No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROSA ISELA ACUNA,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTION PRESENTED

Whether, under 21 U.S.C. § 960, a defendant who knowingly imports a controlled substance can be convicted and subjected to an enhanced punishment on the basis of drug type and quantity in the absence of proof that she knew she possessed that drug type and/or quantity?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

United States v. Hector Martinez-Robos, 19-cr-00369-DMS / No. 20-50205

LIST OF DIRECTLY RELATED PROCEEDINGS

1. United States District Court for the Southern District of California, *United States v. Rosa Isela Acuna,* 19-cr-00369-DMS-2. The district court entered the judgment on November 20, 2020. *See* Appendix B.

2. United States Court of Appeals for the Ninth Circuit, *United States v. Rosa Isela Acuna,* No. 20-50341. *See* Appendix A. The Ninth Circuit entered judgment on June 24, 2022.

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Petitioner, Rosa Isela Acuna, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered June 24, 2022.

OPINION BELOW

The memorandum decision of the court of appeals, *United States v. Rosa Isela Acuna*, No. 20-50341, 2022 WL 2287427 (9th Cir. 2022), appears at Appendix A to this petition and is unpublished.

JURISDICTION

The Court of Appeals issued its opinion on June 24, 2022. No petition for rehearing was filed. This petition is being filed within the 90-day time limit for certiorari petitions. The Court has jurisdiction under 28 U.S.C. § 1254(1).

INVOLVED FEDERAL LAW

The Appendix to the petition includes the relevant provisions of the Controlled Substances Act (as codified at 21 U.S.C. 960) (Appendix C), and the Fifth and Eighth Amendments to the United States Constitution (Appendix D).

STATEMENT OF THE CASE

On February 5, 2019, the government charged Ms. Acuna and her co-defendant in a one-count Information alleging a violation of 21 U.S.C. §§ 952, 960, Importation of Cocaine and 18 U.S.C. § 2, Aiding and Abetting. [CR 31;

4-ER-666.][1] On November 18, 2019, Ms. Acuna and her co-defendant proceeded to trial. On January 7, 2019, the co-defendant drove his Kia Sorento to the San Ysidro Port of Entry and Ms. Acuna was a passenger in the car. [2-ER-220-21.] Officers took the Kia Sorento to the secondary inspection lot, conducted an x-ray review, and discovered 25.06 kilograms of cocaine concealed in the quarter panels and spare tire. [2-ER-231, 236-37, 253.]

Both individuals denied knowledge of the cocaine. They both stated they had traveled from the Los Angeles area to Tijuana, Mexico so that Ms. Acuna could see her son who was in the hospital for a medical procedure and the co-defendant could explore having work done on his vehicle. [2-ER-280-84, 3-ER-301-09.]

At trial, the government also introduced photographs found on Ms. Acuna's phone of an unknown and untested substance and maintained that the evidence showed her guilty knowledge. The case agent speculated the substance was crystal methamphetamine, but was uncertain, as he had not tested or physically inspected the unknown substance. [3-ER-338-39.] In

[1]Citations are as follows: "Pet. App." refers to the Appendix to this petition, "ER" to the Excerpts of Record filed in the Ninth Circuit Court of Appeal, and "CR" to the district court docket entries in 19-cr-00369-DMS-2.

response to the case agent's testimony, the defense expert testified that the pictures depicted something that "could be" "contraband" but also could be "something else." [3-ER-439.] Ms. Acuna maintained the substance in the photos was bath salts.

The jury was instructed that the government only had to prove that "the defendant knew the substance he or she was bringing into the United States was cocaine of some other prohibited drug." [2-ER-42.] The instructions also stated: "It does not matter whether the defendant knew that the substance was cocaine. It is sufficient that the defendant knew that it was some kind of prohibited drug." [*Id.*] The instructions further told the jury that the "government does not have to prove that the defendant knew the quantity of cocaine." [2-ER-42.] Based on these instructions, the jury returned a guilty verdict and found that the offense involved more than 5 kilograms of cocaine, CR 92, triggering a 10-year mandatory minimum sentence under 21 U.S.C. § 960(b)(1). Accordingly, the district court imposed a 72 month sentence after finding Ms. Acuna was safety valve eligible. [CR 141, 142; 2-ER-42.] The PSR stated that if the 10-year

minimum had not applied, a sentence of 48 months would have been appropriate. (PSR 17-18.)

