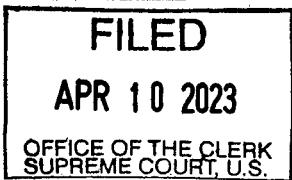


IN THE
Supreme Court of the United States
Spring Term



22 - 7613

UNITED STATES OF AMERICA

Petitioner,

v.

Khawaja Farooq

Defendant.

ON WRIT FOR CERTIORARI

Petition For Writ To The
United States Second
Circuit Court Of Appeals

Pro Se
Khawaja Farooq



ISSUE(S) PRESENTED FOR REVIEW III.

1. Does the First Amendment for a Journalist or member of the press forbid the taking and publishing pictures of an extorted ex-girlfriend?
2. Would the wrongfulness extortion element in *United States v. Jackson*, 180 F. 3d. 55 (2nd Cir. 1999), be a substantive element for a plea to be knowingly and voluntarily made under *Fed. Rules Crim Proc.* 11(b)(1)(G)?

TABLE OF CONTENTS I.

I.	Jurisdictional Statement.....	1.
II.	Issue For Review.....	2.
III.	Prefatory.....	3.
IV.	Constitutional and Statutory Authorities.....	4.
V.	Statement of the Case.....	5-6.
VI.	Substantive Reasons For Granting the Writ.....	7.
	A. To avoid a First Amendment deprivation pursuant to a Journalist (Press) right to film and publish <i>that shall not be abridge</i> despite the unlawful conduct of attempted extortion.	
VII.	Conclusion.....	8.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW



[] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTIONAL STATEMENT II.

Pursuant to *Supreme Court Rules 14(a)*, This Honorable Court has Jurisdiction under *28 U.S.C § 1254(1)* with respect to a substantive appeal from the Second Circuit Court of Appeals that gave rise from an Eastern District Court of New York's error under a defective plea agreement. Additionally, the basis of this respective *Certiorari* is a divided circuit split pursuant to a First Amendment (**U.S. CONT. AMEND I**) matter as such. The Second Circuit Court of Appeals has affirmed the First Amendment issue that appears underdeveloped throughout the lower courts. The final word shall be adjudicated from this ultimate court. The appellant Khawaja Muhammad Farooq pleaded guilty to an attempting extortion scheme involving nude but not obscene pictures under *18 U.S.C. § 875(d)*. The matter should have been reversed under *United States v. Jackson 180 F. 3d 55 (2nd Cir. 1999) and the U.S. CONST. AMEND I.*

CONSTITUTIONAL AND STAUTORY AUTHORITIES IV.

United States Constitution: U.S. CONST AMEND I.

Statutory Authorities: *18 U.S.C. §875(d); Fed. Rules Crim Proc. 11 (b)(1)(G); U.S.S.G. § 5D1.3(b)(1)*

Authorities: *United States v. Jackson* , 180 F.3d 55 (2d Cir. 1999); *United States v. Balde* , 943 F.3d 73, 95 (2d Cir. 2019); *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005); (see) also *United States v. Torrellas*, 455 F.3d 96, 102 (2d Cir. 2006); (See) *United States v. Saft* , 558 F.2d 1073, 1079 (2d Cir. 1977); *United States v. Eaglin* , 913 F.3d 88,94 (2d Cir. 2019); *United States v. Bolin* , 976 F.3d 202, 210 (2d Cir. 2020); *United States v. Myers* , 426 F.3d 117,126(2d Cir. 2005)). *Turner v. Rogers* , 564 U.S. 431, 440 (2011) *Farrell v. Burke* , 449 F.3d 470, 497 (2d Cir. 2006); *United States v. Johnson* , 446 F.3d 272, 276 (2d Cir. 2006).

PREFRATORY III.

The lower Court in the Eastern District of New York sidestepped a Constitutional guarantee under the first amendment considering the fact that the defendant was a known photographer in Pakistan for years, and always published numerous photographs in is native Pakistan and online. The District Court additionally, failed to explain in substantive detail the element of wrongfulness when explaining throughout the proceedings including the Rule 11 hearing that the defendant understood the nature of the case. When speaking with a foreign individual, who main language is not English, the defendant is not educated in law, therefore, to know what the court meant by the “nature of the case,” is hinders the presumption of innocence. Khawaja Muhammad Farooq pleaded guilty under 18 U.S.C. § 875(d) for attempting to threaten dissemination of nude images of Jane Doe, if the girl did not return to a relationship with him. Farooq argued this matter unsuccessfully on appeal, and the circuit courts are split with respect to the exact issue.

