No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ANGELO COREY STACKHOUSE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

CONSTANCE VAN KLEY
CJA Panel Attorney
Van Kley Law PLLC
P.O. Box 451
Missoula, MT 59806
Phone: (605) 517-0673
Email: constance@vankleylaw.com

Attorney for Defendant-Appellant

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QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 1201(a)(1), which prohibits kidnapping with the use of any instrumentality of commerce, falls within Congress's power to regulate the instrumentalities of commerce and therefore survives an as-applied challenge whenever the defendant used a cell phone during the kidnapping.
2. Whether the *mens rea* requirement of 18 U.S.C. § 2421(a), which prohibits transportation across interstate lines with intent to engage in criminal sexual activity, may be satisfied by "contingent intent," even when the specific intent to commit the unlawful act is formed after transportation has concluded.

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INTRODUCTION

To maintain our system of federalism, Congress cannot be allowed to "use the Commerce Clause to completely obliterate the Constitution's distinction between national and local authority." *United States* v. *Morrison*, 529 U.S. 598, 615 (2000). And, while the distinction may be blurry at times, one line is—or should be—clear: "the suppression of [violent crime] has always been the prime object of the States' police power." *Ibid.* To fail to recognize and protect that line is to arrogate to the federal government a core power of the state, and it will in fact frustrate effective law enforcement by creating uncertainty about who may charge and prosecute person-on-person crimes.

The Ninth Circuit disregarded the line entirely. It held that purely local, noneconomic conduct may appropriately be charged as a federal crime whenever the defendant uses a cell phone during the commission of the offense. While the court's decision involved kidnapping under the Adam Walsh Act, which authorizes federal charges for a kidnapping involving the "use[] of . . . any . . . instrumentality of interstate or foreign commerce," its reasoning holds no limiting principle—and would allow Congress to transform any offense into a federal one. 18 U.S.C. § 1201(a)(1). Texting while driving, for example, necessarily involves both a cell phone and an automobile, two instrumentalities of commerce. Indeed, in the modern age, it is hard to imagine *any* offense that was not furthered, in some way, by "any means, facility, or instrumentality of interstate or foreign commerce." *Ibid.* According to the Ninth

Circuit's reading of Section 1201, nothing more is needed to trigger federal jurisdiction.

The Ninth Circuit also erred seriously—and in a way that similarly ignores the nature of federal criminal power—in developing a new theory of *mens rea*, contingent intent, to apply to 18 U.S.C. § 2421(a), which prohibits transportation of a person with intent to engage in criminal sexual activity. Under this theory, a defendant may be convicted of a federal crime when the specific intent to commit the crime arises after interstate transportation has concluded. In other words, evidence suggesting that a defendant conceivably might intend to commit an offense in another state, coupled with evidence that specific intent did in fact form while that state, is enough for a federal conviction.

The Ninth Circuit's errors are unlikely to be confined to the current case and may have broad implications for federal and state criminal jurisdiction across the American West. The Court should grant the petition for a writ of certiorari.

RELATED PROCEEDINGS

United States District Court (D. Mont.)
United States v. *Stackhouse*, No. 1:21-cr-00035-SPW-1 (Oct. 27, 2022)

United States Court of Appeals (9th Cir.)
United States v. *Stackhouse*, No. 22-30177 (June 27, 2024)

OPINION BELOW

The opinion of the court of appeals is published in the Federal Reporter at 105 F.4th 1193 (9th Cir. 2024) and reproduced in the Appendix. App. A.

JURISDICTION

The judgment of the court of appeals was entered on June 27, 2024. The jurisdiction of this Court is invoked under 18 U.S.C. § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

U.S. Constitution Article I, Section 8.

> The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]

18 U.S.C. § 1201(a)(1).

> (a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—
>
> (1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense[.]
>
> shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

18 U.S.C. § 2421(a).

> Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

STATEMENT

A. Indictment

A grand jury handed down the original indictment against Angelo Corey Stackhouse on August 5, 2021, charging him with transportation of a person with intent to engage in illegal sexual activity, in violation of 18 U.S.C. § 2421(a), and four drug charges. R. 969–72. On November 18, 2021, a sixth count—kidnapping an Indian person within the borders of a reservation—was added. R. 964–68.[1]

Following a failed change of plea hearing, on February 17, 2022, the operative indictment issued, adding a seventh and final count—also for kidnapping, in violation of 18 U.S.C. §§ 1201(a)(1), 1201(g), and 3559(f)(2). R. 881–85. Unlike the preexisting kidnapping charge, the seventh count did not involve an Indian person or an Indian reservation and did not implicate Congress's plenary power to regulate Indian tribes or the Indian commerce clause. Rather, the Government charged only that Mr. Stackhouse "used a means, facility, and instrumentality of interstate or foreign commerce." R. 885.