Petitioner timely appealed her conviction and argued, in part, that the government failed to put on evidence that she knowingly possessed a particular type and quantity of drugs, and that mere evidence that a defendant knowingly possessed some type and quantity of drugs does not fulfill the government's burden of proof. Petitioner argued the district court failed to adequately instruct the jury regarding the government's burden of proof. Noting that it was bound by the law of the circuit, the Ninth Circuit relied on its decision in *United States v. Collazo*, 984 F.3d 1308, 1321-29 (9th Cir. 2021) (en banc), where it held that there was no scienter requirement for drug type and quantity. Thus, the court affirmed Petitioner's conviction and sentence.

REASONS TO GRANT THE WRIT

Criminal liability comes about not solely by the existence of a wrongful act, nor solely by the presence of a wrongful intent, but by the joinder of the two. Thus, a criminal trial should be marked by adequate proof of both actus and mens rea. The trial in this case gives rise to an opportunity for

this Court to provide clear guidance on an extremely important federal issue that significantly affects liberty interests—the interpretation of mens rea in § 960 prosecutions. Specifically, this Court should resolve whether, under the Controlled Substances Act (21 U.S.C. § 960), there must be proof that a defendant knew of the drug type and quantity with which he was charged before he may be convicted and subjected to the varying penalties described by the statute, including different mandatory minimum sentences. Several circuits, including the Ninth Circuit in this case, have decided the issue in a manner that conflicts with relevant decisions of this Court. In a number of these circuits, dissenting opinions have issued, noting that conflict.

Intervention by this Court is necessary. In fiscal year 2021, approximately 31% of all federal criminal cases involved drug trafficking. U.S. Sentencing Comm'n, https://www.ussc.gov/sites/default/files/pdf /research-and-publications/annual-reports-and-sourcebooks/2021/Figure02.pdf. A substantial 67% of drug trafficking defendants were convicted of a crime that carried a mandatory minimum sentence. U.S. Sentencing Comm'n, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2021/TableD11.pdf. And the

most frequently prosecuted drug crimes that carried those mandatory minimum sentences were 21 U.S.C. §§ 841 and 960. U.S. Sentencing Comm'n, Mandatory Minimum Penalties For Drug Offenses in the Federal Criminal Justice System 10 (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025_Drug-Mand-Min.pdf. Without a ruling from this Court, large numbers of defendants may suffer years of incarceration in the absence of the proof required by the statute. Certiorari should be granted because this is an issue that is apt to reoccur, and the lower courts "ha[ve] decided an important question of federal law that has not been, but should be, settled by this Court, [and] ha[ve] decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. Rule 10(c).

I. The Circuit Courts' Current Approach Regarding Mens Rea in 21 U.S.C. § 960 Prosecutions Conflicts With This Court's Mens Rea Jurisprudence.

21 U.S.C. § 952 of the Controlled Substances Act (CSA) makes it "unlawful to import into the United States from any place outside thereof, any controlled substance." 21 U.S.C. § 952. 21 U.S.C. § 960 then describes

varying penalties based on drug type and quantity, including varying mandatory minimum sentences.

Because a defendant's sentence exposure under § 960 is dependent upon the type and quantity of substance involved in the offense, drug type and quantity are elements which must be found by the jury beyond a reasonable doubt in order to obtain a conviction. This is the constitutionally required fact-finding process articulated by this Court in *Apprendi* and *Alleyne*. See *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."); *Alleyne v. United States*, 570 U.S. 99, 103 (2013) ("Any fact that, by law, increases the [mandatory minimum sentence] for a crime is an 'element' that must be submitted to the jury and found beyond a reasonable doubt.").

The classification of a fact as an element has further implications for that fact. This Court has historically applied the presumption that all elements of a criminal offense have a mens rea component. *Flores-Figueroa v. United States*, 556 U.S. 646, 652 (2009) ("[C]ourts ordinarily

read a phrase in a criminal statute that introduces the elements of a crime with the word 'knowingly' as applying that word to each element."). Therefore, drug type and quantity, as elements, must have a corresponding mens rea requirement.

