

25-7300 ORIGINAL

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY SEAN COOGLE,
Petitioner,

FILED
MAR 25 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of
Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the statutory gatekeeping function assigned to the courts of appeals under 28 U.S.C. § 2244(b) is satisfied when the court issues a rubber-stamp denial that does not address any of the criteria Congress requires for authorizing a successive habeas petition.
2. Whether, after Counterman v. Colorado, the First Amendment requires the Government to prove that a defendant charged under 18 U.S.C. § 2422(b) had a subjective intent to persuade, induce, entice, or coerce a minor to engage in unlawful sexual activity, rather than allowing conviction under an objective “reasonable person” standard.
3. Whether due process permits a § 2422(b) conviction based on ambiguous online speech that does not clearly establish either the defendant’s subjective intent or a violation of the elements needed to convict.

LIST OF PARTIES TO THE PROCEEDING

Petitioner, Timothy Sean Coogle, an individual.

Respondent, United States of America.

LIST OF ALL PROCEEDINGS

Timothy Sean Coogle v. United States (2:17-cr-167, District Court S.D.W.V., Docket # 85, 2255 motion denied. Judgment entered 1/13/2021).

Timothy Sean Coogle v. United States (2:17-cr-167, District Court S.D.W.V., Docket # 91, Motion for certificate of appealability denied. Judgment entered 3/2/2021).

Timothy Sean Coogle v. United States (21-1031, Fourth Circuit Court of Appeals, Docket #15. Mandamus petition denied requesting court order district court to respond to 2255. Petition denied 3/29/2021. Petition entered 1/8/2021 and 2255 denied on 1/13/2021).

Timothy Sean Coogle v. United States (21-6478, Fourth Circuit Court of Appeals, Docket # 22. Petition for rehearing en banc on 2255 denial. Denied petition on 4/18/2023).

Timothy Sean Coogle v. United States (2:17-cr-167, District Court S.D.W.V., Docket # 115, Motion to return property 41(g) denied. Judgment entered 6/23/2023).

Timothy Sean Coogle v. United States (22-7620, United States Supreme Court, Docket # 4, Writ of certiorari denied 6/26/2023).

Timothy Sean Coogle v. United States (24-108, Fourth Circuit Court of Appeals, Docket # 5. Denied 2244 motion on 2/8/2024).

Timothy Sean Coogle v. United States (2:17-cr-167, District Court S.D.W.V., Docket # 143, Motion to recuse denied. Judgment entered 6/24/2024).

Timothy Sean Coogle v. United States (2:17-cr-167, District Court S.D.W.V., Docket # 154, Writ of Audita Querela denied. Judgment entered 12/3/2024).

Timothy Sean Coogle v. United States (2:17-cr-167, District Court S.D.W.V., Docket # 158, Motion for reconsideration denied. Judgment entered 12/27/2024).

Timothy Sean Coogle v. United States (2:17-cr-167, District Court S.D.W.V., Docket # 159, Certificate of appealability denied. Judgment entered 12/27/2024).

Timothy Sean Coogle v. United States (25-6009, Fourth Circuit Court of Appeals, Docket #10. COA on audita querela motion denied 5/20/2025.

Timothy Sean Coogle v. United States (25-6009, Fourth Circuit Court of Appeals, Docket #13. Petition for rehearing en banc denied on 8/26/2025.

Timothy Sean Coogle v. United States (2:17-cr-167, District Court S.D.W.V., Docket # 186, Request to vacate or hold evidentiary hearing after Brady motion denied. Judgment entered 11/12/2025).

Timothy Sean Coogle v. United States (2:17-cr-167, District Court S.D.W.V., Docket # 188, Rule 60(b)(6) motion denied. Judgment entered 12/29/2025).

Timothy Sean Coogle v. United States (26-109, Fourth Circuit Court of Appeals, Docket #4. Denied 2244 motion. Judgment entered 2/6/2026

Timothy Sean Coogle v. United States (26-109, Fourth Circuit Court of Appeals, Docket # 6. Petition for rehearing and rehearing en banc denied on 2/23/2026.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Timothy Sean Coogle (hereinafter Defendant) respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The district court's judgment on the Rule 60(b)(6) is seen here in Pet. App. 3a. The decision of the United States Court of Appeals for the Fourth Circuit with request to file second or successive 2255 is produced here in Pet. App. 2a. The decision of the United States Court of Appeals for the Fourth Circuit petition for rehearing and rehearing en banc is seen here in Pet. App. 1a.

