IN THE UNITED STATES SUPREME COURT

22-7089

IN RE : William Hopmeier

Supreme Court Case No.

ORIGINAL PETITIONER TO THE UNITED STATES SUPREME COURT
UNDER 28 U.S.C. § 2241

By: William Hopmeier
47362-044
United State Penitentiary
P.O. Box 1000
Marion, IL 62959

pro se

ORIGINAL

Questions Presented

1. Under Title 18, U.S.C. § 2251(a), is there proper Fair Notice, as set forth by this Court in Fasulo v United States, 272 U.S. 620 (1926); that a crime of purely intrastate production of a minor engaging in sexually explicit conduct, or child pornography, was defined by Congress as a federal criminal offense?

2. Where does the trail of Interstate Commerce end, and thus Congress' Constitutional authority "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."?

3. Have the Lower Courts misapplied the "Aggregate Effects" doctrine under Gonzales v Raich, 545 US 1 (2005); to 18 U.S.C. § 2251(a), where intrastate challenges by Gonzales v Raich and other case law were denied relief where the statute specifically mentions intrastate activities, such as the Controlled Substances act in Gonzales v Raich?

4. Does anonymously entering into the online content of child pornography, and the receipt and possession of images that are widely available for free with the click of a mouse, meet the definition of commerce: buying, selling, bartering or trading, or does it have any economic impact upon any market?

5. Does Congress have the Constitutional authority to regulate purely intrastate activity including widely available internet content when there is no economic impact?

6. Are the Congressional Findings of the "Child Pornography Prevention Act" of 2006 accurate today as to online content freely available and anonymously, since technology has advanced, and there is no economic nexis for receipt or possession?

List of Parties and Related Cases

Petitioner:

William Hopmeier
47362-044
United States Penitentiary
P.O. Box 1000
Marion, IL 62959

Respondent:

D. Sproul, Warden, United States Penitentiary, Marion
4500 Prison Road
Marion, IL 62959

Related Case:

Case No. 4:18-MJ-0045-DDN

United States District Court
for the Eastern District of Missouri
July 12, 2019

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Jurisdictional Statement

Petitions filed under Supreme Court Rule 20.4 list mandatory content matters. For writs of Habeas Corpus, the following is required:

(1) 28 U.S.C. § 2241 POWER TO GRANT THE WRIT

(a) Writ of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdiction...

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless :

(3) He is in custody in violation of the Constitution or laws or treaties of the United States,...

(2) 28 U.S.C. § 2242 APPLICATION

"Application for a writ of habeas corpus shall be in writing and verified by the person for whose relief it is intended or by someone acting in his behalf."

- Petitioner has signed and verified this writ of habeas corpus.

"It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known".

- Petitioner is being held in the United States Penitentiary
4500 Prison Road
Marion, IL 62959

Warden D. Sproul

"If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held".

Constitutional And Statutory Provisions Involved

The Petitioner is restrained of his liberty through Congressional overreach using the commerce clause.

The balance has changed in the U.S. Supreme Court. A line must be drawn, securing Congress' footing within the limitations of their Constitutional powers. This petition needs to be heard because it demonstrates overreach to purely local activities through the commerce clause and the necessary and proper clause.

In her historic confirmation to the U.S. Supreme COurt in 2022, Justice Ketanji Brown adds her insight to the limits of federal power under the commerce clause. As a U.S. District Court Judge in D.C., she wrote an opinion in Osvatics v Lyft, 535 F. Supp. 3d 1(D.C. Cir. 2001) defining the difference between purely intrastate and interstate commerce. She explains there is a fundamental limitation to the goverment's reach using the phrase "interstate commerce", and denied the expansion of this opinion due to minimal interstate incursion.

This opinion follows numerous dissenting opinions by Justice Clarence Thomas, warning that allowing the expansion of powers of Congress under the commerce clause would obliterate and eliminate the essential distinction between federal and state powers and Constitutional limits concerning prosecutions in each.

Justice Thomas has forewarned that Congress is overstepping their Constitutional boundaries and is treading on the rights of the States and the People.

