NO. _____

In the

Supreme Court of the United States

DARRIN ALONZO MILLER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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I. QUESTION PRESENTED FOR REVIEW

Whether a jury, when determining whether a letter is "obscene," applying the test from *Miller v. California*, 413 U.S. 15 (1973), can consider evidence beyond the letter itself – in this case, the familial relationship between the author and recipient – or whether its analysis is limited to the "work" itself.

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- *United States v. Miller*, No. 2:21-cr-00261, U.S. District Court for the Southern District of West Virginia. Judgment entered September 7, 2023.
- *United States v. Miller*, Appeal No. 22-4397, U.S. Court of Appeals for the Fourth Circuit. Judgment entered on January 27, 2023.
- *United States v. Miller*, Appeal No. 23-4590, U.S. Court of Appeals for the Fourth Circuit. Judgment entered on January 13, 2025.

V. OPINIONS BELOW

The initial opinion of the United States Court of Appeals for the Fourth Circuit, issued as part of the Government's interlocutory appeal, is published and attached to this Petition as Appendix A. The second opinion of the Fourth Circuit, affirming Miller's conviction following trial, is unpublished and attached to this Petition as Appendix B. The order denying Miller's petition for rehearing from that decision is also an unpublished decision, attached to this Petition as Appendix C. The issue raised in this Petition was ruled upon by the district court in a written order, which is attached to this Petition as Appendix D. The judgment order is unpublished and is attached to this Petition as Exhibit E.

VI. JURISDICTION

This Petition seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit entered on January 13, 2025. A petition for rehearing was filed on January 27, 2025, which was denied by the Fourth Circuit on February 10, 2025. This Petition is filed within 90 days of the date the court's entry of that denial.

Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

VII. STATUTES AND REGULATIONS INVOLVED

The issue in this Petition requires interpretation and application of the First Amendment to the United States Constitution, which provides, in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech . . ..

As well as 18 U.S.C. § 1470, which provides:

> Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.

VIII. STATEMENT OF THE CASE

A. Federal Jurisdiction

On December 14, 2021, an indictment was filed in the Southern District of West Virginia charging Darrin Alonzo Miller with using the mail to attempt to transfer obscene material to a person under 16 years old, in violation of 18 U.S.C. § 1470. JAII at 11.[1] Because that charge constitutes an offense against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231. This is an appeal from the final judgment and sentence imposed after Miller was convicted

[1] Separate Joint Appendices were prepared for each of the two appeals relevant to this Petition. "JAI" refers to the Joint Appendix prepared for the Government's initial interlocutory appeal. "JAII" refers to the Joint Appendix prepared for the appeal following Miller's conviction.

at trial of the charge in the indictment. JAII at 82. A judgment order was entered on September 7, 2023. JAII at 92-100. Miller timely filed a notice of appeal on September 20, 2023. JAII at 101. The United States Court of Appeals for the Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

B. Facts Pertinent to the Issue Presented

In June 2020, Corporal Jennifer Demeyer, an officer from the West Virginia State Police specializing in Internet crimes against children, was alerted by someone at the Parkersburg (West Virginia) Correctional Center of a letter written by an inmate, Miller, to a 14-year-old, M.M., that was of a sexual nature. JAII at 27-28. Demeyer interviewed Miller, who admitted writing the letter, that he knew M.M. was 14 years old, and that M.M. was his adopted sister. JAII at 32. As a result, Miller was charged with one count of attempting to transfer obscenity to a person under 16 years of age, based on a letter dated June 22, 2020. JAII at 11.

That prosecution produced a pair of Fourth Circuit decisions – one from an interlocutory appeal taken by the Government prior to trial, *United States v. Miller*, 61 F.4th 426, 430 (4th Cir. 2023)("*Miller I")*, and one following Miller's conviction at trial and sentencing, *United States v. Miller*, ___ F. App'x ___, 2025 WL 80295 (4th Cir. 2025)("*Miller II*"). Both involved what the jury could consider when determining if the letter Miller wrote was obscene.

