No. 25-5704

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

IN RE: Michael Paul Martin

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

Michael Paul Martin
36887-044
Federal Correctional Institution
P.O. Box 1000
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62959

Respondent:
Solicitor General
of the United States
Room 5616
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

Questions Presented

1. Does the "Aggregate Effects" doctrine under Gonzales v Raich, 545 US 1 (2005) expand federal prosecution powers beyond the original limits designated by the United States Constitution under the Commerce Clause?
2. Have the Lower Courts misapplied the "Aggregate Effects" doctrine under Gonzales v Raich, to 18 U.S.C. § 2251(a), where intrastate challenges by Gonzales v Raich and other case law were denied relief where the statute specifically mentions intrastate activities, such as the Controlled Substances Act in Gonzales v Raich?
3. Does Congress have the Constitutional authority to regulate purely intrastate activity including widely available internet content when there is no economic impact, under a standard set by this Court in United States v Morrison, 528 US 598 (2000)?
4. Under Title 18, U.S.C. § 2251(a), is there proper Fair Notice, as set forth by this Court in Fasulo v United States, 272 U.S. 620 (1926); that a crime of purely intrastate production of a minor engaging in sexually explicit conduct, or child pornography, was defined by Congress as a federal criminal offense?
5. Are the Congressional Findings of the "Child Pornography Pervention Act" of 2006 accurate today as to online content freely available and anonymously, since technology has advanced, and there is no economic nexis for receipt or possession?
6. Does anonymously entering into the online content of child

pornography, and the receipt and possession of images that are widely available for free with the click of a mouse, meet the definition of commerce: buying, selling, bartering or trading, or does it have any economic impact upon any market?

7. Where does the trail of Interstate Commerce end, and thus Congress' Constitutional authority "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."?

List Of Parties

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

Related Cases

United States v Martin
United States District Court, Eastern District of Missouri
Case No. 4:09CR760-JCH

§ 2255

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Martin v United States
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IN THE

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PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

Opinions Below

United States v Martin
United States District Court for the Eastern District of Missouri
Case No. 4:09CR760-JCH
This case is not published

Martin v United States
United States District Court for the Eastern District of Missouri
2013 U.S. Dist. LEXIS 178228 (E.D. Missouri 2013)

Martin v United States
2015 U.S. App. LEXIS 159 (8th 2015)

Jurisdictional Statement

Petitioner has filed under Supreme Court Rule 20.4; and 28 U.S.C. § 2241 and § 2242. For Writs of Habeas Corpus, the following is required:

(1) 28 U.S.C. § 2241 POWER TO GRANT THE WRIT

(a) Writ of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdiction...

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus may not extend to a prisoner unless:

(3) He is in custody in violation of the Constitution or laws or treaties of the United States,...

(2) 28 U.S.C. § 2242 APPLICATION

"Application for a writ of habeas corpus shall be in writing and verified by the person fow whose relief it is intended or by someone acting in his behalf."

- The Petitioner has signed and verified this writ of habeas corpus.

"It shall allege the factrs concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known."

- The Petitioner is being held in the Federal Correctional Institution (FCI), 4500 Prison Road, Marion Illinois 62959. Warden D. Sproul.

REASONS FOR JURISDICTION OF ORIGINAL PETITION
PER SUPREME COURT RULE 20.4(a)

28 U.S.C. § 1651(a) and (b)

(a) The Supreme Court and all Courts established by act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usage and principles of law.

The Petitioner is restrained in his liberty through Congressional overreach using the Commerce Clause. This power was expanded under the former Supreme Court case Gonzales v Raich, 545 U.S. 1 (2005).

Raich changed the balance between federal and state police powers. Raich must be overturned and a line drawn securing Congress' footing within the limitations of their Constitutional powers.

This petition must be heard to prevent further Congressional overreach into purely local activities through the Commerce Clause and the Necessary and Proper Clause.

