe harbor" under the Digital Millenium Copyright Act (DMCA). Title 17 USC § 512 (a) requires all public newsgroup providers to receive, store, and transmit, at user request, all newsgroup postings from all of the thousands of newsgroup servers worldwide; with no selection of content or user and no stored record of user activity. See Appendix B for details. I have been convicted of receiving and possessing what the newsgroups providers are legally required to receive, possess and send to me with no record of who I am or what was sent.

A search by me, see Appendix C, showed that of more than 600 commented appellate court rulings on IC S/ child pornography cases, none had any mention of 47 USC § 230, this court's rulings in Reno/Ferber/Ashcroft (see below) and none of them originated from the NCMEC CyberTipline. The NCMEC (National Center for Missing and Exploited Children) is fully aware of the newsgroups content yet does not report it as child pornography, which

the law requires.

My original Title 28 USC § 2255 / Habeas Corpus petition includes the following Supreme Court rulings. Once the Government saw these rulings in grounds one and two it ceased all objections to my release on actual innocence grounds. The district court's ruling on the newsgroups upholding my conviction originated with the court, not the Government, and was a lower court ruling. The rulings below were not mentioned by the district court.

Reno v. ACLU, 521 US 844, 138 L.Ed.2d 874, 117 S.Ct. 2329 states "Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer. As the District Court found, the content of the Internet is as diverse as human thought. We agree with its conclusion that our cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to the medium."

Lovell v. Griffin, 82 L.Ed 949, 303 US 444-453 defines the free press as "The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. What we have had recent occasion to say with respect to the vital importance of protection this essential liberty from every sort of

infringement need not be repeated.... Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without circulation, the publication would be of little value."

ICSSs are, by this court's own statements, the free press. The First Amendment, United States Constitution states "Congress shall make no law abridging the freedom of speech, or of the press." 18 USC § 2252A is constitutional as written, but it cannot be applied to the free press. Thus, neither the Government nor the courts have, or ever had, any jurisdiction over the ICSSs. Even Congress would need to repeal the First Amendment to have jurisdiction over the ICSSs.

New York v. Ferber, 458 US 747, 73 L. Ed. 2d 1113, 102 S. Ct. 3348 defines child pornography as "(1) child pornography, like obscenity, is unprotected by the First Amendment if it involves scienter and a visual depiction of sexual conduct by children without serious literary, artistic, political, or scientific value.... (3) the statute was not overbroad as forbidding the distribution of materials with serious literary, scientific, or educational value, or materials not threatening the harms sought to be combated by the state."

Ashcroft v. Free Speech Coalition, 535 US 234, 152 L. Ed. 2d 403, 122 S. Ct. 1389 expands on Ferber as "That case upheld a prohibition on the distribution and sale of child pornography, as well as its production, because these acts

were "intrinsically related" to the sexual abuse of children in two ways.... Second, because the traffic in child pornography was an economic motive for its production, the state had an interest in closing the distribution network.... Under either rationale, the speech had what the court in effect held was a proximate link to the crime from which it came." Also "It is well established that speech may not be prohibited because it concerns subjects offending our sensibilities."

Finally, in re the free press "Even where there is an underlying crime, however, the Court has not allowed the suppression of speech in all cases. E.g. *Bartnicki*, supra, at 529, 149 L.Ed. 2d 787, 121 S.Ct. 1753 (market deterrence would not justify law prohibiting a radio commentator from distributing speech that was unlawfully intercepted." Ashcroft provides many more useful citations not included here for brevity.

The following are 47 USC § 230 cases. I have found no case in which § 230 immunity has been denied to ICS providers or users who do not create or modify content. *American Freedom Defense Initiative v. Loretta Lynch*, AG, 217 F.Supp.3d 100, 2016 US Dist. Lexis 155407, DDC states "Indeed, § 230 affords the Defendant no role-enforcement or otherwise-of any kind, nor does it delegate any enforcement role to any federal agency or federal official." Underlining in ruling.

Directory Assistants v. Supermedia, LLC, EDVa, 884

F.Supp.2d 446; 2012 US Dist. Lexis 114468 states "A person who creates or develops unlawful content may be held liable pursuant to Communications Decency Act, 47 USC §230, but users of interactive computer service who find and forward via email that content posted online in interactive computer service by others is immune from liability."

