No. 25-6585

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

PATRICK J. KILLEN, JR. — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PATRICK J. KILLEN, JR.
(Your Name)

USP TUCSON - PO Box 24550
(Address)

Tucson, AZ 85734
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the prosecution can use an arbitrary and fictitious list of 442 unknown individuals during sentencing all of whom never testified during trial nor testified during sentencing when the superseding indictment listed three (3) charged victims. See, *Andrew vs. White,* 604 US 86 (2025).

2. Whether the prosecution can arbitrarily deny a defendant the constitutional right to confront the three (3) witnesses against him. See, *Hemphill vs. New York,* 595 US 140 (2022).

3. Whether the prosecution can call a defendant to the stand during trial to testify against himself violating the Fifth Constitutional Provision against self-incrimination.

4. Whether an indictment can be filed 49 days after arrest and a defendant who had never before been in trouble with the law be held in pre-trial detention without bond for 122 days prior to a federal criminal trial when there was a warrantless arrest and defendant pled not guilty. See, *The Speedy Trial Act of 1974.*

5. Whether a coerced confession can be used after the FBI repeatedly told a 20-year old defendant without counsel he would not be arrested. See, *United States vs. Lall,* 607 F.3d 1277, 1284 (11th Cir. 2010).

6. Whether the prosecution can use contents of falsified documents that were "created" by the FBI in an attempt to build a case around a coerced confession. See, *Pope v. Fed. Express Corp.* (974 F.2d 982, 8th Cir. 1992).

7. Whether illegally seized electronic equipment can be used at trial. See, *Mapp vs. Ohio,* 347 US 643 (1961) and *Fruit of the Poisonous Tree Doctrine.*

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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

[X] For cases from **federal courts**:

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

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or, [X] 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.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 3, 2025

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Constitutional Provision

The two (2) FBI agents did not have a Search Warrant when they illegally searched Petitioner's home and searched Petitioner's electronic equipment with a Cellebrite device violating Petitioner's Fourth Constitutional right and *18 USC §2236 – Searches without a warrant.*

Fourth Constitutional Provision

When Petitioner asked for a Search Warrant the two (2) FBI agents threatened him with returning with SWAT, breaking down his door and embarrassing him in front of his neighbors if he did not relinquish the electronic equipment. FBI agent Ginther stated he did not find child pornography on Petitioner's computer on that date so there was no reason for the threat violating Petitioner's Fourth Constitutional right and *18 USC §872 - Extortion by officers or employees of the United States.*

Fourth Constitutional Provision

There was no Arrest Warrant when Petitioner was arrested on March 6, 2015. Petitioner pled not guilty. The Arrest Warrant was backdated to March 5, 2015 and filed 66 days after Petitioner's arrest on May 11, 2015 violating Petitioner's Fourth Constitutional right and *18 USC §1519 - Obstruction of Justice - Destruction, alteration, or falsification of records in Federal investigations.*

Fourth Constitutional Provision

The illegally searched and seized electronic equipment was used at trial violating Petitioner's Fourth Constitutional right and the *Fruit of the Poisonous Tree Doctrine.*

Fifth Constitutional Provision

FBI agent Schwartzenberger promised Petitioner she was not going to arrest him if he confessed rendering the confession inadmissible violating Petitioner's Fifth Constitutional right against self-incrimination. See, also *United States vs. Lall,* 607 F.3d 1277, 1284 (11th Cir. 2010).

Fifth Constitutional Provision

Petitioner was called to the stand to testify against himself. Defense counsel instructed Petitioner to admit guilt and show remorse stating the jury would be more lenient violating Petitioner's Fifth Constitutional right against self-incrimination.

Fifth Constitutional Provision

The three (3) charged victims were found in the Kik chat evidence. Petitioner's name was not found in any of the Kik evidence produced by the prosecution rendering the evidence irrelevant and unfairly prejudicial violating Petitioner's Fifth Constitutional Due Process right.

Fifth Constitutional Provision

The GigaTribe chat evidence produced at trial did not list the three (3) charged victims, was irrelevant and introduced to the jury for purely prejudicial reasons violating Petitioner's Fifth Constitutional Due Process right.

Fifth Constitutional Provision

The spreadsheet chats used at trial as evidence for one (1) of the charged victims, *masonlikescake* were ***created*** by FBI agent Starman from metadata and strings of numbers received from Kik Interactive. Kik Interactive makes it clear that the chats will be found on the phones of the users only. "Kik does not store chat message content on its servers, so it cannot provide chat logs to law enforcement." Creating false evidence violated Petitioner's Fifth Constitutional Due Process right and *18 USC §1519 - Obstruction of Justice - Destruction, alteration, or falsification of records in Federal investigations.*

Fifth Constitutional Provision

The prosecution failed to alert the jury to the exculpatory evidence wherein child pornography was pushed onto Petitioner's computer by someone name SDefennder, who was not a charged victim, and Petitioner stated: "*I don't know how I am downloading your stuff. I never even clicked on anything*" violating Petitioner's Fifth Constitutional Due Process right.

Fifth Constitutional Provision

The prosecution failed to alert the jury to the exculpatory evidence when child pornography was pushed onto Petitioner's computer by someone name Karucem, who was not a charged victim, and Petitioner stated: "*I think its bad and they should get punished*" violating Petitioner's Fifth Constitutional Due Process right.

