

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN MICHAEL BREWER — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MR. BRIAN MICHAEL BREWER 50290-048
(Your Name) MR. BRIAN MICHAEL BREWER

FEDERAL CORRECTIONAL COMPLEX P.O. BOX 1000
(Address)

PETERSBURG, VIRGINIA 23804-1000
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

If Title 47 U.S.C. § 230 et. seq. is termed overbroad, as indicated by People v. Ferrer, ("... Finally, in attacking the conspiracy allegations, the Backpage.com, LLC Defendants cite Section 230 ... and Kimzy v. Yelp! Inc., 836 F.3d 1236 (9th Cir. 2016), a case concerning website's immunity against claims relating to content created and posted by a third party pursuant to Section 230. ...[A] website may lose immunity under the CDA (Communications Decency Act) by making a material contribution to the creation or development of the content." (Id. at 1269.))? Then, this Petitioner's Appeal should have been heard?

The [California Supreme Court] is taking up this issue in People v. Ferrer, as to holding the Owners of a website Backpage.com, LLC criminally liable for Sex Trafficking. Carl Ferrer, Mike Lacey, and James Larkin are charged with Sex Trafficking Crimes in the State of California as to their [operations of a computer website service]: Backpage.com, LLC.

Instant Petitioner, Brian Michael Brewer presents that Congressional Immunity Provisions as to Statutes such as Title 18 U.S.C. § 2252A infact are overbroad in the absence of co-defendants based upon Selective Prosecutions. And the Question is Are Service Providers and Computer Internet Providers also of the World Wide Web and its Website Owners criminally liable for postings of others?

Incorporated and adopted into this Petition For Writ Of Certiorari is this Petitioner's Direct Appellate Brief for complete and accurate design as to granting Oral Argument for this Petition, please? Kindly, convert Appellant or Appeal as if Petitioner or Petition For Writ of Certiorari in the interest of understanding the true First Amendment analysis and principles of law.

Confer genii [BRIEF] ...

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

1. World Wide Web/Internet
2. Congress of the United States
3. ~~Department~~ of Defense
4. United States Attorney General
5. California Supreme Court
6. Brian Michael Brewer
7. United States of America
8. Other (~~Communist Entities/Government~~ & Terrorists)
9. Computer Service Providers

TABLE OF CONTENTS

CONTENT	PAGE NUMBER
---------	-------------

TABLE OF AUTHORITIES	ii
----------------------	----

STATEMENT OF JURISDICTION	ix
---------------------------	----

ISSUE PRESENTED FOR REVIEW	x
----------------------------	---

STATEMENT OF THE CASE	1
-----------------------	---

STATEMENT OF FACTS	5
--------------------	---

STANDARD OF REVIEW	9
--------------------	---

SUMMARY OF THE ARGUMENT	16
-------------------------	----

ARGUMENT	17
----------	----

CONCLUSION	30
------------	----

PROOF OF SERVICE

ADDENDUM A

SEPERATE COVER APPENDIX OF EXHIBITS VOLUME I.

EXHIBITS A - D

TABLE OF CONTENTS

EXHIBIT "A"

i

EXHIBIT "B"

1

EXHIBIT "C"

57

EXHIBIT "D"

67

EXHIBIT "E"

75

PROOF OF SERVICE

NONE

83

TABLE OF AUTHORITIES

CASE LAW	PAGE NUMBER
<u>Miller v. California</u> , 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973)	x, 9.
<u>New York v. Ferber</u> , 458 U.S. 747, 749, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (1982)	9.
<u>Osborne v. Ohio</u> , 495 U.S. 103, 111, 110 S.Ct. 1691, 109 L.Ed.2d 98 (1990)	9.
<u>United States v. Karadimos</u> , 479 Fed. Appx. 144 (9th Cir. 2012)...	10.
<u>United States v. Liu</u> , 731 F.3d 982, 998 (9th Cir. 2013).....	10.
<u>United States v. Rahman</u> , 642 F.3d 1257, 1260 (9th Cir. 2011).....	10.
<u>United States v. Jeronimo</u> , 398 F.3d 1149, 1155 (9th Cir. 2011)...	10.
<u>United States v. Benford</u> , 574 F.3d 1228, 1232-33 (9th Cir. 2009)	10.
<u>United States v. Benlian</u> , 63 F.3d 824, 827 (9th Cir. 2005).....	10.
<u>Dugan v. United States</u> , 2014 U.S. Dist. LEXIS 165863 (N.D. Cal., Nov. 26, 2014) No. CR-03-20010-RMW	10.
<u>Massaro v. United States</u> , 538 U.S. 500, 504, 123 S.Ct. 1690, 155 L.Ed.2d 714 (2003)	10.
<u>Murray v. Carrier</u> , 477 U.S. 478, 488, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986)	10.
<u>McCleskey v. Zant</u> , 499 U.S. 467, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991)	10.
<u>United States v. Cortez</u> , 2016 U.S. Dist. LEXIS 18622 (E.D. Cal., Feb. 16, 2016) CR. NO. 2:95-20 WBS; CV. NO. 2:15-1433 WBS	10.
<u>McRae v. United States</u> , 2016 U.S. Dist. LEXIS 132482 (M.D.N.C., Sept. 27, 2016) No. 3:08-cv-219-RJC, (3:04-cr-223-RJC-DCK-2)	11.
<u>Hill v. Katavich</u> , 2015 U.S. Dist. LEXIS 156787 (E.D. Cal., Nov. 18, 2015) No. 1:15-cv-00631-LJO-JLT (PC)	11.
<u>Anders v. California</u> , 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967)	4, 12.

TABLE OF AUTHORITIES CONTINUED

CASE LAW	PAGE NUMBER
<u>United States v. Tulsiram</u> , 815 F.3d 114, 116 (2nd Cir. 2016).....	12.
<u>United States v. Restrepo-Suares</u> , 2007 D.C. Dist. Col 516 F.Supp.2d 112, U.S. App. LEXIS 1957 (D. D.C. 2007)	12.
<u>United States v. Salter</u> , 2015 U.S. Dist. LEXIS 166453 (D. Idaho, Dec. 8, 2015)	12.
<u>United States v. Gonzalez-Melchor</u> , 648 F.3d 959, 963 (9th Cir. 2011)	12.
<u>United States v. Streich</u> , 560 F.3d 926, 929-30 (9th Cir. 2009)...	12.
<u>United States v. Clark</u> , 218 F.3d 1092, 1097 (9th Cir. 2000).....	12.
<u>United States v. Pearson</u> , 274 F.3d 1225, 1234 (9th Cir. 2001)....	13.
<u>United States v. Peeples</u> , 630 F.3d 1136, 1138 (9th Cir. 2010)....	14.
<u>United States v. Garcia</u> , 768 F.3d 822, 832 (9th Cir. 2014).....	14, 28.
<u>United States v. Salerno</u> , 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)	14.
<u>Jones v. United States</u> , 526 U.S. 227, 239, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999)	14.
<u>United States v. Choate</u> , 576 F.2d 165, (9th Cir. 1978) 78-2 USTC ¶ 9620, 57 ALR Fed 678, cert. den (1978 CA9 Cal) 439 U.S. 953, 999 S.Ct. 350, 50 L.Ed.2d 344	14.
<u>United States v. Brune</u> , 767 F.3d 1009, 1022-23 (10th Cir. 2014)..	14.
<u>Massachusetts v. Oaks</u> , 491 U.S. 76, 581, 109 S.Ct. 2633, 105 L.Ed.2d 493 (1989)	15.
<u>United States v. Alvarez</u> , 617 F.3d 1198, 1234 (9th Cir. 2009)....	15.
<u>Wurtz v. Risely</u> , 719 F.2d 1438, 1440 (9th Cir. 1983).....	15.
<u>Brds of Trs. of State Univ. of N.Y. v. Fox</u> , 492 U.S. 469, 483, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989)	15.
<u>United States v. Adams</u> , 343 F.3d 1024, 1034 (9th Cir. 2003).....	15.
<u>Perfect 10, Inc. v. Giganews, Inc.</u> , 2014 U.S. Dist. LEXIS 183592 (C.D. Cal., March 8, 2013) No. CV11-07098 AHM (SHx)	19.
<u>Religious Technology Center v. Netcom On-Line Comm. Serv., Inc.</u> , 907 F.Supp. 1361, 1374 (N.D. Cal. 1995)	19, 20.

