No. _____

In the
Supreme Court of the United States

SHERMAN MOORE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress criminalized the "sexual exploitation of children" in 18 U.S.C. § 2251. Subsections (a) through (d) of that statute articulate the federal offenses—each of which involves the production or distribution of child pornography. Subsection (e) provides the sentencing ranges for the federal offenses. A higher range, with a 35-year minimum, applies when a defendant has two or more prior state convictions "relating to the sexual exploitation of children." The question presented is:

Whether, for purposes of 18 U.S.C. § 2251(e), a state offense relates to the "sexual exploitation of children" only when it relates to child pornography, as the Ninth Circuit holds; when it relates to child pornography or child abuse, as the Sixth Circuit holds; or when it relates to any criminal sexual activity involving children, as the First, Third, Fourth, Fifth, and Eighth Circuits hold?

RELATED PROCEEDINGS

This petition arises from the decision of the United States Court of Appeals for the Fifth Circuit in *United States* v. *Sherman Moore*, No. 22-10412. The Fifth Circuit's panel decision was filed June 23, 2023, and is reported at 71 F.4th 392.

This petition is related to the following proceedings in the United States District Court for the Northern District of Texas, *United States* v. *Sherman Moore*, No. 4:21-cr-309.

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INTRODUCTION

In the 1970s, the public suddenly became aware of a vast, highly profitable, and revolting underground industry producing child pornography in America. See C. David Baker, *Preying on Playgrounds: The Sexploitation of Children in Pornography & Prostitution*, 5 PEPP. L. REV. 809, 810 (1977). A new term was coined to refer to this shocking criminal enterprise—child sexploitation. "The term *child sexploitation* refers to the sexual exploitation of minors for the commercial profit of adults using children as prostitutes and as subjects in pornographic materials *** . Although the term is directed chiefly at adults who exploit the children in sexual poses and acts for commercial benefit, it may also include the acts of those who do so for their own gratification." *Id.* at 809 n.2.

"Child sexploitation" was "a new form of child abuse," *id.* at 820; and federal, state, and local governments soon realized that the then-existing laws were insufficient to combat the growing child-sexploitation industry. (Most laws then prohibited obscenity. See *id.* at 821 & n.88.) Legislatures across the country held hearings and passed new laws "to specifically prohibit the sexual exploitation of minors in pornographic materials." *Id.* at 822.

Congress acted, too. During "the first months of the 95th Congress" in 1977, "four bills dealing with the sexual exploitation of children were introduced in the Senate and a series of bills, one with 124 co-

sponsors, was introduced into the House of Representatives." *Id.* at 841. One of those bills passed: the Protection of Children Against Sexual Exploitation Act of 1977, Pub. L. No. 95-225, sec. 2(a), 92 Stat. 7. Among other things, the act created new federal crimes, codified in 18 U.S.C. § 2251, which prohibit activities related to the production and distribution of child pornography. As the name for these new federal crimes, Congress used the term that had become synonymous with the child-pornography industry the law was enacted to address—"Sexual exploitation of children."

In the late 1970s, the new coinage was everywhere, linked with the child-pornography industry. See *id.* 836–844. The Los Angeles Police Department created a "Sexually Exploited Child Unit" to protect and recover children dragged into the sexploitation industry in Hollywood. See *id.* at 811–812. Considering New York's newly enacted anti-child-sexploitation laws, this Court observed that, "[i]n recent years, the exploitive use of children in the production of pornography has become a serious national problem" and found that "[t]he prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance." *New York* v. *Ferber*, 458 U.S. 747, 749, 757 (1982).

Like many new coinages, the meanings of the term "child sexploitation" and its more formal cognate, "sexual exploitation of children," began to shift. In the early 1980s, one author observed that "[t]he term 'sexual exploitation' arose principally

from the *commercial* exploitation of children engaged in sexual acts." David P. Shouvlin, *Preventing the Sexual Exploitation of Children: A Model Act*, 17 WAKE FOREST L. REV. 535, 537 n.10 (1981). Yet by the 1980s, the commercial element was waning, such that some used the term "sexual exploitation" to connote any "sexual activity by a child that is encouraged, promoted, or paid for by an adult." *Id.* at 537.