In her historic confirmation to the United States Supreme Court in 2022, Justice Ketanji Brown-Jackson added her insight to the limits of federal power under the Commerce Clause. As a United States District Court Judge in the District of Columbia, she wrote the opinion in Osvantics v Lyft, 535 F.Supp.3d 1 (D.C. Cir. 2021) defining the difference between purely intrastate, and interstate commerce. She explained there is a fundamental limitation to the government's reach using the phrase "interstate commerce", and denied the expansion of this term in instances of minimal interstate incursions.

This opinion follows numerous dissenting opinions by Justice Clarence Thomas, warning that allowing the expansion of powers of Congress under the Commerce Clause would obliterate and eliminate the essential distinction between federal and state powers and

Constitutional limits concerning prosecutions in each.

Justice Thomas has forewrned that Congress is overstepping their Constitutional boundaries and is treading on the rights of the States and the People.

This position is an opportunity to return the power of prosecution for purely local crime back to the States. Since there was no logical or tangible effect on interstate commerce in this instant case, the federal government lacked the jurisdictional power to prosecute this case.

Justice Thomas has been right.

under the separation of powers doctrine designated by the Constitution, it is the duty of the United States Supreme Court to make a final rule on the Constitutional standing of any statute passed by Congress, or whether it has surpassed the limited authority Congress has enshrined in the Constitution.

"In the end, it remains the role of [the Supreme Court] to decide whether a particular legislative choice is constitutional." See Federal Election Commission v Ted Cruz, 142 S.Ct. 1638 (Headnote 19)(2022)(Opinion by Justice Roberts); See also Sable Communications of California Inc. v FCC, 492 U.S. 115, 119-122, 129, 109 S.Ct. 2729 (1989).

Because the expansion of federal prosecution powers rely upon Raich, a previous Supreme Court decision. it is only under the power, authority and jurisdiction of the Supreme Court to overturn the previous ruling.

Constitutional and Statutory Provisions Involved

Title 18 United States Code Service

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§ 2251A(a)(5)(B).....9
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United States Constitution

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Statement of the Case

The granting of of this writ will be in aid of the Court's jurisdiction, exceptional circumstances warrant the exercise of the Court's discretionary powers, and adequate relief cannot be obtained in any other form or from any other court.

In this instant case, and thousands like it, federal prosecution has far exceeded original Constitutional limitations. This expansion can be reigned in by the United States Supreme Court, and only that High Court, by overturning the previous ruling under Gonzales v Raich, 545 U.S. 1 (2005).

The Petitioner's instant case was a purely local crime that has no link to commerce.

Michael Paul Partin pled guilty on April 8, 2010 and was sentenced July 27, 2010. He received a term of 360 months for counts 1, 2 and 3; 120 months for count 4; and 240 months for count 5; with all terms to be run consecutively for a combined total of 1,440 months, with lifetime supervision. Michael Martin filed under § 2255 on July 27, 2011 and was denied on December 19, 2013. He Appealed, and this was denied, along with COA on September 5, 2014.

Reasons for not Making Application to the District Court

Because lower court's authority to prosecute local crimes falls under Gonzales v Raich, only the Supreme Court has the jurisdiction and authority to hear this instant case.

Reasons for Granting the Petition

I. Fair Notice

"Before one can be punished for violation of a statute, it must be shown, that his offense is plainly within the statute." Fasulo v United States, 272 U.S. 620 (1926);

This has been reiterated time and time again throughout our country's history. The Framers wanted a fair system which would notify the public as to criminal offense passed by Congress.

"There are no constructive offenses." McNally v United States, 483 U.S. 350 (1987);

Every statute presented to the American people must use clear common language so that the average person may read a statute, or portion thereof, and understand its meaning. Because of our wide diversity through the country, such as educational differences, economic class structure, language barriers and unequal access to simple information due to technological limitations in underdeveloped or poor areas, Congress must be exceptionally careful to word each statute with a clear intent.

