

25-5644

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

FILED

JUN 05 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
DERRICK MURPHY — 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 SIXTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
DERRICK MURPHY  
(Your Name)

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## QUESTIONS PRESENTED

In 2014 the Supreme Court ruled unconstitutional as applied §229, criminal provisions of the Chemical Weapons Convention Implementation Act. (See *Bond v U.S* 12-158) Also in that case Justice Thomas stated... "There will come a case where this court will have to decide the constitutionality of statutes implementing treaties and the use of the dictum in *Missouri v Holland*". The Protect Act which amended the Mann Act, whose origins also came from a 1904 international treaty on forced prostitution, but got most of its wording from sections of the 1907 Immigration Act. The Protect Act was not created to promote a national interest, or issues that the states could not resolve with its own penal legislation. It was created because the federal government's belief that using the Necessary & Proper Clause, to pass implementing legislation, on the grounds that the treaty power is exempt from the 10<sup>th</sup> Amendment. These type of statutes have been used to invalidate state age of consent laws, sending thousands to prison for decades. It's time for the Supreme Court to confront *Missouri v Holland* and also declare that consensual sexual activity that is not commercial and between two people who are the age of consent in that state is protected by the Constitution.

## QUESTIONS PRESENTED ARE:

1. Do constitutional structural limits on federal authority impose constraints on the scope of Congress authority to enact legislation to implement a valid treaty, at least in circumstances where the federal statute, as applied, intrudes on the traditional state prerogatives, and is concededly unnecessary to satisfy the government's treaty obligations?

2) Can the Protect Act be interpreted not to reach ordinary domestic cases unrelated to concerns of foreign governments, where state and local statutes are enough to satisfy the U.S treaty obligations, in order to avoid the difficult question on whether to overrule *Missouri v Holland*?

3. Are state age of consent laws invalidated by federal laws that place the generic age of a minor at 18.

4. Is sexual activity not proven to have any commercial use, by two people who are the age of consent in that state protected by the Constitution?

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

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

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix   1   to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## PETITION FOR WRIT OF CERTIORARI

The framers did not empower Congress the authority to expand it's power by negotiating a valid treaty with a foreign nation. While the Constitution clearly empowers federal authorities to negotiate and ratify treaties, it nowhere suggests that the federal government alone is responsible for implementing them or that the normal structural limits do not apply to treaty-implementing federal legislation. The 3<sup>rd</sup> Cir especially Judge Ambro in his concurrence, was not happy with the implications of this expansive view of the treaty power, but it viewed itself bound by this courts 105 year old decision in Missouri v Holland, 252 U.S 416(1920).

The Protect Act, which covers prostitution and pornography offenses. Implements and fulfills the US obligations under the Optional Protocol To The UN Convention On The Rights Of The Child. The Protocol itself does not address non-commercial child sexual abuse, but advises signatories to in acording with their Constitution and laws outlaw certain child abuse and neglect. Child Abuse Prevention and Treatment Act 42(U.S.C.S §5101 et seq) general definitions states: The term child means (A) the age 18 or (B) except in the case of sexual abuse, the age specified by the child protection law of the state in which the child resides. 37 states have the age to consent to sexual activity set at 16. The federal governement is prosecuting consensual sexual activity with no commercial connection as child abuse under the Protect Act. Such prosecutions are the inevitable result of the federal government view of it's unlimited authority under the treaty power. This is the only court that can correct this injustice and clarify that statutes that implement treaties, like all other laws, must comply with the Constitution's bedrock structural limits on our system

of limited powers. The court should grant this petition.

### JURISDICTION

The Court Of Appeals issued it's opinion on Mar 18, 2025. This court has jurisdiction under 28 U.S.C.§1254(1).

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Necessary and Proper Clause, Treaty Clause, 10<sup>th</sup> Amendment, Protect Act.

### STATEMENT OF CASE

In or around December 2020 petitioner answered an ad from a escort online. At the time the escort claim to be 18 years old. He engaged in sexual activity with her and subsequently discovered she was a minor. Petitioner continued to see the escort who is really 17. She sent petitioner a video of her during sex acts on other men and because petitioner asked her to send him a video a month earlier this prompted the petitioner to plead guilty. Petitioner was charged with enticement and coercion of a minor. Petitioner was sentenced to a total of 140 months and 180 months for other drug related action that is to be run consecutive for a combined total of 320 months.