Appellant Farooq also challenges his supervised release portion where Farooq shall remove any pictures of Jane or John Doe and report to the lower court any time, he takes a photograph or publishes images but not obscenity. This is a stark violation of the First Amendment accordingly. (See) *United States v. Farooq, No. 19-CR-100, 2020 WL 1083624, at *2–6 (E.D.N.Y. Mar. 6, 2020)*.

STATEMENT OF CASE V.

Farooq argues that the district court erred by not separately explaining the “wrongfulness” element of extortion to him during the plea proceeding. The appellate court concluded that that had no merit. But, the Federal Rule of Criminal Procedure 11 requires that the defendant understand the Case 21-707, *Document 121-1, 01/30/2023, 3460467, Page 8 of 179* “nature of each charge” against him. Farooq’s stipulations during the plea proceeding confirm that he understood the nature of the extortion charge under *18 U.S.C. §875(d)*, including its “wrongfulness.” Farooq further challenges the special conditions of supervised release on First Amendment grounds. First, the special condition requiring Farooq to seek retraction of articles he published is Unconstitutional. Second, the special condition requiring the district court’s approval before Farooq publishes information about Jane Doe and John Doe is narrowly tailored under the circumstances here that abridge the First Amendments guarantee.

Expiration or modification of a special condition of supervised release typically moots an appeal challenging that condition. (See) *United States v. Juv. Male*, 564 U.S. 932, 936 (2011) (holding “[T]hat there is no presumption of collateral consequences for an expired sentence”); *United States v. Johnson*, 446 F.3d 272, 276 (2d Cir. 2006) (noting that an objection to a condition of supervised release became moot when the condition was modified). The district court did not renew this condition, and there is no indication that it would reimpose it again, however it is capable of repetition yet evading review and substantive impinged Farooq’s First Amendment rights. Farooq also challenges the special condition of supervised release requiring him to seek the district court’s approval before disseminating any information about Jane Doe and John Doe. Although this condition restricts Farooq’s First Amendment rights , the appellate court concluded that it was within the district court’s discretion to impose this condition under the circumstances here. The condition is closely related to Farooq’s criminal conduct and is narrowly tailored to protect Jane Doe and John Doe in

light of Farooq's history of threatening them and his background as a journalist member of the independent press.

As a general matter, conditions that would be unconstitutional "when cast as a broadly applicable criminal prohibition" may be "permissible when imposed on an individual as a condition of supervised release." *Eaglin*, 913 F.3d at 96. The constitutional rights of defendants subject to conditions of supervised release may be limited, but not abridged. (See) e.g. *Farrell v. Burke*, 449 F.3d 470, 497 (2d Cir. 2006) ("[W]e note that the First Amendment rights of parolees are circumscribed."); *Porth v. Templar*, 453 F.2d 330, 334 (10th Cir. 1971) ("[One on probation] forfeits much of his freedom of action and even freedom of expression to the extent necessary to successful rehabilitation and protection of the public programs."). The Second circuit recognizes that the special condition of supervised release prohibiting Farooq from "disseminating any information about Jane Doe or John Doe in any medium...absent seeking and obtaining permission from the Court" is a content-based prior restraint on speech and hinders the First Amendment

(See) *United States v. Quattrone* , 402 F.3d 304, 309 (2d Cir. 2005). (defining a prior restraint as a “judicial order that suppresses speech —or provides for its suppression at the discretion of government officials—on the basis of the speech’s content and in advance of its actual expression”). And there is “a heavy presumption against [the] constitutional validity” of any imposition of a prior restraint.” (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)). The Second Circuit vacated overly broad conditions of supervised release implicating First Amendment rights. *See, e.g., Bolin*, 976 F.3d *At 215–16* (vacating as unconstitutional condition of supervised release prohibiting defendant from engaging in internet speech “that promotes or endorses violence, unlawful activity, or any groups that espouse such ideas”). But *see, e.g. , United States v. Schiff*, 876 F.2d 272, 276– 77 (2d Cir. 1989)(upholding as constitutional condition prohibiting association with groups advocating noncompliance with tax laws).