This petition is an opportunity to return the power of prosecution for a purely local crime back to the States. SInce there was no logical or tangible effect on interstate commerce, the federal government lacked the jurisdictional power to prosecute this case.

Justice Thomas has been right.

Under the separation of powers designated by the United States Constitution, it is the duty of the United States Supreme Court to rule as to whether a statute passed by Congress is indeed Constitutional, or whether it has surpassed the limited authority Congress has been assigned by the Constitution.

"In the end, it remains the role of [the Supreme Court] to decide whether a particular legislative choice is constitutional." F.E.C. v Ted Cruz, 2022 LEXIS 2403 S.Ct. at 8 (2022)(Opinion by Justice Roberts); See also: Sable Communications of Cal. v FCC, 492 U.S. 115, 129 Pp. 19-22, 109 S.Ct. 2729, 109 L.ED. 2d 93; See also: Appendix "K" and "L" (United States Constitution)

Statement Of The Case

William Hopmeier was arrested on February 1, 2018 in Des Peres, Missouri in St. Louis County. On July 12, 2019 he pled guilty to a single charge of Production Of Child Pornography in violation of 18 U.S.C. § 2252(a) and was sentenced in the United States District Court for the Eastern District of Missouri (Eastern Division) to 180 months on October 23, 2019. (Case No. 4:18-MJ-0045-DDN); He did not appeal his sentence, nor did he file a Ineffective Assistance of Counsel claim under 28 U.S.C. § 2255.

William Hopmeier was convicted of a purely local crime, an intrastate crime which has no bearing or nexus to interstate commerce. Nowhere in § 2251(a) does the word "intrastate" appear.

The Supreme Court has a duty, designated by the United States Constitution, to determine whether a statute passed by Congress is Constitutional, or surpasses the limited authority assigned by the Constitution.

This Original Petition addresses the issue of Congressional overreach, using the commerce clause to broaden their scope of power for certain crimes, despite the lack of logical or tangible effect on interstate commerce.

Reasons For Granting The Writ

Lower Courts are bound by a much too broad interpretation of federal power under the Commerce Clause, and irreparable harm can be caused to a Petitioner spending years fighting it to get to the Supreme Court. Granting this Writ would aid in reigning in Congressional overreach with the Commerce Clause, and the Supreme Court is the only Court in the nation with the authority to overturn Gonzales v Raich, 545 U.S. 1 (2005) and limit Congressional Authority.

This was recently done with Dobbs, v Jackson Women's Health Org, 142 S.Ct. 2228 (2022), overturning a nearly 40 year precedent with Roe v Wade, 410 U.S. 113 (1973), and the Supreme Court was the only Court with the power and authority to do so.

Case law inopposite to the original meaning behind the U.S. Constitution and set forth by a previous panel of the Supreme Court can only be overturned by a subsequent panel. Such is the case here. In Gonzales v Raich, the limits of the federal government were expanded under the Commerce Clause and not all the Justices were happy with this decision. In Justice Thomas' dissent in Raich, concurred by Justice O'Conner, the federal government has breached the limits of their power under the Commerce Clause and must be reigned in. Justice Thomas reiterated this in Standing Akimbo, LLC v United States, 142 S.Ct. 919 (2021), also stating that this issue must be heard and corrected.

The United States Supreme Court is the only Court with the authority, jurisdiction, and power to overturn these cases and redefine the limitation of congressional authority.

ARGUMENT

I. Fair Notice

"Before one can be punished for violation of a statute, it must be shown, that his offense is plainly within the statute." Fasulo v United States, 272 U.S. 620 (1926)

This has been reiterated time and time again through our country's history. the Framers wanted a fair system which would notify the public as to criminal offenses passed by Congress.

"There are no constructive offenses." McNally v United States, 483 U.S. 350 (1987).

Every statute presented to the American people must use clear common language so that the average person may read a statute, or portion thereof, and understand it's meaning. Because of our wide diversity through the country, such as educational differences, economic class structure, language barriers and unequal access to simple information due to technological limitations in underdeveloped or poor areas, Congress must be exceptionally careful to word each statute with a clear intent.

