

IN THE SUPREME COURT  
OF THE UNITED STATES OF AMERICA

IN RE: Phillip James Colwell

Supreme Court Case No.

---

Appendix  
for  
ORIGINAL PETITION TO THE SUPREME COURT  
UNDER 28 U.S.C. § 2241

By: Phillip James Colwell  
68396-097  
Federal Correctional Institution  
P.O. Box 1000  
Marion, IL 62959

pro se

Appendix  
Table Of Contents

Appendix "A": Criminal Indictment..... 32

Title 18 United States Code Service

Appendix "B": § 2252A(a)(5)(B)..... 38

Appendix "C": § 2252(a)(4)(B)..... 39

Appendix "D": § 2256(8)..... 40

United States Constitution

Appendix "E": Article 1, § 8, Clause 3..... 41

Appendix "F": Amendment VI..... 42

*CERTIFIED MAIL 9589 0710 5270 1221 1032 94 C 4122125*

1 BENJAMIN B. WAGNER  
2 United States Attorney  
3 LAUREL D. WHITE  
4 Exec. Asst. U.S. Attorney  
5 501 I Street, Suite 10-100  
6 Sacramento, California 95814  
7 Telephone: (916) 554-2700

**FILED**

FEB 23 2012

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BY

DEPUTY CLERK

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 2:12-CR-0073 GEB

11 UNITED STATES OF AMERICA, ) VIOLATION: 18 U.S.C. § 2422(b) -  
12 Plaintiff, ) Use of the Mail or Facility of  
13 v. ) Interstate or Foreign Commerce  
14 ) to Induce Minor to Engage in  
15 ) Unlawful Sexual Conduct; 18  
16 ) U.S.C. § 1470 - Transmitting  
17 ) Obscene Matter to a Minor; 18  
18 ) U.S.C. § 2251(a) and (e) -  
19 ) Production of Visual Depiction  
20 ) of Minor Engaged in Sexually  
21 ) Explicit Conduct; 18 U.S.C. §§  
22 ) 2428, 2253 - Criminal Forfeiture  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

20 I N D I C T M E N T

21 COUNT ONE: [18 U.S.C. § 2422(b) - Use of the Mail or Facility of  
22 Interstate or Foreign Commerce to Induce Minor to  
23 Engage in Unlawful Sexual Conduct]

24 The Grand Jury charges: T H A T

25 PHILLIP J. COLWELL

26 defendant herein, between on or about August 1, 2011, and on or about  
27 November 6, 2011, in Sacramento County, State and Eastern District of  
28 California and elsewhere, did use a facility and means of interstate  
and foreign commerce, to knowingly persuade, induce, entice, and

Rec 7-23-24

1 coerce an individual who had not attained the age of 18 years, to  
2 wit: a 14-year old boy known to the Grand Jury as Victim 1, to engage  
3 in sexual activity for which any person could be charged with a  
4 criminal offense, including, but not limited to violations of  
5 California Penal Code Sections 288(c)(1) and 288 a (b)(2), and  
6 attempted to do so, in violation of Title 18, United States Code,  
7 Section 2422(b).

8 COUNT TWO: [18 U.S.C. § 1470 - Transmitting Obscene Matter to  
9 a Minor]

10 The Grand Jury further charges: T H A T

11 PHILLIP J. COLWELL,

12 defendant herein, between on or about November 3, 2011, and on or  
13 about November 5, 2011, in Sacramento County, State and Eastern  
14 District of California, using any means and facility of interstate  
15 and foreign commerce, did knowingly transfer obscene matter to  
16 another individual who had not attained the age of 16 years, knowing  
17 that such individual had not attained 16 years, and attempted to do  
18 so, all in violation of 18 United States Code, Section 1470.

19 COUNT THREE: [18 U.S.C. § 2251(a)and(e) - Production of  
20 Visual Depiction of Minor Engaged in Sexually  
Explicit Conduct]

21 The Grand Jury further charges: T H A T

22 PHILLIP J. COLWELL,

23 defendant herein, between on or about July 25, 2011, and on or about  
24 July 27, 2011, in Sacramento County, State and Eastern District of  
25 California, did knowingly employ, use, persuade, induce, entice or  
26 coerce a minor, known to the Grand Jury as Victim 2, to engage in  
27 sexually explicit conduct for the purpose of producing any visual  
28 depiction of such conduct, and for the purpose of transmitting a live

1-671

1 visual depiction of such conduct, knowing and having reason to know  
2 that such visual depiction would be transported and transmitted using  
3 any means and facility of interstate and foreign commerce and in and  
4 affecting interstate and foreign commerce; and that such visual  
5 depiction was produced using materials that have been mailed,  
6 shipped, and transported in and affecting interstate and foreign  
7 commerce by any means including by computer; and that such visual  
8 depiction had actually been transported and transmitted using any  
9 means or facility of interstate and foreign commerce, and in and  
10 affecting interstate and foreign commerce, and attempted to do so,  
11 all in violation of Title 18, United States Code, Section 2251(a) and  
12 (e).