The Petitioner's federal court indictment states the offense charged, and later convicted of was 18 U.S.C. § 2251(a) for Count 1, which reads:

"Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of transmitting a live visual depiction of such conduct,

shall be punished as provided under subsection (e), if such person, knows or has reason to know that such visual depiction will be transported or transmitted using any means or facilities of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced of transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in or transmitted using any means or facility of interstate or foreign commerce or mailed."

Or, as the United States Court of Appeals for the 11th Circuit has stated, "[T]he most natural reading of this provision ~~[18 U.S.C. § 2251(a)]~~ is that jurisdiction extends to child pornography (1) produced with the intent that it eventually travel in interstate commerce; (2) produced with materials that have traveled in interstate commerce; or (3) that has traveled in interstate commerce." United States v Smith, 459 F.3d 1276 (2006);

It is important to note that simple intrastate production is not referenced in 18 U.S.C. § 2251(a), which the Petitioner was convicted under.

To use the simplified interpretation in Smith, under section (1), jurisdiction could not be proper as there was never any intent for the material to be transported in interstate commerce. Further, under Section (3), jurisdiction was not proper because the produced materials (videos) had never traveled in interstate commerce.

Finally, under Section (2), it states that as long as the image was produced with materials that have traveled in interstate commerce, prosecution may proceed. This particular section has been challenged in various courts. There were multiple rulings which stated it was an unconstitutional application of the Commerce Clause to regulate activity.

18 U.S.C. §§ 2251(a) and 2252A(a)(5)(B) are unconstitutional as applied to simple intrastate production and possession of images of child pornography, or visual depictions of minors engaging in sexually explicit conduct, when such images and visual depictions were not mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, not intended for interstate distribution or economic activity of any kind, including the exchange of pornographic recordings for other prohibited material; statutes as applied to facts on which each count of the indictment was based exceeded the powers of Congress under the Commerce Clause of the United States Constitution. See: United States v Matthews, 300 F. Supp. 2d 1220 (N.D. Ala. 2004), aaf'd, 143 Fed. Appx. 298, (11th Cir. 2005), vacated, remanded, 184 Fed. Appx. 868 (11th Cir. 2006);

For § 2252(a)(4)(B)(simple intrastate possession) it was decided:

18 U.S.C. §§ 2252(a)(4)(B) was unconstitutional under the U.S. Constitution Article I, § 8, Clause 3, as applied to a mother's simple intrastate possession of a pornographic photo of her daughter where the photo had not been mailed, shipped, or transported interstate and was not intended for interstate distribution.

See United States v McCoy, 323 F.3d 1114, 1122-23 (9th Cir. 2003).

The McCoy court held that the Commerce Clause did not reach home-grown child pornography intended for personal use only, as the Defendant's conduct did not have, nor was intended to have, any significant interstate connection or substantive effect on interstate commerce. This view of economic reach of the child pornography laws under the Commerce Clause has been changed by Gonzales v Raich, 545 U.S. 1, 125 S.Ct. 2195, 2205 (2005), where the Supreme Court reaffirmed that the Commerce Clause empowers Congress to regulate purely local intrastate activities, so long as they are part of an 'economic class of activities that have a substantial effect on interstate commerce".

IN United States v Forrest, 429 F.3d 73, 78 (4th Cir. 2005) the Fourth Circuit interpreted Raich and reasoned that Congress had a rational basis to conclude that prohibition of mere local possession of a commodity was essential to the regulation of "an established, albeit illegal interstate market."

The Court of Appeals for the Ninth Circuit reasoned the problem with the expansion of the Commerce Clause in United States v Stewart, 348 F.3d 1132 (2003):

> "[A]t some level, everything is composed of something that once traveled in commerce. This cannot mean that everything is subject to federal regulation under the Commerce Clause, else that Constitutional limitation would be entirely meaningless. Congress' power has limits, and Courts must be mindful of these limits so as not to obliterate the distinction between what is national and what is local and create a completely centralized government."

