Supreme Court, U.S.
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No. 22-7754

IN THE

SUPREME COURT OF THE UNITED STATES

MAURICE HUNT — PETITIONER
(Your Name)

vs.

USA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court Of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MAURICE HUNT
(Your Name)
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ORIGINAL

QUESTION(S) PRESENTED

1. Whether Congress Lacked Congressional Authority Under The Commerce Clause To Enact 18 USC 1591 (a)(1), To The Extent That The Statue Allows For Criminal Liability To Attach Where There's No Nexus-Intent Between The Use Of Force OR Coercion And The Intent That A Person Engage In Commercial Sex Acts?

2. Whether This Court Should Use It's Supervisory Authority Pursuant To McCormick v. U.S., 500 U.S 257 n.8, And, Ruan v. U.S. 142 S.Ct. 2370, To Invalidate The Ninth Cir.'s Definition Of "knowing" In U.S. v. Todd, 627 F.3d 329 (2010) And It's Application [redacted] (Applied) For The First Time On APPEAL?

3. Whether The District Court, And, The Ninth Cir. Violated Petitioners Constitutional Rights By Invoking A "Harmless Error" Defense That Was Not Relied Upon By The GOVERNMENT, NOR Affording The Defendant An Oppurtunity To Be Heard On The Question If The Constructive Amendment Of The Indictment Was "Harmless"?

4. Whether This Court Should Use It's Supervisory Authority To Address The District Court And Ninth. Cir. Refusal To Apply This Court's Precedent Opinion In U.S. v. Aguilar, 515 U.S. 593 (1995) To Petitioner's Claims That Appellate-Counsel Was Ineffective For Failing To Raise An Aguilar Argument?

5. Whether This Court Should Use It's Supervisory Authority To Address The District Court And The Ninth Cir. Refusal To Apply This Courts Opinion In Elonis v U.S., 135 S.Ct. 2001 (2015) Regarding The Reasonable Person Standard Definition Of "Intimidation" In 18 USC 1512 (b)(1)?

6. Whether The GOVERNMENTS Theory Of An Affect On Interstate Commerce Was Legally-Sufficient To Confer Federal Jurisdiction On This Case?

QUESTION(S) PRESENTED

(7.) Whether The District Court And The Ninth Circuit Failure To Address Petitioners Claim In His 28 USC 2255 Motion, That Appellate Counsel's On Direct-Appeal Rendered Ineffective-Assistance Of Counsel By Failing To Raise The District Judge's Constructive Amendment OF The Superseding Indictment, By Removing "Whoever Knowingly From Count 1 (Actionable Verbs) In It's Jury Instructions To The Jury Violated Petitioners 5th, 6th, and 14th Constitutional Rights ?

(8.) Whether This Court Should Use It's Supervisory Authority To Determine If The Certificate of Appealability (COA) Should Be Expanded To Encompass Any Of The Claims Raised In The 2255 Motion That Makes A Substantial Showing Of A Denial A Constitutional Right ?

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TABLE OF AUTHORITIES CITED

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

U.S. v Hunt, 622 Fed. Appx. 656 (9th. Cir. 2015)

9th. Cir. #19-17337
9th. Cir. #21-16651
9th. Cir. # 13-10583

EDC # 1:13-CR-00189-LJO-SKO-1
EDC # 1:17-CV-01341-LJO
EDC # 1:13-CR-00189-NONE-SKO-1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I don't understand whats to be stated here

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 2022 U.S. App. Lexis 28672; 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.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 10/19/2022 13.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 11/22/2022, and a copy of the order denying rehearing appears at Appendix ____. Rehearing En banc denied Feb. 8, 2023

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

The Statement of The Case is the same as the Reasons for Granting the Petition

(1.) Whether Congress Lacked Congressional Authority Under The Commerce Clause To Enact 18 USC 1591(a)(1)(e), To The Extent That The Statue Allows For Criminal Liability To Attach Where There's No Nexus-Intent Between The Use Of Force Or Coercion And The Intent That A Person Engage In Commercial Sex Acts? (U.S. v. Morrison, 529 U.S. 598 (2000))

I Question the Constitutionality of 18 USC 1591(a) and It's Application To The Facts Of My Case!

In the year 2000 Congress passed the Trafficking Victims Protection Act. That same year (2000), the U.S. Sup. Ct. issued it's opinion in U.S. v. Morrison, 529 U.S. 598 (2000). In Morrison, much was said about the Congressional Findings that Congress made when passing the Violence Against Women Act of 1994 (42 U.S.C. 13981), attempts were made to justify VAWA under the authority of the Commerce Clause. However it was found to be beyond the power of Congress because its subject matter was not Commerce.

It's not clear to this writer if Congress considered the U.S. Sup. Ct. holding in Morrison prior to enacting the TVPA as the TVPA includes the same description of intent that the VAWA set out to do - Use a federal statue, to Criminalize Conduct readily denounced as

Criminal by the States.

The Statue.

Sex Trafficking by Force, Fraud, or Coercion

(a) Whoever Knowingly -

"..... recruits, entices, harbors, transports, provides, obtains, or maintanes by any means a person; Knowing that force, fraud, or coercion will be used to cause the person to engage in commercial sex acts." (In relevant part)

The way this Statue is written opens itself to two different interpretations. Hence the problem. Does this statue requires that all the elements must "Temporally-Align", (Meaning: When this is happening - that's also happenning) or in the words of Morissette v. U.S., 342 U.S. 246, 250-252 (1952)

" that the culpable mental states accompanies and coincide with the wrongful acts."

