No. _____

In The
Supreme Court of the United States

YAIRA T. COTTO-FLORES,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent,

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

PETITION FOR WRIT OF CERTIORARI

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Question Presented

The facts of this case are fully developed on appeal after a Trial before the District Court. Petitioner directly draws from the facts as stated by the First Circuit's Opinion. See Appendix 1.

One fateful day in March 2015, Yaira Taines Cotto-Flores, then a 26-year-old English teacher, drove a 14-year-old student to a motel in San Lorenzo, Puerto Rico and had sex with him. After an investigation, federal prosecutors charged Cotto in the United States District Court for the District of Puerto Rico with transporting a minor "in interstate or foreign commerce, or [as relevant here] in any commonwealth, territory or possession of the United States" with the intent to engage in criminal sexual activity — a federal crime under the Mann Act of 1910 (as amended) that carries a mandatory minimum sentence of ten years in prison. 18 U.S.C. § 2423(a). Cotto was tried, convicted, and sentenced to ten years in federal prison. Petitioner Cotto timely appealed and obtained a new trial on remand for violations to her rights under the Sixth Amendment of the United States Constitution. The First Circuit granted and denied in part her appeal. The part denied relates to her petition to dismiss for lack of jurisdiction to indict for conduct solely occurring within Puerto Rico. Cotto had her petition denied in rehearing for the same issue.

Nowhere in the United States can a defendant be charged with 18 U.S.C. § 2423(a), transportation of a minor across interstate lines with intent to engage in sexual behavior, for conduct that does not crosses interstate lines. § 2423(a) requires transportation of a minor with the intent to engage in sexual behavior through interstate lines for federal jurisdiction to exist.

In Puerto Rico, in stark contrast with the rest of the Union, the transportation of a minor solely within the island's jurisdiction is enough to satisfy the interstate nexus requirement and grant federal jurisdiction. That difference only happens within the commonwealths and the territories without any plausible reason. The District Court and successively the First Circuit denied petitioner's motion to dismiss because they interpreted that Congress, by adding the phrase "transports an individual who has not attained the age of 18 years in interstate or foreign commerce, ***or in any commonwealth***, territory or possession of the United States" to § 2423(a), made such conduct solely applicable within Puerto Rico without the need of an interstate nexus.

However, prior to Petitioner's appeal the First Circuit had already stricken a similar crime covering adult victims as inapplicable to conduct occurring solely within Puerto Rico. See United States v. Maldonado-Burgos, 844 F.3d 339, 349–50 (1st Cir. 2016) construing 18 U.S.C. § 2421(a). Petitioner was denied relief by

the First Circuit even whn her case was strikingly similar to Maldonado-Burgos creating a decision split in the Circuit in charge of solely interpreting federal issues arising from Puerto Rico.

The only question presented.

1. Did the First Circuit erred in the application of 18 U.S.C. § 2423(a) to conduct solely occurring within the confines of Puerto Rico given that such interpretation its inapplicable to intrastate activities in any other of the 50 states of the Nation and henceforth discriminatory to the American citizens of Puerto Rico.

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I. PETITION FOR WRIT OF CERTIORARI

Yaira Cotto-Flores petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

II. OPINIONS BELOW

The First Circuit's published opinion denying the petition to dismiss is reported at 970 F.3d 17 (1st Cir. 2020) and attached as Appendix 1. Petitioner requested rehearing *en banc* which was denied on September 9, 2020. See Appendix 3. The district court's initial order denying Petitioner's motion to dismiss for lack of jurisdiction is reported at 2016 U.S. Dist. LEXIS 139777 (DPR. 2016) and attached as Appendix 2. Plaintiff filed a second motion to dismiss after trial that was denied without opinion.

III. JURISDICTION

The First Circuit entered judgment on September 9, 2020. See Appendix 3 for rehearing denial of the First Circuit. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

IV. STATUTORY PROVISIONS INVOLVED

This case involves the interpretation and application of 18 U.S.C. § 2423(a) to conduct solely occurring within Puerto Rico. The application of the disputed section must be glanced through the lens of the analysis that if the "Act's framers

(the Mann Act), if aware of Puerto Rico's current [post-]constitutional status, would have intended it to be treated as a 'state' or a 'territory' under the Act."

Title 18 U.S.C. § 2423(a), is part of the Mann Act, also known as the White Slave Traffic Act, which states:

> A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not less than 10 years or for life.

The current standing of the First Circuit is that, in clear difference as to how 18 U.S.C. § 2423(a) is applied in all other states of the Nation, Congress intendent to treat Puerto Rico as a territory. The petitioner believes that under the Mann Act, Congress if aware of Puerto Rico's current post-constitutional status, would have intended it to be treated as a state. This Court's interpretation will nonetheless involve Congress's authority to legislate over Puerto Rico and the congressional promise to grant Puerto Rico state-like status.