The question presented in this case is what Congress meant when, in Section 2251's sentencing provisions, it wrote that a person convicted of the federal crime of sexual exploitation of children must be imprisoned for at least 35 years if he or she was previously convicted, two or more times, under a state law "relating to the sexual exploitation of children." 18 U.S.C. § 2251(e). Section 2251's semantic and cultural context points to the answer: A reasonable English speaker in 1977, the year Section 2251 was enacted, would have understood the term "sexual exploitation of children" as referring to child pornography and the child-sexploitation industry.

Alone among the courts of appeals, the Ninth Circuit reads Section 2251(e) this way. The Sixth Circuit reads Section 2251(e) a little more broadly, as encompassing both child-pornography crimes and child-abuse crimes. All the other courts of appeals, including the Fifth Circuit below, read Section 2251(e) much more broadly, as encompassing *every* state crime prohibiting sexual activity involv-

ing children—including crimes, like indecent exposure, that have nothing whatsoever to do with child pornography or child abuse.

Most courts have erred because they have failed to see that "sexual exploitation of children" was essentially a term of art when Section 2251 was enacted in 1977. Congress could not have been clearer about what it thought the term meant. Congress itself labeled the child-pornography offenses that Section 2251 criminalizes "sexual exploitation of children," and the elements of a federal crime functionally define the crime identified in the statute's title. See *Esquivel-Quintana* v. *Sessions*, 581 U.S. 385, 394–395 (2017). Contrary to this, most courts claim that Section 2251 does not define "sexual exploitation of children," and erroneously look to dictionaries (often, modern dictionaries) to define the term's individual words. Yet, because of semantic drift, *modern* dictionaries are not always reliable sources for the *original* public meaning of a 50-year-old statute. See *MCI Telecomm. Corp.* v. *AT&T, Co.*, 512 U.S. 218, 228 (1994).

This Court should resolve the conflict now. Mr. Moore would not be subject to the 35-year mandatory minimum under the Ninth Circuit's approach (or under the Sixth Circuit's); he could instead serve a shorter sentence under Section 2251(e)'s default range of 15 to 30 years' imprisonment. Accordingly, this case presents an excellent vehicle for the Court to confirm that Section 2251's reference to crimes

"relating to the sexual exploitation of children" concerns state crimes relating to the production or distribution of child pornography—not any and every state crime involving children and sexual misconduct.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a–15a) is reported at 71 F.4th 392. The district court's oral ruling (App. 16a–23a) is unpublished.

JURISDICTION

The decision of the court of appeals was issued on June 23, 2023. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 2251 of the U.S. Code, entitled "Sexual exploitation of children," criminalizes four substantive offenses involving the production and distribution of child pornography. 18 U.S.C. § 2251(a)–(d). The statute's sentencing provision provides that an offender who has "2 or more prior convictions *** under the laws of any State relating to the sexual exploitation of children" is subject to a mandatory minimum of 35 years' imprisonment, rather than a minimum of 15 years' imprisonment. *Id.* § 2251(e).

In the 1990s, Texas Penal Code § 21.11(a)(2) made it a crime for any person to "expose[] *** any part of his genitals" in the presence of a child "with

intent to arouse or gratify the sexual desire of any person." Tex. Penal Code § 21.11(a)(2) (1992); Tex. Penal Code § 21.11(a)(2) (1995).

Section 2251 of the U.S. Code and the 1990s' versions of Section 21.11 of the Texas Penal Code are reproduced in full in the Appendix. App. 24a–29a.

STATEMENT

1. In the 1990s, Sherman Moore was twice convicted of indecency with a child under Texas Penal Code § 21.11(a)(2). App. 2a. Section 21.11 makes it a crime for an adult, with an intent to arouse or gratify a sexual desire, to expose his genitals in the presence of a child. The child need not have been naked, abused, or even aware of the adult's actions for this statute to be violated. See *Yanes* v. *State*, 149 S.W.3d 708, 711 (Tex. App.—Austin 2004, pet. ref'd). As an illustration, an adult who covertly exposes himself while in the presence of a child would violate Section 21.11.

2. Decades later, Mr. Moore made a video of an unclothed minor girl. On November 15, 2021, he pleaded guilty to one count of sexual exploitation of children under 18 U.S.C. § 2251(a). See App. 2a. Section 2251(a) makes it a crime for one who "employs, uses, persuades, induces, entices, or coerces any minor to engage in *** sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct."