In U.S. v. Marcus, 538 F.3d 97 (2d Cir. 2008), rev'd on other grounds, 560 U.S. 258 (2010) a Panel Justice Sonia Sontamayor was on, footnote #7 held;

"We note that a serious question exists at to whether 18 USC 1591 could constitute a continuing offense. The Statue's plain language appears to require knowledge of "force, fraud, or coercion at the time of the knowing recruitement, enticement, harboring or transportation. We caution the government that on remand, it may be well served by ensuring that the

jury's instructions make clear that these elements are temporally-aligned."

One interpretation of 18 USC 1591(a) calls for the temporal-aligning of the elements - which when you do so Commerce is implicated as the Commercial Sex Acts is the desired result.

Another interpretation of 18 USC 1591(a), which is how I was prosecuted, and was also the basis for the legal arguments in Marcus, supra case, that the elements of 18 USC 1591(a) does not require a Temporal-Alignment of the elements. Just proof of the commission of the elements is all thats needed. U.S. Attorney's across the Nation are prosecuting 18 USC 1591(a) cases without temporally-aligning the elements. And District Ct. Judges are failing to instruct Juries that the elements are required to align in order to find "Guilt."

In my prosecution (U.S. v. Hunt, D.C.#1:13-cr-00189-LJO-SKO), the GOV'T argued in closing, essentially, that I met a person who was a prostitute. During the time we were together arguments and differences occured where I used force against the prostitute. The Force had the necassary effect of coercing the prostitute into subjectively believing that Force would be used against her if she didn't continue to engage in commercial sex acts.

Now an argument can be made that the above described

prosecution - scenario fits the language of 18 USC 1591(a). But the problem is the statue is a Federal one and Federal Statues must be tethered to one of the Powers/Clauses in the U.S. Constitution.

Prosecuting a defendant for using force against a prostitute, who happens to also engages in Commercial Sex Acts, Severs the nexus between the Commerce Clause and the Intent of the statue (Articulating this is complicated) away from each other. U.S. Attorney's (as in my case) then attempt to justify federal involvement by arguing that the forced used against the prostitute coerced her to engage in Commercial Sex Acts. With the proof coming from the alledged victims subjective-belief.

Theirs a difference between, being abusive towards a prostitute who engages in Commercial Sex Acts or;

being abusive towards a prostitute to cause that prostitute to engage in Commercial Sex Acts

But just like the Violence Against Women Act the TVPA "Force and Coercion" Means, are being applied in violation of the U.S. Constitution distinction between what is truly national and what is truly local, as the force and coercion is just the same as "Violence Against Women" and the Commercial Sex Act that the Prostitute engages in, is just by-product of the trade that the Prostitute engages in.

Congress lacks the Authority To Criminalize Violence Against Women (or Civilly for that matter) and to the extent that 18 USC 1591(a) allows for the Prosecution by the Federal GOV'T for violence against women it should (18 USC 1591(a)) be struck down as UnConstitutional.

(2.) Whether The District Court And The Ninth Circuit Failure To Address Petitioners Claim In His 28 USC 2255 Motion, That Appellate Counsel's On Direct-Appeal Rendered Ineffective-Assist. of Counsel By Failing To Raise The District Judge's Constructive Amendment Of The Superseding Indictment, By Removing "Whoever Knowingly" From Count 1 (Actionable Verbs) In It's Jury Instructions To The Jury! Violated Petitioners 5th, 6th, and 14th. Const. Amend. Rights?

This legal error is so simply-Plain in the Jury Instructions that it's hard for me to accept that neither of the (2) two appointed-appellate counsel's on direct-appeal failed to raise it. It is further shocking that the District Court failed (refused) to address this argument during the 2255 proceedings or in it's "Memorandum Opinion" dated Nov. 7th, 2019, when I clearly raised it as Ground #Thirty-Seven (37) in my 2255 mot. Then I raised it as a request to expand the COA and/or as a "Uncertified Issue" before the Ninth Cir. #19-17337, and again, the

Ninth Cir. refused to address such meritorious claim

18 USC 1591(a) text starts;

"Whoever Knowingly" and it is followed by a string of actionable verbs - Recruits, Entices, Harbors, etc.... So it follows that the "Whoever knowingly" applies to the Recruits, Entices, Harbors, etc.....

I posit that the elements (including) the Mens Rea in 18 USC 1591(a)(1) must "Temporally-Align" in Prosecutions as the Statue intended. In the Superseding Indictment filed June 27, 2013 Count One (the only 18USC 1591(a) charge) states;

"Maurice Hunt did **knowingly** recruit, entice, harbor, etc..."

However, in the Jury Instr. on Day 4 of the Trial (and same quote of the jury instr. by the GOV'T during Closing Arguments) dated Aug. 9th, 2013, the Reporter's Transcripts Vol. 4 pgs. #674 to #760, on pages #705-706 the Dist. Ct. stated;

"In order for the defendant to be found guilty of the count Charge 1, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant recruited, enticed, harbored, etc.....

Clearly the Mens Rea of "Knowing(ly)" is missing from the Jury Instr. and the Jury was never required to pass upon or find the temporal-alignment of the mental state

accompanie and coinciding with the acts of - recruits, entices, harbors etc.....

