

IN THE SUPREME COURT OF THE UNITED STATES

IVAN GRANILLO, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record

A. TYSEN DUVA
Assistant Attorney General

ANN O'CONNELL ADAMS
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the district court erred in giving the Ninth Circuit model jury instruction for attempted transportation of an alien who is unlawfully in the United States, in violation of 8 U.S.C. 1324(a)(1)(A)(ii).

IN THE SUPREME COURT OF THE UNITED STATES

No. 25-6714

IVAN GRANILLO, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A5) is available at 2025 WL 2399976.

JURISDICTION

The judgment of the court of appeals was entered on August 19, 2025. A petition for rehearing was denied on October 28, 2025 (Pet. App. B1). The petition for a writ of certiorari was filed on January 26, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of California, petitioner was convicted of attempted transportation of an alien who is unlawfully in the United States, in violation of 8 U.S.C. 1324(a)(1)(A)(ii). Judgment 1. He was sentenced to 18 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A5.

1. In June 2023, petitioner drove with a passenger to the port of entry in San Ysidro, California, where they both applied for entry into the United States from Mexico. C.A. E.R. 67, 301-302. Petitioner presented the officer with a California driver's license bearing his name and a U.S. passport with the name "Alejandro Ochoa" for his passenger. Id. at 71-74, 85. A Customs and Border Protection (CBP) officer conducted an "imposter check" and confirmed that the California driver's license belonged to petitioner but determined that the photo on the passport did not match the passenger. Id. at 71-74; see id. at 85-89. While displaying nervous behavior, petitioner repeatedly told the CBP officer that the passenger was his neighbor, that the passenger's name was Alejandro, and that they were entering the United States to check their mail and go shopping. Id. at 70, 75-76, 78-79.

The CBP officer referred petitioner to secondary inspection, where additional officers tried to verify the passenger's identity. See C.A. E.R. 79-82. The passenger's wallet contained a

second identification card and money, but no other credit or debit cards. Id. at 80-81. During an interview with the passenger, CBP officers determined that he was Jorge Alberto Cisneros-Sanchez, a Mexican citizen with no legal status in the United States. Id. at 312, 318. Cisneros-Sanchez explained that he had arrived in Tijuana three months earlier to work and save money to pay for entry into the United States. Id. at 319-320. He met a man called "Adrian" who provided him with a passport that supposedly looked like him and arranged for petitioner to drive him across the border. Id. at 323-329; see id. at 331 (conveying that petitioner said he "was told to give you [the illegal alien] a ride"). On the day of the crossing, Adrian called Cisneros-Sanchez and provided a meeting location for his ride to the port of entry. Id. at 329. Petitioner arrived at the meeting location, asked Cisneros-Sanchez if he was "Jorge" (his real name), and said he was there to give him a ride. Id. at 330-331. During the ride, petitioner commented that Cisneros-Sanchez seemed nervous and told him that everything would be fine because the documents were in order. Id. at 333, 336.

2. The United States charged petitioner by information with one count of attempted transportation of an alien who is unlawfully in the United States, in violation of 8 U.S.C. 1324(a)(1)(A)(ii). Information 1. That statute punishes any person who, "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law,

transports, moves, or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law.”

During trial, the government presented testimony from CBP officers; stipulated facts regarding Cisneros-Sanchez’s alienage, his lack of any lawful right to enter the United States, and his having paid \$5000 to be brought into the United States illegally; and a video of Cisneros-Sanchez’s post-arrest interview. C.A. E.R. 97-99, 301-305, 313-343. Petitioner testified that his neighbor, “Jorge,” had asked him as a favor to give Jorge’s friend “Alejandro” a ride across the border because Alejandro had a bad hand. Id. at 174, 190. He testified that when he arrived at the meeting spot, he called out “Jorge” because he had forgotten Alejandro’s name and Jorge was the friend who asked for the favor. Id. at 193, 199, 206. He further testified that he told CBP officers Cisneros-Sanchez was his neighbor because it was “the first thing that popped into [his] head” due to his neighbor having asked him to give Cisneros-Sanchez a ride. Id. at 196-197; see id. at 204.

