No. _____

IN THE

Supreme Court of the United States

CHARLES W. CHRISTOPHER,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has applied two standards for whether a statute is sufficiently ambiguous to trigger the rule of lenity. One standard asks whether there is "reasonable doubt" about the statute's meaning. *Moskal v. United States*, 498 U.S. 103, 108 (1990); *see also Wooden v. United States*, 595 U.S. 360, 383–97 (2022) (Gorsuch, J., concurring) (arguing in favor of the reasonable doubt standard). The other asks whether the statute contains a "grievous ambiguity." *Chapman v. United States*, 500 U.S. 453, 463 (1991) (quoting *Huddleston v. United States*, 415 U.S. 814, 831 (1974)); *see also Wooden*, 595 U.S. at 376–79 (Kavanaugh, J., concurring) (arguing in favor of the grievous ambiguity standard). As the en banc Fifth Circuit recently observed, "[t]he Supreme Court does not appear to have decided which of these standards govern the rule of lenity." *Cargill v. Garland*, 57 F.4th 447, 469 (5th Cir. 2023) (en banc) (citations omitted).

The question presented is this: What degree of statutory ambiguity triggers the rule of lenity?

RELATED PROCEEDINGS

United States Court of Appeals (7th Cir.):
United States v. Charles Christopher, No. 23-2976 (Oct. 14, 2025) (petition for rehearing en banc denied);

United States Court of Appeals (7th Cir.):
United States v. Charles Christopher, No. 23-2976 (Aug. 18, 2025) (panel decision affirming district court's denial of federal post-conviction motion);

United States Court of Appeals (7th Cir.):
United States v. Charles Christopher, No. 23-2976 (May 8, 2024) (certificate of appealability granted);

United States District Court (C.D. Ill.):
United States v. Charles Christopher, 4:22-cv-04187-SLD (Sept. 22, 2023) (district court's denial of federal post-conviction motion).

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Petitioner Charles Christopher respectfully petitions for a writ of certiorari to review the judgement of the Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the Seventh Circuit is published at 148 F.4th 885. Pet. App. 3a–20a. The District Court's opinion and order is unpublished. Pet. App. 23a–45a.

JURISDICTION

The Seventh Circuit Court of Appeals entered its judgment on August 18, 2025. Pet. App. 3a. That court denied en banc review on October 14, 2025. Pet. App. 1a–2a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

18 U.S.C. § 2260A provides as follows:

Whoever, being required by Federal or other law to register as a sex offender, commits a felony offense involving a minor under section 1201, 1466A, 1470, 1591, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, shall be sentenced to a term of imprisonment of 10 years in addition to the imprisonment imposed for the offense under that provision. The sentence imposed under this section shall be consecutive to any sentence imposed for the offense under that provision.

18 U.S.C. § 2422(b) provides as follows:

Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special

maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or 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 and imprisoned not less than 10 years or for life.

INTRODUCTION

For most of this Court's history, the degree of ambiguity required to trigger the rule of lenity in criminal cases was clear: "In the construction of a penal statute, it is well settled . . . that all reasonable doubts concerning its meaning ought to operate in favor of [the defendant]." *Harrison v. Vose*, 50 U.S. 372, 378 (1850). Under this Court's long line of cases establishing that criminal statutes must "leave no room for a reasonable doubt" as to the legislature's meaning, *United States v. Hartwell*, 73 U.S. 385, 396 (1867), "lenity came to serve distinctly American functions—a means for upholding the Constitution's commitments to due process and the separation of powers." *Wooden v. United States*, 595 U.S. 360, 389 (2022) (Gorsuch, J., concurring); *see also McBoyle v. United States*, 283 U.S. 25, 27 (1931) ("To make the warning fair . . . the line should be clear.") (Holmes, J.); *United States v. Wiltberger*, 18 U.S. 76, 95 (1820) ("[Lenity preserves] the plain principle that the power of punishment is vested in the legislative, not in the judicial department.") (Marshall, C.J.).