JURISDICTION

The Fourth Circuit entered judgment on February 6, 2026. See Pet. App. 2a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

Prior proceedings –

Petitioner was arrested on October 4, 2017, in North Carolina charged with 18 U.S.C. § 2422(b). Just after his incarceration, Petitioner wrote a letter to the Court in the Southern District of West Virginia requesting help on filing a § 2255 with some arguments presented. The letter was entered as a letter-form-motion § 2255 on September 7, 2018. (Criminal Case # 2:17-cr-00167, Docket No. 42). Petitioner wasn't fully prepared to enter a § 2255 and requested counsel but continued to amend the motion since it was entered on the docket. Petitioner was not made aware of the problems one may run into by filing other motions after a § 2255 is entered. *Castro v. United States*, 540 U.S. 375 (2003) said “[T]he court cannot... recharacterize a pro se litigant's motion as a request for relief under § 2255 unless the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law's 'second or successive' restrictions, and provides the litigant with an opportunity to withdraw or amend the filing.”

On February 11, 2020, the proposed findings and recommendations (PF&R) were entered by magistrate judge Cheryl A. Eifert dismissing the § 2255 with prejudice and denying the request for counsel (Docket No. 67). Petitioner filed objections to the PF&R and requested an evidentiary hearing docketed on February 27, 2020 (Docket No. 70 and 71). On January 13, 2021, sentencing judge John T. Copenhaver, Jr. overruled the objections and denied the request for counsel, request for an evidentiary

hearing and dismissed the case from the docket (Docket No. 85). Since the original § 2255, Petitioner has not received much review on any other post-conviction motion.

Due to ignorance of the law, ineffective assistance of counsel, threats of more time and being mentally drained, Petitioner plead guilty in Court and much of the Court's denials are based on the Rule 11 plea colloquy. Petitioner's case is a case involving online communication and all his arguments have been related to the evidence, communication, in his case. The Fourth Circuit Court of Appeals has repeatedly rubber-stamped any request for further review.

Other Motions-

Petitioner was released from federal incarceration in 2024 and is now serving 25-years of Supervised Release. Prior to his guilty plea and throughout his incarceration, Petitioner has tried to get communication between himself and the undercover agent posing as a minor who is a family friend. Standard recovery requests were entered prior to a guilty plea. The Government produced only selective excerpts of the communications, omitting material portions necessary to understand their full context. Petitioner's counsel told him that the Government had what they needed to prove guilt and that they did not need all the communication requested. The Government added a Freedom of Information (FOIA) and Privacy Act waiver to the guilty plea stating that Petitioner could not receive evidence in his case. They also added an abandonment of property waiver stating they would keep Petitioner's phone and destroy it. Petitioner's conviction comes from online communication. During the § 2255 process, Petitioner wrote to the US Attorney overseeing his case and requested all the communication. Petitioner also filed FOIA requests to retrieve the communication. See EXHIBIT 1. This

is just some of the work Petitioner put in when trying to get communication. On June 15, 2023 Petitioner filed a Rule 41(g) motion to return property to retrieve the communication off his phone (Docket No. 114). Due to the plea agreement, that motion was denied.

Under *Brady v. Maryland*, 373 U.S. 83 (1963) on July 3, 2025, Petitioner entered a *Brady* motion requesting the Court to order the Government to produce all the communication that has been suppressed and never provided to the courts (Docket No. 171). The Court ordered the Government to respond with the request. The Government stated that Petitioner wasn't entitled to that evidence but produced some of the communication in their response (Docket No. 173). This communication was much more than produced earlier but still has communication missing and gaps in the messages. *Old Chief v. United States*, 519 U.S. 172, 189 (1997) "People who hear a story interrupted by gaps of abstraction may be puzzled at the missing chapters."