The Petitioner's indictment states the statutes he was charged, and later convicted of was 18 U.S.C. § 2251(a) for Count 1, which reads:

"Any person who employs, uses, persuades, induces, entices, or coerces any minor 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 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 facilities 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 in or transmitted using any means or facility of interstate or foreign commerce or mailed."

Or, as the United States Court of Appeals for the 11th Circuit has stated, "the most natural reading of this provision [18 U.S.C. § 2251(a)] is that jurisdiction extends to child pornography (1) produced with the intent that it eventually travel in interstate commerce; (2) produced with materials that have traveled in interstate commerce; or (3) that has traveled in interstate commerce." United States v Smith, 459 F.3d 1276 (2006);

It is important to note that simple intrastate production is not referenced in 18 U.S.C. § 2251(a), which the Petitioner was convicted under.

To use the simplified interpretation in Smith, under section (1), jurisdiction could not be proper as there was never any intent for the material to be transported in interstate commerce. Further, under Section (3), jurisdiction was not proper because the produced materials (videos) had never traveled in interstate commerce.

Finally, under Section (2), it states that as long as the image was produced with materials that have traveled in interstate commerce prosecution may proceed. This particular section has been challenged in various courts. There were multiple rulings which stated it was an unconstitutional application of the Commerce Clause to regulate activity.

18 U.S.C.S. §§ 2251(a) and 2252A(a)(5)(B) are unconstitutional as applied to simple intra-state production and possession of images of child pornography, or visual depictions of minors engaging in sexually explicit conduct, when such images and visual depictions were not mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, nor intended for interstate distribution or economic activity of any kind, including the exchange of pornographic recordings for other prohibited material; statutes as applied to facts on which each count of indictment was based exceeded powers of Congress under Commerce Clause of U.S. Constitution. See United States v Matthews, 300 F. Supp. 2d 1220 (N.D. Ala. 2004), aaf'd, 143 Fed. Appx. 298, (11th Cir. 2005), vacated, remanded, 184 Fed. Appx. 868 (11th Cir. 2006).

For 2252(a)(4)(B)(simple intrastate possession) it was decided:

18 U.S.C.S. §§ 2252(a)(4)(B) was unconstitutional under U.S. Constitution Article I, § 8, Clause 3, as applied to a mother's simple intrastate possession of a pornographic photo of her daughter where photo had not been mailed, shipped, or transported interstate and was not intended for interstate distribution.

See United States v McCoy, 323 F.3d 1114, 2003 CDOS 2483, 2003 Daily Journal DAR 3129 (CA Cal. 2003).

See also United States v Stewart, 348 F.3d 1132 (9th Cir. 2003), "[A]t some level, everything owned is composed of something that once traveled in commerce. This cannot mean that everything is subject to federal regulation under the Commerce Clause, else that Constitutional limitation would be entirely meaningless. Congress's power has limits, and Courts must be mindful of these limits so as not to obliterate the distinction between what is national and what is local and create a completely centralized government."

The Courts were simply following the language of Congress as noted in United States v Lanier,117 S. Ct. 1219 (1997):

"The ligislature possesses the power to define crimes and their punishment." And "[F]ederal crimes are defined by Congress, not by the Courts."

Then came the Supreme Court's ruling in Gonzales v Raich, 545 US 1 (2005) which stated that the Commerce Clause gives Congress the authority to regulate the national market for marijuana including the authority to proscribe the purely intrastate production, possession, and sales of this controlled substance. Because they ruled that Congress may regulate these intrastate activities based on their aggregate effect on interstate commerce, the courts began applying this stander to local intrastate production of child pornography under 18 U.S.C.§ 2251(a).

The "Aggregate Effects" Doctrine

The Supreme Court of the United States has held that "Congress may regulate, among other things, activities that have a substantial aggregate effect on interstate commerce," See Wickard v Filburn, 317 US 111, 125 (1942). this includes "purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce," See Gonzales v Raich, 545 US 1, 17 (2005), so long as those activities are economic in nature. See United States v Morrison, 529 US 598, 613.

