NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 2024

ARJUNE AHMED,

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

Petitioner Arjune Ahmed was convicted of two counts of kidnapping. The district court declined to give him separate trials on the two kidnapping allegations, even though the allegations involved different victims and distinct events. Additionally, the district court admitted over his objection evidence that he had committed a sexual assault for which he was not charged. The court made both important decisions based on its interpretation of Federal Rule of Evidence 413, which provides that "[i]n a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault."

This case presents an issue that has split the circuits: What does it mean to be "accused of sexual assault" for purposes of Rule 413? Does it mean that the defendant is charged with an offense with an element requiring proof of sexual assault? Or is a defendant "accused of sexual assault" whenever a prosecutor informally alleges that he committed a sexual assault, regardless of the elements of the charged offenses?

PARTIES TO THE PROCEEDINGS

The caption lists all parties to the proceedings.

DIRECTLY RELATED PROCEEDINGS

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

United States v. Ahmed, No. 5:21-cr-4087-LTS-KEM (N.D. Iowa) (criminal proceedings), judgment entered October 25, 2023.

United States v. Ahmed, No. 23-3449 (8th Cir.) (direct criminal appeal), judgment and opinion entered October 21, 2024. The Eighth Circuit denied Mr. Ahmed's petition for rehearing on December 5, 2024.

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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Petitioner Arjune Ahmed respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINION BELOW

The Eighth Circuit's published opinion in Mr. Ahmed's case is available at 119 F.4th 564 and appears in the appendix to this petition at page 1.

JURISDICTION

The Eighth Circuit denied Mr. Ahmed's petition for rehearing on December 5, 2024.

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

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

"Rules 413 and 414 of the Federal Rules of Evidence create exceptions to the general rule against propensity evidence." *United States v. Sanchez*, 42 F.4th 970, 975 (8th Cir. 2022).

Mr. Ahmed's case involves Federal Rule of Evidence 413, which provides:

> (a) **Permitted Uses.** In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant.
>
> . . . .
>
> (d) **Definition of "Sexual Assault."** In this rule and Rule 415, "sexual assault" means a crime under federal law or under state law (as "state" is defined in 18 U.S.C. § 513) involving:
>
> (1) any conduct prohibited by 18 U.S.C. chapter 109A;

(2) contact, without consent, between any part of the defendant's body — or an object — and another person's genitals or anus;

(3) contact, without consent, between the defendant's genitals or anus and any part of another person's body;

(4) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or

(5) an attempt or conspiracy to engage in conduct described in subparagraphs (1)-(4).

As relevant here, Federal Rule of Evidence 414 provides:

(a) **Permitted Uses.** In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant.

Similar to Rule 413(d), Rule 414(d) provides the definition of the term "child molestation."

Finally, Federal Rule of Evidence 415 is titled "Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation," and relies on Rules 413 and 414 for definitions of sexual assault and child molestation.

STATEMENT OF THE CASE

An indictment in the Northern District of Iowa charged Mr. Ahmed with two counts of kidnapping, in violation of 18 U.S.C. § 1201(a)(1). One count pertained to the kidnapping of a victim with the initials O.B., and the other related to the kidnapping of a victim with the initials A.J. The government alleged that both kidnappings culminated with Mr. Ahmed sexually assaulting the victims, but he was not formally charged with a sex offense. (App. A., pp. 1-3.)

The district court denied Mr. Ahmed's motion for separate trials on the two separate counts of kidnapping. Additionally, the court admitted evidence at trial that Mr. Ahmed had sexually assaulted a victim with the initials C.S.[1] (*Id.*, pp. 3, 6.)

Both of the district court's rulings against Mr. Ahmed were predicated on its interpretation of Federal Rule of Evidence 413. The court denied Mr. Ahmed's motion for separate trials because it concluded that evidence of O.B.'s kidnapping would be admissible pursuant to Rule 413 at a separate trial on the A.J. kidnapping allegation, and vice-versa. And the court ruled that C.S.'s allegations were admissible pursuant to Rule 413 as well. In so ruling, the court rejected Mr. Ahmed's argument that Rule 413 (which, as quoted previously, applies "[i]n a criminal case in which a defendant is accused of a sexual assault," Fed. R. Evid. 413(a)) does not apply unless the defendant is charged with a crime with an element of sexual assault. (*See* App. A, pp. 3-6.)

Based on the district court's ruling, the jury heard evidence regarding the kidnappings of O.B. and A.J., as well as the sexual assault of C.S. The jury found Mr. Ahmed guilty, and the district court sentenced him to 480 months' imprisonment. (*See id.*, pp. 1-2.)

