

23-5326

No.

FILED

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SUPREME COURT, U.S.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

In Re Latonia Smith,
Petitioner

-against-

United States of America,
Respondent(s).

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

BRIEF FOR PETITIONER

Latonia Smith

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QUESTION(S) PRESENTED

- I. Whether 2261A(2)(B) targets conduct alone or speech and conduct causing distinct and conflicting opinions among the lower courts and significantly raising First Amendment concerns.
- II. Whether 2261A(2)(B) is too vague allowing cases like Petitioner's free speech in this instance (and cases like *U.S. v Srynawski*) to be swept up in criminal proceedings and bypassing the first line of defense-- the district court.
- III. Whether 2261A(2)(B) is being unconstitutionally applied to Petitioner targeting protected speech and violating the First Amendment.
- IV. Whether Petitioner is being detained in violation of the First Amendment of the United States Constitution.
- V. Whether the district judge had an obligation to release Petitioner after concluding that the contents of the emails were not criminal since sending an email is not a crime.
- VI. Whether the 2241 Petition for a Writ of Habeas Corpus trump competency in legal proceedings meaning that despite being

held for competency Petitioner can challenge the constitutionality of her detention (keeping with Article I, §9 of the U.S. Constitution that ensures the right of the Writ of Habeas Corpus shall not be suspended except when in the case of rebellion or invasion public safety may require it).

TABLE OF CONTENTS

Questions Presented	1-2
Table of Contents	3
Table of Authorities	4-5
Opinions Below	6
Jurisdiction	7
Constitutional and Statutory Provisions Involved	8-9
Statement of the Case	10-12
Reasons for Granting the Writ	13
Argument	14-24
Conclusion	25
Proof of Service	26-27

INDEX TO APPENDICES

Appendix A: District Court Opinion
Appendix B: Ninth Circuit Court of Appeals Opinion
Appendix C: Criminal Indictment
Appendix D: District Court Motion To Dismiss
Appendix E: Government's Opposition To Motion to Dismiss
Appendix F: Reply To Government's Opposition

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
U.S. v Ackell 1st Circuit 907 F.3d 67; 2018 US App Lexis 29997.....	15
U.S. v Osinger 9th Circuit 753 F.3d 939 June 4 2014..	15
U.S. v Yung 3rd Circuit 37 F.4th 70; 2022 U.S. App. Lexis 16155.....	15, 18
U.S. v Cassidy 814 F. Supp. 2d 574 M.D. Dec 15, 2011.....	15, 19
U.S. v Cook 472 F. Supp. 3d 326 Miss. July 13 2020.....	15, 16, 19
U.S. v Fleury 20 F. 4th 1353 11th Circuit Dec 16 2021.....	15
U.S. v Sryniewski 48 F. 4th 583; 2022 U.S. App. Lexis 24802.....	15, 17, 19, 20, 24
Giboney v. Empire Storage & Ice Co. 336 U.S. 490, 502 69 S. Ct. 684 93 L. Ed. 834 1949.....	19
U.S. v Stevens 559 U.S. at 471; 130 S. Ct. 1577, 1585, 176 L. Ed. 2d 435, 2010.....	20, 23
U.S. v Weiss 475 F. Supp. 3d 1015; 2020 U.S. Dist. Lexis 133617.....	20
Virginia v. Black 538 U.S. 343, 359, 2003.....	21, 22
Counterman v. Colorado 600 U.S. June 27 2023.....	21
U.S. v Popa 187 F.3d 672, 677, 337 U.S. App D.C. 411 D.C. Circuit 1999.....	23
U.S. v O'Dwyer 5th Circuit 2011.....	23
STATUTES AND RULES	
Article 1, Section 9.....	14

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix B to the petition and is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is unpublished.

Jurisdiction

The date on which the United States Court of Appeals decided my case was July 19, 2023.

No petition for rehearing was timely filed in my case.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The text of the following provisions relevant to the determination of the present case are set forth:

Amendment 1 Religious and Political Freedom

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

18 USC 2261A(2)(B)

"with the intent to kill, injure, harass, intimidate or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication system of interstate commerce or any facility of interstate or foreign commerce to engage in a course of conduct that

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i) (ii) or (iii) of paragraph (1)(A)

shall be punished as provided in section 2261(b) or section 2261B as the case may be."

18 USCS 2266(2)

"course of conduct. The term "course of conduct" means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose."

