24-7018

IN THE SUPREME COURT OF THE UNITED STATES

RODERICK KING, Petitioner

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE

THIRD CIRCUIT

PETITION FOR CERTIORARI

RODERICK KING,Counsel of Record

45404-509

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QUESTIONS PRESENTED FOR REVIEW

I."Whether The Goverment And The Panel Violates Petitioner's Due Process By Waiving His Direct Appeal Arguments By Purposefully Misstating His Arguments?"

II."Whether A Federal Special Agent Has The Authority To Accept An Investigation Referral Directly, And Then Choose To Become The Case Agent Of This Investigation?"

III."Whether Federal Special Agents Violates A Petitioner's Due Process By Downloading Suspected Child Pornography To A Witnesses' Phone From Petitioner's Social Media Account Without Any Search Warrant, And Then Produce This Video At Petitioner's Trial?"

IV. "Whether Due Process Is Violated When The Goverment Claims Petitioner Was Investigated By A Federal Investigative Agency, But Petitioner's Name And Investigation Reports Are Nowhere In This Federal Investigative Agency's Database?"

V."Whether Counsel On Record Creates A Conflict Of Interest By First Filing A Motion To Withdraw, Then Subsequently Filing A Motion To Postpone Petitioner's Trial On Behalf Of Future Counsel?"

VI."Whether Failure To Grant An Ends-Of-Justice Continuance Would Deny Counsel Time For Effective Preparation If The Trial Date Is Vacated And Counsel Is Also Pending A Motion To Withdraw?"

VII."Whether An Ends-Of-Justice Continuance Is 'Sua Sponte' If The Court Informed Petitioner In Open Court His Waiver Was Needed Before Petitioner Agreed To The Continuance?"

VIII."Whether An Ends Of Justice Continuance Is Sufficient If The Court Untruthfully Faults The Defense For The Goverment-Made Continuance?"

IX."Whether A Speedy Trial Waiver Is Coerced If It Is The Result Of A Petitioner Choosing One Right Over The Other?"

X."Whether A Trial Continuance Is Sufficient If The Petitioner Is In Custody Under The I.A.D.A. Provisions But The Continuance Was Not Granted In Open Court With The Defendant Or His Counsel Present?"

XI."Whether Petitioner's Sixth Amendment Right To A Fair Trial Is Violated If Petitioner Request Rule 16 Material, And The Goverment Untruthfully Claims It Produced The Material When It In Fact Did Not?"

XII."Whether Petitioner's Sixth Amendment Right To A Fair Trial Is Violated If The Court Claims The Requested Rule 16 Material Does Not Exist, But The Goverment Uses The Rule 16 Material In Its Case-In-Chief?"

XIII."Whether An Indictment Is Constructively Amended If The Goverment Only Has To Prove The Petitioner Attempted To Violate The Substantial Offense To Prove The Petitioner Guilty Of The Substantial Offense?"

XIV."Whether An Unanimous Jury Verdict Broadens A Petitioner's Bases For Prosecution?"

XV."Whether An Indictment Is Constructively Amended If The Statute Contains The Language, But The Charging Instrument Does'nt Contain The Language Later Added To The Jury Instructions?"

XVI."Whether The Court Can Affirm A Conviction Under A Theory Of Prosecution Not Presented To The Jury?"

XVII."Whether The Court Can Affirm A Conviction Without Finding How Every Element Of The Offense Was Satisfied?"

XVIII."Whether The Sex Trafficking Act Of 'Patronizing' Can Affect Interstate Commerce With No Evidence Of An Electronic Payment For Sex?"

XIX."Whether A Minor Could Be Patronized For The Purpose Of Engaging In A Commercial Sex Act If The Minor Did Not Know What The Money Was For?"

XX."Whether Giving Instructions During Sexually Explicit Conduct, If The Instructions Does'nt Contain 'Camera Language?"

XXI."Whether The Petitioner's Use Of His Cellphone To Record Sexually Explicit Conduct Any Evidence Of Foreplanning To Record That Sexuallyu Explicit Conduct?"

XXII."Whether An Inference Of Purpose Is Sufficient To Satisfy The 'Purpose' Element Of 18 U.S.C. 2251(a) Beyond A Reasonable Doubt?"

XXIII."Whether The Best Evidence Rule; Rule 1002 Is Violated If The Expert Witness Testifies About The Contents Of Data Not Entered Into Evidence?"

XXIV."Whether The Denial Of A Petitioner's Right To Self Representation Is Corrected The Moment The Court Grant Petitioner The Right To Self Representation, Even After Coerced-Counsel Inteferred With Petitioner's Tactical Decision To Persue a Speedy Trial?"

LIST OF PARTIES IN COURT BELOW

The United States Of America, Roderick King; pro se

LIST OF CASES DIRECTLY RELATED TO CASE

1. United States Of America v. King, Western District Of Pennsylvania, case 2:21-cr-00184, entry of judgment:12/16/2022.
2. United States Of America v. King, Third Circuit Court Of Appeals, case: 22-3095, entry of judgment:08/21/2024.

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CITATIONS OF OPINIONS AND ORDERS IN CASE

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 unpublished.

JURISDICTIONAL STATEMENT

The date on which the United Stated Court Of Appeals entereds the judgment at issue sought to be reviewed was August 21,2024.
A timely petition for rehearing was denied by the United States Court Of Appeals on October 28,2024, and a copy of the order denying rehearing appears at Appendix C.
An extension of time to file the petition for a writ of certiorari was given by the clerk of the U.S. Supreme Court to correct deficiencies 60 days from letter dated January 24,2025, and a copy of this letter appears at Appendix E. Therefore the jurisdiction of this court is invoked under U.S.C.§1254(1).