During a conference on the jury instructions, petitioner objected to the district court’s proposed instruction on the offense elements. See C.A. E.R. 216-225. As relevant here, petitioner contended that “attempt should have a specific intent element,” id. at 221, and that “the jury needs to be instructed that [petitioner] had a specific intent to violate the immigration laws,”

id. at 222. Petitioner proposed a modification to the Ninth Circuit's model instruction for attempted transportation of an illegal alien that would require the government to prove that petitioner "acted with the intent to violate the United States immigration laws" by helping Cisneros-Sanchez enter the United States illegally. See id. at 295. The court rejected petitioner's proposed modification and used the Ninth Circuit's model instruction. Id. at 224; see id. at 252-253. The court instructed the jury that to find petitioner guilty, it must find that:

First, Jorge Alberto Cisneros-Sanchez was an alien;

Second, Jorge Alberto Cisneros-Sanchez was not lawfully in the United States;

Third, [petitioner] knew or acted in reckless disregard of the fact that Jorge Alberto Cisneros-Sanchez was not lawfully in the United States;

Fourth, that [petitioner] knowingly attempted to transport or move Jorge Alberto Cisneros-Sanchez to help him remain in the United States illegally; and,

Fifth, that [petitioner] did something that was a substantial step toward committing the crime.

Id. at 252-253.

During deliberations, the jury submitted two notes with questions about the fourth offense element. C.A. E.R. 263. The first note asked: "In #4, does the word illegally apply only to helping him remain in the [United States], or to the whole sent[e]nce? Does 'knowingly' apply to the whole sent[e]nce or only attempting to transport or move?" Id. at 309. The district court responded

that for the fourth element, "'[i]llegally' applies to 'remain in the United States,'" and "'[k]nowingly' applies to 'attempted to transport or move * * * Cisneros-Sanchez to help him remain in the United States illegally.'" Id. at 276-277.

The second jury note asked: "Does the Element (4) * * * require: 1) [petitioner to] know Jorge was an alien prior to imposter check?" C.A. E.R. 310. The district court responded that the government must prove that petitioner "'knew or acted in reckless disregard of the fact that * * * Cisneros-Sanchez was not lawfully in the United States' at the time that '[petitioner] knowingly attempted to transport or move * * * Cisneros-Sanchez to help him remain in the United States illegally.'" Id. at 277.

The jury found petitioner guilty. Judgment 1. The district court sentenced petitioner to 18 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3.

3. The court of appeals affirmed. Pet. App. A1-A5. As relevant here, the court of appeals determined that the district court did not err in giving the Ninth Circuit model jury instruction on the offense elements. See id. at A4. The court of appeals explained that the instruction "adequately conveyed the requisite specific intent" and that the district court's supplemental instructions in response to the jury's questions "clearly tied the knowledge requirement to the attempted transport 'at the time' of the attempt, eliminating any potential ambiguity and reinforcing the mens rea requirement." Ibid. The court of appeals determined

that petitioner's proposed alternative instruction was not required "because the model instruction fairly and adequately covered the issue[]." Ibid. (brackets, citation, and quotation marks omitted).

The court of appeals further determined that any instructional error was harmless because the "evidence introduced at trial -- including petitioner's presentation of a fraudulent passport for the passenger, his nervous behavior, his false statements to border officers, and the problematic aspects of his backstory and relationship with his passenger -- overwhelmingly established that [petitioner] knew his passenger was unlawfully present and intended to transport him." Pet. App. A5.

ARGUMENT

Petitioner renews (Pet. 25-27) his contention that the district court erred by declining to adopt his requested instruction. The court of appeals correctly rejected that argument and held that the instruction the district court provided correctly stated the mens rea element and that any error was harmless. Its decision is consistent with the rule for which petitioner advocates and does not conflict with any decision of this Court or meaningfully conflict with any decision of any other court of appeals. Further review is unwarranted.

1. Congress has imposed criminal liability on any person who, "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation

of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law.” 8 U.S.C. 1324(a)(1)(A)(ii). The Ninth Circuit has held that attempting to transport such an alien requires a showing that the defendant “had the purpose, i.e., the conscious desire, to transport an undocumented alien within the United States.” United States v. Ramirez-Martinez, 273 F.3d 903, 914 (2001), cert. denied, 537 U.S. 930 (2002), overruled in different part by United States v. Lopez, 484 F.3d 1186 (9th Cir. 2007) (en banc). That court has explained that “[t]he reason for requiring specific intent for attempt crimes is to resolve the uncertainty whether the defendant’s purpose was indeed to engage in criminal, rather than innocent, conduct.” United States v. Gracidas-Ulibarry, 231 F.3d 1188, 1193 (9th Cir. 2000) (en banc). Thus, for petitioner’s statute of conviction, the specific-intent requirement ensures that the defendant “intended to further the alien’s illegal presence in the United States.” United States v. Barajas-Montiel, 185 F.3d 947, 953 (9th Cir. 1999), cert. denied, 531 U.S. 849 (2000).

