No. 24-264

In the Supreme Court of the United States

JAY A. LIESTMAN, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's prior Wisconsin conviction for possession of child pornography, in violation of Wisconsin Statutes § 948.12(1m) (2013), is a conviction "under the laws of any State relating to * * * possession * * * of child pornography" for purposes of the recidivist sentencing enhancement for the federal offense of transporting child pornography, 18 U.S.C. 2252(b)(1).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-49a) is reported at 97 F.4th 1054. The order of the district court (Pet. App. 50a-54a) is unreported but is available at 2021 WL 4551956.

JURISDICTION

The judgment of the court of appeals was entered on April 8, 2024. On June 28, 2024, Justice Barrett extended the time within which to file a petition for a writ of certiorari to and including August 7, 2024. On July 23, 2024, Justice Barrett further extended the time to and including September 5, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Western District of Wisconsin, petitioner was convicted on one count of transporting child pornography, in violation of 18 U.S.C. 2252(a)(1) and (b)(1), 2. Judgment 1. The district court sentenced petitioner to 180 months of imprisonment, to be followed by 20 years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-49a.

1. In October 2019, petitioner told an undercover FBI agent that he was interested in underage boys. Pet. App. 2a; Presentence Investigation Report (PSR) ¶ 8. At the time, petitioner was still under supervision following earlier state convictions on one count of attempted child enticement, in violation of Wisconsin Statutes § 948.07 (2013), and one count of possessing child pornography, in violation of Wisconsin Statutes § 948.12(1m) (2013). Pet. App. 2a; PSR ¶ 14.

Petitioner told the agent that he had recently been released from a residential sex-therapy treatment center, but that he continued to view explicit videos of minors. PSR ¶ 9. He later sent the agent a link to a file-storage program containing 561 videos of children being sexually assaulted. Pet. App. 2a; PSR ¶¶ 10-11.

2. A federal grand jury in the Western District of Wisconsin returned an indictment charging petitioner with one count of transporting child pornography, in violation of 18 U.S.C. 2252(a)(1) and 2. Superseding Indictment 1. Petitioner pleaded guilty. Pet. App. 2a; PSR ¶ 6; D. Ct. Doc. 76 (Mar. 8, 2021) (Plea Agreement).

A conviction for transporting child pornography under Section 2252(a)(1) carries a default statutory sentencing range of five to 20 years of imprisonment. 18 U.S.C. 2252(b)(1). That sentencing range increases to

15 to 40 years of imprisonment if the offender has "a prior conviction * * * under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children." *Ibid.*

The Probation Office calculated petitioner's advisory sentencing range under the 2018 Sentencing Guidelines to be 324 to 405 months. PSR ¶ 84. Because petitioner had a 2014 Wisconsin conviction on one count of possessing child pornography, Wis. Stat. § 948.12(1m) (2013), the Probation Office concluded that petitioner qualified for the statutory-minimum 15-year sentence under Section 2252(b)(1), PSR ¶ 83. Consistent with petitioner's plea agreement, the United States recommended a 15-year sentence. Plea Agreement 2.

Petitioner objected to the enhancement, arguing among other things that his previous Wisconsin child-pornography conviction could not be used to increase his sentence under Section 2252(b)(1) because the state-law offense encompasses possession of materials that do not fit the federal definition of child pornography, 18 U.S.C. 2256. See D. Ct. Doc. 90, at 2-3, 16-17 (July 23, 2021). Wisconsin law criminalizes "possess[ing], or access[ing] in any way with the intent to view," images of "a child engaged in sexually explicit conduct." Wis. Stat. § 948.12(1m) (2013). Wisconsin defines "'[s]exually explicit conduct'" to include the "[l]ewd exhibition of intimate parts," *id.* § 948.01(7)(e) (1995), which are further defined to include "the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being," *id.* § 939.22(19) (1979). Petitioner noted that while the federal definition of "child pornography"

encompasses images depicting the lascivious exhibition of the anus, genitals, or pubic area, it does not include the breasts or buttocks. D. Ct. Doc. 90, at 2-3, 16-17; see 18 U.S.C. 2256(2)(A)(v) and (8).[1]

The district court overruled petitioner's objection. Pet. App. 50a-54a. While the court took the view that the Wisconsin child-pornography statute covers some images that do not fit the federal definition of child pornography, it observed that the court of appeals had already rejected petitioner's argument that the applicability of Section 2252(b)(1)'s enhanced sentencing range turns on whether a state offense is "a precise match" for the comparable federal offense. *Id.* at 52a-53a. Specifically, in *United States* v. *Kaufmann*, 940 F.3d 377 (2019), cert. denied, 141 S. Ct. 137 (2020), the Seventh Circuit had recognized that "the words 'relating to' in [Section] 2252(b) expand the range of enhancement-triggering convictions" to include prior convictions that have "'a connection with, or reference to,'" the conduct listed in the federal statute. *Id.* at 378, 380 (quoting *United States* v. *Kraemer*, 933 F.3d 675, 679 (7th Cir. 2019)). The district court accordingly found that petitioner's prior Wisconsin conviction triggered Section 2252(b)(1)'s higher sentencing range. Pet. App. 53a-54a.