CONSTITUTION, STATUTES, REGULATIONS, AND RULES

1. The Sixth Amendment, U.S. Constitution. See Appendix E p.1

2. The Fourteenth Amendment, U.S. Constitution. See Appendix E p.2

3. 18 U.S.C.§1591; Sex Trafficking of a Minor. See Appendix E p.3

4.18 U.S.C.§1594;Attempted Sex Trafficking of A Minor. See Appendix E p.4

5. 18 U.S.C.§2251; Production of Child Abuse Material. See Appendix E p.5

6. 18 U.S.C.§ 3161; Speedy Trial; Endsof Justice Continuances. See Appendix E p.6-10

7. 18 U.S.C.§ Interstate Agreement On Detainers Act; Article III-V. See Appendix E p.11-13

8. Constructive Amendment. See Appendix E p.14

9. Federal Rules of Criminal Procedure 16(a)(1)(e); Documents and Objects. See Appendix E p.15-16

10. Federal Rules of Evidence 1002 (Best Evidence Rule). Appendix E p.17

STATEMENT OF THE CASE

COURSE OF PROCEEDINGS IN THE CASE NOW BEFORE THE COURT

On 07/08/2024, in a cause then pending in the United States District Court For The Western District of Pennsylvania,entitled; United States of America, v. RODERICK KING, criminal no. 2:21-cr-00184-CCW, petitioner was found guilty by a jury on an indictment of count one charging the violation of 18 U.S.C.§1591(a)(1), 1591(b)(2), 1594(a), from in and around November 2020 (Appx D p.78), and petitioner was also found guilty on counts two and three charging the violation of 18 U.S.C.§2251(a), from in and around July 2017 to in or around April 2019, the exact date being unlnown (Appx D p.57-58). On December 16, 2022, the District Court entered judgment and petitioner was sentenced to 444 months on count one, and 360 months for counts two and three to run concurr ently, and was fined 17,000$.

On August 21,2024 this judgment and sentence was affirmed by the United States Court of Appeals For The Third Circuit, United States of America v. Roderick King, case# 22-3095.

On October 28, 2024 the Third Circuit denied petitioner's petition for rehearing en banc.

ARGUMENT FOR ALLOWANCE OF WRIT

I. THE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTIONS ON THE BASIS THAT MY ARGUMENT OF OUTRAGEOUS CONDUCT IS UNTIMELY, HOWEVER, IN MY DIRECT APPEAL I ARGUED DUE PROCESS, NOT OUTRAGEOUS CONDUCT

IN my direct appeal brief, my issue was not labeled outrageous conduct, my issue was specifically labeled, "The Goverment Violated Appellant's Fourteenth Amendment Right ToiDue Process Of Law, Equal Protection Caluse, And Brady v. Maryland By Commencing And Engaging In An Unlawful Investigation And Withholding This Information."(App^{D} p.1) In the goverment's response brief the goverment wrongly claims I waived my claim of outrageous conduct because this defense must be asserted before trial, and also claims I assert no good cause. However, when you look at my direct appeal brief, it is clear as day that the goverment and the Panel is not telling the truth. In the Panel's opinion the Panel somehow erroneously follows in tow, and waives my Due Process Issue in bad faith byalso claiming that in my direct appeal I argued outrageous conduct andcclaims this argument is considered untimelyaand I showed no good cause. Not only is this misleading, but even if my direct appeal issue was labeled, Outrageous Conduct, the full argument explains the "good cause" because most of my Due Process accusations all came together a week before trial when I received Jencks AMaterial, and at trial during thegoverment's witness's testimony. I also made it clear throughout my full pretrial phase that Iwas deprived of discovery. Regardless,instead of inquiring into my Due Process claims ingood

faith to determine if my investigation was in fact unlawful the panel completely disregards my Due Process issue and in a bad faith misconduct manner. This is why I believe the Panel created the question : "Whether The Goverment And The Panel Violates Petitioner's Due Process By Waiving His Direct Appeal Arguments By Purposefully Misstating His Arguments?" Had the Panel actually reviewed my direct appeal brief, the "good cause" would have presented itself. For example, during trial , my case agent Fina C. Spory, an alleged HSI Agent with HSI Pittsburgh, PA, gave testimony that on 11/18/2020 she was notified by phone call of a potential sex trafficking of a minor lead of an initial tip for a possible investigation by Butler, PA Child Youth And Family Services, and was also concurrently notified by a state task force officer with the Attorney General's Office (AppxD p.3) Ms Fina Spory also testified that this investigation referral did not come in the form of any document or report, but came in the form of only an unrecorded phone call. (AppxD p.6) Ms Spory then testified that after she received this notification that she and the state task force agent immediately met with the minor, and the minor's CYFS case worker-indicating that my case agent initiated a joint investigation with the Attorney General's Office. (AppxD p.4)During direct examination my case agent then stated, "Yes. I opened an investigation that day."(AppxD p.5)During cross examination I asked Ms Spory where did CYFS get their tip from and my case agent responded,"I'm not sure."(AppxD p.7) My case agent then testified that whenever CYFS have potential leads regarding a crime that HSI has the authority to investigate, CYFS calls Ms Spory directly. (AppxD p.8) My case agent subsequently testified, I don't recall the exact time I logged onto

the computer and opened the case, but I would have notified my supervisor that I opened a new case that I was starting to investigate." (AppxDp.9). This isdirect and clear evidence that my case agent directly received the investigation referral, and then assigned her own self to this investigation, and then notified her supervisor after the fact. The average layperson sees nonthing wrong with this testimony, however, in United States v. Cordero-Rosario 252 F. Supp. 3d 79 ; 2016 U.S. Dist. LEXIS 187015 (Foot notes 14), the case agent explains that HSI Group Supervisors are responsible for assigning special agents to investigations and that investigation referrals are not effectuated through any particular agents. For the fact that the Panel also disregarded the 'good cause' factors within my Due Process Argument, this is why I believe the Panel also created the question,"Whether A Federal Special Agent Has the Authority To Accept An Investigation Referral Directly, And Then Choose To Become The Case Agent Of This Investigation?" At trial my case agent testified that on 11/19/2020, the minor informed law enforcement that it was child pornography on her phone, so agents seized the minor's phone. (AppxDp.10). This is evidence that the minor's phone was in law enforcement's custody and control on 11/19/2020. Being that the goverment claims the two sexually explicit videos were on the minor's device, during cross examination I asked the witness did she download the sexually explicit videos to her phone and she replied,"No." (AppxDp. 10). Oneweek before trial I received Jencks Material and in this material I received the metadata for the two videos underlying counts two and three of my indictment. The metadata for the two videos shows the latest 'create' and