Consistent with that precedent, the Ninth Circuit Jury Instructions Committee developed a pattern jury instruction for attempted transportation of an alien, see 9th Cir. Model Crim. Jury Instr. 7.2 (updated Sept. 2022), and the district court gave that instruction in this case, see C.A. E.R. 252-253. In relevant part, the instruction requires the jury to find that the defendant knew

or acted in reckless disregard of the fact that the alien was not lawfully present in the United States; and that the defendant knowingly attempted to transport the alien to help him remain in the United States illegally. 9th Cir. Model Crim. Jury Instr. 7.2.

The court of appeals in petitioner's case correctly determined that the model jury instruction -- in particular, the requirement that the jury find that petitioner "'knowingly attempted to transport or move [his non-citizen passenger] to help him remain in the United States illegally'" -- "adequately conveyed the requisite specific intent." Pet. App. A4 (brackets in original). The court also noted that in answering the jury's two questions, the district court "clearly tied the knowledge requirement to the attempted transport 'at the time' of the attempt, eliminating any potential ambiguity and reinforcing the mens rea requirement." Ibid.

Petitioner contends (Pet. 19-20, 23-24) that the model instruction did not adequately convey the requirement that he acted with specific intent because it required the jury to find that the defendant knowingly attempted to transport the alien "to help" the alien remain in the United States illegally, instead of "in order to help" the alien remain in the United States illegally. Petitioner cites no cases delineating a difference between the two phrases ("to help" and "in order to help"), instead invoking (Pet. 20) a single online dictionary for the proposition that "[t]he

phrase 'in order to' is used to 'express the aim or purpose of doing something.'" In petitioner's view, the omission of the phrase "in order to" had the effect of "chang[ing] the mens rea from an intent 'to help' to mere knowledge that transportation would 'help.'" Pet. 20. But that is insufficient to show that the court of appeals improperly concluded that the instruction "adequately conveyed the requisite specific intent." Pet. App. A4 (citing, inter alia, Barajas-Montiel, 185 F.3d at 953-954 (upholding prior instruction using the phrase "in order to")). The instruction required that the jury find that petitioner "knowingly attempted to transport or move * * * Cisneros-Sanchez to help him remain in the United States illegally." C.A. E.R. 252-253 (emphasis added). The natural reading of the instruction is that it required the jury to find that petitioner knowingly transported Cisneros-Sanchez, and that his purpose for doing so was to help Cisneros-Sanchez remain in the country illegally. And because that instruction sufficiently communicated the specific-intent requirement, there is no reason to credit petitioner's claim that the court of appeals' non-precedential decision will result in jury instructions allowing for convictions of people who do not "actually intend to circumvent immigration law." Pet. 25; see Pet. 25-26.

2. Petitioner contends (Pet. 9-18, 25-26) that the courts of appeals are divided on the appropriate mens rea for attempt offenses under 8 U.S.C. 1324(a)(1)(A)(ii) and that this Court

should grant a writ of certiorari to adopt what he views as a stricter mens rea requirement, applied by the Fifth and Sixth Circuits, that would require the government to prove the defendant's purpose or intent to violate the immigration laws.

The Ninth Circuit, however, has already held that a conviction for an attempt to transport an illegal alien in violation of Section 1324(a)(1)(A)(ii) requires a showing that the defendant "intended to further the alien's illegal presence in the United States." Barajas-Montiel, 185 F.3d at 953. And the court of appeals held here that the jury instructions "conveyed the requisite specific intent." Pet. App. A4. That is not materially different from the descriptions of the mens rea for a Section 1324(a)(1)(A)(ii) offense in the Fifth Circuit, see United States v. Irias-Romero, 82 F.4th 422, 425 (2023) (noting that a jury must find that the defendant transported the alien "intending to further" the alien's unlawful presence) (quoting United States v. Gaspar-Felipe, 4 F.4th 330, 341 (5th Cir. 2021), cert. denied, 142 S. Ct. 903 (2022)); Pet. 10 (citing additional Fifth Circuit cases using similar language), and in the Sixth Circuit, see United States v. Stonefish, 402 F.3d 691, 699 (6th Cir. 2005) (affirming instruction requiring jury to find that the defendant transported an alien "'in order to help him remain in the United States illegally' and not for some 'other innocent reason'"); Pet. 11-12 (citing Sixth Circuit cases containing similar language). Petitioner has therefore failed to establish that the Fifth or Sixth

Circuits would have reached a different conclusion in his case or otherwise required a different jury instruction. See Stonefish, 402 F.3d at 699 (upholding a similar mens rea instruction).