Circuit courts have rejected this conclusion. The Ninth Circuit in this case held that a § 960 conviction under an enhanced punishment provision can be sustained even in the absence of evidence that the defendant knew the nature of the drug and amount she possessed. Pet. App. A. In arriving at this view, the court relied on its earlier examination of the structure of § 841[2] in *United States v. Collazo*, 984 F.3d 1308 (9th Cir. 2021) (en banc). Unlike subsection (a) which proscribes the knowing possession of a controlled substance with intent to distribute, subsection (b) sets out progressive penalties with severity depending on factors (including drug type and quantity) without expressly including a scienter requirement. The Ninth Circuit concluded that the Government is not required to prove "the defendant's knowledge of (or intent)" in relation to drug type and quantity

[2] 21 U.S.C. § 841 is "structurally identical to § 960." *United States v. Jefferson*, 791 F.3d 1013 (9th Cir. 2015).

when pursuing a mandatory-minimum sentence for a substantive violation of § 841. *Id.* at 1329.

The Ninth Circuit stated that violating § 841(a)(1) could not be an innocent act: "[r]egardless of the type and quantity of the controlled substance, there is no risk that a defendant would fail to understand the unlawful nature of the act." *Id.* at 1327. It further stated that, though § 841(b) sets out increased penalties for certain drugs and quantities, this was not a case where a "harsh penalty" was given to an unknowing defendant. Rather, the defendant had knowledge he was distributing some type of a controlled substance, hence the § 841(a) violation, and "[t]he severity of a penalty need not be 'precisely calibrated to the level of mens rea.'" *Id.* at 1327-28 (quoting *United States v. Burwell*, 690 F.3d 500, 510 (D.C. Cir. 2012) (en banc)).

A majority of the circuit courts have agreed with the conclusion that there is no scienter requirement for drug type and quantity. See *United States v. Collazo-Aponte*, 281 F.3d 320, 326 (1st Cir. 2002); *United States v. Andino*, 627 F.3d 41, 45–47 (2d Cir. 2010); *United States v. Barbosa*, 271 F.3d 438, 458 (3d Cir. 2001); *United States v. Brower*, 336

F.3d 274, 277 (4th Cir. 2003); *United States v. Betancourt*, 586 F.3d 303, 308–09 (5th Cir. 2009); *United States v. Dado*, 759 F.3d 550, 569–70 (6th Cir. 2014); *United States v. Carrera*, 259 F.3d 818, 830 (7th Cir. 2001); *United States v. Ramos*, 814 F.3d 910, 915–17 (8th Cir. 2016); *United States v. De La Torre*, 599 F.3d 1198, 1204 (10th Cir. 2010); *United States v. Sanders*, 668 F.3d 1298, 1310 (11th Cir. 2012); and *United States v. Branham*, 515 F.3d 1268, 1275–76 (D.C. Cir. 2008)).

However, a dissenting viewpoint has emerged. The dissents, including one penned by then-Judge Kavanaugh in *United States v. Burwell*, 690 F.3d 500 (D.C. Cir. 2012), and one authored by Judge Fletcher in a 6-5 decision in *Collazo*, 984 F.3d at 1337 expose the flaws in the majority analysis. There are a few commonalities among the dissents. First, these jurists relied on the "bedrock" role of mens rea in American jurisprudence as the precursor to criminal liability. *Burwell*, 690 F.3d at 531-32 (Kavanaugh, J., dissenting); see also *Collazo*, 984 F.3d at 1337 (Fletcher, J., dissenting). Next, they dispensed with the notion that the mens rea presumption safeguards only those innocent of any wrongdoing whatsoever. In *Burwell*, in an appeal from an armed robbery conviction, the defendant

asserted that the government failed to prove that he knew he had carried an automatic weapon (subjecting him to a 30-year mandatory minimum sentence) rather than a semiautomatic weapon (which carried a 10-year mandatory minimum sentence). 690 F.3d at 503. The D.C. Circuit concluded that § 18 U.S.C. 924(c), which was silent as to mens rea, contained no such requirement. *Id.* at 516. The dissent disagreed, writing that "[t]he presumption applies both when necessary to avoid criminalizing apparently innocent conduct (when the defendant would be innocent if the facts were as the defendant believed) and when necessary to avoid convicting the defendant of a more serious offense for apparently less serious criminal conduct (that is, when the defendant would receive a less serious criminal sanction if the facts were as the defendant believed)." 690 F.3d at 543 (Kavanaugh, J., dissenting) (emphasis in the original); see also *Collazo*, 984 F.3d at 1337 (Fletcher, J., dissenting) (presumption is not limited to the acts of the entirely innocent).