'modify' date of 11/19/2020 at around 9:00 PM. In metadataterms, this would be considered the dates the agents downloaded the two sexually explicit videos to this mobile device. According to the Certificate Of Authenticity Form, the Snapchat Search Warrant Return was not transmitted to law enforcement until March 8, 2021. (SAppxDp.13). And since this act of tampering with evidence was disregarded by the Panel, I strongly believe the Panel created the question,"Whether A Federal Special Agent Violates A Petitioners Due Process By Downloading Suspected Child Pornography To A Witness's Phone From Petitioner's Social Media Account Without Any Search Warrant, And Then Producing This Video Evidence At Petitioner's Trial?" The goverment claim I was investigated by Homeland Security Investigations , Pittsburgh,PA Division. (See SAppxDp.14). However, at trial during cross examination my HSI case agent made the statement,"CYFS caseworker and my partner Phil Larcinese." Phil Larcinese is a state task force officer. If this state task force officer is my case agent's partner, then my case agent just well may be a state agent and not a federal agent. In HSI Report Of Investigation (002), (SAppxDp.16), my case agent reports that on 12/04/2020, HSI Pittsburgh requested subscriber and ip log inform ation via summons to Snapchat Inc. This HSI report was approved by my case agent's supervisor on 12/17/2020,13 days later. Two weeks before 12/04/2020, on 11/19/2020 my case agent reported in HSI
HSI Report Of Investigation (007),(SAppxDp.17) , that on this day of 11/19/2020, that my case agent seized the minor's phonre, and this investigation report was approved by my case agent's supervisor om 04/16/2021.

More than 150 days later. This makes no sense and these reports are fraudulent because HSI report (007),wasv said to have occured before HSI report (002). In other words, how can the second invest igation report be created on 12/04/2020, and the seventh investig ation report be created on 11/19/2020? Before my federal indict ment I was in the county jail awaiting disposition of state charges. While in the county jail I received a CY-48 Form from Child Protective Services claiming I was under federal investigation and the Attorney General's Office took lead on this investigation. See CY-48 Form, (SAppx D p.18). This is direct evidence that if the Att orney's General's Office collaborated with HSI, but took lead on this investigation, then I was investigated by the state, and my case agent would not be a federal agfent. Posttrial I requested over 15 F.O.I.A. Request to U.S. I.C.E./HSI , requesting ANY documents pertaining tp RODERICK KING. 01/17/2024 ICE/HSI FOIA finally responded to my last FOIA request claiming that the requested records were withheld pursuant to exemption (b)(7)(A) because the records are related to an ongoing law enforcement investigation.(SAppx D p.19).(SAppx D p.20). Out of 16 Requested items in this FOIA REquest, I requested a property receipt pertaining to the property HSI was said to have confiscated of mine. This simple, harmless request could not in any way 'impede' any invest igation. My investigation was said to have commenced on 11/18/2020. I was sentenced on these charges on 12/17/2022. How can HSI still be investigating me in 2024? This FOIA denial letter is clear circumstantial evidence that HSI has something to hide and clearly has no documents to provide. Wherefore, a reasonable person can only

conclude from all the circumstances that the HSI reports are fraudulent and can no way be uploaded to Homeland Security's invest igation database. That would mean that everything obtained from this unlawful and undocumented investigation would be subject to exclusion due to the violation of my Due Process Rights. This is why when the Panel overlooked and disregarded these acts on part of the govermebt the Panel created the question,"Whether Due Process Is Violated When The Goverment Claims Petitioner Was Investigated By A Federal Investigative Agency, But Petitioner's Name Is Nowhere In This Federal Investigative Agency's database or computers?"

II. THE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTIONS ON THE BASIS THAT THE DISTRICT COURT DOCKET ENTRIES GRANTING THE CONTINUANCE SET FORTH THE FACTUAL BASIS WARRANTING THE EXTENSION OF TIME NEEDED BY DEFENSE COUNSEL

This argument relates to a 10/14/2021 trial continuance that I argued was based on insufficient findings in my MOTION TO DISMISS due to STA violations; case: 2-21-cr-184,document#125.09/10/2021 I called my public defender to ask him when was my trial date and if he would file any motions on my behalf. He informed me he was not going to file any motions because he did not want to. I immediately informed the court of this communication in an ametuer letter thatwas filed to the docket on 09/29/2021.(doc#32).,In this letter I made it clear to the court that I had no assistance. The next day, instead of inquiring into my concerns with counsel, the court ordered my counsel to file a counseled motion-that he denied

to file. 14 days later on 10/13/2021, my counsel first filed a motion to withdraw,# doc#39, then on the same day, subsequently filed a motion to postpone my trial-assuming that future counsel would benefit from a 60 day continuance on top of a vacation of the trial;doc#40. On 10/14/2021, instead of requesting the gover ment to respond to the motion to postpone trial, and instead of holding off the motion until the motion to withdraw hearing, the district court immediately granted the trial continuance, and only scheduled a motion to withdraw hearing for 10/19/2021. At the 10/19/2021 motion to withdraw hearing I asked the judge is my trial still 11/15/2021? The court responded,"No. Your trial date has been extended so that I can hear from you and your lawyer this morning so that we can promptly appoint a new attorney for you, and once your new attorney is appointed and has a chance to meet with you and review the case, them we will set a new trial date for you at that time." The court made it clear that the continuance was granted simply because of a motion to withdraw-which is a obvious invalid reason to grant an ends-of-justice continuance. What if the defendant requested to represent himself at the motion to withdraw hearing? In fact, at the hearing I did request to represent myself in order to present my case in my own way and to preserve my trial date but was denied that right to represent myself.(SAppx^{D} p.23-24). Granting my right to represent myself would have completely voided the court's reason for the trial post ponement-making the continuance even more insufficient. The district court simply granted a continuance based on a motion to withdraw, but before the motion to withdraw hearing even commenced