Fifth Constitutional Provision

The arbitrary list of 442 individuals of which 429 were fictitious with unknown names, was not Bate Stamped and not produced at trial. None of the 442 individuals testified at trial nor did they testify during sentencing rendering the entire list unfairly prejudicial violating Petitioner's Fifth Constitutional Due Process right. See, also, *Andrew vs. White,* 604 US 86 (2025).

Sixth Constitutional Provision – Confrontation Clause

The three (3) charged victims listed in the Superseding Indictment never testified during trial. Petitioner's parents offered to pay for the three (3) charged victims to fly to Miami, but the prosecution refused to allow Petitioner to confront the three (3) charged victims violating Petitioner's Sixth Constitutional Confrontation Clause right.

Sixth Constitutional Provision – Speedy Trial Act

Petitioner who had never before been in trouble with the law was held in pre-trial detention without bond for 122 days prior to a federal criminal trial when there was no arrest warrant and Petitioner pled not guilty which violated Petitioner's Sixth Constitutional Speedy Trial Provision and the *Speedy Trial Act of 1974.*

Eighth Constitutional Provision

Petitioner was sentenced to 139 years in prison when there were only three (3) charged victims, none of whom testified during trial and none of whom testified during sentencing. All evidence shown to the jury, some of which was "created and falsified" by the FBI, was irrelevant and unfairly prejudicial. Sentencing a 20-year old who was never before in trouble with the law, to 139 years in prison based on three (3) charged victims, none of whom testified during trial and none of whom testified during sentencing and based on prejudicial and falsified evidence must be considered cruel and unusual punishment.

STATEMENT OF THE CASE

FOURTH CONSTITUTIONAL VIOLATION DURING ILLEGAL SEARCH, SEIZURE, THREAT AND COERCED CONFESSION

Petitioner did not produce child pornography, did not distribute child pornography, did not intentionally receive child pornography and did not intentionally possess child pornography. Child pornography was pushed onto Petitioner by SDefender and Karucem, both of whom were not charged victims and who Petitioner believes were both adults.

On February 11, 2014 two (2) FBI agents, Schwartzenberger and Ginther, entered the home of Petitioner without a search warrant and without any additional paperwork. Petitioner was a 20-year old and still asleep in his bed.

Because Petitioner was wearing his pajamas and still barely awake, he asked permission if he could go to his room to obtain his robe. FBI agent Schwartzenberger allowed Petitioner to go to his room to obtain a robe.

> *"A. Yes, we noticed that he was shaking. We asked him if he was cold. He said yes and got up to retrieve a large robe and sat back down."* (Evidentiary Hearing Direct Schwartzenberger, page 21, lines 11 – 13).

Petitioner did allow the FBI agents to view his computer but never allowed the FBI agents to use a Cellebrite device to search his computer.

After viewing Petitioner's computer, FBI agent Schwartzenberger stated she wanted to question Petitioner on the back patio. When Petitioner's parents attempted to be with their 20-year old son on the fenced in back patio, FBI agent Ginther stood in front of the door and refused to allow Petitioner's parents to counsel their son, thereby placing Petitioner in custody. *Miranda* was not read. See, *Miranda v. Arizona*, 384 US 436 (1966).

> *"A. He was an adult. We generally like to do our interviews in private so he doesn't feel outside influences when he talks to us."* (Evidentiary Hearing Direct Ginther, page 115 lines 20-22).

While Petitioner was being questioned by FBI agent Schwartzenberger on the fenced in back patio, FBI agent Ginther left the home and returned with paperwork and a black Cellebrite device he hooked up to Petitioner's computer.

After being questioned for quite some time and being told by FBI agent Schwartzenberger that he was not going to be arrested, Petitioner told her what she wanted to hear just to make her go away and then returned inside and found FBI agent Ginther searching his computer with a black Cellebrite device.

Petitioner never agreed to allow FBI agent Ginther search his computer with a Cellebrite device and Petitioner had a reasonable expectation of privacy. See *Katz vs. United States, 389 U.S. 347*(1967) wherein the Supreme Court reasoned that the Fourth Amendment's protection extends to people's reasonable expectations of privacy, not just to physical locations.

> *Q. And you told Patrick, "We're not going to arrest you today," when you took him out to the backyard to ask him questions; is that right?*
>
> *A. I told Patrick that several times during the time we were at his house during the knock and talk while we were sitting at the dining room table and when we were out in the backyard. (DE:144)*

In *United States vs. Lall*, 607 F.3d 1277, 1284 (11th Cir. 2010), the government contended that *Lall* was not in custody in his bedroom, and his confession was voluntary. However, the Court ruled that "it is inconceivable that *Lall* an uncounseled twenty-year old, understood at the time that a promise by Gaudio (the police officer) that he was not going to pursue any charges did not preclude the use of the confession in a federal prosecution. Indeed, it is utterly unreasonable to expect any uncounseled layperson, especially someone in *Lall*'s position, to so parse Gaudio's words." The Court found *Lall*'s confession to be involuntary and reversed the conviction.

FBI agents Schwartzenberger and Ginther stated they needed to take Petitioner's electronic equipment even though they did not find any child pornography.

"To the best of my recollection of his testimony he said he didn't find any child pornography" (Schwartzenberger, Trial Day 5, page 29, lines 10-11)

Petitioner then asked for a search warrant and was met with the FBI threat of returning with SWAT, breaking down his door and embarrassing him in front of his neighbors.

Petitioner's mother was so distraught with the threat, a few days later, she sent an email to their attorney memorializing the threat.