TABLE OF AUTHORITIES CONTINUED

CASE LAW	PAGE NUMBER
<u>Arista Records LLC v. Usenet.Com., Inc.</u> , 633 F.Supp.2d 124, 129-130 (S.D. N.Y. 2009)	19, 20.
<u>American Civ. Liberties Union v. Reno</u> , 929 F.Supp. 824, 835 (E.D. Pa. 1996) aff'd 521 U.S. 844, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997)	20.
<u>Rickert v. Francis</u> , 2015 U.S. Dist. LEXIS 179901 (D. AZ. Jan. 27, 2015) No. CV-13-2326-PHX-DKD	21.
<u>Fair Housing Council of San Fernando Valley v. Roommate.Com, LLC</u> , 521 F.3d 1157, 1162, 1164 (9th Cir. 2008)	21, 25, 29.
<u>Fields v. Twitter, Inc.</u> , 2016 U.S. Dist. LEXIS 161233 (N.D. Cal., Nov. 18, 2016) No. 16-cv-00213-WHO	15, 21, 29.
<u>Doe No. 14 v. Internet Brands, Inc.</u> , No. 12-56638, 2016 U.S. App. LEXIS 9969, 2016 WL 3067995 (9th Cir. May 31, 2016)	24, 25, 29.
<u>Stratton Oakmont, Inc. v. Prodigy Servs. CA.</u> , 1995 N.Y. Misc. LEXIS 229, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995)	25.
<u>United States v. Armstrong</u> , 21 F.3d 1431, 1436 (9th Cir. 1994)...	25.
<u>United States v. Wayte</u> , 710 F.2d 1385, 1387 (CA9 1983), aff'd 470 U.S. 598, 105 S.Ct. 1524, 84 L.Ed.2d 687 (1996)	25, 26.
<u>United States v. Armstrong</u> , 48 F.3d 1508, 1516 (9th Cir.1995) ..	25.
<u>United States v. Armstrong</u> , 516 U.S. 942, 116 S.Ct. 377, 133 L.Ed.2d 301 (1995)	25.
<u>United States v. Armstrong</u> , 517 U.S. 456, 465, 116 S.Ct. 1480, 134 L.Ed.2d 687 (1996)	25, 26.
<u>United States v. Mazzanatto</u> , 513 U.S. 196, 203, 115 S.Ct. 797, 103 L.Ed.2d 697 (1995)	25, 26.
<u>Bordenkircher v. Hayes</u> , 434 U.S. 357, 364, 98 S.Ct. 633, 54 L.Ed.2d 604 (1978)	26.
<u>United States v. Batchelder</u> , 442 U.S. 114, 125, 99 S.Ct. 2198, 60 L.Ed.2d 755 (1979)	26.
<u>Bolling v. Sharpe</u> , 347 U.S. 497, 500, 74 S.Ct. 693, 98 L.Ed.2d 844 (1954)	26.

TABLE OF AUTHORITIES CONTINUED

CASE LAW	PAGE NUMBER
<u>Oyler v. Boles</u> , 368 U.S. 448, 456, 82 S.Ct. 501, 7 L.Ed.2d 446 (1962)	26.
<u>Yo Wick v. Hopkins</u> , 118 U.S. 356, 373, 6 S.Ct. 1064, 30 L.Ed.2d 220 (1886)	26.
<u>United States v. Ford</u> , 2016 U.S. Dist. LEXIS 111243 (D. Or., Aug. 22, 2016) No. 3:14-cr-00045-HZ	26, 28.
<u>Lockhart v. United States</u> , 577 U.S. ___, 136 S.Ct. 958, 194 L.Ed.2d 48 (2016)	28.
<u>United States v. Gleason</u> , 2009 U.S. Dist. LEXIS 24800 (D. Or., March 24, 2009) No. 07-349-KI	29.
<u>United States v. Kabbaj</u> , 2016 U.S. Dist. LEXIS 125226 (E.D. Pa., Sept. 12, 2016) No. 16-365	29.
<u>United States v. Cromitie</u> , 2011 U.S. Dist. LEXIS 4820 (2d Cir.) (S.D. N.Y. May 2, 2011)	29, 30.
<u>United States v. Burgess</u> , 648 F.3d 445, 457 (4th Cir. 2012).....	30.
<u>Mackenzie v. Cal. A.G.</u> , 2016 U.S. Dist. LEXIS 129227 (C.D. Cal., April 11, 2016) No. SA CV 12-00432-VBF-JZ	30.
<u>Abel v. Chavez</u> , 2013 U.S. Dist. LEXIS 161301 (E.D. Cal., Nov. 12, 2013) No. 2:11-cv-0721 GEB AC P	30.
<u>United States v. Sadaghaty et al.</u> , 2010 U.S. Dist. LEXIS 37186, 2010 WL 149036 (D. Or., April 30, 2010 Hogan, J.)	30.
<u>United States v. Carter</u> , 549 F.Supp.2d 1257 (D. NV., Feb, 12, 2008)	30.
UNITED STATES CONSTITUTION	
FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION	x, 9, 15, 16.
ARTICLE III OF THE UNITED STATES CONSTITUTION	22.
FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION	26.
SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION	16.
NINTH AMENDMENT OF THE UNITED STATES CONSTITUTION	14, 16.

TABLE OF AUTHORITIES CONTINUED

STATUTES	PAGE NUMBER
Public Law 108 - 21, Title V, § 501, April 30, 2003, 117	
Stat. 676	9.
Public Law 110 - 358, § 102, Oct. 8, 2008, 122	
Stat. 4001	9.
Public Law 109 - 248, Title I, 120 Stat. 590 (2006)	9.
Internet Tax Freedom Act § 1101	9.
Communications Decency Act (CDA)	15, 21, 25, 27.
American Terrorist Act (ATA)	x, 15, 16, 21.
Electronic Communications Privacy Act	25.
TITLE 18 UNITED STATES CODES ANNOTATED	
18 U.S.C. § 7	29.
18 U.S.C. § 1151	23.
18 U.S.C. § 1460	23, 24.
18 U.S.C. § 2251	24.
18 U.S.C. § 2252A	x, 3, 5, 9, 14, 16, 28.
18 U.S.C. § 2252A(a)(2)	3, 5, 6.
18 U.S.C. § 2252A(b)	3, 5, 6.
18 U.S.C. § 2252A(a)(5)(B)	3.
18 U.S.C. § 2256(8)	3, 4.
18 U.S.C. § 2258A	15, 28.
18 U.S.C. § 2258(E)	
18 U.S.C. § 2703	15.
18 U.S.C. § 2703 Chapter 121	15.
18 U.S.C. § 2703(e)	15, 28.
18 U.S.C. § 3551	18, 19.
18 U.S.C. § 3553	4, 18, 19.
18 U.S.C. § 3582	8, 18, 19.
18 U.S.C. § 3742	ix.
18 U.S.C. § 2709(c)	28.

TABLE OF AUTHORITIES CONTINUED

STATUTES	PAGE NUMBER
TITLE 18 UNITED STATES CODES ANNOTATED	
18 U.S.C. § 2333(a)	21.
18 U.S.C. § 2339A	21.
18 U.S.C. § 2339B	21.
TITLE 19 UNITED STATES CODES ANNOTATED	
19 U.S.C. § 1589	29.
TITLE 28 UNITED STATES CODES ANNOTATED	
28 U.S.C. § 1291	ix.
28 U.S.C. § 1746	Addendum A
TITLE 27 UNITED STATES CODES ANNOTATED	
27 U.S.C. § 151	9.
27 U.S.C. § 223	24.
27 U.S.C. § 230	23, 25, 27.
27 U.S.C. § 230(a)	22.
27 U.S.C. § 230(b)	23.
27 U.S.C. § 230(c)	25.
27 U.S.C. § 230(e)	23, 24.
27 U.S.C. § 230(f)	24, 25.
27 U.S.C. § 230(c)(1)	21, 25.
27 U.S.C. § 231	24.
UNITED STATES SENTENCING GUIDELINE MANUAL	
U.S. SENTENCING COMMISSION GUIDELINE MANUAL CHAPTER 2 PART G	
§ 2G2.2	13.
§ 2G2.2(a)(1)	6.
§ 2G2.2(b)(2)	6.
§ 2G2.2(b)(3)	6.
§ 2G2.2(b)(4)	6.
§ 2G2.2(b)(6)	6.

TABLE OF AUTHORITIES CONTINUED

UNITED STATES SENTENCING GUIDELINE MANUAL	PAGE NUMBER
U.S. SENTENCING COMMISSION GUIDELINE MANUAL CHAPTER 2 PART G	
§ 2G2.2(b)(7)	6.
OTHER AUTHORITIES	
National Center for Missing and Exploited Children (NCMEC)	1, 11, 15, 28.
Criminal Justice Act (CJA)	11.
Rule of Lenity	8, 28.
FEDERAL RULES OF APPELLATE PROCEDURE	
F.R.A.P. RULE 4(a)(4)(A)	12.
F.R.A.P. RULE 10	12.
FEDERAL RULES OF CIVIL PRACTICE AND PROCEDURE	
Fed.R.Civ.P. RULE 60(b)	11, 12, 16.
APPENDIX SEPERATE COVER	

APPENDIX OF EXHIBITS VOLUME I

TABLE OF CONTENTS	i
EXHIBIT "A"	1
EXHIBIT "B"	57
EXHIBIT "C"	67
EXHIBIT "D"	75
EXHIBIT "E"	NONE
PROOF OF SERVICE	83

No.

IN THE
Supreme Court of the United States

STATEMENT OF JURISDICTION

Appearance in pro per under pro se capacity invokes this Honorable Courts
jurisdiction by Title 28 U.S.C. 1261 et. seq. and Title 18 U.S.C. § 2252(a).
Petition for Writ of Certiorari is sought before 'miscarriage of justice' becomes
manifest(ed).

WHEREFORE, Jurisdiction is Invoked under Title 28 U.S.C. § 3742 et. seq.; and

ISSUE PRESENTED FOR REVIEW

- I. Whether Selective Prosecution Claim warrants oral argument.
- II. Ineffective Assistance of Counsel Claims, may warrant cumulative effect analysis.
- III.--Did the Government manipulate Appellant's sentencing exposure through a default resulting in a Breach of the Plea Agreement?
- IV. Title 18 U.S.C. § 2252A falls under Facial Challenge with respect as to immunity provisions specific to the highest level of the distribution chain, taken in context that Al Queda, ISIS, and Communist Terrorist Organizations are directly involved and exploiting children through child pornography. Such inclusion of the ISIS Terrorist Organization mining funding through the Internet by exploiting children via child pornography, then under Congressional implications, Anti Terrorist Act (ATA), Title 18 U.S.C. § 2252A reporting immunity provisions are meaningless. Any immunity provision through any number of child pornography statute or Internet Laws is null void.

