No. 05-443

In the Supreme Court of the United States

MICHAEL GIORANGO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the evidence was sufficient to support petitioner's conviction under 18 U.S.C. 1952 which proscribes, *inter alia*, the use of interstate facilities to promote or facilitate unlawful prostitution activity, when it showed that petitioner telephoned a Miami prostitution house from Chicago to arrange for prostitution for others at a party in Miami and thereafter traveled to Miami for the party, offered prostitutes to his friends, and arranged for further prostitution encounters for his friends and business associates.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-2) is not published in the Federal Reporter but is reprinted in 137 Fed. Appx. 277. The pretrial order of the district court (Pet. App. 10-22) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 27, 2005. The petition for a writ of certiorari was filed on September 23, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on one count of using the facilities of interstate

commerce with the intent to promote a business involving prostitution, in violation of 18 U.S.C. 1952(a)(3) (Travel Act).[1] He was sentenced to three years of probation with six months of intermittent confinement. Pet. App. 4, 6-7. The court of appeals affirmed. *Id.* at 1-2.

1. Petitioner and twelve co-defendants were indicted for their roles in "the Circuit," a prostitution business "operating in major cities throughout the United States," including Chicago, New York, Los Angeles, and Miami. Pet. 4; Pet. App. 27. "There was a madam in each city and the prostitutes circulated from one city to the next," Pet. 4-5, to "provide a constant turnover in prostitutes available in each major city," Pet. App. 28.

Petitioner's co-defendant Judy Krueger was the madam who operated the Miami enterprise on the Circuit. Pet. 4. As such, she "directed prostitutes to travel to hotels, residences, condominiums and other locations in South Florida and in other states in the United States to perform sexual acts for money." Pet. 4-5; Pet. App. 29. Krueger also owned several condominiums in a Miami hotel where clients could meet with the prostitutes she employed. Pet. 4; Gov't C.A. Br. 3. If the prostitutes met with the client at the condominium, the client was charged $350 per hour; if they met elsewhere, the client was charged $400 per hour. Krueger received 40% of the fee, and the prostitutes received 60% of the fee and their tips, generally ranging between $50 and $200. Pet. 4; Gov't C.A. Br. 3.

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[1] The district court granted a judgment of acquittal at the close of the government's case on a second Travel Act count. Pet. 8.

2. The Federal Bureau of Investigation began an investigation into the Circuit and placed a wiretap on Krueger's phone in early 2002. During that time, several phone calls were placed from petitioner in Chicago, Illinois, to Krueger in Miami, Florida. Pet. App. 11-14.

Petitioner was a managing member of a limited liability company that owned a hotel in Miami Beach. Pet. 5-6; Gov't C.A. Br. 2-3. On January 22, 2002, petitioner telephoned Krueger from Chicago and told her that he was coming to Miami for three to four weeks and wanted to have a party at his hotel during Super Bowl weekend for some "high rollers." Pet. 6; Pet. App. 11-12. He asked Krueger whether she could supply prostitutes for the party and discussed which ladies would be appropriate. Pet. 6; Pet. App. 12.

Petitioner again spoke with Krueger on January 24, 29, 30, and 31 to finalize the details for the party which, he said, would be attended by "10-15 men and some women." Pet. App. 12. He confirmed the time with Krueger, asked that she "send as many prostitutes as she could to the party because that would make him look good," agreed to "about 4-7 prostitutes," discussed the specific women selected, and guaranteed that each prostitute would receive 1-2 hours' worth of fees, *i.e.*, $400 to $800, for the time spent at the party. Pet. 6; Pet. App. 12; Gov't C.A. Br. 5.

3. Petitioner traveled to Miami for the party, which was held on January 31, 2002. Pet. App. 12. During the party, Krueger received a phone call from one of the prostitutes who complained that she had only been given $50 for 30 minutes with one of the guests. Pet. 6, 8; Pet. App. 12. Krueger then talked to petitioner who agreed to pay the prostitute her $400 fee. Pet. 6; Pet. App. 12.