> **Killen**: *The two FBI agents also threatened us when we asked if they had a search warrant stating "It is better to voluntarily relinquish the items because we wouldn't want SWAT to knock down your door especially since you are in such a nice neighborhood, you would not want your neighbors to know.*
>
> **Salzman**: *Its NOT voluntary when they threaten you like that!*
>
> **Salzman**: *It doesn't make sense why they did not get a proper Search Warrant. It would have taken them 30 minutes to obtain one. Something is completely out of whack.*
> **(Exhibit A** – email dated February 21, 2014)

FBI agents Schwartzenberger and Ginther violated Petitioner's Fourth Amendment right, *18 USC §2236 – Searches without a warrant, 18 USC §241 – Conspiracy Against Rights; 18 USC §3501 – Admissibility of Confessions;* and, *18 USC §872 - Extortion by officers or employees of the United States.*

After the threat and after the FBI physically searched Petitioner's computer with a black Cellebrite device, without a search warrant, the FBI agents demanded Petitioner sign a "Consent to Search Computer(s)," that FBI agent Ginther brought in when he went out to get the Cellebrite device.

Petitioner was so shaken with the verbal threat he reluctantly signed the form. Contrary to the testimony of the two FBI agents, Petitioner completed the form ***after*** the two (2) FBI agents searched Petitioner's computer as neither agent had paperwork when they initially entered Petitioner's home. FBI agents Schwartzenberger and Ginther violated *18 USC §242 - Deprivation of Rights under the Color of Law.*

After Petitioner asked for a search warrant but was met with the threat of returning with SWAT, breaking down the door and embarrassing Petitioner in front of his neighbors, FBI agent Ginther then walked back into Petitioner's bedroom and illegally searched Petitioner's room looking inside of Petitioner's closet and drawers without a search warrant.

FBI agent Schwartzenberger testified that Agent Ginther was in Petitioner's room looking through his drawers and closet **without** a Search Warrant.

*"Q. You are **not** going with the search warrant, correct?*
A. *Correct."* (Evidentiary Hearing Direct Schwartzenberger, page 15, lines 23 – 24).

"Q. Is it your testimony that Agent Ginther was in Patrick's room was just before you left when he went in there and searched for the Galaxy 5"

A. *Yes, that is correct."* (Evidentiary Hearing Direct Ginther, page 83, lines 10 – 13 and Direct Schwartzenberger, page 87, lines 20 - 24).

The two (2) FBI agents then illegally seized Petitioner's:

- Apple Macbook laptop computer
- Apple iPhone 5
- Apple iPod 2
- Cruz SanDisk 256 thumb drive
- SanDisk Micro Cruzer USB flash drive

FBI agents Schwartzenberger and Ginther violated Petitioner's Fourth Amendment right and *18 USC §2236 - Searches without a warrant.*

In the recent Supreme Court case, *Barnes vs. Felix,* 145 S. Ct. 1353 (2025), the Supreme Court unanimously ruled that courts must consider the "totality of the circumstances." surrounding an incident involving a threat including the circumstances leading up to the threat.

Barnes applies to police use-of-force claims, including those involving perceived threats, by requiring courts to consider the "totality of the circumstances," not just the "moment of the threat."

Extortion is a specific crime that involves obtaining something of value through threats. Extortion involves the wrongful use of fear to compel someone to give up something against their will.

In the instant case, there was no reason for the two (2) FBI agents to threaten Petitioner when the FBI agents stated they did not find child pornography on the computer, Petitioner was still asleep in bed when the two (2) FBI agents entered his home, no crime was occurring, and all the two (2) FBI agents had to do was obtain a search warrant prior to entering Petitioner's home. *18 USC §872 - Extortion by officers or employees of the United States.*

FIFTH DUE PROCESS PROVISIONAL VIOLATIONS DURING TRIAL

Pursuant to the Superseding Indictment, there were three (3) charged victims; *masonlikescake, frosty2499,* and, *jacksoncook10* who were listed in Kik chats.

During trial the jury was shown evidence of Kik chats of *masonlikescake, frosty2499,* and, *jacksoncook10.* However, Petitioner's name does not appear on any of these chats making this evidence irrelevant and prejudicial. See, *Andrew vs. White,* 604 US 86 (2025).

Further, during trial, FBI agent Melissa Starman stated that she **"created"** the evidence stating it was a similar representation while showing the jury un-sanitized chats of *masonlikescake,* who was one of three (3) charged victims.

> *"Q. And you organized it on a Excel spreadsheet for organizational purposes?*
> **Melisa Starman**: *"A. Again, I took the information and put it into an Excel spreadsheet. and from that point, I was able to filter the conversation between Chanel Izzabel and Masonlikescake and then I* ***created this summary chart so that it would present more like the Kik chats with the bubbles.***
> *Q. But this is not exactly how it appears on Kik, correct?*
> ***A. No, but it's a similar representation.*** (DE:141: page 212, lines 9 – 12; page 232, lines 16 – 22).

However, Kik Interactive does not store chat message content on its servers, so it cannot provide chat logs to law enforcement. **Exhibit B** – Kik's Guide for Law Enforcement.

"TIP: The text of Kik conversations is ONLY stored on the phones of the Kik users involved in the conversation. Kik doesn't see or store chat message text in our systems and ***we don't ever have access to this information****"*

The Kik chats for *masonlikescake* that the prosecution received from Kik Interactive were in some form of metadata and strings of numbers and not in Excel spreadsheet format but were shown to the jury in Excel spreadsheet format as if they were chat conversations.