Zeran v. America Online, Inc. (4th Cir. 1997), 129 F.3d 327, US App Lexis 31791 states "By its plain language, §230 creates a federal immunity to any cause of action that would make service providers liable for information originating with third-party users of this service." Note: §230 grants users equal protection.

Doe v. Mark Bates & Yahoo!, Inc., EDTX, 2006 US Dist. Lexis 43348 states "Finally, the Magistrate Judge found that the Plaintiff's federal claim pursuant to 18 USC §2252A did not fit any exception to §230." Note §2252A is my charged offense.

M.A. v. Village Voice Media Holdings, LLC (EDMO, 2011), 809 F.Supp.2d 1041, 2011 US Dist. Lexis 90588 states "Because the court could not create a for-profit exception to 47 USC §230 broad grant of immunity, it had to find a website operator immune from suit based on an underage victim's allegations about how the operator structured its website in order to increase its profits." Note this is the Backpage.com publisher below and involves paid advertising for child prostitution.

Doe v. Backpage.com, LLC, 817 F.3d 12 (1st Cir. 2016),
US App Lexis 4671 states "Provider of online advertising
was protected under 47 USC § 230(c) from liability to minor
victims of sex trafficking for posting advertisements of the
victims as escorts since the provider performed traditional
publisher functions in its website policies and practices
and was not the publisher or speaker of the contents of
the advertisements."

To summarize the above: ICSs are the free press and
due the same protections as the New York Times and Washington
Post, including anonymity. This protection includes pictures
of child nudity, both legal and criminal. ICSs provide
non-commercial publication with no proximate link to any
commercial production, as child pornography requires, and
does not victimize anyone in its contents. ICSs do allow the
public to freely discuss, anonymously, the most sensitive and
controversial topics with full legal protection short of
creation for illegal purposes.

Jurisdiction and Enforcement

"Congress shall make no law abridging the freedom of speech
or of the press." United States Constitution, Amendment 1.

"Indeed, § 230 affords the Defendant (USAG, my note) no role-
enforcement or otherwise- of any kind, nor does it delegate
any enforcement role to any federal agency or federal

official. "American Freedom Defense Initiative above. No branch of government has any jurisdiction over ICSS. Only repeal of the free speech and press clause of the First Amendment may change that.

"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in the Cases of Rebellion or Invasion the public Safety may require it." Article I, § 9, Clause 2, United States Constitution. In re Presidential power "... He shall take Care that the Laws be faithfully executed...." Article II, § 3, United States Constitution. "The judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States... to Controversies to which the United States shall be a Party...." Article III, § 2, Clause 1, United States Constitution.

Federal Court Rules, Rules Governing Sections 2255 Proceedings, Rule 5(b) "Contents. The answer must address the allegations in the motion." Rule 5(d) "The moving party may file a reply to the respondent's answer or other pleading." Federal Rules of Civil Procedure, Rule 8(b)(6) "Effect of Failing to Deny. An allegation - other than one relating to the amount of damages - is admitted if a responsive pleading is required and the allegation is not denied." Federal Rules of Criminal Procedure, Rule 48(a) Dismissal by Government. "The government may, with leave of the court, dismiss an indictment, information or complaint. The government may not dismiss the prosecution during trial without the

defendant's consent."

McQuiggin v. Perkins, 569 US 383, 133 S.Ct. 1924, 185 L.Ed.2d 1019, 2013 US Lexis 4068 states "Actual innocence, if proven, serves as a gateway through which a prisoner may pass whether the impediment is a procedural bar, as it was in Schlup v. Delo, 513 US 298, 115 S.Ct. 851, 130 L.Ed.2d 808 and House v. Bell, 547 US 518, 126 S.Ct. 2064, 165 L.Ed.2d 1, or expiration of the AEDPA statute of limitations, as in this case."

Question: if no government branch has jurisdiction over my conduct and the evidence presented, and no indication of any other wrongdoing exists, does a case in law exist? I submit to this court that §230, Reno v. ACLU and the First Amendment render the charges against me, and all criminal charges and investigations nationwide on §230 covered conduct, moot. In this situation the "case" in "case in law" does not exist, along with Article III jurisdiction.