B. Trial

Mr. Stackhouse waived his right to a jury trial, R. 878–880, and proceeded to a bench trial. At trial, V.G. took the stand; V.G was the child involved in the conduct giving rise to Mr. Stackhouse's charge for kidnapping while "us[ing] a[n] . . . instrumentality of . . . commerce." She testified that she lived next door to Mr.

[1] Mr. Stackhouse appealed to the Ninth Circuit from this conviction under the Rule Against Hearsay. The Ninth Circuit resolved his challenge in a memorandum disposition, and the conviction is not relevant to this Petition. *See* App. B.

Stackhouse in Billings, Montana. R. 331. She testified that in September 2020, Mr. Stackhouse transported her to several locations in Billings, including a motel, R. 311–327, 368–377, and that he used his cell phone during that time, R. 317, 334.

Hannah, the woman involved in the conduct giving rise to the unlawful transportation charge, also testified. She testified that her sexual relationship with Mr. Stackhouse began in May 2020, when Mr. Stackhouse brought Hannah on a trip to Denver, Colorado, where Mr. Stackhouse purchased and Hannah consumed cocaine. R. 100–02. Mr. Stackhouse and Hannah engaged in sexual activity during that trip and again after they returned to Billings, Montana. R. 103–04.

Mr. Stackhouse and Hannah returned to Denver shortly thereafter. R. 105–06. During that trip, Hannah engaged in sexual activity with Mr. Stackhouse's friend and the friend's wife. R. 107–08. Hannah testified at trial that Mr. Stackhouse forcibly penetrated her with an object because she had allowed the man to have penetrative sex with her against Mr. Stackhouse's instruction, given immediately before the sexual activity occurred. R. 108–09.

On the morning of the fourth day of trial, the district court denied Mr. Stackhouse's Rule 29 motion for judgment of acquittal, R. 17–24, and entered a guilty verdict on all seven counts of the indictment, R. 11–16; App. C. Mr. Stackhouse was sentenced to life in prison and has been committed to the custody of the Bureau of Prisons. App. C.

C. Appeal

The Ninth Circuit affirmed. App. A. Mr. Stackhouse brought an as-applied Commerce Clause challenge to the federal kidnapping charge and challenged the sufficiency of the evidence used to convict him for transportation across interstate lines with intent to engage in criminal sexual activity.

1. Kidnapping

The Ninth Circuit held that the federal kidnapping statute survives a Commerce Clause challenge whenever a defendant uses a cell phone in furtherance of a strictly intrastate crime. App. A at 7–10. Reasoning that cell phones are instrumentalities of interstate commerce—a point that Mr. Stackhouse does not dispute—the court determined that Section 1201(a) is a regulation of an instrumentality of commerce and therefore constitutional *per se*. *Ibid.*

The court of appeals wrote that "[f]orbidding the use of instrumentalities of commerce, including cellphones, to further intrastate crime, including kidnapping, is 'regulat[ing]' one aspect of the device—its use in certain circumstances"—and therefore not a regulation of the intrastate conduct itself. App. A at 8 (quoting U.S. Const. art. I, § 8). Looking to prior cases involving the use of communication devices to make threats—criminal conduct that cannot occur without the use of the communication device—the court concluded that, even in broader circumstances such as person-on-person crimes, "parallel language" between statutes—the use of an instrumentality of commerce—"compels parallel results." *Id.* at 9.

The Ninth Circuit did not merely conclude that the kidnapping statute may be applied to strictly intrastate activity. It also held that there is no requirement that the intrastate conduct be economic in nature or have a substantial effect on interstate commerce. App. A at 10. Because the court had already concluded that the statute is a sufficiently direct regulation of an instrumentality of commerce, it held that "no further inquiry" regarding economic activity "is necessary to determine that [the] regulation is within the Commerce Clause authority." *Ibid.* (quoting *United States* v. *Clayton*, 108 F.3d 1114, 1117 (9th Cir. 1997) (ellipses omitted)).