Because Kik does not have the actual chats, they had to be ***falsely created*** by FBI agent Melissa Starman. **Exhibit C** – Unsanitized Kik Chats and Image Files between Defendant and masonlikescake available for review.

Creating false evidence is a violation of Petitioner's Fifth Constitutional Due Process right and *18 USC §1519 - Obstruction of Justice -Destruction, alteration, or falsification of records in Federal investigations.*

In the recent Supreme Court case *Glossip vs Oklahoma, 604 U.S.* ____ (2025), the court held that prosecutors violated the Constitution when they knowingly obtained a conviction using false evidence. In the instant case, FBI agent Starman stated during trial that she **"created"** the evidence. The prosecution knowingly obtained a conviction using false evidence. See, also *Pope v. Fed. Express Corp.* (974 F.2d 982, 8th Cir. 1992) wherein the claim was dismissed when the plaintiff knowingly presented a falsified document.

The prosecution produced two (2) sets of evidence.

- Kik chats
- GigaTribe chats

The sanitized Kik chats for *frosty2499* and *jacksoncook10* that were given to Petitioner for examination only show their names on the chats. Petitioner's name does not appear on any of the Kik chats with *frosty2499* and *jacksoncook10.* Nothing was redacted and there was no co-defendant, rendering the chats unfairly prejudicial and inadmissible. **Exhibit D** – Sanitized

Kic Chats & Image Files between Defendant and frosty2499; **Exhibit E** - Sanitized Kic Chats & Image Files between Defendant and jacksoncook10.

During trial the jury was shown evidence of GigaTribe chats. However, none of the charged victims, *masonlikescake, frosty2499,* nor *jacksoncook10,* were listed in this evidence making the GigaTribe chats unfairly prejudicial. **Exhibit F** – PJK 00154 – PJK 00217 (GigaTribe chats). In *Andrew vs. White,* 604 US 86 (2025), the Supreme Court held that clearly established federal law provided that the erroneous admission of unduly prejudicial evidence could render a criminal trial fundamentally unfair in violation of due process.

CONTINUED FIFTH CONSTITUTIONAL PROVISIONAL VIOLATIONS

Prior to Petitioner's arrest on March 6, 2015, a Sealing Order and an Application for Search Warrant were filed on March 5, 2015. However, neither the Sealing Order nor the Application for Search Warrant included an Arrest Warrant. **Exhibit G** - *Sealing Order;* and, **Exhibit H** - *Application for Search Warrant.*

The prosecution, after maintaining control over the electronic equipment for over 12 months, arrested Petitioner without probable cause as FBI agent Ginter stated he did not find child pornography on the computer after illegally searching it with a Cellebrite device.

The prosecution, after maintaining control over the electronic equipment for over 12 months, arrested Petitioner without an arrest warrant on March 6, 2015 when he pled not guilty. The Indictment was filed 49 days later on April 24, 2015 violating *The Speedy Trial Act of 1974* which makes it clear an indictment must be filed within 30 days from arrest.

Petitioner was then held in pretrial detention for 122 days without bond violating the Sixth Constitutional Speedy Trial Provision and *The Speedy Trial Act of 1974,* which states the trial shall commence within 70 days from arrest or indictment whichever is later. Either way the trial commenced later than 70 days.

The Arrest Warrant was then ***backdated*** to March 5, 2015 as neither the Sealing Order nor the Application for Search Warrant listed an Arrest Warrant. The Arrest Warrant was then filed on May 11, 2015, 66 days after a warrantless arrest. **Exhibit I** – Arrest Warrant.

This is a violation of Petitioner's Due Process rights and *18 USC §1519 - Obstruction of Justice -Destruction, alteration, or falsification of records in Federal investigations.*

CONTINUED FIFTH CONSTITUTIONAL PROVISIONAL VIOLATIONS

The prosecution failed to show the jury exculpatory evidence wherein Petitioner never purposely received child pornography. In the Bate Stamped documents PJK 00154 – PJK 00217 (GigaTribe chats), the prosecution failed to show the jury that the child pornography was downloaded onto Petitioner's computer without his permission, knowledge or consent.

> Petitioner stated *"I don't know how I am downloading your stuff. I never even clicked on anything."* (**Exhibit J** – PJK 00209 Gigatribe evidence with SDefender)

Further, additional GigaTibe evidence produced included someone named Karucem, a German gentleman who was cooperating with the Italian police, who pushed child pornography onto Petitioner's computer. After viewing the child pornography files that were pushed onto him, Petitioner stated:

> Petitioner: ***"I think its bad and they should get punished."*** (**Exhibit K** – PJK 00200 Gigatribe chats with Karucem)

Petitioner did not want the child pornography as he believes pedophiles should be punished and attempted to delete tens of thousands of the files. A person engaged in child pornography would not delete them nor would he state "I think its bad and they should get punished."

The prosecution has a constitutional duty to disclose evidence that is both favorable to the accused and material to guilt or punishment, regardless of whether the defense requests it. This duty is rooted in the Supreme Court case *Brady v. Maryland*, 373 U.S. 83 (1963), but the prosecution failed to alert the jury to this exculpatory evidence.