The district court sentenced petitioner to 180 months (15 years) of imprisonment, to be followed by 20 years of supervised release. Sent. Tr. 13; Judgment 2-3. The

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[1] Petitioner also argued that his Wisconsin statute of conviction did not "relat[e] to" possession of child pornography because it also covers "access[ing]" child pornography with intent to view it. D. Ct. Doc. 90, at 2, 10-15. The courts below unanimously rejected that contention, Pet. App. 24a-25a, 33a, and petitioner does not advance it in this Court, Pet. 5 n.1.

court calculated the advisory Guidelines range as 151 to 188 months of imprisonment, but observed that Section 2252(b)(1) increased the low end of the range to 180 months. Sent. Tr. 6-7. The court also recognized that the government had recommended a 15-year term of imprisonment—a recommendation the court understood "was negotiated in the plea agreement"—but noted that petitioner's conduct "seem[ed] like a case where [the government] might have asked for more." *Id.* at 8. The court expressed "grave concerns" about petitioner's "history of committing the same offense," and explained that petitioner "poses a risk to the public." *Id.* at 8-9. The court also made clear its "concerns about whether" a 15-year term of imprisonment would provide "an adequate deterrent given that [petitioner] committed this offense while he was on a form of supervision" after his previous state convictions. *Id.* at 9. Finally, the court explained that, although it occasionally has "concern[s]" that a statutory minimum sentence "compels [the court] to impose a sentence" it believes to be "[in]appropriate," it did not "have that concern here" because "15 years, given [petitioner]'s history, is appropriate." *Id.* at 13.

After the district court announced petitioner's sentence, the government asked whether the court would have imposed the same term of 180 months' imprisonment regardless of whether Section 2252(b)(1)'s higher sentencing range applied. Sent. Tr. 18-19. The court said "Yes," explaining that petitioner "is clearly a danger to the public" and that a "15-year sentence would be appropriate even without" the enhanced statutory minimum. *Id.* at 19. The court added that while "it would only be fair" to "resentence" petitioner were the higher range deemed inapplicable, its judgment reflected "an

honest assessment" of what "a fair sentence would be" even "without respect to" the enhanced statutory minimum. *Id.* at 19-20.

3. The court of appeals affirmed. Pet. App. 1a-49a. Sitting en banc on its own initiative, the court adhered to its earlier decision in *Kaufmann*, *supra*, and agreed with the district court that petitioner's Wisconsin child-pornography offense was an offense "relating to" the possession of child pornography. *Id.* at 11a-25a.

The court of appeals observed that the term "'relating to'" carries a "broad" "ordinary meaning," Pet. App. 12a (citation omitted), and explained that the statute's "text, structure, and history[,] * * * as well as its place in the overall statutory scheme, only reinforce that Congress intended to use 'relating to' in its broad, ordinary sense," *id.* at 13a.

First, the court of appeals explained that "giving 'relating to' its broad and ordinary meaning" of "bear[ing] a connection with" would respect the specific words that Congress used. Pet. App. 12a-13a. The court observed that in other sentencing statutes, Congress had cross-referenced state offenses by employing "narrower connecting language"—such as the term "'involving,'" which means "'necessarily entail[].'" *Id.* at 13a (discussing *Shular* v. *United States*, 589 U.S. 154, 162 (2020)); see 18 U.S.C. 924(e)(2)(A)(ii). The court emphasized that under petitioner's interpretation, the phrase "'relating to'" would have the same meaning as "'involving,'" because both would "disqualif[y] as any predicate any state offense that sweeps more broadly than" the conduct enumerated by federal law. Pet. App. 13a (citation omitted). The court declined to "adopt an interpretation that attaches no significance to Congress's