2. Transportation with Intent to Engage in Unlawful Sexual Activity

The Ninth Circuit held that the Government met its burden of establishing that Mr. Stackhouse "knowingly transport[ed]" Hannah from Montana to Colorado "with intent that [she] engage . . . in any sexual activity for which any person can be charged with a criminal offense." 18 U.S.C. § 2421(a). Recognizing that under its own precedents, the statute necessitates proof that the criminal intent be "a dominant, significant, or motivating purpose of the transportation," the court found the requirement met. App. A at 11 (quoting *United States* v. *Flucas*, 22 F.4th 1149, 1164 (9th Cir. 2022)).

The court of appeals reasoned that evidence of prior sexual assaults or threats against other women, without more, may allow an inference that Mr. Stackhouse intended to sexually assault Hannah when he traveled with her to Colorado. App. A at 10–13. This theory, if endorsed, would allow for a conviction under Section 2421(a)

whenever a person travels with someone across interstate lines on the basis of past uncharged criminal activity.

The Ninth Circuit did not stop there, however. It found that the evidence "suggests that Stackhouse may have intended to sexually assault [Hannah] only *if* she did not comply with his directions and demands," App. A at 13, and that "Stackhouse's intent can arguably be characterized as intent to have sex with Hannah without her consent if she did not comply with his demands and directives," *Id.* at 14. The court did not address when this "contingent intent" may have arisen—whether before or after the trip to Denver was complete. "In sum," it wrote, " that Stackhouse may have intended to assault Hannah contingently—if the victim did not fully comply with his demands—is sufficient to meet the intent element of Section 2421." *Ibid.* Between evidence of prior assaults and the newly minted theory of contingent intent, the Court held that the evidence was sufficient to support the conviction. *Ibid.*

REASONS FOR GRANTING THE PETITION

A. The Court should review the Ninth Circuit's erroneous holding that a purely local kidnapping may be prosecuted as a federal crime whenever the defendant uses a cell phone during the commission of the offense.

1. The Ninth Circuit's decision conflicts with the Constitution and this Court's precedents.

"Thus far in our Nation's history our cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature." *United States* v. *Morrison*, 529 U.S. 598, 613 (2000). This makes immediate sense:

commerce *is* economic activity. "In fact, when Federalists and Anti-Federalists discussed the Commerce Clause during the ratification period, they often used trade (in its selling/bartering sense) and commerce interchangeably." *United States* v. *Lopez*, 514 U.S. 549, 586 (1995) (Thomas, J., concurring).

Giving shape to this principle, the Court has "identified three broad categories of activity that Congress may regulate under its commerce power": (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities," and (3) "those activities having a substantial relation to interstate commerce." *Id.* at 558–59. While a regulation may be constitutional when applied to "purely local activities," *Gonzales* v. *Raich*, 545 U.S. 1, 17 (2005), that is true only when the activities "threat[en]" commerce, *Lopez*, 514 U.S. at 558, or "are part of an economic 'class of activities' that have a substantial effect on interstate commerce," *Raich*, 545 U.S. at 17 (citing *Perez* v. *United States*, 402 U.S. 146, 151 (1971); *Wickard* v. *Filburn*, 317 U.S. 111, 128–29 (1942)). And the activities must be "economic in nature," *Taylor* v. *United States*, 579 U.S. 301, 306 (2016)—for example, "the production, possession, and distribution of controlled substances," *id.* at 308.

As applied to Mr. Stackhouse, Section 1201(a)(1) lands far beyond the outer limits of the *Lopez* categories. It certainly does not fall within the first category: it does not regulate the channels of commerce—the systems and routes along which commerce moves between states. *See Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 271 (1964) ("railroads, truck lines, ships, rivers, and even highways are

. . . subject to congressional regulation"); *Gibbons v. Ogden*, 22 U.S. 1 (1824) (navigable waters).

The Ninth Circuit held that the federal kidnapping statute fits neatly within *Lopez*'s second category—that is, that Section 1201(a)(1) "regulate[s] and protect[s] the instrumentalities of commerce, or persons or things in interstate commerce." *Lopez*, 514 U.S. at 558. This cannot be. The federal kidnapping statute regulates *kidnapping*, not the instrumentalities of commerce, even when a cell phone is used during the offense. *See Raich*, 545 U.S. at34 (Scalia, J., concurring) ("The first two categories are self-evident, since they are the ingredients of interstate commerce itself.").