The principle thread of judicial analysis behind decisions favoring First Amendment application of rights in Internet Providers, were in fact overridden, through the Supreme Court's decision to hold that the First Amendment is not entitled to protection in view of Obsenity and Child Pornography under Miller v. California, (1973) (citations omitted).

Therefore, because Obsenity and Child Pornography are not entitled to protection under the First Amendmnet under Miller v. California, (1973), World Wide Web, Internet, and Computer Servers or Inter-Active Computer Service Provider(s) in the same token, can not be afforded First Amendment protection via First Amendment Standards of Reviews or Context therewith.

Where in the face of (statute) immunity provision or exceptions to any responsibility flies in the face of legal understanding and contrary to the principle purposes of precedenting laws. And the lack of holding others, responsible in the chain, is corrupt and selective.

STATEMENT OF THE CASE

On July 8, 2015 Wallwisher Inc. owner to online Bulletin Board application as "Padlet," notified the National Center for Missing and Exploited Children (NCMEC) via Cybertip Report 5904969 received at Las Vegas Metropolitan Police Department that a user associated with IP address 72.19.37.241 uploaded a file believed to contain child pornography.

Pursuant to the notification being forwarded to the Las Vegas Metropolitan Police Department an investigation was initiated as to IP address 72.19.37.241 through Police Detective Lora Cody of the (LVMPD), whereby during the course of investigation, additional reports came in from NCMEC that approximately 80 images of suspected child pornography were uploaded to Padlet from stated IP address, between July 14, 2015 through July 19, 2015.

These uploaded images received from Padlet/Wallwisher, Inc. were examined and determined to be images of minor children who were nude and engaged in oral-genital contact, and the lascivious exhibition of the genitals.

LVMPD Investigator Lisa Rowe served an Administrative subpoena on Casacade Communications for subscriber information on or about August 20, 2015, as to the IP address provided by Padlet/Wallwisher, Inc. related with the uploaded images on the date and time these transmission of these files occurred. On August 24, 2015, Cascade responded with account information for subscriber Michael Duncan at

585 Condor Street, Mesquite, NV 89027.

On September 17, 2015, task force members conducted surveillance of the residence at 585 Condor St. Mesquite, Nevada and observed a vehicle registered to a Brian Michael Brewer at the residence. A further check of Brian Michael Brewer revealed that he is a Tier 2 registered sex offender, whom had been convicted in 2008 of Child Molestation in the Second Degree by the State of Washington and with indicated residency as to 585 Condor Street.

Subsequent investigation determined that the subscriber name associated with the Cascade Communications account, is Brian Michael Brewer's step-father. Michael Duncan is married to Danna Duncan, she is mother of Brian M. Brewer. The residence at 585 Condor St., Mesquite, Nevada is shared by the three adults.

On September 23, 2015, a search warrant was authorized by Eighth Judicial District Court Judge Nancy Alf for the premises of 585 Condor St., Mesquite, Nevada. On September 24, 2015, members of the Internet Crimes Against Children Task Force executed the search warrant. Brian Michael Brewer was present at the residence at the time of the search. And consented to be interviewed by law enforcement, admitting that he had uploaded several images of child pornography to an online account called "Padlet." Additionally, admitting that officers would find child pornography on both his computer as well as a thumb drive. Over 1500 images and videos of child pornography were contained in this Kensington thumb drive.

On October 6, 2015 a sworn complaint by Lora Cody was filed

before Honorable Nancy J. Koppe U.S. Magistrate Judge for violation 18 U.S.C. § 2252A(a)(2) & (b) Receipt or Distrubution of Child Pornography.

On December 14, 2015 Plea Agreement/Memorandum as to Brian Michael Brewer is entered upon the docket in Case No. 2:15-cr-00301. An Indictment is filed October 27, 2015 and the Change of Plea hearing is held December 29, 2015.

The Indictment charged 2 Counts: 18 U.S.C. § 2252A(a)(2) & (b) Receipt or Distrubution of Child Pornography (Count 1); and 18 U.S.C. § 2252A(a)(5)(B) Possession of Child Pornography (Count 2). Therefrom, a plea agreement is entered as to Receipt of Child Pornography (Count 1) December 14, 2015. With Waiver of Appeal and Post-Conviction Proceedings id at XIII (B) p. 15 of Plea Agreement.

III. Elements Of The Offenses at p. 3 of Plea Agreement

A. The elements of Receipt of Child Pornography under 18 U.S.C. § 2252A(a)(2) are:

1. The defendant knowingly received child pornography, 18 U.S.C. § 2256(8), or material which contained such child pornography;
2. Such items of child pornography or material containing such child pornography had been mailed, shipped or transported in interstate or foreign commerce, by any means, including by computer; and;
3. The defendant knew that such item(s) or material constituted or contained child pornography as defined in

18 U.S.C. § 2256(8).

See Ninth Cir. Jury Instruction § 8.185 (modified).

On June 21, 2016 Sentencing and Disposition as to Brian Michael Brewer are held before U.S. District Judge Honorable Howard D. McKibben. Judgment entered June 27, 2016 Count 1 210 Months, US BOP; Court recommends FCI Butner, NC or FCI Petersburg, VA; Lifetime supervised release; sex offender treatment; no contact with minors; pornography prohibition; pre-approved residence; computer restriction and monitoring; \$100 assessment; \$35,000 restitution.

Notice of Appeal filed on June 27, 2016 as to judgment USCA9 Case No. 15-10281. On August 11, 2016 U.S. Court of Appeals for the Ninth Circuit issues order relieving counsel (FPD) and relying on U.S. District Court for the District of Nevada at Las Vegas Division to locate new counsel, Case reassigned Record No. 16-10281. On August 16, 2016 U.S.D.C. issued order appointing counsel and forwarded a copy of this order to USCA Ninth Circuit 08/16/2016.

On February 21, 2017 Attorney at Law Mark Eibert (FPD) sent email message indicating Anders Brief, as refusal to submit appeal under Selective Prosecution Claim Appellant made abundantly clear since contact with appointed counsel, soon after Appellant's initial placement in a housing unit at FCC Petersburg Unit C-North.

Appellant made every effort to convince (CJA) Attorney at Law (FPD) Mark D. Eibert as to 3553 Violation under a Selective Prosecution Claim, whereby, this appeal is taken via Pro Se Supplemental Opening Brief through counsel advice.

STATEMENT OF THE FACTS

On September 24, 2015 Appellant is arrested by members of the Internet Crimes Against Children Task Force pursuant execution a search warrant. Lora Cody Detective Las Vegas Metropolitan Police Department, Task Force Officer - FBI subscribed and sworn a criminal complaint in the matters of USA v. Brian Michael Brewer, Case No. 2:15-mj-00766-NJK on October 6, 2015 in the U.S. District Court for the District of Nevada. Two Count Complaint Violations: 18 U.S.C. § 2252A(a)(2) & (b) Receipt or Distrubution of Child Pornography; and 18 U.S.C. § 2252A(a)(5)(B) Possession of Child Pornography.

October 27, 2015 Indictment as to same Two Counts per the complaint is entered in the U.S. District Court for the District of Nevada Las Vegas Division in the matters of the USA v. Brian Michael Brewers, Case No. 2:15-cr-00301-HDM-VCF-1. Return of the Grand Jury Indictment results in arraignment and plea of not guilty at November 3, 2015 hearing before Magistrate Judge Cam Ferenbach on indictment.

On December 14, 2015 in relation to a December 1, 2015 Jury Trial Order the AUSA and Defense file Plea Agreement. December 15, 2015 a Change of Plea Hearing is set for December 29, 2015, that is continued until February 2, 2016 as to sentencing. The Change of Plea Hearing is conducted on December 29, 2015. Sentencing set for March 22, 2016. Guilty Plea accepted and term of imprisonment as to 180 months agreed. On June 21, 2016 Sentence of 210 Months is imposed. Timely Notice of Appeal is entered on June 27, 2016.

Beginning on or about July 14, 2015, and continuing through on or about July 19, 2015 to wit: Appellant used Padlet.com a software application that can be accessed via the Internet to upload approximately 80 images containing pornography to an online noticeboard. (Count One)

Beginning on a date unknown and continuing through on or about September 24, 2015 to wit: Appellant did knowingly possess a Kensington thumb drive containing images of child pornography. (Count Two)

B. Offense Level Calculations. The parties stipulate and agree to the following calculation of the defendant's offense level under the Sentencing Guidelines, and acknowledge that these stipulations do not bind the Court:

1. Count 1: Receipt of Child Pornography (18:2252A(a)(2)(b)):	
Base Offense level, USSG § 2G2.2(a)(1):	22
Specific Characteristics:	
Material involving Prepubescent Minors USSG § 2G2.2(b)(2)	+2
Distribution USSG § 2G2.2(b)(3)	+2
Sadistic.Masochistic or Violent Content USSG § 2G2.2(b)(4)	+4
Use of a Computer USSG § 2G2.2(b)(6)	+2
Number of images USSG § 2G2.2(b)(7)	+5
Total Offense Level	37
...Adjusted Offense Level:	34

Id. p. 7 PLEA AGREEMENT USA v. BREWER, 15 CR 301 HDM.

Pursuant to this December 14, 2015 PLEA AGREEMENT at page 6 "The parties agreed to jointly recommend a sentence of 180 months." Appellant is sentenced June 21, 2016 id. at pg. 17 (Transcript of Continued Sentencing), wherein the Court asserted; "The only right you would have is to assert ineffective assistance of counsel. But, otherwise, you've waived your appellate rights."