choice of the broad 'relating to' language in [Section] 2252(b)(1)." *Ibid.*

Second, the court of appeals explained that the statutory history supported giving "relating to" its ordinary meaning. Pet. App. 14a. The court observed that "in the very statute that added the 'relating to' language to [Section] 2252(b)(1), Congress amended another sentencing enhancement"—in 18 U.S.C. 2241(c)—"to expressly require the kind of relationship [that petitioner] reads into [Section] 2252(b)(1)." Pet. App. 14a. In Section 2241(c), "Congress made clear that a state offense would trigger enhanced penalties only if it 'would have been an offense under' [Section] 2241(a) or (b) 'had the offense occurred in a Federal prison.'" *Ibid.* (citation omitted). The court reasoned that the contemporaneous enactment of Sections 2241(c) and 2252(b)(1) showed that Congress "knew full well how to condition the applicability of a sentencing enhancement on a prior offense's congruence with federal law" and chose not to do so in Section 2252(b)(1). *Ibid.*

Finally, the court of appeals observed that when Congress enacted the relevant statutory language in 1996, "only a fraction of states defined child pornography in a manner congruent with or narrower than the federal definition," such that adopting petitioner's reading "would mean that on the day of its enactment, a large swath of [Section] 2252(b)(1) could apply to only a handful of states scattered across the country." Pet. App. 14a-15a. And the court recognized that such an outcome would be inconsistent with this Court's precedents and Congress's goal of expanding the scope of Section 2252(b). *Id.* at 15a-16a, 18a-23a.

Judge Wood, joined by four other judges, dissented. Pet. App. 26a-49a. Judge Wood would have concluded

that petitioner's offense did not qualify under Section 2252(b)(1), on the view that a predicate offense must exactly match the federal definition of "child pornography" codified at 18 U.S.C. 2256(8). *Id.* at 48a-49a.

ARGUMENT

Petitioner renews his contention (Pet. 8-25) that the lower courts erred in determining that his prior child-pornography conviction under Wisconsin Statutes § 948.12(1m) (2013) was "under the laws of any State relating to * * * [the] possession * * * of child pornography" for purposes of 18 U.S.C. 2252(b)(1). The court of appeals' decision does not conflict with any decision of this Court or implicate any circuit conflict that warrants further review in this case. Indeed, this case would be a particularly unsuitable vehicle for considering the question presented because the district court made clear that it was inclined to impose the same sentence even if the enhanced statutory minimum did not apply.

This Court has recently denied petitions for writs of certiorari presenting similar claims. See *Kaufmann* v. *United States*, 141 S. Ct. 137 (2020) (No. 19-7260); *Portanova* v. *United States*, 141 S. Ct. 683 (2020) (No. 20-5772). It should follow the same course here.[2]

1. The court of appeals correctly recognized that petitioner's previous Wisconsin child-pornography conviction was a conviction "under the laws of any State relating to * * * possession * * * of child pornography" that triggers the sentencing enhancement in 18 U.S.C. 2252(b)(1).

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[2] A similar issue is presented in the pending petition for a writ of certiorari in *Flint* v. *United States*, No. 24-5883 (filed Oct. 28, 2024).

a. For the purposes of Section 2252(b)(1), the term "'child pornography'" is defined as "any visual depiction * * * of sexually explicit conduct, where" (A) "the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct"; (B) "such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct"; or (C) "such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct." 18 U.S.C. 2256(8). The federal statute defines "'sexually explicit conduct'" to include "sexual intercourse," "bestiality," "masturbation," "sadistic or masochistic abuse," and the "lascivious exhibition of the anus, genitals, or pubic area." 18 U.S.C. 2256(2)(A). Wisconsin law, in turn, prohibits possessing or accessing with intent to view images of "a child engaged in sexually explicit conduct," Wis. Stat. § 948.12(1m) (2013), which includes the "[l]ewd exhibition of intimate parts," *id.* § 948.01(7)(e) (1995), such as "the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound," *id.* § 939.22(19) (1979).

Because a Section 2252(b)(1) enhancement applies when a defendant has a prior state conviction "'relating to'" the possession of child pornography, the court of appeals correctly considered whether the Wisconsin statute under which petitioner was previously convicted "bears a connection with" the possession of child pornography within the meaning of federal law. Pet. App. 23a. The ordinary meaning of the phrase "'relating to'" is "a broad one." *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992). It means "to stand in some relation; to have bearing or concern; to pertain; refer;

to bring into association with or connection with." *Ibid.* (quoting *Black's Law Dictionary* 1158 (5th ed. 1979)); see *Black's Law Dictionary* 1288 (6th ed. 1990) (providing the same definition of "[r]elate") (emphasis omitted).