Nor is it conceivable that Section 1201(a)(1) *protects* the instrumentalities of commerce. Federalizing person-on-person offenses will not free up cellular networks or interfere with telecommunications services; a purely local kidnapping will not clog a highway or stop a train from reaching its destination; and Mr. Stackhouse's conduct had no effect on persons or commodities moving between states. And, while there may be instances in which federal enforcement is necessary for the effective prosecution of crimes that *require* the use of interstate infrastructure and may frustrate local law enforcement agencies, *see*, *e.g.*, 18 U.S.C.§ 844(a) (using mail or "other instrument" of commerce to make a bomb or arson threat); 18 U.S.C. § 875 (transmitting in commerce a threat or a ransom or extortion demand), the same cannot be said of a statute, like Section 1201(a)(1), that opportunistically seizes on *Lopez*'s language to create a federal jurisdictional hook for a local crime.

Finally, the court of appeals did not address whether Section 1201(a)(1) falls within the third *Lopez* category, either facially or under the facts of this case. It clearly does not. Purely local activities are subject to regulation under the Commerce Clause only when the activities are economic—when they involve "the production, distribution, and consumption of commodities." *Raich*, 545 U.S. at 25 (quoting Webster's Third New International Dictionary 720 (1966)); *see also Morrison*, 529 U.S. at 611 ("[I]n those cases where we have sustained federal regulation of intrastate activity based upon the activity's substantial effects on interstate commerce, the activity in question has been some sort of economic endeavor."). Kidnapping may, at times, refer to economic conduct, as when a ransom is demanded, or when § 1201 is applied to human trafficking or kidnapping-for-hire. But it does not refer to an economic "class of activities." *Raich*, 545 U.S. at 17.

Nothing about Section 1201(a)(1) suggests that Congress disagrees. Prior to 2006, the Government's charging theory would have been unavailable. But that year, as part of the Adam Walsh Child Protection and Safety Act, Congress added a single sentence to the federal kidnapping act, changing the jurisdictional element of 18 U.S.C. § 1201(a)(1). The element had once been:

> (1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary *if the person was alive when the transportation began*[.]

18 U.S.C. § 1201(a)(1) (2000) (emphasis added). But, with the passage of the Act, it became:

> (1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a

> State boundary, *or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense*[.]

18 U.S.C. § 1201(a)(1) (emphasis added). With this sentence, Congress "dramatically increased the scope of federal jurisdiction under the [federal kidnapping act]." Colin V. Ram, Note, *Regulating Intrastate Crime: How the Federal Kidnapping Act Blurs the Distinction Between What Is Truly National and What Is Truly Local*, 65 Wash. & Lee L. Rev. 767, 786 (2008).

Congress made no express—or even implicit—"findings regarding the effects upon interstate commerce" of kidnapping with the use of an instrumentality of commerce. *Lopez*, 514 U.S. at 562. It certainly knew how to do so. Elsewhere, the Adam Walsh Act includes findings demonstrating Congress's awareness that the Commerce Clause limits its reach. *See* 18 U.S.C. § 2251 (addressing child pornography's impact of interstate and foreign commerce). And other criminal provisions within the Act require far more to be proven to satisfy the jurisdictional element. *See* 18 U.S.C. §§ 1465 (prohibiting producing and transporting certain obscene materials "with the intent to transport, distribute, or transmit in interstate or foreign commerce"); 2250 (imposing sex offender registration requirements and updated registrations for individuals who "travel[] in interstate or foreign commerce"); 2257A(a) (imposing recordkeeping requirements upon producers of certain sexual images "which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce").

Section 1201(a)(1) similarly appears to have no equal outside the Adam Walsh Act. The federal murder-for-hire statute, 18 U.S.C. § 1958, includes similar language but also an additional threshold requirement of economic activity. The Hobbs Act provides the most helpful point of comparison. Through the Hobbs Act, Congress has prohibited robbery and attempted robbery that affects commerce. *Taylor*, 579 U.S. at 302 (citing 18 U.S.C. § 1951(a)). In *Taylor*, the Court considered a challenge to a conviction under the Hobbs Act arising from the defendant's attempts to rob marijuana dealers. *Id.* at 303–05. The Court rejected the challenge because "the activity at issue, the sale of marijuana, is unquestionably an economic activity," and because the Court previously had determined that marijuana trafficking is subject to broad federal regulation. *Id.* at 306–07. The Court did not say that every robbery is a Hobbs Act robbery and therefore may be charged as a federal crime. Rather, it reinforced that the evidence must address the robbery's effect on commerce.