During the GOV'T's Closing Argument (See Reporters Transcript #714, #716) the GOV'T stated;

" Essentially, there are three elements that must be proved beyond a reasonable doubt for you to be able to find the defendant guilty. The first being that the defendant recruited enticed, harbor, etc..... "

The failure by the District Judge and the U.S. Attorney to instruct/alert the Jury that my acts had to be done Knowingly - Prejudiced me - because the GOV'T Closing Arguments Theory Of The Case, wasn't based upon my Knowledge or Intentions, but rather was a theory of the effects of my alledged use of force had on the subjective-beliefs of their (?) victim and why she continue to engage in Commercial Sex Acts.

I believe the District Judges and U.S. Attorney's removal of the Mens Rea in the Jury Instr. was by design. Because the GOV'T lacked any evidence that would establish my Mental State at the time I un-Knowingly Harbored and Transported their victim. So the GOV'T in-cahoots with the Dist. Judge set out to change before the Jury the inquiry of the defendant's subjective-intent, to one of an

objective theory.

In the GOV'Ts "Opposition Motion" to my 2255mot. (dated 5-11-2018, D.C.#1:13-cr-00189-LJO, doc.175) their sole position was that I waived and procedural defaulted all my claims raised in the 2255mot. for failure by appellate counsel(s) to raise such arguments on Direct-Appeal.

Confusingly, (to me) the Dist. Ct. and the Ninth Cir. addressed the constructive amendment argument I raised relating to the Dist. Ct. "Adding language to the Mens Rea" (See Ground/Claim #1 I raised in my 2255mot.) but both Court's ignored the Constructive Amend. argument (In Ground #3 2255mot.) "removing language as to the Mens Rea."

This argument was couched in my 2255mot. before the GOV'T, Dist. Ct., and Ninth Cir. based upon Ineffective Assist. of Appellate Counsel on Direct-Appeal, if meritorious, this should be sufficient to get passed the Procedural Default defense. Since the GOV'T has never acknowledge the "Whoever knowingly" was erroneously removed from the Jury Instructions and therefore has not raised a defense to this legal error, I posit that the GOV'T has waived any argument or defense suchas - the Harmlessness of the constructive amendment by removing the "knowingly" safegaurd Mens Rea from the Jury Instructions to the Jury in violation of my Due Process Rights.

(3.) Whether This Court Should Use It's Supervisory Authority Pursuant To McCormick, vs. U.S., 500 U.S. 257 n.8 And Ruan v. U.S., 142 S.Ct. 2370, To Invalidate The Ninth Cir's Definition Of "Knowing" In U.S. v. Todd, 627 F.3d 329 (2010), And It's Application Applied For The First Time On Appeal?

(Please review the Dist. Judges "Memorandum Decision" dated Nov. 7th, 2019, Case #1:13-cr-00189-LJO, doc. 201, Sec. D. "Use of Modus Operandi on Appeal)

On Direct-Appeal Appellate-Counsel(s) advanced an argument that their was insufficient evidence that I knew force, fraud, or coercion would be used to cause a person to engage in commercial sex acts.

Appellate-Counsel's argued in her opening brief;

"The fact that SG describes beatings, turbulence in the relationship, and physical abuse does not convert the evidence into a fact pattern in which fraud and coercion are used to force her into performing commercial sex acts against her will."

I went to trial because I knew the GOV'T could not prove that (I) "knew" that (I) would use Force, Fraud, or Coercion to cause [any] person to engage in Commercial

Sex Acts. During all the witnesses testimony at trial the witnesses all testified that, I, either, used force against them for reason's that was un-related to a Commercial Sex Act, or, that, they subjectively convinced themself that they had to engage in commercial sex acts because of the force I used against them. But, none of the testifying witnesses ever said I told them that Force was used to cause them to engage in Prostitution/ Commercial Sex Acts. Even the GOV'T argued during Closing Arguments at the Trial (See Day 4 of Trial, Rep. Transcr. # 721, line # 3-16) that their victim "Had this choice to make" and that "She made the decision to stay with the one she had to fear the most."

The entire GOV'T's theory of their case was convincing the Jury to find MR. Hunt (me) guilty based on the Subjective beliefs of their victim. And threw these subjective beliefs and the removal of "Whoever knowingly" from the Jury Instr. The GOV'T argued an "Objective-Theory which caused the Jury to convict me in error.

At Trial the District Judge instructed the Jury as;

"An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident." (See ECF No. 155 at 96 Dist. Ct. #1:13-cr-00189-LJO)

Not once, throughout the four day trial either in the GOV'Ts opening statements or in the Dist. Judge's Jury Instr., or, the GOV'Ts Closing Arguments did the GOV'T say or indicate that their "Theory" of the case was based on MR. Hunt's "knowledge of his or anyone else's Modus Operandi" In fact the words "Establish Modus Operandi" does not appear anywhere in the four day Trial Transcripts.