II. The "Aggregate Effect" Doctrine

The Supreme Court of the United States has held that "Congress may regulate, among other things, activities that have a substantial aggregate effect on interstate commerce." See Wickard v Fiburn, 317 U.S. 111, 125 (1942). This includes 'purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce." See Gonzales v Raich, 545 U.S. 1, 17 (2005), so long as those activities are economic in nature. See United States v Morrison, 529 U.S. 598, 613 (2000).

Justice Thomas' dissenting opinion in Raich, 545 U.S. at 54 states in part:

> "The majority also inconsistently contends that regulating respondents' conduct is both incidental and essential to a comprehensive legislative scheme...I have already explained why the CSA's ban on local activity is not essential...However, the majority further claims that, because the CSA covers a great deal of interstate commerce, it 'is of no moment' if it also 'ensnares some purely intrastate activity'...So long as Congress cast its net broadly over an interstate market, according to the majority, it is free to regulate interstate and intrastate activity alike. This cannot be justified under either the Commerce Clause or the Necessary and Proper Clause. If the activity is purely intrastate, then it may not be regulated under the Commerce Clause. And if the regulation of the intrastate activity is purely incidental, then it may not be regulated under the Necessary and Proper Clause."

According to United States v Tedder, 2008 US Dist. LEXIS 119379 (E.D. Ca. 2008), the court explained the change Gonzales v Raich made upon previous decisions:

> "Defendant argues that Ninth Circuit precedent, United States v McCoy 323 F.3d 1114, 112-23 (9th Cir. 2003), found § 2251(b) unconstitutional when applied to a simple intrastate possession case in which visual depictions of the sexual exploitation of minors had not been mailed, shipped, or transported in interstate commerce, was not intended for interstate distribution, nor for any economic or commercial use (including trading for other pornographic images."

and;

"The McCoy court held that the Commerce Clause did not reach home-grown child pornography intended for personal use only, as the Defendant's conduct did not have, nor was intended to have, any significant interstate connection or substantive effect on interstate commerce. this view of the economic reach of the child pornography laws under the Commerce Clause has been changed by Gonzales v Raich, 545 U.S. 1, 125 S.Ct. 2195 (2005), where the Supreme Court reaffirmed that the Commerce Clause empowers Congress to regulate purely local intrastate activities, so long as they are part of an economic class of activities that have a substantial effect on interstate commerce,' citing Wickard v Filburn, 317 U.S. 111, 128-29, 63 S.Ct. 82 (1942).

Before 2003 other courts had begun to come to the same conclusions as above. In United States v Matthews, 300 F.Supp.2d 1220 (N.D. Ala. 2004), the court ruled:

"The U.S. Supreme Court has rejected the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The U.S. Constitution requires a distinction between what is truly national and what is truly local."

and;

"The mere possession of an object is not 'commerce'".

and;

"While the exploitation of a minor in home-made child pornography is detestable, and deserving of strong criminal condemnation, it is not 'commerce' or 'economic activity' subject to congressional regulation in the absence of any evidence indicating that the pornographer intended to mail, sell, distribute, or exchange the images within an interstate market."

The dissenting opinion by Justice Thomas in Morrison, states in part:

The majority holds that the federal commerce power does not extend to such 'noneconomic' activities as 'noneconomic, violent criminal conduct' that significantly affects interstate commerce only if we 'aggregate' the 'effect[s]' of individual instances." Morrison, 529 U.S. at 656.

See also, Julie Goldscheid, United States v Morrison and the Civil Rights Remedy of the Violence Against Women Act: A Civil Rights Law Struck Down in the Name of Federalism, 86 Cornell

L. Rev. 109, 111 (2000)("[Morrison] established that Congress cannot enact laws under the Commerce Clause that regulate noneconomic, violent criminal conduct based only on the conduct's aggregate effect on interstate commerce.")