"Moot questions do not fall within constitutional definition of "cases or controversies." Central Soya Co. v. Consolidated Rail Corp., 614 F.2d 684 (7th Cir. 1980), 1980 US App. Lexis 19377

"Mootness doctrine ensures that litigant's interest in outcome continues to exist throughout life of lawsuit including pendency of appeals; controversy must remain "live" throughout litigation process." McCorvey v. Hill, 385 F.3d 846, 59 Fed.R. Serv.3d (Callaghan) 807, (5th Cir. 2004), 2004 US App. Lexis 19240

"It was of no moment that defense of lack of subject matter jurisdiction was raised for the first time in reply brief on appeal; fact that mootness claim was not raised earlier in proceeding could not and did not confer jurisdiction on appellate court nor, in absence of live US Const. Art. III controversy could it provide district court jurisdiction in case."

Brown v. Philadelphia Housing Authority, 350 F.3d 338, 2003 U.S. App. Lexis 23708, 57 Fed. R. Serv. 3d (Callaghan) 21.

Question: may the court raise objections not raised by the Government in cases of habeas corpus? "Since government did not plead abuse of the writ, the appellate court did not reach the issue of whether that doctrine barred the inmate successive 2241 petition. The appellate court did not have to resolve whether the law of the case applied to successive §2241 petition for habeas relief. The decision of the district court was reversed, and the case was remanded to the district court with instructions to issue the writ of habeas corpus, and vacate the inmate's conviction for importation." *Alaimo v. United States*, 9th Cir. 645 F.3d 1042, 2011 U.S. App. Lexis 12540

"Court has no power to second guess US Attorney's implicit decision in ceasing investigation that case was not prosecutable, since decision whether to prosecute is committed to executive branch and court's review of it, absent allegations of a constitutional violation, would violate separation of powers doctrine." *Howard v. United States*, 31 Fed. Cl. 297, 1994 U.S. Claims Lexis 95.

"If government chooses to claim that the prisoner has abused the writ of habeas corpus it rests with the government to make that claim with clarity and particularity in its return to show cause. This is not an intolerable burden. The government is usually well acquainted with the facts that are necessary to make such a claim." Price v. Johnston, 92 L. Ed 1356, 334 US 266-301, 68 S. Ct. 1049.

Question: may the Government retain custody of a prisoner when the Government has not filed any objection to a prisoner's petition for a Writ of Habeas Corpus with a Certificate of Innocence, with or without court approval, when innocence is a matter of law supported by this court?

Federal Court Rules, Rules Governing § 2255 Proceedings, Rule 5(b) requires a response to my allegations of actual innocence. The Government filed no response to any of my grounds in my original § 2255/Habeas Corpus petition, and no response at all to my subsequent motions. Federal Rules of Civil Procedure, Rule 8(b)(6) states that no response, when one is required, is an admission. Federal Rules of Criminal Procedure, Rule 48(a) states that the Government may dismiss a case "with the leave of the court." I have no ruling to support or deny that the Government's failure to respond to my claim of actual innocence is effectively a motion to dismiss. However, with no live case and no statement to justify my continued incarceration this failure to respond appears to me to be the same as a government motion. "By leave of the court"

has limits that do not cover innocence as a matter of law. This clause may be mooted under the actual innocence exception as a procedural bar, but I have no case specific to this situation.

"... constitutional duty of obligating President to "take care that Laws be faithfully executed" does not permit President to refrain from executing laws duly enacted by Congress as those laws are construed by judiciary. "National Treasury Employees Union v. Nixon, 492 F.2d 587, 160 U.S App DC 321 (D.D.C., 1974) 1974 US App Lexis 10397

"If case over which court lacks subject matter jurisdiction was originally filed in federal court it must be dismissed;..." Ray v. Eyster (in re Orthopedic "Bone Screw" Prods. Liab. Litig.) 132 F.3d 152, 39 Fed. R. Serv. 3d (Callaghan) 608, 609 (3rd Cir. 1997), 1997 US App Lexis 35914.

"Since it appeared to appellate court that jurisdiction under 18 USC § 3231 was available if Fed. R. Crim. P. 48(a) motion was made after sentencing and appeal, district court's grant of government's Rule 48(a) motion to vacate inmate's 15 years-old conviction 18 USC § 924(c) was affirmed; inmate's argument that Fed. R. Crim. P. 48(a) was inapplicable was rejected." United States v. Smith, 467 F.3d 785, 373 U.S App DC 324 (D.C. Cir. 2006).