Therefore the Panel created the question,"Whether Counsel On Record Creates A Conflict Of Interest By First Filing A Motion To Withdraw, Then Subsequently Filing A Motion To Postpone Petitioner's Trial On Behalf Of Future Counsel?"In the same 10/14/2021 continuance order, the district court erroneously stated,"failure to grant the requested continuance of the trial date would, under 18 U.S.C.§3161(h)(7)(B)(4), deny counsel for defendant the reasonable time necessary for effective preparation, taking into account the exersize of due diligence."(Appx D p.25). But how? On 10/13/2021 counsel filed a motion to withdraw claiming irreconcible differences and claiming he could no longer work with petitioner.(doc#39). At the motion to withdraw hearing petitioner's counsel stated,"..it occurs to me that, even if it means postponing his trial, he ought to have a lawyer hes going to believe because it aint going to be me."(Appx D p.27). Taking everything into account, I cannot see how not granting this continuance would deny 'counsel' the time for effective preparation, when(1) the trial date was vacated, and (2) 'counsel' was preparing to withdraw from the case. This is why the Panel created the question,"Whether Failure To GraNT An Ends Of Justice Continuance Would Deny Counsel Time For Effective Preparation If The Trial Date Is Vacated And Counsel Is Also Pending A Motion To Withdraw?"

THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER's CONVICTIONS ON THE BASIS THAT THE DISTRICT COURT APPROPRIATELY EXTENDED THE TRIAL DATE TO ALLOW FOR EFFECTIVE TRIAL PREPARATION

At the 03/15/2022 Final Pretrial Conference Hearing, the continuance that was granted at this hearing was also granted on insufficient findings. At the 10/19/2021 Motion To Withdraw Hearing I requested to represent myself and was denied this right in open court.(SEE AppxD p.24). The coerced counsel that was appointed to represent me subsequently filed joint trial stipulations with the government,(doc#68) (SAppxD p.28). At the 03/15/2022 Hearing, while still being represented by counsel-I requested to withdraw these coerced stipulations.(SAppxD p.29-30). The court then informed me that it would not be appropriate to withdraw these stipulations at this late period in time. That was when I orally motioned to withdraw my counsel.(SAppxD p.31-32). The Districtv Court then informed me that (1) I can keep the stipulations and have my trial the next week, but(2) If I withdraw the stipulations trial would have to be postponed.(SAppxD p.33). The court then informed me that I would have to agree to waive that time under the STA.(SAppxD p.33). The court then subsequently stated,"That would require you to agree that the time could be excluded under the STA.(SAppx pD 34). I then informed the court,"I don't agree to the stipulations, but I don't want to waive my Speedy Trial.(SAppxD p.34). The court then acknowledged that a week before this 03/15/2022 Hearing, counsel and the court discussed the fact that if the defendant was not willing to go forward with the stipulations, the attorneys would be willing to continue the trial without the stipulations.(SAppxD p.35). This is evidence that this trial continuance was already in the works and the new trial date would have occured with my then-counsel

present, and had nothing to do with my pro se status. At this 03/15 22 Hearing the court again, informed me,"But in order to delay your trial to a future time, you, yourself, have to agree to waive whatever it is, these additional two or three months."(SAppx^{D}p.35). At this hearing, me needing extra time to prepare for trial due to my pro se status was not ever a topic. The court then stated, "we need confirmation from you that you will waive that time under the speedy trial clock... and then that would give counsel for the goverment time to bring in these witnesses, and obviously it would give you and your attorney an additional opportunity to continue to prepare for trial."(SAppx^{D}p36).The court makes it clear that the goverment is the party that needs time to bring in witnesses-not the defense. Regardless, the goverment created joint stipulations with a coerced defense counsel, therefore the stipulations were NOT created in good faith in the first place. And just because the defense could possibly, also use the same continuance time period to prepare, this inference should not make a goverment-made continuance faulted at the defende. 'Sua sponte is likely defined as 'on its own motion.' I eventually gave in to the district court's coersion and stated,"Yeah. I'll waive my speedy trial rights being that I have no choice, I would think that the goverment should waive it on their behalf, due to nonessential witnesses."(SAppx^{D}p.36). My 'waiver', once again had nonthing to do with me preparing for trial due to my pro se status, because at this point in the hearing I was still represented by counsel. If my 'oral' STA waiver does'nt contain within it any request for additional time to prepare for trial, then how can the order granting, or accepting the waiver Claim it granted a continuance on its own motion to allow pro se defendant time to prepare for trial