Then came the confusion. In *Huddleston v. United States*—after nearly two centuries of cases ap-

plying the reasonable doubt standard—this Court constructed a conflicting standard: lenity would be triggered only if the statute contained a "grievous ambiguity." 415 U.S. 814, 831 (1974). But as Justice Gorsuch recently explained, *Huddleston* did not "pause to consider, let alone overrule," this Court's cases applying lenity when there was reasonable doubt about a statute's meaning. *Wooden*, 595 U.S. at 394 (Gorsuch, J., concurring); *see also id.* (explaining that grievous ambiguity "does not derive from any well-considered theory about lenity or the mainstream of this Court's opinions"). That the "grievous ambiguity" standard was based more on reflex than reason is demonstrated by its disconnect from the due process and separation of powers principles animated by lenity and this Court's decisions dating back to *Wiltberger*.

Nevertheless, since *Huddleston*, this Court has applied both standards. *See, e.g.*, *Moskal v. United States*, 498 U.S. 103, 108 (1990) (applying "reasonable doubt" standard); *Chapman v. United States*, 500 U.S. 453, 463 (1991) (applying "grievous ambiguity" standard) (quoting *Huddleston*, 415 U.S. at 831). Those competing standards were articulated in recent concurrences by Justice Gorsuch and Justice Kavanaugh. *See Wooden*, 595 U.S. at 383–97 (Gorsuch, J., concurring) (arguing for "reasonable doubt" standard); *id.* at 376–79 (Kavanaugh, J., concurring) (arguing for "grievous ambiguity" standard). Citing those concurrences, the en banc Fifth Circuit observed that "[t]he Supreme Court does not appear to have decided which of these standards govern the rule of lenity." *Cargill v. Garland*, 57 F.4th 447, 469 (5th Cir. 2023) (en banc) (citations omitted).

The consequence of the Court's competing standards is confusion and conflict throughout and between the federal courts of appeals. As illustrated below (*see infra* at 15–16), every circuit has applied both standards. *See, e.g.*, *United States v. Jones*, 993 F.3d 519, 530 (7th Cir. 2021) (finding that "reasonable doubt" standard governs); *United States v. Pace*, 48 F.4th 741, 755 (7th Cir. 2022) (finding that "grievous ambiguity" standard governs). This conflict is not new. For decades, scholars have lamented that lenity cases are "capricious" and involve "random invocation" of the rule. William N. Eskridge, Jr., *Public Values in Statutory Interpretation*, 137 U. Pa. L. Rev. 1007, 1083 (1989). Without this Court's intervention, the caprice and conflict will continue.

This case presents the perfect vehicle for resolving the conflict. For starters, the standard matters here. Along with his underlying offense, Petitioner Charles Christopher was convicted under 18 U.S.C. § 2260A, which stacks a ten-year mandatory consecutive sentence on top of lengthy sentences for certain predicate offenses "involving a minor."[1] But Mr. Christopher was caught in an FBI sting involving only adult members of law enforcement. The statutory question is whether "involving a minor" in § 2260A sweeps in stings constructed by adult FBI agents—i.e., a crime that does not "involve a minor" under any colloquial understanding.

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[1] Mr. Christopher's underlying offense was attempted enticement of a minor, 18 U.S.C. § 2422(b), which itself carries a mandatory minimum sentence of 10 years' imprisonment and a maximum sentence of life in prison. Mr. Christopher does not challenge this conviction.

As Mr. Christopher argued to a panel of the Seventh Circuit, dictionary and statutory definitions confirm the colloquial understanding. A common definition of "involving" is "to require as a necessary accompaniment." Involve, Merriam-Webster (11th ed. 2003); *accord United States v. Eychaner*, 326 F. Supp. 3d 76, 102 (E.D. Va. 2018) (explaining that the word involving "*primarily means* to include or contain as a necessary element" (emphasis added)). "Minor" is expressly defined in the relevant chapter of the U.S. Code as "*any person* under the age of eighteen years." 18 U.S.C. § 2256(1) (emphasis added). Thus, under those definitions, for a crime to "involve a minor," a person under the age of eighteen is a necessary element. The panel did not (and could not) dispute those definitions or that under those definitions Mr. Christopher's crime fell outside of the statute.