"Phrase "by leave of the court" in Rule 48(a) of the Federal Rules of Criminal Procedure... thus, good faith exercise of executive's discretion with respect to termination of

pending prosecutions should be not be judicially disturbed unless clearly contrary to manifest public interest." *United States v. Cowan*, 524 F.2d 504 (5th Cir., 1975) 1975 US App Lexis 11588.

I submit to this court that any immunity law, identified even post-conviction, authorizes the Government to grant a Writ of Habeas Corpus and Certificate of Innocence directly. I find no court rulings, on-point, one way or the other. The Habeas Corpus clause, US Constitution does not state who may issue the Writ. The Government is charged with enforcement under Article II and the courts have no Article III jurisdiction over immune conduct and evidence. I find no record of any federal court denying actual innocence as a matter of law when the Government abandons the case. This case appears unique in these aspects.

Question: does the Government or courts have the authority to reveal the identity of any ICS user who does not create or modify ICS content, or a user's online conduct?

The following are from *Doe v. 2TheMart.com*, 140 F.Supp.2d 1088, 2001 US Dist. Lexis 5318, 49 Fed. R. Serv. 3d (Callaghan) 404 WDVA.

"First Amendment protections extend to speech via the Internet," in re *Reno*. Also "A component of the First Amendment is the right to speak with anonymity. This component of free speech is well established." See e.g., *Buckley v. American Constitutional Law Found.* 525 US

182, 200, 142 L. Ed. 2d 599, 119 S. Ct. 636.

"The right to speak anonymously extends to speech via the Internet. Internet anonymity facilitates the rich, diverse and far ranging exchange of ideas. The "ability to speak one's mind" on the Internet without the burden of the other party knowing all the facts about one's identity can foster open communication and robust debate." *Columbia Ins. Co. v. Seescandy.com*, 185 F. B. D. 573, 578 (N.D. Cal. 1999). People who have committed no wrongdoing should be free to participate in online forums without fear that their identity will be exposed under the authority of the court."

"When speech touches on matters of public political life, such as debate over the qualifications of candidates, discussion of political affairs, discussion of political campaigns and advocacy of controversial points of view, such speech has been described as the "core" or "essence" of the First Amendment. See *McIntyre*, 514 US at 346-47 (2001 US Dist. Lexis 12).

Governmental restrictions on such speech are entitled to "exacting scrutiny" and are upheld only where they are "narrowly tailored" to serve an overriding state interest."

Title 17 USC § 512 (a), the DMCA safe harbor for the newsgroups, institutes anonymity by forbidding records of users and content accessed by providers. This anonymity should extend to the user's computers. I see, again, no court rulings on the matter. Provider side anonymity protections are unclear for other ICS services. See Appendix B for § 512 (a).

I submit to this court that all post-creation/modification ICS provider/user conduct and content is the free press and is subject to the same level of protection as the newsrooms of the Washington Post and New York Times. It is simply outside of the jurisdiction of the Government, the courts and Congress. This protection is from the First Amendment independent of 47 USC §230. §230 just codifies Internet/ICS protections and well established limits. The Internet has changed the scale of communication and publication/circulation, but the information and opinion involved is still the same. The change in scale only makes First Amendment protections more imperative.

Non-public information and communication can be treated as their non-Internet counterparts. This requires the Government and courts to separate protected from non-protected content on a user's computers and devices, just like searches of a doctor's or attorney's home. It should also prohibit the Government from searching ICS traffic for IP addresses and ICS/Internet Service Providers from granting requests for ICS user information. A reporter (ICS) may not be forced to reveal his/her sources (users). I see no evidence that any such standard exists.

Justification for Granting Writ (Rule 10)

"Exercise of jurisdiction by Supreme Court to protect constitutional rights cannot be denied when it is plain that fair result of decision is to deny rights." *Rogers v. Alabama*, 192 US 226, 24 S.Ct. 257, 48 L.Ed 417 (1904)

"It is the duty of the Supreme Court to preserve supremacy of laws of the United States." *Amis v. Smith*, 41 US 303, 10 L.Ed 973 (1842)

"Supreme Court, in exercise of its appellate jurisdiction, has power not only to correct errors in judgment but to make such disposition of case as justice requires." *Honeyman v. Hanan*, 300 US 14, 57 S.Ct. 350, 81 L.Ed. 476 (1937)