### MISINTERPRETATION OF MISSOURI V HOLLAND

As Justice Alito put it in oral arguments for Carol Anne Bond v U.S.(No. 12-158)"One of the original purposes of the objectives of the Constitution was to deal with a treaty power was to deal with issues of debt to British creditors. And there have been cases about property rights of foreign subjects, about the treatment of foreign subjects here, about things that are moving across international borders, about extradition and all of those. But in all of those, until fairly recently, certainly until, after WWII, all of those



matters concerned were legitimate concerns of foreign states. That was the purpose of a treaty. So can't we see something in that, in the meaning of a treaty, what it was understood to mean when the Constitution was adopted". All circuits are bound by a single dictum in *Missouri v Holland*, 252 U.S 416(1920), to uphold any statute by Congress implementing a valid treaty. Some circuits have gone even further stating:"When a min standard is set, Congress may implement the treaty's aim with legislation going further than the specific text".(U.S v Belfast, 611 F.3d 783,807) Our treaty obligations, at most , is to have laws that prohibits the conduct in the treaty. Every state is absolutely ready and able to shoulder the task of protecting our children, and have been for over 100 years. All implementing legislation should be consistent with our basic chartering document. Reason some treaty's are non-executing is to preserve federalism. The 10<sup>th</sup> Amendment makes express what is otherwise implied by the structure of the Constitution. In 2011 the Supreme Court eloquently stated: The 10<sup>th</sup> Amendment express prohibition on the use of power protects liberty. [It ensures that the people of each state will not be governed by some remote national or international government entity about matters concerned with their safety, health, and welfare. The expansive reading in *Holland* vest the treaty power in the federal government a plenary "acquirable police power" to do just about anything it wants. "Holland sweeps away any Constitutional barrier to the reach of the treaty power, it treats the 10<sup>th</sup> Amendment as if it does not exist." Granting Congress plenary power to enact any law on any subject covered by a treaty. *Holland's* opinion is a blatant and unavoidable affront to a constitutional government of limited powers. As documented

by the ABA task force on the federalization of criminal law,"the fundamental view that local crime is with rare exception, a matter for the states to attack has been strained in practice in recent years".(The Federalization Of Criminal Law ABA 1998 P.5)

Congressional activity making essentially local conduct a federal crime has greatly accelerated, notably, in areas in which existing state laws already criminalizes the same conduct. This troubling federalization trend has contributed to a patchwork of federal crimes often lacking a principles basis[ABA report P.5] all too often, Congress treats the Constitution enumerated powers as a grab bag of potential authority to criminalize private behavior, unmoored to either Constitutional text or history. Latching primarily to the Commerce Clause. Congress has criminalized behavior based on a person or product merely crossing state lines. New crimes are often enacted in response to newsworthy events, rather than as part of a cohesive code developed in response to an identifiable federal need. Instead of honoring the deeply rooted principle that the general police power resides in the states and that the federal government law enforcement should be narrowly limited. Congress continues to criminalize more and more conduct, in disregard of the constitutional vision that the federal government should play a narrowly circumscribed role in defining and investigating criminal conduct within the states. The potential penalties for violations of the Protect Act are disproportionate to the blameworthiness of the crimes committed. Sentences imposed for violating the statutes are far more severe than a person would receive under state law for the same conduct. Many circuits have express concern about this practice. "A sentence that is disproportionately long in relation

to the offense is unjust and likewise fails to promote respect for the law".(U.S v Ontiveros, 07-cr-333)(2008) Unwarranted sentencing disparity breeds disrespect for the law".(U.S v Irey, 612 F.3d 1160,1239)(Hill,J Concurring) Further more the mens rea required to commit some Protect Act offenses can be met by average teenage dating activities. I.E Sexting. Stripped of the moral foundation of traditional criminal law, when the federal government prosecutes purely local sexual image intended between two people who are the age of consent to make that material, it undermines the rich moral precepts that undergrid the exercise of police power traditionally exercised by the states in our system of government. Under the American constitutional republic, it is the several states, not the federal government that are repositories of that moral capital. Congress have no plenary power to enact laws enforceable against the people so they use the Necessary and Proper Clause to enforce it's treaty making power to extend the scope of the treaty and the use of the Commerce Clause as it was intended to be used in the Constitution. A power given in the Constitution cannot be construed to authorize a destruction of other powers given in the same instrument. [It must be construed, therefore, in subordination to it, and can not supersede or interfere with any other of it's fundamental provisions. (2. Story's Commentaries, §1508 at 339)(St. G Tucker, Limitations on the treaty-making power, §122, P.139) Joseph Story warned against an expansive interpretation of the treaty making power that could annihilate other authorities, changing the organization of government or overturning it's republic form. Story contended that any such treaty would be found void because it would destroy, what the Constitution was designed to fulfill, the will of the people. St.