Instead, the panel reached for a definition of "involving" that expanded the scope of § 2260A: "to relate closely." Pet. App. 17a–18a.[2] According to the panel, under that definition, FBI stings could fall within § 2260A's ambit because they include adults posing as minors. Pet. App. 18a. In other words, when faced with two common definitions of the word "involving," the panel chose the one that by its own terms

[2] Citations to the Appendix submitted with this Petition are labeled "Pet. App." Citations to District Court filings from the underlying criminal case (4:20-cr-40072-SLD-JEH) not in the appendix are labeled "Dkt." Citations to District Court filings from the 28 U.S.C. § 2255 docket (4:22-cv-04187-SLD) not in the appendix are labeled "Dkt. § 2255." Finally, citations to Seventh Circuit filings (No. 23-2976) not in the Appendix are labeled "Doc."

"cast[] a broader net." *Id.* While Mr. Christopher maintains that lenity should apply under either standard, there is certainly reasonable doubt about the statute's construction.

There are also no procedural impediments standing in the Court's way. Mr. Christopher argued below that lenity should apply because there was "reasonable doubt" about the statute's scope. Doc. 20 at 26; Doc. 38 at 9–10. In holding that lenity does not apply, the panel wrote that "lenity had no role to play" because § 2260A was not "grievous[ly]" ambiguous. Pet. App. 20a. Finally, the focus of Mr. Christopher's petition for rehearing en banc was the Seventh Circuit's entrenched intra-circuit conflict about the degree of ambiguity required to trigger lenity. *See* Doc. 48.

This Court should grant review to resolve the conflict between and throughout the courts of appeals, clarify the standard required to trigger lenity, and affirm the application of the reasonable doubt standard to criminal statutes. That standard is all the more apt where, as here, courts are tasked with construing ambiguous criminal laws that impose lengthy mandatory minimum sentences. "If a judge sentenced you to decades in prison for conduct that no law clearly proscribed, would it matter to you that the judge considered the law 'merely'—not 'grievously'—ambiguous?" *Wooden*, 595 U.S. at 392 (Gorsuch, J., concurring).

STATEMENT OF THE CASE

The panel below was faced with two common definitions of the word "involving." One of those definitions favored liberty. The second triggered a ten-year mandatory consecutive sentence. The panel chose the second, characterizing its definition as "cast[ing] a broader net." Pet. App. 18a. Caught in this judge-made net, Mr. Christopher is serving a significantly longer sentence "for conduct that no law clearly prescribed." *Wooden*, 595 U.S. at 392 (Gorsuch, J., concurring).

I. Factual Background

In 2020, Charles Christopher logged on to Skout, an online application created to facilitate both romantic and platonic connections between adults.[3] Dkt. 34 at 9. A thirty-year-old FBI agent, using a profile purporting to be an eighteen-year-old, began messaging with Mr. Christopher. Dkt. 1 at 5. In the course of messaging, the agent told Mr. Christopher that she was a fifteen-year-old girl. *Id.* at 9. After messaging briefly, Mr. Christopher and a "confidential human source" went on a different video application. Dkt. 34 at 22. The person appearing on video was a twenty-three-year-old woman pretending to be fifteen. *Id.* at 23. A few days later, Mr. Christopher drove to meet with the woman he had spoken with over video, where he was arrested. *Id.* at 39–42. Throughout his interaction with adult FBI agents, no minor was involved.

[3] The application's terms of use state that "[y]ou may use the Services only if you are 18 years or older." Terms of Use, Skout, https://www.skout.com/tos.html. *See also* Dkt. 34 at 9–10.

The government initially charged Mr. Christopher with violating 18 U.S.C. § 2422(b)—a crime that carries a 10-year mandatory minimum. But it went further in a superseding indictment, charging him with committing a sex offense "involving a minor" under 18 U.S.C. § 2260A. Dkt. 27 at 2. The prosecutor's choice to charge § 2260A was significant. It carried a 10-year mandatory consecutive sentence that doubled Mr. Christopher's mandatory minimum sentence from 10 years to 20 years.

Defense counsel did not challenge the applicability of the § 2260A charge to Mr. Christopher's case. Nor did counsel advise Mr. Christopher that the charge may not apply to FBI stings. Instead, counsel advised Mr. Christopher to plead guilty to both counts of the superseding indictment. Following counsel's advice, Mr. Christopher pleaded guilty to violating both § 2422(b) and § 2260A.

