

No.

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM JENNINGS BRYANT AXSOM II

Pro Se PETITIONER

vs.

UNITED STATES OF AMERICA

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Honorable Jerome Kearney, U.S. Magistrate Judge: jerome_kearney@ared.uscourts.gov,
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Honorable D. Price Marshall, U.S. District Judge: Price_Marshall@ared.uscourts.gov,
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ALL

- RESPONDENTs ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

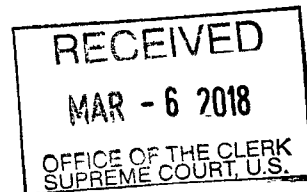
William Jennings Bryan Axsom II Fed Inmate Reg #21830-009

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QUESTIONS PRESENTED

I. Did the Eighth Circuit Court of Appeals fail to properly apply the standards for issuance of a Certificate of Appealability (COA) under Miller-el v. Cockrell, 537, U.S. 322 (2003) and Slack v. McDaniel, 529 U.S. 473 (2000) where the petitioner made a substantial showing of "ineffective assistance of counsel" (IAC) in violation of the Sixth Amendment under Strickland v. Washington, 466 U.S. 668 (1984) and Carter V. Bowersox, 265 F.3d 705 (8th cir. 2001) where Jury asked the District Court to "Please define trafficking for us," and Court responded insufficiently with, "Please refer to all the court's instructions previously given," whereby leaving the Jury to reach their own conclusions regarding the nature of plaintiff's prior conviction?

II. Did the Eighth Circuit Court of Appeals fail to properly apply the standards for issuance of a Certificate of Appealability (COA) under Miller-el v. Cockrell, 537, U.S. 322 (2003) and Slack v. McDaniel, 529 U.S. 473 (2000) where the petitioner made a substantial showing of procedural error for the court's failure to clarify the definition of "trafficking" pertaining to petitioner's prior conviction for "Trafficking in material involving sexual exploitation of minors" where the prosecutor had mischaracterized petitioner's prior conviction in her closing remarks where she stated petitioner had been convicted previously of "trafficking in minors," in 2003, thus he knew what a "minor" was in 2010?

III. Have the supervisory powers of the Eighth Circuit Court of Appeals been suspended through its condoning of lower courts abandonment of doctrine of stare decisis occasioning a systematic suspension of the petitioner's Writ of Habeas Corpus, the only common-law tradition enshrined in the constitution?

IV. Has comments of newly-appointed Justice Gorsuch exposed flaw in Supreme Court procedures allowing clerks to play too large a role in case selection enabling the Judicial perspectives of a particular circuit Justice to cause Petitioners of that circuit limited access to the court based on biases of the particular circuit Justice and whereby enabling the aforementioned suspension of the Petitioner's Writ of Habeas Corpus enshrined in the Constitution?

V. Did "Limewire's" **deceptive practices** of sharing users files without their consent or knowledge as was proven by the Federal Trade Commission's (FTC) 2011 lawsuit against Frostwire (Limewire's source code) and proven by three congressional oversight hearing on the dangers of Limewire exposing its users to wrongful penal liabilities for distribution and possession of child pornography?

VI. Did the Eighth Circuit Court of Appeals fail to properly apply the standards for issuance of a Certificate of Appealability (COA) under Miller-el v. Cockrell, 537, U.S. 322 (2003) and Slack v. McDaniel, 529 U.S. 473 (2000) where the petitioner made a substantial showing of both "ineffective assistance of counsel" (IAC) and "ineffective assistance of appellate counsel" in violation of the Sixth Amendment under Strickland v. Washington, 466 U.S. 668 (1984) and Carter V. Bowersox, 265 F.3d 705 (8th cir. 2001) where the petitioner offers specifics in his 2255 as to how the investigation and defense was insufficient and what additional investigation and defense preparation would have changed his guilty verdict. Petitioner's appointed appellate attorney made a procedural error in the petitioner's direct appeal brief and he also excluded the error by the court in not answering the Jury's question to define trafficking, when the petitioner specifically requested in writing and meetings that it be included in his direct appeal.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page. *for writ of Cert.*
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED
STATES PETITION FOR WRIT OF
CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

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

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

The Proposed Findings and recommendations instructions by the Magistrate Judge of the United States District appears at Appendix B and is also unpublished

The opinions of the United States court of Appeals for the 8th Circuit to timely Pro Se rehearing En Banc petitions appears at Appendix C & D and are also unpublished.