Justice Thomas' dissenting opinion in Morrison, Section B states in part:

> "The majority also inconsistently contends that regulating respondents' conduct is both incidental and essential to a comprehensive legislative scheme. Ante, at 22, 24-25. I have already explained why the CSA's ban on local activity is not essential. Supra, at 64. However, the majority further claims that, because the CSA covers a great deal of interstate commerce, it "is of no moment" if it also "ensnares some purely intrastate activity." Ante, at 22. So long as Congress cast its net broadly over an interstate market, according to the majority, it is free to regulate interstate and intrastate activity alike. This cannot be justified under either the Commerce Clause or the Necessary and Proper Clause. If the activity is purely intrastate, then it may not be regulated under the Commerce Clause. And if the regulation of the intrastate activity is purely incidental, then it may not be regulated under the Necessary and Proper Clause."

This "aggregate doctrine", as applied, violates Due Process and protection against government interference with fundamental rights and individual liberty interests, and the rights to have each element of a crime proven beyond a reasonable doubt.

This purely intrastate incident of production of child pornography can in no way be construed as commerce or any type

of economic activity since it was not ever in interstate commerce, nor was it intended to be.

The incident of production of child pornography was not economic nor a gainful activity, but a purely private activity with no intentions of selling, buying, bartering, trading or tranporting for any purpose.

The statute in which Raich was convicted under the Controlled Substances Act (CSA), 21 U.S.C. § 801 et seq., which states in part:

> "(5) Controlled substances manufactured and distributed interstate cannot be differentiated from controlled substances manufactured intrastate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

This statute has a tangible link to intrastate commerce in the statute itself. Contary to being unable to tell the difference in locally manufactured controlled substances, it would be much easier for law enforcement to make the distinction between purely intrastate and interstate versions of child pornography. Law enforcement has databases that can be used to identify interstate child pornography, while purely intrastate versions of child pornography quite often have a local victim easy to identify, victims which will not be in the interstate database.

In the recent US Supreme Court case Standing Akimbo, LLC, et al., v United States, 141 S. Ct. 2236 (2021) Justice Thomas wrote:

> "Whatever the merits of Raich when it was decided, federal policies of the past 16 years have greatly undermined its reasoning." And,
> "If the government is now content to allow States to act "as laboratories""and try novel social and economic experiments," then it might no longer have authority to intrude on "[t]he States' core police powers...to define criminal law and to protect the health, safety and welfare of their citizens."

III

Petitioner's Statutes Of Conviction

Pursuant to a plea agreement, on July 12, 2019, the Petitioner plead guilty to the following single charge:

18 U.S.C. § 2251(a) and (e)

Production of visual depiction of a minor engaged in sexually explicit conduct

See page 25 for a full version of 18 U.S.C. § 2251(a), the statute challenged in this Petition. (See Appendix "A")

"When Congress includes particular language in one section of a statute but omits it in another section of the same act [] this Court generally takes the choice to be deliberate. [] That holds true for jurisdictional questions as federal district courts may not exercise jurisdiction absent a statutory basis." Badgerow v Walters, 142 S.Ct. 1310 at 1312 (2022)(Opinion by Justice Kagan) (internal quotes omitted);

"[P]olicy concerns cannot trump the best interpretation of the statutory text." Patel v Garland, 2022 U.S. LEXIS 2494 S.Ct. at 28 (2022)(Opinion by Justice Barret);

IV

Congressional/Legislative Findings

The Congressional Findings for 18 U.S.C. § 2251(a), Child Pornography Prevention Act, July 27, 2006, P.L. 109-248, Title V, § 501, 120 Stat. 623, provides:

"Congress makes the following findings:

(1) The effect of the interstate production, transportation, distribution, receipt, advertising, and possession of child pornography on the interstate market in child pornography:

(A) The illegal production, transportation, distribution, receipt, advertising and possession of child pornography, as defined in Section 2256(8) of Title 18, United States Code, as well as the transfer of custody of children for the production of child pornography, is harmful to the physiological, emotional, and mental health of the children depicted in child pornography and has a substantial and detrimental effect on society as a whole."