However, on Direct-Appeal (9th. Cir. #13-10583) the 9th. Cir. held that; " A 1591 conviction "may be premised on the defendant's knowledge or reckless disregard of the fact that 'means of force, threats of force, fraud or coercion will be used to cause a victim to engage in a commercial sex act.' This element of the offense was establish by evidence that Hunt knew "in the sense of being aware of an establish modus operandi that would in the future cause the victim to engage in prostitution by force, fraud, or coercion." Hunt, 622 Fed. Appx. 657 (quoting U.S. v. Todd, 627 F.3d 329, 334 (9th. Cir. 2009))

In several Grounds/Claims throughout my 28 USC 2255 mot. I attempted to sound the alarm that the Ninth Cir. affirmed my conviction on Direct-Appeal based upon a "Theory" that was never submitted to the Jury at my Trial. (See 2255 mot. Grounds # 4, 8, 10, 11, 12, 13, 14, and 16, 17, and 37)

In response to the Grounds I raised in my 2255 mot. attacking the 9th. Cir. affirming my conviction on a "Theory" that wasn't apart of my trial - The Dist. Judge (also the same Trial Judge) in his November 7th, 2019 "Memorandum Opinion", shockingly, agreed with my arguments, but cowardly did

nothing about it. The Trial Judge stated,

"The Ninth Circuit found that Petitioners use of force, fraud, or coercion caused the victim to engage in commercial sex acts via the modus operandi theory, even though a modus operandi theory never was alledged explicitly in the indictment nor provided to the jury in instructions or arguments."

(Note: For clarity purposes the Dist. Judges characterization of the 9th. Cir's. holding is mistaken. The Ninth Cir. never held that I used force, fraud, or coercion to cause the victim to engage in commercial sex acts - Rather - The 9th. Cir. held I was aware of an establish modus operandi that would cause the victim to engage in prostitution in the future)

Well if the modus operandi never was alledged explicitly in the indictment nor provided to the jury in the instructions - Where did the Ninth Cir. get it from? How does my conviction on Direct-Appeal get affirmed based On A Modus Operandi Theory That the Jury or the Parties never heard?

I was never given a Direct-Appeal based solely on the issue's/theory that was before the Jury and that was raised before the Ninth Cir. (Please read the GOV'T Closing Arguments - Attached)

While the Ninth Cir. founded and affirmed my conviction on a "Modus Operandi Theory", by doing so, shines light on the fact that I never received an opportunity to be heard and defend myself before the Jury at Trial, on this "Modus Operandi Theory."

For the following (3) three reason's this Court should Grant this Petition;

1. The Ninth Cir. violated this Court's Rule held in McCormick by affirming petitioner's conviction based on a theory that wasn't submitted to the Jury at Trial.

2. Petitioner was never given an opportunity to be heard and allowed to protect his substantive rights against the "Establish Modus Operandi Theory"

3. The definition of "Knowing" that the Dist. Ct. instructed the Jury was inadequate and conflicted with the Ninth Cir. definition of "Knowing" as Judicially-Crafted in U.S. v. Todd, 627 F.3d 329 (2010), and the Todd's definition of "Knowing" that was used to affirm the conviction, conflicts with the U.S. Sup. Ct.'s definition of "Knowingly" as held in Borden v. U.S., 589 U.S. — (2020). The Todd's definition of "Knowing" also conflicts with the Model Penal Codes definition of Knowing as it writes-in language (Suchas "Modus Operandi" "Established") that doesn't appear in the the Model Penal Codes of 1985, 2.02(2)(b)(ii). Ruan v. U.S., 142 S.Ct. 2370 (2022).

(4.) Whether The District Court And The Ninth Circuit Violated Petitioners Constitutional Rights By Invoking A "Harmless Error" Defense That Was Not Relied Upon By The Government, Nor affording The Defendant An Oppurtunity To Be Heard On The Question If The Constructive Amendment Of The Indictment Was Harmless Error?

In my Openning Brief and Reply Brief **before** the 3 Judge Panel in the 9th.Cir #19-17337 I argued that the District Ct. violated the Party-Presentation Rule (See U.S. v. Sineneng-Smith, 140 S.Ct. 1575 (2020)) by invoking Sua Sponte a Harmlessness defense that the GOV'T had not relied upon in their filed "Opposition Motion" To MR. Hunts 2255mot. (See GOV'T Opposition Motion filed 5-11-2018, doc.175, Case # 1:13-CF-00189-LJO-SKO)

Neither Parties to this case ever raised, or, address the "Harmlessness of The Constructive Amendment Of The Indictment In the District Ct.. The District Judge just included it in his "Memorandum Decision" for the first time denying my 2255mot. And the 3 Judge Panel before the Ninth Cir. continues the abuse on Collateral Appeal, by relying on the Dist. Ct's. basis for affirming the conviction.

Pursuant to U.S. v. Murguia-Rodriguez, 815 F.3d 566 (9th.Cir. 2015) The GOV'T has waived the "Harmlessness Defense" and this Court should so hold.

In the Dist. Ct's "Memorandum" dated Nov. 7, 2019, sec. E;

"Nevertheless, any such error was harmless because the jury also expressly found the government proved beyond a reasonable doubt the statue's predicate alternative..... i.e., that Petitioner "Knowingly, or in reckless disregard of the fact, that means of force, threats of force, fraud, or coercion, or any combination of such means would be used to cause S.G. to engage in a commercial sex act."....."

"it cannot be said the error had a "substantial and injurious effect" on the jury's verdict, because there is an independent predicate jury finding for Petitioners 1591(a) conviction supported by overwhelming evidence."

The main flaw with the District Ct's. "Harmless" analysis is It's one-sided. The District Judge did not allow any adversarial challenge to the question of the degree of "Harmfulness" played in the Constructive Amendment of the Indictment.