Once Petitioner received the communication, on October 9, 2025 he filed a Rule 60(b)(6) motion regarding the new evidence presented and arguments based on the subjective intent and the Supreme Court's recent decision in *Counterman v. Colorado*, 600 U.S. 66 (2023) (docket no. 185). The 60(b)(6) motion and request for an evidentiary hearing were denied with the Court stating that the motion "...is simply a veiled attempt to file a successive petition under 28 U.S.C. § 2255 without seeking prior approval of the United States Court of Appeals for the Fourth Circuit." See Pet. App. 3a.

From there, Petitioner entered a motion for authorization to file a successive application with the Fourth Circuit Court of Appeals, case no 26-109 docketed January 15, 2026 (docket no. 2). The appeals court denied this motion on February 6, 2026

(docket no. 4). The response from the appeals court merely stated, "The court denies the motion." See Pet. App. 2a. Petitioner promptly entered a petition for rehearing and petition for rehearing en banc placed on the docket February 23, 2026 (docket no. 5). Not seeing the petition on the docket after seven days of mailing it, Petitioner phoned the Clerk's office on February 23, 2026 at around noon. The office stated that they had not received it yet but said their mail runs at 3:30 pm and it may be there that afternoon. The Clerk received the petition at 4:12 pm that day and at 4:13 pm it was denied (docket no. 6). The petition was denied as barred by statute and Local Rule 22(d). See Pet. App 1a. *Frazier v. Heebe*, 482 U.S. 641 (1987) stated "However, this Court may exercise its inherent supervisory power to ensure that local rules are consistent with principles of right and justice. @645-646. By denying motions with one line, using local rules and not addressing all that has been presented, this undermines fairness.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari because the court of appeals failed to perform the mandatory gatekeeping analysis required by 28 U.S.C. § 2244(b).

Under § 2244(b) Congress didn't leave the gatekeeping role to judicial discretion. It spelled out exact statutory prerequisites that the court of appeals must evaluate before authorizing a second or successive petition. Newly discovered evidence (§ 2255(h)(1)) and new constitutional rule § 2255(h)(2) are the two gateways a defendant must meet when requesting authorization to file a second or successive § 2255. The Fourth Circuit points out that for a defendant to receive authorization, a movant need only "make a prima facie showing that his claims satisfy the § 2255(h)

gatekeeping test"—or, in other words, that his claim satisfies either § 2255(h)(1) or (2). *In re Graham*, 61 F.4th 433, 442 (4th Cir. 2023). Petitioner has made this prima facie showing on both gateways.

Noted on the docket, Petitioner and his ineffective lawyer requested the evidence under a standard discovery request. The case involves online communication and all that was presented was fragments of the messages typed in the pre-plea court proceedings. As previously stated in this petition, Petitioner has gone above and beyond trying to get complete communication, only to be ignored or denied throughout the pre-conviction and post-conviction process. Petitioner's pre-sentence report (PSR) was never reviewed by him prior to being finalized by the probation officer. A violation of Rule 32(e)(2). When Petitioner's counsel brought the PSR to him, there were many omitted messages, altered communications and numerous misstatements in the report. The report was finalized by the probation officer and counsel told Petitioner he could make changes at sentencing. Petitioner prepared a list of corrections, mainly due to the missing, misstated and altered messages. At sentencing, the Court asked Petitioner if the PSR was correct. He responded that it was for the most part, but he wanted to address the corrections. The Court responded with an emphatic "For the most part won't get it." See EXHIBIT 2. At this point the Court and counsel were upset, so Petitioner gave up on making all corrections and proceeded with sentencing.

Once some of the communication was presented in the *Brady* motion, it was clear that there was distasteful and repugnant communication between Petitioner and the undercover agent. Even with the missing communication, when reviewing what the Government chose to present with the newly discovered evidence in their response to

the **Brady** motion, it's clear that no reasonable factfinder would have found Petitioner guilty. The Government had this evidence prior to the guilty plea but failed to present it. The evidence was favorable to Petitioner and is intrinsic to the case. Petitioner attempted to get this communication prior to his guilty plea and has attempted to retrieve this for over seven years. This evidence would have changed the outcome of the complete case. It would have helped Petitioner better prepare for a decision before pleading guilty. The arguments and facts presented in the § 2244(b) motion clearly met what is required under § 2255(h)(1) but were never addressed by the Fourth Circuit.