George Tucker likewise worried that, because there is no restrictions to the subject matter of treaties, there is only two constitutional guarantees that protect the states, the one securing the states a republican form or government and the other securing the states authority to self protection against invasions. In sum, both Story and Tucker cautioned that the treaty power not be read in a way that would dismember the federal republic. At the heart of the constitutional guarantee of a federal republican form of government to every state is the principle that the laws are to be enacted by representatives of the people of each state.(4 The Founders Constitution, item 13 3 PP.571-72) The 10<sup>th</sup> Amendment ensures the enactment of positive law is left to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon political processes that control a remote central power. The treaty power must be made subordinate to the 10<sup>th</sup> Amendment, first because it is a power that can be exercised unchecked by the house, which is the legislative branch of the national government closest to the people. Second, the treaty power can be misused as a vehicle to transfer the power reserved to the people and to the states to international bodies, disenfranchising the people of the several states and imposing upon the people of the states a totally foreign political or moral standard. Many states have set there political and moral standard for sexual age of consent at 16 . For the federal government to make laws that set that standard at 18 would be a violation of the 10<sup>th</sup> Amendment and not a proper way to use the Commerce Clause as it was met to be used when the Constitution was created. The treaty power can also be used to vacate precious Supreme Court decisions. In April of 2013 the United Nations general assembly overwhelmingly

approved a pioneering treaty aimed at regulating the enormous global trade in conventional weapons. For the first time linking sales to human rights records of buyers. The object of the treaty was not commercial. Such a treaty on gun control could not only serve as a pretext for centralizing the regulation of firearms in the United States, but also a pretext for globalizing gun control including a ban on assault weapons. The 10<sup>th</sup> Amendment is the front line defense of the right of each state to set the moral standard governing the transfer and use of firearms within their respective local jurisdiction. Missouri v Holland would render any statute created by Congress to implement this treaty as a valid act of law. In so many words, Holland rejects the Constitution delineation of what powers the federal does possess, and replaces it with the court's vision of what powers a civilized government should possess. Holland can not be ignored again. It must be confronted and overruled. The 18<sup>th</sup> Amendment was created to ban the manufacture/sale/transportation of alcohol, this are all aspects of commerce. If Congress had the authority under ther Commerce Clause to regulate this area then why would the Constitution had to have been amended in order for them to get this authority? Ron Paul's farewell speech to Congress sums up this argument and makes it even clearer. Stating "My goals in 1976 were the same as they are today, promote peace and prosperity by a STRICT adherence to the principles of individual liberty. Just following the constraints placed on the federal government by the Constitution would have been a good place to start".

#### WHITE SLAVE TRAFFIC ACT/MANN ACT

The fear of endless supply of both foreign prostitutes and foreign men luring american girls into immorality, led the Committee on

Interstate and Foreign Commerce to draft a bill. This bill intended to bring the United States in compliance with a 1904 international treaty on forced prostitution, but much of the wording was drawn from sections of the 1907 Immigration Act, which banned the "importation into the United States of any alien women or girl for the purpose of prostitution, or any othe immoral purpose". The newly founded FBI failure to find widespread evidence of "White Slavery" networks, led prosecutors to begin using it against other forms of consensual sexual conduct. The act was amended the Mann Act. The Mann Act prohibited the transportation of women over state lines for any immoral purpose. Prostitution of both women and girls have been a part of American society since the colonial era. Both were sexual partners for the soldiers and officers during the American Revolution. Mining towns in the west flourished because of prostitution. The regulation of prostitution in this country is exclusively the domain of the states to permit, or otherwise regulate commercial sex under the 10<sup>th</sup> Amendment. Forced prostitution is illegal in every state in America, So is the prostitution of minors. 37 states have an age of consent set at 16. The federal government's prosecutions of what it would call porn and prostitution under the Protect Act undermines the states legislators authority as sovereign. This major constitutional violation has contributed to wide spread mass incarceration, sending many poor men and women to federal prison for decades.