Under the circumstances of this case, the special condition is narrowly tailored. First, it is “reasonably related” to the “nature and circumstance

circumstances" of Farooq's offense. *U.S.S.G. §5D1.3(b)(1)*. The charged conduct and the conduct to which Farooq pled guilty related to exposing Jane Doe's and John Doe's identities and disseminating information that would embarrass and harm them. Farooq pled guilty to emailing Jane Doe and threatening to send naked pictures of her to other men in Pakistan unless she came back to Farooq also contacted Jane Doe and John Doe both directly and indirectly through their coworkers. So, the conduct covered by the special condition is closely related to the conduct for which Farooq was charged. Second, the special condition is closely related to Farooq's "history and characteristics." *U.S.S.G. §5D1.3(b)(1)*. Farooq was charged with Violating a family-court order of protection and contacting someone in Pakistan about John Doe. Throughout the district court proceedings, Farooq tried to publicize information about Jane Doe and John Doe against the district court's express orders. This included sending letters to the President of the United States and various government officials identifying both Jane Doe and John Doe and

published articles to the district court identifying Jane Doe and describing Farooq’s relationship with her. Farooq also repeatedly alluded to or sought to introduce into evidence articles that named the victims and disclosed potentially but not actual harmful details about them. So, the condition was closely related to Farooq ’s history of disseminating information about Jane Doe and John Doe, including in defiance of court orders. Third, the condition is narrowly tailored because it restricts public dissemination of information only about Jane Doe or John Doe. It is not a broad prohibition on speaking about the case or criticizing the attorneys or the district court. *See United States v. Coleman, No. 98-1299, 1999 WL 278878, at *2 (2d Cir. May 4, 1999)*(explaining in *dicta* that prohibiting the defendant from criticizing the government “or anyone else” would “surely exceed a District Court’s discretion”). The condition itself limits the restriction to “information about Jane Doe or John Doe.” The district court explained the limited scope of the condition during the sentencing hearing, noting that the purpose was to “prevent Mr. Farooq from continuing to threaten

[the victims] through media.” But the pictures were not obscene, the attempted dissemination of those pictures would hinder the First Amendment and if Farooq did disseminate the pictures and would not be unlawful, only the extortion element of his conduct would be. Accordingly, the scope of the condition was limited to information about Jane Doe and John Doe but still violated a Constitutional guarantee. Fourth, the condition is limited in duration but the Constitution doesn’t allow for partial violation of its guarantee, but a total absolute guarantee. Upon Farooq’s guilty plea to the violation of supervised release, the district court imposed a new term of supervised release in November 2021 set to expire in February 2023— lasting approximately three months. Finally, the condition still allows Farooq to seek permission from the district court to publish information about Jane Doe or John Doe, which on its face appears unconstitutional. Therefore, the special condition is *ipso facto* a hindrance of the First Amendment thus far. Farooq seeks a vacatur of his underlying conviction, sentence, and supervised release.

SUBSTANTIVE REASONS FOR GRANTING THE WRIT VI.

- A. To avoid a First Amendment deprivation pursuant to a Journalist, or member of the press and their right to film or publish *that shall not be abridged* despite unlawful conduct of attempted extortion.**
- B. To avoid vague usage of the First Amendments' guarantee to freedom of press especially in today's photogenic landscape of independent journalists.**

The Appellate Court affirmed the matter with the basis of it being tailored and limited in scope. This adjudication -framed as limited-typically falls within the scope of symbolic expression. Nothing in the underlying case was symbolic. Conversely, the conduct of threatening another could be unlawful but, in this case, it appears the government is overreaching-once again- the freedoms of the press. This Court should grant the writ for certiorari because of our instant day and age of independent journalist with modern technology that could be subjected to jail terms for publishing conventional albeit nude photos. Not one single photograph was not consensual. Therefore, by even publishing photographs and being punished for that conduct and framing it -as the government did-extortion and substantively punishing Farooq falls short of the First Amendment Guarantee.

CONCLUSION VII.

This Court should apply Strict Scrutiny appropriately. The Government is chilling the conduct of photographers and members of the press by using another statue to punish the unlawful conduct. This Court should step in and create stare decisis for this exact situation and for the benefit of others.

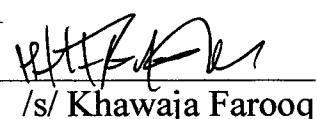


/s/ S. Mescall, JD
Legal Representative Associate

MESCALL LAW P.C.

442 5TH AVE, 15th Floor
Suite 1552
New York, NY 10018
516-844-3562
www.legalprospection.com
www.lawmescall.com

ON BEHALF OF AND THROUGH



/s/ Khawaja Farooq

04/10/2023