Pro Se Petitioners timely motion for reconsideration of a proper length petition for rehearing En Banc and Pro Se Proper Length Rehearing petition appears in Appendix E and are also unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 10, 2017.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date 09/28/2017 and a copy of the order denying rehearing appears at Appendix D. A timely Pro Se proper length petition for rehearing En Banc was approved by the court and filed on Oct. 26, 2017

[x] A timely proper length petition for rehearing was denied by the United States Court of Appeals on the Following date 12/06/2017 and appears at Appendix C

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

The petitioner has 90 days from the date of the last judgment from the U.S. Court of appeals for the Eighth Circuit case #17-1530 listed in Appendix C . The last Judgment was issued on December 6, 2017 denying timely filed petition for rehearing. The Petitioner has until March 6 to file his Pro Se petition for Writ of Cert with the United States Supreme Court.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBERS
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 Oversight and Government Reform: House Hearing, 111th Congress- "INADVERTENT FILE SHARING OVER PEER-TO-PEER NETWORKS: HOW IT ENDANGERS CITIZENS AND JEOPARDIZES" Limewire CEO Mark Gorton is the only peer-to-peer Network company questioned at this hearing because his software has caused the most damage and still is in 2018, because so many have cloned it's code. The full 1000 pages of all three hearings are in the support documents on pacer.gov under William J.B. Axsom II Case: 4:10-cr-00214-DPM Eastern District of Arkansas Petitioner included the excerpts from the hearing that mention the other hearings where Limewire's CEO promised to fix his software, but never has, because he created a monster that can't be controlled or tamed, unless the whole peer-to-peer Gnutella network is disarmed, which is impossible. So the only thing that can be done is warn the public, and reform the distribution law for child pornography to separate the violent offenders from the innocent victims of Limewire and its clones for future arrest and vacate sentences of those innocent victims of this software that are now incarcerated and serving 10 years mandatory minimum sentence. July 29, 2009 Serial #111-25 Bill #h.R.2221 - Published.....	
	10-13,16
 Please show this ProSe petitioner mercy if he has not followed the rules for writ of cert to a "T". The Petitioner has tried his best and prays it will be accepted and denied.	

STATEMENT OF THE CASE

During deliberations, the jury asked for clarification on an important point of law. The lower court refused to provide such clarification responding only that the jurors would be required to rely solely on the evidence presented and the instructions directing their verdict.

There is strong precedent on this specific issue demonstrating that the lower court erred in failing to answer the jury's important clarifying question. By ignoring that controlling case law from the Eighth Circuit, the lower court violated the Doctrine of Stare Decisis, which requires that a court must follow earlier judicial decisions when the same point of law thereafter arises in litigation. In failing to provide relief in Petitioner's § 2255 pleadings the lower court effectively suspended the writ of habeas corpus afforded to Petitioner. Petitioner's pleadings relied upon Supreme Court law that required his suffering of a constitutionally intolerable sentence be redressed. Petitioner respectfully suggests that the Eighth Circuit then suspended its supervisory powers by failing to correct the lower court's error occasioning a systematic suspension of the writ of habeas corpus.

ARGUMENT

Petitioner was told by his attorney that the Government must prove that he knowingly and intentionally possessed and distributed child pornography and that they would be successful in disproving such criminal elements at trial. Thus, Petitioner proceeded to trial with the full expectation that his innocence would be advocated for on every possible level. To his astonishment, Petitioner instead found that his counsel failed to provide any meaningful adversarial test to the prosecution's arguments before the jury.

When the jury was left in a state of confusion by the prosecution's closing remarks that, "Axsom knew what a minor was when he was convicted of "trafficking in minors in 2003 and he knew what a 'minor' was in 2010." (Trial Tr. 652:23). Because an answer to the jury's plea to the court to, "[p]lease define trafficking for us," when unresponded to beyond instructions to refer to the Court's previous instructions, Petitioner raised this issue for the first time in his Motion Under 28 U.S.C. § 2255. The District Court denied relief, and the Circuit Court of Appeals for the Eighth Circuit refused to grant a Certificate of Appealability to allow the proceedings to move forward.