The district court sentenced Mr. Christopher to 288 months (24 years) in prison. The court imposed a 144-month sentence for the § 2422(b) charge, and 120 months for the § 2260A charge to be served consecutively as required by the statute.[4] Dkt. 60 at 47. In imposing a near-quarter century sentence, the district court noted that if Mr. Christopher had been prosecuted in state court for a *contact* offense, his sentence would have been seven years. *Id.* at 27.

Mr. Christopher filed a timely pro se § 2255 motion, arguing that his conduct fell outside the ambit of § 2260A because no minor was involved in his

[4] The district court also imposed a sentence of 24 months' imprisonment for a supervised release violation. Dkt. 60 at 48.

offense. Dkt. § 2255 1 at 3–4. He therefore argued that trial counsel's failure to raise this argument and advise him that the charge was legally defective before facilitating a guilty plea constituted ineffective assistance. *Id.* at 2. The district court denied Mr. Christopher's § 2255 motion and rejected his request for a certificate of appealability. Pet. App. 23a–24a.

Judge Kolar of the Seventh Circuit issued a certificate of appealability, concluding that Mr. Christopher had made a substantial showing of the denial of his constitutional rights. Pet. App. 21a–22a. The certificate asked the parties to address "whether . . . under 18 U.S.C. § 2260A, a predicate offense 'involving a minor' must involve an actual minor, whereas here Christopher's predicate offense was an attempt crime involving only an adult posing as a minor." Pet. App. 22a. For the Seventh Circuit, this was a question of first impression.

With the assistance of pro bono counsel, Mr. Christopher argued on appeal that FBI stings comprised solely of adult FBI agents is not an offense "involving a minor." In support of that argument, Mr. Christopher cited the applicable chapter of the U.S. Code, which defines minor as a "person under the age of eighteen." 18 U.S.C. § 2256(1). He explained that the plain and ordinary meaning of the word "involving" means to "include as a necessary element." And he argued that, taken together, "involving a minor" means to include "as a necessary element, a person under the age of eighteen." Doc. 20 at 20–22.

Mr. Christopher also made arguments to support the statute's plain meaning. *See id.* at 23–30. He noted that a key difference between his predicate offense statute, § 2422(b), which did capture his

conduct, and § 2260A, is that the former includes an attempt clause while the latter does not. Doc. 20 at 23–24. That distinction is important, Mr. Christopher explained, because without the attempt clause § 2422(b) would not apply to situations where the person being enticed is an adult posing as a minor. Doc. 20 at 24. As one district court explained when deciding the same question, "[i]t is only the attempt language that broadens the subsection to allow for a conviction where there is a victim who pretends to be a minor, such as an undercover law enforcement officer." *United States v. Dahl*, 81 F. Supp. 3d 405, 407 (E.D. Pa. 2015). And "[s]ince § 2260A does not include an attempt clause, it does not apply to an offense where the person being enticed is an adult posing as a minor." *Id.* at 409–10.

The *Dahl* court, as Mr. Christopher noted below, ultimately held that § 2260A does not apply to "situations in which an adult undercover agent is posing as an underage person," and that such a conclusion was "clear and unambiguous." *Dahl*, 81 F. Supp. 3d at 407.

Finally, Mr. Christopher argued that while a plain reading of § 2260A demonstrates that FBI stings fall outside its ambit, reasonable doubt about the statute's meaning must be decided in favor of the individual rather than the Government. Doc. 20 at 26; Doc. 38 at 9–10. Citing this Court's rule of lenity case law, he explained that there was "surely" a "reasonable doubt" about whether "'involving a minor'

contemplates adult members of law enforcement."[5] *Id.*

II. The Panel Below Concluded That Lenity Had "No Role to Play" Because the Statute Was Not "Grievously" Ambiguous.

On August 18, 2025, a panel of the Seventh Circuit affirmed the district court's decision. The panel determined that Mr. Christopher could not prove prejudice, holding as a matter of first impression that "§ 2260A encompasses a defendant's § 2422(b) violation of attempting to entice into criminal sexual activity a law enforcement agent whom the defendant believes to be a minor."[6] Pet. App. 19a–20a.