"Congress characteristically employs the phrase to reach any subject that has 'a connection with, or reference to,' the topics the statute enumerates." *Coventry Health Care of Mo., Inc.* v. *Nevils*, 581 U.S. 87, 96 (2017) (quoting *Morales*, 504 U.S. at 384). And as the court of appeals recognized (Pet. App. 23a-24a), the Wisconsin statute of conviction "bears the necessary connection" to the possession of child pornography within the meaning of Section 2252(b). The Wisconsin statute criminalizes the same type of conduct described in Section 2252(b)(1)—the knowing possession of images depicting sexually explicit acts involving minors—to combat the same harm, namely, the sexual exploitation of minors. Indeed, petitioner does not argue that his Wisconsin statute of conviction bears no connection to, or falls outside the heartland of, the federal offense of possessing child pornography.

Statutory context and history reinforce that the phrase "relating to" in Section 2252(b)(1) bears its ordinary meaning. When Congress "wants to reference only state law congruent with federal law, it has said so clearly and specifically." *United States* v. *Kraemer*, 933 F.3d 675, 681 (7th Cir. 2019). As the court of appeals observed (Pet. App. 13a), that is precisely what Congress did when it enacted the Child Pornography Prevention Act of 1996 (Act or CPPA), Pub. L. No. 104-208, Div. A, Tit. I, § 121(5), 110 Stat. 3009-30, which amended Section 2252(b)(1) to its current form to cover offenses "relating to" the possession of child pornography. In

the same Act, Congress amended the penalties applicable to the offense of aggravated sexual abuse of a child by explicitly requiring that a predicate state offense have a federal match. In that distinct context, Congress imposed a sentencing enhancement if the defendant had "previously been convicted of another Federal offense under this subsection, or of a State offense *that would have been an offense* under either such provision had the offense occurred in a Federal prison." § 121(7)(c), 110 Stat. 3009-31 (emphasis added); 18 U.S.C. 2241(c).

Congress's use of language elsewhere in the CPPA requiring that a predicate offense mirror federal law—and its choice not to do so in Section 2252(b)(1)—confirm that the legislature intended Section 2252(b)(1) to reach a broader category of state offenses. See, *e.g.*, *Gallardo ex rel. Vassallo* v. *Marstiller*, 596 U.S. 420, 431 (2022) ("[Courts] must give effect to, not nullify, Congress' choice to include limiting language in some provisions but not others."). This Court has "long held that '[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *Sebelius* v. *Cloer*, 569 U.S. 369, 378 (2013) (quoting *Bates* v. *United States*, 522 U.S. 23, 29-30 (1997)) (brackets in original).

Applying the plain meaning of "'relating to'" also furthers Section 2252(b)(1)'s role of covering "heartland," *Pugin* v. *Garland*, 599 U.S. 600, 607 (2023), child-pornography offenses. When Congress enacted the CPPA in 1996, only six states had child-pornography-possession laws that clearly limited their coverage to content that would qualify as "child pornography" under the federal statutory definition in 18 U.S.C. 2256(8).

See Gov't C.A. Supp. En Banc Br. 6-7 & Addendum 1a-15a (collecting examples). In contrast, the statutes of 40 states appeared to include some content that may fall outside that definition.[3]

Requiring precise congruence, rather than a "relat[ionship]," 18 U.S.C. 2252(b)(1), between state and federal child-pornography law would therefore limit the application of Section 2252(b)(1)'s enhancement to child-pornography-possession convictions from only a handful of states. This Court has recently and repeatedly emphasized that courts "'should not lightly conclude that Congress enacted a self-defeating statute'" and has accordingly "decline[d] to interpret" the phrase "'relating to'" in ways that would "*exclude* numerous heartland * * * offenses" from a cross-reference to state criminal law. *Pugin*, 599 U.S. at 607 (interpreting the phrase "'relating to obstruction of justice'" under 8 U.S.C. 1101(a)(43)(S)) (citation omitted). And it would make little sense to do so here.

Here, as in other contexts, "Congress did nothing to indicate that offenders with prior federal sexual-abuse convictions are more culpable, harmful, or worthy of enhanced punishment than offenders with nearly identical state priors." *Lockhart* v. *United States*, 577 U.S. 347, 354 (2016). And it has repeatedly added additional conduct to the statute, in an effort to ensure that recidivist offenders are subject to the punishment that the federal legislature has prescribed. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 160001(d), 108 Stat. 2037; CPPA, § 121(5), 110 Stat. 3009-30; Protection of Children From Sexual Predators Act of 1998, Pub. L. No. 105-314, § 202(a)(1), 112 Stat.