The Eighth Circuit affirmed Mr. Ahmed's conviction. Relying on *United States v. Blazek*, 431 F.3d 1104 (8th Cir. 2005), the panel rejected Mr. Ahmed's argument that he was entitled to a new trial based on the district court's denial of the motion

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[1] Mr. Ahmed was never charged with a crime for C.S.'s alleged sexual assault.

for separate trials and the admission of evidence regarding C.S.'s sexual assault. The panel explained:

> Ahmed insists that because he was "accused of" kidnapping and not "sexual assault," Rule 413 doesn't apply. But we've already rejected the argument that the formal charges in a case govern whether the rule applies to it. *See United States v. Blazek*, 431 F.3d 1104, 1108-09 (8th Cir. 2005). In that case, the defendant was charged with traveling in interstate commerce for the purpose of knowingly engaging in a sexual act with someone at least twelve but younger than sixteen years old. *See* 18 U.S.C. § 2423(b). We held that the district court properly received evidence under Rule 413 about a prior sexual assault the defendant committed because the allegations surrounding the charged offense involved conduct proscribed by Chapter 109A, even though the defendant wasn't "accused of" a Chapter 109A offense. *See Blazek*, 431 F.3d at 1108-09. We explained that "Rule 413 does not require that the defendant be charged with a chapter 109A offense, only that the instant offense involve conduct proscribed by chapter 109A." *See id.* at 1109. Likewise here, for the rule to apply, Ahmed need not have been charged with any particular offense. What matters is whether the offense he was charged with involved conduct that Rule 413(d) deems to be sexual assault. Ahmed's kidnapping offenses did involve that kind of conduct. . . .
>
> *Blazek* rules this case, and so the district court did not err in denying Ahmed's request for separate trials.

(App., pp. 4-5.) The Eighth Circuit denied Mr. Ahmed's petition for rehearing by the panel or by the *en banc* court. (App. B, p. 11.)

REASONS FOR GRANTING THE WRIT

I. THE EIGHTH CIRCUIT'S INTEPRETATION OF RULE 413 CONFLICTS WITH THE SEVENTH CIRCUIT'S NARROWER INTERPRETATION IN *COURTRIGHT*.

As noted, Rule 413 provides that "[i]n a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault." Fed. R. Evid. 413(a). Rule 413(d) defines "sexual assault" as "a crime under federal law or under state law . . . involving" the following:

> (1) any conduct prohibited by 18 U.S.C. chapter 109A;
>
> (2) contact, without consent, between any part of the defendant's body—or an object—and another person's genitals or anus;
>
> (3) contact, without consent, between the defendant's genitals or anus and any part of another person's body;
>
> (4) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or
>
> (5) an attempt or conspiracy to engage in conduct described in subparagraphs (1)-(4).

Fed. R. Evid. 413(d). The question is whether, for purposes of Rule 413, "accused of a sexual assault" means charged with a crime with elements that match any of the alternatives in Rule 413(d), or whether a defendant is "accused of a sexual assault" whenever the prosecution informally alleges that an offense involved sexual assault, regardless of the elements of the charged offenses.

The panel below held that *Blazek* already answered this question for the Eighth Circuit. In *Blazek*, the defendant unsuccessfully argued that his prior federal

conviction for a sex offense against a minor was inadmissible at his trial on a charge of traveling in interstate commerce for the purpose of engaging in a sex act with a person who had attained the age of 12 years but had not attained the age of 16 years, in violation of 18 U.S.C. § 2423(b). 431 F.3d at 1108. The Court reasoned: "Rule 413 does not require that the defendant be charged with a chapter 109A offense [for a defendant to be "accused of sexual assault"], only that the instant offense involve conduct proscribed by chapter 109A." *Id.* at 1109. *Blazek* concluded that a sex act with a minor between the ages of 12 and 15 is conduct described in chapter 109A, even if § 2423(b) does not have an element of sexual assault. *Id.* (citing 18 U.S.C. § 2243).