During trial the prosecution made false claims that they found the information on Petitioner's computer, however, the FBI agents stated they found no child pornography on the Apple computer they illegally searched and seized on February 11, 2014. Since no child pornography was found on the computer on February 11, 2014 and the FBI held the computer in their control for 12 months, evidence should have been rendered inadmissible based on the *Fruit from the Poisonous Tree Doctrine* and *Mapp vs. Ohio, 347 US 643* (1961).

Further, even though no child pornography was found on the illegally seized computer, the FBI somehow used the illegally seized electronic equipment to then obtain a search warrant 13 months later on March 5, 2015. The Fourth Amendment protects individuals from unreasonable searches and seizures. To enforce this right, the Supreme Court established the exclusionary rule, which makes illegally obtained evidence inadmissible in court. The "*fruit of the poisonous tree*" doctrine extends this principle further. If the FBI seized evidence illegally and then used that evidence to establish probable cause for a search warrant, the warrant should be tainted. Any evidence gathered with that warrant would then also be inadmissible as "*fruit of the poisonous tree.*"

After the Apple computer had been illegally seized by the FBI, Petitioner used an old Dell computer which was seized on March 6, 2015 the date of Petitioner's non-warrantless arrest.

During trial an FBI agent testified that the Dell computer had been reimaged.

"Q. Now, were you the first examiner to take a look at the Dell?
A. No, I was not.
Q. And were you asked to ***reimage*** *the Dell laptop?*
A. Yes, I was.
Q. Why was that?
A. There was an administrative matter with the previous supervisor, and my supervisor tasked me with doing a reexamination." (DE:142, page 214, lines 2 – 10).

Reimaging a computer means to restore the computer system to factory default settings. As soon as the Dell laptop was reimaged, set back to factory default settings, all data and evidence were lost. It is not clear how the prosecution was able to use this computer during

trial if all evidence has been deleted. *18 USC §1519 - Destruction, alteration, or falsification of records in Federal investigations and bankruptcy*

The prosecutors knowingly obtained a conviction using false evidence and false testimony which violated Petitioner's constitutional right, due process, and the recent Supreme Court case *Glossip vs Oklahoma, 604 U.S.* ____ (2025) where the court held that the prosecution violated its constitutional obligation to correct false testimony under *Napue v. Illinois*.

FIFTH DUE PROCESS AND SIXTH CONSTITUTIONAL CONFRONTATION CLAUSE PROVISIONAL VIOLATIONS

During trial the Petitioner was called to the stand. The Fifth Amendment protects a person from being compelled in any criminal case to be a witness against himself. Defense counsel instructed Petitioner, a naïve 20-year old, to admit guilt and show remorse stating the jury would be more lenient. This violated Petitioner's Fifth Amendment Due Process right.

During trial, Petitioner was never given the opportunity to confront the three (3) charged victims in the Superseding Indictment which is guaranteed by the Sixth Amendment's Confrontation Clause. Petitioner's parents offered to pay for the three (3) charged victims to fly to Miami but the prosecution refused to allow Petitioner to confront them. In *Hemphill vs. New York,* 595 US 140 (2022) the Supreme Court held "it is a person's bedrock right to be confronted with the witnesses against him."

FIFTH AND EIGHTH CONSTITUTIONAL PROVISIONAL VIOLATIONS DURING SENTENCING

During sentencing, the prosecution produced an arbitrary non-Bate Stamped list of 442 fictitious individuals, all of whom never spoke during sentencing, nor testified during trial. Out of the 442 individuals, 429 were listed as "***unknown***" and only three (3) were interviewed, those listed in the Superseding Indictment, *masonlikescake, frosty2499,* and *jacksoncook10.*

Because of this arbitrary and fictitious list of individuals, the Court sentenced Petitioner to 139 years in prison. **Exhibit L** – 305D-MM-4436153 VICTIMS.

This arbitrary list of 442 non-Bate Stamped list had nothing to do with Petitioner, Petitioner's name is not on this list, Petitioner was not allowed to confront the three (3) charged victims who names were on the list, Petitioner was not allowed to confront the remaining 439 individuals of whom 429 fictitious individuals were listed as "unknown," and producing this arbitrary and fictitious list at sentencing made the proceedings unfairly prejudicial. In *Andrew vs. White,* 604 US 86 (2025) the Supreme Court established that the admission of irrelevant and unfairly prejudicial evidence can violate a defendant's due process rights, even at the sentencing stage.

Sentencing a 20-year old virgin, who had never been in trouble with the law, to 139 years in prison when there were three (3) charged victims, none of whom testified during trial as Petitioner was not allowed to confront them and none of whom testified during sentencing, must be considered cruel and unusual punishment and a violation of Petitioner's Eighth Constitutional right.

> *Mr. Emery: "Another reason for the 274-year sentence, Your Honor,* ***is general deterrence.*** *Again, the Government searched far and wide in order to find a case of this magnitude and it was hard-pressed to do so, a case involving 288 victims over the time span that the Petitioner acted." (Sentencing, page 57, lines 5 – 9).*

It must be noted there were three (3) charged victims in the Superseding Indictment, and according to the fictitious and arbitrary list of 442 individuals only three (3) were interviewed, not 288 as the prosecution suggests.