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[3] Four states did not have child-pornography-possession offenses in 1996. See Gov't C.A. Supp. En Banc Br. Addendum 1a-15a.

2977; Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, § 507, 117 Stat. 683; Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 206(b)(2), 120 Stat. 614; Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299, § 7(c), 132 Stat. 4389.

b. Petitioner contends (Pet. 18-23) that the decision below conflicts with *Mellouli* v. *Lynch*, 575 U.S. 798 (2015). But as the court of appeals recognized (Pet. App. 20a-23a), *Mellouli* involved a "different statutory context[]"—an immigration law—and thus has "limited relevance" to the proper interpretation of the statutory phrase "relating to" in 18 U.S.C. 2252(b)(1). *Mellouli* concluded that a state-law conviction for "possession of drug paraphernalia" was not an offense "'relating to a controlled substance (as defined in section 802 of Title 21)'" under 8 U.S.C. 1227(a)(2)(B)(i), a statute concerning the removal of noncitizens. 575 U.S. at 800-801. Although the Court recognized that the phrase "relating to" ordinarily is "broad," it concluded that the specific context and history of the removal statute required a "narrower reading." *Id.* at 811-812 (citations omitted).

Specifically, the Court noted that prior versions of the removal statute in *Mellouli* had listed particular drugs on the federal schedule, such as "opium, coca leaves, [and] cocaine," *Mellouli*, 575 U.S. at 806-807 (citation omitted), and that, "[o]ver time, Congress amended the statute to include additional offenses and additional narcotic drugs," *id.* at 807. But that "increasingly long list" eventually became so unwieldly that Congress later replaced it with a simple cross-reference to the drug schedules in Title 21. *Ibid.* The Court thus emphasized that "[t]he historical background of [Sec-

tion] 1227(a)(2)(B)(i) demonstrates that Congress and the [Board of Immigration Appeals] have long required a direct link between an alien's crime of conviction and a particular federally controlled drug," and reasoned that Congress's use of the phrase "relating to" was not intended to authorize removal based on convictions involving non-federally scheduled drugs. *Id.* at 812. The Court also explained that Congress "qualified" the phrase "'relating to'" in the removal statute by "adding the limitation 'as defined in [Section 802].'" *Id.* at 808 n.9. *Mellouli* contrasted that explicit cross-reference with "other provisions of the immigration statute tying immigration consequences to controlled-substance offenses" that use the phrase "relating to" but "contain no reference to" Section 802, *id.* at 811 n.11 (citing 8 U.S.C. 1184(d)(3)(B)(iii) and 1357(d)).

The features undergirding the Court's conclusion in *Mellouli* are absent here. Section 2252(b)(1)'s context and history confirm that the phrase "relating to" carries its ordinary meaning, and nothing in the statute's historical backdrop suggests that Congress intended to limit the sentencing enhancement to state child-pornography offenses that exactly matched a federal predicate crime. See pp. 10-13, *supra*. Unlike in *Mellouli*, this is not a situation in which Congress can be presumed to have carried forward some traditional "direct link," *Mellouli*, 575 U.S. at 812; no such tradition existed. And unlike the removal provision at issue in *Mellouli*, Section 2252(b)(1) does not contain a parenthetical cross-reference to the federal statutory definition of "child pornography"; instead, it groups "child pornography" with various terms that do not even have federal definitions at all, suggesting a more expansive

approach to the various ways in which state laws attempt to combat child pornography.

Indeed, in addition to giving no effect to Congress's deliberate choice to use the phrase "relating to" as opposed to other terminology that it employed in the same statute, see pp. 10-11, *supra*, a constricted reading of "relating to" in Section 2252(b)(1) would turn that phrase into a statutory chameleon. Petitioner accepts (Pet. 20 n.3) that "relating to" carries its ordinarily broad sweep when the object of that phrase is conduct lacking a federal definition, such as "abusive sexual conduct involving a minor or ward," 18 U.S.C. 2252(b)(1). The phrase "relating to" cannot have a much narrower meaning when its object is a state-law child-pornography conviction like petitioner's. Petitioner supplies no sound basis to abandon the bedrock principle that, "in all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning." *United States* v. *Davis*, 588 U.S. 445, 456 (2019) (quoting *Cochise Consultancy, Inc.* v. *United States ex rel. Hunt*, 587 U.S. 262, 268 (2019)) (brackets omitted). And neither context nor history indicates that the phrase "relating to" in Section 2252(b)(1) "bears a split personality." *Ibid.*

