

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

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In the Supreme Court of the United States

\_\_\_\_\_  
ROBERT MATTHEW BOWMAN,  
*Petitioner*

v.

UNITED STATES OF AMERICA,  
*Respondent*

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Petition for Writ of a Certiorari  
to the United States Court of Appeals for the Fifth Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

- I. Whether 18 U.S.C. § 2252(a)(4)(B) authorizes conviction upon proof that a phone containing child pornography once crossed state lines at an unspecified prior time, when there is no evidence that the possession of child pornography itself caused such movement?
- II. Whether Article I, Section 8 of the United States Constitution permits Congress to impose criminal sanctions for all conduct undertaken using materials that have moved in interstate commerce, however remotely, whether or not the criminal conduct caused such movement?

## **PARTIES TO THE PROCEEDING**

Petitioner is Robert Matthew Bowman, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

## **DIRECTLY RELATED PROCEEDINGS**

*United States v. Bowman*, No. 3:24-CR-00146-X(1) (N.D. Tex. Dec. 12, 2024).

*United States v. Bowman*, No. 24-10485 (5th Cir. July 10, 2025).

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Robert Matthew Bowman seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

## **OPINIONS BELOW**

The Fifth Circuit’s unpublished opinion is available at *United States v. Bowman*, No. 24-10485, 2025 WL 1905335 (5th Cir. July 10, 2025)(unpublished). It is reprinted in Appendix A. The district court’s judgment and sentence in *United States v. Bowman*, No. 3:24-CR-00146-X(1) (N.D. Tex. Dec. 12, 2024), is reprinted in Appendix B.

## **JURISDICTIONAL STATEMENT**

The Fifth Circuit entered its judgment on July 10, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).



## RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, Section 8 of the U.S. Constitution provides in part:

The Congress shall have power... [t]o regulate commerce with foreign nations, and among the several states, and with the Indian [sic] tribes[.]

Title 18, Section 2252(a)(4)(B) of the United States Code provides:

**(a)** Any person who—

**(4)** either—

**(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 was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if--

**(i)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(ii)** such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

Title 18, Section 2252(b)(2) of the United States Code provides:

**(2)** Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if any visual depiction involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or

chapter 117, or under the Uniform Code of Military Justice or the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

Federal Rule of Criminal Procedure 11(b)(3) provides:

*Determining the Factual Basis for a Plea.* Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

## **STATEMENT OF THE CASE**

### **A. Facts and Proceedings in District Court**

Robert Matthew Bowman pleaded guilty to one count of violating 18 U.S.C. § 2252(a)(4)(B) and (b)(2) for possession of child pornography. As regards the interstate commerce element, the factual resume simply alleged that “he knowingly possessed matter which contained any visual depiction that had been transported using any means and facility of interstate and foreign commerce, and which was produced using materials which had been shipped and transported in interstate and foreign commerce by any means, including by computer[.]” Record in the Court of Appeals 24. It also stated that he possessed a “Motorola G Pure device” containing child pornography that “was made and shipped in foreign commerce.” Record in the Court of Appeals 24-25. He entered a plea agreement that waived his right to appeal, save for certain exceptions not relevant here. Record in the Court of Appeals 123-132. The court accepted the plea agreement and sentenced him to 120 months of imprisonment to be followed by a life term of supervised release. Record in the Court of Appeals 43-49.

### **B. Appellate Proceedings**

On appeal, Petitioner contended that the factual resume failed to admit a constitutional offense. Specifically, he argued that the district court plainly erred by accepting a factual resume that admitted only that he possessed materials that had moved in foreign commerce; that § 2252(a)(4)(B) should be construed to require either the government to prove that his offense caused the materials to move in interstate commerce, or that they moved in interstate commerce recently. He argued that if the

statute could not be so construed, it exceeds Congressional power to regulate interstate commerce under Article I, Section 8 of the Constitution. He cited *Bond v. United States*, 134 S. Ct. 2077 (2014), and *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)(Roberts, J., concurring), in support of these contentions. Petitioner showed that his claim was not barred by the appeal waiver under Fifth Circuit law, *United States v. Spruill*, 292 F.3d 207, 215 (5th Cir. 2002), but conceded that it was foreclosed on the merits.

The court below applied plain error review and rejected his arguments on the merits as foreclosed by circuit precedent. *See United States v. Bowman*, No. 24-10485, 2025 WL 1905335 at \*1 (5th Cir. July 10, 2025)(unpublished) (citing *United States v. Bailey*, 924 F.3d 1289, 1290 (5th Cir. 2019); *United States v. Dickson*, 632 F.3d 186, 192 (5th Cir. 2011); *United States v. Kallestad*, 236 F.3d 225, 226-31 (5th Cir. 2000)). It did not decide whether the waiver barred the appeal. *See Bowman*, 2025 WL 1905335.

