NO. _____

IN THE

Supreme Court of the United States

_____ TERM, 20__

LUIS ALFREDO MOREIRA BRAVO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The federal transportation of a minor statute provides: "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 and imprisoned not less than 10 years or for life." 18 U.S.C. § 2423(a).

Mr. Moreira-Bravo was charged under this provision for driving a minor from Iowa to Minnesota to commit a Minnesota statutory rape offense. The sole reason Mr. Moreira-Bravo's conduct was illegal was the victim's age. It was undisputed the minor lied about her age to Mr. Moreira-Bravo.

The question presented is:

Whether an individual may be convicted under 18 U.S.C. § 2423(a) for transportation of a minor, without regard to whether the defendant knew of the individual's minority status?

PARTIES TO THE PROCEEDINGS

The caption contains the names of all parties to the proceedings.

DIRECTLY RELATED PROCEEDINGS

This case arises from the following proceedings in the United States District Court for the Southern District of Iowa, and the United States Court of Appeals for the Eighth Circuit:

United States v. Luis Alfredo Moreira Bravo, 3:20-cr-00087-001, (S.D. Iowa) (criminal proceedings) judgment entered October 4, 2021.

United States v. Luis Alfredo Moreira Bravo, 21-3355 (8th Cir.) (direct criminal appeal), judgment entered December 27, 2022.

United States v. Luis Alfredo Moreira Bravo, 21-3355 (8th Cir.) (direct criminal appeal), Order denying petition for rehearing *en banc* and rehearing by the panel entered March 22, 2023.

There are no other proceedings in state or federal trial or appellate courts, or in this Court directly related to this case.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Luis Moreira-Bravo respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The Eighth Circuit's published opinion in Mr. Moreira-Bravo's case is available at 56 F.4th 568 and is reproduced in the appendix to this petition at Pet. App. p. 14.

JURISDICTION

The Eighth Circuit entered judgement in Mr. Moreira-Bravo's case on December 27, 2022, Pet. App. p. 36, and denied Mr. Moreira-Bravo's petition for rehearing *en banc* on March 22, 2023. Pet. App. p. 38. Three judges voted in favor of granting the petition for rehearing *en banc*. This Court granted two extension requests to file a petition for writ of certiorari.

This Court has jurisdiction over these cases under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

18 U.S.C. § 2423(a)

> 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 and imprisoned not less than 10 years or for life

STATEMENT OF THE CASE

A. Mr. Moreira-Bravo is charged with a federal offense after driving from Iowa to Minnesota and having sexual intercourse with a minor—a minor who repeatedly told him she was a legal adult.

Mr. Moreira-Bravo and R.M. met online. PSR p. 5, ¶ 21.[1] At the time, R.M. lived in California and Mr. Moreira-Bravo lived in Minnesota. PSR p. 5, ¶ 21. Mr. Moreira-Bravo asked R.M. to be his girlfriend. PSR p. 5, ¶ 21. R.M. told Mr. Moreira-Bravo that she was over 18 years old. PSR p. 5, ¶ 21. Mr. Moreira-Bravo questioned whether R.M. was a minor, telling her that "he did not want any problems." PSR p. 5, ¶ 21. The two exchanged "normal" photographs. PSR p. 5, ¶ 21. R.M. indicated that Mr. Moreira-Bravo never asked for pornographic or sexual photographs. PSR p. 5, ¶ 21.

Eventually, R.M. and her family moved to Iowa. PSR p. 5, ¶ 21. On May 5, 2020, R.M. suggested Mr. Moreira-Bravo come get her at her house. PSR p. 5, ¶ 22. On this day, R.M. told Mr. Moreira-Bravo she was twenty-one years old. PSR p. 5, ¶ 22. R.M. was fourteen years old. PSR p. 4, ¶ 12. Mr. Moreira-Bravo was twenty-six years old. PSR p. 4, ¶ 13.

Later that evening, Mr. Moreira-Bravo picked R.M. up outside her house. PSR p. 5, ¶ 23. Once her family noticed R.M. was gone, they reported her missing. PSR

[1] In this petition, the following abbreviations will be used:

"R. Doc." -- district court clerk's record, followed by docket entry and page number, where noted; and

"PSR" -- presentence report, followed by the page number of the originating document and paragraph number, where noted.

p. 4, ¶ 12. Her family also reported that R.M. was messaging unknown men on social media websites like TikTok. PSR p. 4, ¶ 12.