V. STATEMENT OF THE CASE

A. Facts

The facts in this case are without much dispute as the issue on appeal is exclusively related to interpretation of the Law and of Congress's intent. As there is no need to rehash the facts, we draw them as narrated by the First Circuit on its Opinion. See Appendix 1.

Yaira Cotto started teaching at Escuela Manuel Torres Villafañe, a public school in San Lorenzo, Puerto Rico, in August 2015. Before long, other teachers started to notice that a 14-year-old male ninth grader — we'll call him "YMP" — wasn't finishing his schoolwork and would often skip class to spend time alone with Cotto. One day, a teacher walked by Cotto's classroom and saw her alone with YMP holding hands. As it turns out, that was the tip of the iceberg. By November, Cotto and YMP were messaging each other constantly through WhatsApp (the smartphone application). Cotto told YMP that she loved him, that "if you were older, I would already be by your side," and proposed that they have sex. In January, she planned how to do it without getting caught: "I prefer to go into that motel than out front in the car because it's not safe," she wrote. She told him she'd take steps to make sure she didn't get pregnant. She also bought him gifts — facial creams and an expensive watch for Valentine's day — and left love notes in his school bag. All the while, Cotto stressed the need to keep their relationship hidden. "I have left a lot for you,"

she messaged him, "and risk myself every day, to losing even my job." "We have to hide babe" (she wrote); "[i]f your mom makes a complaint, well, then the biggest scandal in the world explodes." On February 3, 2016, they went to a nearby motel and had sex for the first time.

A month later, on March 1, 2016, YMP told a school staff member that he needed to leave early to go to the barbershop and his grandmother's house. In reality, just after noon, he walked to the restaurant La Casa de Abuela (which, to be fair, translates to "Grandmother's House"), where he and Cotto had planned for her to pick him up. YMP testified that about five minutes after he got to the restaurant, Cotto arrived in her gray Kia Rio, YMP got into the passenger seat, and they drove to Motel Oriente. When they got there, Cotto drove into the carport and paid through a window. They went to a room on the second floor and had sex. Meanwhile, tipped off that something was up, the school social worker and a volunteer went to the barbershop and YMP's grandmother's house and learned that YMP hadn't been to either. Around three hours later, Cotto dropped off YMP on a road near the restaurant and he walked back to school, where the principal and YMP's mother were waiting for him. Initially, YMP told those adults and his friends that he hadn't been with Cotto that day. But later, YMP revealed that he had been and all hell broke loose.

After an investigation, federal prosecutors charged Cotto in the United States District Court for the District of Puerto Rico with transporting a minor "in interstate or foreign commerce, or [as relevant here] in any commonwealth, territory or possession of the United States" with the intent to engage in criminal sexual activity — a federal crime under the Mann Act of 1910 (as amended) that carries a mandatory minimum sentence of ten years in prison. 18 U.S.C. § 2423(a). Cotto was tried, convicted, and sentenced to ten years in federal prison.

The allegations against Ms. Cotto are limited to two short car rides: one from Casa de Abuela Restaurant to the Motel Oriente, and the second is the ride back, totaling approximately 2 miles each way within the municipality of San Lorenzo, Puerto Rico. There is no allegation that Ms. Cotto traveled with YMP in or among the several municipalities within the island, any other states, or on or off the island of Puerto Rico.

B. How the Jurisdictional Question Presented was Raised and Decided Below

a. District Court

Prior to Cotto's trial she sought to have the indictment dismissed on jurisdictional grounds before the district court. See Appendix 5. The district court denied said petition with an Opinion and Order based in Crespo v. United States, 151 F.2d 44 (1st Cir. 1945). See Appendix 2 for the district court's opinion and order. During trial and after the prosecution rested Petitioner moved for Judgment

of Acquittal and again requested dismissal of the case on the same jurisdictional grounds. See Appendix 6. The district court denied the petition. Petitioner was found guilty and sentenced to 10 years in prison. Petitioner immediately requested bail on appeal which was treated as an emergency by the First Circuit and granted.

b. Circuit Court of Appeals

Petitioner appealed on several grounds and the First Circuit remanded for new trial because the district court violated Cotto's Sixth Amendment right, U.S. Const. Amend. VI., to in-person confrontation under a misreading of Maryland v. Craig, 497 U.S. 836, 855–56 (1990). See Appendix 1 for the First Circuit's opinion. The case on remand is still pending.

Cotto, on appeal, raised that Congress had not intended to treat Puerto Rico differently than the States and that therefore the interstate jurisdictional element of transportation of a minor was necessary under the First Circuit's precedent of Córdova & Simopietri Insurance Agency, Inc. v. Chase Manhattan Bank N.A., 649 F.2d 36 (1st Cir. 1981) and United States v. Maldonado-Burgos, 844 F.3d 339, 349–50 (1st Cir. 2016) (construing 18 U.S.C. § 2421(a) and making it inapplicable to intrastate conduct). Cotto reasoned that transportation that occurred only within the Puerto Rico Commonwealth or territory could not be federally charged as it lacked the element of interstate transportation and that Congress had not intended to treat

Puerto Rico differently from the states if aware of Puerto Rico's current post-constitutional status.