When someone is convicted of violating Section 2251(a), Section 2251(e) sets a mandatory minimum sentence of 35 years' imprisonment if that person has "2 or more prior convictions *** under the laws of any State relating to the sexual exploitation of children." 18 U.S.C. § 2251(e). The district court imposed the 35-year minimum, holding that Mr. Moore's two prior convictions under Section 21.11 of the Texas Penal Code related to the sexual exploitation of children.

3. In a published decision, the Fifth Circuit (Smith, J., joined by Higginson and Willett, JJ.) affirmed. This case, the panel noted, "presents a pure question of statutory interpretation"—namely, what does Section 2251(e) mean in referring to state laws "relating to the sexual exploitation of children." App. 1a. The court of appeals acknowledged that the circuits are divided on the correct answer to that question. Whereas the Ninth Circuit holds that the term encompasses only child-pornography offenses, the Sixth Circuit holds that the term also encompasses child-abuse offenses; and the First, Third, Fourth, and Eighth Circuits "have adopted a variety of definitions" that encompass much more. See App. 12a–13a. Criticizing the Third and Fourth Circuits' definitions as too vague, the Fifth Circuit joined the First and Eighth Circuits in holding that "any criminal sexual conduct involving children" is a state offense relating to the sexual exploitation of children. App. 13a. On that view, the Fifth Circuit held that

the conduct underlying Mr. Moore's two prior convictions under Section 21.11 is "unequivocally criminal sexual conduct involving children." App. 15a.

REASONS FOR GRANTING THE PETITION

I. The circuits are split over the meaning of the term "sexual exploitation of children" in Section 2251(e).

The courts of appeals do not agree about the meaning of the term "sexual exploitation of children" in Section 2251(e)—*i.e.*, about which state crimes qualify as relating to the sexual exploitation of children under the categorical approach. This is an avowed circuit split, which only this Court can resolve.

The narrowest (and best) interpretation of Section 2251(e) is the Ninth Circuit's. In *United States* v. *Schopp*, 938 F.3d 1053 (C.A.9 2019), the defendant had previously been convicted under state laws criminalizing sexual assault and sexual abuse of minors, *id.* at 1056, and the Ninth Circuit held that those convictions did not "relat[e] to the sexual exploitation of children," *id.* at 1069. The Ninth Circuit held that Section 2251(e) refers to a generic offense of "sexual exploitation of children," *id.* at 1059; to determine the elements of that generic offense, the Ninth Circuit looked at the offenses defined in Section 2251(a)–(d) because "Congress frequently uses section headings for the precise purpose of conveying the reach of the offense a statute covers," *id.* at

1060.[1] The Ninth Circuit accordingly held "that the federal generic definition of 'sexual exploitation of children' is defined within § 2251 as the production of visual depictions of children engaging in sexually explicit conduct, or put simply, the production of child pornography." *Id.* at 1061. To buttress that conclusion, the Ninth Circuit showed how other federal statutes and the Sentencing Guidelines define "exploitation" in relation to child pornography and how 23 states criminalize production of child pornography as "unlawful" or "sexual" "exploitation of a minor." See *id.* The Ninth Circuit noted that Section 2251(e) refers not to state laws criminalizing the sexual exploitation of children, but to state laws *relating to* the sexual exploitation of children. See *id.* at 1064–67. The "relating to" prepositional phrase expands Section 2251(e)'s reach to "various kinds of conduct involving the central substantive concept"—*i.e.*, any child-pornography crime—but not so far as to reach "activity that does not include the key visual depiction aspect of that term." *Id.* at 1067.

In *United States* v. *Sykes*, 65 F.4th 867 (C.A.6 2023), the Sixth Circuit rejected the Ninth Circuit's

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[1] "The statute's section heading, when read in conjunction with the statutory text, largely resolves our question concerning the federal generic definition of 'sexual exploitation of children.' Congress titled § 2251 '[s]exual exploitation of children.' By doing so, it signaled that the enumerated federal offenses in § 2251 constitute the federal understanding of the term 'sexual exploitation of children,' and that the term as subsequently used in § 2251(e) bears that same meaning." *Schopp*, 938 F.3d at 1060.

approach in favor of a slightly broader interpretation. The defendant in *Sykes* had two prior state-law convictions for statutory rape. See *id.* at 884. The Sixth Circuit believed the Ninth Circuit's reliance on Section 2251's title was inappropriate because, supposedly, titles should be considered only *after* dictionary definitions. See *id.* at 886. The Sixth Circuit thus looked to a 2019 dictionary to ascertain the "plain meaning" of "sexual exploitation" as using another person "in prostitution, pornography, or other sexually manipulative activity." *Id.* at 887. According to the Sixth Circuit, "[t]he plain meaning of Section § 2251(e) evinces a Congressional intent to define 'sexual exploitation of children' to extend to child-sexual-abuse offenses," like statutory rape, "as well as child-pornography-related offenses." *Id.* at 889.