Under the Ninth Circuit's reasoning, though, Congress could have taken an easier path when it drafted the Hobbs Act and avoided the substantial effects inquiry altogether, had it only recited the magic word, "instrumentality." Then every robbery would be a federal crime. A get-away car, a phone call between co-conspirators, a ski mask purchased from Amazon—all these and more would suffice to trigger federal jurisdiction.

The Ninth Circuit's holding falls squarely counter to the original meaning of the Commerce Clause and the Court's precedents. Never has the Court sanctioned such a broad view of the commerce power. Indeed, it has cautioned against adopting

arguments that would broadly federalize prosecutions of violent crime—historically, a matter of nearly exclusive state control. *Morrison*, 529 U.S. at 615 ("[I]f Congress may regulate gender-motivated violence, it would be able to regulate murder or any other type of violence since gender-motivated violence, as a subset of all violent crime, is certain to have lesser economic impacts than the larger class of which it is a part."). Where, as here, kidnapping is a local crime, it cannot be prosecuted in federal court under Section 1201(a)(1).

2. The Court should grant review.

Mr. Stackhouse's case is an ideal vehicle for resolving the question presented. The record is complete and uncomplicated, and the Ninth Circuit appropriately recognized the question as one of law and fully resolved it. As similar conduct has been and will continue to be charged and prosecuted in federal court, state and federal law enforcement officials and prosecutors should know whether future federal prosecutions suffer from a fatal defect. The Court's clarification of the scope of Section 1201(a)(1) would protect federalism and provide critical guidance to individuals throughout the state and federal criminal justice systems.

Commerce Clause challenges to Section 1201(a)(1) are mounting. To date, the circuits that have addressed similar as-applied challenges have, like the Ninth Circuit, concluded that Congress need do nothing more than refer to the instrumentalities of commerce to exercise its powers. *See United States* v. *Windham*, 53 F.4th 1006, 1013 (6th Cir. 2022) ("When a car or cell phone is used 'in committing or in furtherance of' a kidnapping for ransom, reward, or otherwise, the federal

kidnapping statute applies."); *United States* v. *Protho*, 41 F.4th 812, 827–29 (7th Cir. 2022) (affirming conviction when defendant held victim in an automobile against her will); *United States* v. *Morgan*, 748 F.3d 1024, 1030–32 (10th Cir. 2014) (defendants "used a cell phone, the Internet, or a GPS device"). On the other hand, a couple of defendants have gained slight traction in district court challenges to indictments premised on their use of automobiles—no less instrumentalities of commerce than cell phones. *See United States* v. *Mitchell*, No. CR 22-01545-TUC-RM, 2024 WL 91524, at *15 (D. Ariz. March 4, 2024) ("The government must present evidence at trial to establish that the [specific] motor vehicle used during the kidnapping is an instrumentality of commerce."); *United States* v. *Chavarria*, No. 22-CR-1724-KG, 2023 WL 3815203, at *8 (D.N.M. June 5, 2023) ("This Court concludes that there is no federal jurisdiction . . . . Congress has not indicated an intent to assert Commerce Clause authority and bring under federal jurisdiction non-economic criminal kidnapping entirely occurring intrastate simply because of the use of a common vehicle.").

Although the circuit courts to address this issue have agreed that Congress may broadly criminalize kidnapping, their reasoning conflicts directly with the Court's precedents. And resolution of the question presented now is a much-needed course correction—not only for the courts of appeals, but also for Congress, which would benefit from clarity about the scope of its commerce power and the requirements for its exercise.

B. The Court should review the Ninth Circuit's holding that "contingent intent" satisfies the *mens rea* requirement for a conviction under Section 2421(a) when the specific intent to commit the crime arises only after transportation is completed.