The First Circuit denied Cotto's allegations that § 2423(a), like its counterpart covering adult victims (18 U.S.C. § 2421(a)), only applies to transportation in "interstate or foreign commerce" with respect to Puerto Rico. Cotto sustained her allegations based on United States v. Maldonado-Burgos, 844 F.3d 339, 349–50 (construing § 2421(a)), that § 2423(a) only applies to transportation in "interstate or foreign commerce" with respect to Puerto Rico (that is, to travel to or from the island); and since she never left Puerto Rico with the victim, the drive wasn't a federal crime. Cotto petition for rehearing *en banc* on that issue was denied.

The First Circuit reasoned that Congress could very well make such rules that only applied to Puerto Rico, something that Cotto does not disputes. What Cotto disputes is that the Cordova/Maldonado-Burgos analysis was not properly followed and that the result was discriminatory. When the Court is asked to construe another federal statute "to intervene more extensively into the local affairs of post-Constitutional Puerto Rico than into the local affairs of a state," Cordova, 649 F.2d at 42, we ask whether the "Act's framers, if aware of Puerto Rico's current [post-]constitutional status, would have intended it to be treated as a 'state' or a 'territory' under the Act." Id. at 39. That assumption comes with a corollary: that, if the enacting Congress was aware of Puerto Rico's "commonwealth" status and long road

to attaining it, it would have acted with an intent to "fulfill [its] promise" to grant Puerto Ricans state-like self-rule free from the selective intervention of a federal government they do not elect states"); see also Cordova, 649 F.2d at 42 (holding that "there would have to be specific evidence or clear policy reasons embedded in [a] statute to demonstrate" that Congress meant it to regulate more local conduct in "post-Constitutional Puerto Rico" than it does in the states).

VI. REASONS FOR GRANTING THE WRIT

A. Introduction.

18 U.S.C. § 2423(a) does not apply to the conduct Petitioner Yaira Cotto was charged with — transporting a minor within Puerto Rico to commit a sex crime. In the fifty states of the Nation, that section only applies if the defendant transported the victim "in interstate or foreign commerce." That is the very essence of the federal government. In Cotto's view, the same is true in Puerto Rico, which is (since 1952) a "self-governing Commonwealth" vested with "state-like autonomy." United States v. Maldonado-Burgos, 844 F.3d 339, 340, 348-50 (first quote quoting Puerto Rico v. Sánchez Valle, 136 S. Ct. 1863, 1874, 195 L. Ed. 2d 179 (2016)).

This decision raises an important matter as to Congressional intent related to the applicability of § 2423(a) that can only be charged against citizens of Puerto Rico without there been any interstate nexus and in clear difference as to the rest of the Nation. This anomaly cannot stand as Congressional intent related to this purely

local matter was to grant Puerto Rico with state-like autonomy and there is absolutely no need for the federal government to intervene in a matter that local prosecutors are willing and able to handle. See United States v. Carolene Prods. Co., 304 U.S. 144, 153, 58 S. Ct. 778, 82 L. Ed. 1234 (1938) ("[T]he constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing . . . that those facts have ceased to exist." (citing Chastleton Corp. v. Sinclair, 264 U.S. 543, 44 S. Ct. 405, 68 L. Ed. 841 (1924)).

B. This Court and the First Circuit Court of Appeals are the only Courts tasked to deal with issues related to Puerto Rico making this a sui generis case.

Puerto Rico, is since 1952 a "self-governing Commonwealth" vested with "state-like autonomy." Nowhere else in the United States there is such a unique relationship. The citizens of Puerto Rico have wide latitude to enact local laws and to regulate their own affairs. However, Congress can also make Laws that affect the citizens of Puerto Rico in unique ways without its residents having a say or a vote in those matters (except that of the elected Resident Commissioner). Petitioner did not have the opportunity to cast a vote to elect the representatives that enacted a Law that now personally affects her and her fellow residents of Puerto Rico; she only has the judicial system as a recourse against ever expanding federalization and prosecution of a local crime in Puerto Rico.

C. Congress has authority to legislate over Puerto Rico, but its intent is that, Puerto Rico being a "self-governing Commonwealth" vested with "state-like autonomy", governs itself.

