No. _____

In The

SUPREME COURT OF THE UNITED STATES

♦

MICHAEL INZITARI,
Petitioner

v.

STATE OF CONNECTICUT,
Respondent

♦

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
CONNECTICUT SUPREME COURT

♦

PETITION FOR WRIT OF CERTIORARI

♦

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QUESTION PRESENTED FOR REVIEW

The question presented, on which state appellate courts and federal circuit courts of appeal are split, is:

When the six factors of *United States v. Dost*, 636 F. Supp. 828 (S.D. Cal. 1986), are read to a jury as the means of obtaining a conviction solely based on what constitutes "lascivious exhibition of the genitals" under Connecticut's possession of child pornography statute, is a conviction constitutional when the images depict no sexual conduct?

LIST OF PARTIES

The caption of the case contains the redacted name of the petitioner, Michael Inzitari., and the prosecuting authority, the State of Connecticut.

LIST OF ALL PROCEEDINGS IN STATE, FEDERAL AND APPELLATE COURTS

State of Connecticut Superior Court Proceedings: *State v. Michael Inzitari,* Docket No. HHB-CR21-0330945-T. Federal Proceedings: None. State of Connecticut Supreme Court Proceedings: *State v. Michael Inzitari* 351 Conn. 86 (2025).

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The Petitioner, Michael Inzitari, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Connecticut Supreme Court which entered in the above-entitled proceeding on January 21, 2025 and became final on said date. (App. p. 1a).

OPINION BELOW

The opinion below was from the Connecticut Supreme Court. It was published and filed on January 21, 2025. The case was styled *State of Connecticut v. Michael Inzitari, No. SC 21008.* It is published as *State v. Michael Inzitari* 351 Conn. 86, 329 A. 3d 215 (2025). The entire text of this opinion is reproduced in the appendix. (App. pp. 1a.)

BASIS FOR JURISDICTION

The judgment of the Connecticut Supreme Court entered on January 21, 2025. The statutory provision believed to confer jurisdiction to review judgment in this matter on a writ of certiorari is 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

First Amendment to the Constitution of the United States:

Congress shall make no law respecting an establishment of religion, or prohibiting a 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.

Fifth Amendment to the Constitution of the United States:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SUPREME COURT RULES

United States Supreme Court, Rule 10. Considerations Governing Review on Writ of Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a

departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

STATUTES INVOLVED IN THIS CASE

Connecticut General Statutes:

Connecticut General Statutes § 53a-193, Definitions

Connecticut General Statutes § 53a-193(13)

Connecticut General Statutes § 53a-193(14)

Connecticut General Statutes § 53a-196d(a)(1) Possession of Child Pornography, First Degree

United States Code

28 U.S.C. § 1257 State courts; certiorari;

(a) Final judgments or decrees rendered by the highest court of the State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the

grounds of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

STATEMENT OF THE CASE

Mr. Michael Inzitari was convicted of possessing child pornography in the first degree in violation of Connecticut General Statute, § 53a-196d(a)(1). The Connecticut Supreme Court affirmed. *State v. Inzitari*, 351 Conn. 86 (2025), 1a. Petitioner was sentenced to eighteen and one-half years in prison. *Id.*, at 90, (5a). C.G.S. § 53a-196d(a)(1) required that the state prove the petitioner "knowingly possess fifty or more visual depictions of child pornography." *Inzitari* at 4a.

At trial, "the state introduced fifty-seven images." *Id.* After the state rested its case, the defense moved for a judgment of acquittal claiming that the state failed to prove the minimum required quantity of fifty images. *Id.* The defense argued that "numerous images introduced by the state did not depict sexual activity. The court denied the motion." *Id.* For the first time, in state trial court history, in reliance on *State v. Sawyer,* 335 Conn, 29, 225 A.3d 668 (2020) and *State v. Michael R.*, 346 Conn. 432, 291 A.3d 567, cert. denied, ___US. ____, 144 S. Ct. 211, 217 L.Ed 2d 89 (2023), the trial court, over defense objection, instructed the jury "that it may, but

[w]as not obligated to consider the six *Dost* factors" in deciding if any of the exhibits depicted "lascivious exhibition of the genitals."[1]

Under C.G.S. § 53a-196d(a)(1):

> *For an image to constitute child pornography ..., it must depict "sexually explicit conduct, where the production of such visual depiction involves the use of a person under sixteen years of age engaging in sexually explicit conduct ...."* § 53a-193 (13). The legislature defines "[s]exually explicit conduct" as "actual or simulated (A) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal physical contact, whether between persons of the same or opposite sex, or with an artificial genital, (B) bestiality, (C) masturbation, (D) sadistic or masochistic abuse, or *(E) lascivious exhibition of the genitals or pubic area of any person.*" General Statutes (Rev. to 2019) § 53a-193 (14).

Inzitari, supra at 91, 6a (emphasis added).

The petitioner argued to the trial court and on appeal that thirteen of the fifty-seven images "clearly do not depict sexual intercourse, bestiality, masturbation, or sadistic or masochistic abuse." *Id.* The Connecticut Supreme Court agreed. *Id.* Thus, as the state supreme court noted, [t]he question of sufficiency, therefore, turns on whether the thirteen images each depict a 'lascivious exhibition of the genitals or

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[1] The trial court instructed the jury: "In considering whether an image constitutes "lascivious exhibition of the genitals or pubic area" you may, but are not obligated to, consider the following: (1) whether the genitals or pubic area are the focal point of the image; (2) whether the setting of the image is sexually suggestive (i.e., a location generally associated with sexual activity); (3) whether the child is depicted in an unnatural pose or inappropriate attire considering his/her age; (4) whether the child is fully or partially clothed, or nude; (5) whether the image suggests sexual coyness or willingness to engage in sexual activity; and (6) whether the image is intended or designed to elicit a sexual response in the viewer." These *Dost* factors are from the written jury instructions the court read verbatim to the jury. 96a-99a.

pubic area', and thus constitute child pornography." *Id.,* at 92, 7a.