An appeal may not be taken to the court of appeals from a final order in a habeas corpus proceeding "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability "may issue ... only if the applicant has made a substantial showing of

the denial of a constitutional right." 28 U.S.C. § 2253(c)(1). "The COA determination under § 2253(c) requires an overview of the claim in the habeas petition and a general assessment of their merits." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

To warrant a grant of the certificate as to claims denied on their merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). This standard requires a § 2255 movant to demonstrate that reasonable jurists could debate whether the motion should have been resolved differently, or that the issues presented deserved encouragement to proceed further. *Id.* 529 U.S. at 483-84. As to claims the district court rejects on procedural grounds, the movant must show both that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* 529 U.S. at 484.

Petitioner asserts that the Eighth Circuit Court of Appeals failed to properly apply the standards of issuance of a COA under Miller-El v. Cockrell, *supra*, and Slack v. McDaniel, *supra*, relating to a single claim.

- I. The Eighth Circuit Court of Appeals failed to properly apply the standards for issuance of a COA under Miller-El v. Cockrell and Slack v. McDaniel where Petitioner made a substantial showing of Ineffective Assistance of Counsel under Strickland v. Washington in violation of the Sixth Amendment due to Counsel's

failure to object to Government's improper closing arguments and for including the issue in Petitioner's direct appeal under Carter v. Bowersox.

It is long-held that the trial court has a "duty to answer the jury's question if clarification is requested, the original jury instructions are incomplete, or the jurors are confused." Carter v. Bowersox, 265 F.3d 705 (8th Cir. 2001).

Petitioner submits that it was procedural error for the District Court to fail to clarify for the jury the definition of his prior indictment as "Trafficking in material involving sexual exploitation of minors." In light of the facts of Petitioner's prior conviction, which had entailed the opening of an email posted by an undercover operative within the FBI that contained images of child pornography who then requested that Petitioner return the emails to him, which he did on a single occasion.

Clearly, the prejudicial damage of these errors was enough to completely change the evidentiary picture of the case. Such error is worthy of COA consideration under Miller-El and Slack, and the lower courts failed to properly apply controlling law to allow the proceedings to progress.

- II. The Eighth Circuit Court of Appeals failed to properly apply the standards for issuance of a COA under Miller-El v. Cockrell and Slack v. McDaniel where Petitioner made a substantial showing of procedural error for the District Court's failure to clarify the definition of "trafficking" pertaining to Petitioner's prior conviction for "Trafficking in Material Involving Sexual Exploitation of Minors" where Prosecutor had mischaracterized Petitioner's prior conviction in his closing remarks when he stated Petitioner had been convicted previously of "trafficking in minors," in 2003, thus he knew what a "minor" was in 2010.

The failure of a court to fulfill its duty to answer a jury's questions when clarification is requested or the jurors are confused is a structural error requiring a new trial.

Generally, a constitutional error that "did not contribute to the verdict obtained" is deemed harmless, which means the defendant is not entitled to reversal. Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705. However, a structural error, which "affect[s] the framework within which the trial proceeds," Arizona v. Fulminante, 499 U.S. 279, 310, 111 S. Ct. 1246, 113 L. Ed. 2d 302, defies harmless error analysis, *id.*, at 309, 111 S. Ct. 1246, 113 L. Ed. 2d 302. Thus, when a structural error is objected to and then raised on direct review, the defendant is entitled to relief without any inquiry into harm.

Petitioner claimed that his counsel's failure to object to the District Court's failure to answer the jury's question, a clear procedural error, was ineffective under both Strickland prongs. As a pro-se litigant, reasonable jurists would have suggested that such error rises to that of a structural error requiring a new trial, certainly a COA. See Weaver v. Massachusetts, 198 L. Ed. 2d 420 (2017).

III. The Supervisory Powers of the Eighth Circuit Court of Appeals been suspended through its condoning of lower court's abandonment of Doctrine of Stare Decisis occasioning a systematic suspension of the writ of habeas corpus.