The Dist. Ct's. isolated his analysis of the "Harmfulness" of the Constructive Amendment, to the language of the Jury Instr.. This deprives Petitioner of a Process grounded in Due Process.

I raised multiple instructional errors within my filed 2255mot. that related to Count 1 (1591(a)(1)). When the Dist. Judge was addressing and deciding my claims of various instructional errors, nowhere in his response does he consider, expressively, the prejudice of each instructional errors in-conjunction with each other.

Rather, he solely addressed each instructional-error and found them to be "Harmless" standing alone. This is the Perils of not affording the government and petitioner an opportunity to brief/weigh-in their positions.

For an example; (In the 2255mot.)

1. I raised a meritorious claim of Constructive Amend. of the Indictment by the inclusion of "Reasonable Opportunity to Observe"

2. I raised an "Un-Addressed" claim that the Indictment was Constr. Amended by the removal of "Knowingly" from the Jury Instruction.

3. I raised in Ground 13A, that the jury instructions for "coercion" improperly omitted the correct definition of the phrase "serious harm" in 1591(a)(1)(e)(4)

4. I raised in Ground 16A that the jury instructions should have included the Todd definition of "Knowing"

5. I raised in Ground 17A that the jury instructions should have reflected that that the elements/means of 159(a)(1) must "temporally-Align" (U.S. v. Marcus, 538 F.3d 97 (2d. Cir. 2008)

It's my position that all #5 of these instructional errors played a "Substantial and Injurious" part in the Jury's verdict in reaching "Guilt" on the Force/Coercion element. I further posit that given an opportunity I can mount a persausive argument of the interplay of prejudicial-effect between each of the above instructional errors and/or the omitted instruction.

But the Dist. Judge can't be the one to solely state what's an error and Sua Sponte determine the effect of that error, as the parties may bring a perspective/position to the Court's

attention, that the court may not have considered in it's analysis in the first instance.

Briefly, but not only this argument exist;

When the Dist.Ct. determined that a Constructive Amend. of the Indictment occured by the inclusion of "Reasonable Opportunity To Observe" in the Mens Rea, but finding that their was no Constr. Amend. of the Indictment as to the Force/Coercion element and their was sufficient evidence to uphold the Jury Verdict as to this element. Why didn't the Dist. Judge Sua Sponte consider Ground #37 (2255 mot.) that is - the effect that "Removing Knowingly" from the actionable-verbs recruits, entices, harbors, transports would have on the Juries finding of Guilt on the Force/Coercion element. Why didn't the Dist. Ct. Judge Sua Sponte consider Ground #17 and take it upon himself to determine if the removal of "Knowingly" from the actionable-verbs failed to focus the Jury that all the elements must "Temporally-Align" on the force/coercion element

The Dist. Ct. Judges determination that the Constr. Amend. of the Indictment was "Harmless" was short-sighted, And the Ninth Cir. reliance on the Dist. Ct's. holding furthers the harm against Petitioner.

Petitioner request's the opportunity to show why and with the inclusion of all relevant claims raised in the 2255 mot. that the Constr. Amend. of the Indictment was not "Harmless" If this Court doesn't find first that the Harmlessness Defense hasn't been waived first.

(5.) Whether The Governments Theory Of An Effect On Interstate Commerce Was Legally-Sufficient To Confer Federal Jurisdiction On This Case ?

This argument is legally-complicated for me to explain. The reason why is because the (3) three purported-theories-nexuses the GOV'T relied upon at Trial in their closing arguments are legally-flawed. One of the "affecting interstate commerce theories was not found to be legally-sufficient on Direct-Appeal by the Ninth Cir. (622 Fed.App'x 656-[2015]).

When this happened it left a period of time in the operative dates of the indictment without "Federal Criminal Statutory Jurisdiction."

(Note: When the above occured Count 1 (1591(a)(1)) became un-tethered to the Commerce Clause as the offense wasn't effecting /affecting interstate commerce)

At Trial the GOV'T relied upon these three Commerce theories;

1. The Condom Theory
2. The Interstate Traveler Theory
3. The Bank with Branches out-of-state Theory

The Condom Theory was the only theory that the Ninth Cir. refused to affirm the conviction under. See, the dates of the Superseding Indictment runs from October 9-17, 2011 as to Count #1. (Here's where the argument gets complicated to explain)

Before the Trial started the GOV'T issued their Trial Brief dated 7/29/2013, doc. 53, case# 1:13-cr-00189-LJO-SKO, pgs# 4 of 22.

In the GOV'Ts Trial Brief "Statements of Facts" pg. #4 of 22, line 10-11 it states "Prior to leaving Fresno for Bakersfield, the defendant made an appointment for the victim at the EOC Clinic....."

While, before the trial started I didn't understand the significance of the above statement, I knew it was false, as I never made no appointment for the alledged victim.

During the victims testimony the GOV'T attempted to get the victim to provide testimony that I made the app't. at the EOC. The victim refuse to do so and testified she was the one who made the app't. (At this point of the Trial I still didn't know the relevance of the app't at the EOC) However, the GOV'T elicited testimony from (?) the victim that on Oct. 14, 2011 she received Condoms from the EOC and when she engaged in commercial sex acts she always used Condoms.

Then the GOV'T put on the Physician Assistant from the EOC to testify that she gave the (?) victim Condoms.