c. Petitioner errs in arguing (Pet. 24-25) that giving "'relating to'" its ordinary meaning would deprive defendants of "fair notice" or cause "void-for-vagueness problems." As the court of appeals observed, petitioner has not actually challenged the statute on vagueness or any other constitutional ground. Pet. App. 19a-20a. And the oblique concerns that he asserts are unsupported. Courts apply statutory language like "relating to" in many contexts. See, *e.g.*, *Pugin*, 599 U.S. at 602 (addressing provision of the Immigration and National-

ity Act, 8 U.S.C. 1101 *et seq.*, concerning whether a state offense "'relat[es] to obstruction of justice'") (citation omitted); *Coventry Health Care*, 581 U.S. at 95-96 (addressing provision of the Federal Employees Health Benefits Act of 1959, Pub. L. No. 86-382, 73 Stat. 708, concerning whether a contract "'relate[s] to the nature, provision, or extent of coverage or benefits'") (citation omitted); *Morales*, 504 U.S. at 383-384 (addressing provision of the Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705, concerning "'any law * * * relating to rates, routes, or services of any air carrier'"). There is no reason to suppose that courts will interpret the phrase here to encompass surprising outcomes that deprive the public of fair notice. And petitioner identifies no instance of that happening in the many jurisdictions that follow the same approach as the court of appeals here.

For similar reasons, petitioner is wrong to contend (Pet. 25) that the "rule of lenity" supports his preferred interpretation of Section 2252(b)(1). That principle "applies only if 'after seizing everything from which aid can be derived,' there remains 'grievous ambiguity,'" *Pugin*, 599 U.S. at 610 (citation omitted), "'such that the Court must simply guess as to what Congress intended,'" *United States* v. *Castleman*, 572 U.S. 157, 173 (2014) (citation omitted). No such grievous ambiguity exists here.

2. Petitioner errs in asserting (Pet. 8) that "the decision below deepens a divide among the circuits." That argument overstates the alleged circuit disagreement and overlooks that the Seventh Circuit's decision below simply reaffirmed that court's earlier opinion in *United States* v. *Kaufmann*, 940 F.3d 377 (2019), cert. denied, 141 S. Ct. 137 (2020). The Court denied a writ

of certiorari in *Kaufmann*, *supra*, and no new developments since then would warrant a different outcome here.

The overwhelming view of the courts of appeals that have considered the issue is that the phrase "relating to" in Section 2252(b)(1) and similar sentencing-enhancement statutes carries its broad ordinary meaning. Thus, each court has held that the "full range of conduct proscribed" by a predicate offense must "stand in some relation to," "have bearing" on, "concern," "pertain" to, "refer" to, or "bring into association or connection with" statutorily specified conduct—but "not" that the predicate offense "criminalize exactly the same conduct" as a federal statute.[4] *United States* v. *Mayokok*,

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[4] See, *e.g.*, *United States* v. *Trahan*, 111 F.4th 185, 192 (1st Cir. 2024) (explaining that "relating to" in Section 2252(b)(2) "takes on its usual broad meaning and its inclusion means that a state definition need not be a perfect match with the federal definition of child pornography"); *United States* v. *Barker*, 723 F.3d 315, 322-323 (2d Cir. 2013) (per curiam) (explaining that "[i]n the context of sentencing enhancements, 'relating to' has been 'broadly interpreted to apply not simply to state offenses that are equivalent to sexual abuse, but rather to "any state offense that stands in some relation to, bears upon, or is associated with the generic offense."'") (brackets and ellipsis omitted); *United States* v. *Portanova*, 961 F.3d 252, 256-258 (3d Cir.) (explaining that Section 2252(b)(1) "does not require a precise match between the federal generic offense and state offense elements"), cert. denied, 141 S. Ct. 683 (2020); *United States* v. *Colson*, 683 F.3d 507, 511-512 (4th Cir. 2012) ("Numerous courts of appeals agree that Congress chose the expansive term 'relating to' in [18 U.S.C.] 2252A(b)(1) to ensure that individuals with a prior conviction bearing some relation to sexual abuse, abusive conduct involving a minor, or child pornography receive enhanced minimum and maximum sentences."); *United States* v. *Hubbard*, 480 F.3d 341, 347-348 (5th Cir.) (explaining that "'relating to'" in 18 U.S.C. 2252A(b)(1) (Supp. IV 2004) carries its "broad" ordinary meaning)

854 F.3d 987, 992-993 (8th Cir. 2017) (citation and internal quotation marks omitted), appeal, 747 Fed. Appx. 441 (8th Cir. 2019), cert. denied, 139 S. Ct. 2659 (2019). Applying the same reasoning as the court of appeals in this case, see Pet. App. 12a-13a, those decisions have explained that "relating to" "must be 'read expansively'" to "'encompass[] crimes other than those specifically listed in the federal statutes,'" *United States* v. *Portanova*, 961 F.3d 252, 256 (3d Cir.) (citation omitted), cert. denied, 141 S. Ct. 683 (2020).