Petitioner asserts that the Eighth Circuit Court of Appeals has abandoned the Doctrine of Stare Decisis and that many

district courts within the Eighth Circuit have emboldened to follow suit. Such results is a self-fulfilling prophecy analogous to the saying, "when the cat's away, the mice will play." Petitioner asserts that this situation has eroded the supervisory powers of the Eighth Circuit causing a suspension by that Court's condoning of lower courts' abandonment of the Doctrine of Stare Decisis, which mandates that a court follow the guidance of precedent jurisprudence and that such behavior has occasioned a systematic suspension of the writ of habeas corpus denying relief when jurisprudence is favorable to criminal defendants. The Government has, thus, become unbridled in its willingness to run roughshod over defendants' constitutional rights with impunity.

In 2017, this Court found that the Fifth Circuit Court of Appeals had erred in placing too heavy a burden on the petitioner at COA stage. Buck v. Davis, 580 U.S. ___, 137 S. Ct. ___, 197 L. Ed. 2d 1 (2017). Petitioner asserts that the Eighth Circuit court of Appeals has engaged in a pattern of eschewing such COA review by declining to issue any opinion as to its underlying rationale for denying COA's instead issuing blanket denials in such cases, thus denying the ability to determine whether the reviewing court inverted the statutory order of operations by deciding the merits of an appeal and then denying the COA based on adjudication of the actual merits as the reviewing court did in Buck.

IV. Newly-Appointed Justice Gorsuch's Recent Statements Demonstrate Flaw with the Case Selection Process in Supreme Court.

In support of Petitioner's pertaining to the abandonment of the Doctrine of Stare Decisis. Petitioner respectfully raises this claim to ask the Court to explore deeper the veracity of Justice Gorsuch's comments to ascertain whether or not there is a true issue with the case selection process. Petitioner suggest that, particularly in the Eighth Circuit, this process skews relief away from similarly situated petitioners from this rogue circuit that is truly an outlier to heartland cases.

- V. Did "LIMEWIRE" Services' Deceptive Practices of Sharing Users Files Without Their Consent or Knowledge, as proven by the Federal Trade ("FTC") 2011 Lawsuit against Frostwire (Limewire source code clone) and also proven by Three Congressional Oversight hearing on dangers of Limewire, exposing its users to wrongful penal liabilities for distribution and possession of child pornography?

At the time of Petitioner's conviction, there was a split among circuit courts of appeals as to the mens rea requirement for application of U.S.S.G. Section 2G2.2(b)(3)(F), the sentencing enhancement for distribution of child pornography. The circuits were divided as to how to apply this enhancement where defendants had merely used peer-to-peer file sharing services such as "Limewire" not knowing that such services often automatically, without explicit consent or knowledge of its users, made storage devices shared and accessible to other service members. The result of a lengthy debate among legislators, Sentencing Commissioners, and members of the public at large was that the Commission crafted a clarifying amendment, Amendment 801 (effective November 1, 2016), to crystallize the requirement that a defendant must have had intent to receive the distribution enhancement.

Petitioner asserts that Limewire's deceptive practices of sharing users' files without their consent or knowledge, as proven by the FTC's 2011 lawsuit against Frostwire (a Limewire source-code clone) and also proven by three congressional oversight hearings on dangers of Limewire, exposed Petitioner and other users to wrongful penal liabilities for distribution and possession of child pornography. Moreover, the magnitude of this issue, as it potentially affects millions of unsuspecting users of such services, warrants certiorari review of this Court. This is also proven in the following hearing transcript excerpts.

Committee on oversight and government reform :House Hearing, 111th Congress -
INADVERTENT FILE SHARING OVER PEER-TO-PEER NETWORKS: HOW IT
ENDANGERS CITIZENS AND JEOPARDIZES..July 29, 2009 Serial #111-25 Bill #h.R.2221 -

Opening Remarks by Chairman Edolphus Towns at the above congressional hearing. Pg 1-2

"Specific examples of recent LimeWire leaks ranged from appalling to shocking.

The Social Security numbers and family information for every Master Sergeant in the Army have been found on LimeWire. The medical records of some 24,000 patients of a Texas hospital were inadvertently released. Most of the files are still available on LimeWire. FBI files, including civilian photographs of an alleged mafia hit man, were leaked while he was on trial and before he was convicted. We were astonished to discover that a security breach involving the Secret Service resulted in the leak of a file on LimeWire containing a safe house location for the First Family.