Meanwhile, R.M. and Mr. Moreira-Bravo stayed the night in his car. PSR p. 5, ¶¶ 23-24. The two drove to Minnesota the next day, and checked into a hotel. PSR p. 5, ¶¶ 23-24. The two engaged in sexual intercourse several times both in Iowa and Minnesota. PSR p. 5, ¶¶ 23-24. Law enforcement eventually found R.M. and Mr. Moreira-Bravo near the hotel in Minnesota. PSR p. 4, ¶ 16.

On September 9, 2020, a grand jury in the Southern District of Iowa charged Mr. Moreira-Bravo with transportation of a minor, in violation of 18 U.S.C. § 2423(a). R. Doc. 1. The indictment alleged that Mr. Moreira-Bravo "did knowingly transport an individual who had not attained the age of 18 years in interstate commerce, with the intent that such individual engage in sexual activity for which any person can be charged with a criminal offense." R. Doc. 1. The indictment did not identify the "criminal offense." R. Doc. 1. However, the prosecution later identified the offense as the Minnesota state offense of Criminal Sexual Conduct in the Third Degree, which states:

> A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists: . . .
>
> > (b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older.

> In all other cases, mistake as to the complainant's age shall not be a defense. Consent by the complainant is not a defense; . . .

Minn. Stat. § 609.344. R. Doc. 28, 30.

B. Mr. Moreira-Bravo files a motion in limine, asking the district court to instruct the jury that knowledge of minority status is required. The district court denies the motion, finding context trumps the plain language of the statute.

Mr. Moreira-Bravo filed a motion in limine requesting the court instruct the jury that they must find Mr. Moreira-Bravo had knowledge that the victim was a minor, and relatedly that he intended to engage in unlawful sexual activity. R. Doc. 28. He noted that principles of statutory interpretation supported applying the "knowledge" requirement to the age of the victim, as well as requiring that a defendant specifically intended to engage in unlawful sexual activity. *Id.* Further, Mr. Moreira-Bravo argued Supreme Court precedent established a general presumption that a culpable mental state was required for otherwise lawful conduct. *Id.* The prosecution resisted Mr. Moreira-Bravo's request and asked the district court to prevent the defense from raising a "mistake of age" defense. R. Doc. 30.

The district court denied the motion in limine by written order. Pet. App'x. p. 1. The court acknowledged that the Supreme Court had interpreted similar statutes to find the "knowing" requirement applied to all clauses, but the court found these cases distinguishable. Pet. App'x pp. 3-4. The court also determined that this interpretation was supported by the overall goal of the statute, which was to protect children. Pet. App'x p. 5

Mr. Moreira-Bravo entered a conditional guilty plea to the sole count. R. Doc. 40. As part of the plea, Mr. Moreira-Bravo preserved the right to challenge the court's denial of his motion in limine on appeal. R. Doc. 40.

The case proceeded to sentencing. The district court ultimately sentenced Mr. Moreira-Bravo to 120 months of imprisonment, the statutory mandatory minimum sentence. Pet App'x p. 7.

C. The Eighth Circuit rejects Mr. Moreira-Bravo's statutory-interpretation argument in a split decision.

Mr. Moreira-Bravo appealed, maintaining his challenge to the district court's ruling on his motion in limine. The Eighth Circuit affirmed, in a split decision. *United States v. Moreira-Bravo*, 56 F.4th 568 (8th Cir. 2022). Like the district court, the majority agreed that the statute's plain language supported that "knowingly" should apply to each later element. 56 F.4th at 571-72. However, the majority determined the "context" and "background circumstances" of the statute rebutted this rule of statutory construction. *Id.* at 572-74.

The Circuit relied on three factors to support relying on context over the statute's plain language. First, the majority noted that § 2423(a) was adopted at the time of "near-universal tradition of strict liability as to the victim's age in sex crimes," citing common law and state statutes. *Id.* at 572-73. Additionally, the offense requires in person contact between the defendant and the victim, and the majority believed that under these circumstances a defendant "may easily be required to ascertain the victim's age." *Id.* at 573-74 (internal quotation marks omitted). Finally,

Congress allowed for a mistake-of-age defense under other statutes but did not do so here. *Id*. at 574.