13 FORFEITURE ALLEGATION: [18 U.S.C. §§ 2253, 2428 - Criminal Forfeiture]

14 1. Upon conviction of the offense alleged in Count One of this  
15 Indictment, pursuant to 18 U.S.C. § 2428, or upon conviction of the  
16 offense alleged in Count Three, pursuant to 18 U.S.C. § 2253,  
17 defendant PHILLIP COLWELL shall forfeit to the United States all his  
18 interest in any property, real or personal, used or intended to be  
19 used to commit or to facilitate the commission of such offense; and  
20 in any property, real or personal, constituting or derived from  
21 proceeds traceable to such offense, including but not limited to the  
22 following:

23 (1) HTC Aria Cell phone, with cell phone number 916-849-  
24 4391;  
25 (2) HTC Inspire Cell phone, with cell phone number 916-719-4391;  
26 (4) Kodak Easy Share M341 Camera;

27 ///

28 ///

12/27/2012

1 (5) SB memory cards;

2 (6) HP computer, Serial Number CNF6431NFW; with Fujitsu hard  
3 drive, Model Number MHV2080BH, Serial Number NW9ZT692LUC4.

4       2. If any property subject to forfeiture, as a result of the  
5 offense alleged above, for which the defendant is convicted, cannot  
6 be located upon the exercise of due diligence; has been transferred  
7 or sold to, or deposited with, a third party; has been placed beyond  
8 the jurisdiction of the Court; has been substantially diminished in  
9 value; or has been commingled with other property which cannot be  
10 divided without difficulty, it is the intent of the United States,  
11 pursuant to 18 U.S.C. §§ 2428 and 2253, incorporating 21 U.S.C.  
12 § 853(p), to seek forfeiture of any other property of said defendant  
13 up to the value of the property subject to forfeiture.

A TRUE BILL.

/s/ Signature on file w/AIUSA

---

**FOREPERSON**

*Benjamin Wagner*  
BENJAMIN B. WAGNER  
United States Attorney

BENJAMIN B. WAGNER  
United States Attorney

No.

Case 2:12-cr-00073-TLN Document 3 Filed 02/23/12 Page 5 of 6

UNITED STATES DISTRICT COURT

*Eastern District of California*

*Criminal Division*

THE UNITED STATES OF AMERICA

vs.

PHILLIP J. COLWELL

I N D I C T M E N T

**VIOLATION(S):** 18 U.S.C. § 2422(b) - Use of the Mail or Facility of Interstate or Foreign commerce to Induce Minor to Engage in Unlawful Sexual Conduct; 18 U.S.C. § 1470 - Transmitting Obscene Matter to a Minor; 18 U.S.C. § 2251(a) and (e) - Production of Visual Depictions of Minors Engaged in Sexually Explicit Conduct; 18 U.S.C. § 2428, 2253 - Criminal Forfeiture

*A true bill,*

*LS/*

-----  
Foreman.

*Filed in open court this 23 day*

*of February, A.D. 2012*

-----  
Clerk.

*P. Buz*

*Bail, \$ NO BAIL WARRANT PENDING HEARING*

*Tallman*

-----  
GPO 863 525

2:12-CR-0073 GEB

RECEIVED  
FEB 22 2012  
U.S. DISTRICT COURT  
CLERK'S OFFICE  
EASTERN DISTRICT OF CALIFORNIA

DEFENDANT: PHILLIP J. COLWELL  
COUNT ONE:  
VIOLATION: 18 U.S.C. § 2422(b) - Use of the Mail or Facility of Interstate or Foreign Commerce to Induce Minor to Engage in Unlawful Sexual Conduct

PENALTY: 10 years to life imprisonment  
Not more than \$250,000 fine, or both;  
5-year term supervised release

COUNT TWO:  
VIOLATION: 18 U.S.C. § 1470 - Transmitting Obscene Matter to a Minor

PENALTY: Not more than 10 years imprisonment,  
Not more than \$250,000 fine, or both  
5-years to life supervised release.

COUNT THREE:  
VIOLATION: 18 U.S.C. § 2251(a) and (e) - Production of Visual Depictions of Minor Engaged in Sexually Explicit Conduct

PENALTY: 15 to 30 years imprisonment,  
Not more than \$250,000 fine, or both  
5-year to life supervised release.

FORFEITURE ALLEGATION: 18 U.S.C. §§ 2253 and 2428 - Criminal Forfeiture

PENALTY: As directed by Indictment

SPECIAL ASSESSMENT: \$100 - Mandatory Special Assessment each count.

2:12-CR-0073 GEB

## Appendix "B"

### 18 U.S.C. § 2252A(a)(5)(B)

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

Appendix "C"

18 U.S.C. § 2252(a)(4)(B)

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

## Appendix "D"

### 18 U.S.C. § 2256(8)

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

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

Appendix "E"

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

"Section 8: The Congress shall have the power...

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

Appendix "F"

United States Constitution  
Amendment VI

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