This "aggregate doctrine", as applied, violates Due Process and the protection against government interference with fundamental rights and individual liberty interests, and the rights to have each element of a crime, including jurisdiction, proven beyond a reasonable doubt.

18 U.S.C. 2251(a) is overbroad and unconstitutionally vague as applied to intrastate activities.

This purely intrastate incident of production of child pornography can in no way be construed as commerce or any type of economic activity since it was not ever in interstate commerce, nor was it intended to be.

This incident of production of child pornography was not economic nor a gainful activity, but a purely private activity with no intention of selling, buying, bartering, trading or transporting for any purpose. This was done within the jurisdiction of state prosecution, not federal.

The statute in which Raich was convicted under, the Controlled Substances Act (CSA), 21 U.S.C. § 801 et seq., states at § 810(5):

> "(5) Controlled substances manufactured and distributed interstate cannot be differentiated from controlled substances manufactured intrastate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate."

This statute has a tangible link to interstate commerce in the statute itself. Contrary to being able to tell the difference

in locally manufactured controlled substances, it would be much easier for law enforcement to make the distinction between purely intrastate and interstate versions of child pornography. Law enforcement has databases that can be used to identify interstate child pornography, while purely local intrastate versions of child pornography quite often have a local victim easy to identify due to the proximity of the production and producer.

In the recent Supreme Court case Standing Akimbo, LLC, et al. v United States, 141 S.Ct. 2236 (2021), Justice Thomas wrote a dissent, which reads in part:

"Whatever the merits of Raich when it was decided, federal policies of the past 16 years have greatly undermined its reasoning."

And;

"If the government is now content to allow States to act 'as laboratories' 'and try novel social and economic experiments,' then it might no longer have authority to intrude on '[t]he States' core police powers...to define criminal law and to protect the health, safety and welfare of their citizens."

III

Petitioner's Statutes Of Conviction

Pursuant to a plea agreement, on July 20, 2011 the Petitioner plead guilty to the following two counts:

(1) 18 U.S.C. § 2251(a) and (e)

Production of visual depiction of a minor Engaged in sexually explicit conduct

(2) 18 U.S.C. § 2252(a)(4)(B) and (b)(2)

Certain activities relating to material involving sexual exploitation of minors

See page 25 for a full version of 18 U.S.C. § 2251(a), the statute challenged in this Petition. (See Appendix "A")

"When Congress includes particular language in one section of a statute but omits it in another section of the same act [] this Court generally takes the choice to be deliberate. [] That holds true for jurisdictional questions as federal district courts may not exercise jurisdiction absent a statutory basis." Badgerow v Walters, 142 S.Ct. 1310 at 1312 (2022)(Opinion by Justice Kagan)(internal quotes omitted);

"[P]olicy concerns cannot trump the best interpretation of the statutory text." Patel v Garland, 596 U.S. @ 330, 142 S.Ct. 1618 (2022)(Opinion by Justice Barrett)

IV. Congressional/Legislative Findings

The Congressional Findings for 18 U.S.C. 2251(a), Child Pornography Prevention Act, July 27, 2006, P.L. 109-248, Title V, § 501, 120 Stat. 623, provides:

"Congress makes the following findings:

(1) The effect of the interstate production, transportation, distribution, receipt, advertising, and possession of child pornography on the interstate market in child pornography:

(A) The illegal production, transportation, distribution, receipt, advertising, and possession of child pornography, as defined in Section 2256(8) of Title 18, United States Code, as well as the transfer of custody of children for the production of child pornography, is harmful to the physiological, emotional, and mental health of the children depicted in child pornography and has a substantial and detrimental effect on society as a whole."

Under the above stated Act of July 27, 2006, it continues with the following:

"(B) A substantial interstate market in child pornography exists, including not only a multimillion dollar industry, but also a nationwide network of individuals openly advertising their desire to exploit children and to traffic in child pornography. Many of these individuals distribute child pornography with the expectation of receiving other child pornography in return."

