
In The
Supreme Court of the United States

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DOYLE RANDALL PAROLINE,

Petitioner,

v.

UNITED STATES, *et al.*,

Respondents.

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**On Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

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**BRIEF OF *AMICUS CURIAE* THE
NATIONAL ASSOCIATION TO PROTECT
CHILDREN SUPPORTING RESPONDENTS**

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QUESTION PRESENTED

What, if any, causal relationship or nexus between the defendant's conduct and the victim's harm or damages must the government or the victim establish in order to recover restitution under 18 U.S.C. 2259?

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INTEREST OF *AMICUS CURIAE*¹

The National Association to Protect Children (NAPC) is a national, non-profit pro-child, anti-crime membership association located in Knoxville, Tennessee. NAPC is founded on the belief that our first and most sacred obligation as parents, citizens, and members of the human species is the protection of children from harm. NAPC works with law enforcement agencies and prosecutors at the local, state and federal level to protect children. NAPC provides technical assistance, resources and analysis of crime victim laws. This case involves interests of crime victims who face a lifetime of exploitation from predators, because their images will circulate on the Internet forever and other children will be groomed with the same images for sexual exploitation.

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¹ No such counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission. The parties have filed blanket consent to the filing.

SUMMARY OF THE ARGUMENT

Victims of sexual abuse who know images exist of the abuse are in a unique category. Their victimization never ends because the evidence of the victimization lives on forever to fulfill the deviant sexual gratification of those that possess images of the sexual abuse². These possessors fuel a global demand for the sexual abuse and perpetual exploitation of children. Once the images reach the Internet they remain accessible to others forever which causes a lifetime of trauma to the victim. Whether the victim fears a stranger has seen the images or knowing the images will be used to groom other victims, both cause irreparable harm.

Prior to the Internet, those who exchanged images of child sexual abuse used to hide in the shadows. Now they have multiplied exponentially and are out of the shadows. They openly and freely download images off the Internet and create a demand that results in the sexual abuse of thousands of children. Law enforcement attempt to stay ahead of the problem but there are simply too many engaged in these crimes. With the inability of law enforcement to stop this global problem victims are left tormented for the rest of their lives. Simply downloading one image of child sexual abuse fuels the torment and each downloader should pay joint and several liability.

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² We use the term child pornography and sexual abuse images interchangeably in this brief. The images possessed by possessors are crime scene images of sexual abuse so it is more appropriate to refer to the images as sexual abuse images or child sexual abuse images.

ARGUMENT

I. VICTIMS OF CHILD PORNOGRAPHY DESERVE FULL RESTITUTION FOR HARMS CREATED BY THE DEMAND FOR THEIR IMAGES AND THE FACT THAT THEIR IMAGES ARE USED TO GROOM ADDITIONAL CHILDREN FOR ABUSE IN PERPETUITY.

In 2008, USA Today reported that law enforcement identified 624,932 unique computers trafficking in images of child sexual abuse. Wendy Koch, *Software Tracks Child Porn Traffickers Online*, USA Today (Apr. 15, 2008), http://usatoday30.usatoday.com/news/nation/2008-04-15-childporn-side_N.htm. There is no way to know the number of victims of child sexual abuse images around the world but we do know that the National Center for Missing and Exploited Children “NCMEC” has identified 62 million images of child sexual abuse following seizure by law enforcement. U.S. Sentencing Comm’n, *Report to the Congress: Federal Child Pornography* (2012) (statement of Michelle Collins, Vice President, Exploited Children Division and Assistant to the president of NCMEC. While many of the images are duplicates that traffic the Internet, law enforcement has identified over 4,000 individual victims and thousands more remain unidentified. *Id.* at 4. During a 2005 study, investigators were interviewed and determined of those arrested for possession of child sexual abuse images 83% had images of children between 6 and 12, 39% had images of 3 to 5 year old children and 19% had images of toddlers or infants younger than 3. Janis Wolak, David Finkelhor and Kimberly J. Mitchell, *Child Pornography Possessors Arrested in*

Internet-Related Crimes: Findings From the National Juvenile Online Victimization Study, at 4 (2005). The images are extremely graphic as 92% had images focusing on the genitals or explicit sexual activity, 80% had images of sexual penetration of a child and 21% had images “depicting violence such as bondage, rape, or torture. Most of these involved images of children who were gagged, bound, blindfolded, or otherwise enduring sadistic acts.” *Id.* at 5.