Our federal system of government trusts the states to handle most local criminal offenses (and thereby protects their citizens from federal overreach). Based on this, Cotto's case might have seemed like a case for Puerto Rico to prosecute and punish. After all, "[p]erhaps the clearest example of traditional state authority is the punishment of local criminal activity." Bond v.United States, 572 U.S. 844, 858 (2014). By limiting federal jurisdiction over local criminal conduct, and leaving room for state prosecutors to exercise discretion, the Constitution not only protects states' "sovereign" policy choices; it safeguards "the liberty of the individual from arbitrary power." Id. At 864–65. It gives people "within a State" the right to be free from federal prosecution for "laws enacted in excess" of Congress's delegated "governmental power[s]," Bond v. United States, 564 U.S.211, 222, 225 (2011), powers that are carefully "limited" within the fifty states, United States v. Morrison, 529 U.S. 598, 607. Yet in Cotto's case the First Circuit clearly stated in its opinion that this was not applicable to Puerto Rico.

Such conclusion is understandable, but mistaken. As the Supreme Court frequently reminds us, Puerto Rico is not a "State" but part of the "Territory or other property belonging to the United States." Harris v. Rosario, 446 U.S. 651, 651, 100

S. Ct. 1929, 64 L. Ed. 2d 587 (1980) (quoting U.S. Const., Art. IV, § 3, cl. 2). For that reason, in important ways, the U.S. government can treat the island and its residents differently. See id.; Puerto Rico v. Shell Co., 302 U.S. 253, 257, 58 S. Ct. 167, 82 L. Ed. 235 (1937). See Appendix 1, at 2-3 (1st Cir. Aug. 10, 2020). See also Dávila-Pérez v. Lockheed Martin Corp., 202 F.3d 464, 467-68 (1st Cir. 2000)(construing the words "Territory or Possession outside the continental United States," in light of the statutory context and legislative history, to cover Puerto Rico). See Appendix 1, at 24.

Congress can create Laws that specifically apply to Puerto Rico and treat the island and its residents differently when Congress points out “clear specific evidence or clear policy reasons” or when they “pass rational basis constitutional muster.” This case requires only to answer a question of congressional intent, and whether "the Mann's Act framers, if aware" of Puerto Rico's "post-Crespo 1952 transformation from a [mere] United States territory to the 'self-governing Commonwealth' it is today," "would have intended it to be treated as a 'state' or 'territory' under the Act."

However, discrimination by the federal government violates the Fifth Amendment, when it constitutes "a denial of due process of law." Bolling v. Sharpe, 347 U.S. 497, 499, 74 S. Ct. 693, 98 L. Ed. 884 (1954). This is referred to as the equal protection component of the Fifth Amendment. Here, the First Circuit rejected

Equal Protection Clause arguments that § 2423(a) must not be allowed to treat Puerto Rico residents different unless is passes strict scrutiny. This conclusion is based on a determination that such scrutiny is mandated by the Supreme Court under Harris, 446 U.S. at 651-52. The First Circuit's application of diminished scrutiny is based on the fact that § 2423(a)'s commonwealth prong does not apply just to a politically powerless class because it also applies to people visiting Puerto Rico. The per curiam opinion in Harris — not dealing with any liberty interest — was two-paragraphs and held a federal welfare law constitutional despite its provision of lower reimbursements to Puerto Rican recipients. See id.

Inquiring into the stated reason for enacting this legislation reveals that Congress created the Mann Act to criminalize the transportation of women or minors in interstate commerce for purposes of sexual exploitation. See further explanation below. Here, the classification subject to challenge can be defined as: individuals who reside or travel to Puerto Rico against the treatment of all other residents or travelers of the 50 states. Unlike in Harris, where differences in a financial benefit program were at issue, § 2423(a) singles out the accused in Puerto Rico for prosecution, conviction, and imprisonment, where similarly situated people in all fifty states would remain un-prosecutable under the same law. Even if Harris and this Court's precedents compel rational basis review, no rational basis justified §

2423(a)'s application to transportation wholly within Puerto Rico where it applies to no equivalent within states.

Given Puerto Rico's state-like self-rule, such a possible relationship between Puerto Rico and the goal of the § 2423(a) that went unstated by Congress is "'so attenuated as to render the distinction arbitrary or irrational.'" United States v. Vaello-Madero, 956 F.3d 12, 23 (1st Cir. 2020) (citing Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 446 (1985)). There is no rational basis for § 2423(a)'s criminalization of conduct in Puerto Rico, which is left untouched by the same statute in all 50 states. Congress may not invidiously discriminate among such claimants on the basis of a 'bare congressional desire to harm a politically unpopular group,' or on the basis of criteria which bear no rational relation to a legitimate legislative goal." Weinberger v. Salfi, 422 U.S. 749, 772, 95 S. Ct. 2457, 45 L. Ed. 2d 522 (1975). The Fifth Amendment does not permit the arbitrary treatment of individuals who would otherwise qualify for SSI (or be charged under § 2423(a)) but for their residency in Puerto Rico (those plausibly considered least able to "bear the hardships of an inadequate standard of living"). See United States v. Vaello-Madero, 956 F.3d 12, 30 declining to permit Congress to sidestep the Fifth Amendment when it legislates for a territory and forbiding the arbitrary denial of SSI benefits to residents of Puerto Rico.