After applying independent appellate review which required the justices "to examine the four corners of each image to determine whether each, in fact, constitutes child pornography," it concluded: "The defendant does not challenge forty-four of the images introduced by the state, . . . Because we conclude that a total of fifty-five images in evidence support the defendant's conviction under § 53a-196d(a)(1), the quantity element is satisfied." *Id.,* n.9. Two of the thirteen challenged images were held not to constitute lascivious exhibition. Thus, the remaining eleven images being challenged were held to constitute "lascivious exhibition." *Id.*

Regarding the definition of "lascivious exhibition," the court observed that standard dictionaries are consistent with Black's Law Dictionary'[s] definition of 'lascivious,' defining [it] as '[g]iven to or expressing lust; lecherous' of [e]xciting sexual desires, 'salacious'...." *Id.*, 93-94, 8a-9a.

The court noted that the sixth *Dost* factor used to evaluate "lascivious exhibition" asks whether "(6) the visual depiction is intended or designed to elicit a sexual response *in the viewer*." *Id.* at 96, 11a (Emphasis added). The petitioner had argued that the sixth *Dost* factor "improperly adds a subjective component to the evaluation of lasciviousness that requires a fact finder to determine whether the images in question were intended to elicit a sexual response in the viewer who is a pedophile." *Id.,* at 97, 12a.

The court agreed that the sixth factor "certainly implies that a pedophile viewer's subjective response to an image may be relevant." *Id.*, at 99, 14a. After stating that it was "not readily apparent how the sixth factor is relevant or helpful to a possession of child pornography case, like the present case, in which there is no allegation that the defendant himself located the victims, arranged or posed the scenes or otherwise produced the images," the court held, "we are persuaded that the sixth *Dost* factor should not be considered in determining whether an image is child pornography under our possession of child pornography statutes." *Id.*, at 100-101, 15a-16a.

The court nevertheless ruled that "the first five factors can be helpful in assessing whether a depiction is a lascivious exhibition." *Id.*, at 101, 15a. The state supreme court opinion, without referring to the first five *Dost* factors by their number, summarizes in one five-sentence paragraph what the thirteen images portray. Its first four sentences are:

> "Each of the images depicts one or more nude male children, with nearly all of the images prominently depicting the children's genitals or pubic areas. At least eight of the images depict a child lying on a bed or mattress. See *United States v. Villard*, supra, 885 F.2d 123 ("[b]eds and mattresses are often associated with sexual activity"). Many of the images depict multiple nude children, with those children located or positioned in close proximity to one another." *Id.*, at 102, 17a.

This paragraph does not identify any of the remaining eleven exhibits by their numbers.

The first sentence of the above-quoted paragraph refers to the children being "nude" (which invokes *Dost's* fourth factor) and it refers to "nearly all of the images prominently depicting the children's genitals" (which invokes *Dost's* first factor). *Id.* The second sentence states "at least eight of the images depict a child lying on a bed" (which invokes *Dost's* second factor, "whether the image depicts "a place... generally associated with sexual activity."). *Id.* The third sentence refers to a Third Circuit decision which relied on *Dost's* second factor. The fourth sentence of the above-quoted paragraph states: "Many of the images depict multiple nude children, with those children located in close proximity to one another." *Id.* This presumably did not invoke any *Dost* factor.

The exhibits the petitioner claimed were protected by the First Amendment were: 33, 35, 36, 37, 46, 49, 50, 70, 71, 72, 75, 77 and 83. It is not in dispute that eight of the challenged exhibits depict one boy per image. Five exhibits depict two boys and one of these is Exhibit 50 which the state supreme court held did not depict a lascivious exhibition. *Inzitari* at 102, 17a. Also see defendant's brief, pages 19-20, 58a-59a.

The first four sentences of the decision's above-quoted paragraph summarizing why eleven exhibits out of fifty-five depicted lascivious exhibitions of a child's genitals implicitly relied on three *Dost* factors. They were factors: (4)-nudity, (1)-focal point - prominent display of the genitals and (2)-setting, the place where some of the photographs were taken, i.e., "a bed or mattress." The decision does not

mention how many of the eleven images depicted prepubescent boys. At trial, the state presented no corroborating evidence of the age of any of the boys in the fifty-seven exhibits. Presumably this was because the pictures independently and visually proved the below-age element beyond a reasonable doubt because many of the children appeared to be prepubescent.

Utilizing the required First Amendment independent review of the challenged exhibits in this case, one in which quantity is an element and "sexually explicit conduct" is an element exclusively predicated on C.G.S. § 53a-193(14)E's definition of "lascivious exhibition of the genitals," the state supreme court opined that the "*Dost* factors are neither elements of the offense nor are they definitional of an element." *Inzitari,* supra, n.11. The petitioner below argued that the judge verbatim reading the *Dost* factors in this case as an instruction to the jury was a constitutional error, notwithstanding the fact the jury was instructed "that it was not obligated to consider any of the *Dost* factors...." *Inzitari* at 105, 20a.

REASONS FOR GRANTING THE PETITION

A. THERE IS A SPLIT AMONG STATE APPELLATE COURTS REGARDING THE USE AND IMPORT OF THE *DOST* FACTORS IN DETERMINING IF IMAGES OF CHILDREN NOT ENGAGED IN ANY SEXUAL ACTIVITY CONSTITUTE CHILD PORNOGRAPHY BASED ON THEM BEING "LASCIVIOUS EXHIBITIONS."

Various state appellate courts interpret their child pornography statutes in an inconsistent and contradictory manner based on their use of the *Dost* factors.

1. Connecticut's definition is based on the federal statute.

Most of the fifty states have criminal statutes which prohibit the possession and production of images of minor children engaging in "sexually explicit conduct" with this phrase defined as including "lascivious exhibition of the genitals."[2] Connecticut is such a state. Its statutory definition of child pornography, C.G.S. § 53a-193(13), defines it "to be "any visual depiction ... of sexually explicit conduct, where the production of such depiction involves the use of a person under sixteen years of age engaging in sexually explicit conduct...." "Sexually explicit conduct" is then defined under subsection (E) of C.G.S. § 53a-193(14) as meaning, "lascivious exhibition of the genitals or pubic area of any person."