As far as I am concerned, the days of self regulation should be over for the file sharing industry. In the last administration, the Federal Trade Commission took a see-no-evil, hear-no-evil approach to file sharing software industry. I hope the new administration is revisiting that approach. I hope to work with them on how to better protect the privacy of consumers.

Today I look forward to hearing from our witnesses on the impact of peer-to-peer file sharing, and particularly how LimeWire proposes to help remedy the problems caused by its software"

Remarks by Senator Ranking Member Darrel Issa at the hearing page 14. Senator Issa is demonstrating how loading Limewire innocently can get you put in prison, because of all the real child predators and child pornography producers are doing a number on the FBI Agents using Limewire to turn their findings in the wrong direction toward innocent "Limewire" users.

Page 14 Mr, Issa: "What it will do is it will make law enforcement think that it is that person. They will only show midsections of the indecent pictures but once they show a face, obviously law enforcement is going to deduce that is the face of the victim. And in an effort to try to find the victim, it actually turns you the wrong direction.

Imagine if this NASCAR driver were a potential victim in a sexually explicit case. It could ruin his career and he didn't do anything wrong. His daughter downloaded a peer-to-peer client (Limewire), had it on her system, and she had a picture of her dad and her brother. That is nothing bad, but this is what happens."

Mr. Thomas Sydnor is senior fellow and director of the Center for the Study of Digital Property at the Progress and Freedom Foundation (Mr. Sydnor offered to speak to and help petitioner's counsel get up to speed on the dangers of Limewire for the trial, but counsel refused to even call him or email him. All the emails from Mr. Sydnor were documented in the petitioners 2255. All of this is part of the record transcript of the motion for a new trial in the District Court.

Congressional Hearing Page 50 Mr. Sydnor comments: "Limewire 5: There you will once again be recursively sharing folders, the very feature that Mr. Gorton told this committee was the cause of catastrophic inadvertent file sharing."

Page 68 -69 Senator ISSA asking Mr. Gorton the CEO Limewire. "OK, then let us go through some steps. Why is it that you still have 4.18 on your site? You still offer today for download out of date software that is inherently more vulnerable by your own statements. Why do you still do that? Mr. GORTON. I am not aware of us doing that. Mr. ISSA. My own people who are not technologists checked on it today. It is still there "

Page 77-78 Mr. Hodes asking Mr. Gorton Questions: Mr. HODES. How about child pornography? You understand that LimeWire is being used as we speak to facilitate the commission of child sex crimes? You understand that, right? Mr. GORTON. Yes. Mr. HODES. What are you going to do about it? Mr. GORTON. "LimeWire is in the process of working with the New York State Attorney General's Office on specifically this problem . We are working together in building a filter to remove child pornographic material. Mr. HODES. So you can't tell us that after leaving this committee room 2 years ago when you promised us you would fix it that you started fixing it, right?"

Petitioner was arrested in 2010, this hearing was in 2009 and nothing had been done by Limewire or its clones to protect its users from unsolicited child pornography on the Limewire peer to peer Network (Gnutella) or had Limewire fixed the dangerous deceptive inadvertent sharing of these unsolicited child pornography files.

Page 81 Mr. Connolly asking Gorton Questions: "Mr. Sydnor also said that in addition to being dangerously unpredictable, one of his three points was that you were knowingly dangerously unpredictable. In other words, this isn't accidental or this isn't just a feature of the software that is something we can't really control. **You knowingly have, in fact, manufactured, sold, and operated software that has this dangerous default with**

unwilling or unable to ensure user safety. It is time to put a referee on the field begin to play by rules.

Lastly and sadly the Federal Bureau of Investigation (FBI) Agents are using the same flawed deceptive non-Daubert tested "Limewire" services as evidence on and snare unsuspected innocent victims of Limewire services that come with a first time mandatory minimum sentence of 10 years in prison, before enhancements are even considered. Some of these victims are users of FrostBearshare, etc. which all use the same dangerous Limewire source code, but only change the launch screens only cosmetically. Some of these innocent users are found guilty, because they can get less than 10 years. The Federal Courts or Jury and the public are not exposed or educated to how dangerous this software. That makes it almost impossible for an innocent user to be found not guilty by the jury.