The Internet is truly the information revolution but it makes images of child sexual abuse readily available. It has expanded the market for possessors to obtain images of child sexual abuse and in turn that fuels greater demand for sexually abusive images of children. Prior to the Internet, images were traded face to face or through the mail. With the Internet there is a limitless audience one click away. This demand makes it more difficult for authorities to prevent the sexual exploitation and abuse. *See generally, United States v. Lewis*, 605 F.3d 395, 403 (6th Cir. 2010).

For most victims of crimes the harm is over following the act, but for children whose sexual abuse was recorded in images the sexual abuse is just the start of the crime. Victims, like Amy, spend the rest of their life carrying the fear of being recognized. Amy has attended therapy but her feelings are worse today because the crime has never gone away and she is forced to relive it on an almost daily basis. Amy indicated in her victim impact statement that it is “hard to describe what it feels like to know at any moment, anywhere, someone is looking at pictures of me as a little girl being abused by my uncle and is getting some kind of sick

enjoyment from it. It is like being abused over and over and over again.” This knowledge that her sexual abuse images will be used to sexually abuse other children compounds her fear and embarrassment. Because of the pictures, “[w]hat happened to me hasn't gone away. It will never go away” *United States v. Kennedy*, 643 F.3d 1251, 1255 (9th Cir. 2011).

Amy is not alone, other victims have expressed the same views. The anonymous female from the Vicky series also writes of how she fears walking down the street. She said I “am living everyday with the horrible knowledge that someone somewhere is watching the most terrifying moments of my life and taking grotesque pleasure.” Dennis Romboy, *Child Porn Victim Makes Gut-Wrenching Case for Restitution*, Deseret News, (Sept. 12, 2013), <http://www.deseretnews.com/article/865586308/Child-porn-victim-makes-gut-wrenching-case-for-restitution.html?pg=all>. She also feels that she is being raped all over again by those that have the evidence/images of her sexual exploitation.

However, the most heinous part of the continued abuse for the victims is to know the sexual abuse images may be used to groom future victims. Child sexual abuse images are used to groom new victims in a way to normalize the behavior. *Osborne v. Ohio*, 495 U.S. 103, 111 (1990). “I am horrified by the thought that other children will probably be abused because of my pictures. Will someone show my pictures to other kids . . . they tell them what to do? Will they see me and think it’s okay for them to do the same thing?” *Victim Impact Statement of Girl in Misty Series*, The Virginian-Pilot (Oct. 25, 2009),

<http://hamptonroads.com/2009/10/document-victim-impact-statement-girl-misty-series>.

Competent courts have determined that there is significant restitution owed to the victims, but how much should the possessors of child sexual abuse images pay? The producers of the child pornography are motivated by the demand of the possessors. Specifically, in Amy's case, her abuser sexually violated her to produce child pornography for an end user. Then those images were traded or sold over the internet to countless possessors. Many times, images and videos are used to gain access to exclusive groups that require fresh, new content for admittance.