Then the GOV'T put on a person from the Food, Drug, Admin. (FDA) to talk about Condoms are not made in California.

During the GOV'T's Closing Arguments they advanced a theory that since Condoms are not made in California and their victim was using condoms during commercial sex acts, the affecting interstate commerce element has been established.

Once the matter was decided on Direct-Appeal and the Ninth Cir. did not affirm the conviction on the Condom Theory - Then the Question on Collaterol-Review becomes - When (what date) did Count 1 become a Federal Offense. As the Condom Theory was suppose to show an inference that between Oct. 9-13, 2011 their was acts committed by MR. Hunt that tied

him to the affecting interstate commerce, element, that being, MR. Hunt was the one who made the appt. for the victim to get the Condoms - Condoms that affect interstate commerce.

But the testimony didn't follow the GOV'T's Fraud.

Now, let's add fuel to this fire - it get's complicated. The dates of the operative indictment runs from Oct 9-17, 2011. I have established that the GOV'T never proved this offense affect interstate commerce between Oct 9-13, 2011 and the Ninth Circuit confirms this when they don't affirm the conviction on the Condom Theory, because this was the only theory submitted to the Jury that would show the dates of the indictment between Oct 9-13, 2011 having a Federal Connection.

So my attention is now, focused, that the conduct occuring between Oct. 9th-13, 2011 has no federal connection and is not supported under the Commerce Clause (U.S. v. Morrison, 529 U.S. 598)

However, this fraud of a prosecution - the GOV'T presented alledged assaultive-conduct that occured between Oct 9-12th, 2011 that MR. Hunt committed upon (the) victim, but the GOV'T never explains, nor can they, how assaultive-conduct that has no economic connection gives them statutory-jurisdiction under 18 USC 1591(a)(1).

Remember, my position is the elements must Temporally-Align. The GOV'T, The Dist. Ct. and The Ninth Cir. has been proceeding on the assumption that simply alledging dates within the indictment Confers Federal Jurisdiction for that Period. I beg to differ. I believe that Federal Criminal Statutory Jurisdiction as to 18 USC 1591(a)(1) does not become operative in its protective form until one of the actionable-verbs are committed and it is

Simultaneously affecting interstate commerce.

The GOV'T faced a problem with this case - How to make a State Pimping and Pandering case into a federal one called "Sex Trafficking"

One of the Perils of not proving every aspect of the Theories of the GOV'Ts case as it relates to the interstate commerce - creates these dovetail arguments into other areas of law.

The GOV'T utilize assaultive conduct that occured before the defendant engaged in the conduct (actionable-verbs) that the statue prohibits that must (temporally-align) affect interstate commerce.

The suspect-evidence at Trial (See GOV'T's Closing Arguments) that the GOV'T relied upon to establish the statutory jurisdiction didn't occur until Oct. 14-16th, 2011, this was the dates the GOV'T argued;

1. Their victim obtained "Condoms"
2. Their victim was "Transport(ed)" and "Harbor(ed)" to/at a Hotel that served interstate travelers
3. That the Hotel their victim used - The Hotel used Bank of the West for it's Banking purposes and Bank of the West has branches in numerous States outside of California

So far the Issue's Are;

1. The Ninth Cir. did not affirm the Conviction on the Condom Theory therefore the full dates of the indictment does not satisfy Federal Statutory jurisdiction - which means the GOV'T's use of conduct during this period on, none-proven statutory jurisdiction, to establish a separate element of knowing Force, fraud, or Coercion will be used - should not have been allowed forwarded to the Jury

2. Where theirs no proven facts to establish statutory jurisd, then the use of assaultive/force conduct occuring between Oct. 9th - 12th, 2011 to prove the 18 USC 1591(a)(1) Count 1 runs afoul of the principles of law as held in U.S. v. Morrison supra, that the federal GOV'T doesn't have the authority to criminalize assaultive conduct.

At some point I have to stop writing. In short, the GOV'T needs to explain based on the theories of an affect on interstate commerce they advanced at Trial - how conduct occuring during a period of dates, that occurs before statutory jurisd. is established, can be used, nevertheless, to establish an element of the offense, without a charge of Conspiracy or aiding and abetting included.

I believe that the continuing affirmation of the conviction of Count #1 violates my Due Process rights because it's based upon conduct that alledgedly occured where, when, the GOV'T has failed to prove such conduct was simultaneously affecting interstate commerce.

If my conviction is allowed to stand then the Federal GOV'T will have assumed/grab Powers from the State of California to prosecute domestic-assaults then this will have obliterated the distinction between what is local conduct vs. National Conduct, creating a National unitary Police Powers. Looking to the language in the U.S. Constitution I must zealously oppose my prosecution and humbly but confidently ask this Court to vacate my conviction in Count #1, respectfully.

Without the use of the conduct occuring between Oct 9-12, 2011, once excised, the evidence to uphold Count #1 is insufficient as a matter of law.

The last log into the fire.

In my 2255mot. Ground 3 I raised a claim that either the Dist.Ct. or the GOV'T Constructively Amended the Indictment or Fatally Varied away from the language in the indictment by the use of other persons acts, that were not listed in the indictment, to satisfy the In or affecting interstate commerce element.

And that my Appellate-Attorney(s) rendered Ineffective Assistance of Counsel on Direct-Appeal for not raising the Issue.