#### THE OPTIONAL PROTOCOL ON THE RIGHTS OF THE CHILD/ THE PROTECT ACT

In May of 2000, the United States entered into the Optional Protocol On The Rights Of The Child, buying and selling of children, child

prostitution, and child pornography. To meet it's treaty obligations, Congress amended the Mann Act statutes, the amended law now known as the Protect Act which covers prostitution offenses of adults and children no matter if the offenses are transnational or domestic, committed by a group or an individual. Congress took no consideration that each state had already criminalized the possession of child pornography and prostitution when it amended the Mann Act in order to implement the treaty. This action violated the Necessary and Proper Clause and the 10<sup>th</sup> Amendment.

#### AGENCY AND CIRCUIT CONFLICT ON AGE OF CONSENT LAWS

INA (IMMIGRATION AND NATIONALITY ACT) 8 U.S.C. § 1101(a)(43)(A) requires the victim to be under 16 years of age for the crime to be sexual abuse of a minor. In the Supreme Court Case *Esquivel-Quintana v Sessions*, 137 S. Ct. 1562, 198 L. Ed 2d 22 (2017), The Court held that "in The context of statutory rape offenses focused solely on the age of the participants, the generic federal definition of Sexual abuse of a minor requires the age of the victim to be less than 16. Under the Protect Act child pornography is sexual abuse of a minor. The Supreme Court concluded that for an act based solely on the age of the participants, the victim must be younger than 16, absent some "special relationship of trust". The Supreme Court did not say it was creating a generic definition of statutory rape applicable to all removability provisions in the Act, and by doing that it has created different broader interpretations of crimes of child abuse. Although the dissent in *Esquivel-Quintana* argued that the decision modifies the generic definition of a "crime of child abuse" for statutory rape offenses, but the categorical approach does not allow courts to adopt different generic definitions.

Where intercourse is abusive solely because of age of participants, the victim must be younger than 16 as stated in Esquivel-Quintana. In US v Corp 234 F.3d 325, the district judge commented: I think all parties agree that the case here is outside the heartland of the statute which it was intended to punish. People who engage in sexual abuse of minors. So even the 6<sup>th</sup> circuit has linked child pornography to sexual abuse of a minor. In Corp's the Court determined the material involved was not involved or intended to be involved in sharing or distribution with others. This case also contains no such behavior. In U.S v X-Citement Video Inc, 982 F.2d 1285, 1288 The Court Of Appeals recognized a "series of Supreme Court cases that permit 'adult' treatment of 16 and 17 year olds". 982 F.2d at 1288. The petitioner was engaged in private consensual intimate conduct with a female he first thought was 18 or older. This female turned out to be 16, which is still the age of consent in the State to engage in such activity. This sexual activity is protected by the Constitution and should be protected from government intrusion. Writing on behalf of the DOJ then Asst Attorney General Patricia Wald stated in response to the Senate Judiciary Committee about the proposed Protection of Children Against Sexual Exploitation Act of 1977 "In our opinion, the investigation or prosecution of purely local acts of child abuse should be left to local authorities with federal involvement confined to those instances in which the mails or facilities of interstate commerce are actually used or intended to be used for distribution of the film or photographs in question. Other circuits have held unconstitutional the mere possession of intrastate child pornography with no intent of interstate distribution or economic activity of any kind.



U.S v Justine Wayne Matthews, 300 F.Supp 2d 1220(The court concluded that 18 U.S.C.S §2251(a), §2252A(a)(5)(B) were unconstitutional as applied to simple intrastate production and possession of images of child pornography, or visual depictions of a minor engaging in sexually explicit conduct, when such depictions are not mailed, shipped or transported in interstate or foreign commerce by any means, nor intended for interstate distribution or economic activity of any kind". The Matthews court also stated: Although some, if not most, child pornography may certainly be the product of commercial enterprise, it does not follow that all child pornography is the product of, or intended for distribution in, a market pandering to other perverts. The exploitation of a minor in home produced video recordings of sexual acts is, unquestionably, despicable; but when it is done with no intention to sell, distribute, or exchange the tapes thus produced it is not "commerce." Further, the mere possession of an object is not "commerce." See (U.S v Kallestad, 236 F.3d 225, 231)(Jolly, J dissenting)("I can think of no activity less commercial than the simple local possession of a good produced for personal use only) No aggregation of local effects is permissible to elevate a non-economic[intra-state] activity's insubstantial effect on interstate commerce into a substantial one in order to support federal jurisdiction. (U.S v Ballinger, 312 F.3d 1264,1270) The state of Ohio makes it a crime to engage in the acts charged in this federal conviction. When Congress criminalizes conduct already denounced as criminal by the state, it affects a change in the sensitive relation between federal and state jurisdiction.(U.S v Lopez) The tension between state and federal jurisdiction over this matter is only exacerbated when one considers that the federal statute defines a minor as, any