claim it granted a continuance on its own motion to allow pro se defendant to prepare for trial-when the defendant was not pro se at the time the court accepted the waiver and granted the continuance? How can the Panel say,"Its clear from the district court's docket that the court properly weighed the relevant interests in light of King's decision to proceed pro se, which resulted in the scuttling of certain trial stipulations," and not mention that the trial stipulations was coerced, and entered in bad faith? These statements by the Panel are untrue.(Panel's Opinion p.9). The Panel then cited U.S. v. Brooks,697 F.2d 517,520 (3d cir.1982)(acknowledging that trial courts are permitted to grant an ends-of-justice continuance sua sponte). This is why the Panel created the question,"Whether An Ends-Of-Justice Continuance Is 'Sua Sponts' If The Court Informs Petitioner In Open Court His Waiver Is Needed For The Continuance?" The Panel also created the question,"Whether An Ends-Of-Justice Continuance Is Sufficient If The Court Untruthfully Faults The Defense For The Goverment-Made Continuance?" Previously I mentioned how at the 10/19/2021 Motion To Withdraw Hearing I requested to represent myself and was denied this right.(SEE APPxD p.24). I also mentioned that my coerced counsel subsequently filed joint trial stipulations with the goverment;(doc#68)(SappxD p.28). At the 03/15/22 hearing I requested to withdraw the stipulations entered by my coerced counsel. The court informs me-while I'm still represented by my counsel, that if I withdraw stipulations my trial would have to be continued, and then stated,'So these sort of two things are in conflict with one another.(SAppxD p.33).(SAppxD p.34). I then pleaded to the court how I don't agree to the stipulations, but how I do'nt want to waive my speedy trial, thats when the court stated,"Well that

puts us in a tough spot." The district court coerced me to choose one right over the other which is similar to Simmons. Therefore when the Panel asserted that my claim of coercion was unsupported, the Panel created the question,"Whether A Speedy Trial Waiver Is Coerced If It Is The Result Of A Petitioner Choosing One Right Over The Other?"

IV. THE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTIONS ON THE BASIS THAT THE STA CONTINUANCES SHOULD ALSO TOLL THE 120-DAY IADA CLOCK

On page 13 of the Panel's Opinion the Panel claims that periods excludable under the Speedy Trial Act for 'ends-of-justice' continuances should also toll the 120-day clock underr the IADA's provision. However, the Panel fails to mention that a IADA contin uance has to be granted in open court, with the defendant or his counsel present. In my Motion To Dismiss For STA Violations;(doc#125), I challenged the ORDER GRANTING @# SECOND MOTION FOR EXTENSION OF TIME TO FILE PRETRIAL MOTIONS;doc#24, I challenged the ORDER GRANTING DEFENDANT'S MOTION TO POSTPONE TRIAL AND RELATED PRETRIAL DEADLINES;doc#42, and I also challenged the ORDED GRANTING 57 FOURTH MOTION FOR EXTENSION OF TIME TO FILE PRETRIAL MOTIONS;doc#58. All three of these continuances were NOT granted in open court with defense counsel or defendant present in open court. Therefore, when the Panel rejected my assertion that my IADA rights were violated, The Panel created the question,"Whether A Trial Continuance Is Sufficient If The Petitioner Is In Custody Under The Iada Provisions But The Continuance Was Not Granted In Open Court With The Defendant Or His Counsel Present?"

V. THE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTIONS ON THE BASIS THAT PETITIONER RECEIVED THE REQUESTED PHONE EXTRACTION REPORT UNDER RULE 16(a)(1)(e) WHEN PETITIONER IN FACT DID NOT

On April 14,2022 I filed a pro se motion for additional discovery doc#104. On April 18,2022, the District Court ordered me to refile my motion and direct my request to the goverment-not the court; doc#105. I then made a second request directed to the prosecutor's office, and in thisdiscovery request, one of the items I requested was a Cellebrite mobile extraction report.(See AppxDp.39). I then filed another Motion For Additional Discovery requesting a Cellebrite Report.(SappxDp.41). Now even though I requested a Cellebrite Report, the governmenbt knows Cellebrite is a program used by law enforcement to create phone extraction reports. And even if the goverment took my request literally, it could have easily referred to my first motion for additional discovery;doc#104(SAppxDp.37). The goverment clearly understood what I meant because in its response to my discovery motion;doc#126, the goverment conceded that the full extraction report of the minor's cellphone may constitute Jencks material, and is premature.(SAppxpD43). At that time I did not receive any extraction report. The goverment even printed a screenshot of its computer-showing the discovery I received and nonthing in this screenshot shows a phone extraction report. (SAppxDp.44-45). At the June 02,2022 Motion Hearing I informed the District court "theres no extraction reportfrom the alleged victim's phone."(SAppxDp.48). Subsequently at the June 22, 2022 Hearing I again brought up the topic of evidence stating,"You can't have David Coleman testify at trial but he has no exhibits. He

has nonthing to show the jury. There is no exhibit of the phone." (Referring to the phone extraction report).(SAppx D p.49). Trial was scheduled July 05, 2022, therefore the partys were 14 days away from trial, and it was clear as day that the phone extraction report was not produced. I also care to mention that the moment I became pro se up until trial the District Court did not schedule any status conference for my case and this may be the very reason why at every in person hearing the court does'nt want to talk about evidence. However, at trial after the goverment's forensic agent testified I requested the extraction report again stating, "I would like the extraction report by David Coleman." The court then directed the question to the prosecutor responded,"I'm not 100 percent sure which report... so the reports that we have were either produced as part of the Jencks material that was put on Mr. King's computer...if you can specify if theres another report I'm kind of loss."(SAppx D p.50). But how is the prosecutor lost or confused when in her response to my Motion For Additional Discovery the goverment clearly conceded that the phone extraction report was premature and may be Jencks.(SAppx D p.43). Still at sidebar the prosecutor then informs the court that all the reports created have been produced. (This indicates a phone extraction report of the minor's phone was never created). However I then explained to the court and the goverment that I have another forensic analysis report from a state investigation, and the report the goverment provided me only have the identity of the photos;photo metadata, and I also explain in detail the report the goverment