4. In February and March 2002, petitioner continued to contact Krueger to arrange for prostitutes for his friends. Pet. App. 12-14; Pet. 6. On February 3, 4, and 5, 2002, petitioner spoke with Krueger several times about "whether she could arrange a date for a friend." Pet. 6; Pet. App. 13. She did, and petitioner paid the prostitute after she met with his friend in a Miami hotel. Pet. 6. On March 15, 2002, he talked to Krueger about which prostitutes would be available when he and his "good friend" would be in town. Pet. App. 14.

Petitioner was not employed by Krueger, did not receive compensation from Krueger, and had no control over the women that Krueger hired. Gov't C.A. Br. 7. Krueger's business, however, relied on referrals because "there was no advertising or listing anywhere in telephone directories or on the internet," meaning that "a client had to know someone to refer them before they could get an appointment." *Ibid.*

5. Petitioner sought dismissal of the two counts against him, asserting that no reasonable jury could find him guilty of violations of the Travel Act, 18 U.S.C. 1952(a)(3), Pet. App. 10, because he was a "mere customer" of the illegal activity, Pet. 14. The district court granted judgment of acquittal as to one count because there was no evidence that petitioner followed through after the specified telephone call to promote or facilitate the unlawful activity requested. Pet. App. 21; Gov't C.A. Br. 1 n.1, 2. The district court allowed the other count to proceed to the jury because a reasonable jury could find a violation of the statute based on petitioner's work on the Super Bowl weekend party. Pet. App. 20, 55; Gov't C.A. Br. 2.

6. The jury was instructed that, in order to return a verdict of guilty, it needed to find that petitioner "was more than a mere customer of Krueger's prostitution ring and that he had promoted or facilitated her prostitution ring." Gov't C.A. Br. 9. The jury returned a guilty verdict. Pet. 8.

7. On appeal, petitioner argued that he was wrongly convicted of a Travel Act violation because he was nothing more than a "mere customer." The court of appeals rejected that claim, finding that "there was sufficient evidence for the jury to have found that [petitioner] promoted or facilitated Judy Krueger's prostitution enterprise." Pet. App. 1.

ARGUMENT

Petitioner contends (Pet. 9-18) that the Travel Act does not apply to his conduct because he was a mere customer of the prostitution ring. Contrary to that assertion, the jury found that petitioner was more than a mere customer, and there was sufficient evidence to support that conclusion. Petitioner's factbound disagreement with that conclusion does not warrant further review by this Court.

1. The Travel Act, 18 U.S.C. 1952(a)(3), provides that a person is guilty of an offense punishable by fine or imprisonment for not more than five years, or both, where the person "travels in interstate * * * commerce or uses * * * any facility in interstate * * * commerce, with intent to * * * promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform" such promotion, management, establishment, or carrying on, of the unlawful activity. The Act covers "unlawful activ-

ity" consisting of, *inter alia*, "prostitution offenses in violation of the laws of the State in which they are committed or of the United States." 18 U.S.C. 1952(b).

Petitioner used the facilities of interstate commerce to telephone Krueger and arrange for prostitutes for a party in Miami, traveled to Miami for the party, held the party, and continued to arrange and subsidize prostitutes for his friends and business partners. It is also undisputed that Krueger's prostitution ring was an enterprise engaged in unlawful activity under the Travel Act. Pet. App. 14. Petitioner thereby assisted in the promotion and carrying on of the unlawful prostitution ring.

Petitioner contends that his conduct does not fall within the Travel Act because he was a "mere customer" of the unlawful activity, and not an operator or manager of it. Pet. 12-13. Petitioner relies on this Court's decision in *Rewis* v. *United States*, 401 U.S. 808 (1971), where the Court concluded that the Travel Act did not apply to "mere customers" who traveled across state lines to make use of an unlawful gambling establishment because the Act "prohibits interstate travel with the intent to 'promote, manage, establish, carry on, or facilitate' certain kinds of illegal activity." *Id.* at 811. Therefore, "the ordinary meaning of this language suggests that the traveler's purpose must involve more than the desire to patronize the illegal activity." *Ibid.*

The Court also concluded that the mere fact that a local unlawful business was patronized by out-of-state customers was not generally sufficient to subject the owners of the business to the Travel Act because the Act was "aimed primarily at organized crime and, more specifically, at persons who reside in one State while operating or managing illegal activities located in an-

other." *Rewis*, 401 U.S. at 811. Nevertheless, the Court recognized, there may be "occasional situations" where the owner so encouraged interstate patronage that there would be a Travel Act violation. *Id.* at 814.