The post-Crespo 1952 transformation refers to the constitutional developments and events of the mid-20th century — when Puerto Rico underwent a profound change in its political system. "[T]he people of Puerto Rico[…] engaged in an exercise of popular sovereignty . . . by adopting their own Constitution establishing their own government to enact their own laws." At that time, Congress enacted Public Law 600 to authorize Puerto Rico's adoption of a constitution, designed to replace the federal statute that then structured the island's governance.

Those constitutional developments were of great significance — and, indeed, made Puerto Rico "sovereign" in one commonly understood sense of that term. As this Court has recognized, Congress in 1952 "relinquished its control over [the Commonwealth's] local affairs[,] grant[ing] Puerto Rico a measure of autonomy comparable to that possessed by the States." Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero, 426 U. S. 572, 597, 96 S. Ct. 2264, 49 L. Ed. 2d 65 (1976); see id., at 594, 96 S. Ct. 2264, 49 L. Ed. 2d 65 ("[T]he purpose of Congress in the 1950 and 1952 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with States of the Union." See Puerto Rico v. Sánchez Valle, 136 S. Ct. 1863, 1874 (2016).

Puerto Rico boasts "a relationship to the United States that has no parallel in our history." Examining Bd., 426 U. S., at 596, 96 S. Ct. 2264, 49 L. Ed. 2d 65. And since the events of the early 1950's, an integral aspect of that association has

been the Commonwealth's wide-ranging self-rule, exercised under its own Constitution.

Therefore, Petitioner Cotto points outs that as to local matters, the intent of Congress is to grant Puerto Rico with a measure of autonomy comparable to that possessed by the States. That is, in a crime that does not involve interstate commerce, congressional intent has been to permit Puerto Rico a measure of autonomy comparable to that possessed by the states.

D. The Intent of the Mann Act as enacted was not to regulate intrastate conduct.

The Indictment against Ms. Cotto should have been dismissed for lack of jurisdiction because 18 U.S.C. § 2423(a) does not apply to acts occurring only within the Commonwealth of Puerto Rico. Title 18 U.S.C. § 2423(a), is part of the Mann Act, also known as the White Slave Traffic Act, which states:

> A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or **in any commonwealth**, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not less than 10 years or for life.

The purpose of the Mann Act was to criminalize the transportation of women or minors in interstate commerce for purposes of sexual exploitation. White Slave Traffic Act of June 25, 1910 (current version at 18 U.S.C. §§ 2421-2424). The language of the current version of the statute, under which Ms. Cotto was charged, appears to criminalize conduct occurring solely within a commonwealth, territory or

possession of the United States (not specifically Puerto Rico). The First Circuit reasoned that because the word "*commonwealth*" was used within § 2423(a) that Congress had fully intended for that section to apply to Puerto Rico. A light reading of both Maldonado-Burgos (construing 18 U.S.C. § 2421(a)) and Cotto's statutes reveal that they only differentiate by a single word: "commonwealth." The word "commonwealth" being added to § 2423(a) by the Protection of Children from Sexual Predators Act of 1998, Pub. L. No. 105-314, § 103, 112 Stat. 2974, 2976 (1998) (the "Protect Act" or as referred by the First Circuit as Congress's "commonwealth" amendment). The First Circuit in its decision to upheld §2423(a) approached the question using the appropriate Analytical Framework of Cordova but reached the opposite conclusion of Maldonado-Burgos only because the word "commonwealth" was present.

The Mann Act does not specifically name Puerto Rico as it was aimed at the transportation of an individual across state lines for the purpose of prostitution (originally described as transportation "for immoral purposes" until a 1986 amendment). Mortensen v. United States, 322 US 377 (1944), rightly indicated that the act was aimed primarily at the use of interstate commerce to criminalize the conduct of while slave trafficking. So, the Mann Act is directed to criminalize interstate and/or foreign transportations of individuals, not local domestic transportation.

The portion of the statute criminalizing conduct, which takes place wholly within the commonwealth, should be held to be invalid under the commerce clause according to binding precedent of the Supreme Court and Maldonado-Burgos. This Court should dismiss the indictment as the government did not make a sufficient showing of an effect upon interstate commerce to fall within the reach of the Commerce Clause, and that, in light of the change in Puerto Rico's status from "territory" to "Commonwealth" and the subsequent evolution through Sanchez Valle 2423(a) no longer applies to Puerto Rico.

E. The interstate commerce element is required for the Mann Act to be properly applied to Puerto Rico and the rest of the States.

