

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

IN RE: Adolfo Herrera-Sustaita

Appendix

Petitioner:  
Adolfo Herrera-Suataita  
19145-480  
Federal Correctional Institution  
P.O. Box 1000  
Marion, IL 62959  
  
pro se

Respondent:  
Solicitor General  
of the United States  
Room 5616  
Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

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18 U.S.C. § 2251(a)

Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facilities of interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in or transmitted using any means or facility of interstate or foreign commerce or mailed.

Appendix "A"

18 U.S.C. § 2252A(a)(5)(B)

Knowingly possesses, or knowingly access with intent to view, any book, periodical, film, videotape, or computer disk, or any other material that contains an image of child pornography that has been, or shipped or transported using any means or facility of interstate or foreign commerce or by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer.

Appendix "B"

18 U.S.C. § 2252(a)(4)(B)

Knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which have been mailed or so shipped or transported, by any means including by computer[.]

Appendix "C"

18 U.S.C. § 2256(8)

Child pornography means any visual depiction including any photograph, film, video, pictures or computers-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where -

- A. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
- B. Such visual depiction is a digital image, computer image, or computer-generated images that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
- C. Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

Appendix "D"

21 U.S.C. § 801(5)

Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

28 U.S.C. § 1651(a) & (b)

"(a) The Supreme Court and all courts established by act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a Court which has jurisdiction."

Appendix "F"

- (a) Writ of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdiction. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
- (b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.
- (c) The writ of habeas corpus shall not extend to a prisoner unless:
  1. He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
  2. He is in custody for an act done or committed in pursuance of an act of Congress, or an order, process, judgement or decree of a court or judge of the United States; or
  3. He is in custody in violation of the Constitution or laws or treaties of the United States or its territories; or
  4. He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or
  5. It is necessary to bring him into court to testify or for trial.
- (d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

Appendix "G"

(e) (1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

Appendix "G"

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"Application for a writ of habeas corpus shall be in writing and verified by the person for whose relief it is intended or by someone acting in his behalf.

"It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.

"If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held."

Appendix "H"

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court find that the judgement was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgement vulnerable to collateral attack, the court shall vacate and set the judgement aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from the final judgement on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of -

- (1) The date on which the judgement of conviction becomes final;
- (2) The date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) The date on which the right asserted was initially recognized by the Supreme Court and made retroactively

applicable to cases on collateral review; or

(4) The date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act [21 U.S.C.S. § 848], in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 2006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 [28 U.S.C.S. § 2244] by a panel of the appropriate court of appeals to contain -

(1) Newly discovered evidence that, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) A new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Appendix "I"

"Congress makes the following findings:

- (1) The effect of the interstate production, transportation, distribution, receipt, advertising, and possession of child pornography on the interstate market in child pornography:
  - (A) The illegal production, transportation, distribution, receipt, advertising and possession of child pornography, as defined in Section 2256(8) of Title 18, United States Code, as well as the transfer of custody of children for the production of child pornography, is harmful to the physiological, emotional, and mental health of the children depicted in child pornography and has a substantial and detrimental effect on society as a whole.
  - (B) A substantial interstate market in child pornography exists, including not only a multimillion dollar industry, but also a nationwide network of individuals openly advertising their desire to exploit children and to traffic in child pornography. Many of these individuals distribute child pornography with the expectation of receiving other child pornography in return."

United States Constitution, Article I, § 8, Clause 3

"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;"

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Appendix "K"

The United States Constitution, Amendment VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 4:18CR00763(2) DC  
USM Number: 19145-480

**ADOLFO HERRERA-SUSTAITA**

Alias(es):

AKA Adolfo Herrerasustaita,; AKA Adolfo Herrera,; AKA  
Adolfo Herrera,;  
Defendant.

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, Adolfo Herrera-Sustaita, was represented by Elizabeth Rogers, .

The defendant pled guilty to Count(s) 1, of the Superseding Information on April 9, 2019. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

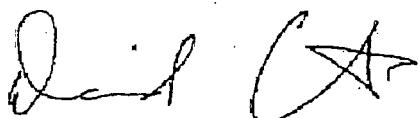
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count(s)</u>
18 U.S.C. § 2251(a)	Aiding and Abetting the Production of Child Pornography	October 19, 2018	1s

As pronounced on August 29, 2019, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

On motion of the United States, the Court has dismissed all remaining counts with prejudice.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this 5th day of September, 2019.



David Counts  
United States District Judge

Appendix "M"