In reaching the merits of the statutory claim, the panel recognized that a common definition of "involving" is "to require as a necessary accompaniment." *Id.* 17a. It recognized that "minor" is expressly defined in the relevant chapter as "any person under the age of eighteen years." *Id.* And it did not dispute that, under those definitions, Mr. Christopher's crime falls outside of § 2260A. *Id.*

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[5] At oral argument, the government was asked, "what minor was involved in this [§] 2422(b) offense?" Its response was telling: "It was not a minor. It was an FBI agent posing as a minor." Seventh Circuit Oral Arguments, *Christopher v. United States*, available at https://media.ca7.uscourts.gov/sound/2025/gw.23-2976.23-2976_04_ 08_2025.mp3 at 15:46-15:57.

[6] The panel joined the Sixth and Eleventh Circuits, which are the only other circuits to consider the question. *See United States v. Fortner*, 943 F.3d 1007 (6th Cir. 2019); *United States v. Slaughter*, 708 F.3d 1208 (11th Cir. 2013). A published district court decision came to the opposite conclusion. *See Dahl*, 81 F. Supp. at 407.

But the panel chose a different definition of involving: "to relate closely." Pet. App. 17a–18a. According to the panel, that definition—unlike the common definition Mr. Christopher cited—"does not necessarily mean that the offense must entail an actual minor." *Id.* The panel described its definition as "cast[ing] a broader net." *Id.* 18a.

In a lone paragraph, the panel wrote that "the rule of lenity has no role to play here" because the statute was not "grievous[ly]" ambiguous. *Id.* 20a.

Mr. Christopher filed a petition for rehearing en banc. *See* Doc. 48. His petition urged the full court to resolve its entrenched in-circuit conflict on the following question: What degree of ambiguity is required to trigger the rule of lenity? *Id.* at 1. As Mr. Christopher explained, the Seventh Circuit has offered conflicting answers to that question. Sometimes, the court has said that lenity is triggered when there is "reasonable doubt about a statute's construction." *Id.* at 7–8. Other times, like the panel here, the court has said that lenity applies only when a statute contains "grievous ambiguity." *Id.*

On October 14, 2025, the Seventh Circuit denied Mr. Christopher's petition for en banc review.[7] Pet. App. 1a–2a.

This petition for certiorari follows.

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[7] In 2024, the latest year that statistics are available, the Seventh Circuit only granted en banc review in 3 out of 1271 cases (0.24%). *The Judicial Business of the United States Courts of the Seventh Circuit 2024*, U.S.C.A. Table 2, https://www.ca7.uscourts.gov/assets/pdf/2024_report.pdf.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari for three reasons.

First, this Court has applied inconsistent standards about the degree of ambiguity required to trigger the rule of lenity, which has created confusion throughout and between the federal courts of appeals. In fact, every circuit is laden with conflict about whether the degree of ambiguity required for lenity is "reasonable doubt" or "grievous ambiguity." Without clarity from this Court, the courts of appeals will continue to talk past and run into each other.

Second, this Court should clarify that "any reasonable doubt about the application of a penal law must be resolved in favor of liberty." *Wooden*, 595 U.S. at 388 (Gorsuch, J., concurring). That standard is far more consistent with centuries of this Court's jurisprudence and animates the due process and separation of powers concerns at lenity's core. Those constitutional concerns are all the more significant in cases, like Mr. Christopher's, involving criminal statutes that impose lengthy mandatory consecutive sentences.

Finally, this case presents the ideal vehicle for clarifying the correct standard. As briefed below, the degree of ambiguity required to trigger lenity matters here. Under the reasonable doubt standard, there is no question that the rule applies.

I. This Court's Inconsistent Standards About the Degree of Ambiguity Required to Trigger Lenity Has Created Conflicts Within and Between Every Federal Court of Appeals.

"[T]he touchstone of the rule of lenity is statutory ambiguity." *Moskal*, 498 U.S. at 107 (citation and quotation marks omitted). As the en banc Fifth Circuit recently explained, this Court has applied "two standards for whether a statute is sufficiently ambiguous to trigger the rule of lenity." *Cargill*, 57 F.4th at 469.