1. The Ninth Circuit misapplied the Court's precedents and seriously erred.

The Mann Act, 18 U.S.C. § 2421 criminalizes "knowingly transport[ing] any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense." Because interstate transportation is a jurisdictional requirement, "it is essential that the interstate transportation have for its object or be the means of effecting or facilitating the proscribed activities." *Mortenson* v. *United States*, 322 U.S. 369, 374 (1944). "What Congress has outlawed by the Mann Act . . . is the use of interstate commerce as a calculated means for effectuating sexual immorality." *Id.* at 375; *see also Cleveland* v. *United States*, 329 U.S. 14, 20 (1946) ("[G]uilt under the Mann Act turns on the purpose which motivates the transportation, not on its accomplishment.").

The Ninth Circuit erred in holding that a conviction may stand on mere evidence of prior incidences of sexual violence and the fact that criminal sexual activity did, in fact, occur after transportation. It did so by applying the theory of "contingent intent"—the idea that, even if the evidence did not show "unconditional intent" to commit a sexual crime at the point of transportation (and it did not), it is enough for that "Stackhouse's intent can arguably be characterized as an intent to have sex with Hannah without her consent if she did not comply with his demands

and directions." App. A at 14. The court did not require that the conditional intent exist at the time of travel.

The court of appeals relied nearly exclusively on *Holloway* v. *United States*, 526 U.S. 1 (1999). But *Holloway* cannot hold the meaning attributed to it. There, the Court considered convictions under 18 U.S.C. § 2119, which prohibits carjacking "with the intent to cause death or serious bodily harm." The defendant challenged his conviction because he did not actually intend use his gun on any victim unless the victim "had given him a hard time." *Holloway*, 526 U.S. at 4. The Court concluded that the defendant's conditional intent—the intent to harm the victim if the victim denied him a car—was sufficient. *Id.* at 6–12.

The Ninth Circuit's reasoning stretches *Holloway* beyond recognition. Notably, *Holloway* does not erase the requirement that intent be specific but provides only that specific intent "may be conditional." *Id.* at 9. And that conditional intent is pinpointed to the precise moment when the carjacker points a gun at the driver.

In contrast, the evidence here contradicts the Ninth Circuit's conclusion that the specific intent (whether unconditional or conditional) motivated interstate travel, as required under the Mann Act. The unlawful sexual activity occurred exclusively in Colorado, and the intent—whether conditional or not—similarly arose in that state. Hannah testified that assault occurred shortly after she had sex with someone because she had not heeded to Mr. Stackhouse's instruction to not have penetrative intercourse with him. R. 109–110. She testified that the instruction was given immediately before Hannah and the man had sex. R. 108. Thus, even if conditional

intent may be accepted as a theory under the Mann Act, that conditional intent was formed immediately shortly before the unlawful criminal activity occurred—in Colorado. The intent could not motivate the out-of-state trip when it did not exist at the time of the travel, and the Ninth Circuit's construction of a new theory of intent cannot mask the absence of evidence to support the conviction under Section 2421.

No other court of appeals has similarly negated the requirement that intent exist at the time of transportation to sustain a conviction under the Mann Act. Indeed, other courts have searched for evidence showing premeditation. *See United States* v. *Goodwin*, 719 F.3d 857, 859–62 (8th Cir. 2013) (under analogous statute involving transportation of a minor, Section 2423, intent shown when defendant purchased bus fare for minor with whom he had been having an online, sexual relationship); *United States* v. *Hitt*, 473 F.3d 146 (5th Cir. 2006) (under Section 2423, evidence demonstrated intent when defendant groomed victim prior to interstate travel and arranged for opportunity to share hotel bedroom); *United States* v. *Bonty*, 383 F.3d 575, 578–79 (7th Cir. 2004) (defendant transported thirteen-year-old across interstate lines and threatened her against leaving during the travel in order to have sex with her, whether or not by force).

2. The Court should grant review.

The Ninth Circuit reads *Holloway* far too broadly, turning its recognition of specific conditional intent into a theory approaching something like negligence. Section 2421 requires more. If the intent to commit unlawful criminal sexual activity can arise after transportation is completed, then Section 2421 is transformed from

the federal crime of criminal transportation into the federal crime of unlawful sexual activity. But, just as Congress cannot criminalize all kidnappings, it cannot criminalize all sexual violence. Under the Ninth Circuit's theory of intent, though, Mr. Stackhouse has been convicted federally for conduct over which the state has exclusive jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.
Constance Van Kley
CJA Panel Attorney
Counsel of Record

September 24, 2024.