It is not clear whether the Sixth Circuit holds that "sexual exploitation of children" includes *only* child-abuse and child-pornography offenses, or whether it includes *at least* those offenses. In reaching its decision, the Sixth Circuit endorsed older decisions of the Fourth and Eighth Circuits, which announced an expansive interpretation that covers much more than child abuse and child pornography. See *id.* at 887. In *United States* v. *Mills*, 850 F.3d 693 (C.A.4 2017), the Fourth Circuit held that Section 2251(e) "sweeps broadly" and that "'sexual exploitation of children' means to take advantage of children for selfish and sexual purposes," *id.* at 697–698. Based on that broad interpretation, the Fourth Circuit upheld the defendant's 35-year mandatory

minimum sentence because he had two prior state-law convictions under a state indecency statute that criminalized a wide range of activities, such as producing "sexual images, touching, penetration, and 'masturbation within a child's sight.'" *Id.* at 698 (quoting *State* v. *Etheridge*, 352 S.E.2d 673, 682 (N.C. 1987)). Similar to the Fourth Circuit, the Eighth Circuit in *United States* v. *Smith*, 367 F.3d 748 (C.A.8 2004) (*per curiam*), a case with a defendant previously convicted of sexual abuse of a child, held that "the term 'sexual exploitation of children' is not defined" yet "unambiguously refers to any criminal sexual conduct with a child," *id.* at 751.[2]

After *Sykes*, the First Circuit decided *United States* v. *Winczuk*, 67 F.4th 11 (C.A.1 2023), which fully accepted the Eighth Circuit's interpretation. The defendant in *Winczuk* had state-law convictions

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[2] The Third Circuit has weighed in on Section 2251(e) but, as the Fifth Circuit observed, "the Third Circuit does not appear to have a working definition" of "sexual exploitation of children." App. 12a. Instead, its opinions include data points for which state offenses purportedly "relat[e] to the sexual exploitation of children" under Section 2251 and which don't. See *United States* v. *Galo*, 239 F.3d 572, 581–584 (C.A.3 1995) (stating in dicta that statutory rape and involuntary deviate sexual intercourse with a child under Pennsylvania law would be a categorical match, but holding that corruption of minors, endangering the welfare of a child, and indecent assault under Pennsylvania law are not); *United States* v. *Randolph*, 364 F.3d 118, 122 (C.A.3 2004) (holding child molestation under Georgia law is a categorical match); *United States* v. *Pavluak*, 700 F.3d 651, 674 (C.A.3 2012) (holding unlawful sexual contact under Delaware law is a categorical match).

for sexually assaulting minors and for file-sharing child pornography. *Id.* at 13. The First Circuit found that Section 2251 does not define "sexual exploitation of children," *id.* at 16, and ruled that the statute's "title is not the same as a formal definitional section," *id.* at 18. Turning to dictionaries from the 1990s, the First Circuit concluded that the term "encompass[es] all sexual uses of children." *Id.* at 17; accord *ibid.* ("We conclude that the plain text of 'sexual exploitation of children' unambiguously refers to any criminal sexual conduct involving children."). On the way, the First Circuit expressly rejected the Ninth Circuit's reasoning in *Schopp*. See *ibid.*