When reviewing § 2255(h)(2), the new constitutional rule this Court decided on in **Counterman** was that when speech is part of a criminal case, the Government must prove a subjective mental state, not just that a reasonable person would view the speech as a threat. It is not a product of the government's narrative stitching. **Counterman** was a true threat case, but in 18 U.S.C. § 2422(b), this case supports an argument that prosecutors must prove the defendant knowingly or recklessly intended to persuade, induce, entice or coerce a minor into engaging in sexual activity. In Petitioner's case, the lower courts are merely interpreting the communication as illegal. Communications must be viewed in full context to show intent instead of relying on isolated, fragmented and distorted communication. You must look at the entire conversation, the flow, the tone, the back-and-forth, the clarifications, the hesitations, and the surrounding circumstances. If the Government only presents fragments, those fragments may misrepresent what the defendant meant. ("An act does not make one guilty, unless the mind be guilty."), 1 Edward Coke, *Institutes of the Laws of England* § 3 (1644).

In *Counterman*, this Court did not apply its holding to only true threat cases. It mentioned the Constitution requiring a subjective mental state whenever the Government criminalizes speech. The case strengthens the argument about intent and state of mind when communication is the core evidence. To deny that protection in enticement cases is to treat identical constitutional risks differently for no principled reason. The totality of the circumstances must be reviewed. The conviction shouldn't be based on a bad act, cherry-picked excerpts or a distorted narrative. The totality standard has to apply so everything should be looked at. It's essential to see everything. Even going through what the Government has presented, line by line, it doesn't show Petitioner was trying to entice, persuade, induce or coerce a minor into sexual activity. The Fourth Circuit has repeatedly said in online enticement cases, "the very nature of the underlying offense — persuading, inducing or enticing engagement in unlawful sexual activity — necessarily contemplates oral or written communications as the principal if not the exclusive means of committing the offense...." *United States v. Engle*, 676 F. 3d 405 - Court of Appeals, 4th Circuit 2012, citing *United States v. Rothenberg*, 610 F.3d 621, 627 (11th Cir.2010). The Fourth Circuit went on to say; "an individual evaluation by the fact finder of the defendant's intent as disclosed by his words or speech is necessary in [almost] every prosecution under § 2422(b)." *Engle @ 423*. When reviewing the statement of facts See EXHIBIT 3, it mentions the surrounding circumstances in this case. One year prior to communication with the undercover agent, the Government showed communication with Petitioner and A.M. and it shows no odd or wrong actions with normal communication. Petitioner did not initiate the inappropriate

conversations, he did not arrange a rendezvous to have sex, he started the conversation in a normal tone and when it did get out of line, Petitioner tried to get out of the conversation. Petitioner changed the subject back to sports numerous times and when the undercover agent tried to get Petitioner to come meet her in West Virginia, he declined and never addressed that topic. Petitioner did not offer gifts or provide money to try and persuade or entice a minor into sex. Petitioner ended the conversation. His acts were way out of character and distasteful, but there was no plan to act this way using his real name, sean_coogle, on social media. It was not a thought in his mind to try and commit this crime.

Counterman represents a substantive constitutional change and while subjective intent may be weighed in some § 2422(b) cases, no court required a subjective mens rea before **Counterman**. The change was unforeseeable and unavailable at the time of Petitioner's conviction. This is not procedural; it's substantive. It's clear from the communication that Petitioner acted recklessly but did not have the specific intent to engage in illegal sexual activity. While **Counterman v. Colorado** is directly related to "true threats" under the First Amendment, its principles of recklessness and perception can be applied to 18 U.S.C. § 2422(b) cases, where communication is at the heart of the crime. The ruling helps to clarify how courts should interpret the mental state required for criminal liability, particularly in cases where a defendant's communications might not have had the intent to coerce or entice but may have been inappropriate and repugnant.

In Petitioner's communications, nothing was instrumental to executing a crime because there was no concrete plan or arrangement. § 2422(b) involves adults

communicating with minors and courts treat these cases with heightened scrutiny and less tolerance for First Amendment defenses. Not every case is an episode of *To Catch a Predator* (NBC television series hosted by Chris Hanson , 2004-2007). Nothing changes the fact that there were inappropriate and repugnant conversations in this case. It was steered the wrong way once this agent got involved and human nature is weak. People can act differently online showing them as a different person than they truly are.