The majority next determined the otherwise-innocent-conduct presumption was insufficient to overcome this context. *Id*. at 575-77. The Circuit believed the conduct was not "otherwise innocent" because 18 U.S.C. § 2421(a) criminalized the "exact same conduct" as § 2423(a), specifically "transporting an individual with intent that the individual engage in prostitution or unlawful sexual activity," just without the age requirement.[2] *Id*. at 575-76. The Court also reasoned that age would not *always* be what makes the conduct illegal—for example, if it was transportation with intent to commit a prostitution offense. *Id.* at 576-77. The "coincidence" that Mr. Moreira-Bravo's offense was a statutory rape offense did not change the analysis for the majority. *Id.* Even though age might be the only criminal aspect in some convictions, this was not enough to require knowledge as to the age element.

Finally, the majority determined the "with intent to" language did not require the prosecution to prove that Mr. Moreira-Bravo's intent was to engage in sexual intercourse with a minor. *Id*. at 577-79.

Judge Grasz dissented. 56 F.4th at 579-82. Judge Grasz asserted that the plain language of the statute, as well as other rules of statutory construction, required "knowingly" be applied to the age requirement. According to Judge Grasz, the analysis should begin and end with the plain language. Judge Grasz noted that

[2] Section 2421(a) has a statutory maximum sentence of 10 years of imprisonment, and no mandatory minimum sentence.

"[w]e do not typically depart from this course to find statutory meaning from tradition or by looking to common law to support counter-textual 'special context.'" *Id*. at 579.

The dissent did not rely upon the plain language alone; the dissent noted other principles of statutory interpretation supported applying the knowledge requirement to the victim's age. First, this reading was bolstered by the need to divide wrongful conduct from what is otherwise innocent conduct. Judge Grasz noted that, just last term, the Supreme Court reasoned that "when a statute is not silent as to *mens rea* but instead includes a general scienter provision, the presumption applies with equal or greater force." *Id*. at 580 (internal quotation marks omitted).

Next, Judge Grasz believed that this statute was unlike other statutes which allowed for strict liability—so called regulatory or public welfare offenses. *Id*. Mr. Moreira-Bravo's statute of conviction imposed harsh penalties—ten years to life. Finally, even if the statute were ambiguous, the dissent believed the rule of lenity required the Court to apply knowingly to the age requirement. *Id*.

The dissent was unpersuaded by the majority's reliance on "context" to interpret this federal statute. Judge Grasz believed this was irrelevant when the statutory language was plain. Regardless, Judge Grasz determined the historical context of statutory rape offenses was "less clear" then presented by the majority. The reliance on the need to personally observe the victim was similarly unpersuasive, as nothing in the statute requires a defendant to have personally observed the victim, and nothing indicates Congress intended for the defendant to bear the risk.

Finally, Judge Grasz rejected the majority's reliance on the fact that the mistake of age defense was present in other subsections:

> The court explains that because Congress provided a defendant charged with engaging in "illicit sexual conduct" under subsections (b)–(d) with an explicit mistake-of-age defense, but did not include such a defense to subsection (a), it suggests Congress found mistake of age irrelevant to the offense. *Id*. I disagree. The more likely explanation for the absence of a mistake-of-age defense in subsection (a) is that Congress did not believe the defense was necessary because, unlike the crimes specified in subsections (b)–(d), subsection (a) plainly requires the government prove a defendant's knowledge as part of its case in chief. *See* 18 U.S.C. § 2423.

See id. at 582.

Mr. Moreira-Bravo filed a petition for rehearing *en banc*. The court denied the petition, with three judges voting to grant the petition. Pet. App'x p. 38.

REASONS FOR GRANTING THE WRIT

Two guiding principles have driven this Court's recent statutory interpretation decisions. First, the Court has required that the "knowingly" *mens rea* be applied to all subsequently listed elements, because under rules of grammar the adverb generally modifies both the verb and the object of the verb. Second, the Court has ensured that statutes are interpreted to require a "guilty mind." This Court has steadfastly applied these canons, even in the face of years of widely adopted precedent stating otherwise. *Ruan v. United States*, 142 S. Ct. 2370 (2022); *Rehaif v. United States*, 139 S. Ct. 2191 (2019); *Flores-Figueroa v. United States*, 556 U.S. 646, 650 (2009).

Mr. Moreira-Bravo relied heavily on these principles to assert that the prosecution must prove he knew the victim in this case was under eighteen years old. The Eighth Circuit, in a split decision, declined to do so. This Court should grant certiorari, as the Eighth Circuit's decision is inconsistent with this Court's precedent, presents a question of exceptional importance, and Mr. Moreira-Bravo's case presents a clean vehicle to decide the issue.