The Sentencing Court, upon argument, determined the sentence agreed upon, was below the low end of the guideline range, on March 22, 2016 id. at pg. 5 (Transcript of Sentencing). Further, the Court explained: ("And I will hear argument on that, but I'm going to have difficulty with that. So to the extent you want to build whatever argument you can to support the Plea Agreement on this one, I'll be happy to hear it, but you need additional time to think about it.") Sentencing was continued until June 21, 2016 at 9:15 a.m. by the Court, when Mr. Carrico, defense counsel explained in response: ("On that issue, I don't believe I do, Your Honor. However, my client has indicated that he would prefer to go along with the continuance in this case to June 21, 2016, so that all matters may be settled by the Court's final judgment.").

The agreed upon sentence up to this point of the case is 180 months. Yet, during the June 21, 2016 hearing for sentencing continuation; instead 210 months as found through Judicial Identified Guideline Range Calculation not supported by the Plea Agreement's terms, is imposed contrary to an ambiguous joint recommendation. For which, counsel stressed "that all matters may be settled by the

Court's final judgment."

Therefrom, on June 21, 2016 the Court specified at pg. 3 ("And, of course, I'm aware of the terms of the Plea Agreement ...")." after announcing the Court reviewed the Sentencing Memorandum filed by the defense. (Emphasis) as explanation is offered to excuse the lack of objection or rebuttal opposition to matters previously brought to defense during the March 22, 2016 Sentencing hearing as to hearing argument upon the low end of the guideline range factor as pointed out by the Sentencing Court; quoting pg. 5 (Sentencing Transcript) ("And I will hear argument on that, but I'm going to have difficulty with that. So to the extent you want to build whatever argument you can to support the Plea Agreement on this one, I'll be happy to hear it, but you need additional time to think about it.").

Appellant, stresses that on June 27, 2016 the Notice of Appeal is prosecuted pursuant imposition of un-agreed-upon June 21, sentence. The Court took interest to specify that ("And, of course, I'm aware of the terms of the Plea Agreement...). 180 Months not 210 Months, and counsel failed to supplement the issue, that the court granted continuance pursuant additional time to think about it.

WHEREFORE, 3582 Violation exists, and Appellant asserts Law favors existance of the Rule of Lenity, in declaring and settingforth researched material of Court precedents establish counsel failed to perform legal research in analysis of this case, offering instead; incorrect legal advice. In failing to advice Selective Prosecution Claim setout below pursuant to Ineffective Assistance of Counsel.

STANDARD OF REVIEW

- (1) Selective - Prosecution Claim. (2) Ineffective Assistance of Counsel.
(3) Breach of the Plea Agreement. (4) Facial Challenge 18 U.S.C. § 2252A.

- 1) A. Congressional Findings Relating to Obsenity and Child Pornography
Pub. L. 108-21, Title V, § 501, April 30, 2003, 117 Stat. 676, provide that:

"Congress finds the following:

- (1) Obsenity and Child pornography are not entitled to protection under the First Amendment under Miller v. California, 413 U.S. 15 (1973) (obsenity), or New York v. Ferber, 458 U.S. 747 (1982) (child pornography), and thus may be prohoibited.
- (2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. 'The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,' New York v. Ferber, 458 U.S. 747, 757 (1982), and this interest extends to stamping out the vice of child pornography at all levels on the distribution chain. Osborne v. Ohio, 495 U.S. 103, 110 (1990). ...
- (4) Child pornography is readily available through virtually every Internet technology, including Web Sites, email, instant messaging, Internet Relay Chat, newsgroups, bulletin boards, and peer-to-peer. ...
- (15) ...and even increase, on the Internet."

- 1) B. Title 18 U.S.C. Ch. 110 Sexual exploitation and other abuse of children Findings:

Pub. L. 110-358, § 102, Oct. 8, 2008, 122 Stat. 4001, provides that:

"Congress finds the following:

- ...(5) The technological ease, lack of expense, and anonymity in obtaining and distributing child pornography over the Internet has resulted in an explosion in the multijurisdictional distribution of child pornography.
- (6) The Internet is well recognized as a method of distrubting goods and services across State lines.
 - (7) The transmission of child pornography using the Internet constitutes transportation in interstate commerce."

Child Pornography Prevention ..."Pub. L. 109-248, ... 2258 E Definitions

- (4) The term Internet has the meaning given that term in section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note)."

1) C. Discovery

In United States v. Karadimos, 479 Fed.Appx. 144 ... ("The record shows the discovery was served on defense counsel on ... 2009 and we discern no prejudice to consider it on appeal").

2) A. Ineffective Assistance of Counsel

In United States v. Liu, 723 F.3d 982, ___ (9th Cir. 2013) ("...As a general rule, we do not review challenges to the effectiveness of defense counsel on direct appeal. United States v. Rahman, 642 F.3d 1257, 1260 (9th Cir. 2011) (citing United States v. Jeronimo, 398 F.3d 1149, 1155 (9th Cir. 2005)). The only exceptions are when "the record on appeal is sufficiently developed to permit determination on the issue." *Id.* (citing Jeronimo, 398 F.3d at 1156). Review, when warranted, is de novo. United States v. Benford, 574 F.3d 1228 (9th Cir. 2009) (citing United States v. Benlian, 63 F.3d 824, 826 n.3 (9th Cir. 1995))").

i) As in, Dugan v. United States, ... ("Claims not raised on direct appeal may not be raised on collateral review "unless the petitioner shows cause and prejudice," Massaro v. United States, 538 U.S. 500, 504, 123 S.Ct. 1690, 155 L.Ed.2d 714 (2003), or that he is "actually innocent," Murray v. Carrier, ... (1986). "Attorney error short of ineffective assistance of () counsel ... does not constitute cause and will not excuse a procedural default." McCleskey v. Zant, 499 U.S. 467 ... (1991)").

ii) Under elements constituting evidence via discovery as to proof to support a selective prosecution claim, see United States v. Cortez, 2016 U.S. Dist. LEXIS 18622 (E.D. CA. Feb. 16, 2016) No. 2:15-1433 WBC. ("...On those grounds, petitioner requests that the court permit him to conduct discovery regarding his selective prosecution claim, and the court resentence him without the 851 enhancements"). Appellant discerns cause and prejudice by counsel error to objectively preserve the record under the Government's Breach of the Plea Agreement. Inaccurately advising Appellant to the exact sentence exposure in light of failing to represent certain, accurate, true, and correct criminal background factors necessary for purpose of sentencing, and that such lack of adequate and proper advice relinquished Appellant's right to be represented by

zealous and competent counsel. Incompetent counsel failed to give adequate and necessary research into the U.S. Judicial Court Precedents relevant as to the existence of a defense for the Government's lack of co-conspirator's, co-defendant's, simultaneous cyber tipline of the NCMEC, or other named user or Internet Service Provider. And that further, incompetent counsel failed to investigate, examine, or analyze Search Warrant and Search Warrant Affidavit.

iii) As a result of the incompetent counsel's prejudice to this case, this Appellant never received explanation or discussion as to a more meaningful action to compel World Wide Web and Internet Service Providers to stamp out child pornography entirely through technology software, as similar software, utilized for scope and purpose of reason' to identify images of child pornography. For exclusive justifications of reporting the criminal activity to Law Enforcement or the National Center For Missing And Exploited Children. Immunities, is such prejudice, as Constitutionally deprived and caused to - this Appellant an unfairness for having foregone understanding a better defense, which to rely. In exercising the right to due process of trial or mitigating circumstance to support objections under increased sentence guideline determinations, as [based] through judicial determination, which may have been personally motivated by bias or other personal concern privately harbored in the findings of the court.

2) B. The Appeal Attorney of Record fails as counsel too. For having failed to designate as exhibit of record the search warrant and the search warrant's affidavit in support of search warrant application, even though Appellant did explain to Attorney of Record Mark D. Eibert (CJA) Federal Public Defender it was necessary of his service to retrieve and exhibit this search warrant material. As well, counsel failed to correctly, properly, and adequately examine, analysis, review or institute reasonable discovery pursuant to making grounds of basis for issues on this instant appeal. Mark D. Eibert is fully aware as to selective prosecution claim and has prejudiced this appeal through inept, unprofessional, incompetent, and ineffective representations, having failed to discover search warrant materials or raising the selective prosecution claim, arguing instead that Appellant is not entitled to discovery post-conviction. Federal Rules of Civil Procedure Rule 60(b) as understood through McRae v. United States, 2016 U.S. Dist. LEXIS 132482 and Hill v. Katavich, 2015 U.S. Dist. LEXIS 156787 (E.D. CA. ...) "(Stating that the Ninth Circuit held appeal in abeyance pending the district court's resolution of a post-judgment motion

filed after notice of appeal (See C. Discovery, supra.);

i) This Court concludes that it has jurisdiction to consider ... motion for reconsideration ... see also F.R.A.P. 4(a)(4)(A), the Rule 60(b) motion prevented the notice of appeal from becoming effective until the district court rules on the merits of those motions)".

ii) Wherefore, Appellate Counsel gave incorrect legal advice to Appellant. A Nunc Pro Tunc Motion for discovery to support this selective prosecution claim was warranted in light of the fact that Appellate counsel sought 3 or 4 extension of time to file Appellant Opening Brief under Anders. In spite to Appellant's written request for; Counsel Mark D. Eibert to request in the U.S. Court of Appeals for an extension of time, including a necessity to correct the record under F.R.A.P. 10, as purpose of designating the Search Warrant Materials. Being entered into the record via the complaint through reference and indication that a search warrant and search warrant affidavit utilized in the investigation of the case, And relevant to the selective prosecution claim, wherefore, it is material discoverable for support via discovery motion Nunc Pro Tunc in the U.S. District Court for the District of Nevada at Las Vegas Division, also.

iii) Appellate Counsel's reasons for extensions of time were dispicable, degenerative, flagrant depictions of an unconcerned attorney with zeal and or intent to represent, as declared interests were self serving and unprofessional.