In the Dist.Ct. Judges Nov. 7, 2019 "Memorandum" response to my 2255mot. he doesn't adequately address this ground/claim and the Ninth Cir. refused to expand the COA to encompass this Claim. I raise it before the U.S.Sup.Ct. because it's simple-straight forward error and shows how a miscarriage of Justice occured.

At Trial, on Day 4, the Trial Judge instructed the Jury; "In order for the defendant to be found guilty of the count Charge 1, the government must prove each of the following elements beyond a reasonable doubt:

And third, the defendant's actions were in or affecting interstate commerce." (pg.#706)

The language of the Superseding Indictment as to the interstate commerce element is similar.

However, throughout the GOV'Ts presentation of their theory that the defendants acts were affecting interstate commerce, their evidence revealed that non-~~idicted~~ indicted persons conduct affected interstate commerce (Note: All though the evidence points to other people conduct affected interstate commerce I still debate if even thats true to the point if an actual effect on Interstate Commerce is required.)

As Ive said before, the GOV'T relied upon (3) three Theories in their Closing Arguments;

1. The Condom Theory - This theory had nothing to do with me whatsoever. The victim got her condoms from her doctor at the EOC clinic. Their was no testimony throughout the 4 day Trial that I even knew the victim was using condoms.

2. The Interstate Traveler Theory - This is pure nonsense. The GOV'T put the Manager of a Bakersfield Hotel on the stand and he testify that interstate travelers stay at his hotel on occassions. No dates were testified to as to when interstate travelers stayed at the Bakersfield Lodge Hotel. But it doesn't matter because this theory has nothing to do with my acts.

3. The Bank with Branches out of state Theory - This is pure nonsense. The Manager of the Bakersfield Lodge testified in 2013 (Aug.) that there hotel uses Bank of the West for it's banking purposes - this testimony did not tie to the dates of the operative indictment. Then the GOV'T puts on a Bank of the West Bank Manager who testifies that money deposit in the bank is available to customer in each state theirs a Bank of the West, this theory has nothing to do with my acts.

For the reasons stated above this Court should grant this Petition and vacate my conviction on Count 1 (18 USC 1591(a)(1))

(b.) Whether This Court Should Use It's Supervisory Authority To Address The District Court And Ninth Circuit Refusal To Apply This Court's Opinion In U.S. v. Aguilar, 515 U.S. 593 (1995) To Petitioners Claims That Appellate-Counsel (On Direct-Appeal) Was Ineffective For Failing To Raise An Aguilar Argument?

This claim involve the following issue's that was raised in my 2255 mot. (Ground #28, #27, #35, #36);

1. "Ground #27" That the GOV'T Theory In Closing Arguments As to Counts #3-5 That Defendants False Statements Made To Potential Witnesses Violated 18 USC 1503.

2. "Ground #28" That the GOV'T Theory In Closing Arguments That Defendant Could be Held Liable Under 18 USC 1503 Even Though He Had No Prior Knowledge Of Who THE GOV'T Intended To Call As A Witness.

3. "Ground #35" That The GOV'T Theory In Closing Arguments That Defendant Could Be Held Liable Under 18 USC 1503 Even If He Was Unaware That His Communications To Alledged Witnesses Were Material To THE GOV'Ts Theory Of THE Case.

4. "Ground #36" That The District Court At Trial Failed To Instruct The Jury That The Elements Of 18 USC 1503 and 1512(b)(1) Must "Temporally-Align".

All of the Grounds stated were raised as Ineffective Assistance of Appellate Counsel. ALL Of These Grounds Were Ignored By The Dist. Ct. In It's Response To My 2255 mot. And The Ninth Cir. Refused To Issue or Expand The COA To Encompass Such Grounds, As If The Precedent Authority In US v. Aguilar, 515 U.S. 593 (1995) "Meant Nothing".

The High Court in U.S. v. Aguilar supra stated

"We granted certiorari to resolve a conflict among federal circuits over whether [18 USC] 1503 punishes false statements made to potential grand Jury witnesses."

The U.S. Supreme Court ultimately held that false statements made to potential witnesses does not violate Sec. 1503.

Obviously, the Jury at my trial didn't get this "Order" as the Trial Judge sat by while the GOV'T argued;

(See Jury Trial Day 4, Vol. 4, pg.# R.T. 736)

"And so why would Roxanne Sanchez be afraid to tell you what happened after the police left? Well, again, MR. Hunt told you in those jails calls. Remember that? "I have a report saying that you were with S.G.? There was something extra going on? You might want to get a lawyer. You might come up on a federal indictment." All lies to her. You heard from the agent. There is no report. The victim never alledged any molestation. So why would MR. Hunt tell her that? To scare her into not testifying."

The Ninth Cir. held in U.S. v. Aguilar, 21 F.3d 1475 (1993) En banc

" ..... To construe the statue as the GOV'T has in this case would mean that anyone who makes a false statement to any person who might be or is expected to be a witness before a Grand Jury or any other Judicial proceeding about a subject under investigation could be guilty of the crime of obstructing justice." " ..... The fact that the FBI investigation could result in producing evidence that might be presented to ~~the~~ a Grand Jury is insufficient to constitute a violation of Sec. 1503." " ..... But what use will be made of false testimony given to an investigative agent [Natalie Kelly or Roxanne Sanchez] who has not been subpoenaed or otherwise directed to appear before the grand jury is far more speculative. We think it cannot be said to have the "Natural and probable effect" of interfering with the due administration of Justice."