In the decision below, the Fifth Circuit joined the First and Eighth Circuits. See App. 13a. Unlike those courts, the Fifth Circuit acknowledged that Section 2251's title, written by Congress when it enacted the statute in 1977, "is a strong point in Moore's favor." App. 8a. But other considerations swayed the Fifth Circuit. The Fifth Circuit concluded that, because statutes codified nearby Section 2251 (some enacted long after 1977) criminalize sexual exploitation *and* other types of abuse, that "seems to evidence that Congress did not have a clear definition in mind for the term 'sexual exploitation.'" App. 8a–9a. The Fifth Circuit also noted that, in 2006, the Adam Walsh Child Protection and Safety Act defined the term "child exploitation enterprise" in relation to child *abuse*, not just child *pornography*. App. 9a. And in the same Act, Congress eliminated the term "sexual exploitation of children" from Section 2251(e)'s 25-year mandatory minimum

and replaced it with a laundry list of specific child sex crimes. App. 10a–11a. Even though the Act did not eliminate the term "sexual exploitation of children" from Section 2251(e)'s 35-year mandatory minimum, the Fifth Circuit found no "clear reason why Congress would have amended" the 25-year minimum but not the 35-year minimum, unless the term "sexual exploitation of children" already encompassed all the specific crimes Congress added to the 25-year minimum. App. 10a–11a.[3] After recognizing that "[t]he circuits that have interpreted the phrase broadly have adopted a variety of definitions," App. 12a, the Fifth Circuit ultimately applied the First and Eighth Circuits' definition because (1) "it is a broad definition of the term," (2) "it tracks persuasive authority," and (3) it "is workable and contains limiting principles," App. 13a–14a.

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[3] The Fifth Circuit's inference does not solve the puzzle: Why would Congress amend the 25-year minimum if the term "sexual exploitation of children" already encompassed all the specific crimes? The Fifth Circuit's effort to divine a reason for the variation in the two sentencing provisions contravenes ordinary rules of statutory interpretation. See *Comcast Corp.* v. *Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1018 (2020) ("[W]here, as here, Congress has simultaneously chosen to amend one statute in one way and a second statute in another way, we normally assume the differences in language imply differences in meaning."). It also fails to acknowledge the possibility that the variation was "an unintentional drafting gap," which "is up to Congress rather than the courts to fix." *Exxon Mobil Corp.* v. *Allapattah Servs., Inc.*, 545 U.S. 546, 565 (2005). "The omission may seem odd, but it is not absurd." *Ibid.*

At this point, the disagreement among the courts of appeals is solidified. After the Ninth Circuit's thorough analysis of the statutory text and history, the First, Fifth, and Sixth Circuits avoided repeating some of the obvious mistakes that earlier courts made—*e.g.*, relying on modern dictionaries and disregarding Section 2251's title as a mere section heading. Still, those courts found new reasons to read "sexual exploitation of children" as including much, much more than offenses related to the production and distribution of child pornography. This pure question of statutory interpretation, then, is not one that needs further development in the lower courts before this Court weighs in.

This case is a strong vehicle for the Court to answer the question and resolve the split. Mr. Moore's prior state-law convictions under Texas's narrow indecency statute do not categorically relate to child pornography (or child sexual abuse). Mr. Moore, therefore, clearly prevails under the Ninth Circuit's interpretation (and also under the Sixth Circuit's interpretation, assuming it is *limited* to child-pornography and child-abuse offenses, see p. 10, *supra*). Had Mr. Moore been convicted in the Ninth Circuit (or Sixth Circuit), he would not be serving a 35-year mandatory minimum sentence for his violation of Section 2251(a). The Court should grant the petition.

II. The Fifth Circuit's approach to Section 2251 is contrary to this Court's precedents.

The Fifth Circuit and other courts of appeals base their interpretations of Section 2251 on the idea that

the term "sexual exploitation of children" is not defined. See, *e.g.*, App. 6a; *Smith*, 367 F.3d at 751. That premise is false. Congress may not have included the term "sexual exploitation of children" in a list of formally defined terms—there's no statutory paragraph that says something like, "For purposes of this section, the term 'sexual exploitation of children' includes *** "—but that does not mean the term is undefined. There are other ways Congress defines terms.

One need only flip through Title 18 to see that criminal statutes are functionally definitions: The substantive prohibitions of each statute define the crime whose name Congress makes the statutory title. So, when repeating the name of a crime in the same statute's text, Congress is presumably referring to its substantive prohibitions. This Court even interprets crimes mentioned in statutory text in light of other federal criminal statutes whose titles repeat the same name. For example, in 8 U.S.C. § 1101(a)(43), Congress wrote the term "sexual abuse of a minor" into a list of aggravated felonies, the commission of which subjects an alien to removal. To determine what that term meant, in *Esquivel-Quintana* v. *Sessions*, 581 U.S. 385 (2017), the Court looked at a federal criminal statute with a nearly identical name: "Sexual abuse of a minor, a ward, or an individual in Federal custody," 18 U.S.C. § 2243. "Section 2243, which criminalizes '[s]exual abuse of a minor or ward,' contains the only *definition* of that phrase in the United States Code." *Esquivel-Quintana*, 581 U.S. at 394 (emphasis added).