1. The Government's interlocutory appeal.

Miller elected to proceed to trial. On September 22, 2022, he filed a motion *in limine* seeking to preclude the Government from entering into evidence any

communication between Miller and the victim, M.M., "other than the June 22, 2020, letter for which Mr. Miller has been charged." JAI at 9. As part of his argument, Miller noted that to secure a conviction under 18 U.S.C. § 1470, the Government would have to prove that Miller (1) transferred, or attempted to transfer, obscene matter to a minor; (2) knew the recipient was a minor; (3) used the mails; and (4) did so knowingly. Miller stated that he was "willing to stipulate to the second, third, and fourth elements of the offense." JAI at 12. Miller was also "willing to stipulate that he transferred and attempted to transfer matter to another individual who had not attained the age of 16 years." JAI at 12-13. As a result, "the only element in dispute is whether the matter was obscene." JAI at 13.

In response to Miller's motion, the district court entered an order directing the parties to brief "the issue of whether any evidence or testimony, beyond the mere introduction of the June 22, 2020, letter at issue, is relevant or should be permitted in light of the defendant's stipulations to every element of the crime except the obscenity of the letter." JAI at 16. The Government responded that it intended to call a single witness, Demeyer, and introduce a single exhibit, the June 22, 2020, letter. In addition to being the conduit through which the letter was introduced, the Government planned for Demeyer to testify about her part in the investigation, including that "she interviewed defendant and he admitted how he knew M.M. and that she was 14 years old." JAI at 30. The Government argued that Miller's offered stipulations did not fall under *Old Chief v. United States*, 519 U.S. 172 (1997), and as such they did not limit the Government's ability to present and prove its case as it

saw fit. JAI at 31-35. Miller responded with a second motion *in limine*, in which he argued that in light of his offered stipulations "the Government's presentation of additional evidence as to" his knowledge that M.M. was a minor "would be needlessly cumulative and a waste of time." JAI at 39. Miller further argued that "presentation of evidence as to Mr. Miller's relationship with M.M. . . . would result in unfair prejudice and potentially confuse the jury," emphasizing that the "letter on its face is not obscene and that transmitting it to a minor does not transform it into an obscene letter." *Ibid*.

On September 22, 2022, the district court entered an order in which it "precluded the Government from introducing evidence of the defendant's relationship with M.M. or any testimony or evidence beyond the June 22, 2020, letter at issue," because such evidence "is irrelevant and otherwise inadmissible under Rule 403 of the Federal Rules of Evidence, as its probative value would be far outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, and needlessly presenting cumulative evidence." JAI at 41-42. The Government took an interlocutory appeal from that decision. JAI at 43.

In a published opinion, the Fourth Circuit reversed the district court. The court first held that the evidence that Miller "knew the victim was under the age of sixteen because they were siblings" was relevant to the issue of Miller's knowledge of the victim's age, regardless of his willingness to stipulate to that knowledge. *Miller I*, 61

F.4th at 431.[2] "In addition," the court held, "the evidence could assist the jury in determining whether the material is obscene." *Ibid.* Noting that while "whether a work is obscene requires consideration of the work itself, that does not discount the significance of Miller's relationship to the victim because the Supreme Court has instructed that . . . the work must be examined 'as a whole.'" *Ibid.* quoting *Miller v. California*, 413 U.S. 15, 24 (1973). "In the specific circumstances of this case," the court continued, "the 'whole' necessarily includes Miller's relationship to the recipient." *Id.* at 431-432, citing *United States v. Deason*, 965 F.3d 1252, 1261 (11th Cir. 2020).

2. Miller is convicted at trial.

Upon remand, trial was held on June 13, 2023. JAII at 12. The only witness to testify was Demeyer. In addition, the jury heard stipulations that (1) on June 22, 2020, Miller was incarcerated at the Parkersburg Correctional Center, and that (2) Government Exhibit 1 was a letter drafted by Miller sent via the United States mail to M.M., who was 14 years old at the time. JAII at 33-34. The Government also introduced the letter in question, Government Exhibit 1, which was read for the jury in full by Demeyer. JAII at 30-32, 87-88.