"Supreme Court may issue writ of habeas corpus on appeal, but not in exercise of original jurisdiction." *Ex Parte Watkins*, 32 US 568, 8 L.Ed. 786 (1833)

For more than 20 years, and many thousands of convictions, law and court of ficers have, likely unintentionally, convicted private individual users of ICSs of child pornography who have done nothing illegal. No commercial ICS has even been charged. This appears to be primarily through lack of proper information about this court's limits on child pornography

in its cases *New York v. Ferber* and *Ashcroft v. Free Speech Coalition*. This court's ruling in *Reno v. ACLU* regarding this exact issue, content harmful to children on the public Internet, is equally missing from officer training. When I presented these cases to the Government in my original 28 USC § 2255 habeas corpus petition the Government ceased all objections to my release on actual innocence grounds and totally abandoned the case. These wrongful convictions, continuing post-release limits on sex offenders, and ongoing illegal investigations nationwide justify this court's time.

The lower courts' conduct of ignoring and openly defying this court's orders, laws passed by Congress, and the lack of Government opposition over repeated motions put the lower courts in the position of judge, jury, and executioner, independent of any authority.

The Government and courts have engaged in pure content-based suppression of free speech just because they can. The same or similar content appearing in art galleries, artistic photo books, mainstream movies and basic cable TV channels is not suppressed. In my case the Government identified no underlying crime, admitted in its pre-sentence report that it could not find a single person claiming to be a victim. The appellate court admitted, on direct appeal, that the pictures had no commercial value.

This court ruled in *Ashcroft v. Free Speech Coalition* that
"First Amendment freedoms are most in danger when

the government seeks to control thought or to justify its laws to that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought." Also "A law imposing criminal penalties on protected speech is a stark example of speech suppression in violation of the free speech guarantee of the Federal Constitution's First Amendment."

Hundreds of millions of Americans are Internet ICS users and every single one is affected wrongly by the Government and court's illegal conduct. All of them need this court to take this case.

I find no case precedents being followed in the courts for key questions. Who, if anyone, has jurisdiction over ICSs? How can the Government enforce 47 USC § 230 protections post-conviction? Does § 230 allow the Government to directly grant a Writ of Habeas Corpus and a Certificate of Innocence as an enforcement tool? Can the courts deny actual innocence if the Government abandons the case as a matter of law? May the courts raise objections to actual innocence relief without granting the petitioner a chance to reply? May the Government continue to retain custody of an inmate when it has positively identified actual innocence as a matter of law, with or without the court's permission? Are ICS providers and users subject to the newsroom standards for searches? Are ICS providers and users subject to the well established First Amendment

component of anonymity, applied to the person and content, at all stages, once information is posted?

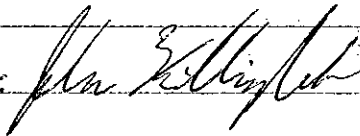
I read in the news that this court's current session includes cases for Facebook and Twitter liability. My questions and citations, especially in re the free press and Article III jurisdiction may render both cases moot. ICSSs are little more than circulators of information and opinion, the definition of the free press. See *Lovell/Ashcroft/Bartnicki* above. §230 just codifies standard First Amendment protections and limits. Anything more is "shooting the messenger."

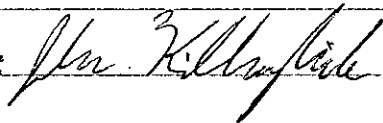
Three anonymous authors once advocated the violent overthrow of this nation's government. It worked. Using the pen names Publius, Cato, and Brutus the authors wrote the Federalist and anti-Federalist papers, which raised the level of popular support for the not very popular overthrow of the legitimate rule of this nation by the British Empire. The most basic principle of the war was the radical and widely unpopular, at that time, concept that all people were members of the "ruling class." Publius, Cato and Brutus were, in reality, James Madison, Alexander Hamilton, and John Jay.

Before the courts could suppress Internet speech they had to suppress this court's rulings in *Reno/Ashcroft/Ferber* and 47 USC §230. This suppression poses a clear and present danger to the freedom of speech and press for all ICSS users.

Statement of Truthfulness

I, John Killingbeck, swear under penalty of perjury
that the above statements are truthful and accurate.

dated: 12/2/2022 signed: 

Signed: 

Dated: 12/2/2022

John Killingbeck

Inmate # 18895-052

Unit H-A

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