For example, federal agents that took down the online child pornography ring known as 'Dreamboard' found that there was a four-tiered hierarchy of users culminating with "Super VIPs." Super VIPs were producers and distributors of child pornography who were considered to be the trusted, upper echelon members. These members were encouraged to produce highly offensive, degrading and torturous images of abused children. According to the Justice Department, "the international group prized and encouraged the creation of new images and videos of child sexual abuse – numerous Dreamboard members sexually abused children, produced images and videos of the abuse, and shared the images and videos with other members of Dreamboard."³ U.S. Dep't of Justice, *Attorney*

³ Equally disturbing were the rules of the website for the members. Among the rules (that which were printed in English, Russian, Japanese, and Spanish) were statements requiring that members "keep the girls under 13, in fact, I really need to see 12 or younger to know your [sic] a

General and DHS Secretary Announce largest U.S. Prosecution of International Criminal Network Organized to Sexually Exploit Children (Press Release, Aug. 11, 2011) ,<http://www.justice.gov/opa/pr/2011/August/11-ag-1001.html>. Thus, the demand for child pornography consistently and directly leads to victims' sexual abuse.

The behavior of those who engage in the production and possession of child sexual abuse images is what directly causes the emotional challenges for victims like Amy. Why should victims not receive restitution from every user in the stream of the exploitation? Why should any defendant not be held jointly and severally liable? The courts routinely hold that joint and several liability is the appropriate way for defendants to pay restitution. Thus, if the defendant wanted to seek contribution from other defendants, he or she could do so. We should not treat victims of child sexual exploitation any differently. The aggregate effect of the possessors and producers create the financial burdens associated with the restitution and should therefore pay that burden, not the victim. See, *United States v. Tzakis*, 736 F.2d 867 (2nd Cir. 1984).

Even if the harm from the abuse act subsides, the Internet has created a venue for the evidence of the

brother.” Furthermore, in a section of the website entitled ‘Super Hardcore,’ there were rules warning members to only upload the most heinous pictures and videos: “Its very young kids, getting fucked, and preteens in distress, and or crying ect... Getting hit hard on the ass, with a belt and so on . . I can’t believe some of you guys can’t work it out for yourselves? And ‘pretend’ bondage, ‘Pretend light whipping’ is not super hardcore. If the girl looks totall comfortable, she’s not in distress, it does NOT belong I this section :-)”

crime to live for the remainder of the child's life. Possessors travel the Internet in hopes of finding the evidence of child sexual abuse or people willing to share the images. They don't seek out the evidence and images to rescue the child but instead view the exploitation for their own deviant sexual gratification. The continued existence and distribution of the crime scene images causes continued harm to the victims. This creates a distinct new harm that haunts the victim for the rest of their lives. *See generally, Osborne* at 111; *New York v. Ferber*, 458 U.S. 747, 759 (1982).

II. POSSESSORS AND DISTRIBUTORS OF CHILD ABUSE IMAGES REQUEST ACTUAL RAPE OF CHILDREN FUELED BY A GLOBAL DEMAND FOR THE SEXUAL ABUSE OF CHILDREN THAT RESULTS IN IMAGES OF THE ABUSE REMAINING ON THE INTERNET FOREVER.

One only needs to read the Dreamboard indictment to get an understanding of how broad this problem is internationally. Dreamboard was an Internet-based bulletin board that advertised child pornography. All members were encouraged to post images so the other members could have vast collections. The group contained different levels of membership. In order to increase your ability to access the site the member needed to "post more advertisements for child pornography, post advertisements for child pornography the member had produced, or post advertisements for child pornography that no other member possessed."

Superceding Indictment at 5-6, U.S. v. Barton, No. 5:11CR00062, (W.D.La. June 15, 2011). The Dreamboard indictment was the result of ICE Homeland Security Investigations' Operation Delego. 72 were arrested for their participation in the international criminal network. U.S. Dep't of Justice, *Attorney General and DHS Secretary Announce largest U.S. Prosecution of International Criminal Network Organized to Sexually Exploit Children* (Press Release, Aug. 3, 2011), <http://www.justice.gov/opa/pr/2011/August/11-ag-1001.html>.