I. The Eighth Circuit's decision conflicts with this Court's precedent on principles of statutory interpretation.

The Eighth Circuit's statutory interpretation analysis rejects the statute's plain language, and other canons of statutory interpretation, in favor of vague "context." First, the Court refused to apply the "knowingly" requirement to all later listed elements—specifically to the age of the victim. This is contradictory to this Court's jurisprudence.

This Court's position is clear: "As 'a matter of ordinary English grammar,'" we normally read the statutory term "'knowingly' as applying to all the subsequently listed elements of the crime." *Rehaif*, 139 S. Ct. at 2196 (citing *Flores-Figueroa*, 556 U.S. at 650). For example, in *Rehaif*, this Court found that the phrase "knowingly violates" in certain subsections of 18 U.S.C. § 922, should be interpreted to apply "knowingly" to each element of § 922(g), including prohibited status. And *Rehaif* is simply the latest case to apply "knowingly" to all later elements. *Flores-Figueroa*, 556 U.S. at 647; *United States v. X-Citement Video*, 513 U.S. 64, 68-69 (1994).

Applying this principle to Mr. Moreira-Bravo's statute, knowingly applies to the victim's minority status. The verb "transports" modifies the direct object "an individual who has not attained the age of 18 years." *See Flores-Figueroa*, 556 U.S. at 651 (applying grammatical rules to statutory interpretation). The term knowingly properly modifies the direct object of the action. *Id.* The Eighth Circuit's refusal to apply "knowing" to the victim's age is in direct conflict with this Court's precedent.

The Eighth Circuit was dismissive of other principles of statutory interpretation that this Court has found controlling in recent decisions. As the dissent acknowledged, other canons of statutory interpretation detailed by this Court also support requiring knowledge as to the victim's age. First, "[t]he presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct." *Elonis v. United States*, 575 U.S. 723, 737 (2015) (quoting *X-Citement Video*, 513 U.S. at 72). Here, knowledge as to the victim's age is crucial to distinguish innocent from wrongful conduct. It is not the intent to engage in sexual activity, but the unlawful aspect of the activity that creates consciousness of wrongdoing. And the only reason the conduct was unlawful in Mr. Moreira-Bravo's case was the victim's age.

This Court most recently applied this reasoning in *Ruan v. United States*, 142 S. Ct. 2370 (2022). The defendant in *Ruan* argued that in 21 U.S.C. § 841(a), the distribution of controlled substances statute, the "knowing" *mens rea* applied to the

later clause, "except as authorized." This Court agreed, relying upon the otherwise innocent conduct presumption. *Id*. at 2377.

Additionally, central to the *Rehaif's* reasoning was the principle that "Congress intends to require a defendant to possess a culpable mental state regarding each of the statutory elements that criminalize otherwise innocent conduct." *Rehaif*, 139 S. Ct. at 2195 (internal quotations omitted). And "where, as here, dispensing with *mens rea* would require the defendant to have knowledge only of traditionally lawful conduct, a severe penalty is a further factor tending to suggest that Congress did not intend to eliminate a *mens rea* requirement." *Staples v. United States*, 511 U.S. 600, 618–19 (1994). Mr. Moreira-Bravo's statute of conviction has a statutory range of ten years to life imprisonment.

Finally, if there is any question as to whether the plain language or "context" controls, the rule of lenity supports Mr. Moreira-Bravo's interpretation. "It is a 'familiar principle that ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.'" *Skilling v. United States*, 561 U.S. 358 (2010).

The Eighth Circuit's majority opinion in Mr. Moreira-Bravo's case found these principles of statutory interpretation unpersuasive, in favor of context. The majority noted "Justice Alito, concurring in *Flores-Figueroa*, identified § 2423(a) as an 'example' of a statute where 'context *may well* rebut th[e all-subsequent-elements] presumption.'" *Moreira-Bravo*, 56 F.4th at 572 (second alteration in original).

But a concurrence is not binding, and in more recent decisions this Court has followed the plain language and rejected "context" arguments, at times over the objection of Justice Alito. For example, the majority in *Rehaif* relied upon the statute's plain language. Justice Alito, dissenting, disagreed with the majority for ignoring the context and purpose of 18 U.S.C. § 922(g), and instead finding that the presumption in favor of a *mens rea* controlled. 139 S. Ct. at 2211 (Alito, J., dissenting). In *Ruan*, the Court again applied the presumption in favor of *mens rea*, in disagreement with Justice Alito. 142 S. Ct. at 2382-83 (Alito, J., concurring in judgment).