Petitioner asserts (Pet. 13), that in *United States* v. *McGrattan*, 504 F.3d 608 (2007), the Sixth Circuit interpreted 18 U.S.C. 2252A(b)(1) to require an exact match

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(citations omitted), cert. denied, 552 U.S. 990 (2007); *United States* v. *Mateen*, 806 F.3d 857, 860 (6th Cir. 2015) (agreeing with the "[o]ther circuits [that] have broadly interpreted the phrase 'relating to' as triggering sentence enhancement for 'any state offense that stands in some relation, bears upon, or is associated with that generic offense'") (citation omitted), cert. denied, 578 U.S. 935 (2016); *Kaufmann*, 940 F.3d at 380 (recognizing that "relating to" in Section 2252(b) "retains its usual broad meaning") (citation omitted); *United States* v. *Sullivan*, 797 F.3d 623, 638 (9th Cir. 2015) (declining to find "that a prior conviction triggers a sentencing enhancement under [18 U.S.C.] 2251(e) or [18 U.S.C.] 2252(b)(2) only if the statutory definition of the prior offense is equivalent to a federal generic definition"), cert. denied, 578 U.S. 1024 (2016); *United States* v. *Bennett*, 823 F.3d 1316, 1322 (10th Cir.) ("We have held, as have the other circuits, that 'relating to' has a broadening effect on [18 U.S.C.] 2252A.") (citation omitted), cert. denied, 580 U.S. 926 (2016); *United States* v. *Miller*, 819 F.3d 1314, 1317 (11th Cir.) (per curiam) (recognizing that 18 U.S.C. 2251(e)'s sentencing enhancement does not require a state-law conviction to be "equivalent to a conviction for a crime that would constitute sexual abuse under federal law"), cert. denied, 579 U.S. 923 (2016). Although some of those decisions involve Sections 2251(e), 2252(b)(2), or 2252A(b)(1) and (b)(2), petitioner treats those statutes as of a piece with Section 2252(b)(1). See Pet. 2, 15.

between state and federal child-pornography offenses. But the principal dispute there was about whether to follow the categorical approach by applying the statutory language to the entire definition of the state offense. See *McGrattan*, 504 F.3d at 611-613. The Sixth Circuit concluded that the categorical approach applied, see *ibid.*, but so did the decision below, see Pet. App. 6a-7a. And whereas the decision below then went on to "the question before [it]," *id.* at 7a, which required it to interpret "relating to," see *id.* at 11a-25a, the decision in *McGrattan* appears simply to have assumed, or at least concluded without explicit analysis, that an exact match was required, see 504 F.3d at 611-613.

When the Sixth Circuit squarely interpreted the phrase "relating to" in *United Sates* v. *Mateen*, 806 F.3d 857 (6th Cir. 2015), cert. denied, 578 U.S. 935 (2016), it joined the general circuit consensus described above. *Id.* at 860 (citation omitted). *Mateen* rejected a defendant's argument that an Ohio conviction for gross sexual imposition could qualify as a predicate offense under 18 U.S.C. 2252(b)(2) only if it matched the federal "sexual abuse definition" contained in Chapter 109A of Title 18. *Mateen*, 806 F.3d at 860. The court instead explained that Section 2252(b)(2) employed "'broad[] language'" by "requir[ing] only that the defendant have been convicted of a state offense 'relating to . . . sexual abuse,'" and that therefore Congress had "require[d] only that the state statute be *associated with* sexual abuse" for the sentencing enhancement to apply. *Id.* at 860-861 (emphasis added) (citation omitted).