By contrast, in *United States v. Courtright*, 632 F.3d 363 (7th Cir. 2011), the Seventh Circuit held that evidence of a prior sexual assault was inadmissible under Rule 413 where the defendant was charged with child pornography offenses and "verbally" alleged to have committed a sexual assault. *Id.* at 368-69. According to *Courtright*, to be "accused of a sexual assault" under Rule 413 means to be charged with an offense with an element of sexual assault. *See id.*[2]

[2] Without acknowledging *Courtright*, the Seventh Circuit later ruled in *United States v. Foley*, 740 F.3d 1079 (7th Cir. 2014), that the categorical approach does not apply to the question whether a defendant is "accused of a sexual assault," because "the focus [of the rule] is on the conduct itself rather than how the charges have been drafted." *Id.* at 1087; *see also United States v. Brooks*, 723 F. App'x 671, 681 (11th Cir. 2018) (unpublished) (applying *Foley* to Rule 414).

Blazek (and the panel's decision in Mr. Ahmed's case) and *Courtright* conflict, so the question is which is the correct approach to reading Rule 413 (and, by extension, Rule 414).

II. THE SEVENTH CIRCUIT'S INTERPRETATION OF RULE 413 IN *COURTRIGHT* IS CORRECT.

For several reasons, *Courtright*'s narrower interpretation of Rule 413 is correct.

First, the panel opinion in this case reasoned that the "focus of the Federal Rules of Evidence is on facts" (App. A, p. 5 (quoting *Foley*, 740 F.3d at 1087)), but that is not always so. For instance, extrinsic evidence is inadmissible for impeachment unless it qualifies under Rule 609. Fed. R. Evid. 608(b). In turn, Rule 609 requires consideration of what the witness was convicted of, rather than his underlying conduct, to determine whether evidence is admissible. *See, e.g.*, Fed. R. Evid. 609(a)(2) ("evidence must be admitted if the court can readily determine that establishing the *elements* of the crime required proving—or the witness's admitting—a dishonest act or false statement" (emphasis added)). Thus, the focus of the Federal Rules of Evidence depends on the rule—and sometimes the focus is on elements rather than underlying facts.

In Rule 413, the focus is on elements, as its text suggests. "[A]t the time Rule 413 was drafted (and today), the word 'accused' was often used in a technical sense to describe someone who was charged with a crime." *Courtright*, 632 F.3d at 368 (citing *Black's Law Dictionary* and *Webster's Third New International Dictionary*).

When a defendant faces trial, the answer to the question "what is he accused of?" is usually a summary of the formal charges in the indictment—not a summary of allegations extraneous to the elements of the offenses. In Mr. Ahmed's case, that meant he was accused of kidnapping, not sexual assault.

As *Courtright* observed, "[t]here is nothing in the text or committee notes of Rule 413 to indicate that the word 'accused' was used in a broader fashion." *Id.* By contrast, the committee notes to Rule 412[3] "specify that, for th[at] Rule, 'accused' is meant in a broader, 'non-technical sense,' and that there is 'no requirement that there be a criminal charge pending against the person or even that the misconduct would constitute a criminal offense.'" *Id.* (quoting Fed. R. Evid. 412 advisory committee's notes). The absence of language in Rule 413's notes broadening "accused" beyond its usual meaning suggests that the usual meaning applies. *Id.*; *see also United States v. Wright*, 363 F.3d 237, 247 (3d Cir. 2004) (Alito, J.) (observing that Rule 412 is an anomaly in which "accused" "is used in a broader sense").

The narrower interpretation of Rule 413 is also appropriate because the rule was intended as a "limited exception to Federal Rule of Evidence 404(b)." Wright & Miller, 23 Fed. Prac. & Proc. Evid. § 5384 (2d ed.). The "limited exception" becomes quite broad if the Eighth Circuit's approach wins out, as Wright & Miller explain:

> [T]he "offense of sexual assault" must be one that was "involving" conduct of the sort described in one of the five subdivisions of Rule 413(d). This raises the question, does a crime "involve" such conduct

[3] Rule 412 generally provides that evidence of a victim's other sexual behavior or sexual predisposition is inadmissible in a civil or criminal proceeding involving alleged sexual misconduct. *See* Fed. R. Evid. 412.

> only if it is an element of that crime or is it enough that such conduct occurred during the commission of the crime? If the latter is sufficient, a purse snatching would "involve" sexual assault if the mugger grabbed the victim's purse and, in the ensuing struggle, the defendant's crotch comes in contact with the victim. Since there is no reason to believe that Congress intended to treat muggers as sex offenders, we think "involving" must mean as an element of the crime, not merely as a circumstance of its commission.

Id. Accordingly, this Court should take Mr. Ahmed's case to correct the Eighth Circuit's misinterpretation of Rule 413 and address the circuit split.

CONCLUSION

For these reasons, Mr. Ahmed respectfully requests that the Court grant his petition for writ of certiorari.

RESPECTFULLY SUBMITTED,

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