NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

June 16, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

CANDACE R. JACKSON-AKIWUMI, *Circuit Judge*

No. 21-3225

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	Appeal from the United States District Court for the Western District of Wisconsin.
v.	No. 3:20-cr-00006-jdp-1
JAY A. LIESTMAN, *Defendant-Appellant.*	James D. Peterson, *Chief Judge*.

O R D E R

In case no. 21-3225, Defendant Jay A. Liestman pleaded guilty to violating 18 U.S.C. §§ 2252(a)(2)(A) and 2252A(a)(5)(B). The sentencing provisions corresponding to those offenses are 18 U.S.C. §§ 2252(b)(1) and 2252A(b)(2). Section 2252(b)(1) calls for an enhanced sentence for a person with "a prior conviction under the laws of any State *relating to* … the … possession … of child pornography[.]" (Emphasis added). The term "child pornography" is defined in a neighboring provision in the statute. See 18 U.S.C. § 2256(8). Liestman has a prior conviction under Wis. Stat. § 948.12(1m), a child pornography offense. On the one hand, that statute addresses more conduct and encompasses more illicit content

than its federal counterpart, but on the other hand, the federal statute uses the term "relating to," as noted above.

In light of that background, counsel are requested to file supplemental briefs addressing the following questions, in addition to any other points they wish to raise:

(1) Must the State law to which section 2252(b)(1) refers cover no more conduct than "possession of child pornography" and no more content that "child pornography" as that term is defined in 18 U.S.C. §§ 2252(b)(1), 2256(8), or does the prepositional phrase "relating to" signal that an exact match is not necessary? Counsel should take note of the fact that there is a split in the circuits on this question.

(2) Counsel should also address the question whether *United States v. Kaufmann*, 940 F.3d 377 (7th Cir. 2019), and its predecessor *United States v. Kraemer*, 933 F.3d 675 (7th Cir. 2019) properly applied the Supreme Court's decision in *Mellouli v. Lynch*, 575 U.S. 798 (2015) (rejecting a broad interpretation of the words "relating to" because of an applicable statutory definition), keeping in mind that *Kraemer* and *Kaufmann* concern different clauses of section 2252(b)(1).

(3) Finally, counsel should address the Supreme Court's decisions regarding the categorical approach, including most recently *Shular v. United States*, 140 S. Ct. 779 (2020).