The two standards were articulated expressly by Justice Gorsuch and Justice Kavanaugh in their respective concurrences in *Wooden*. *See* 595 U.S. at 376–79, 383–397. Under Justice Gorsuch's view, lenity applies where there is "reasonable doubt" about a statute's meaning. *Id.* at 393 (Gorsuch, J., concurring).[8] For Justice Kavanaugh, lenity should "rarely if ever come[] into play" and applies only where the statute is "grievously ambiguous." *Wooden*, 595 U.S. at 377 (Kavanaugh, J., concurring).[9]

This Court's conflicting standards have created confusion throughout the courts of appeals. Indeed, without clear direction from this Court, every circuit has applied—and continues to apply—both inconsistent standards. *See, e.g.*, *United States v. Jones*, 993 F.3d 519, 530 (7th Cir. 2021) (applying

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[8] Justice Sotomayor joined Parts II, III, and IV of Justice Gorsuch's concurrence. *Wooden*, 595 U.S. at 388–97.

[9] *But see* Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2119, 2145 n.136 (2016) ("I do not have a firm idea about how to handle the rule of lenity.").

reasonable doubt standard); *United States v. Pace*, 48 F.4th 741, 755 (7th Cir. 2022) (applying grievous ambiguity standard). The result, as illustrated in the table below, is case law that contradicts itself both within and throughout the federal courts of appeals:

Cir.	**Applying Reasonable Doubt Standard**	**Applying Grievous Ambiguity Standard**
CA1	*United States v. Dávila-Reyes*, 84 F.4th 400, 453 n.27 (1st Cir. 2023)	*United States v. Musso*, 914 F.3d 26, 32 n.3 (1st Cir. 2019)
CA2	*Mendez v. Barr*, 960 F.3d 80, 87 (2d. Cir. 2020)	*United States v. Di-Cristina*, 726 F.3d 92, 104 (2d Cir. 2013)
CA3	*United States v. Heinrich*, 57 F.4th 154, 163 (3d Cir. 2023)	*Thieme v. Warden Fort Dix FCI*, 145 F.4th 115, 126 (3d Cir. 2025)
CA4	*United States v. Smith*, 54 F.4th 755, 763–64 (2022)	*United States v. Sonmez*, 777 F.3d 684, 691 n.6 (4th Cir. 2015)
CA5	*United States v. Hamilton*, 46 F.4th 389, 397 n.2 (5th Cir. 2022)	*United States v. Suchowolski*, 838 F.3d 530, 534 (5th Cir. 2016)
CA6	*United States v. Householder*, 137 F.4th 454, 496 (6th Cir. 2025) (Thapar, J., concurring) (citing	*United States v. Woodward*, No. 23- 4018, 2024 WL 3458751 (6th Cir. July 18, 2024)

	United States v. Erker, 129 F.4th 966, 970 (6th Cir. 2025))	
CA8	*United States v. Brummels*, 15 F.3d 769, 773 (8th Cir. 1994)	*United States v. Buford*, 54 F.4th 1066, 1068 (8th Cir. 2022)
CA9	*United States v. Metcalf*, 156 F.4th 871, 882–83 (9th Cir. 2025)	*United States v. Hankins*, 858 F.3d 1273, 1278 (9th Cir. 2017)
CA10	*United States v. Garcia*, 74 F.4th 1073, 1125 (10th Cir. 2023)	*United States v. Tony*, 121 F. 4th 56, 70 (10th Cir. 2024)
CA11	*United States v. McNab*, 331 F.3d 1228, 1239 n.21 (11th Cir. 2003)	*United States v. Dawson*, 64 F.4th 1227, 1239 (11th Cir. 2023)
CADC	*United States v. Anderson*, 59 F.3d 1323, 1333 (D.C. Cir. 1995)	*United States v. Burwell*, 690 F.3d 500, 515 (D.C. Cir. 2012)

Notably, the conflicting standards arise most often in criminal cases implicating significant liberty interests. This conflict will continue without clarity from the Court.

II. This Court Should Clarify That Lenity Applies When a Reasonable Doubt Remains About a Criminal Statute's Construction.

Without this Court's intervention, panels throughout the country will continue applying the "grievous ambiguity" standard, which frustrates the due process and separation of powers principles that lenity preserves—depriving individuals of fair warning and allowing judges to encroach on the legislature's punishment powers. It is a standard that is unmoored from the common law, this Court's foundational cases, and the constitutional principles connected to lenity.