While the circuits to address this issue have found knowledge is not required, most of these courts did not have the benefit of the recent decisions in *Rehaif* and *Ruan*. *See United States v. Moore*, 45 F.4th 192 (D.C. Cir. 2022); *United States v. Tyson*, 947 F.3d 139 (3d Cir. 2020); *United States v. Tavares*, 705 F.3d 4 (1st Cir.), *cert. denied*, 571 U.S. 964 (2013); *United States v. Griffith*, 284 F.3d 338 (2d Cir. 2002); *United States v. Washington*, 743 F.3d 938 (4th Cir. 2014); *United States v. Daniels*, 653 F.3d 399 (6th Cir. 2011); *United States v. Cox*, 577 F.3d 833 (7th Cir. 2009); *United States v. Daniels*, 685 F.3d 1237 (11th Cir. 2012), *cert. denied*, 568 U.S. 1164 (2013). In fact, the Fourth Circuit's analysis in *Jones*, compared the statute criminalizing the possession of firearms by prohibited persons to the statutory language concerning knowledge of minority status, which at the time did not require the government to prove the defendant's knowledge of the prohibited status. *United*

States v. Jones, 471 F.3d 535, 540 (4th Cir. 2006). *Tyson* was decided after *Rehaif* but fails to discuss the decision whatsoever. Only *Moore* addresses these recent decisions in depth, but, like the majority here, relies upon Justice Alito's concurrence over the recent majority opinions.[3]

II. Mr. Moreira-Bravo's case presents an issue of exceptional importance.

The Eighth Circuit's decision has essentially created a federal strict liability statutory rape offense, with a mandatory minimum sentence of ten-years imprisonment and a maximum of life imprisonment. The Eighth Circuit justified this by noting that, in general, states treated statutory rape offenses as strict-liability crimes, and Congress would have known this and therefore likely intended this interpretation. But states with strict liability statutory rape crimes generally do not have the harsh punishments required under Mr. Moreira-Bravo's statute of conviction.

Many states do not have a mandatory minimum sentence *at all* for statutory rape offenses with similar age gaps. *See, e.g.,* Alaska Stat. §§ 11.41.436, 12.55.035, 12.55.125; Or. Rev. Stat. §§ 163.355, 161.605; R.I. Gen. Laws §§ 11-37-6, 11-37-7; S.D. Codified Laws §§ 22-6-1, 22-22-1(5); Wash. Rev. Code §§ 9A.44.079, 9A.20.021. For example, the Minnesota offense used as the predicate to charge Mr. Moreira-Bravo

[3] This Court recently denied cert in *Moore*, but it appears the defendant *Moore* did not raise the "knowing" argument at the Supreme Court; instead, the defendant only argued the "with intent to" language required specific intent to commit the offense. Petition for Writ of Certiorari, United States v. Charles Morgan, (No. 22-6002) *available at* https://www.supremecourt.gov/DocketPDF/22/22-6002/245780/20221103215534606_CerttoFileCombinedNoAddendum.pdf

had no mandatory minimum sentence and sets the statutory maximum at fifteen years of imprisonment. Minn. Stat. § 609.342. If Mr. Moreira-Bravo was charged in Iowa, where some of the offense conduct occurred, he would not be subject to a mandatory minimum sentence either. Iowa Code § 709.4.

In states with a mandatory minimum sentence for a similar offense, the minimum sentence is generally significantly shorter. *See, e.g.,* Conn. Gen. Stat. §§ 53a-71(a)(1), (b) (nine-month mandatory minimum). Several states have a one-year mandatory minimum. *See, e.g.,* Ky. Rev. Stat. Ann. §§ 510.020, 510.060, 532.060(2)(d); Neb. Rev. Stat. §§ 28-319, 28-105; Nev. Rev. Stat. §§ 200.364, 200.368; Okla. Stat. §§ 21-1114, 21-1116; W. Va. Code § 61-8B-5. Other states have a two-year mandatory minimum. *See, e.g.,* Ala. Code §§ 13A-6-62, 13A-5-6(a)(2); Colo. Rev. Stat. § 18-3-402; Del. Code Ann. tit. 11, §§ 761, 772, 4205; Tenn. Code Ann. §§ 39-13-506(c),(d), 40-35-111; Tex. Code Ann. §§ 22. 011, 12.33; Va. Code Ann. § 18.2-63.