In closing argument, the Government noted that, in light of the stipulations, "what remains is whether the letter meets the definition of obscene." JAII at 48. The Government argued that because the letter was "sent from one person to another"

[2] On appeal, Miller agreed that "the Government cannot be forced into a stipulation" on the issue. *Miller I*, 61 F.4th at 431 n.4.

with "no intention of ever being publicly distributed, published" there was "no legitimate claim that the community, as a whole, would find that this has serious literary value." JAII at 49. The Government also stressed that the applicable standard was what the average person would find patently offensive while "looking at what the community accepts as being within the limits of candor." *Ibid*. The letter, the Government argued, "describes in graphic detail sexual activity between a 38-year-old man and 14-year-old girl" which "alone . . . is shameful" and "not accepted." JAII at 51. That M.M. was Miller's sister "is what makes this even more shameful and disgusting." *Ibid*. As for the words themselves, the Government argued that "the words he uses to describe sex are patently offensive" and "it's clear to . . . the average person in the community that those are offensive terms." JAII at 52. The letter uses such language "over and over" and, "combined with the fact that it appeals to shameful incestuous sex, the fact that it has no literary value, that is what pushes it to meet the standard for being obscene." JAII at 55.

Miller argued that the test for obscenity was not what "Miller thought when he wrote the letter" or "what M.M. would find offensive" and that the "fact that this letter was sent to a minor doesn't transform it . . . from not obscene to obscene." JAII at 56. He added that "the simple fact that he sent it to his adopted sister, does not in and of itself make it obscene." *Ibid*. Miller emphasized that there were portions of the letter that discussed "wanting kissing and cuddling and the sleeping next to her at night," none of which is obscene. JAII at 57. Miller realized "he wasn't going to have any kind of relationship with M.M." but was "searching for some degree of intimacy

and he was looking for it in the wrong place." *Ibid*. Miller also argued, with regard to his familial relationship to M.M., that while the jury could consider that in determining whether the letter appealed to the prurient interest, "you can only consider the four corners of that letter to see if he describes sexual conduct in a patently offensive way." JAII at 58. The letter itself "describes ordinary, normal, healthy sexual behavior between two people that might be in a relationship." *Ibid*. As to the words themselves, Miller argued that he was "using the words that he knows to describe what he wants to do." JAII at 59. As for community standards, Miller argued the jury should consider that it was "the age of sexting and Snapchat" and other apps that allow people to "connect with people who share your own same sexual fetishes." *Ibid*. "That's what's accepted." JAII at 60.

The jury found Miller guilty. JAII at 82. He was sentenced to 37 months in prison, to be served concurrently with his incomplete state sentence, to be followed by a three-year term of supervised release. JAII at 93-94.

3. The Fourth Circuit affirms Miller's conviction.

The Fourth Circuit affirmed Miller's conviction[3] in an unpublished opinion. *Miller II*, 2025 WL 80295 at *1. The court characterized Miller's argument as that the text of the letter "itself does not satisfy the definition of obscenity" and therefore "the jury necessarily, but improperly relied on evidence from outside the four corners of the letter to convict him." *Id*. at *2. The court noted that its "prior decision in the Government's interlocutory appeal . . . dispenses with the notion that we must

[3] Miller did not challenge any aspect of his sentence.

consider the four corners of the letter apart from evidence of the recipient's age or familial relationship when considering whether the letter is obscene," highlighting that "we expressly rejected Miller's argument that the jury's consideration of obscenity was limited to the letter's text." *Id*. at *3. Ultimately, the panel concluded that "Miller's choice of words combined with the specific conduct depicted between the sender and the receiver create the strong impression on the reader as to the letter's obscene nature." *Ibid*.

IX. REASON FOR GRANTING THE WRIT

The writ should be granted to determine whether a jury, when determining whether a letter is "obscene," applying the test from *Miller v. California*, 413 U.S. 15 (1973), can consider evidence beyond the letter itself – in this case, the familial relationship between the author and recipient – or whether its analysis is limited to the "work" itself.

Since *Miller v. California*, 413 U.S. 15 (1973), this Court has made clear that, when determining whether something is obscene, a jury must evaluate the work in question as a whole. Just as a jury may not single out particular portions of a work for analysis, nor may it consider evidence extraneous to the work, when determining whether the work, as a whole, is obscene. In this case, the jury was allowed to consider evidence as to the familial relationship between Miller and M.M., evidence beyond the "work" itself in question – the single letter Miller sent M.M. on June 22, 2020. Whether consideration of such extraneous evidence comports with *Miller* is an important question of federal law that this Court should resolve. *See* Rules of the Supreme Court 10(c).