The Dreamboard indictment also showed the sophistication of possessors of child sexual abuse images on the Internet. It was difficult to track down many of the suspects because they did not use their real names. Instead they used aliases or screen names and encrypted the evidence and images of sexual exploitation. The members actually accessed the site using "proxy servers, which routed the Internet traffic through other computers." *Id.* One of the defendants, a police officer, accessed other's open wireless networks to avoid detection. Nate Morabito, *Former Kingsport Cop Used Neighbors, Churches, and Businesses to Access Child Porn*, Bristol Herald Courier (2012), http://m.tricities.com/news/article_66cb0a9b-e8eb-5c20-afcf-e26b75c9cc44.html?mode=jqm. This sophisticated stealth behavior disguised the user's identity and location. Dreamboard also encouraged members to encrypt files on their computer in the event officer's executed a search warrant on their computer.

Courts have recognized that "possessing these images and reviewing these images creates demand

– it fuels a cruel industry.” *United States v. Christy*, 888 F. Supp.2d 1107, 1164 (D.N.M. 2012) (citation omitted). As the trial judge in the Seventh Circuit reasoned in sentencing Corey Stinefast, “his insatiable demand for such materials likely contributed to the production of other images involving the sexual exploitation of children.” *United States v. Stinefast*, 724 F.3d 925, 933 (7th Cir. 2013). Other courts share similar views. A court in the Eighth Circuit noted that by “possessing, receiving, and distributing child pornography, defendants collectively create the demand that fuels the abusive images.” *United States v. Fast*, 709 F.3d 712, 725 (8th Cir. 2013) (citing *In re Amy Unknown*, 701 F.3d 749, 762 (5th Cir. 2012)). The D.C. Circuit Court of Appeals held, “merely possessing child pornography is not a victimless crime, it fuels the demand for creation and distribution of child pornography.” *United States v. Accardi*, 669 F.3d 340, 345 (D.C. Cir. 2012) (citing *United States v. Pugh*, 515 F.3d 915, 924 (9th Cir. 2008)).

Victims of child sexual exploitation are in a unique category. Most crimes end when the crime is over. Once an image of child sexual abuse is posted on the Internet it can remain there forever. For example, when you send an e-mail with an image attached the sender and the recipients have a copy. One of the recipients can also forward the file. Even if the files are deleted they remain on the digital media storage device. When you hit delete on your computer it simply makes the image unavailable to read but remains on your computer. A computer user with simple knowledge can access the deleted file.

Now imagine the image is posted on a website and not forwarded to others. Every one of the countless predators that view the image has the ability to download the file for their own deviant gratification. There is no way to know or find every image that is downloaded by a child pornographer. There are also websites that archive the Internet by making copies of the content of websites. *See generally, St. Luke's Cataract & Laser Inst., P.A. v. Sanderson*, 573 F.3d 1186 (11th Cir. 2009). These numerous methods to archive the images of child sexual abuse creates perpetual existence of the most tormented time of a child's life.

**III. LAW ENFORCEMENT AGENCIES
CONSTANTLY IMPROVE
TECHNOLOGY TO CATCH CHILD
PORNOGRAPHERS BUT ARE UNABLE
TO STOP THE SPREAD OF THE CHILD
ABUSE IMAGES ON THE GLOBAL
MARKET.**

Prior to the mainstream use of the Internet, child pornographers sent their child pornography in the mail or traveled with concealed packages of their material. The Internet created a global marketplace for those that exploit children. Federal courts only sentenced 90 child pornography offenders total in the combined stats of 1994 and 1995. U.S. Sentencing Comm'n, *Sex Offenses Against Children: Finding and Recommendations Regarding Federal Penalties* (1996). At the end of fiscal year 2012, the number of primary offenses for just possession of child pornography rose to 1,757. U.S. Sentencing Comm'n *Sourcebook of Federal Sentencing Statistics*, Table 17 (2012).