There are no reports or citations to support the findings of there being a multimillion dollar industry. Monies can be exchanged for these items, but in fact, each video or picture that an individual might be searching for can be found for free on various websites. This industry is not different from others. Intellectual property interests get lost on the internet. Pictures and videos get copied and posted elsewhere. Then anyone can come across the image and is able to download the image, not only in secret, but for free. This does not affect any market, does not involve buying, selling, bartering or trading, nor exchanging money.

Under the above stated Act of July 27, 2006, it continues even further with the following:

"(D) Intrastate incidents of production, transportation, receipt, advertising, and possession of child pornography, as well as the transfer of custody of children for the production of child pornography, have a substantial and direct effect upon interstate commerce because:

(i) Some persons engaged in the production, transportation, distribution, receipt, advertising, and possession of child pornography conduct such activities entirely within the boundaries of one state. These persons are unlikely to be content with the amount of child pornography they produce, transport, distribute, receive, advertise, or possess. These persons are therefore likely to enter the interstate market in child pornography in search of additional child pornography, therefore stimulating the demand in the interstate market for child pornography.

(ii) When the persons described in subparagraph (D)(1) enter the interstate market in search of additional child pornography, they are likely to distribute the child pornography they already produce, transport, distribute, receive, advertise, or possess to persons who will distribute additional child pornography to them, thereby stimulating supply in the interstate market in child pornography.

(iii) Much of the child pornography that supplies the interstate market in child pornography is produced entirely within the boundaries of one state, is not traceable, and enters the interstate market surreptitiously. This child pornography supports demand in the interstate market in child pornography and is essential to its existence."

In the United States Supreme Court case United States v Morrison, 529 U.S. 598 (2000), it states in part:

"In contrast with the lack of congressional findings that we faced in Lopez, § 13981 is supported by numerous findings regarding the serious impact that gender-motivated violence has on victims and their families. See, e.g., H.R. Conf. Rep. No. 103-711, p 385 (1994); S. Rep. No. 103-138, p 40 (1993); S. Rep. No. 101-545, p 33 (1990). But the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause regulation. As we stated in Lopez, "[S]imply because Congres may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so." 514 US at 557, n 2, 131 L Ed

2d 626, 115 S Ct 1624 (quoting Hodel, 452 US. at 311, 69 L Ed 2d 1, 101 S Ct 2352 (Rhenquist, J. concurring in judgement)). Rather, "'[w]hether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court.'" 514 US, at 557, n 2, 131 L Ed 2d 626, 115 S Ct 1624 (quoting Heart of Atlanta Motel, 379 US, at 273, 13 L Ed 2d 258, 85 S Ct 348 (Black, J. concurring))." Quoting 529 U.S. at 614.

In NOW v Scheidler, 114 S Ct 798, 510 US 249, 260 (1994), the United States Supreme Court stated in part:

"We previously have observed that a 'statement of congressional findings is a rather thin reed upon which to base' a statutory construction."

Also in Scheidler, the Supreme Court went on to state:

"We also think that the quoted statement of Congressional findings is rather a thin reed upon which to base a requirement of economic motive neither expressed nor, we think, fairly implied in the operative sections of the Act." See H. J. Inc. v Northwestern Bell Telephone Co., 492 US 229, 248, 109 S Ct 2893 (1989).

The term "intrastate" is neither mentioned now implied in the statute, and there are no reports or citations to support the implications of economic motive. With the advent of the internet, anyone with a computer and a connection can easily access these images and videos anonymously, and for free.

V. Federal and State Separation of Powers

The Supreme Court's Commerce Clause jurisprudence emphasizes that, in addressing the constitutionality of Congress' exercise of its commerce authority, a relevant factor is whether a particular federal regulation trenches on an area of traditional state concern. See Morrison, 529 U.S. at 611, 615-16; Lopez, 514 U.S. at 561, n.3, 564-68.