produced does'nt have the information that I feel like the court would need to prove that this phone was extracted. The court cut me off in mid-sentence and attempted to proceed to the trial. I them conceded to the judge that she is the one who told me this forensic analysis of the minor's phone did'nt exist. The prosecutor then informed me the forensic analysis is not in paper format and it has child pornography within it si I cannot receive a copy and the goverment produced all communications from the Magnet Axiom program. (Appx D p.50-53). The Panel now, somehow erroneously claims the Magnet Axiom Report was provided.(Appx A p.26-27). But the Panel did not at any point, confirm that the Magnet Axiom Report was the phone analysis of the minor's phone.The Panel coulld have not reviewed my discovery material. In fact, in the goverment's response brief to my direct appeal appendix, the goverment filed the Magnet Axiom Reports of the minor's phone.(Appx D p.11-12). If the prosecutor and the Panel Judges does not know these two documents are not phone extraction reports then they are clearly in the wrong profession. This is why the goverment and the Panel created the questions:"Whether Petitioner's Sixth Amendment Right To A Fair Trial Is Violated If Petitioner Request Rule 16 Material, And The Goverment Untruthfully Claims It Produced The Material When It In Fact Did Not?" and "Whether Petitioner's Sixth Amendment Right To A Fair Trial Is Violated If The Court Claims The Requested Rule 16 Material Does'nt Exist, But The Goverment Uses The Rule 16 Material In Its Case-In-Chief?"

THE COURT OF APPEALS ERRED IN AFFIRMING COUNT ONE ON THE BASIS THAT COUNT ONE WAS NOT CONSTRUCTIVELY AMENDED

For count one I was charged with Sex Trafficking And Attempted Sex Trafficking Of A Minor.(SAppx^{D}p.54). The goverment is therefor obligated to narrow the offense at trial-choosing one or the other, produce separate jury instructions, and separate the offenses on the verdict form. However, at trial the court charged the jury that I was charged with the substantial offense of 'Sex Trafficking Of A Minor' and to prove the first element of this substantial offense, the goverment only has to prove I 'attempted' to violate the first element of 'recruiting,' enticing' 'harboring' 'transporting' etc.(SAppx^{D}p.55). How is this not broadening my basis for prosecution? The date of this offense is from July 2017 through November 2020. However trial evidence and testimony did not pinpoint what 'event' constituted my offense or to understand the goverment's theory of prosecution I was brought to trial. The offense is also duplicitious on my verdict form. (SAppx^{D}p.56). I also care to mention that when a petitioner has a general verdict, or an unanimous jury verdict, that verdict broadened the petitioner's bases for prosecution. Giving all the circumstances, when the Panel disregarded my constructive amendment claim, the Panel created the questions:"Whether An Indictment Is Constructively Amended If The Jury Is Instructed The Goverment Only Has To Prove The Petitioner Attempted To Violate The Substantial Offense To Prove The Petitioner Guilty Of The Substantial Offense" and "Whether An Unanimous Jury Verdict Broadens A Petitioner's Bases For Prosecution"

THE COURT OF APPEALS ERRED IN AFFIRMING COUNT TWO AND THREE ON THE BASIS THAT COUNT TWO AND THREE WAS NOT CONSTRUCTIVELY AMENDED

For counts two and three of production of child pornography,18 U.S.C. 2251(a), my charging instrument did not include the language,"that the visual depiction had actually been transported in interstate or foreign commerce or mailed." The charging instrument only states, "would be transported in and affecting interstate and foreign commerce."(SAppx[D] p.57-58). However, at trial, the jury instructions added the language,"that the visual depiction had actually been transported in interstate or foreign commerceor mailed."(SAppx[D] p. 59). The Panel claims that even though the "actually transported" language is not in the indictment, it is in the statute, so theres no constructive amendment.(SAppx[A] p.106). This would make the constructive amendment clause pointless and is the very reason the Panel created the questionn:"Whether An Indictment Is Constructively Amended If The Statute Contains The Language, But The Charging Instrument Does;nt Contain The Language Later Added To The Jury Instructions"

THE COURT OF APPEALS ERRED IN AFFIRMING PETITIONER's CONVICTION ON A THEORY OF PROSECUTION NOT PRESENTED TO THE JURY

Affirming a conviction with an offense that an accused was not charged implicates a violation of the accused due process. We believe this is the heart of the court of appeal's decision.(SAppxA, p.72-74). Such reasoning is a variance with this court's decision in Fiore v. White, when this court propositioned that,"it is unconstitutional to affirm a conviction secured under an incorrect interpretation of a statute that, correctly appliad, excluded the conduct for which the defendand was convicted." Particularly, I was charged with 'Sex Trafficking And Attempted Sex Trafficking Of A Minor.(SappxD p.54). At trial the court charged the jury, "The defendant,Roderick King, is charged in the indictment at count one with 'sex trtafficking of a minor' in violation of title 18 U.S.C. sections 1591(a)(1), 1991(b)(2), and 1594(a). The first element is that the defendant (1) attempted to or did knowingly'entice', by any means, a person less than 18 years old whom the defendant knew would be caused to engage in a commercial sex act.

The second element is (2) the defendant had knowledge of the fact that the person was less than 18 years old, tnd the third element is (3) the offense of 'enticing' the minor-knowing the minor would be caused to engage in a commercial sex act-affected interstate or foreign commerce. During opening statement the goverment stated,"first, when M.R. King paid Emily for sex, he was engaged in sex trafficking.(Appx D p.60). This jury charge now narrowed my offense to the 'patronizing theory of 'patronizing the minor-knowing the minor would be caused to engage in a commer cial sex act'. The jury are now lawyers and could now have in any way known that the offense was narrowed to the patronizing theory, Regardless, the goverment was obligated to prove I 'paid the minor via electronic payment-for the purpose of engaging in a commercial sex act. This evidence of a payment for sex (patronizing) through the internet is nonexistent at trial. The goverment only offered testimony that I attempted to send a third party money through Western Union-but the attempt failed. there is also no evidence that this payment was for sex. But even if the goverment believedit was, the goverment abandoned the 'attempt' theory by (1) claiming I sex trafficked the minor and (2) not defining 'attempt' in the jury instructions. In the Panels opinion, the Panel asserts,"This was sufficient for the jury to find 'enticement.'(Appx A p.23). But how?, I was not charged under 18 U.S.C. 2422 with Enticement. I was charged with 18 U.S.C. 1591(a), and 1594(a); Sex Trafficking And Attempted Sex Trafficking Of A Minor,(a charge that does'nt exist).