Additionally, in most states these "mandatory minimums" can be satisfied with a term of probation instead of imprisonment. *See Thomas v. State*, 612 S.E.2d 99, 100 (Ga. Ct. App. 2005) (acknowledging the ten-year mandatory minimum for statutory rape is satisfied with a ten-year term of probation). For example, New Jersey's similar statutory rape offense requires a sentence between five and ten years of imprisonment, but that sentence can be suspended for first time offenders. N.J. Stat. §§ 2C:14-2(c)(4), 2C:14-6.

Many states have a statutory *maximum* that is shorter than the mandatory *minimum* sentence Mr. Moreira-Bravo received. *See, e.g.,* Ark. Code Ann. §§ 5-14-127, 5-4-401 (six-year max); Me. Stat. Ann. tit. 17-A, § 254(1)(A) (five-year max); Mo. Rev. Stat. § 566.034(1) (seven-year max); N.H. Rev. Stat. Ann. § 632-A:3 (seven-year max); N.M. Stat. Ann. §§ 30-9-11, 31-18-15 (eighteen-month max); N.Y. Penal Law §§ 130.30, 70.00 (seven-year max); Or. Rev. Stat. §§ 163.355, 161.605; R.I. Gen. Laws §§ 11-37-6, 11-37-7 (five-year max); Utah Code Ann. §§ 76-5-401.2(b)(ii), 76-3-203 (five-year max); Wash. Rev. Code §§ 9A.44.079, 9A.20.021 (five years); W. Va. Code § 61-8B-5 (five-year max).

Even with these lesser punishments, some states still require prosecutors to prove a defendant had knowledge of the minor's age. *See, e.g.,* Ohio Rev. Code Ann. § 2907.04. For example, Montana allows a sentence of up to life imprisonment for a similar statutory rape offense. Mont. Code. Ann. §§ 45-5-501, 45-5-503. However, in Montana, it is a defense if the defendant made a reasonable mistake of age, and the victim was 14 or 15 years old at the time. Mont. Code Ann. § 45-5-511.

Further, most states have degrees of statutory rape, and the punishment will depend upon the circumstances of the case, including age difference between the defendant and victim. Mass. Gen. Laws ch. 265, § 23A; Utah Code Ann. § 76-5-401. That nuance is not available under the Eighth Circuit's interpretation of Mr. Moreira-Bravo's statute of conviction—ten years of imprisonment at minimum is mandated.

Finally, the Eighth Circuit's interpretation creates disproportionate penalties between § 2421(a) and § 2324(a), when the *mens rea* is essentially the same for each offense. As the majority in Mr. Moreira-Bravo's case recognized, 18 U.S.C. § 2421(a) is virtually identical to Mr. Moreira-Bravo's statute of conviction, 18 U.S.C. § 2423(a). Both require transportation of an individual with intent to engage in sexual activity for which any person can be charged with a criminal offense. The only distinction is § 2423(a) is implicated when the individual transported is a minor.

Under the Eighth Circuit's interpretation, the prosecution does not have to prove that a defendant knew the individual was a minor. In practice, this means a defendant can go from the zero to ten-year statutory range under § 2421(a), to the ten-year to life statutory range under § 2423(a), based upon circumstances that a defendant may be completely unaware of—or in Mr. Moreira-Bravo's case, a circumstance he actively tried to avoid. Stated another way, the "guilty mind" could be the same, but depending upon the statute charged, a defendant could be looking at a ten-year minimum instead of a ten-year maximum.

III. Mr. Moreira-Bravo's case presents an ideal vehicle for review.

Mr. Moreira-Bravo's case presents a clean vehicle for review of this purely legal issue. Mr. Moirera-Bravo preserved this question before the district court and on appeal. Because it was preserved through a motion in limine and a conditional guilty plea, this Court will not need to grapple with issues like harmless error. Further, it was undisputed that the victim lied about her age to Mr. Moreira-Bravo, on multiple occasions.

CONCLUSION

"The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Morissette v. United States*, 342 U.S. 246, 250 (1952). Thus, for the reasons stated above, the Eighth Circuit erred in finding that a defendant is not required to have knowledge of a victim's minority status. Any context or concern cannot overcome the general principle that knowledge applies to every element of the offense.

For the reasons stated herein, Mr. Moreira-Bravo respectfully requests that the Petition for Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,

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