Under the above stated Act of July 27, 2006, it continues with the following:

"(B) A substantial interstate market in child pornography exists, including not only a multimillion dollar industry, but also a nationwide network of individuals openly advertising their desire to exploit children and to traffic in child pornography. Many of these individuals distribute child pornography with the expectation of receiving other child pornography in return."

There are no reports or citations to support the findings of there being a multimillion dollar industry. Monies can be exchanged for these items, but in fact each picture or video that an individual might be searching for can be found for free on various websites. This industry is no different than others. Intellectual property interests get lost on the internet. Pictures and videos get copied and posted elsewhere. Then anyone that comes across the image is able to download the image not only in secret, but for free, not affecting any market, not trading for them, nor exchanging money.

Under the above stated Act of July 27, 2006, it continues

with the following:

> "(D) Intrastate incidents of production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the transfer of custody of children for the production of child pornography, have a substantial and direct effect upon interstate commerce because:
>
> (i) Some persons engaged in the production, transportation, distribution, receipt, advertising, and possession of child pornography conduct such activities entirely within the boundaries of one state. These persons are unlikely to be content with the amount of child pornography they produce, transport, distribute, receive, advertise, or possess. These persons are therefore likely to enter the interstate market in child pornography in search of additional child pornography, therefore stimulating the demand in the interstate market in child pornography.
>
> (ii) When the persons described in subparagraph (D)(i) enter the interstate market in search of additional child pornography, they are likely to distribute the child pornography they already produce, transport, distribute, receive, advertise or possess to persons who will distribute additional child pornography to them, thereby stimulating supply in the interstate market in child pornography.
>
> (iii) Much of the child pornography that supplies the interstate market in child pornography is produced entirely within the boundaries of one state, is not traceable, and enters the interstate market surreptitiously. This child pornography supports demand in the interstate market in child pornography and is essential to its existence."

In United States v Morrison, 529 US 598 (2000) the United States Supreme Court stated in part:

> "In contrast with the lack of congressional findings that we faced in Lopez, § 13981 is supported by numerous findings regarding the serious impact that gender-motivated violence has on victims and their families. See, e.g., H.R. Conf. Rep. No. 103-711, p 385 (1994); S. Rep. No. 103-138, p 40 (1993); S. Rep. No. 101-545, p 33 (1990). But the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause regulation. As we stated in Lopez, "[S]imply because Congress may conclude that a particular activity aubstantially affects interstate commerce does not necessarily make it so." 514 US at 557, n 2, 131 L Ed 2d 626, 115 S Ct 1624 (quoting Hodel, 452 US, at 311, 69 L Ed 2d 1, 101 S Ct 2352 (Renquist, J. concurring in judgement)). Rather, "'[w]hether particular operations affect interstate

commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court.'" 514 US, at 557, n 2, 131 L Ed 2d 626, 115 S Ct 1624 (quoting Heart of Atlanta Motel, 379 US, at 273, 13 L Ed 2d 258, 85 S Ct 348 (Black, J. concurring)).

In NOW v Scheidler, 114 S Ct 798, 510 US 249, 260 (1994), the United States Supreme Court stated in part:

"We previously have observed that a 'statement of congressional findings is a rather thin reed upon which to base' a statutory construction."

Also in Scheidler, the Supreme Court went on to state:

"We also think that the quoted statement of Congressional findings is rather a thin reed upon which to base a requirement of economic motive neither expressed nor, we think, fairly implied in the operative sections of the Act." See H. J. Inc. v Northwestern Bell Telephone Co., 492 U.S. 229, 248, 109 S Ct 2893 (1989).

The term "intrastate" is neither mentioned nor implied in the statute, and there are no reports or citations to support the implications of economic motive. With the advent of the internet, anyone with a computer and a connection can easily access these images and videos anonymously, and for free.

In Morrison, 529 U.S. @ 674, (2000), it states in part:

"[t]he existence of congressional finding is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation."