The issue is whether 18 U.S.C. § 2423(a) applies differently to Puerto Rico than any other state in the United States. Ms. Cotto submits that the statute applies exactly as it would in any other State of the Union as Congress granted Puerto Rico "state-like" autonomy and the Mann Act is intended to specifically penalize interstate actions. A conduct that affects interstate commerce is necessary for the application of the Interstate Commerce Clause.

The Constitution authorizes Congress "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. CONST. art. I, § 8, cl. 3. In the early days of the Republic, the Supreme Court defined "commerce" broadly to include "every species of commercial intercourse" between

two parties. Gibbons v. Ogden, 22 U.S. 1, 193-94 (1824). More recently, the Supreme Court has recognized "three general categories of regulation in which Congress is authorized to engage under its commerce power." Gonzales v. Raich, 545 U.S. 1, 5 (2005).

In reaching this result, the Court described "three broad categories of activity" that Congress may regulate under the Commerce Clause: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce; and (3) activities that substantially affect interstate commerce. United States v. Lopez, 514 U.S. 549, 558-59 (1995). Cited in United States v. Rene E., 583 F.3d 8 (1st Cir., 2009).

In its path marking decision in Lopez, the Supreme Court held unconstitutional a statute criminalizing the possession of a firearm in a school zone because it did not fall within one of the three aforementioned categories.

Five years later, in United States v. Morrison, the Court struck down portions of the Violence against Women Act on similar grounds. 529 U.S. 598, 617 (2000) ("The concern . . . that Congress might use the Commerce Clause to completely obliterate the Constitution's distinction between national and local authority seems well founded.").

Discussing the third category, the Lopez Court observed that it had previously held laws regulating "intrastate economic activity" where that activity "substantially

affected interstate commerce." Id. at 559. It contrasted such regulations with the law at issue in Lopez, which, it observed, was "not an essential part of a larger regulation of economic activity, in which the regulatory scheme would be undercut unless the intrastate activity were regulated." Id. at 561. The causal connection between the regulated activity and interstate commerce was so attenuated that, if Congress had the power to regulate it, federal power would effectively be unlimited in scope. Id. at 564. See United States v. Rene E., 583 F.3d at 17.

The Mann Act as codified in §2423(a) is a crime that requires interstate transportation for it to apply in all of the United States, except in Puerto Rico according to the First Circuit (commonwealth, territory). In United States v. Cardoza, 129 F.3d 6 (1st Cir. 1997), the First Circuit upheld the Youth Handgun Safety Act against a Lopez-based challenge, concluding that the law fell within Congress's authority because it "regulates the national juvenile market in handguns by prohibiting certain intrastate activities." Id. at 11. The First Circuit Court reasoned that the ban on juvenile possession in 18 U.S.C. § 922(x)(2)(A) was, in the language of the Supreme Court, "'an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.'" Cardoza, 129 F.3d at 12. Because a handgun "must come from somewhere, often out of state," Congress could have rationally concluded that the intrastate possession of a handgun by juveniles substantially affects the national

handgun market. Id. at 13. However, the Mann Act as explained before is a measure directed to regulate interstate trafficking of persons and minors and is not part of a larger regulation of economic activity as transporting someone intrastate does not falls within the purviews of the Act.

When it comes to §2423(a)'s application to the territory and the facts in Petitioner Cotto's case there is a complete lack of activity that substantially affects interstate commerce so as to activate Congress's power to regulate intrastate economic activity. Congress may regulate "purely intrastate activity . . . if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in [a] commodity." No such conclusion has been reached under §2423(a)'s application to either the states or the territory.

The analysis we must undertake when evaluating the extent of Congress's power under the Commerce Clause is explained in Cardoza. Under that analysis, "[f]irst, we must defer to a congressional finding that a regulated activity [substantially] affects interstate commerce, if there is any rational basis for such a finding." Cardoza, 129 F.3d at 11-12. "Second, the only remaining question for judicial inquiry is whether the means chosen by [Congress] [are] reasonably adapted to the end permitted by the Constitution."

The regulated activity under §2423(a) as requiring the interstate transportation of a minor does meet the analysis under c however Congress is devoid of any

authority under the Commerce Clause to regulate pure intrastate activity (having sex with a minor) that does not undercut the regulation of the interstate market in [a] commodity.

Other jurisdictions have reached similar results that require the existence of interstate activity for the application of the Commerce Clause. E.g. 18 U.S.C. § 2423(b) did not unconstitutionally exceed Congress's power under Commerce Clause because statute criminalized interstate travel with intent to engage in illicit sexual conduct with minor and thus fell squarely within Congress's power to regulate use of channels of interstate commerce. United States v Schneider, 817 F Supp. 2d 586 (2011, ED Pa); In prosecution for 18 U.S.C. § 2423, government has burden of proving defendant's intent in transporting girls in interstate commerce. United States v Vik, 655 F2.d 878 (1981, CA8 Mo).