28 USCS 2241(c)(3)

"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; or "

Article 1, §9 Cl. 2

"The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

STATEMENT OF THE CASE

Between June 8, 2022 and June 30, 2022, Ms. Smith (Petitioner) sent emails to three Las Vegas judges, one Las Vegas politician, and her Las Vegas supervision officer complaining of various injustices and corruptions. In some of the emails, Ms. Smith listed public facts about these individuals and their families. On June 27, 2022 under the guise of 'help' the FBI and Petitioner's supervision officer lied to the Las Vegas Metropolitan Police Department stating Petitioner was homicidal/suicidal in order to have Petitioner placed on a legal 2000 hold in Las Vegas, NV [Petitioner's recorded interview with the FBI reveals that Petitioner never expressed homicidal or suicidal ideation]. The FBI and Petitioner's supervision officer then recruited and weaponized doctors to feed them intelligence on Petitioner and to not release Petitioner in an attempt to have Petitioner civilly psychiatrically committed for an extended length of time (at least 6 months). When their plan to commit Petitioner fell apart because a minority judge, who knew what they were attempting, released Petitioner to her mom within 24 hrs, the FBI coordinated with doctors to have Petitioner arrested outside

10
namely, the First Amendment).

The Ninth Circuit Court held jurisdiction after all judges in the district of Nevada district court recused themselves leaving the case in the district of Nevada with a California judge. The Court declined to hear the issue on July 19, 2023, on the merits stating that it is a re-litigation of a Motion to Dismiss. However, this is not the case; Petitioner is being held in violation of the U.S. Constitution. The case is now before this Court, appealing from district court case 3:22-cr-00051-RTB-CSD and appellate case 23-70092. Appendix D contains the full emails.

REASONS FOR GRANTING THE WRIT

Partly because of different conclusions by court of appeals, writs of certiorari will be granted. *Shapiro v. U.S.* 235 U.S. 412, 35 S. Ct 122, 59 L. Ed. 291 (1914). The district and circuit courts differ on the reading of 2261A(2)(B) as set forth in the argument. The district judge in Petitioner's case concluded that the contents of the emails were not criminal. Thus, the petition should be granted, Petitioner's case should be dismissed, and Petitioner should be released from federal custody.

ARGUMENT

I. Article 1, Section 9 of the United States

Constitution allows Petitioner who is detained to file for habeas corpus relief despite being held for competency proceedings.

A. Article 1, Section 9 states that the right of the Writ of Habeas Corpus shall not be suspended except when in the case of rebellion or invasion public safety may require it. 28 U.S.C.S. 2241 further states that the writ may be extended for a petitioner being held in violation of the Constitution or laws or treaties of the United States.

B. Petitioner being held for competency proceedings does not trump her right to the writ; Petitioner's right to the writ trumps her being held for competency, as the law states. Thus, Petitioner is in legal boundaries to petition for a Writ of Habeas Corpus based on an unconstitutional detention, while being held indefinitely for competency.

II. 2261 A(2)(B) targets speech and conduct, not just conduct alone, significantly raising violative First Amendment concerns, and causing district/circuit court splits.

this case before the court), texts, and social media posts, also raising questions on whether 2261A(2)(B) is vague and facially overbroad and whether it comports to the O'Brien Test.

C. These cases prove that the government is increasingly using 2261A(2)(B) to punish defendants based on the contents of their speech, not just conduct. And as the court in *U.S. v Cook* (472 F. Supp. 3d 326 Miss. July 13, 2020) concluded even conduct can enjoy First Amendment protection if it's significantly imbued with speech, bringing the First Amendment to the forefront of 2261A(2)(B) prosecutions.

D. The reading of the 2261A(2)(B) statute significantly imbues speech as well as conduct. 2261A(2)(B) punishes anyone who with intent to kill, injure, harass, or intimidate another person uses the mail, any interactive computer service of electronic communication... to engage in a course of conduct that causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress.

16

to employ broad definitions of the 2261A(2)(B) terms harass and intimidate

17

in direct violation / contradiction of the First Amendment. Therefore, allowing the denials of as-applied motions to dismiss that should have been granted (*U.S. v Sryniewski* was overturned on appeal).

B. The Third Circuit in *U.S. v Yung* (37 F. 4th 20; 2022 U.S. App. Lexis 16155) has reasoned that if the terms harass and intimidate are interpreted broadly, protected speech can be swept up in costly criminal proceedings. But, essentially, there is currently nothing in the statute itself that prohibits the government from initially charging and imprisoning a defendant for protected speech as in this instant case. As the Yung court noted, the substantial emotional distress element doesn't prohibit protected speech from being prosecuted because the element is not objectively measurable and even speech that is substantially emotionally distressing can be afforded protection. The vagueness of 2261A(2)(B) allows for it to be used maliciously to silence disfavored

speech as in this instant case, *U.S. v Cook* (472 F. Supp. 3d 326 Miss. July 13 2020), *U.S. v Srynawski* (48 F.4th 583, 2022 U.S. App. Lexis 24802) and *U.S. v Cassidy* (814 F. Supp. 2d 574 MD Dec 15 2011).