See United States v. Tulsiram, 815 F.3d 114 (...) ("We merely held the appeal in abeyance ..."). "Court of Appeals had granted defendant's motion to hold his appeal in abeyance pending resolution of his motion for relief ... United States v. Restrepo-Suarez, 2007 D.C. Dist. Col 516 F.Supp.2d 112 ... U.S. App. LEXIS 1957 ..." .

3) A. Breach of the Plea Agreement by Government

Consider, United States v. Salter 2015 U.S. Dist. LEXIS 166453 ... quoting: "...A plea agreement is construed as a contract between the prosecutor and the defendant. United States v. Gonzalez-Melchor, 648 F.3d 959, 963 (9th Cir. 2011) (citing United States v. Streich, 560 F.3d 926, 929-30 (9th Cir. 2009). Accordingly, it is governed by traditional contract law standards or principles. United States v. Clark, 218 F.3d 1092, 1095 (9th Cir. 2000). Just as in contract law [i]f 'the terms of the plea agreement on their face have a clear and unambiguos meaning, then this court will not look to extrinsic evidence to determine their meaning.' Streich, 560 F.3d at 930 (citation omitted); see also Clark, 218 F.3d at 1095. That said, if there is an ambiguity, the court will examine extrinsic evidence such as facts of

the case to determine what the parties reasonably understood and resolve the ambiguity. Id."

- i) The Court, created ambiguity in fashioning a finding relative to its own relation of perceiving additional criminal history matters, that counsel of record, failed to investigate or research, and subsequently abandoned any and all argument, objection, understanding or reasonable intelligence as to the factual basics of the underlying offenses directly involved.
- ii) In United States v. Pearson, (citations omitted) ("U.S.S.G. 2G2.2 guideline is out of tune with the underlying theory of the Sentencing Guidelines, and the Ninth Circuit has noted that "the child pornography Guidelines are, to a large extent, not the result of the commissioner's exercise of its characteristic institutional role, ..."). Counsel lacked expertise to raise a concern as to applied sentence enhancements utilized through the USSG adjusted offense levels.
- iii) The Government breached the plea agreement when presenting unsupported recommendations, (1) as to guideline sentence, and (2) as to judicial finding of an unnecessary concern relative to recedivist interest, based on very minor past criminal history offenses, that overall had no bearing of the actual need of sentence imposed, premised on unrelated background matters.
- iv) By breach of the plea agreement, the government, relied on judicial bias to covet an unagreed-upon guideline range, which, should have been clearly and accurately stipulated within the plea agreement. For such, lack of stipulated informations, counsel of record for defense, again is ineffective also as to preperation of the plea agreement terms and understandings or clarification on matters relevant to sentencing exposure.
- v) The grave concern of the Court was biased and slanted with prejudice as to Appellant's previous offense violations, not relevant or in relation to this instant case. Thereby, overstating the Appellant's criminal history without objection or exception taken by counsel of record, too establishes ineffective assistance of counsel.
- vi) By the court engaging in full determination, soley based on the Government stipulating into the record, i.e., "('MS. HERR':No, Your Honor. ...") in response to the court's reasoning a minimum under the statute. ("THE COURT: All right. And unless there's something unusual about this case -- does he have a large criminal record of any kind? Does anyone know?") to which, the government ("MS. HERR: No, Your Honor."), in response. Distinguishes breach of the plea

agreement by the government, having failed to adequately support recommendation for 180 month sentence, through inaccurate reflection of Appellant's criminal record. As if by sentence manipulation, for uncertain remarks.

- (a) THE COURT: ("Why don't you just (remain) seated and I'll hear you better.");
- (b) MS HERR: ("Your Honor, the defendant does have a prior conviction as sex offender, which is why he has the enhanced penalty.")
- (c) THE COURT: ("That's what I had assumed. But, other than that, is there anything else that anyone is aware of?");
- (d) MS HERR: ("No, Your Honor."). Id. Dec. 29, 2015 Change of Plea Hearing Transcript pgs. 13-14.

- 4) A. Facial Challenge Title 18 U.S.C. § 2252A unconstitutionally invalid
 - i) See United States v. Peeples, 630 F.3d 1136, 1138 (9th Cir. 2010)(quoting United States v. Garcia, 768 F.3d 822, 832 (9th Cir. 2014):

..."A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exist under which the Act would be valid." United States v. Salerno, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)."

- ii) See also, Jones v. United States, 526 U.S. 227, 239, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999):

("[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [a court's duty] is to adopt the latter.").

- iii) Amendment Nine (9th Amendment) Right retained by the people
- The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

At; USCONST Rights retained by people CASE ANNOTATION 1. In General 1 Generally;

"Rights under the Ninth Amendment are only those so basic and fundamental and so deeply rooted in our society to be truly "essential rights," and which nevertheless, cannot find direct support elsewhere in Constitution. United States v. Choate, (9178, CA9 Cal) 576 F.2d 165, 78-2 USTC ¶ 9620, 57 ALR Fed 678, cert den (1978) 439 U.S. 953, 999 S.Ct. 350, 50 L.Ed.2d 344 ..."

- 4) B. Facial Overbreadth

- i) At footnote 5/ in United States v. Brune, 767 F.3d 1009, 1022-23 (10th Cir. 2014); ("5/ Standing to facially challenge [§ 2252A] ... because the

First Amendment overbreadth doctrine provides "an exception to the general rule that a person to whom a statute may be constitutionally applied cannot challenge the statute on the grounds that it may be unconstitutionally applied to others." Massachusetts v. Oaks, 491 U.S. 76, 581, 109 S.Ct. 2633, 105 L.Ed.2d 493 (1989)." Id.

ii) In United States v. Alvarez, 617 F.3d 1198, 1234 (9th Cir. 2009), the Ninth Circuit reached a clear understanding of a standard;

..."if such an overbreadth challenge succeeds, the prosecution fails regardless of the nature of the defendant's own conduct," Wurtz v. Risely, 719 F.2d 1438, 1440 (9th Cir. 1983), because a successful overbreadth challenge renders a statute unconstitutional and, therefore, invalid in all its ~~617 F.3d 1236~~ applications," Bds of Trs. of State Univ. of N.Y. v. Fox, 492 U.S. 469, 483, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989). ..."

Real and Substantial

"An overbroad law "suffices to invalidate all enforcement of that law, ..." Id. United States v. Adams, 343 F.3d 1024, 1034 (9th Cir. 2003)

4) C. Facial Challenge Title 18 U.S.C. § 2258A Reporting requirements of electronic communication service providers and remote computing service providers

i) (a) Duty to report. (1) In general ...

(b) Contents of report. ...

(4) Images of apparent child pornography. ...

(c) Forwarding of report to law enforcement

(1) In general ... (NCMEC) - (Title 18 U.S.C. § 2703):

ii) § 2703. Ch. 121 Stored wire and electronic communications and transactional records; (§ 2703.) Required disclosure of customer communications or records

"...(e) No cause of action against a provider disclosing information under this chapter."

iii) Immunity is unconstitutional under analysis of the (ATA) as to allowing service providers immunity, as contrary to law, if no meaningful actions are more meaningful action as distinguished by Fields v. Twitter in stamping out child pornography at all levels on the distribution chain. Child Pornography Statute and Laws enacted in support of computer age child pornography are void of more meaningful action necessary, wherein, these statutes are vague, ambiguous, overbroad, unconstitutional, and invalid, when the realm by Anti Terrorist Act is undertaken. As no immunity may therein exist or be reasoned valid or otherwise constitutional.

SUMMARY OF THE ARGUMENT

I. Selective Prosecution. When Congress made specific findings that announced selective immunity provisions within the Child Pornography Statute(s) 2252A et. seq., and the Supreme Court of the United States resolved to declare that there are no entitlements to protection of the First Amendment prohibiting Obsenity and Child Pornography. The enactment of the Anti Terrorist Act (ATA) removed any and all immunity provisions with respects to Child Pornography in light of the fact that ISIS is involved in the exploitation and abuse of children as Obsenity and Child Pornography rendering the statutes facially invalid and are facially overbroad thereafter under the Ninth Amendment hereafter.

1) Appellant has standing to challenge these statutes based on the ugly position that the government undertook to manipulate the Appellants exposure under the sentencing guidelines with inaccurate, uncertain, and unintelligent understandings absent datas necessary to inform the court during the change of plea process in violation of the Sixth Amendment. In breach of the plea agreement to suggest a recommended minimum sentence of 180 months, whereto, the counsel of record failed to oppose or object nor took exception. Further, counsel of record failed to argue at the continuance as to the support of the recommended sentence, following the Court's personal gripe or beef with other bias as to something unusual about this case, when asking directly to the counsel of record and the government. If Appellant has a large criminal record of any kind? to which, the government responded; "No Your Honor. He does have a prior conviction as a sex offender, which is why he has the enhanced penalty."

2) Appellant's appellate counsel rendered also ineffective assistance of counsel in failing to modify or correct the record on appeal, nor pursue a claim of selective prosecution, or file a Nunc Pro Tunc Motion For Discovery and or a Rule 60(b) Motion post-conviction premised on the ineffective assistance of counsel in the U.S. District Court proceedings.

II. Facial Challenge. Title 18 U.S.C. § 2252A and other enacted laws by the U.S. Congress are invalid in light of the Anti Terrosist Act (ATA) undertaken to contrast the application of Legislation to grant immunity through overbroad law. Appellant has standing to challenge these statutes unconstitutionally as invalid under the [Ninth Amendment]. See 4) C. iii), supra Standard of Review.