18 U.S.C. § 2426, Repeat offenders, also creates a problem and was briefly touched by but largely ignored by the First Circuit's decision in Petitioner's Case. Pub. L. No. 105-314, § 103, 112 Stat. at 2976; adds 18 U.S.C. § 2426, which provided a definition of "State" for the purposes of the Mann Act. Under Chapter 117, Transportation For Illegal Sexual Activity And Related Crimes §2426(b)(2) the term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States. This clearly demonstrates that "any commonwealth, territory, or possession of the United States"

will be equated to a state for purposes of repeat offenders' penalties. Congress did intent to define that states, commonwealth and territories be treated equally under the section, this should be construed as a general indicator that Congress also wanted to upheld the exceptional status of Puerto Rico by treating it as a State of the Union.

F. Prior First Circuit Decisions of Cordova/Maldonado-Burgos contradicted the application of 18 U.S.C. § 2423(a) to conduct solely occurring within Puerto Rico and without any interstate nexus.

Petitioner did not travel or make any sort of promise or intent to engage in interstate or foreign commerce. Puerto Rico and its authorities are willing and able to punish local crimes and have Laws designed to punish and deter such conduct. See P.R. Laws Ann. tit. 33, §§ 4770, 4772. Congress intended for Puerto Rico to manage its own local affairs and to punish crime accordingly under its state-like status.

While federal jurisprudence has permitted Congress to treat Puerto Rico distinctly depending on the context of a particular case, the Circuit's decision goes too far in allowing Puerto Rico, within the same statute to be treated at once state-like and simultaneously as a territory (e.g. §§ 2423(a) and 2421). When analyzed § 2421 and § 2423(a) are virtually identical, yet the incompatible grants of jurisdictions create conflicting and confusing precedents within the Circuit. Relatedly, the First Circuit's decision in Petitioner's case directly conflicts with the

precedent of United States v. Maldonado-Burgos and reflects internal disagreement within the Circuit as to the interpretation of almost identical statutes. As the First Circuit is tasked with managing the unique issues of Puerto Rico it is difficult to find different opinions from other Circuits.

In Maldonado-Burgos, the First Circuit applied the Cordova test to § 2421(a) (which bans the transportation of "any individual in interstate or foreign commerce, or in any Territory or Possession of the United States" to commit a sex crime)[1] **and held that after 1952[2], that section no longer applies to travel wholly within Puerto Rico**. 844 F.3d at 346–47. The only remarkable difference between § 2421(a) and § 2423(a) is that the latter has the word “commonwealth” within its definition.

The First Circuit decided that whether Puerto Rico is to be treated as a state or a territory for purposes of a particular statute that does not mention it specifically **depends upon the character and aim of the act**. This inquiry entails construing the text of the statute to effectuate the intent of the lawmakers and considering, in

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[1] Section 2421(a) punishes "[w]hoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so."

[2] ("Congress in 1952 'relinquished its control over [the Commonwealth's] local affairs[,] grant[ing] Puerto Rico a measure of autonomy comparable to that possessed by the States.'" (quoting Examining Bd., 426 U.S. at 597)). See Maldonado-Burgos, 844 F.3d 339, at 341.

addition to the words in the statute, the context, the purposes of the law, and the circumstances under which the words were employed.

Maldonado-Burgos transported an 18-year-old woman with a severe mental disability within Puerto Rico to engage in unlawful sexual activity. Id. At 340. The district court dismissed the indictment. Id. On appeal, the government argued that the statute applied to Puerto Rico as a "Territory or Possession" and covered transportation within it, as we'd held in 1945. See id. at 342–43 (citing Crespo, 151 F.2d at 45 (holding that it could "not be doubted that [§ 2421(a)] applie[d] to transportation within Puerto Rico," which was "a territory within the meaning of the Act")). The government urged that despite the intervening developments, Crespo still controlled. The First Circuit held that Cordova "blazed a trail" by asking itself: whether "the Mann's Act framers, if aware" of Puerto Rico's "post-Crespo transformation from a [mere] United States territory to the 'self-governing Commonwealth' it is today," "would have intended it to be treated as a 'state' or 'territory' under the Act." Id. at 340, 347 (first quoting Sánchez Valle, 136 S. Ct. at 1874; then quoting Cordova, 649 F.2d at 39).

Cordova "turned on" the "[c]ritical" "'fact that, as a general matter, the Sherman Act ceases to apply to purely local matters once territories become states, leaving state governments free to enact various local antitrust laws broadly consistent with general federal policy, but occasionally divergent as to details.'"

Cordova, 649 F.2d at 4). Using this analysis the First Circuit reasoned that the Sherman Act and the Mann Act are similar — not different — with respect to Congress's hesitancy to intervene in the local affairs of a state, see Maldonado-Burgos, 844 F.3d at 344, and that the critical fact in Cordova was the absence of "specific evidence or clear policy reasons embedded in [the Sherman Act] to demonstrate a statutory intent to intervene more extensively into the local affairs of post-Constitutional Puerto Rico than into the local affairs of a state."