V. Federal and State Seperation of Powers

The Supreme Court's Commerce Clause jurisprudence emphasizes that, in assessing the constitutionality of Congress's exercise of its commerce authority, a relevant factor is whether a particular federal regulation trenches on an area of traditional state concern. See Morrison, 529 U.S. at 611, 615-16, 120 S. Ct. at 1750-51, 1753; Lopez, 514 U.S. at 561 n.3. 564-68, 115 S. Ct. at 1631 n.3, 1632-34. The Supreme Court has expressed concern that "Congress might use the Commerce Clause to completely obliterate the Constitution's distinction between national and local authority." Morrison, 529 U.S. at 615, 120 S. Ct. at 1752; see also Raich, 545 U.S. at 35-36, 125 S. Ct. at 2216-17 (Scalia, J., concerring); Lopez, 514 U.S. at 557, 567-68, 115 S. Ct. at 1628-29, 1634; id. at 577, 115 S. Ct. at 1638-39 (Kennedy, J., concurring)(Stating that if Congress were to assume control over areas of traditional state concern, "the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory. the resultant inability to hold either branch of the government answerable to the citizens is more dangerous even than devolving too much authority to the remote central power" (citation omitted)). Coupled with this consideration, the Supreme Court recognizes that the Constitution "withhold[s] from Congress a plenary police power." Lopez, 514 U.S. at 566, 115 S. Ct. at 1633; see also Morrison, 529 U.S. at 618-19, 120 S. Ct. at 1754; cf. Comstock, 560 U.S. at 126 , 130 S. Ct. at 1964 (Kennedy, J., concerring)(stating that the police power "belongs to the States and the States alone").

If accepted, and the conviction upheld in the instant case, reasoning would allow for Congress to regulate any crime as long as the nationwide, aggregated impact of that crime in any way effects interstate commerce through employment, production, transit or consumption, even if the crime wholly was contained within the boundaries of one state.

In the dissenting opinion of Taylor, Justice Thomas states:

"Finally, today's decision weakens logstanding protections for criminal defendants. the criminal law imposes especially high burdens on the government in order to protect the rights of the accused. The Government may obtain a conviction only "upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which (the accused) is charged." Winship, 397 U.S. at 364. those elements must be proved to a jury. Amdt. 6; see Alleyene, 570 U.S. at 99 (opinion of Thomas, J.)(slip op., at 3). Given the harshness of criminal penalties on "the rights of the individuals," the Court has long recognizedthat penal laws "are to be construded strickly " to ensure that Congress has indeed decided to make the conduct at issue criminal. United States v Wiltberger, 5 Wheat. 76, 95 (1820) (Marshall, C. J.). Thus before a man can be punished as a criminal under the federal law his case must be plainly and unmistakenly within the provisions of some statute." United States v Gradwell, 243 U.S. 476, 485 (1917). When courts construe criminal statutes, then, they must be especially careful. And when a broad reading of a criminal statute would upset federalism, courts must be more careful still. "(U)nless Congress

"conveys its purpose clearly," we do not deem it" to have significantly changed the federal-state balance in the prosecution of crimes." Jones v United States, 529 U.S. 848, 858 (2000)(internal quotation marks omitted)". - end Justice Thomas' quote.

Allowing for the Government to forego its burden to prove, beyond a reasonable doubt, that the Petitioner's intrastate production and possession of child pornography affected interstate commerce, will allow Congress to reach the sort of purely local crimes such as this; those crimes which the States prosecute.

In summary, the Petitioner's conviction and sentence should be set aside because "Congress cannot punish felonies generally." Cohens v Virginia, 6 Wheat. 264, 428 (1821).

"A criminal act committed wholly within a State "cannot be made an offense against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States." United States v Fox, 95 U.S. 670, 672 (1878);

In the historic confirmation to the United States Supreme Court in 2022, Ketanji Brown Jackson brings to the High Court her insight into the limits of federal power under the Commerce Clause. While she was a US District Judge in D.C. she wrote an opinion in Osvatics v Lyft, 535 F.Supp.3d 1 (D.C. Cir. 2021). This opinion defined the difference of purely intrastate and interstate commerce. She explains there is a legitimate limitation to government's reach using the phrase "interstate commerce". She denied the expansion under this opinion due to minimal interstate incursion.