ARGUMENT

I.

A. INEFFECTIVE ASSISTANCE OF COUNSEL

Instant within the scope and purpose as to a direct appeal, Appellant sets forth 210 Month Term of Imprisonment exceeds agreed upon 180 Month Term of Imprisonment, "jointly recommend a sentence of 180 months." See Plea Agreement pg. 10 Section VIII. ("The United States and the Defendant will jointly recommend a sentence of one hundred eighty (180) months incarceration followed by life-time supervised release...").

1. Counsel of Record failed to object under breach of the plea agreement as to argument in opposition of Judicially Identified Sentence Guideline Range Calculation not supported by the Plea Agreement. Or by taking exception to finding.
2. Counsel of Record failed to advise Appellant as to the correct exposure of incarceration under Sentencing Guideline Range.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

On instant direct appeal, excerpt of record has no Search Warrant or Search Warrant Affidavit designated as Exhibit. Giving allowance that Counsel of Record failed to properly examine, analyse, or institute reasonable discovery during the case proceedings [effectively], and that, as well, Counsel of Record on Appeal has undermined to prejudice the appellate excerpt of record by failing designating these documents Appellant declared important to appellate review.

C. INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel of Record in U.S. District Court proceedings prejudiced the defense of this case by failing to research the law, to correctly advic[e] existence of a defense under claim

as to Selective Prosecution. Search Warrant and Search Warrant Affidavit support a colorable basis of a Selective Prosecution Claim pursuant Mitigating Factors, that should have been taken into consideration.

1. Neither did Counsel of Record ever explain or discuss this exact defense as herein being discussed further, infra. Wherefrom, such defense(s) would have established mitigating issue(s), the court was required to consider in relation to 18 U.S.C. § 3551 et. seq.; (to 18 U.S.C. § 3553 et. seq.); and Title 18 U.S.C. § 3582 et. seq.

II.

A. SELECTIVE PROSECUTION

(i). Discussion

Presently, and currently as to pornography offenses Congress along with the courts deem receipt, distribution, and possession of pornographic material via the Internet or through the World Wide Web as offenses without requisite elements, to hold criminal or liable any World Wide Web Server, Internet Provider Service, or Inter-Active Computer Services as if co-defendant(s). And that an act of receipt, distribution, and or possession of pornographic images of children material offensive against the United States by virtue as United States Codes, are offendable offenses without recourse as to elements of co-defendant(s). Research, however, concludes differently:

- (1) Neither did Counsel of Record in U.S. District Court proceedings, and during plea bargaining ever explain or discuss this exact defense as herein [is] discussed further through analysis, argument, point of difference by argument; and conclusion as to this discussion (i).

Wherefrom, such explanation and or discussion would have established mitigating issue(s), the court was required to consider in relation to Title 18 U.S.C. § 3551 et. seq.; (to 18 U.S.C. § 3553 et. seq.); and Title 28 U.S.C. § 3582 et. seq.

(ii). Analysis

Take into consideration the structure and function of the usenet/internet as the court had taken via judicial notice of the following two generally known aspects about USENET. See Perfect 10, Inc. v. Giganews, Inc., 2014 U.S. Dist. LEXIS 183592 (C.D. Cal., March 8, 2013) No. CV11-07098 AHM (SHx): (quoting)

("First, many other commercial providers besides defendants provide access to usenet, see Religious Technology...Services, Inc., 907 F. Supp. 1361, 1366, n. 4 (N.D. Cal. 1995) ("netcom") ("there is no specific network that is the usenet. usenet traffic flows over a wide range of networks, including the internet and dial-up phone links."); Arista Records LLC v. Usenet.com, Inc., 633 F.Supp.2d 124, 129-130 (S.D. N.Y. 2009) ("usenet") ("to obtain access to the usenet, a user must gain access through commercial usenet provider ... or an internet service provider.") ... Like other parts of the internet, including the World Wide Web ("The Web") there is no specific network that is the usenet. ... In its broadest sense, the usenet is "an international collection of organizations and individuals (known as 'peers') whose computers connect to one another and exchange messages posted by USENET users.") ...

("However, "[t]o obtain access to the usenet, a user must gain access through a commercial usenet provider ... or an internet service provider." Arista Records LLC v. Usenet.com, Inc. ('Arista Records'), 633 F.Supp.2d 124, 130 (S.D.N.Y. 2009). Defendant Giganews is one such Usenet provider ... Defendant Livewire does not 'own' or operate any of its own Usenet Servers. "Rather, Livewire provides its customers with access to the usenet by offering access to content stored on Giganews' usenet servers. As Judge Matz already judicially noticed, 'the content on usenet' to which Giganews (and Livewrie via Giganews's servers) offer access "is primarily user-uploaded by usenet users." users provide this content by posting text-based "articles" to online bulletin boards, known as 'news-groups.' ... The only way to uniquely identify a usenet message is by its message-ID. for example, although a usenet message contains a 'sender' field in which the user's email address should appear, the 'sender' email address is not verified, and many usenet users provide fake email addresses ... ("Articles posted to the usenet are text files. However, using text, it is possible to encode another type of file (image, snag, movie, etc.) into the body of a file as a binary file.

"These binary files are encoded in text form for storage and processing, and requires a software program to convert the text into a content file such as an image or music file." Arista Records, 633 F.Supp.2d at 130. Additionally, before a user can access or download any usenet articles to begin with (let alone view them), including articles containing encoded binary files, a user must use a usenet browser application. Giganews offers its own usenet browser called "Mimo", which is apparently also capable of decoding binary files to display them as images. Giganews also offers its customers the option of purchasing access to a 'Virtual Private Network' (VPN), which encrypts and secures data for all forms of internet traffic, including but not limited to usenet, web, and email traffic.").

"[W]hen an individual user with access to a usenet server posts a message to a newsgroup, the message is automatically forwarded to all adjacent usenet servers that furnish access to the newsgroup, and it is then propagated to the servers adjacent to those servers, etc. ...the messages are temporarily stored on each receiving server, where they are able for review and responses by individual users." Am. Civ. Liberties Union v. Reno, 929 F.Supp. 824, 835 (E.D. Pa. 1996), affd, 521 U.S. 844, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997). This process by which messages are posted to one usenet server are propagated to other usenet servers is fundamental to the NNTP architecture and is commonly known as the 'peering' process. See Netcom, supra, 907 F.Supp. at 1366 n. 4; Arista Records, supra, 633 F.Supp.2d at 130. The 'peering' process occurs once two usenet access providers enter into a "peering agreement" by which "they make an affirmative agreement ... for two servers to accept materials from each other." In essence the servers cross-check the contents offered on both servers and synchronize their information so that the content mirrors the content on the other, with certain exceptions discussed below. Given the amount of materials usenet providers exchange during the 'peer' process, it is impossible for a usenet provider to know the content of two individual articles exchanged during 'peering'.

- (1) By comparing the above judicially noted case to the facts in relation to using Wallwisher, Inc. or the 'Padlet' Bulletin Board, a contrast and comparison can be realized between understanding 'peer' shared files, and content provider servers. Appellant states specifically, that Claim of Selective Prosecution is therefore, colorable, genuine, certain, and true.

Appellant wishes, to make clear; that the U.S. District Court in the District of Arizona determined in Rickert v. Francis, 2015 U.S. Dist. LEXIS 179901 (D. AZ., Jan. 27, 2015) No.CV-13-2326-PHX-DKD a case discussing Copyright Infringement pursuant motion for dismissal explained; (quoting):

"... Immunity conferred by the Communications Decency Act ("CDA"). Title 47 U.S.C. § 230(c)(1) provides:

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another content provider.

This provision immunizes providers or users of interactive computer services from liability for publishing items provided by another information content provider. thus, unlike a newspaper which could face liability for republishing a defamatory statement written by another, the statute immunizes an inter-active computer service provider from liability for this republication. This § 230 Immunity only applies if the inter-active computer service provider is not also an information content provider. Which is defined as someone who is responsible, in whole or in part, for the creation or development of the offending content. Fair Housing Council of San Fernando Valley v. Roomates.Com, LLC, 521 F.3d 1157, 1163 (9th Cir. 2008).

Plaintiff's complaint alleges defamation and copyright infringement claims against the Defendant who wrote the alleged defamatory content, and the defendants who republished this content on their websites. Plaintiffs ... Defendants should be dismissed pursuant to this statutory immunity. ...The basis for Plaintiffs contention that the copyright claims survive is that § 230(e)(2) provides that the immunity in this section has no effect on intellectual property law. ..."

Appellant reasons as follows, kindly, allow your fullest attentions, please.

(Speeding up to 2016; See Fields v. Twitter, Inc., 2016 U.S. Dist. LEXIS 161233 (N.D. Cal., Nov. 18, 2016) No. 16-cv-00213-WHO; (quoting):

..."Plaintiff's accuse Twitter of violating 18 U.S.C. § 2333(a) (CRIMINAL) part of the ("ATA") (American Terrorist Act), by knowingly providing material support to ISIS, in violation of 18 U.S.C. § 2339A and 18 U.S.C. § 2339B. ...Plaintiffs assert that Twitter's 'provision of material support to ISIS was a proximate cause of (their) injur(ies).' They allege that Twitter "knowingly and recklessly provided ISIS with accounts on its social network" and that

[t]hrough this provision of material support, Twitter enabled ISIS to acquire the resources needed to carry out numerous terrorist attacks" including the attack that took place on November 9, 2015 when an ISIS operative shot and killed Loyd 'Carl' Fields, Jr. and James Damon Creach."

