

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

DAVID SERRANO-MUNOZ – PETITIONER

vs.

UNITED STATES OF AMERICA – RESPONDENT,

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD
CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Should *certiorari* be should granted to determine whether the sentence enhancement provided by 18 U.S.C. § 2251(e) is void for vagueness for lack of definitions of term “sexual abuse?”

LIST OF PARTIES

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

LIST OF PRIOR PROCEEDINGS

1. *United States v. David Serrano-Munoz*, 1:17-CR-233 (Middle District of Pennsylvania); judgment entered on June 1, 2022.
2. *United States v. David Serrano-Munoz*, No. 22-2058, 2023 WL 2729430 (3d Cir. March 31, 2023) *en banc rehearing denied*, May 3, 2023; opinion affirming district court opinion.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below from the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The non-precedential opinion of the United States Court of Appeals for the Third Circuit appears in Appendix A to this petition and is reported at *United States v. David Serrano-Munoz*, No. 22-2058, 2023 WL 2729430 (3d Cir. March 31, 2023) *en banc rehearing denied*, May 3, 2023.

The Judgment as to Petitioner by the United States District Court for the Middle District of Pennsylvania appears in Appendix C to this petition.

JURISDICTION

The date on which the United States Court of Appeals for the Third Circuit issued the opinion in this case was May 3, 2023, upon denial of *en banc rehearing*. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process Clause, U.S. Const. amend. 5th Amendment

No person shall ... be deprived of life, liberty, or property, without due process of law.

18 U.S.C. § 2251(e)

Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years...

STATEMENT OF THE CASE

A. Procedural Background

On August 2, 2017, Petitioner David Serrano-Munoz, was charged in a three (3) count Indictment, including Count One (1), persuading, inducing, enticing and coercing a minor to produce visual depictions of sexually explicit conduct, in violation of 18 U.S.C. § 2251(a) and (e). Following a Superseding Indictment, on June 3, 2021, Appellant pleaded guilty to Count One (1) of the Indictment, pursuant to a written plea agreement. On June 1, 2022, the trial court (Conner, C.) sentenced Serrano-Munoz to 300 months imprisonment, finding the twenty-five (25) year mandatory to apply pursuant to 18 U.S.C. § 2251(e) due to a prior offense involving an adult victim.

Serrano-Munoz appealed conviction and sentence, and the United States Court of Appeals for the Third Circuit issued a not precedential opinion affirming the District Court opinion. *Serrano-Munoz*, 2023 WL 2729430. Rehearing *en banc* was sought. The Court of Appeals denied rehearing on May 3, 2023, issuing final Judgment on May 11, 2023.

B. Factual Background

Per the Change of Plea proceeding, Petitioner admitted to soliciting and receiving sexually explicit images from a sixteen-year-old female of herself. The Plea Agreement acknowledged that either a fifteen- or twenty-five-year mandatory minimum sentence would apply, depending on whether Petitioner's prior offense

under state law, pursuant to 18 Pa.C.S. § 3123, was found to be a qualifying predicate offense for purposes of 18 U.S.C. § 2251(e).

C. District Court Judgment (Appendix B)

Petitioner objected to application of the twenty-five-year mandatory minimum on various grounds, including that 18 U.S.C. § 2251(e) was void-for-vagueness because that statute does not define “sexual abuse,” a necessary requirement of a prior conviction to trigger the higher mandatory minimum sentence. The District Court overruled this objection, finding that statute’s lack of definition of “sexual abuse” to not be fatal for purposes of Due Process review.

D. The Third Circuit Opinion (Appendix A)

Upon review by the Court of Appeals for the Third Circuit, the decision of the District Court was affirmed, reasoning that the term “sexual abuse”, while not defined in the statute or by incorporation, was not standardless nor does the language invite the possibility that bizarre or unexpected state offenses would be predicate offenses.

REASONS FOR GRANTING THE PETITION

Petitioner asks this Court to grant this petition for writ of *certiorari* because he was sentenced under a mandatory minimum statute which is unconstitutionally void-for-vagueness. The statute does not define which prior convictions trigger the higher mandatory minimum sentence, providing only generic qualification such as “sexual abuse.” Petitioner asks this Court to grant review to decide the issue.