## REASONS FOR GRANTING THE PETITION

Federal Rule of Criminal Procedure 11 requires that the admissions made by the defendant in connection with a plea establish a prosecutable offense. *See* Fed. R. Crim. P. 11(b)(3). In connection with his guilty plea, Petitioner signed a document called a “factual resume” in which he admitted that he possessed child pornography on a phone that “was made and shipped in foreign commerce.” Record in the Court of Appeals 25. He did not admit that the offense itself caused the movement of the phone, nor that the movement of the phone was recent, nor any other fact establishing that the offense involved the buying, selling, or movement of any commodity. Petitioner contended below that the factual resume was therefore insufficient to establish a violation of 18 U.S.C. § 2252(a)(4)(B).

Section 2252(a)(4)(B) of Title 18 makes it a federal crime to knowingly possess “matter” containing a “visual depiction” of a minor engaging in “sexually explicit conduct” that “has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce,” or “produced using materials which have been mailed or so shipped or transported, by any means” of interstate or foreign commerce, “including by computer[.]” 18 U.S.C. § 2252(a)(4)(B). A possible reading of this statute would criminalize the possession of child pornography that had been downloaded on a smartphone or other object that crossed state lines years ago for entirely innocent purposes. Under this view, Petitioner’s conduct would constitute a federal offense. But the Supreme Court’s opinion in *Bond v. United States*, 134 S. Ct. 2077 (2014) suggests that this is not the proper

reading, as it would allow the exercise of federal police power over conduct that has little or nothing to do with the movement of commodities in interstate commerce. Bond was convicted of violating 18 U.S.C. § 229, a statute that criminalized the knowing possession or use of “any chemical weapon.” *Bond*, 572 U.S. at 852–53; 18 U.S.C. § 229(a). She placed toxic chemicals – an arsenic compound and potassium dichromate – on the car door, mailbox, and doorknob of a romantic rival. *See id.* at 852. This Court reversed her conviction, holding that any construction of the statute capable of reaching such conduct would compromise the chief role of states and localities in the suppression of crime. *See id.* at 859–60. It instead construed the statute to reach only the kinds of weapons and conduct associated with warfare. *See id.*

Notably, § 229 defined the critical term “chemical weapon” broadly as “any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.” 18 U.S.C. § 229F(8)(A). Further, it criminalized the use or possession of “any” such weapon, not of a named subset. 18 U.S.C. § 229(a). This Court nonetheless applied a more limited construction of the statute, reasoning that statutes should not be read in a way that sweeps in purely local activity:

The Government’s reading of section 229 would “alter sensitive federal-state relationships,” convert an astonishing amount of “traditionally local criminal conduct” into “a matter for federal enforcement,” and “involve a substantial extension of federal police resources.” [*United States v. Bass*, 404 U.S. [336] 349–350, 92 S. Ct. 515, 30 L. Ed. 2d 488 [(1971)]]. It would transform the statute from one whose core concerns

are acts of war, assassination, and terrorism into a massive federal anti-poisoning regime that reaches the simplest of assaults. As the Government reads section 229, “hardly” a poisoning “in the land would fall outside the federal statute’s domain.” *Jones [v. United States]*, 529 U.S. [848,] 857, 120 S. Ct. 1904, 146 L. Ed. 2d 902 [(2000)]. Of course Bond’s conduct is serious and unacceptable—and against the laws of Pennsylvania. But the background principle that Congress does not normally intrude upon the police power of the States is critically important. In light of that principle, we are reluctant to conclude that Congress meant to punish Bond’s crime with a federal prosecution for a chemical weapons attack.

*Bond*, 572 U.S. at 863

As in *Bond*, it is possible to read § 2252(a)(4)(B) to reach the conduct admitted here: possession of an object that once moved across state lines to commit a criminal act, without proof that the crime caused the instrumentality to move across state lines, nor even proof that the instrumentality moved across state lines in the recent past. But to do so would intrude deeply on the traditional state responsibility for crime control. Such a reading would assert the federal government’s power to criminalize virtually any conduct anywhere in the country, with little or no relationship to commerce, or to the interstate movement of commodities.

It is plain that Congress intended the “interstate movement” requirement to bind § 2252(a)(4)(B) to federal interests in interstate commerce. This prong of the statute should therefore be read in a way that accomplishes this purpose. The better reading of the phrase “shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce,” therefore requires a meaningful connection to interstate commerce. Such a reading would require either: 1) proof that the defendant’s offense caused the materials to move in interstate

commerce, or, at least, 2) proof that the relevant materials moved in interstate commerce at a time reasonably close in time to the offense.

The court below rejected these claims, however, because it found them foreclosed by its precedent. *See Bowman*, 2025 WL 1905335 at \*1 (citing *Bailey*, 924 F.3d at 1290; *Dickson*, 632 F.3d at 192; *Kallestad*, 236 F.3d at 226–31). The broad reading of § 2252(a)(4)(B) afforded by the court below and its remarkable intrusion on areas of state criminal law can therefore only be remedied by this Court.

This Court should grant certiorari in an appropriate case, and hold the instant Petition if this case is not the appropriate vehicle. *See Lawrence on behalf of Lawrence v. Chater*, 516 U.S. 163, 166 (1996).

### CONCLUSION

Petitioner Robert Matthew Bowman respectfully asks this Court to grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 8th day of October, 2025.

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