- V1. Did the Eighth Circuit Court of Appeals fail to properly apply the standards for issuance of a Certificate of Appealability (COA) in Miller-el v. Cockrell, 537, U.S. 322 (2003) and Slack v. McDowell, 529 U.S. 473 (2000) where the petitioner made a substantial showing of both "ineffective assistance of counsel" (IAC) and "ineffective assistance of appellate counsel" in violation of the Sixth Amendment under Strickland v. Washington, 466 U.S. 668 (1984) and Carroll v. Bowersox, 265 F.3d 705 (8th cir. 2001) where the petitioner offered specifics in his 2255 as to how the investigation and defense were insufficient and what additional investigation and defense preparation would have changed the outcome of the trial. Petitioner's appellate counsel made a procedural error in the petitioner's direct appeal when he also excluded the court error in not answering the Jury's question to define trafficking, when the petitioner specifically requested it in his writing and meetings that it be included in his direct appeal.

The petitioner asserted in his 2255 petition that he was denied his right to a direct appeal because of his "ineffective assistance of appellate counsel" procedural error and his exclusion of the critical court error for not answering correctly

what he characterized as "devastating results." I assume your view is that is just not true. Mr. CONNOLLY. The third point he made was that he could identify at least eight violations of voluntary best practices, suggesting that self-regulation in your case doesn't work."

Page 85 Mr. Welch voicing his opinion: "Mr. Chairman, if we have another hearing, another hearing, and another hearing after that we are going to have the same story from Mr. Gorton. Then we are going to have another demonstration from Tiversa that shows us whatever he has done lately has failed. At a certain point it may be appropriate for us to ask folks from the FTC, the U.S. Attorney's Office, and maybe some State Attorneys General who are concerned about access to pornography as to whether there is some legal action that should be taken in order to protect intellectual property, protect our kids from pornography, and essentially protect classified medical and national security information. I want to thank Tiversa. There is the old Groucho Marx line, do we want to believe Mr. Gorton or our own two eyes? **I think your demonstration makes it irrefutable that whatever actions LimeWire has taken to supposedly deal with this inadvertent file sharing are a failure.** My conclusion is that they have no serious intention of being successful and stopping it because the main agenda item is providing access to intellectual property to anybody who wants it without any kind of compensation.

Page 87 Chairman TOWNS. I have to leave. Let me just say that from what I have heard today, it is clear that private citizens, businesses, and the Government continue to be **victims of unintentional and illicit file sharing.** At its best, with the proper safeguards in place, peer-to-peer software has great potential. At its worst, it isn't peer-to-peer but **predator-to-prey.** For our sensitive Government information, the risk is simply too great to ignore. I am planning to introduce a bill to ban this type of insecure open network peer-to-peer software from all Government and contractor computers and networks. I plan to meet with the new chairman of the Federal Trade Commission to request that the FTC investigate whether inadequate safeguards on file sharing software such as LimeWire constitute an unfair trade practice. The administration should initiate a national campaign to educate consumers about the dangers involved with file sharing software. The FTC needs to look at this, too. The file sharing software industry has shown that it is

defining "trafficking" as stated in petitioner's prior conviction "trafficking in material involving sexual exploration of minors". The petitioner voice his concerns about this court error in his PRO Se brief Doc. #67 in support of his motion to replace appointed counsel (Doc#66). It was also part of the formal complaint that the petitioner did not receive a fair trial dated July 31, 2012 and sent to the District Court's clerk, Prosecuting Attorney's office, Counsel's office, Appellate Counsel's office, James A. Neal Supreme Court of Arkansas Committee on Professional Conduct, Arkansas Judicial Discipline and Disability Commission and the Arkansas Bar Association.

Axson's sixth amendment rights to have "effective assistant of counsel" were denied, because Hughes and the court refused to answer the juror's question on what trafficking meant, did not include it in the Juror's Limited instructions, did not object to Clevenger's inaccurate reference to the prior conviction. The jurors were given a copy of the prior conviction, but were not properly informed on the definition of the prior charge 18 U.S.C. 2252 (a) (1) "Trafficking in Material Involving Sexual Exploitation of Minors- a class C Felony and 18 U.S.C. 2253 Criminal Forfeiture". When Juror#8 and #9 (the jury foreman) sent a note out to the Judge to specifically ask, they were not granted a definition. The definition was not explained during the court proceedings to the Juror, the prior conviction was sometimes referred to Trafficking in the sexual exploitation of minors, Trafficking in minors, Trafficking in material involving sexual exploitation of minors, distribution and possession of child pornography and trafficking in child pornography. " This inconsistency was not harmless, because it confused the Jurors and that is why they ask the Judge "What does trafficking mean?"