IV. 2261A(2)(B) is being unconstitutionally applied to Petitioner's speech. Thus, Petitioner is being detained in violation of the First Amendment. Moreover, the district judge was obligated to dismiss the case and release Petitioner after he concluded that the contents of the emails were NOT criminal.

A. Both the Government and the court has conceded that the two exceptions to the First Amendment that can even be possibly applicable to this instant case are true threats and speech integral to criminal conduct. Petitioner's speech falls into neither category making her prosecution and detainment unconstitutional.

B. The speech integral to criminal conduct exception originated in *Giboney v. Empire Storage & Ice Co.* (336 U.S. 490, 502 69 S.Ct. 684 93 L.Ed. 834 1949) when the court

held that enjoining otherwise lawful picketing activities did not violate the First Amendment where the sole purpose of that picketing was to force a company to enter an unlawful agreement restraining trade in violation of a state criminal statute.

Since then, the Supreme Court has held that the speech integral to criminal conduct exception applies to speech that is a mechanism or instrumentality in the commission of a separate unlawful act (U.S. v Stevens 559 U.S. at 471 S. Ct.). The lower courts have followed concluding that for the speech integral to criminal conduct to apply, the speech must help cause or threaten other illegal conduct; the speech itself cannot be integral to violating the statute being challenged as it would be fatally circular. see U.S. v Weiss (475 F. Supp. 3d 1015; 2020 U.S. Dist Lexis 133617); U.S. v Sryniewski (48 F. 4th 583; 2022 U.S. App. Lexis 24802). The government in Petitioner's case never asserts that Petitioner engaged in criminal conduct other than their assertion that her speech was illegal.

Thus, the exception does not apply to Petitioner's case and the district court's ruling that the exception does apply is flawed.

C. The true threat doctrine is grounded in the landmark case *Virginia v. Black*, 538 U.S. 343, 359 (2003). The doctrine holds that true threats are serious expression[s] conveying that a speaker means to commit an act of unlawful violence to a particular individual or group of individuals, not just in general (*Virginia v. Black*). They subject individuals to "fear of violence" and to the many kinds of "disruption that fear engenders." *Black*, 538 U.S. at 360.

However, reading the emails that Petitioner is being charged with, one has to wonder what violence Petitioner was threatening to commit against the alleged victims and what violence they could have possibly feared when violence was never conveyed towards them.

D. In *Counterman v. Colorado* (600 U.S. June 27, 2023), this Court concluded that an objective and subjective standard was needed to determine whether speech

fell into a "true threats" category. The objective standard weighs whether a reasonable person would consider the speech to be threatening. The court held a recklessness standard was sufficient for the subjective view -- a showing that a person "consciously disregard[ed] a substantial [and unjustifiable] risk that [his] conduct will cause harm to another. However, the court doesn't even need to weigh the objective and subjective standards in this case where Petitioner never even threatened violence to the alleged victims in the first place. The government's prosecution falls far short of the "true threats" definition in *Virginia v. Black*. In her dissent, Justice Barrett even conceded that speakers must specifically intend to incite violence before they lose First Amendment protection. Speech that is merely offensive, poorly chosen, or unpopular doesn't apply. Thus, the exception does not apply to Petitioner's case and the district court's ruling that the exception may apply is flawed.

E. 2261 A(2)(B) must be fenced-in by the First Amendment unless protected speech be threatened. Most of Petitioner's speech can be afforded heightened First Amendment protection as it deals with matters of public and political concern -- corruption and injustices. The U.S. Supreme Court has consistently classified emotionally distressing or outrageous speech as protected, especially where that speech touches on matters of political, religious, or public concern. This is because in public debate citizens must tolerate insulting and even outrageous speech in order to provide adequate breathing space to the freedoms protected by the First Amendment. *U.S. v Stevens* 130 S. Ct. 1577, 1585, 176 L. Ed. 2d 435 (2010). A matter can be of public concern even if it's directly communicated to a public official through email or phone as proven in *U.S. v Popa* 187 F.3d 672, 677, 337 U.S. App D.C. 411 (D.C. Cir 1999) and *U.S. v O'Dwyer* (5th Cir 2011).

F. It is clear that application of 2261 A(2)(B) to

Petitioner's speech is an unconstitutional content-based restriction. Most notably the district judge concluded that the contents of Petitioner's emails were not criminal (see Appendix A page 11, line 11). So, it begs the question of why Petitioner is still being prosecuted and detained? The Eighth Circuit court in *U.S. v Srynawski* (48 F. 4th 583; 2022 U.S. App Lexis 24802) has concluded that sending an email cannot be aggregated with criminal conduct in a course of conduct because sending an email is not a crime. As such, Petitioner's case should be dismissed and Petitioner should be released from an unconstitutional detention.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests this court to reverse the judgment of the United States Court of Appeals for the Ninth Circuit and release Petitioner from custody.