Petitioner effectively reads the *Rewis* decision as limiting Travel Act liability to operators and managers and as excluding customers who also promote and facilitate the enterprise in ways that go beyond mere patronage. Contrary to his assertion, *Rewis* did not preclude liability under the statute for persons who use interstate facilities with the intent to promote or facilitate the illegal activity, even though they may also be customers. See *Rewis*, 401 U.S. at 811. Instead, *Rewis* held that "mere customers," who do not have the "intent to 'promote, manage, establish, carry on, or facilitate'" the unlawful activity, do not violate the Act.

2. Petitioner contends (Pet. 7-8, 17) that he was nothing more than a "mere customer" because he was not paid for his efforts and because he had no control over the business decisions of Krueger. The jury found, however, that petitioner was more than a mere customer and that petitioner promoted or facilitated the prostitution ring. Gov't C.A. Br. 9. The record supports the jury's finding.

Petitioner facilitated Krueger's business by arranging prostitution encounters for his friends and business partners in Miami and by negotiating their terms with Krueger. He arranged to have prostitutes available for the men at his Super Bowl weekend party and traveled to Miami to follow through on the plan. He arranged subsequent encounters for friends and business associates, each time screening the prostitutes Krueger offered to ensure they would be acceptable. Pet. App. 11-14. Contrary to petitioner's claim (Pet. 16), that activ-

ity went beyond the role of a mere consumer of prostitution services who recommended clients to the business.

Petitioner was also a promoter of Krueger's business, which relied, at least in part, on promotion by individuals like petitioner because there was no other advertising for the business. On one occasion, petitioner arranged for the chosen prostitute to stop by his table at a restaurant so his friend would see the prostitute and agree to the encounter. Gov't C.A. Br. 5-6. On another occasion, petitioner connected his friend into a telephone call he was having with Krueger so the friend could hear the description of the prostitute being offered and agree to her services upon his arrival in Miami. *Id.* at 6.

In this way, petitioner's conduct is more akin to that of the defendant in *United States* v. *Chambers*, 382 F.2d 910 (6th Cir. 1967), a case that this Court cited approvingly in *Rewis*, 401 U.S. at 813, in discussing the interstate-travel requirements of the statute. In that case, the defendant was not paid by the interstate prostitution business, but testified that he went to the prostitution house "as a favor" to "tak[e] out the garbage, stok[e] the fire," and "answer[] the door and the telephone." *Id.* at 912-913. The defendant knew, though, that other defendants were transporting customers from Ohio to the house in Kentucky for unlawful prostitution. *Id.* at 912. The court of appeals, therefore, held that it was reasonable for the jury to have concluded that his actions were taken to promote the unlawful activity occurring across state lines. *Id.* at 913.[2]

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[2] The cases cited by petitioner (Pet. 14-15) involve defendants who managed or operated the illegal business. As petitioner acknowledges,

Likewise, petitioner was well aware that the prostitution ring was nationwide, and he worked with the ring in order to provide its services to others. In so doing, petitioner became more than a "mere customer" of the unlawful activity.

3. The Act explicitly applies to those who promote and facilitate illegal activity, and there is therefore no basis for contending (Pet. 10-14) that application of the Act to petitioner's conduct runs afoul of the rule of lenity or clear statement principles. Before the rule of lenity applies, there must be "a grievous ambiguity or uncertainty in the statute." *Muscarello* v. *United States*, 524 U.S. 125, 138-139 (1998) (internal quotation marks omitted) (quoting *Staples* v. *United States*, 511 U.S. 600, 619 n.17 (1994)). There is no such "grievous ambiguity" here because petitioner's conduct falls directly within the plain language of the statute, which proscribes the use of interstate facilities to promote and facilitate unlawful prostitution offenses.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 2005

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the "cases do not by themselves prove the Travel Act must be limited to owners and managers." Pet. 15.