Like Section 2251, Section 2243 lacks a formal definitional subsection like one might find in a lengthy civil statute. Thus, the Court's reference to "the *definition* in § 2243(a)" could only have been a reference to the whole of Section 2243 itself—the combination of the statute's title and its substantive prohibitions, which together function as a definition of the crime. *Id.* at 395 (emphasis added).

When considering Section 2251, the Ninth Circuit deemed *Esquivel-Quintana* highly instructive. See *Schopp*, 938 F.3d at 1060–1061. Yet, in the decision below, the Fifth Circuit did not even cite *Esquivel-Quintana*. (And that's not because it wasn't briefed; Mr. Moore relied on *Esquivel-Quintana* extensively.) The First Circuit acknowledged *Esquivel-Quintana* yet distinguished it on the ground that this Court considered dictionaries *before* considering other federal statutes. See *Winczuk*, 67 F.4th at 19 n.6. That distinction is not compelling. *Esquivel-Quintana* did not establish a strict order of operations that forbids considering criminal titles before dictionaries. For, as the Court said, dictionary definitions and Section 2243's title pointed in the same direction; there was no occasion to decide which source takes priority. See *Esquivel-Quintana*, 581 U.S. at 391–392.

In addition to downplaying Section 2251's title, "Sexual exploitation of children," the Fifth Circuit and other courts err by resorting to *modern* dictionaries to interpret an old term. The *original* public

meaning of statutory text must be gleaned from contemporary sources, not dictionaries published decades later. Today, "exploitation" may have a general meaning of "using" other people, see App. 6a (quoting modern dictionaries), but it originally had a specialized meaning—one that refers to the child-sex-ploitation industry of producing and distributing child pornography. That specialized meaning was the dominant one when Congress wrote Section 2251 in 1977. See pp. 1–4, *supra*.

The First Circuit's cramped view of *Esquivel-Quintana* and several circuits' reliance on modern dictionaries cannot be reconciled with this Court's recent precedent—including two cases from last Term.

In *Dubin* v. *United States*, 143 S. Ct. 1557 (2023), this Court considered two elements of 18 U.S.C. § 1028A(a)(1)'s "aggravated identity theft" offense: the "use" of a patient's means of identification "in relation to" healthcare fraud. Because the terms had multiple judicially and legislatively recognized meanings, the Court first looked not to dictionaries, but to Section 1028A's title: "*Start[ing] at the top*, with the words Congress chose for § 1028A's title," the Court confirmed that the title "reinforces what the text's nouns and verbs independently suggest." *Id.* at 1567 (emphasis added) (quoting *Yates* v. *United States*, 574 U.S. 528, 552 (2015) (Alito, J., concurring in the judgment)). Finding Section 1028A's title compelling, the Court rebuffed the Government's request for "the Court to ignore the title"

in favor of broader definitions extracted from dictionaries. *Ibid.* Instead, the Court applied the "more targeted reading"—based on "Section 1028A(a)(1)'s title and terms"—which more "accurately captures the ordinary understanding of identity theft." *Ibid.*

The Court confronted a similar problem in *United States* v. *Hansen*, 143 S. Ct. 1932 (2023). At issue was 8 U.S.C. § 1324(a)(1)(A)(iv), which criminalizes "encourag[ing] or induc[ing]" aliens to enter the country unlawfully. Although those words have specialized meanings, the Ninth Circuit had "stacked the deck in favor of ordinary meaning" and used dictionaries to define the statutory terms. *Id.* at 1942. This Court rejected that approach—holding that the words' context (a criminal statute) and the decades' running statutory history together showed that Congress used the phrase "in its specialized, criminal-law sense." *Ibid.*

Across multiple recent decisions, the Court has held that the titles of criminal statutes are not mere section headings, to be given little weight in an interpretive dispute, and that modern dictionaries' broad definitions often do not inform the meaning of specialized statutory terms. The Fifth Circuit and several of its sister circuits have failed to follow these principles, and this Court should grant the petition to correct their interpretive mistakes.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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