The rule of lenity is a "venerable," *United States v. Santos*, 553 U.S. 507, 514 (2008) (plurality), "time-honored interpretive guideline," *Liparota v. United States*, 471 U.S. 419, 427 (1985), that predates the Constitution and "is perhaps not much less old than [statutory] construction itself." *Wiltberger*, 18 U.S. at 95; *see also Wooden*, 595 U.S. at 392 (Gorsuch, J., concurring) ("From the start, lenity has played an important role in . . . seek[ing] to ensure people are never punished for violating just-so rules concocted after the fact."); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 343 (2012) (lenity "reflect[s] the spirit of the common law").

Flowing from the common law and first principles, this Court's early cases featured a robust conception of lenity. As Chief Justice Marshall wrote in one of his most cited decisions, lenity is "founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the

judicial department." *Wiltberger*, 18 U.S. at 95. Guided by those principles, *Wiltberger* considered whether a sailor who killed a passenger on a river was guilty of violating a federal statute that criminalized manslaughter "on the high seas." *Id.* at 93–94. In its analysis, the Court recognized that Congress likely intended to answer that question affirmatively. *Id.* at 99, 105. But the statue's meaning was not certain. *Id.* at 100. Where uncertainty exists, Chief Justice Marshall explained, the law must privilege liberty. *Id.* at 105.

Wiltberger is widely understood to be this Court's first lenity decision, but it was far from its last. In the decades that followed, the Court repeatedly reaffirmed that "penal laws are to be construed strictly" such that "they must . . . leave no room for reasonable doubt" as to the legislature's meaning. *Hartwell*, 73 U.S. at 395–96; *see also United States v. Lacher*, 134 U.S. 624, 628 (1890); *Harrison*, 50 U.S. at 378. Those decisions, advancing the reasonable doubt standard for lenity, "came to serve distinctly American functions—a means for upholding the Constitution's commitments to due process and the separation of powers." *Wooden*, 595 U.S. at 389 (Gorsuch, J., concurring).

With respect to due process, "[l]enity works to enforce the fair notice requirement by ensuring that an individual's liberty always prevails over ambiguous laws." *Id.* Lenity's emphasis on fair notice, Justice Gorsuch has explained, "is about protecting an indispensable part of the rule of law—the promise that, whether or not individuals happen to read the law, they can suffer penalties only for violating standing rules announced in advance." *Id.* at 390–91;

see also Bittner v. United States, 598 U.S. 85, 102–03 (2023) (applying lenity to prevent "fair notice" problem); *United States v. Davis*, 588 U.S. 445, 464 (2019) (same); *Santos*, 553 U.S. at 514 (plurality) (same); *Liparota*, 471 U.S. at 427 (same).[10] As those cases establish, due process demands fair notice. And fair notice demands that ambiguous legislative expressions not be enlarged by the judiciary.

In this way, lenity's fair notice function is closely related to its role in maintaining the separation of powers. "[B]ecause of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity." *United States v. Bass*, 404 U.S. 336, 348 (1971). "Lenity helps safeguard this design by preventing judges from intentionally or inadvertently exploiting doubtful statutory expressions." *Wooden*, 595 U.S. at 391 (Gorsuch, J., concurring) (citation and quotation marks omitted). And it ensures that criminal sanctions are established by the branch of government most accountable to the people.[11]

To avoid lenity, the panel in Mr. Christopher's case applied the "grievous ambiguity" standard that has crept into every circuit's case law. But that

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[10] The Founders recognized lenity's fair notice purpose, too. As Thomas Jefferson wrote, "when an instrument admits two constructions the one safe, the other dangerous, the one precise the other indefinite, I prefer that which is safe & precise." Thomas Jefferson, *Letter from Thomas Jefferson to Wilson Cary Nicholas* (Sept. 7, 1803).

[11] Lenity "also places the weight of inertia upon the party that can best induce Congress to speak more clearly." *Santos*, 553 U.S. at 514 (plurality).

standard "does not derive from any well-considered theory about lenity or the mainstream of this Court's opinions." *Wooden*, 595 U.S. at 392 (Gorsuch, J., concurring). As Justice Gorsuch recently detailed, "talk about 'grievous ambiguity'" derived from dicta in *Huddleston*, which was issued during a "bygone era characterized by a more freewheeling approach to statutory construction." *Wooden*, 595 U.S. at 394 (Gorsuch, J., concurring) (citation and quotation marks omitted). Importantly, *Huddleston* did not "pause to consider, *let alone overrule*, [the] Court's pre-existing cases explaining lenity's original and historic scope." *Id.* (emphasis added). And in those pre-existing cases, lenity applied when there was "reasonable doubt" about a statute's meaning. *Wooden*, 595 U.S. at 393 n.2 (Gorsuch., J. concurring) (collecting cases).