Connecticut and the many other states that statutorily define "sexually explicit conduct" to include "lascivious exhibition" appear to have modeled their definitions based on the federal statutes. For example, 18 U.S.C. § 2252A prohibits knowingly "an image of child pornography" and § 2256(8) defines "child pornography" as "any visual depiction ... of sexually explicit conduct" where "the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct." Section

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[2] Smith, Brenda V., "Fifty State Survey of Child Exploitation Laws" (2012). *The Project on Addressing Prison Rape – Surveys.* 4. https://digitalcommons.wcl.american.edu/prisonrape-surveys/4.

2256(2)(A) defines "sexually explicit conduct" with the same five categories as the state statute:

> (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
> (ii) bestiality;
> (iii) masturbation;
> (iv) sadistic or masochistic abuse; or
> (v) *lascivious exhibition of the anus, genitals, or pubic area of any person....*(Emphasis added).

Section 2256(2)(A)(v)'s language is identical to C.G.S. § 53a-193(14)E's language.[3]

2. The specific images depict no sexual touching or contact.

Because the thirteen challenged images involve no sexual touching or contact, the jury must have found sexually explicit conduct to be exclusively based on "lascivious exhibition of the genitals or pubic area." In its brief-in-chief to the Connecticut Supreme Court, the petitioner summarized what they depicted:

> ***Exhibit 33.*** It shows a naked smiling boy wearing a jacket, sitting alone in the lotus position facing the camera. His genitals are visible and he is not sexually aroused.
> ***Exhibit 35.*** It shows a naked blonde haired boy standing up facing the camera with his arm against what appears to be part of a large wooden door as there is a piece of hardware on the wooden door. The boy is smiling and his knees and legs are not visible. His genitals are visible.

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[3] See *Inzitari*, supra, n8: "The federal definition of 'sexually explicit conduct' is substantially similar to Connecticut's statutory definition. Compare General Statutes . . . § 53a-193 (13) and (14) with 18 U.S.C. § 2256 (2) (A) and (B) and (8) (2018). Many federal courts have used or approved the *Dost* factors to assist in determining whether a depiction is a 'lascivious exhibition' within the meaning of the federal child pornography statutes." Many state courts have likewise used or approved the *Dost* factors to determine "lascivious exhibition."

> ***Exhibit 36.*** It shows two boys standing next to each other. The one on the right is wearing pants. He is holding a camera which he is looking at. The boy on the left is naked except for some underpants which he is wearing while holding the top down while exposing his penis. He is looking towards the camera.
> ***Exhibit 37.*** It is a photograph of a naked boy standing in a shower stall. He is holding a towel over part of his face, covering his mouth.
> ***Exhibit 46.*** It is a photograph of a naked boy lying alone on a bed.
> ***Exhibit 49.*** It is a photograph of two naked boys on a bed.
> ***Exhibit 50.*** It is a photograph of two boys on a bed. One is naked, is smiling and is sitting up. Only the face, hands and part of the chest of the other boy are shown. Nothing of a sexual nature is shown.
> ***Exhibit 70.*** It is a photograph of a smiling young naked boy sitting on a bed or a couch. The photograph has been altered because the boy's left arm appears to be missing as though it had been amputated because only the left shoulder remains....
> ***Exhibit 71.*** It appears to be a photograph of the same boy depicted in Exhibit 70 except now his left arm is fully restored. He is sitting, facing the camera.
> ***Exhibit 72.*** It appears to be a partial photograph of the same naked boy in Exhibits 70 and 71 but the image appears altered . . . . The image only shows six or seven inches of his arm making it look as though most of his right arm was amputated. In Exhibits 70-71 his right arm was intact. In Exhibit 72 it is not intact....
> ***Exhibit 75.*** It shows two naked young boys lying on their backs. Nothing of a sexual nature is occurring.
> ***Exhibit 77.*** It shows the same naked boys shown in Exhibit 75. One boy is lying on the chest of the other boy but there is no sexual touching shown.
> ***Exhibit 83.*** It shows a naked young boy outdoors, alone in a tree.

(Defendant's Br. pp 19-20. 58a-59a.)

It is significant to note that exhibits 33, 35, 37, 46, 70, 71, 72 and 83 depict only one child in each. Exhibits 36, 49, 50 and 75 depict two children in each but they are not touching. Exhibit 77 does depicts one child lying on the chest of another but it does not show any sexual touching. Thus, eight of the thirteen challenged exhibits depict

one under-age child per exhibit. Five of the thirteen contain images depicting two children but of these, only one shows any touching and not "sexual touching."

3. *The Dost factors unconstitutionally expand the scope of Connecticut's child pornography statute.*

The petitioner argued at the trial court and on appeal that defining "lascivious exhibition" based on the *Dost* factors was unconstitutional. (Defendant's Br. pp. Personal. 22-27, 50-51, 61a-66a, 89a-90a). In *United States v. Hillie*, 39 F.4th 674 (2023) the D.C. circuit court interpreted when "sexually explicit conduct" defined by "lascivious exhibition" occurs. Relying in part on *United States v. Williams*, 553 U.S. 285 at 297 (2008) it found that "'sexually *explicit* conduct' connoted actual depiction of the sex act rather than merely the suggestion that it is occurring." (Emphasis in the original.) Importantly, the D.C. Circuit Court "reject[ed] the Government's argument that 'lascivious exhibition of the genitals,' as defined in § 2256(2)(A) should instead be construed in accordance with the so called *Dost* factors." *Hillie*, supra, at 689. [4]

a.) The First Amendment Violation.