Indeed, this Court has never held that that a presumption in favor of a scienter requirement should apply only to statutory elements that criminalize otherwise wholly innocent conduct. See *Flores-Figueroa v.*

United States, 556 U.S. 646, 655-57 (2009) (rejecting the government's suggestion that a defendant's guilt of a predicate crime and knowledge that he acted unlawfully should dispense with a scienter requirement for another element). As the dissent in *Burwell* noted:

> [R]ules of mens rea apply both to a defendant who is unaware of the facts that make his conduct criminal and to a defendant who is 'unaware of the magnitude of the wrong he is doing.' . . . The idea that 'the mistake by the defendant may be disregarded because of the fact that he actually intended to do some legal or moral wrong' is . . . 'unsound, and has no place in a rational system of substantive criminal law.'

Burwell, 690 F.3d at 531-32 (Kavanaugh, J., dissenting) (quoting Wayne R. LaFave, Criminal Law 304-05 (5th ed. 2010)).

The *Burwell* dissent's reasoning has been joined by other jurists that have rejected the circuit courts' failure to require a showing of mens rea, particularly in light of the enhanced punishment faced by defendants convicted of handling specific drug types and quantities. See *Burwell*, 690 F.3d at 528 (Kavanaugh, J., dissenting) ("The Supreme Court has emphasized the particular importance of the presumption when penalties are high—a characterization the Court has applied to statutory maximum sentences of one year's imprisonment."); *Collazo*, 984 F.3d at 1337

(Fletcher, J., dissenting) ("[T]he presumption applies with particular force, given the severity of the penalties [described in § 841(b)]); *United States v. Dado*, 759 F.3d 550, 571-572 (6th Cir. 2014) (Merritt, J., dissenting) (arguing that mens rea as to element of drug quantity was required; *Alleyne* removed the separation between §§ 841(a) and (b) upon which the majority had relied to reject including a mens rea requirement into § 841(b), holding that facts of both drug possession and drug quantity were necessary to prove the crime alleged; and majority disregarded "the presumption that the more serious the penalty at issue, the more important intent is to guilt"); *United States v. Jefferson*, 791 F.3d 1013, 1019-1023 (9th Cir. 2015) (Fletcher, J., concurring) (in a 21 U.S.C. § 960 appeal, agreeing that the panel was bound by prior circuit precedent holding that defendant need not know precise type or quantity of drug imported but explaining why it should be overruled, and noting 1) in interpreting statutes "'the existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence'" (*id.* at 1020) (citation omitted); 2) nothing in the Anti-Drug Abuse Act overcame that presumption and the escalating penalties are intended "to approximate the culpability of the defendant and

the dangerousness of his act" (*id.* at 1021); and 3) *Alleyne* "underscored" the conclusion that mens rea as to type is required: "There is no reason, in light of *Alleyne*, why it should be enough for the government to prove that a defendant knew that he was carrying a controlled substance, irrespective of what that substance was, in order to subject him to the mandatory minimum sentences . . . .") (*id.* at 1021-22)).

Again, it is these dissenting views that align with this Court's precedent. This Court has recognized that penalties are a "significant consideration" in determining whether scienter applies to a particular provision not expressly so requiring. *Staples v. United States*, 511 U.S. 600, 616 (1994); *United States v. Xcitement Video, Inc.*, 513 U.S. 64, 65-66, 71-72 (1994) (in reviewing statutory prohibition on the knowing "transportation, shipping, receipt, distribution, or reproduction of visual depictions of minors engaged in sexually explicit conduct," noting that possible 10-year sentence was a "harsh penalt[y]" that supported a finding of a scienter requirement as to the victim's age). In § 960 cases, mandatory minimum sentences can be triggered and can vary, based solely on drug

type and quantity, from zero to ten years of imprisonment. See 21 U.S.C. § 960(b).