The Ineffective assistance claims are all listed in petitioner 2255 petition in detail with all supporting documents to back up the IAC Claims on how counsel was IAC before, during and after the trial. Because the petitioner didn't have effective assistance of counsel the Jury was allowed to hear false evidence against him from the government, the FBI agents, the one defense witness and from his own counsel. The FBI agent Passmore's Affidavit did not deny or defend herself against the

petitioner's claims that she gave false testimony and false information that was published as evidence and given to the Jury during deliberations. Yet the Court didn't even call a hearing about these major disagreements presented between the government and the petitioner, instead the Judge completely ignored (emphasis added) the petitioner's rebuttals and objections to the government's response. The petitioner's objections even references the court's transcripts to prove the government was incorrect in its responses to the petitioner's 2255 petition, but all petitioner's statements, proof, proffer, supporting documents, government publications, congressional hearings, request for discovery, request to expand record, request for hearing and request for certificate of appealability were all ignored. The findings and recommendations by the Judge were the exact findings and recommendation as were presented by the government and even the same exact "false information was included or quoted" in direct opposition to the true facts via the trial transcript. Then the District Judge, gives a blanket denial on all and denies COA also, then the Eighth Circuit does the same. Is it right to convict an innocent person proven by polygraph and sex offender evaluations, that has never been charged or accused of any inappropriate contact with a minor to prison for 15 years just because it is an extremely technical case and involves a charge of possessing and "Limewire" distribution of child pornography? Former Pennsylvania Senator Arlen Specter, who, in an article jointly written with Philadelphia attorney Linda Dale Hoffa, called mandatory sentencing for child pornography "unfairly disproportionate" offered this critical assessment:

"The fact that child pornography offenders can be given longer sentences than child abusers or violent offenders reflects a lack of care by Congress. In the rush to prove itself hostile to individuals who possess or distribute child pornography, Congress has obscured the real distinctions between different offenders. In the

words of the Second Circuit, the current Guidelines were “cobbled together,” rather than drafted with purpose.”

"The very fact that Specter and Hoffa spoke out is remarkable given the stigma attached to the crime. Child pornography is a reprehensible crime that destroys the lives of its victims and perpetuates a culture of exploitation. But misapplying the statutes to throw the book at people who do creepy things or innocently download deceptive sharing software or app on their computers or phones when there are more applicable and equitable, legal remedies undermines the spirit of the law. "

CONCLUSION

WHEREFORE, for the above-stated reasons and under these legal authorities, Petitioner Prays this Honorable Court will grant certiorari review of these issues, appoint counsel, and proceed accordingly. Should the Court be so inclined as to grant relief sought at this juncture, Petitioner Prays the Court will remand to the Circuit Court of Appeals with instructions to issue a Certificate of Appealability to allow briefing of the issues.

Moreover, Petitioner Prays the Court will extend the relief provided by the United States Sentencing Commission pertaining to the circuit split for mens rea requirement of distribution where, as here, the defendant in question merely used a file-sharing solution such as Limewire and, thus, was unjustly exposed to improper penal liability.

Respectfully submitted,

X William Axsom II

Date Feb 29, 2018

William J. B. Axsom II #21830-009

Proof of Service

CERTIFICATE OF SERVICE

I, Sandra Taylor, certify that a copy of this Motion for leave to proceed in forma pauperis and petition for Writ of Certiorari was mailed overnight for William Axsom II on March 1, 2018 from the US Post Office in White Hall, AR 71612 to:

Clerk, Supreme Court of the United States,
1 First Street, N.E.
Washington, D. C. 20543
Clerk's Office: 202-479-3011

Sandra Taylor, sister of Petitioner

Sandra Taylor 1-870-247-3609
executed on 3/2/, 2018

For:

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