During the appeal, knowing there were only three (3) charged victims listed in the Superseding Indictment, knowing only three (3) were interviewed, the Appellate Court used this same list of 442 individuals, of which 429 were listed as "***unknown***" to re-sentence Petitioner to 50 years in prison imposing consecutive sentences citing *United States v. Kapordelis, 569 F.3d 1291 (11th Cir. 2009).* In *Kapordelis,* the Court affirmed Mr. Kapordelis' 35-year sentence, which was a ***variance above his guideline range,*** where Mr. Kapordelis had

a 20-year history of drugging and molesting minors and had traveled abroad to have sex with minor boys.

In the instant case, Petitioner did not drug or molest minor boys, did not travel abroad to have sex with minor boys. Petitioner, at the time of his warrantless arrest was a 20-year old virgin, who believed pedophiles should be punished.

The evidence presented was not substantial enough to justify the judgment. Yet, the Appellate Court sentenced Petitioner to 50 years in prison based on the non-Bate Stamped arbitrary and fictitious list produced at sentencing of 442 individuals, none of whom testified during trial nor during sentencing and of which 429 were listed as "***unknown.***"

The Appellate Court ruling was extremely prejudicial and violated Petitioner's Due Process rights and the recent Supreme Court case *Andrew vs. White,* 604 US 86 (2025) where the court held that the introduction of prejudicial evidence at the sentencing stage "violated the Due Process Clause."

Sentencing a 20-year old virgin to 50 years in prison when there were three (3) charged victims, none of whom testified during trial and none of whom testified during sentencing, using falsely created evidence, using evidence that had been illegally searched and seized, and evidence that had nothing to do with Petitioner must be considered cruel and unusual punishment and a violation of Petitioner's Fifth and Eighth Constitutional rights.

Under Supreme Court precedent, a **new substantive constitutional rule** must be applied retroactively to all cases on collateral review. Rather than creating a new right from scratch, the court articulates a rule it determines was required by the Constitution all along, even if it was not dictated by prior precedent. This standard was established in the landmark case *Teague v. Lane,* 489 US 288 (1989) and later clarified and applied to state courts in *Montgomery v. Louisiana,* 577 US 590 (2016).

Under federal law, new substantive constitutional rules generally apply retroactively in federal cases because they alter the range of conduct punishable by law, effectively declaring the initial conviction or sentence unlawful.

Andrew v. White is considered a new rule of constitutional law because it established a new test to determine when the Due Process Clause is violated by the admission of unfairly prejudicial evidence.

Barnes v. Felix is considered a new rule of constitutional law because this Court rejected the "moment of threat" doctrine, holding that the "totality of the circumstances" must be considered in excessive force cases.

Glossip v. Oklahoma is considered a significant development in constitutional law, specifically regarding the due process rights of criminal defendants reinforcing that prosecutors have a constitutional duty to correct false testimony, even if the defense is aware of some of the information.

REASONS FOR GRANTING THE PETITION

1. Petitioner did not produce child pornography, did not distribute child pornography, did not intentionally receive child pornography and did not intentionally possess child pornography. Child pornography was pushed onto Petitioner by SDefender and Karucem, both of whom were not charged victims and who Petitioner believes were both adults.

2. The prosecution failed to alert the jury to the exculpatory evidence wherein child pornography was pushed onto Petitioner's computer by SDefennder, when Petitioner stated *"I don't know how I am downloading your stuff. I never even clicked on anything."* This violated Petitioner's **Fifth Constitutional Due Process** right and ***Brady v. Maryland*, 373 U.S. 83 (1963).**

3. The prosecution failed to alert the jury to exculpatory evidence when child pornography was pushed on Petitioner's computer by Karucem, a German gentleman working with the Italian police, when Petitioner stated: "I think its bad and they should get punished." This violated Petitioner's **Fifth Constitutional Due Process** right and ***Brady v. Maryland*, 373 U.S. 83 (1963).**

4. Petitioner's **Fourth Constitutional** right was violated when the two (2) FBI agents did not have a Search Warrant when they illegally searched Petitioner's home and electronic equipment. See, also, ***18 USC §2236 – Searches without a warrant.***

5. Petitioner's **Fourth Constitutional** right was violated when after Petitioner asked for a Search Warrant the two (2) FBI agents threatened him with returning with SWAT, breaking down his door and embarrassing him in front of his neighbors if he did not relinquish the electronic equipment. The FBI stated they found no child pornography on the computer on that date, so there was no reason for the threat. See, also ***18 USC §872 - Extortion by officers or employees of the United States.***

6. FBI agent Schwartzenberger promised Petitioner she was not going to arrest him if he confessed rendering any confession inadmissible violating Petitioner's **Fifth Constitutional** right against self-incrimination and ***United States vs. Lall*, 607 F.3d 1277, 1284 (11th Cir. 2010).**

7. When Petitioner asked for a Search Warrant the two (2) FBI agents threatened him with returning with SWAT, breaking down his door and embarrassing him in front of his neighbors if he did not relinquish the electronic equipment. The FBI stated they did not find any child pornography on the computer on that date so there was no reason for the threat violating Petitioner's Fourth Constitutional right and ***18 USC §872 - Extortion by officers or employees of the United States***

8. There was no Arrest Warrant when Petitioner was arrested on March 6, 2015. No crime was being committed on that date. Petitioner was asleep in his bed. The Petitioner pled not guilty. The Arrest Warrant was backdated to March 5, 2015 and filed on May 11, 2015, 66 days after Petitioner's arrest violating Petitioner's **Fourth Constitutional** right and ***18 USC §1519 - Obstruction of Justice - Destruction, alteration, or falsification of records in Federal investigations.***

9. Petitioner, a 20-year old virgin, was never previously in trouble with the law but was held in pre-trial detention without bond for 122 days rendering Petitioner unable to prepare a proper defense and rendering Petitioner guilty without trial violating Petitioner's **Sixth Constitutional Speedy Trial** right and **The Speedy Trial Act of 1974.**

10. The illegally searched and seized electronic equipment was used at trial violating the **Fruit of the Poisonous Tree Doctrine,** Petitioner's **Fourth Constitutional** right and ***Mapp vs. Ohio, 347 US 643*** **(1961).**

11. The Petitioner was called to the stand to testify against himself violating Petitioner's **Fifth Constitutional** right.