In the days of mailing child pornography or face to face exchanges “child pornography was difficult to find, risky to produce, expensive to duplicate and required secure and private storage.” Federal Sentencing Reporter, *Report to Congress: Federal Child Pornography Offenses*, Vol. 25. No. 5, (2013). The Internet now allows the immediate access to child sexual abuse images for anyone with a connection. Max Taylor & Ethel Quale, *Child Pornography: An Internet Crime*, 9 (2003). In 1997, the Census Bureau started asking whether someone in the house accessed the Internet. In 2011, 71.7% of the questioned households accessed the Internet compared to 18% in 1997. Thom File, *Computer and Internet Use in the United States*, (2013), <http://www.census.gov/prod/2013pubs/p20-569.pdf>. When comparing the rise of households with the Internet to the Federal prosecution, we see the Internet facilitated the increase of the global demand for child pornography.

In 1998, the first Internet Crimes Against Children Task Forces were founded to combat Internet predators. U.S. Dep’t of Justice, *The National Strategy for Child Exploitation Prevention And Interdiction: A Report to Congress* (2010).

Under the technological and investigative direction of the Internet Crimes Against Children Task Force and the Wyoming Attorney General, technology was created to identify computers trafficking in child sexual abuse images. The advanced mapping technology showed us the magnitude of this problem. In April 2008, Operation Fairplay identified approximately 624,000 computers possessing child sexual abuse images, just in the United States. *Challenges and Solutions for*

Protecting our Children from Violence and Exploitation in the 21st Century: Hearing Before the S. Comm. On the Judiciary Sub. Comm. On Crime and Drugs, 110th Cong., (2008) (statement of Flint Waters, Lead Agent, Wyoming Internet Crimes Against Children Task Force). The same officer testified to a Congressional Committee a year earlier that the impact on these predators is “catastrophic” as the scale of the problem “has caused the investigative and forensic infrastructure to be overwhelmed.” *Child Sex Crimes on the Internet: Hearing Before the H. Comm. On the Judiciary*, 109th Cong. (2007) (statement of Flint Waters, Special Agent, Wyoming Attorney General Division of Criminal Investigation). With over 624,000 computers possessing child sexual abuse images, law enforcement does not have the resources to go after each possessor.

Following Operation Fairplay, multiple other software systems were created and deployed to try to follow the traffic of those possessing child sexual abuse images. Officers needed to change the technology because offenders continue to conceal their activity in efforts to avoid being detected. The offenders “harness various technologies to evade law enforcement detection and to lesson the likelihood of successful prosecution if caught.” U.S. Sentencing Comm’n, *Report to the Congress: Federal Child Pornography Offenses*, at 56 (2012). Some may simply log onto a wireless network at a coffee shop or library to avoid detection, but the more savvy possessors may use encryption and remotely access other’s computers to download child sexual abuse images. There are still more tools that help possessors hide their identity. Online currencies and

pre-paid credit cards allow them to travel the Internet anonymously.

If the Internet did not create enough challenges for law enforcement, the increased use of smartphones with Internet connectivity further complicates the problem. Aaron Smith, *46% of American Adults are Smartphone Owners*, at 2 (2012), <http://pewinternet.org/~media/Files/Reprots/2012/Smartphone%20ownership%201012.pdf>. This technology allows those that seek images of child sexual abuse to access the images anywhere at anytime. The problem can best be summed up by Eric Diez, “in an ever-evolving technological world, government bureaucracy and legislatures tend to be reactive to, and thus, two steps behind, net-savvy child pornographers.” Eric R. Diez, “*One Click, You’re Guilty*”: *A Troubling Precedent for Internet Child Pornography and the Fourth Amendment*, 55 *Cath. U.L. Rev.* 759, 786 (2006). Law enforcement simply does not have the resources to stop this global problem.

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CONCLUSION

Courts agree possession of child sexual abuse images creates irreparable harm to victims. They also agree that the demand for the images fuels actual sexual abuse of children. Victims live with a lifetime of trauma because of the demand for their images. The demand is created by a market that is sophisticated and too large to stop. It is time for those possessing images of child sexual abuse to know that they will have to pay for the damage they create by their demand. Each and every person that seeks child sexual abuse images should jointly and severally pay for the harm their demand created.

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