Reviewing the statute's text in Maldonado-Burgos, legislative history, and the government's policy arguments (that human trafficking is a "pervasive problem" in Puerto Rico), the First Circuit nonetheless found no "specific evidence or clear policy reasons embedded in § 2421(a)" to show that its framers would have meant to federalize the prosecution of local crime in the Commonwealth of Puerto Rico. Id. at 347–50. Thus, it concluded that § 2421(a) reaches "only transportation 'in interstate or foreign commerce' with respect to the island." Id. at 350. In other words, § 2421(a) reserves for Puerto Rico (as it does for states) the decisions of when to prosecute, and how severely to punish, illicit transportation that occurs wholly within its borders. See United States v. Cotto-Flores, at 21 as Appendix 1. The First Circuit bluntly held that "there would have to be specific evidence or clear policy reasons embedded in [a] statute to demonstrate" that Congress meant it to regulate

more local conduct in "post-Constitutional Puerto Rico" than it does in the states. see Cordova, 649 F.2d at 42.

The First Circuit, in Petitioner's case, failed to put § 2423(a) under the test of Cordova/Maldonado-Burgos. The test is simple: when the Court is asked to construe a federal statute such as § 2423(a) "that intervenes more extensively into the local affairs of post-Constitutional Puerto Rico than into the local affairs of a state" it must evaluate whether the "Act's framers (that being the Mann Act Framers), if aware of Puerto Rico's current [post-]constitutional status, would have intended it to be treated as a 'state' or a 'territory' under the Act." That assumption comes with a corollary: that, if the enacting Congress was aware of Puerto Rico's "commonwealth" status and long road to attaining it, it would have acted with an intent to "fulfill [its] promise" to grant Puerto Ricans state-like self-rule free from the selective intervention of a federal government they do not elect.

The Mann Act, as discussed above, is directed to criminalize interstate and/or foreign transportations of individuals, not local domestic transportation. That is the intent of the Act, noting more, nothing less. Whoever crosses interstate or foreign lines with the intent to perform a sexual act punishable by State Law is within the Mann Act's grasps. Nowhere within the Mann Act there is a position to regulate more the local conduct of Puerto Rico other than the word "commonwealth". But the word commonwealth by itself is not definitive, because Puerto Rico is also a

territory and a possession of the United States. The words territory and possession also being in § 2421(a)'s definition in Maldonado-Burgos did not free it from the same scrutiny of Cordova. However, in Petitioners Cotto's Case the word "commonwealth" made Congressional intent so obvious to the First Circuit that it rid § 2423(a) of the Cordova test and held that it applied wholly to Puerto Rico while ignoring both the Mann Act's purpose and Congress's intent to grant Puerto Rico "state-like" autonomy.

The enacting Framers aware of Puerto Rico's "commonwealth" status and long road to attaining intended to grant Puerto Ricans state-like self-rule free from the selective intervention of a federal government that they do not elect. The First Circuit just ignored its own precedent and the historical analysis made in Sanchez-Valle by this Court. The absence of "specific evidence or clear policy reasons embedded in the Mann Act to demonstrate a statutory intent to intervene more extensively into the local affairs of post-Constitutional Puerto Rico than into the local affairs of a state" make § 2423(a) inapplicable to solely intra Puerto Rico activity.

VII. CONCLUSION AND PRAYER FOR RELIEF

Absent specific evidence or clear policy reasons embedded in §2423(a) that demonstrate a statutory intent to intervene more extensively into the local affairs of post-Constitutional Puerto Rico than into the local affairs of a state there is no

jurisdiction of this Court to charge defendant under that section. The indictment as charged cannot stand when submitted to the pressure analysis of Cordova, and the district court incorrectly relied on the past analysis of Crespo.

The coming into effect of the Federal Relations Act, the Puerto Rico Constitution and the developments in Sanchez-Valle mean that the Mann Act of 1910 as amended can no longer be given greater effect as applied to Puerto Rico when it comes to "intra-state" activities than as applied to the rest of the states of the Union.

This Court should grant certiorari to review the First Circuit's judgment refusing to grant dismissal on the jurisdictional issues raised in Petitioner's motion and subsequently appeal, summarily reverse the decision below, dismiss the indictment for lack of jurisdiction, or grant such other relief as justice requires.

RESPECTFULLY SUBMITTED.

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CERTIFICATE OF COMPLIANCE WITH TYPE VOLUME LIMITATION

I hereby certify that this brief complies with the type-volume limitations specified in Rule 33.2(b). According to the Word Processing System used, this Petition for Writ of Certiorari contains **8,052 words.**

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 16th day of November 2020.