So that I'm clear, I am not a lawyer and can't be expected to present equal service. This claim is based upon Ineffective Assistance of Appellate Counsel for not bringing to the Ninth Cir. and U.S. Sup. Ct. opinions in Aguilar, to the Ninth Cir. attention on Direct-Appeal. As most of the evidence and the theory the GOV'T advanced at Trial has already been rejected as not being violative of 18 USC 1503 by the U.S. Sup. Ct. in Aguilar supra. I have previously brought this claim to the attention of the Dist. Ct. and the Ninth Cir. and neither Court wouldn't even acknowledge expressively the arguments I was

raising to state if Aguilar applies or not. But rather the District Ct. glossed over my Aguilar arguments by cherry-picking over some boilerplate language and saying that the Appellate-Counsel made a "Strategic Decision" not to raise an Aguilar argument. But doesn't explain why?

It is my representation to this High Court that their is no evidence in existence that the GOV'T could produce to this Court that would would show a violation of either 18 USC 1503 or 1512(b)(1). I have included (Appended) the GOV'Ts Closing Arguments and the actual transcripts of relied upon conversation are available to this Court upon request of the GOV'T.

(7.) Whether This Court Should Use It's Supervisory Authority To Address The District Court And The Ninth Circuit's Refusal To Apply This Court's Opinion In Elonis v. U.S., 135 S.Ct. 2001 (2015) Regarding The Reasonable Person Standard Definition Of "Intimidation" In 18 USC 1512(b)(1)

In my filed 2255 mot. in Ground Twenty-Nine (29) I raised an argument that this High Courts opinion in Elonis supra Denouncing the use of "Criminal Negligence Standards' suchas the "Reasonable Person Standard" effectively invalidated the Jury Instructions as to Counts #5-6 (18 USC 1512(b)(1)) That required the Jury to determine if "Intimidation" was committed from a reasonable person standard. I further argued that the instruction given as to intimidation infected the Juries deliberations as to the necessary Mens Rea required for Count's #5-6 and rendered my trial unfair.

The dist. Ct's. instruction on Counts #5-6 defined intimidation as;

" The term "intimidation" includes the use of any words or any actions that would harass, frighten or threaten a reasonable, ordinary person to do something that person would not otherwise do, or not to do something that the person otherwise would do." (Jury Trial, Day 4 Rep. Transcr. # 709)

As in Elonis this instruction allowed the Jury to focus whether a reasonable person equipped with that knowledge, not the actual defendant recognizing the harmfulness of his conduct was the standard.

In the dist. Ct's. "Memorandum Decision" dated Nov. 7, 2019, Section G. (SER 66) the dist. Ct. held;

" ..... and Elonis is not relevant to the determination here."

But neither the Dist. Ct. or the Ninth Circuit explained why it would be unreasonable for the Jury to follow this Courts instruction of what intimidation includes and apply that instruction as an alternative Mens Rea to find guilt, rather, their response (dist. Ct's) relies upon other language of the instruction. Essentially, the district Court (Not the GOV'T) is attempting to draw logic from making a confusing point It's like saying the sky is Blue-ish Red when clearly these are opposites. Just like the Mens Rea of knowledge vs. a Mens Rea of what a reasonable, ordinary, person - thought.

For the reasons stated I ask this Court to review the GOV'T Closing Arguments and vacate Counts # 5-6, respectfully.

(8.) Whether This Court Should Use It's Supervisory Authority To Determine If The Certificate of Appealability (COA) Should Be Expanded To Encompass Any Of The Claims Raised In The 2255 Motion That Makes A Substantial Showing Of Denial Of A Constitutional Right ?

In my filed 2255 motion I raised numerous detailed and factual legal errors, some claims standing alone, others couched in Ineffective Assistance of Appellate Counsel on Direct-Appeal.

In the Ninth Cir.'s "Memorandum Opn." dated Oct 17, 2022 (9th.Cir.# 19-17337) they state;

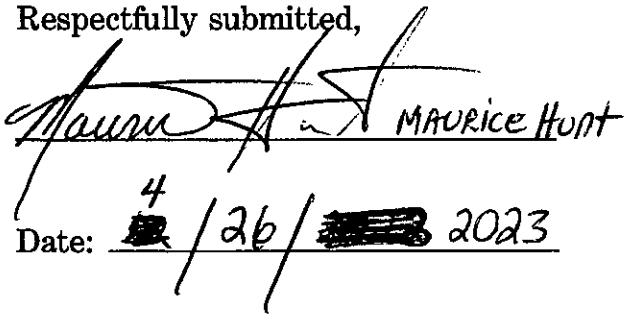
"In his briefing on appeal and in a separate motion, Hunt requests that we treat his original 2255 motion and related filings as a supplemental brief on uncertified issues. We grant this request and treat these additional arguments as a motion to expand the certificate of appealability. See 9th Cir. R. 22-1(e). Having done so, we deny the motion because Hunt has not made a "substantial showing of the denial of a constitutional right."

I believe the Ninth Cir. is wrong and doesn't want to admit it. I humbly, beg this Court to conduct an independent review of my 2255 mot. to determine if # I, in Pro Se, made the necassary showing to expand the COA

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 4 [redacted]/26/[redacted] 2023