Understanding objective intent is when the courts are only reviewing what the objective inference is from the chats, not the mental state inquiry. In *United States v. Thomas*, 410 F.3d 1235 (10th Cir. 2005), the Tenth Circuit upheld its conviction based on the objective intent simply stating "We have reviewed the evidence in this case, particularly the transcripts of the YAHOO! messaging sessions and conclude that a reasonable jury had sufficient evidence to convict *Thomas* of both counts using the definitions set forth above." *Thomas* @1245. This is hallmark objective intent. The Court focused on the objective meanings of the chat. The Tenth Circuit treated the chat transcripts as the primary (almost exclusive) evidence of intent.

The Fourth Circuit sometimes mentions more than just chats when deciding on guilt in § 2422(b) cases. In *United States v. Engle*, 676 F. 3d 405 @420 - Court of Appeals, 4th Circuit 2012, the appeals court stated, The "mere intent to violate a federal criminal statute is not punishable as an attempt unless it is also accompanied by significant conduct." *United States v. Resendiz-Ponce*, 549 U.S. 102 (2007).

Therefore, in order to convict a defendant of attempt, the government must prove beyond a reasonable doubt, that (1) he had culpable intent to commit the crime and (2)

he took a substantial step towards completion of the crime that strongly corroborates that intent. *United States v. Neal*, 78 F.3d 901, 906 (4th Cir.1996). Culpable intent is a broader term, but similar to subjective intent. It is a blameworthy mental state, a criminally responsible purpose and a conscious objective to commit the prohibited act.

Counterman clears up that to establish that a statement is a "true threat" unprotected by the First Amendment, the government must prove that the defendant had some subjective understanding of the statements' threatening nature. Because § 2422(b) criminalizes speech acts-persuasion, inducement, coercion and enticement-the First Amendment requires, under *Counterman*, proof that the Petitioner subjectively understood his statements to violate the elements required to convict someone of the charge against him. Both involve speech as the actus rea, which is exactly where *Counterman* imposes a constitutional mens rea requirement.

Petitioner does not say the statute is ambiguous, but the speech evidence is ambiguous. It cannot constitutionally support criminal liability without subjective intent. Petitioner has been arguing and fighting his case since his incarceration. Using his kids college savings with him and his wife's retirement money, his wife paid \$35,000 to a state lawyer who claimed to have federal experience, to represent him. His lawyer promised an investigation and preparation in his case. He did no investigation, preparation or interviews in his case. See his contract EXHIBIT 4. See his list of work he provided during a fee dispute with the N.C. State Bar. See EXHIBIT 5. It shows no true work in Petitioner's case and it shows counsel scheduling a guilty plea with the Government before going over any guilty plea with Petitioner.

Petitioner feels he is not getting further review due to the charge against him, a sex offense charge. It may be due to the rule 11 plea colloquy. It's easy for someone to say they had no idea or plan to go online using his real name with a goal or plan of trying to get sex from a minor, but it's the truth, there was no intent. When reviewing the totality of the circumstances, previous history of his involvement around the minor for over two years and more than twenty times and her responses from the FBI interview where she spoke kindly about Petitioner, it should mean something. Petitioner acted out of character and in a way he never planned on acting. At sentencing, A.M.'s parents spoke kindly about Petitioner and the Court stated they seldom hear remarks as kind as those. This is because they know the real person Petitioner is. They have known him for years. Petitioner has lost everything he lived for due to this conviction, the sex-offender registry and the dark cloud and burden this brings to everyone around him. He wants to restore his relationship with his wife and children, but this conviction has made that impossible. His efforts to rebuild family ties with his 22-year-old triplets, his 17-year-old son, and his wife have been nearly impossible due to the collateral consequences that accompany this conviction. Out of sight, out of mind is a real thing. The Supreme Court is his last efforts at getting any help. It's not the punitive effects that Petitioner uses to get relief but asks this Court to see that by not receiving help from the lower courts it has produced devastating real-world consequences, underscoring the urgent need for this Court's intervention.

Conclusion

Petitioner respectfully requests this court grant the petition for writ of certiorari.