VI. Justice Thomas' Commerce Clause View

Through the years, Justice Clarance Thomas has remained consistent with his view that Congress has specific limits when it comes to it's power under the Commerce Clause. In his opinions in Raich, Lopez, Morrison, and Taylor, among others, he has set forth an interpretation much like Chief Justice John Marshal (1801-1835); (See McCulloch v maryland, 17 U.S. (4 Wheat.) 316; (1819)). The term commerce is defined as buying, selling, bartering or trading.

Even if the production of child pornography were found to be outside the reach of Congress through the Commerce Clause and thus beyond the reach of federal jurisdiction, each state has similar laws criminalizing the production of child pornography; violators would still face prosecution under State jurisdiction.

Justice Thomas has warned that allowing the expansion of the powers of Congress under the Commerce Clause would obliterate and eliminate the essential distinction between federal and state powers and Constitutional limits concerning prosecutions in each.

Justice Thomas has forewarned, and thus far been correct, that Congress is overstepping their Constitutional boundaries and treading upon the rights of the States and the People.

The instant case before you is an opportunity to place the power of prosecution for a purely local crime back to the States. Since there was no logical or tangible affect in interstate commerce, the federal government lacked the jurisdictional power to prosecute this case.

Justice Thomas has been right.

Thus, the Petitioner's Conviction must be overturned.

Conclusion

This case brings a simple, yet not so simple inquiry. What did the Framers intend to be the limit of congressional powers regarding criminal prosecutions under the Commerce Clause and federal jurisdiction?

According to Chief Justice Marshall (1801-1835) the line between federal and state control of criminal statutes and prosecutions was more defined. See United States v Wiltberger, 5 Wheat. 76, 95 (1820).

As our country has grown, so too has Congress expanded it's powers. This has mainly been done under both the Commerce Clause and the Necessary and Proper Clause.

There has never been a line in the sand, so to speak, set by the judicial branch or the Supreme Court which would define specifically what is to be a federal crime, and what would be a purely state matter. With Congress using the Commerce Clause, Congress could regulate almost every crime typically regulated on a state or local level. Even the recent case Murphy v NCAA, 138 S. Ct. 1461 (2018), the line has been blurred between what is federal and what is state jurisdiction and the ability to control governing policies.

If we were to consider drunk driving, Congress could regulate this purely state crime since both the vehicle and the alcohol would have at some point in time traveled in interstate commerce. If a wreck ensues, and traffic is stopped, commerce which is in interstate transport would be effected.

"When a statute is void for vagueness, the language on its face is unclear. A statute that fails to provide fair notice, on the other hand, may be clear or unclear on its face but regardless, is applied to conduct outside the scope of the statute, thus retroactively punishing the defendant for an act that he could not have reasonably expected to fall under the statutes prohibitions. The fair notice doctrine is broader than the void for vagueness doctrine, since a conviction under a statute is void for vagueness or when a defendant is retroactively punished under an expansion of a clear statute. Void for vagueness analysis is, however, therefore, still applicable to the question of vagueness in a case of fair notice with regard to a criminal statute. " United States v Kay, 513 F.3d 432 (5th Cir. 2007);

Kay goes on to say: "The Bouie test recognizes two fair notice concerns in criminal statutes, including the vagueness of the statute's language and courts' retroactive enlargement of the scope of the statute, whether the statutory language underlying that enlargement is clear on its face or vague. The Lanier test expands upon these standards, in a manner consistent with Bouie."

Prayer For Relief

Whereas the Petitioner asks this Honorable Supreme Court or any Justice thereof, for the foregoing reasons, grant this Habeas Corpus. Or, in the alternative, transfer this Habeas Corpus for hearing and determination to the District Court having the jurisdiction to entertain it.

Respectfully Submitted,

William Hop 2/15/2023