12. The three (3) charged victims, *frosty2499, jacksoncook10 and, masonlikescake*, never testified during trial. Petitioner was not allowed to confront them violating Petitioner's **Sixth Constitutional Confrontation Clause, Fifth Constitutional Due Process** right and ***Hemphill vs. New York,*** **595 US 140 (2022).**

13. The three (3) charged victims, *frosty2499, jacksoncook10 and, masonlikescake* were listed in the Kik evidence. Petitioner's name was not on any of the Kik evidence rendering the evidence unfairly prejudicial violating Petitioner's **Fifth Constitutional Due Process right** and ***Andrew vs. White,*** **604 US 86 (2025).**

14. The GigaTribe evidence did not list the three (3) charged victims, *frosty2499, jacksoncook10 and, masonlikescake*, and was introduced to the jury for prejudicial reasons violating Petitioner's **Fifth Constitutional Due Process** right and ***Andrew vs. White,*** **604 US 86 (2025).**

15. Spreadsheet chat conversations for ***masonlikescake*** were **falsely *created*** by FBI agent Starman from metadata and strings of numbers received from Kik Interactive violating ***18 USC §1519 - Obstruction of Justice - Destruction, alteration, or falsification of records in Federal investigations.***

16. The prosecution failed to alert the jury to the exculpatory evidence wherein child pornography was pushed onto Petitioner's computer by someone name SDefennder, and Karucem. Failing to alert the jury to this exculpatory evidence violated **Petitioner's Fifth Constitutional Due Process** right and ***Brady v. Maryland,*** **373 U.S. 83 (1963).**

17. The arbitrary list of 442 individuals used at sentencing of which 429 were listed as unknown was not Bate Stamped, not produced at trial, none of the 442 individuals testified at trial none of the 442 individuals testified during sentencing rendering the entire list unfairly prejudicial violating Petitioner's **Fifth Constitutional Due Process** right and ***Andrew vs. White,*** **604 US 86 (2025).**

18. Sentencing a 20-year old virgin who had never been in trouble with the law to 50 years in prison based on a list of 442 arbitrary individuals when there were three (3) charged victims, none of whom testified during trial, none of whom testified during sentencing, using evidence that had nothing to do with Petitioner as his name was not on it, using evidence that was presented to the jury only for prejudicial reasons, must be considered cruel and unusual punishment and a violation of Petitioner's **Eighth Constitutional** right.

CONCLUSION

Petitioner did not produce child pornography, did not distribute child pornography, did not intentionally receive child pornography and did not intentionally possess child pornography. Child pornography was pushed onto Petitioner by SDefender and Karucem, both of whom were not charged victims and who Petitioner believes were both adults.

The two (2) FBI agents did not have a Search Warrant when they illegally searched Petitioner's home and electronic equipment with a Cellebrite device, violating Petitioner's Fourth Constitutional right and *18 USC §2236 – Searches without a warrant.*

When Petitioner asked for a Search Warrant the two (2) FBI agents threatened him with returning with SWAT, breaking down his door and embarrassing him in front of his neighbors if he did not relinquish the electronic equipment. The FBI stated they did not find any child pornography on the computer on that date so there was no reason for the threat violating Petitioner's Fourth Constitutional right and *18 USC §872 - Extortion by officers or employees of the United States*

FBI agent Schwartzenberger promised Petitioner she was not going to arrest him if he confessed rendering any confession inadmissible violating Petitioner's Fifth Constitutional right against self-incrimination, *United States vs. Lall*, 607 F.3d 1277, 1284 (11th Cir. 2010) and *Miranda v. Arizona*, 384 US 436 (1966).

There was no Arrest Warrant when Petitioner was arrested on March 6, 2015. Petitioner pled not guilty. The Arrest Warrant was backdated to March 5, 2015 and filed 66 days after Petitioner's arrest on May 11, 2015 violating Petitioner's Fourth Constitutional right and *18 USC §1519 - Obstruction of Justice - Destruction, alteration, or falsification of records in Federal investigations.*

Petitioner, a 20-year old virgin, was never previously in trouble with the law but was held in pre-trial detention without bond for 122 days rendering Petitioner guilty without a trial violating Petitioner's Fifth Constitutional right and the *Speedy Trial Act of 1974.*

Petitioner was called to the stand to testify against himself violating Petitioner's Fifth Constitutional right.

The three (3) charged victims, frosty2499, jacksoncook10, masonlikescake, never testified during trial. Petitioner was not allowed to confront the three (3) charged victims violating Petitioner's Sixth Constitutional Confrontation Clause, Fifth Constitutional Due Process right and *Hemphill vs. New York,* 595 US 140 (2022).

Petitioner's name was not on any of the Kik evidence violating Petitioner's Fifth Constitutional Due Process right, *Brady v. Maryland*, 373 US 83 (1963) and *Andrew vs. White*, 604 US 86 (2025).