The Supreme Court has expressed concern that "Congress might use the Commerce Clause to completely obliterate the Constitution's distinction between national and local authority." Morrison, 529 U.S. at 615; See also Raich, 545 U.S. at 35-36 (Scalia, J., concurring); Lopez, 514 U.S. at 557 (Kennedy, J., Concurring) (Stating that if Congress were to assume control over areas of traditional state concern, "the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusionary. The resultant inability to hold either branch of the government answerable to the citizens is more dangerous even than devolving too much authority to the remote central power." (Citation omitted).

Coupled with this consideration, the Supreme Court recognizes that the Constitution "withhold[s] from Congress a plenary police power." Lopez, 514 U.S. at 566, 115 S. Ct. at 1633; see also Morrison, 529 U.S. at 618-19, 120 S. Ct. at 1754; cf. Comstock, 560 U.S. 126, 130 S. Ct. 1949 (2010)(Kennedy, J., concurring) (stating that the police power "belongs to the States and the States alone").

If accepted, and the conviction upheld in the instant case, reasoning would allow for Congress to regulate any crime as long as the nationwide, aggregated impact of that crime in any way effects interstate commerce through employment, production, transit or consumption, even if the crime wholly was contained within the boundaries of one state.

In the dissenting opinion of Taylor v United States, 579 U.S. 301 136 S.Ct. 2074 (2016), Justice Thomas states:

"Finally, today's decision weakens longstanding protections for criminal defendants. The criminal law imposes especially high burdens on the government in order to protect the rights of the accused. The Government may obtain a conviction only "upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which (the accused) is charged." Winship, 397 U.S. at 364. Those elements must be proved to a jury. Amdt. 6; See Alleyne v United States, 570 U.S. 99, 133 S.Ct. 2151 (2013)(Opinion of Thomas)(slip op. at 3). Given the harshness of criminal penalties on "the rights of the individuals," the Court has long recognized that penal laws "are to be construded strickly" to ensure that Congress has indeed decided to make the conduct at issue criminal. United States v Wiltberger, 5 Wheat. 76, 95 (1820)(Marshall, C.J.). "Thus, before a man can be punished as a criminal under federal law his case must be plainly and unmistakenly within the provisions of some statute." United States v Gradwell, 243 U.S. 476, 485 (1917). When courts construe criminal statutes, then, they must be especially careful. And when a broad reading of a criminal statute wold upset federalism, courts must be more careful still. "[U]nless Congress

"conveys its purpose clearly," we do not deem it" to have significantly changed the federal-state balance in the proseuction of crimes." Jones v United States, 529 U.S. 848, 858 (2000)(internal quotation marks omitted)" - end Justice Thomas' quote.

Allowing for the Government to forego its burden to prove, beyond a reasonable doubt, that the Petitioner's intrastate production and possession of child pornography affected interstate commerce, will allow Congress to reach the sort of purely local crimes such as this; those crimes which the States prosecute.

In summary, the Petitioner's conviction and sentence should be set aside because "Congress cannot punish felonies generally." Cohens v Virginia, 6 Wheat, 264, 428 (1821);

"A criminal act committed wholly within a State "cannot be made an offense against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States." United States v Fox, 95 U.S. 670, 672 (1878);

VI. Justice Thomas' Commerce Clause View

Through the years, Justice Thomas has remained consistent with his view that Congress has specific limits when it comes to it's power under the Commerce Clause. In his opinions in Raich, Lopez, Morrison, and Taylor, among others, he has set forth an interpretation much like that of former Chief Justice John Marshal (1801-1835); See McCulloch v Maryland, 17 U.S. 316, 4 Wheat. 316 (1819). The term commerce has been defined as buying, selling, bartering or trading.

Even if the production of child pornography were found to outside the reach of Congress through the Commerce Clause, and thus beyond the reach of federal jurisdiction, each state has similar laws criminalizing the act of production of child pornography, ensuring that violators would still face consequences and prosecution under State jurisdiction.