Mateen additionally emphasized that when Congress intends for the application of a sentencing enhancement to hinge on whether a predicate state offense "mirror[s] the federal one," it says so "explicit[ly]." 806 F.3d at

861. And since *Mateen*, the Sixth Circuit has consistently interpreted the phrase "relating to" in statutes like Section 2252(b)(1) to carry its ordinary meaning. See, *e.g.*, *United States* v. *Mayes*, No. 24-5079, 2024 WL 4434318, at *2 (Oct. 7, 2024) ("The state conviction only needs to be 'associated' with sexual abuse.") (quoting *Mateen*, 806 F.3d at 861); *United States* v. *Sykes*, 65 F.4th 867, 885 (2023) (similar), cert. denied, 144 S. Ct. 576 (2024); *United States* v. *Nelson*, 985 F.3d 534, 535-536 (2021) (similar); *United States* v. *Parrish*, 942 F.3d 289, 296 (2019) (similar). Those decisions undercut petitioner's contention that he would have been subject to a different sentencing range in the Sixth Circuit.

As petitioner observes (Pet. 12), the Ninth Circuit's decision in *United States* v. *Reinhart*, 893 F.3d 606 (2018), employed a different interpretation of "relating to." In that case, the court of appeals concluded that a state statute "relat[es] to" the possession of child pornography, within the meaning of Section 2252(b)(2), only if the State's definition of child pornography matches the federal definition in Section 2256(8). See *Reinhart*, 893 F.3d at 610-616. But *Reinhart* itself is in sharp tension with the Ninth Circuit's earlier decision in *United States* v. *Sullivan*, 797 F.3d 623 (2015), cert. denied, 578 U.S. 1024 (2016).

In *Sullivan*, the Ninth Circuit determined—in the context of considering whether a state conviction was for an offense "relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward" under Section 2252(b)(2)—that the phrase "relating to" "do[es] not require" a prior state conviction to be "categorically the same as any particular federal offense." 797 F.3d at 637-638. The court explained that Section 2252(b)(2) requires "only that the state convic-

tion is one categorically 'relating to' such federal offenses." *Ibid.* And in accord with the approach of the court of appeals here and with other circuits, *Sullivan* "define[d] the phrase 'relating to'" in Section 2252(b)(2) "broadly" for the purpose of making that determination. *Id.* at 640.

Reinhart acknowledged the discordance between its conclusion and *Sullivan* in a footnote, but stated that the opinions' conflicting definitions of "'relating to'" are "appropriate" because Section 2252(b)(2) "contains some clauses of defined terms that require a narrow reading of 'relating to,' and some of undefined terms that require a broad reading." 893 F.3d at 616 n.5. That distinction, however, is analytically unsound. As discussed earlier (pp. 14-15, *supra*), even if the court of appeals' rationale might justify adopting different interpretations of the term "relating to" in different statutory provisions, "[i]n all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning." *Davis*, 588 U.S. at 456 (citation omitted; brackets in original). Although the Ninth Circuit denied en banc review in *Reinhart* itself, 16-10409 C.A. Doc. 48, (Oct. 29, 2018), in a future case, it may revisit its analysis and adopt a construction of the statute that avoids "attribut[ing] different meanings to the same phrase," *Cochise*, 587 U.S. at 268 (citation omitted)—particularly with the benefit of this Court's more recent decisions, see, *e.g.*, *Pugin*, 599 U.S. at 607.

And at all events, the intracircuit discrepancy between the Ninth Circuit's approaches in *Reinhart* and *Sullivan* does not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a [c]ourt of [a]ppeals to reconcile its internal difficulties."). *Rein-*

hart, moreover, had already been decided when this Court declined to review the Seventh Circuit's decision in *Kaufmann*. The same outcome is warranted here, particularly because the Seventh Circuit made clear that its opinion in this case was repeating "th[e] precise conclusion" that the court had previously reached in *Kaufmann*. Pet. App. 16a.

3. Finally, even if the question presented otherwise warranted this Court's review, this case would be a particularly unsuitable vehicle in which to consider it because reversal of the decision below is unlikely to meaningfully affect the length of petitioner's sentence.

Petitioner's 180-month (15-year) prison term fell within the 151-to-188-month advisory Guidelines range calculated by the district court before the court applied Section 2251(b)(1)'s statutory minimum. Sent. Tr. 6-7. Although the court acknowledged (*id.* at 19) that it would be appropriate to resentence petitioner if the enhanced 15-year statutory minimum were found inapplicable, petitioner is unlikely to receive any practical benefit from a decision in his favor. The sentencing court emphasized its "grave concerns" about petitioner's "risk to the public," questioned whether even 15 years in prison would provide "an adequate deterrent," and maintained that the same "sentence would be appropriate even without" the statutory minimum. *Id.* at 8-9, 19. The court's "honest assessment" of what it believed "a fair sentence would be * * * even without respect to" an enhanced statutory minimum, *id.* at 19-20, suggests that petitioner would be unlikely to receive a lower sentence.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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