The GigaTribe evidence did not list the three (3) charged victims, *frosty2499, jacksoncook10, nor masonlikescake*, and was introduced to the jury for prejudicial reasons violating Petitioner's Fifth Constitutional Due Process right and *Andrew vs. White*, 604 US 86 (2025).

Spreadsheets for *masonlikescake* were **falsely *created*** by FBI agent Starman from metadata and strings of numbers received from Kik Interactive violating Petitioner's Fifth Constitutional Due Process right and *18 USC §1519 - Obstruction of Justice - Destruction, alteration, or falsification of records in Federal investigations*

The illegally searched and seized electronic equipment was used at trial violating Petitioner's Fourth Constitutional right, *Fruit from the Poisonous Tree Doctrine* and *Mapp vs. Ohio, 347 US 643* (1961).

The prosecution failed to alert the jury to the exculpatory evidence wherein child pornography was pushed onto Petitioner's computer by someone name SDefennder, who was not a charged victim, when Petitioner stated *"I don't know how I am downloading your stuff. I never even clicked on anything."* This violated Petitioner's Fifth Constitutional Due Process right and *Brady v. Maryland*, 373 U.S. 83 (1963).

The prosecution failed to alert the jury to the exculpatory evidence wherein child pornography was pushed on to Petitioner's computer by someone named Karucem, who was not a charged victim, when Petitioner stated: *"I think its bad and they should get punished."* Failing to alert the jury to this exculpatory evidence violated Petitioner's Fifth Constitutional Due Process right and *Brady v. Maryland*, 373 U.S. 83 (1963).

The arbitrary list of 442 individuals of which 429 were listed as unknown produced at sentencing was not Bate Stamped, not produced at trial, none of the 442 individuals testified at trial nor testified during sentencing rendering the entire list unfairly prejudicial violating Petitioner's Fifth Constitutional Due Process right and *Andrew vs. White*, 604 US 86 (2025).

The willful violation of multiple Constitutional rights, Federal Statutes, and case law by the prosecution made the entire judicial proceeding unfairly prejudicial.

Petitioner, PATRICK J. KILLEN, JR. respectfully requests this Honorable Court VACATE the conviction based on the egregious multitude of Constitutional violations, Federal Statute violations, case law violations, and more specifically reasons why the **indictment should be dismissed:**

Andrew vs. White, 604 US 86 (2025), Erroneous admission of irrelevant and unduly prejudicial evidence at the trial stage and introduction of prejudicial evidence at the sentencing phases "violated the Due Process Clause" rendering a criminal trial fundamentally unfair.

Glossip vs Oklahoma, 604 U.S. ____ (2025), *Pope v. Fed. Express Corp.* (974 F.2d 982, 8th Cir. 1992), and *Brady vs. Maryland,* 373 U.S. 83 (1963) When the prosecution uses contents of falsified and forged documents that were "created" by the FBI in an attempt to build a case around a coerced confession.

The Speedy Trial Act of 1974, When a Defendant is held in pretrial detention for 122 days when states an Indictment must be filed within 30 days and a Defendant must be tried within 70 days from original indictment and if not, the indictment should be dismissed.

Brady vs. Maryland, 373 U.S. 83 (1963), There was insufficient evidence and the prosecution failed to meet the burden of proof beyond a reasonable doubt when the Kik chat evidence presented did not include Petitioner's name.

Brady vs. Maryland, 373 U.S. 83 (1963), There was insufficient evidence and the prosecution failed to meet the burden of proof beyond a reasonable doubt when none of the charged victims, *frosty2499, jacksoncook10, masonlikescake,* were in the GigaTribe chat evidence, and were shown to the jury for purely prejudicial reasons.

Fourth Constitutional violations occurred when the FBI violated the Petitioner's rights during the illegal search and seizure, threatened Petitioner, and then arrested Petitioner without an arrest warrant, rendering the evidence inadmissible. *Mapp vs. Ohio,* 347 US 643 (1961), see, also, *Katz vs. United States,* 389 U.S. 347 (1967)

United States vs. Lall, 607 F.3d 1277, 1284 (11th Cir. 2010) when Petitioner was interrogated by FBI without counsel and promised by FBI he was not going to be arrested coercing a confession

Fifth Constitutional violations occurred when the Petitioner was called to the stand to testify against himself.

Sixth Constitutional violations occurred when Petitioner was not allowed to confront the witnesses against him. See, also, *Hemphill vs. New York,* 595 US 140 (2022)

Pope v. Fed. Express Corp., 974 F.2d 982, 8th Cir. (1992) The prosecution knowingly obtained a conviction using false evidence when Petitioner's name was not on the Kik chat evidence, when the GigaTribe chat evidence was shown to the jury for purely prejudicial reasons and chats for *masonlikescake* were created.

Eighth Constitutional violations occurred when Petitioner, a 20-year old virgin who had never been in trouble with the law was sentenced to 139 years in prison and then 50 years in prison based on a list of 442 arbitrary individuals when there were three (3) charged victims, none of whom testified during trial, none of whom testified during sentencing, using evidence that had nothing to do with Petitioner as his name was not on it, using evidence that was presented to the jury only for prejudicial reasons, using evidence that was illegally seized, must be considered cruel and unusual punishment.

Based on the above facts, evidence, and violations of Constitutional Provisions, case law and Federal Statutes, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: November 14, 2025