In *Ashcroft v. Free Speech Coalition*, 535 U.S.234, 258 (2002) the lower court's holding that provisions of the Child Pornography Prevention Act of 1996, i.e. 18 U.S.C. §§ 2252A and 2256, were overbroad under the First Amendment was

[4] There is little supportive historical evidence that Congress intended to "broaden the scope" of federal child pornography statutes when the word "lascivious" replaced the word "lewd." *Hillie,* 39 F.4th at 689.

affirmed. In *Williams,* supra, the successor federal child pornography statutes were upheld against vagueness and First Amendment challenges but Justice Scalia restricted the reach of the statute by applying the "commonsense canon of n*oscitur a sociis*--which counsels that a word is given more precise content by the neighboring words with which it is associated." *Williams*, 553 U.S. at 289. It has been said that "[u]nder the familiar interpretive canon '*noscitur a sociis,*' a word is known by the company it keeps." *United States v. McDonnell*, 579 U.S. 550, 568-69 (2016). In *Dubin v. United States*, the government's expansive reading of "uses" in the aggravated identity theft statute was rejected for this reason. In *Dubin*, this court noted that the canon of *noscitur a sociis* "is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress." 599 U.S.110 at 124-25 (2023). Applying it here would require "lascivious exhibition of the genitals" to, at minimum, be lewd and lustful by portraying an image that is sexually arousing to a non-pedophile.

b. *The Dost factors have caused the states to construe "lascivious exhibition" inconsistently.*

Had this court's precedent in *Williams* been followed in the case at bar, the trial court would have been prohibited from instructing the jury on *Dost's* six factors. The Tennessee Supreme Court in determining the breadth of its child pornography statute relative to the *Dost* factors, admonished its jurists about the dangers of instructing juries on *Dost's* six factors, even if the *Dost* instruction is

preceded by a comment such as occurred here, i.e. the jurors "may but are not obligated to consider them" :

> [C]ourts applying *Dost* almost invariably include caveats to the effect that the *Dost* factors are not "comprehensive," are not "necessarily applicable in every situation," are merely a "starting point," *et cetera.* Despite these recitations, *many seem inexorably drawn to using Dost as a lasciviousness definition or a test of sorts*, with lengthy analysis and weighing of each "factor" and debate regarding different courts' interpretation of specific factors. *This often ends up pulling them "far afield" from the task at hand, namely, applying the statutory language to the materials at issue.* . . . [T]he sixth *Dost* factor in particular has proven to be an analytical quicksand. *For this reason, we reject the use of the Dost factors as a "test" or an analytical framework for determining whether certain materials constitute child pornography.*

State v. Whited, 506 S.W. 3d. 416, 437 (Tenn. 2016) (Emphasis added).

Although Connecticut has now essentially joined Tennessee in holding that "the sixth *Dost* factor should not be considered in determining whether an image is child pornography under our possession of child pornography statutes," the decision below nevertheless supports using the first five factors as an analytical framework. *Inzitari,* at 101, 16a. The first five factors should not be given as a jury instruction.

In 2023, another state appellate court overruled its prior precedent which held that "a 'lewd exhibition' of the genitals or anus," as stated in the Oregon child pornography statutes meant "*exhibition with the intent of stimulating the lust or sexual desires of the person who views it.*" *State v. Parra-Sanchez,* 324 Or. App. 712 at 729, 527 P.3d 1008 (2023). It admitted that "without analysis . . . [the court previously created] a new standard, holding that an exhibition of a child's sexual . . .

parts meets the statutory definition *so long as the subjective purpose of the defendant allowing or creating the display is to elicit a sexual response from the defendant* or someone else." *Id.* at 732-33 (emphasis added). It disavowed this case law and imposed an objective standard. It held that "lewd exhibition of a child's sexual or other intimate parts" means that the showing of these sexual parts must be "itself salacious or focused on sex." *Id.* at 736.

The defendant in *Parra-Sanchez* was prosecuted because he would sometimes enter the bathroom where the child was showering and enter her bedroom when she was not fully dressed and he would "[observe] her in a state of full or partial undress." *Id.* at 714. The defendant viewed the child's body "for the purpose of his own sexual gratification" but, it was "not determinative of whether there had been a lewd exhibition." *Id.* at 737. His five convictions for the creation of pornography "using a child in display of sexually explicit conduct were reversed and it was held that the trial court erred when it denied the defendant's motion for judgment of acquittal. *Id.* at 738.

Nevertheless, the court also endorsed the *Dost* factors "[t]o assist fact finders and trial courts in making those objective determinations." *Id.* at 733. It referred, inter alia, to the Connecticut Supreme Court's decision in *State v. Sawyer*, 335 Conn. 29 (2020), wherein the use of the *Dost* factors was approved of while "cautioning against applying the *Dost* factors 'rigidly or mechanistically.'" *Parra-Sanchez* at 735.

Justice James concurred in the result but objected to the use of the *Dost* factors. He first criticized factor tests in general.

> In legal analysis, few things are as pernicious as judicially created factor tests. The difficult questions in the law are usually highly circumstance dependent. Context drives focus, and what may determine one case, might not determine another . . . One might approach the same issue, in two cases, in slightly differing ways because the factual differences between the cases called for a shift in focus; and each approach, though different can be reasonable. *Id.* at 751.

A factors test can interfere with critical thinking. Instead of deep thinking and considered analysis, people tend to follow the recipe they are given.

> Factor tests take the depth and complexity of human thought and perspective and replace it with a checkbox form. *Although often couched in language of "non-exhaustive factors," or "guideposts," factor tests naturally encourage parties to follow a script: consider A, then consider B, finally consider C, then decide. Parties wanting to preserve* their issue, will naturally follow the script, even though it purports to only be a guide. *Id.*, at 751 (emphasis added).

When the script is a definition-like jury instruction; all the more reason jurors will follow it.

Two appellate decisions from Texas and Rhode Island show why none of *Dost* factors should be applied.

In *Romo v. State*, 629 SW. 3d. 679 (Tex. App.-San Antonio 2021) the defendant was convicted of possession of child pornography in addition to two other sex crimes. The imagery was a video portraying nudist life which focused "on naked prepubescent girls who are outside in a grassy, picnic-type area on a windy day, talking both with other girls, and some adults . . . [T]he video is entirely in French

and contains no subtitles." It ended "with other girls standing in a line waiting, , , , holding number placards from one to five." *Id.* at 687.