Finally, the dissenting view has emphasized that the mens rea presumption cannot be casually discarded. Instead, in light of the presumption and its strong foothold in American jurisprudence, Congress' intent to jettison the scienter requirement must be manifest. *Burwell*, 690 F.3d at 537 (Kavanaugh, J., dissenting) (recognizing this Court's rule that "[a] requirement of mens rea applies to each element of the offense unless Congress has plainly indicated otherwise."); *Collazo*, 984 F.3d at 1337 (Fletcher, J., dissenting) ("The presumption is overridden only if Congress makes plain that it intends to forego a mens rea requirement.").

The dissenting view is both correct and consistent with this Court's practice. Indeed, while mens rea does not appear in the text of § 960(b), syntax does not exclude the application of presumptions of mens rea originating in common-law. See *X-Citement Video, Inc.*, 513 U.S. at 68-69 (holding scienter did apply to the age of-the-victim element of child pornography statute due in part to a presumption of mens rea, even though "[t]he most natural grammatical reading" of the statute suggested

"knowingly" applied only to elements concerning means of circulation, and the age-of-the-victim element was "set forth in independent clauses separated by interruptive punctuation."). As this Court has stated, "[T]he common-law rule requiring mens rea has been 'followed in regard to statutory crimes even where the statutory definition did not in terms include it.'" *Staples*, 511 U.S. at 605-06 (citation omitted).

A more recent case from this Court reinforces this principle. In *Rehaif v. United States*, 139 S. Ct. 2191 (2019), this Court held that the presence of a mens rea requirement in one section of a statute, and its absence in another section, is not dispositive. *Rehaif* construed 18 U.S.C. § 922(g), which provides that it is unlawful for individuals in certain prohibited groups to possess a firearm. *Id.* at 2194. The mens rea requirement pertaining to this prohibition did not appear in the text of § 922(g), but instead appeared in 18 U.S.C. § 924(a)(2): "Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both." At issue was whether the "knowing" requirement extended to both the act of possession and the defendant's status as a person within a

category of individuals prohibited from possessing a firearm. *Rehaif*, 139 S. Ct. at 2194. Courts had construed the statute as requiring the government to prove only that the defendant knew he possessed the firearm; it need not prove that he knew he was a prohibited person. See *id.* at 2210 & n.6 (Alito, J., dissenting) (collecting cases holding that mens rea did not apply to the defendant's status).

In discerning congressional intent regarding the mens rea requirement, this Court underscored the "presumption in favor of scienter"—a "longstanding presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state regarding 'each of the statutory elements that criminalize otherwise innocent conduct.'" *Id.* at 2195. This presumption applies "even when Congress does not specify any scienter in the statutory text." And it "applies with equal or greater force when Congress includes a general scienter provision in the statute itself." *Id.* Therefore, scienter applied to the element of status as well as the element of possession, and the government was required to prove that a defendant was aware of that status. *Id.* at 2200.

Rehaif indicates that for a mens rea requirement to apply to some elements of an offense and not others, Congress must make plain this contrary intent. In the absence of clear guidance from Congress that scienter is limited in this manner, there is no reason that "knowingly" should extend only to § 960(a) elements. As suggested by *Rehaif*, the "knowingly" scienter requirement expressly included and applied to the elements in subsection § 960(a) should also apply to the elements in subsection (b).

II. The Question Presented Is An Extraordinarily Important One That Warrants Review By This Court.

Our system of jurisprudence has long recognized the nexus between punishment and mental culpability. See *Morissette v. United States*, 342 U.S. 246, 250-51 (1952) ("The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion . . . . Unqualified acceptance of this doctrine by English common law in the Eighteenth Century was indicated by Blackstone's sweeping statement that to constitute any crime there must first be a 'vicious will.'"); see generally *United States v. United States Gypsum Co.*, 438 U.S. 422, 436 (1978)