"...Plaintiff's cite a number of media reports from 2011 and 2014 concerning ISIS's use of twitter's refusal to take any meaningful action to stop it." They also describe several attempts by members of the public and the United States Government to persuade Twitter to crack down on 'ISIS's' use of its services. They allege that, while Twitter has now instituted a rule prohibiting threats of violence and promoting Terrorism, and announced in August 2016 that "it has suspended 235,000 accounts since February for promoting terrorism," it still permits groups designated by the U.S. Government as Foreign Terrorist Organizations to maintain official accounts." Id.

Created, is a rule prohibiting threats of violence and the promotion of terrorism! Yet, Appellant, insists and wishes to give emphasis, that there is more that must be taken into consideration relevant to Pornography, as [Pornography], too requires through Law and Congress, the Government, and or Courts, for Internet Service Providers as 'Twitter'; that requires a rule prohibiting any and all images of materials pertaining to sexual exploitation of children! And the Selective Prosecution Claim is ripe for challenge via appeal herein standing as basis that Selective Prosecution as being executed by Executive, Congressional, and Judicial Branches of the Government and the Government's Prosecutions are absent and blind their true Authority actually owed by official duty, and through executive powers stated in Article III of the United States Constitution.

Terrorists are certainly important, however, also too is this Sexual Exploitation of Children via images and or materials known and found to be Pornography, yes indeed! Pay Attention - -

Title 47 U.S.C. § 230(a), provides in relevant part:

"...(3) The internet and other interactive computer services offer a forum for true diversity or political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation. ...

§ 230(b), provides in relevant part:

...(2) to preserve the vibrant and competition free market that presently exists for the internet and other interactive computer services, unfettered by federal or federal regulation; ...

(4) To remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their childrens access to objectional or inappropriate online material; and

(5) to ensure vigorous enforcement of federal criminal laws to deter and punish trafficking in obscenity, stalking, and harrassment by means of a computer ..." Id.

Although, a lawsuit may proceed against Twitter, but yet, Title 47 U.S.C. § 230 et. seq. can not have affect on criminal law. Is this selective or is it criminal? However, pursuant to refusal of Twitter to take meaningful action ... gives jurisdiction to an injured party to pursue civil remedy under claim of material support to ISIS as to ISIS's abuse of the internet. Where is the flaw, then that the Internet can not as 'Good Samaritan' block or filter - automatically any and all child pornography period?

Thus, Is Congress, The World Wide Web, The Internet, Our American Judicial Precedents, or The Government this flaw? Kindly, review - - Title 18 U.S.C. § 1460; See Part 1. Crimes Ch. 71. U.S.C.S, Obsenity § 1460. "Possession with

...(a) Whoever, either - - (1) in the special maritime and territorial jurisdiction of the United States, or any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States; or (2) in the indian country as defined in section 1151 of this title (18 USCS § 1151) knowingly sells or possesses with intent to sell an obscene visual depiction shall be punished by a fine in accordance with the provisions of this title or imprisoned for not more than two years, or both. (b) For the purpose of this section, the term 'visual depiction' includes undeveloped film or videotape but does not include mere words.

As it takes into account, the veracity of legal theory in opposition to effect complete removal of any immunity or waiver provisions instilled through enacted law, which, no longer survives Common Carrier Regulation § 230 of Title 47 U.S.C. subsection (e) Effects on other laws. That hereafter is meaningless as to:

I. Other Laws; § 230(e) Effect on other laws. - -

- (1) No effect on criminal law. Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this Act ..., chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of Title 18, U.S.C. §§ 1460 et. seq., or §§ 2251 et. seq., or any Federal criminal statute.
- (2) No effect of intellectual property law. Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.
- (3) State law. Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State of local law that is inconsistent with this section.
- (4) No effect on communications privacy law. Nothing in this section shall be construed to limit the application of the Electronic Communication Privacy Act of 1986 or any of the amendments made by such Act, or similar State law.

II. Defined; § 230(f) Definitions. As used in this section:

- (1) Internet. The term 'internet' means the international computer network of both federal and non-federal inter-operable packet switched data networks.
- (2) Interactive Computer Service. The term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or education institutions.
- (3) Information Content Provider. The term 'information content provider' means any person or entity that is responsible, in whole or part, for the creation or development of information provided through the Internet or any other interactive computer service.
- (4) Access Software Provider. The term 'access software provider' means a provider of software (including client or server software), or enabling tools that do any one or more of the following:
 - (A) filter, screen, allow, or disallow content;
 - (B) pick, choose, analyze, or digest content; or
 - (C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

III. Core Policy, see Doe v. Internet Brands, Inc.: Feb, 7, 2014 767 F.3d

894:

"... The core policy of section 230(c)(1) supports this conclusion.. As the heading to section 230(c) indicates, the purpose of that section is to provide "[p]rotection for 'Good Samaritan' blocking and screening of offensive material." That means a website should be able to act as a 'Good Samaritan' to self-regulate offensive third party content without fear of liability. In particular, section 230 was in part a reaction to Stratton Oakmont, Inc. v. Prodigy Servs. CA., 1995 N.Y. Misc. LEXIS 229, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995) (unpublished), A New York State Court Decision holding that an internet service provider became a 'publisher' of offensive content it did not remove, or filtering nothing, which would prevent liability for all third party content. See id. "In passing section 230, Congress sought to spare interactive computer services this grim choice by allowing them to perform some editing on user-generated content without thereby becoming liable for all defamatory or otherwise unlawful messages that they didn't edit or delete." Fair Housing Council v. Roomates.Com, LLC, 521 F.3d 1157, 1163 (9th Cir. 2008) ..."

A Model filed this action under ("CDA") Communications Decency Act, Title 47 U.S.C. § 230. And caused the Court to examine that indeed Congress (SPARED) everyone, but individuals providing material support to terrorists, from any substantial liability. Obviously, Congress elected to import unconstitutional immunities, provided only to those otherwise liable afterall. Hence this brief exclaims Selective-Prosecution Claim may be issue afterall.

(a) The similarly situated 'internet service provider' or 'internet' or 'World Wide Web' and many other defined terms as realized under § 230(f) as to similarly situated co-defendants, whom by legal analysis are properly liable, yet, unprosecuted via selective ambiguity.

Appellant, quotes (517 U.S. 461 - 462):

"... A divided three-judge panel of the Court of Appeals for the Ninth Circuit reversed, holding that, because of the proof requirements for a selective-prosecution claim, defendants must "provide a colorable basis for believing that 'others similarly situated have not been prosecuted'" to obtain discovery. 21 F.3d 1431, 1436 (1994) (quoting United States v. Wayte, 710 F.2d 1385, 1387 (CA9 1983), aff'd 470 U.S. 598, 84 L.Ed.2d 547, 105 S.Ct. 1524 (1985)). the Court of Appeal voted to rehear the case en banc, and the en banc panel affirmed the District Court's order of dismissal, holding that "a defendant is not required to demonstrate that the government has failed to prosecute others who are similarly situated." 48 F.3d 1508, 1516 (1995) We granted certiorari to determine the appropriate standard for discovery for a selective-prosecution claim. 516 U.S. 942, 133 L.Ed.2d 301, 116 S.Ct. 377 (1995).

...A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independant assertion that the prosecutor has brought the charge forbidden by the Constitution. ...cf. United States v. Mezzanatto, 513 U.S.

196, 203, 103 L.Ed.2d 697, 115 S.Ct. 797 (1995), that the showing necessary to obtain discovery should itself be a significant barrier to the litigation of insubstantial claims.

(b) ...In the ordinary case, "so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." Bordenkircher v. Hayes, 434 U.S. 357, 364, 54 L.Ed.2d 604, 98 S.Ct. 633 (1978). ... Of course, a prosecutor's discretion is "subject to constitutional constraints." United States v. Batchelder, 442 U.S. 114, 125, 60 L.Ed.2d 755, 99 S.Ct. 2198 (1979). One of these constraints, imposed by the equal protection component of the Due Process Clause of the Fifth Amendment, Bolling v. Sharpe, 347 U.S. 497, 500, 98 L.Ed. 884, 74 S.Ct. 693 (1954), is that the decision whether to prosecute may not be based on "an unjustifiable standard such as race, religion, or other arbitrary classification," Oyler v. Boles, 368 U.S. 448, 456, 7 L.Ed.2d 446, 82 S.Ct. 501 (1962). A defendant may demonstrate that the administration of a criminal law is "directed so exclusively against a particular class of persons ... with a mind so unequal and oppressive" that the system of prosecution amounts to "a particular denial" of equal protection of the law. Yick Wo v. Hopkins, 118 U.S. 356, 373, 30 L.Ed. 220, 6 S.Ct. 1064 (1886). Id. (517 U.S. at 465)...."

...(") successfully demonstrated that the ordinance was applied against Chinese nationals but not against other laundry-shop operators. ... "No latitude of intention should be indulged in a case like this. There <*pg. 700> should be certainty to every intent. Plaintiff in error seeks to set aside a criminal law of the State, not on the ground that it is unconstitutional on its face, not that it is discriminatory in tendency and ultimate actual operation as the ordinance to which was passed on in the Yick Wo case, but, that it was made so by the manner of its administration. This is a matter of proof, and no fact should be omitted to make it out completely, when the power of a Federal court is invoked to interfere with the course of criminal justice of a State. ..." Id. Armstrong.

In 1996 the Supreme Court established the standard of review as to the above quoted text from United States v. Armstrong, 517 U.S. 456, 464, 116 S.Ct. 1480, 134 L.Ed.2d 687 (1996) and within also, United States v. Ford, 2016 U.S. Dist. LEXIS 111243 (D. Or., Aug. 22, 2016) No. 3:14-cr-00045-HZ.