The Texas appellate court addressed each *Dost* factor seriatim. As to the first factor it concluded that, the video "does not focus on the children's genital or pubic area." As to the second factor it concluded that a "grassy picnic area" is not "sexually suggestive" and that no sexual acts were shown on the video. As to the third factor, it stated there was an "unnatural pose" considering the children's ages. As to the fourth factor, the children were "fully nude." As to the fifth factor which is "sexual coyness or a willingness to engage in sexual activity, "the court held that none of the girls were engaging in sexual activity, that they "appear casual when talking to each other" and when "interviewed by the cameraman . . . they look either shy or uncomfortable." *Id.*

Regarding the sixth *Dost* factor, the court noted that because there was no transcription or translation from French into English "[w]e are left to review the visual images depicted on the video and the intonations of the voices, *none of which appear to be out of the ordinary*." *Id.* (Emphasis added). The court found and applied two *Dost* factors and "using the *Dost* factors as a guide, conclude[d] the evidence is insufficient to support a finding that the video depicts a 'lewd exhibition of the genitals'".... Therefore, the court reversed the judgment and acquitted the defendant. *Id.* at 687. One justice dissented.

The dissent noted that "[s]everal federal courts have recognized that a photograph is lascivious when '*the photographer array[s] it to suit his particular lust*' and referred to the oft-quoted sentence from *Wiegand*, supra, that lasciviousness is *not* a characteristic of the child photographed *but of the exhibition which the photographed sets up for an audience that consists of himself on likeminded pedophiles.*" *Id.* at 691 (emphasis added).

The nine justice Court of Criminal Appeals of Texas granted the state's petition for further appellate review and *unanimously reversed* the intermediary appellate court's decision. It held that the dissenting opinion in fact correctly expressed Texas common law and directly quoted the oft-quoted *Wiegand* description that an exhibition is lascivious when "the photographer sets [it]up for . . . himself or likeminded pedophiles." *Romo v. State*, 663 S.W. 3d 716, 721-22 (2022). The court went on to state, "*[t]he lower court did not consider whether the video was designed to elicit a sexual response in a pedophile.*" *Id.* at 721 (emphasis added).

The second state appellate court decision is a recent child pornography case from Rhode Island, *State v. Hansen,* 272 A. 3d 1040 (R.I. 2022). In this case the defendant was convicted following a bench trial, of having "knowingly possessed [six] digital images depicting minors engaging in sexually explicit conduct" in violation of Rhode Island's felony possession of child pornography statute. *Id.* at 1044. The facts were not in dispute.

> In the case at bar, all of the children in the images are completely naked, with the exception of sneakers, sandals, or jewelry, and their pubic areas are clearly visible and genitals are partially visible; the images capture the full frontal nude body of each child. There is no question ... that the genitals or pubic areas of the prepubescent girls ... are on display ... that there is an exhibition of the genitals or pubic areas. Thus, *the only issue before us is whether those exhibitions of the genitals and pubic areas are lascivious.* *Id.* at 1051 (emphasis added).

The six images are of naked young children. Some images had naked middle-aged adults appearing along with "nine naked children." *Id.* at 1054. There was no sexual conduct or sexual touching in the six images. In a split opinion, four of the five justices affirmed the conviction. The majority algorithmically evaluated the *Dost* factors and held that the images contained lascivious exhibitions of the genitals with all six factors being satisfied.

The dissenting justice *also* algorithmically evaluated the *Dost* factors. He found the fourth *Dost* factor to be satisfied, i.e. nudity. *Id.* at 1062. The dissent reluctantly conceded the third factor was satisfied. That factor requires an "unnatural pose, or inappropriate attire . . . ." But the dissent gave this factor very little weight, noting that "these poses are natural in the context of a beauty pageant" among naked children and their naked parents. *Id.*

Regarding the fifth *Dost* factor, "sexual coyness or a willingness to engage in sexual activity," the dissent summarily explained why this factor was absent.

> " –I differ from the majority because I do not perceive actual sexual coyness or sexual suggestiveness in these images. *Dost,* 636 F. Supp. at 832. *The majority suggests that the depiction of what it characterizes as the girls' "vulnerability and availability" somehow translates into sexual*

> *coyness to the viewer.* In my opinion, that is *an enormous inferential leap*, and it is one that I, on the basis of my independent review, am unable to make. *Id.*, (emphasis added).

In analyzing *Dost's* second factor, the sexual suggestiveness of the setting, the dissent stated:

> [I]t can fairly be inferred that the images depict girls participating in a sort of beauty pageant in the presence of ... adults, who are engaging in a nudist lifestyle. ... In several of the images, the girls appear to be on some sort of stage; ... *I simply do not detect anything overtly sexual about the setting of the images or about the images themselves aside from the nudity; and that nudity is not, in and of itself, enough to render them lascivious. See Osborne v. Ohio, 495 U.S. 103, 112 (1990) ("We have stated that depictions of nudity without more, constitute protected expression.") (citing New York v. Ferber, 458 U.S. 747, 765 n.18 (1982)).* *Id.* at 1061-62 (emphasis added).

Regarding the first factor, "whether the focal point of the visual depiction is on the child's genitalia or pubic area," the dissent opined that they did not so focus. The images "display virtually the entirety of the children's bodies; they do not . . . . particularly draw attention to the genitalia in their design or composition." *Id.* The dissent relied on *United States v. Amirault*, 173 F. 3d 28 at 33 (1st Cir. 1999) which held "that an image did not "significantly focus upon the genitalia when it showed a girl's pubic area . . . on clear display, where there is no close-up view of the groin" and "the genitals are not featured in the center of the composition." *Hansen* at 1061.

In the case at bar, almost all of the challenged exhibits "display virtually the entirety of the children's bodies" and are not "close-up views" of the groin area.

The *Hansen* majority claimed to apply an objective analysis to the sixth and fifth *Dost* factors but directly quotes that lasciviousness is a characteristic "of the exhibition set up for an audience that consists of himself or likeminded pedophiles." *Hansen,* at 1059. Such an analysis is subjective, not objective.

The majority also stated "it is not ordinary for the fully nude bodies of young girls to be the subject of scrutiny; this factor . . . promotes sexual exploitation and intrusion on the privacy and dignity of the children depicted therein . . . ." *Id.*

The dissent disagreed.

> *The fact that the majority and I consider these images to be inappropriate does not make these images sexual*; it does not mean that the images were designed to elicit a sexual response in the viewer. It is a reasonable interpretation that these images are of a beauty pageant involving individuals who engage in a nudist lifestyle. *Id.* (emphasis added).