Nor does petitioner show that the other circuits' tests result in materially different outcomes. He claims that the First, Third, Eighth, and Tenth Circuits require that the defendant act "willfully in furtherance of the alien's violation of law" in order to establish a violation of Section 1324(a)(1)(A)(ii). Pet. 15, 17, 18; see Pet. 15-19. But petitioner does not advocate for that standard, see Pet. 25-27 -- and for good reason. The statute does not contain the term "willfully," which is typically understood to require proof that the defendant knew that his conduct was unlawful. See, e.g., Ratzlaf v. United States, 510 U.S. 135, 137 (1994). Regardless, there does not appear to be a meaningful difference between the mens rea requirement in those circuits and the standard employed in the Ninth Circuit. Compare United States v. Silveus, 542 F.3d 993, 1003 (3d Cir. 2008) (upholding a verdict where a jury could conclude that the defendant "acted with the intent to further [aliens'] illegal presence in the United States"); United States v. Guerra-Garcia, 336 F.3d 19, 23 (1st Cir.) (relying on Ninth Circuit precedent in setting out the elements of a violation of Section 1324(a)(1)(A)(ii)), cert. denied, 540 U.S. 961 (2023); United States v. Velasquez-Cruz, 929 F.2d 420, 422 (8th Cir. 1991) (stating that the mens rea is satisfied if the transportation is more than incidental to the alien's pres-

ence in the United States, relying on Ninth Circuit precedent); cf. United States v. Barajas-Chavez, 162 F.3d 1285, 1288 (10th Cir.) (en banc) (stating that the statute does not apply to those "who, with no evil or criminal intent," interact with illegal aliens, but refusing to limit it "to those who support the presence of illegal aliens in this country through a smuggling operation or some other form of illicit transportation") (citation and quotation marks omitted), cert. denied, 528 U.S. 826 (1999), with Barajas-Montiel, 185 F.3d at 953 ("Barajas was charged as both an aider and abetter and a principal under this statute, which requires that the defendant knew that the alien was illegal and intended to further the alien's illegal presence in the United States."). Thus, while petitioner asserts (Pet. 3) that "[t]he instruction [in this case] would likely * * * be deficient in" the First, Third, and Eighth Circuits "for lack of the magic word 'willfully,'" he has not shown that those circuits define "willfully" in a way that meaningfully diverges from the decision below or that it would have resulted in an acquittal in his case.

Petitioner further claims that the Seventh Circuit applies a "less exacting mens rea requirement." Pet. 12; see Pet. 12-13 (discussing United States v. Parmelee, 42 F.3d 387 (7th Cir. 1994), cert. denied, 516 U.S. 812, and 516 U.S. 813 (1995)). But in Parmelee, the court explained that "the government [has] to prove beyond a reasonable doubt not only that the defendant knew the alien he transported had entered the country in violation of im-

migration law, but also that the defendant knowingly transported the alien to further that violation, that is, acted willfully." 42 F.3d at 390 (emphasis added). Whether or not that standard is less exacting, petitioner again provides no reason to conclude that he would have been acquitted in the Seventh Circuit.

Petitioner also claims (Pet. 15) that in the Eleventh Circuit the "knowledge of doing something illegal is not required for conviction." But the cases he cites (Pet. 13-15) for that proposition involved, in relevant parts, the mens rea for a different element -- corresponding to the third paragraph of petitioner's jury instruction, rather than the fourth paragraph that is at issue in this case. See United States v. Kendrick, 682 F.3d 974, 984 (11th Cir. 2012); United States v. Dominguez, 661 F.3d 1051, 1068-1069 (11th Cir. 2011), cert. denied, 566 U.S. 1034 (2012). In any event, there is again no reason to believe that petitioner would have been acquitted in the Eleventh Circuit, where the pattern jury instructions require the government to prove "a direct and substantial relationship between the Defendant's act of transportation and the furthering of the alien's presence in the United States." 11th Cir. Crim. Pattern Jury Instr. 096.2 (2025).

3. Finally, this case would be a poor vehicle to determine whether the Ninth Circuit's model jury instruction adequately described the mens rea of an offense under Section 1324(a)(1)(A)(ii) because the court of appeals correctly found that any instructional error was harmless. Pet. App. A5. As the court explained, "[t]he

evidence introduced at trial -- including [petitioner's] presentation of a fraudulent passport for the passenger, his nervous behavior, his false statements to border officers, and the problematic aspects of his backstory and relationship with his passenger -- overwhelmingly established that [petitioner] knew his passenger was unlawfully present and intended to transport him." Ibid. (emphasis added). Petitioner does not challenge that holding, and thus does not challenge the conclusion that he would not prevail under any mens rea standard. Accordingly, the petition for a writ of certiorari should be denied. See Supervisors v. Stanley, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

A. TYSEN DUVA
Assistant Attorney General

ANN O'CONNELL ADAMS
Attorney

MAY 2026