(c) Ford, (quoting): ("A United States Attorney violates the Constitution by charging a defendant based on 'an unjustified standard such as race, religion, or other arbitrary classification.'") ... "[I]n the absence of clear evidence to the contrary courts presume that (prosecutors) have properly discharged their official discovery for a selective prosecution claim is to "exercise judicial power over a special province of the Executive." ... ("For selective-prosecution claim to succeed on the merits, a defendant must show (1) discriminatory effect and (2) discriminatory purpose or intent. Id. at 465. On the first element, Armstrong also requires evidence of similarly situated persons being treated differently. id. at 470. This is necessary to balance "the Government's interest in vigorous prosecution and the defendant's interest in avoiding selective prosecution." Id. ... The rigorous standard for the elements of a selective-prosecution claim [] require a correspondingly rigorous standard for

discovery in aid of such a claim." Id. Thus, to win a motion for discovery, a defendant must produce 'some' evidence tending to show the existence of the essential elements of the defense,' which include both 'discriminatory effect and discriminatory intent.' Id.

(d) By law announced under the Communication Decency Act, Title 47 U.S.C. § 230 stipulates that "allowing them to perform some editing on user-generated content without thereby becoming liable for all defamatory or otherwise unlawful messages that they didn't edit or delete" meets the standard termed as discriminatory effect, Wallwisher, Inc. is not shown to have issued a cybertip relevant as to other computer user, or service provider Padlet being named as recipient or co-defendant to the material identified as pornography in this case. Nor is a co-defendant ever distinguished in the search warrant and affidavit as indicated through the complaint. Complaint neither indicates conspirator or co-defendant either for that fact. As such, the standard termed discriminatory intent thereby, is satisfied. The discovery of the actual laws applicable to the concept of Appellant's selective prosecution claim are precedents established by the U.S. Courts. Whereof: If Twitter can be held accountable when the content of their services depicts actual murders in progress/executions of americans taken hostage by terrorists and terminated for the horror of terror; then the overly important exploitation of children must be front and center under the design of the World Wide Web Internet enacted laws providing exceptions and immunities to the highest levels of the distribution chain responsible for the actual exploitation factor to pornography as the major delivery system. Delete Pornography via blocking software, filter pornography via filtering software. Execute the principle of law, that holds content generated by users may be confiscated under the CDA, if the contents do not meet the requisite regulatory CDA basics.

(e) For this lack of the government prosecutors to prosecute only the users, allowing Congressional findings to go unferetted or vetted for decent basic norms in applying the common decency of mankind to prevent delivery in any way of pornography period; must be held accountable under the selective prosecution claim for contributing to the delivery at the highest levels of the distribution chain to the sexual exploitation of children. Because, their official capacity binded a duty to prosecute not immunize all levels of the distribution chain.

(f) The World Wide Web or Internet is resource to the distribution, delivery, exchange, possessing, or receiving child pornography. As determined by Law Enforcement and the FBI, Communist Government's utilize the World Wide Web and Superior Technologies to enable their Organized Criminal Factions to market high-end pornography videos, photos, and images upward of \$10,000.00 and more.

(g) Appellant contends that ISIS is involved with pornography. As such, it is vital that this U.S. Court of Appeals perform a comprehensive review of this selective prosecution claim, wherein, establishment of a more meaningful action to eliminate the highest level of the distribution chain known to terrorists, to communists, to child molesters, to child pornographers, and to pedophile exploiters.

(h) Use the very words of Congressional Findings setforth supra, at Standard of Review and summary of the argument. And stamp out the vice of child pornography at all levels on the distribution chain, by more meaningful action, please.

III.

A. FACIAL CHALLENGE TITLE 18 U.S.C. § 2252A

The rule of lenity applies and favors Appellant's argument. See Lockhart v. United States, 577 U.S. ___, 136 S.Ct. 958, 194 L.Ed.2d 48 (2016) No. 14-8358; (... "We will not apply the rule of lenity to override a sensible grammatical principle buttressed by the statute's text and structure.")

(i) In order for ("A facial challenge ... to be valid."), United States v. Garcia, 768 F.3d 822, 832 (9th Cir. 2014); 2252A Certain activities relating to material constituting or containing child pornography ... § 2258A Reporting requirements of electronic communication service providers;

(") (a) Duty to report.

(1) In general ...

(b) Contents of report. ...

(4) Images of apparent child pornography ...

(c) Forwarding of report to law enforcement

(1) In general ... (NCMEC). ... (18 U.S.C. § 2703(e) - 2709(c))(").

A statute must be vague, ambiguous, or meaningless in all its applications.

(ii) "While the Ninth Circuit has described the reach of section 230(c)(1) in broad terms, stating that it immunizes providers of interactive computer services against liability arising from content created by third parties," the statute does not "create a lawless no-man's-land on the internet." Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1162, 1164 (9th Cir. 2008); see also Doe No. 14 v. Internet Brands, Inc. 2016 U.S. App. LEXIS 9969, 2016 WL 3067995 at *6 (9th Cir. May 31, 2016) No. 12-56638, (Noting that "the CDA does not decalre a general immunity from liability deriving from third-party content"). Id. Fields v. Twitter, supra.

(iii) Conversely, the immunity prescribed by any obsenity or child pornography Statute, Law, or Congressional Findings and or United States Codes under legal research conducted and conveyed herein pursuant to this Anti Terrosist Act (ATA) can not survive facial scrutiny. When in the analysis and reasoning that ISIS is involved directly and indirectly with abusing the internet to further its radical - extremism through involvement in financial gains through pornography, and drugs, and recruitment and too the internet or World Wide Web:

1. United States v. Gleason, 2009 U.S. Dist. LEXIS 1401 (9th Cir. 2009) (D. Or. March 29, 2009) No. 07-24800 - ("Gleason ... employee ... registered in Dubai to train Afghan Police ... On October 25, 2005, a laptop computer allegedly containing pornography was seized from Afghan police training facility ..."). ("...in the special maritime and territorial jurisdiction of the United States ... possess images containing child pornography, ... as defined in 18 U.S.C. § 7"). Id.

2. See Operation - Angel Watch Title 19 U.S.C. § 1589.

3. United States v. Kabbaj, 2016 U.S. Dist. LEXIS 125226

("...But we must detain him pending trial because his repeated emails and filings specifically warn of his role in: death and decapitation upon his enemies ... 23. After reaching agreement ... of allegedly ongoing defematory comments on the internet. N.Y citizens, the individuals filed suit in N.Y. against Mr. Kabbaj for harrassment. ... 35. On February 29, 2016 filed writ of certiorari with Supreme Court of the U.S. representing:
(b) My brief is being rushed because it needs to be filed immediately ... ongoing terrorism schedule which has been porovided to him by the now mereged ISIS/Al-Queda organization ...[I am] forced to file this brief immediately upon threat of a terrorist attack being committed if [I] do not do so ... 104. Even if possible for us to condition the release of Mr. Kabbaj so he cannot issue statements through the internet, ...").

4. United States v. Cromitie 2011 U.S. Dist. LEXIS 48201 (2nd Cir.) (S.D. N.Y. May 2, 2011) No. 09CR558 (CM) ("... Crimitie told Hussain that

would love to travel to Afghanistan and "die like a Shahid, a martyr." ...
I want to do something to America.")

5. United States v. Burgess, 648 F.3d 445, 457 (4th cir. 2012) - -
("...Regarding his pornography sources in Russia ... Kapersky is the U.S. Distributor of Internet Security software ... based in Russia ... compromising ... damaging computer files ... opening links to unwanted websites, including pornography sites.
6. Mackenzie v. Cal.A.G., 2016 U.S. Dist. LEXIS 129227 (C.D. Cal. April 11, 2016) - - (... "evidence of child pornography made in Russia then transported from Greece to U.S. ...").
7. "The Cyber Crime Center ... examined the imaged drives from Russia ... that contained photographs of naked or partially naked boys." Id. Abel v. Chavez, 2013 U.S. Dist. LEXIS 161301 (E.D. Cal. Nov. 12, 2013) No. 2:11-CV-0721 GEB ACP.
8. United States v. Sedaghaty, 2010 U.S. Dist. LEXIS 37186, 2010 WL 149036 (D. Or., April 30, 2010 Hogan, J.);
("...computer hard drives seized from Al Haramain .. dead soldiers (Russian) ... other information relevant to jihadist in Chechnya from the computers were provided.")
9. United States v. Carter, 549 F.Supp.2d 1257 (D. NV. Feb. 12, 2008) No. 2:01-cr-00148-RLH-GWF:
("...located on web servers in Russia ... a range of child pornography.").

Utilize this material conveyed under an examination of the overbreadth and facially flawed statutes enforcing child pornography, whereby, no authority may immunize or protect these exploiters, praying upon the weak, feeble, and foolish Internet Surfers, who through voyeurism practice wipe outs in the sake of gratification. Which, Communist and Terrorist Religious Zealots/Hypocrites utilize to degrade, dehumanize, deprive, and wreak havoc upon the country's electronic age weaklings. Appellant is weak, without a doubt. However, the Government relies upon facially invalid criminal statutes, which are, overbroad and over-reaching and unconstitutionally applied in reference to this case. And counsel are truly ineffective for having failed their duty to represent through proper investigation and research with prejudice contrary to laws.

CONCLUSION

Appeal be granted oral argument in favor of Appellant's Brief, or declare More Meaningful Action is appropriate in warranting invalidation of immunity and reporting provisions within unconstitutional statute(s).