("[T]he existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.") (citation omitted). *Rehaif* and its more recent predecessors reinforce the concept that punishment should generally be reserved for those who act with intent. And that concept applies with equal force to those who have deliberately engaged in some criminal act, but are innocent of a weightier offense. See generally *United States v. Nieves-Castano*, 480 F.3d 597, 601 (1st Cir. 2007) ("[K]nowledge that one is guilty of some crime is not the same as knowledge that one is guilty of the crime charged.") (emphasis in the original); 1 Joel Prentiss Bishop, Commentaries on the Criminal Law § 334 (7th ed. 1882) ("[T]he evil intended is the measure of a man's desert of punishment."). This principle, essential to a fair and just punitive system,
is undermined if individuals are sentenced for more culpable conduct even though they lacked awareness that they had engaged in a greater offense. See *Flores-Figueroa*, 556 U.S. at 650 ("Would we apply a statute that makes it unlawful 'knowingly to possess drugs' to a person who steals a passenger's bag without knowing that the bag has drugs inside?") (emphasis in the original). What sense would it make for the system to be

concerned with the inequities faced by someone innocent of all wrongdoing, but not the inequities faced by someone who intentionally committed one act, but was completely unaware they had committed another? It is an incongruent approach.

Yet that is the approach currently executed by the lower courts and the absence of a scienter requirement exposes unknowing defendants to excessive, undue, and unconstitutional punishment. See generally *Solem v. Helm*, 463 U.S. 277, 284 (1983) (holding that the Eighth Amendment prohibition on cruel and unusual punishment "prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed."); *Francis v. Franklin*, 471 U.S. 307, 313 (1985) ("The Due Process Clause . . . 'protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.'" (quoting *In re Winship*, 397 U.S. 358, 364 (1970))). Petitioner in the instant case, for example, had a viable defense to the cocaine charges had drug type and quantity been treated as an element with a scienter component.

And aside from Petitioner's case, the § 960 mens rea question has far reaching consequences for countless other defendants. As noted above, drug prosecutions constitute a large portion of the federal criminal docket. Moreover, the liberty interests at stake are high. As of June 2020, approximately 47% of all federal prisoners were serving sentences for drug trafficking offenses. U.S. Sentencing Comm'n, Quick Facts-Federal Offenders in Prison-June 2020 1 (2020), https://www.ussc.gov/sites/default /files/pdf/research-and- publications/quickfacts/BOP_June2020.pdf. The mean and median sentence for drug trafficking offenses in fiscal year 2019 was 76 months and 60 months, respectively. U.S. Sentencing Comm'n, Sourcebook of Federal Sentencing Statistics App'x. B, 1 (2019), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annualreports-and-sourcebooks/2019/AppendixB.pdf. Thus these oft-recurring drug prosecutions can result in sizeable sentences. If any portion of those sentences was imposed because of drug type and quantity despite a defendant's ignorance as to the full scope of her actions, then the process and punishment runs afoul of this Court's jurisprudence. See generally 4 William Blackstone, *Commentaries on the Laws of*

England 17 (1769) ("It is . . . absurd and impolitic to apply the same punishment to crimes of different malignity."). Where the degree of punishment increases in accordance with the magnitude of the offense, a defendant must know not only that he is committing some unlawful act, but also the magnitude of the offense being committed. The contrary and narrowed view of mens rea and § 960 offenses employed by the majority opinions in the circuit courts of appeal is a question that, with this case, is ripe for resolution by this Court.

CONCLUSION

For the foregoing reasons, Petitioner Rosa Acuna respectfully requests that the Court grant the writ of certiorari.

Respectfully submitted,

Dated: September 21, 2022

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CERTIFICATE OF COMPLIANCE WITH RULE 33.2

I, Marisa L. D. Conroy, counsel for petitioner, certify that this document is prepared in accordance with the requirements of Supreme Court Rule 33.2, and contains 4253 words, exclusive of the table of contents, table of authorities, signature lines, and certificates of service and compliance, as counted by the word count program of Corel Wordperfect.

I also certify that this brief complies with the typeface requirements because the brief is prepared in a proportionally spaced typeface using 14-point Century 725 BT font.

I declare under penalty of perjury that the foregoing is true and correct. Executed September 21, 2022 at Encinitas, California.

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