person under the age of 18, while Ohio code extends criminal liability when the depicted minor is a person under the age of 16. U.S v McCoy, 323 F.3d 1114,1122-23(finding §2252(a)(4)(B) unconstitutional as applied to defendant's intrastate possession of home grown child pornography not intended for distribution or exchange.) U.S v Corp, 236 F.3d 325(Finding unconstitutional §2252(a)(4)(B) were the defendant was not involved in the distribution of pictures or sharing them with others and his photographing of minors engaged in sexual activity was purely intrastate and consensual.) The 9<sup>th</sup> Circuit quoting U.S v Bird, 124 F.3d 667, in which the 5<sup>th</sup> Circuit observed: Simply because a type of antisocial conduct(which any state could validly proscribe) can fairly be described as a "national" problem in the sense that many (or even all) states experience more instances of it than are desirable or desired,[does not mean that] this of itself suffices to bring such conduct within the scope of Congress's Commerce Clause power. Plainly it does not. Ever since a time well before the Constitutional Convention, there have been every year in each of the several states more murders than desirable or desired, but it is nevertheless plain that the Commerce Clause does not authorize Congress to enact legislation punishing any and all murders throughout the nation...

#### REASONS FOR GRANTING THE PETITION

The questions presented are of imperative public importance, the need for this courts immediate determination to maintain a uniform national standard of interpretation. The third circuit got it wrong in BOND two times, and because this court choose not to answer the Constitutional question, it has allowed for the incarceration of thousands, destroying the impoverished and perpetuating mass incarceration. Our country has

4% of the worlds population but 20% of it's prisoners.(See. Peter Wanger & Wanda Bertram, Prison Pol'y Initiative 2020) The routine of using Protect Act violation, from the statutes harsh sentences for conduct that can clearly be related to teenage dating or consensual sexual activity or using enhancements to double punish in order to add decades of time to 0 point offenders. This has gone unchecked in the name of domestic terrorism and welfare protection. "The disease which inflicts bureaucracy and what they usually die from is routine".(Stanford Encyclopedia Of Philosophy) The prosecution of the petitioner candidly acknowledges a treaty power unchecked by the most fundamental structural limits of the Constitution and our federalism. The petitioners actions were not economic within the meaning of commerce or intended to be. In these circumstances, only this court can clarify that the treaty power, like every enumerated power granted to the federal government, remains subject to the basic structural limits of the Constitution. No grant of power or clause can grant another power or clause to do what the Constitution forbids. The especially important recurring issue of "acquired police power" is indeed, antithetical to fundamental tenets of our federal government of few and defined powers. The framers did not grant Congress authority to expand it's limited powers based on negotiations with foreign governments. Given the central government's seemingly insatiable appetite for the federalization of traditional state crimes, the importance of clarifying the scope of the federal government's authority to criminalize purely local conduct when seeking to implement treaties is obvious. As this court has reasserted the importance of federalism and the limits on Congress "enumerated", the confusion in the lower courts and the need for this courts review has grown more acute.

The expanding scope and number of international treaties and the ever increasing federalization of local criminal law threatens the vitality of this court's recent federalism jurisprudence, and runs a risk of disrupting the delicate balance between state and federal authority. When Congress wants to disrupt that balance it must do so by speaking explicitly. The use of the Commerce Clause alone is not explicit. In fact the definition of explicit sums up this argument. (Explicit-Clear, detailed, and unambiguous) This is an opportunity for the Supreme Court to clarify that just the use of the Commerce Clause in a statute doesn't mean the federal government has purely local jurisdiction. This court's review is needed to eliminate this threat to "the integrity, dignity, and residual sovereignty of the states" and the individual liberty that the Constitution's division of powers was intended to protect. (Bond, 131 S Ct at 2364)