The dissent then quoted from *Texas v. Johnson*, 491 U.S. 397 at 414 (1989).

> "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Id.*

The dissent concluded that "there is nothing in these images to suggest that they were intended to elicit a sexual response and were anything other than images capturing a nudist beauty pageant." *Id.*

B. THERE IS A SPLIT AMONG THE FEDERAL CIRCUITS REGARDING THE USE AND IMPORT OF THE *DOST* FACTORS IN ANALYZING IF IMAGES OF CHILDREN NOT ENGAGED IN ANY SEXUAL ACTIVITY CONSTITUTE CHILD PORNOGRAPHY BASED ON THEM BEING "LASCIVIOUS."

1. *The Dost factors unconstitutionally expand the scope of the federal child pornography statutes.*

As was previously explained, in *United States v. Hillie*, 14 F.4th 674, 689 (2022) a divided District of Columbia Circuit Court of Appeals "reject[ed] the Government's argument ... that 'lascivious exhibition of the genitals' as defined in [18] § 2256(2)(A) should instead be construed in accordance with the so-called *Dost* factors." There is an intractable split among the federal circuit courts of appeal regarding whether images of naked children who are not engaged in any sexual conduct satisfy the "sexually explicit conduct" element of child pornography when it is solely based on "lascivious exhibition of the genitals or pubic areas."

In *United States v. McCoy* 108 F.4th 639 (8th Cir. 2024) the defendant used a hidden camera to record two videos of a nude minor going into and walking out of a shower and sitting on a toilet, *Id.* at 642. A grand jury charged the defendant with sexual exploitation of a minor in violation of 18 U. S.C. § 2551(a) alleging that the defendant "used...the minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct." The sexually explicit conduct alleged was the "lascivious exhibition of the genitals and pubic area." *Id.* At trial the court

instructed the jury on all six *Dost* factors. They were instructed that they were to "decide, what weight, if any, to give to each of the factors" and that "[a] picture need not involve all of the factors to constitute a lascivious exhibition of the genitals...." *Id.*, at 643. Following his convictions on both counts, *McCoy* argued on appeal that the district court erred by giving the *Dost* six-factored instruction "and should instead have used an instruction derived from a divided panel decision in another circuit," namely *United States v. Hillie*, 39 F.4th 674 (D.C. Cir. 2022), *Id.*

The Eighth Circuit Court of Appeals initially reversed McCoy's convictions and held, as a matter of law, "no reasonable jury could have found McCoy guilty beyond a reasonable doubt." *United States v. McCoy, supra* at 658. It applied the *Dost* factors and found that the fourth factor, nudity, was satisfied but that the two videos did not imply any sexual coyness or a willingness to engage in sexual activity. It also declared the sixth factor, whether the images "were intended to appeal to the defendant's particular interest" was irrelevant. The proper inquiry was "whether the videos on *their face,* are of a sexual character." *Id.*, at 646, (emphasis added.)

The Eighth Circuit granted en banc review and in a six-to-five opinion, reinstated the defendant's convictions. 108 F.4th 639, 647-48 (8th Cir. 2024). The majority held that the jury could find that the defendant "viewed the minor female 'as a sexual object'" and "composed the images in order to elicit a sexual response in a viewer--himself." *Id.*, at 648.

Judge Grasz was joined in his dissent by Judges Kelly, Erickson, Smith and Stras. These judges agreed with the *Hillie* court which rejected the *Dost* interpretations applied by multiple other circuits, 39 F.4th at 689. In *Hillie*, Judge Katsas concurred in the denial of en banc review noting, "[a] child engages in 'lascivious exhibition' under section 2256(2)(A)(v) if, but only if, she reveals her ... genitals, or pubic area in a sexually suggestive manner." *Hillie*, 38 F.4th at 237. And in *McCoy* Judge Stras said in the first sentence of his two sentence dissent: "Judge Katsas has it right: 'lascivious exhibition' means revealing private parts in a sexually suggestive way." *McCoy* at 654.

In *McCoy,* Judge Grasz stated:

> Because the court is sitting en banc, *I would recognize the Dost factors are not appropriate in a jury instruction because they may steer juries away from applying the plain words of the statute adopted by Congress.* For example, factor 4—whether the minor is fully or partially clothed, or nude—may confuse the jury. *See United States v. Dost,* 636 F. Supp. 828. 832 (S.D. Cal. 1986). "We have held that more than mere nudity is required before an image can qualify as 'lascivious' within the meaning of the statute." *Kemmerling,* 285 F.3d at 645-46. Likewise, factor 2—concerning the setting of the visual depiction—is difficult to square with any language of the statute. See *Dost,* 636 F. Supp. at 832. And factor 6—whether the visual depiction is intended or designed to elicit a sexual response in the viewer—also risks steering jurors away from the statutory language adopted by Congress. *See id. As we have repeatedly held, "the relevant factual inquiry ... is not whether the pictures in issue appealed, or were intended to appeal, to [the defendant's] sexual interests but whether, on their face, they appear to be of a sexual character." Wallenfang*, 568 F.3d at 658 (alterations in original) (quoting *Kemmerling*, 285 F.3d at 646).
> 108 F.4th at 653 (2024) (emphasis added).

In the case at bar, the defendant objected to the *Dost* factors becoming part of Connecticut's child pornography jury instructions and argued in a similar manner that the *Dost* factors would lead juries astray from applying the plain words of C.G.S. §§ 53a-196d(a)(1), 53a-193(13) and 53a-193(14). (Def. Br. p18-33, 57a-72a) It is important to note that in addition to factor 4 being misleading because "nudity without more" is protected expression under *Osborne v. Ohio.* If a child's image occurred in the center of a photograph facing the camera, a viewer could interpret the genitals to be a "focal point" of the image merely because genitals are located in the center of the human body. Thus, factor 1 can be confusing. With the exception of outdoor nudist colonies, because naked people don't normally go outside when they are nude, a photograph of a naked child is often taken inside a home and thus often in a room where sexual activity may occur and thus allows jurors to easily decide that factor 2 applies, i.e. the "setting is sexually suggestive." Factor 3 is quite subjective and contributed to the defendant's conviction in *State v. Hansen*, supra, even though the posing and very limited "attire" were quite natural in the context of a children's beauty pageant outside at a nudist colony. Factor 5 is also subjective because what constitutes "sexual coyness" is not defined and can mean different things to different people.