18 U.S.C. § 2251(e) Should Be Reviewed Under the Due Process Principle of Void-for-Vagueness

A statutory provision violates the due process clause of the Fifth Amendment to the United States Constitution when it “take[s] away someone’s life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” Johnson v. United States, 576 U.S. 591, 595 (2015). The prohibition against vagueness in criminal proceedings is “a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law.” Connally v. General Constr. Co., 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926). Void-for-vagueness review “appl[ies] not only to statutes defining elements of crimes, but also to statutes fixing sentences.” Johnson, 576 U.S. at 596, citing United States v. Batchelder, 442 U.S. 114, 123 (1979). “A statute fixing a sentence imposes no less a deprivation of liberty than does a statute defining a crime, as our Sixth Amendment jurisprudence makes plain.” Beckles v. United States, 580 U.S. 256, 273, 137 S. Ct. 886, 899, 197 L.

Ed. 2d 145 (2017)(Sotomayor, Concurring).

The essential purpose of the ‘void for vagueness’ doctrine is to warn individuals of the criminal consequences of their conduct. Williams v. United States, 341 U.S. 97, 71 S.Ct. 576 (1951); Screws v. United States, 325 U.S. 91, 103-104, 65 S.Ct. 1031, 1036, 89 L.Ed. 1495 (1945). This Court has repeatedly stated that criminal statutes which fail to give due notice that an act has been made criminal before it is done are unconstitutional deprivations of due process of law. Lanzetta v. State of New Jersey, 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888 (1939). The void-for-vagueness doctrine reflects the fundamental principle that, in order to comply with the requirements of due process, a statute must give fair warning of the conduct that it prohibits. United States v. Fontaine, 697 F.3d 221, 226 (3d Cir. 2012). The Government violates the Fifth Amendment’s guarantee of “due process of law” by taking away someone’s life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement. Kolender v. Lawson, 461 U.S. 352, 357–358, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983). The prohibition of vagueness in criminal statutes “is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law,” and a statute that flouts it “violates the first essential of due process.” Connally *at* 391. For example, this Court has found the residual clause of the Armed Career Criminal Act to be void for vagueness due to “the indeterminacy of the wide-ranging inquiry required by the residual clause [which] denies fair notice to

defendants and invites arbitrary enforcement by judges.” Johnson at 597. This Court should likewise find 18 U.S.C. § 2251(e) void for vagueness insomuch as the statute fails to define “sexual abuse” or “aggravated sexual abuse,” and those terms lack an inherent meaning.

18 U.S.C.A. § 2251(e) provides a tiered system of mandatory minimum sentences based on the number of predicate offenses:

Any individual who violates, or attempts or conspires to violate, [2251(a)] shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years...

In addition to various specific federal statutes, five categories of applicable state offenses are also enumerated. While the categories of “the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography” and “sex trafficking of children” are self-defining, the remaining categories are not, and no definition is stated or incorporated. “Sexual Abuse” and “Aggravated Sexual Abuse” are “generic offenses [and] are non-traditional.” United States v. Johnson, 681 F. App’x 735, 739 (11th Cir. 2017). Courts “define non-traditional generic offenses in federal sentencing enhancement statutes based on the “ordinary, contemporary, and common meaning” of the statutory words. United States v.

Ramirez-Garcia, 646 F.3d 778, 783 (11th Cir. 2011).

Without definitions or incorporation of another statute, a defendant is left to guess at the meaning of “sexual abuse” and “aggravated sexual abuse.” Does the use of the word “abuse” imply that the prior offense must involve a minor victim, as the other categories of enumerated predicates would appear to require? If so, the increased mandatory minimum would not apply to the instant case, because the would-be predicate offense involved an adult victim. Without definition, defendants and judges are left to guess as to what conduct or circumstances are “aggravated.” While there are neighboring statutes captioned “aggravated sexual abuse” and “sexual abuse” at 18 U.S.C. § 2241 and § 2242, respectively, § 2251(e) makes no cross-reference or incorporation of those statutes; borrowing these definitions was neither authorized nor intended by Congress.

Because § 2251(e) fails to provide any definition of “sexual abuse” or “aggravated sexual abuse,” review should be granted to determine if the statute should be invalidated as void-for-vagueness. This Court should grant review to determine the constitutionality of § 2251(e) as applied to Petitioner, whose mandatory minimum sentence could only be increased by application of the undefined term “sexual abuse.”

CONCLUSION

For the foregoing reasons, this petition for a writ of *certiorari* should be granted in order to review whether 18 U.S.C. § 2251(e) violates Due Process.

Respectfully submitted,

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