Justice Thomas has warned that allowing the expansion of the powers of Congress under the Commerce Clause would obliterate and eliminate the essential distinction between federal and state powers and Constitutional limits concerning prosecutions in each.

Justice Thomas has forewarned, and thus been correct, that Congress is overstepping their Constitutional boundaries and treading upon the rights of the States and the People. The instant case before you is an opportunity to place the power of prosecution for a purely local crime back to the States. Since there was no logical or tangible affect on interstate commerce, the federal government lacked the jurisdictional power to prosecute this case.

The problem of Congress overstepping their Constitutional boundaries regarding the Commerce Clause rests upon the previous Supreme Court decision, Gonzales v Raich, 545 U.S. 1 (2005) which stated that the Commerce Clause gives Congress authority to regulate the national market for marijuana, including the authority to regulate the purely intrastate production, possession, and sales of this controlled substance. Through this decision, courts began applying the standard to purely local instances of production of child pornography under 18 U.S.C. § 2251(a), among other local crimes.

Conclusion

This case brings a simple, yet not so simple inquiry. What did the Framers intend to be the limit of congressional powers regarding criminal prosecutions under the Commerce Clause and federal jurisdiction?

According to Chief Justice Marshall (1801-1835) the line between federal and state control of criminal statutes and prosecutions was more defined. See: United States v Wiltberger, 5 Wheat. 76, 95 (1820);

As our country has grown, so too has Congress expanded it's powers. This has mainly been done under both the Commerce Clause and the Necessary and Proper Clause.

There has never been a line in the sand, so to speak, set by the judicial branch or the Supreme Court which would define specifically what is to be a federal crime, and what would be a purely state matter. With Congress using the Commerce Clause, Congress could regulate almost every crime typically regulated on a state or local level. Even the recent case Murphy v NCAA, 138 S.Ct. 1461 (2018), the line has been blurred between what is federal and state jurisdiction and the ability to control governing policies.

If we were to consider drunk driving, Congress could regulate this purely state crime since both the vehicle and the alcohol would have at some point in time traveled in interstate commerce. If a wreck ensues, and traffic is stopped, commerce which is in interstate transport would be affected.

The opinion written by Justice Thomas in Sackett v Environmental Protection Service, 598 U.S. 561 (2023) a recent evaluation was made of the Commerce Clause expansion:

"As I have explained at length, the Court's Commerce Clause jurisprudence has significantly departed from the original meaning of the Constitution." Quoting 598 U.S. at 708.

See Gonzales v Raich, 545 U.S. at 558-559:

"The Commerce Clause's text, structure, and history all indicate that, at the time of the founding, the term "commerce" consisted of selling, buying, and bartering, as well as transporting for these purposes."

"By departing from this limited meaning, the Court's cases have licensed federal regulatory schemes that would have been "unthinkable" to the Constitution's Framers and ratifiers."

This opinion is not the only one. In Haaland v Brackeen, 599 U.S. 255, at 351 (2023), Thomas further described that the Constitution "permits Congress to regulate only 'economic activity' like producing materials that will be sold or exchanged as a matter of commerce."

Gonzales v Raich must be overturned. The local criminal activities that were prosecuted in this case must be overturned, and placed in the jurisdiction of state prosecution, where it belongs.

Under the Sixth Amendment of the United States Constitution, "[I]n all criminal prosecutions, the accused shall""be informed of the nature and cause of the accusation". Gonzale v Raich interferes with the notification of jurisdiction when it oversteps it's Constitutional limits.

Prayer for Relief

Whereas, the Petitioner asks this Honorable Supreme Court, or any justice thereof, for the foregoing reasons, grant review or Certiorari of this Petition. Or, in the Alternative, any other relief the Court deems just and proper.

Michael Martin Dated: 8/26/2025

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Declaration

The Petitioner in the instant case, hereby certifies, declares and swears that the foregoing is true and correct under the penalty of perjury of the laws of the United States.

Michael Martin Dated: 8/26/2025

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pro se