Somewhat remarkably, in *McCoy*, supra, the four other dissenting judges agreed with Justice Grasz that the six member majority opinion also "misrepresents [its] existing case law." *Id.*, at 652. It cited *United States v. Kemmerling*, 285, F.3d

644, 646 (8th Civ. 2002) ("A picture is 'lascivious' only if it is sexual in nature.") The dissent stated that there is a Fifth Amendment vagueness danger.

> *The amorphous standard applied by the majority today presents a very real danger to the continued validity of the statute under the Fifth Amendment. The term "lascivious exhibition" was upheld against constitutional vagueness challenges because it has a meaning a reasonable person could understand—it means the same thing as lewd.* See *United States v. X-Citement Video, Inc.*. 513 U.S. 64, 78-79, (1994) (rejecting an unconstitutional vagueness argument "for the reasons stated by the Court of Appeals," which explained lascivious and lewd have the same meaning); *United States v. Koelling,* 992 F.2d 817, 821 (8th Cir. 1993). If the statute's language is instead construed to allow pornography convictions for non-lewd images based on a defendant's subjective intent—as perceived by a jury—then the reasoning of the cases upholding the statute under the Fifth Amendment is undermined. 108 F.4th 639 at 654 (emphasis added).

Hillie and *McCoy* reflect the inter-circuit split concerning how "lascivious exhibition of the genitals" should be construed by juries in child pornography cases. They also reflect the intra-circuit division. Professor Adler has written that *Dost* "has produced a profound incoherent body of case law and post-*Hillie*, this appears to be an understatement. Amy Adler, *Inverting the First Amendment*, 149 U. Penn. L .Rev. 921, 953 (2001).

The federal government recognizes the seriousness and importance of resolving this issue. [5] A first-time offender convicted of producing just one image under 18

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[5] This is reflected in it twice seeking en banc reviews. En banc review was granted in *McCoy* and denied in *Hillie.* If *Hillie* had been applied in the petitioner's case then none of the *Dost* factors would have become a jury instruction and the outcome likely would have been different. The same can be said regarding the state cases referred to in this petition, *Whited,* supra, *Parra-Sanchez*, supra.

U.S.C. 2251(e) faces a statutory minimum sentence of fifteen years. In the state case at bar, Mr. Inzitari was convicted of the passive possession of 50 or more images of child pornography, (passive in the sense that he did not create, produce or publicize the images) and he received a sentence of eighteen and a half years. Five years was the mandatory minimum under § 53a-196d(c).

C. THE QUESTION PRESENTED IS INCREDIBLY IMPORTANT.

The stakes for Mr. Inzitari are very high and they are very high for the hundreds of state and federal defendants who regularly face extremely lengthy sentences for the passive possession of child pornography when "sexually explicit conduct" is exclusively based on "lascivious exhibition of the genitals." Indeed, in *McCoy*, the government's petition for rehearing asserted that the issue was "of surpassing importance." Gov't Pet. for Reh'g En Banc 14, *United States v. McCoy*, No. 21-3895, (8th Cir. Jan. 30, 2023) (quoting *New York v. Ferber*, 458 U.S. 747, 757 (1982)).

D. THE SPLIT AMONG STATE APPELLATE COURTS REGARDING WHETHER IMAGES SHOWING NO SEXUAL CONDUCT CONSTITUTES "SEXUALLY EXPLICIT CONDUCT" BASED ON "LASCIVIOUS EXHIBITION" IS SIGNIFICANT. PETITIONS SEEKING CERTIORARI TO CLARIFY "SEXUALLY EXPLICIT CONDUCT" BASED ON THE MEANING OF "LASCIVIOUS EXHIBITION" ARE BEING FILED ON A REGULAR BASIS.

1. *The significant split among the states should be resolved.*

A recent Maryland Supreme Court decision highlights the problem. It is *Turenne v. State,* 321 A.3d 697 (Md. 2023). In this case the defendant was charged

with eight counts of child sex abuse, eight counts of production of child pornography and eight counts of possession of child pornography. In 2021, the eighteen year old defendant worked as an aid at a daycare center. One of the coworkers noticed some unusual images on Turenne's cell phone. The police were called. The defendant consented to her cell phone images being viewed and gave statements to the investigating officer, admitting that she took pictures of naked babies on the changing table. None depicted the babies being touched. She testified at trial that she took the photos to document diaper rash.

There were eight cell phone photographs. All showed naked female babies but the images depicted close up of the babies' vaginas. The jury found Turenne guilty on all 24 counts. She received a sentence "of 280 years of imprisonment" suspended after "126 years" served. *Id.* at 709. The Appellate Court of Maryland affirmed the 24 convictions. 258 Md. App. 224 (2023). Its supreme court adopt[ed] a content-plus-context test that considers both the content ... and the totality of circumstances that directly relate to the [lascivious] exhibition...." *Turenne v. State*, 312 A.3d 697 (Md. 2024). *Id.*, at 722, 726-27. It further stated that its new test requires an image to be "objectively sexual in nature," *Id.* It expressly declined to adopt the *Hillie* standard, stating that "it would lead to an absurd interpretation' of its statute." *Id.*, at 726.

Interestingly, the Maryland Supreme Court did not review the images by applying independent appellate review. The record is silent why this constitutionally required standard of review did not occur. As is well known, "in

cases raising First Amendment issues [the Supreme Court has] repeatedly held that an appellate court has an obligation in order to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" *New York Times Co. v. Sullivan*, 376 U.S. 254, 285-86 (1964). Instead, it applied its new "test to the evidence in this case, *viewed in the light most favorable to the state,* [and] conclud[ed] that a rational juror could find beyond a reasonable doubt that Ms. Turenne's photos depicted "lascivious exhibitions of the children's genitals...." (Emphasis added.) This deferential approach is improper regarding images that are claimed to be protected by the First Amendment. In the case at bar, the Connecticut Supreme Court correctly applied independent appellate review but erroneously only found two of the thirteen images to be protected. *Inzitari* at 102, 17a.