The offense of Sex Trafficking;1591(a) has the additional element of 'would be caused,' which is not mentioned anywhere at trial, not mentioned in rebuttal to my oral Rule 29 Motion (See SAppx^{D}p.61-62), and is not mentioned in the Panel's Opinion-affirming my conviction. The Panel therefor created the question: "Whether The Court Can Affirm A Conviction Under A Theory Of Prosecution Not Presented Tp The Jury." The Panel also created the question: "Whether The Court Can Affirm A Conviction Without Finding How Every Element Of The Offense Was Satisfied." Lastly, the Panel also created the question: "Whether The Sex Trafficking Act Of 'Patronizing' Can Affect Interstate Commerce Without An Electronic Payment For A Commercial Sex Act."

At trial Emily testified that I offered her money to hang out but did'nt say anything about sex.(SAppx^{D}p.63). The prosecutor then asked Emily if I told her why I was giving her the money, and the witness replied,"Well probably for having sex."(SAppx^{D}p. 64). This is evidence that the witness is not sure if the sexual encounter was even a commercial sex act. But how can a minor be patronized for the purpose of engaging in a commercial sex act if the minor did not know if the sex act was commercial? Regardless, the witness testified that I always paid her in cash 'after the sex act,' therefore even if it was a commercial sex act, the act of 'paying' or 'patrenizing' would have to come 'before' the sex act if a sex act occured. The jury clearl did not know this. The act also have to affect interstate commerce and giving someone mpney in person is a far cry from interstate

commerce. This is why when the Panel overlooked these facts, the Panel created the question: "Whether A Minor Could Be Patronized For The Purpose Of Engaging In A Commercial Sex Act If The Minor Did Not Know What The Money Was For."

THE COURT OF APPEALS ERRED IN AFFIRMING COUNTS TWO AND THREE OF PRODUCTION OF CHILD PORNOGRAPHY UNDER 18 U.S.C. 2251(a) ON THE BASIS THE 'FOR THE PURPOSE' ELEMENT WAS PROVEN AT TRIAL

Every element of an offense should be proven beyond a reasonable doubt, therefore an 'inference' of enough evidence to satisfy an element should not be sufficient enough to prove that element beyond a reasonable doubt. In particular, for an offense of 18 U.S.C. 2251(a), an 'inference' of purpose should not be sufficient to prove the 'for the purpose' elementbeyond a reasonable doubt, especially when the recordings started in the middle of sex. We believe this is the heart of the court appeal's decision(SAppA p23-25; RK 74-76). Such reasoning is at variance with the Fourth Circuit's decision in U.S. v. McCauley, when the Fourth Circuit held that 18 U.S.C.§2251(a) "does not criminalize a spontaneous decision to create a visual depiction in the middle of sexual activity without some sufficient pause or other evidence to demonstrate that the production of child pornography was atleast a significant purpose." 983 F.3d at 696. In the Court of Appeals opinion, the court did not once mention the two videos being recorded in the 'middle of sex,' nor do the Panel mention any evidence of 'significant purpose.' The Panel only asserts that the evidence was enough to prove an 'inference of purpose.' At trial the goverment's witnesses did not proffer any evidence to satisfy the 'purpose' element to show specific intent under 18 U.S.C. 2251(a). The witness only testified that I recorded us when we were having sex, she knows because I sent her the videos, and I

recorded the videos with my phone.(SAppx[D] p.65). The testimony is clearly not any evidence of specific intent. Exhibit #13 is only about 20 seconds, and the only video with audio. A male is receiving oral sex, and a voice in the background is heard saying, "kiss it baby like you like it." Exhibit #14 has no audio. Both original videos are under 32 seconds, neither video has a zoom, nor was the phone camera hidden. There was no evidence of any camera equipment, and most of all, the two short videos were recorded in the middle of sex. The testimony, nor the exhibits themselves show any evidence of specific intent, The Panel claims that the witness gave testimony that she learned of the videos when I sent them to her on Snapchat, and the minor was not looking at the phone camera while we were engaging in sex, therefore I surreptitiously recorded the videos.(SAppx[A] p.111). This assertion is baseless. The camera appears to be hand held. Because the minor did not look at the phone it does not prove the phone was meant to be hidden. If anything this proves recording the sex acts was not important or planned. The Panel also claims I instructed the victim how to perform oral sex, but did not specify what statements specifically was said during the sex act. Specifically a male is heard saying,"kiss it baby." This statement does not prove specific intent, and is only a part of the sexually explicit conduct. The goverment was required to connect the sexually explicit conduct to the Petitioner's 'purpose.' The evidence failed to do just that. The Panel is otherwise

making the statement that talking during sex proves foreplanning to record that sexually explicit conduct-which is frivolous. The Panel also believes that because I used a cellphone, this alone is enough evidence to prove I foreplanned to record the sexually explicit conduct.The Panel also asserts, "this too supports an inference that King was producing the video." However, the historic symbol of justice id a scale, which means evidence has to be weighed. Therefore how can one or two small inferences

or speculations of an element become 'proof beyond a reasonable doubt'? What about the ten to fifteen other inferences that there was no 'purpose' or 'specific intent' to create the two videos? This is the very reason the Panel created the questions: "Whether Giving Instructions During Sexually Explicit Conduct Proves Foreplanning To Record That Sexually Explicit Conduct If The Instructions Does Not Involve 'Camera Language," "Whether The Petitioner's Use Of His Cell Phone To Record Sexually Explicit Conduct Any Evidence Of Foreplanning To Record That Sexually Explicit Conduct?" and "Whether An Inference Of Purpose Is Sufficient To Satisfy The 'Purpose" Element Of 18 U.S. C. 2251(a) Beyond A Reasonable Doubt?"