In *Miller*, this Court held that the central concern of the obscenity analysis is the nature of "the work" in question: examining "whether the average person, applying contemporary community standards would find that ***the work, taken as a whole***, appeals to the prurient interest," whether "***the work*** depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law," and whether "***the work, taken as a whole***, lacks serious literary, artistic, political, or scientific value." *Miller*, 413 U.S. at 24 (cleaned up, emphasis added). "The work" itself, available for the jury to read or view, is all that is necessary to prove it is obscene. *United States v. Ragsdale*, 426 F.3d 765, 772 (5th Cir. 2005)(the "Supreme Court has accepted that the prosecution may prove the elements of the *Miller* test without resorting to any evidence or testimony other than the introduction of the allegedly offending materials themselves").

"The work" in this case is the single letter introduced by the Government at Miller's trial. It would not have been presented to the jury in a vacuum had DeMeyer's testimony been restricted. Rather, the jury would have learned that it was a letter written by Miller (a fact not contested) and mailed by him (a fact not contested) to a minor (a fact not contested) that describes a fantasy of sexual activity with the recipient. Although injecting "the most taboo form of pedophilia," *State v. Hanson*, 439 N.W.2d 133, 134 (Wis. 1989), into that factual scenario may be probative of whether the letter is obscene, that evidence is relevant only if it is contained within the four corners of "the work" (i.e., the letter itself).

Miller I turned largely on whether examining the work "as a whole" permits the jury to consider facts outside the four corners of the letter – DeMeyer's testimony about Miller's relationship to the victim. In concluding that it does, the Fourth Circuit relied exclusively on the Eleventh Circuit's decision in *Deason*, explaining in a parenthetical "that the 'taken as a whole' requirement 'ensures . . . that the matter is placed in context so that the jury can properly determine whether the work as a whole appeals to the prurient interest.'" *Miller I*, 61 F.4th at 431-432, quoting *Deason*, 965 F.3d at 1261. However, *Deason* cannot bear the weight that the court placed upon it in reaching a rather hasty conclusion to a critical issue.

Deason engaged online with a person he thought was a 14-year-old girl, but was actually an undercover police officer. *Deason*, 965 F.3d at 1256. He was charged with multiple counts of violating § 1470 for sending obscene images and videos to the supposed minor and was convicted at trial on all counts. *Id.* at 1258. On appeal, Deason challenged his convictions, arguing that the Government "did not put into evidence the entirety of the three videos" underlying one count, instead having an agent who "testified about the contents of each video, and screenshots from each video were admitted into evidence." *Id.* at 1262. In other words, the issue was whether the jury had really been able to consider the works "as a whole," as this Court requires. The court ultimately held that it had, noting that Deason had not argued that the agent's "descriptions left out important details or otherwise failed to place the matter in its proper context." *Id.* at 1263.

Whereas *Deason* stands for the proposition that the Government is not required to introduce the allegedly obscene material into evidence in its totality (there, the videos; here, the letter), the panel misconstrued its holding to resolve a different issue altogether: whether the Government may introduce ***additional*** evidence beyond the material itself as probative of the material's obscene nature. *Deason* says nothing on that issue, and the panel decision did not cite any additional cases in support of its otherwise cursory resolution of the issue. Nor were any cases cited by the parties in their briefs on point as to this issue.

In short, in the more than fifty years since *Miller v. California* was decided, not a single federal court has addressed the important issue on which this case turns: whether a jury, in determining whether a "work" is obscene, may consider additional evidence beyond the "work" itself. In light of the First Amendment concerns implicated by this issue, it is critical that this Court take up this case and provide appropriate guidance.

X. CONCLUSION

"[O]bscene speech enjoys no First Amendment protection." *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 569 (2002). For that reason, it is critical that a jury correctly analyze a work – a collection of words – before returning a determination that the work is obscene, particularly in light of "the ambiguities inherent in the definition of obscenity." *Mishkin v. State of New York*, 383 U.S. 502, 511 (1966). Whether that analysis can include evidence from beyond the four corners of the "work" itself is a question that implicates fundamental Constitutional

protections. Therefore, for the reasons stated, the Supreme Court should grant certiorari in this case.

Respectfully submitted,

DARRIN MILLER

By Counsel

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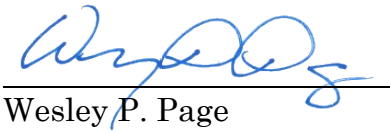

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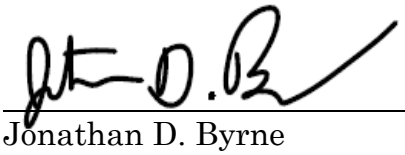

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Dated: May 9, 2025