Chief Justice Fader dissented, stating that "the framing of the photographs is ... relevant" ... but assert[ed] that "the framing here still makes clear that the pictures are of children during the process of a diaper change." *Id.* at 741. The majority dismissed this out of hand because "our deferential standard of review requires us to resolve any conflicts on this point in favor of the state." *Id.* n. 25.

The majority in *Turenne* affirmed the convictions but also stated: "Our content-plus-content standard ... *is not a gloss on one or more of the Dost factors in whole or in part as the test for determination of lasciviousness in Maryland." Id.* (emphasis added). Yet, they affirmed.

The dissent in *Turenne* noted that the Maryland statute, as occurred in the case at bar, exclusively applied to images that were allegedly "lascivious exhibition of the genitals or pubic area of any person." *Id.* at 739. In his dissent, Chief Justice Fader noted that, "[t]he plain language of the statute unambiguously requires that the lascivious character of an exhibition must exist within the image ..., not the mind of the defendant." *Id.* at 736. His dissent largely agreed with the majority's new test but parted company with the majority regarding the "context" of the test being "the *totality* of the circumstances that directly relate to the exhibition of the genitals or pubic area." *Id.*, (emphasis added.) He explained: "I would describe the 'context' portion of the test as '*limited to those* circumstances that directly relate to the exhibition of the genitals or pubic area.'" *Id.* at 740 .emphasis in the original.) After applying this restriction to the facts, Maryland's chief justice noted that the babies were "situated in the midst of diaper changes—a perfectly ordinary, nonsexual event—*not* posed in sexual positions." *Id.* at 741 (emphasis added). In the case at bar, with the possible exception of one of the challenged thirteen exhibits, the children were not posed in sexual positions. The dissent also noted that "[a] jury may infer from similarity of the images that Ms. Turenne was attracted to the images, but *that does not make them objectively sexual.*" *Id.*, at 742 (emphasis added). The same applies to the case at bar.[6] Near the end of his dissent, the chief

[6] On appeal the defendant "urge[d] this [c]ourt to not evaluate lasciviousness subjectively from the alleged perspective of a pedophile" and relied on the three

justice stated: "We honor the General Assembly's intent in enacting the statutes by applying their terms, not by applying them more expansively to cover conduct we think the General Assembly would also find offensive." *Id.* The dissent concluded by stating, "[b]ecause the images ... do not meet that standard [of lascivious exhibition of the genitals] the convictions for violating those provisions should be reversed. *Id.*

As occurred in the *McCoy* Eighth Circuit split decision, the judges of the Maryland Supreme Court were sharply divided, 4-to-3. At this juncture the appellate courts of Tennessee, Maryland and Oregon largely do not adopt the *Dost* factors and resultantly do not utilize then as jury instructions. In *Inzitari,* Connecticut removed the sixth factor from consideration but factor (1) – (5) remain and the petitioner was convicted nevertheless. One scholar notes that "[n]ineteen states have relied on *Dost*—to hold that their state child pornography statutes criminalize lewd or lascivious images, as opposed to images of children engaging in ... lascivious conduct ..."[7] The division among the state courts mirrors the divisions among the federal courts.

2. *Petitions seeking certiorari to clarify "sexually explicit conduct" based on the meaning of "lascivious exhibition" are being filed on a regular basis.*

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state appellate courts that have so held. Def. Br. pp. 30, 69a.

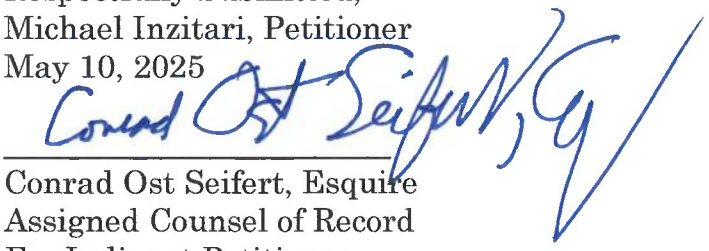
[7] Owen Senders, *Misreading The Federal Child-Pornography Statutes,* 3 Ga. Crim. L. Rev. 1 (forthcoming 2024-2025) (available at ssrn at https://ssrn.com/abstract=4768117), 1 at *32-33. The nineteen states, their statutes and appellate decisions are found in this law review at n. 158.

Post-*Hillie,* federal courts are involved in more litigation over the *Dost* factors and the role they play in defining "lascivious exhibition." In this Court, petitions for certiorari were filed and denied in: *United States v. Close,* 2022 WL 17086495, (2d Cir. Nov. 21, 2022) *cert. denied,* 143 S. Ct. 1043 (2023), *United States v. Anthony,* No. 21-2343, 2022 WL 17336206 (3d Cir. Nov. 30, 2022), *cert. denied,* 2024 WL 67488 (2024), *United States v. Donoho,* 76 F.4th 588 (7th Cir. 2023), *cert. denied,* No. 23-803, ___ S. Ct.___ (2024), *United States v. McCoy,* 55 F.4th 658 (8th Cir. 2022), *cert. denied,* No. 24-380, ___ S. Ct.___ (2024), *United States v. Boam, 69 F.4th 601* (9th Cir. 2023), *cert. denied,* No. 23-625, ___S. Ct.___ (2024), *United States v. Bracero-Navas,* No. 22-12887, 2024 WL 3385134, (11th Cir. July 12, 2024), *cert. denied,* January 13, 2025 , No. 24-6000, ___S. Ct.___(2025).

CONCLUSION.

In *Osborne v. Ohio* this Court stated that, "depictions of nudity without more, constitute protected expression." 495 U.S. 112 (1990). The Supreme Court of Maryland in *Turenne,* supra, and the Eighth Circuit's en banc decision in *McCoy,* show the difficulty jurists experience within their own courts in deciding what, beyond nudity, constitutes "lascivious exhibition of the genitals." The cause of such difficulty lies within the divergent interpretations of the six *Dost* factors. Certiorari should be granted to finally resolve the conflict.

Respectfully Submitted,
Michael Inzitari, Petitioner
May 10, 2025



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