THE COURT OF APPEALS ERRED IN NOT ADDRESSING MY ARGUMENT ASSERTING A VIOLATION OF RULE 1002(BEST EVIDENCE RULE)

I made it crystal clear throughout the prosecution that I did not receive the phone extraction report that the goverment used in its case-in-chief under Rule 16(a)(1)(e). In the goverment's Notice Of Intention To Call Expert Witnesses;case 2:21-cr-00184, doc#140, the goverment states,"special Agent Coleman is expected to testify concerning his forensic examination of Mr. King's cellular telephone and minor Jane Doe's cellular telephone(SAppx D p.66-67). At the June22, 2022 Final Pretrial conference, a week before the July 5, 2022 trial, I questioned the trial judge why the goverment's forensic expert did not have any trial exhibits? (SappxDp.49). However, subsequently, at trial the gfoverment's forensic expert still testified about the phone, and even testified to the contents of the data.(SAppxDp.68-71). In one instance, the goverment expert stated,"In this case the EXIF data denotes that the files was created on April 27,2019, and that this date was able to be cross-checked to the conversation between the minor and the Petitioner(Mr. King).(SAppxDp.72).cThis testimony prejudiced my defense because not only did the expert testify to the date of the videos creation date, but the expert also testified to the date the videos were actually transported through the internet-while providing no fprensic report in evidence.

No other witness testified to these dates. Without this testimony I could have argued insufficiency of evidence because the witness gave testimony she did not download the videos to her phone and offered no date of the videos being 'actually transported.' Therefore I could have argued that the prosecution did not prove the crime was completed before the date of indictment since 'actually transporting' the video would have been the last step of the crime.In disregarding this fact of my case the Panel created the question:"Whether The Best Evidence Rule(Rule 1002) Is Violated If The Forensic Expert Testifies About Data Not Entered Into Evidence?"

THE DISTRICT COURT DID NOT RESET THE GAMECLOCK THE MOMENT IT GRANTED PETITIONER THE RIGHT TO REPRESENT HIMSELF AND COERCED AN INSUFFICIENT ENDS OF JUSTICE CONTINUANCE

On September I wrote an ametuer letter on the docket informing the court that my then counsel informed me he was not filing any motions for me and I also informed the court I was pursuing a speedy trial. 13 days later defense counsel filed a motion to withdraw.At this hearing I madd it clear to the court and counsel that I was pursuing a speedy trial and the court even acknowledged that it would give me a speedy trial. At the October 19,2021 Motiopn To Withdraw hearing I requested to represent myself in order to salvage my November 15,2921 trial date and present my case in my own way. The district court denied me the right to represent myself without giving reason. Once my new counsel was appointed I immediately informed new counsel that my strategy was to pursue a speedy trial and he hesitated but appeared to have agreed, However, I was still under the impression my Speedy Trial was already violated and I did not trust my coerced counsel, this is why on November 16,2021 I wrote a letter to the Jury Section Supervisor stating," I believe I am under the IADA. If thats true, I was not brought to trial in 120 days making this case eligible for dismissal. Defense counsel was ordered by the court to counsel petitioner on the pro se letter. With this in mind, it would be outrageous for my then-counsel to claim he did not know I wanted to pursue a speedy trial.

On January 18,2022 when defense counsel filed a Motion To Extend Time To File Pretrial Motions(doc#57) he did this to offset my trial strategy in bad faith. For one (1) Mr.Ovens waited 3 months after he was appointed to file an extension only to prepare possible motions. Two(2) my pretrial motion period had already been expired with previous counsel, and Mr. Ovens did not file any motion for leave to file any specific motion he thought would be 'good cause to reopen the expired pretrial deadline. Three(3), Mr. Ovens had not received any new discovery upon his arrival. Four(4), Mr. Ovens falsely claimed due to the nature of discovery, additional time is needed;but my discovery at that time only consisted of Snap chat messages. Taking everything into consideration, Mr. Ovens frivilous motions and strategies derailed and interferred with my tactical decisions, contaminated my trial proceedings, and implemented a Sixth Amendment Violation of my right to self-representation and was not rectified in time to permit me to try my sace as I wished. Had the district court granted me the right to represent myself when I originally requested on October 19,2021, I would have proceeded to my scheduled November 15,2021 trial, and regardless of how the proceedings would have turned out, I would have been abbbbbl able to present my case in my own way, when I wanted to present it.

THE QUESTIONS RAISED IN THIS ARE IMPORTANT AND UNRESOLVED

The Third Circuit has decided important questions of federal law that have not been, but should be, settled by this court and are a firm basis for granting certiorari in this case. Is is clear from the Panel's opinion that the Panel disregarded my direct appeal issues and possibly may not have even reviewed my direct appeal. The rulings theirself are not only questionable, but outright erroneous. However, these erroneous rulings created questions that I believe may help determine the outcome of other casesand bring light to some dark grey areas that the Third Circuit seems to occupy often.

CONCLUSION

The judgment below is egregious, and a unique departure from decisions of this court. The goverment's investigation practices violated my Fourteenth Amendment Right To Due Process, and during the court process, my Sixth Amendment Right To A Fair Trial was violated.Reviewing the Third Circuit's decision, I am not even convinced a panel of three judged even created this opinion. However, a Petitioner's Due Process rights and appeal process should not be disregarded on the basis of him or her being charged with a sex offense. I have the same rights as someone charged with a crime of credit card fraud or any white collared crime. The fact alone that the Third Circuit affirmed a duplicitious offense is enough to show this Panel does'nt follow Due Process.Wherefore I

am asking for the Supreme Court's intervention to answer these questions of exceptional importance to assist courts and other petitioners with grey area conduct committed by U.S. Attorneys and judicial officers of the court.

This petition for a writ of certiorari should therefore be granted.

Dated: 03/12/2025

Respectfully submitted

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