Notably, since *Huddleston*, this Court has routinely returned to its more traditional understanding of lenity: that reasonable doubt about the application of a penal law must be resolved in liberty's favor. *See, e.g.*, *Bittner*, 598 U.S. at 101; *Davis*, 588 U.S. at 464; *Yates v. United States*, 574 U.S. 528, 547–48 (2015) (plurality); *Burrage v. United States*, 571 U.S. 204, 216 (2014); *Skilling v. United States*, 561 U.S. 358, 410–11 (2010); *Santos*, 553 U.S. at 513–15 (plurality); *Cleveland v. United States*, 531 U.S. 12, 25 (2000). In none of those cases does "grievous ambiguity" or anything resembling it make an appearance. Indeed, the Court refers to Chief Justice Marshall's decision in *Wiltberger*, which applied the reasonable doubt standard, as the "seminal rule-of-lenity decision." *Santos*, 553 U.S. at 515 (plurality). *Wiltberger*, and two centuries of cases following its lead, remain good law.

The panel's decision conflicts with this good law as do panel decisions throughout the United States. Unreasoned dicta, which lower federal courts routinely (and perhaps reflexively) latch on to "hardly suppl[ies] any court with a sound basis for ignoring or restricting one of the most ancient rules of statutory construction—let alone one so closely connected to the Constitution's protections." *Wooden*, 595 U.S. at 394 (Gorsuch, J., concurring).

A few final points. The "grievous ambiguity" standard that the panel landed on was from a decision of this Court construing part of a statute that carried civil penalties rather than one imposing criminal punishment. Pet. App. 20a (citing *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). The distinction matters. While lenity is relevant to interpreting civil statutes, the canon plays a special role "in the interpretation of a criminal statute." *Burrage*, 571 U.S. at 216. As Judge Easterbrook opined, in a previous Seventh Circuit decision that cannot be squared with the panel's decision below, "the Rule of Lenity counsels us not to read criminal statutes for everything they can be worth." *United States v. Thompson*, 484 F.3d 877, 884 (7th Cir. 2007). Given the relative liberty interests, one can envisage "grievous ambiguity" being the appropriate standard for triggering lenity when construing civil statutes and "reasonable doubt" being the appropriate standard when construing criminal statutes. Such a distinction would be consistent with the different standards of proof required in criminal versus civil trials.

It simply cannot be that "lenity ha[s] no role to play," pet. app. 20a, in a criminal case where the more common of two definitions does not cover the conduct

at issue. As this Court has emphasized repeatedly, "when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite."[12] *United States v. Universal C.I.T. Credit Corp*, 344 U.S. 218, 221–22 (1952); accord *Cleveland*, 531 U.S. at 25; *McNally v. United States*, 483 U.S. 350, 359–60 (1987).

That decree applies with special force when construing criminal statutes that carry mandatory consecutive sentences. *See United States v. Scott*, 990 F.3d 94, 134 (2d Cir. 2021) (Leval, J., dissenting) ("Reliance on the rule of lenity has a special importance when the legislature has passed harsh mandatory sentences which are then imposed for crimes to which they do not clearly apply."). After all, the liberty interest and attendant need for fair warning approaches its zenith when defendants are subject to mandatory consecutive sentences. And mandatory sentences present the peak of Congress's punishment powers, making the reasonable doubt standard an essential safeguard to preserve the separation of powers—protecting against courts "cast[ing] broader net[s]," pet. app. 18a, that are not theirs to cast.

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[12] As Justice Scalia cautioned, "[w]hen interpreting a criminal statute," it is not a court's job to "play the part of a mindreader." *Santos*, 553 U.S. at 514 (plurality). Nor is it the court's role, as Justice Holmes wrote nearly a century ago, to "extend[]" a statute's scope "simply because it may seem to us that a similar policy applies, or upon the speculation that if the legislature had thought of it, very likely broader words would have been used." *McBoyle*, 283 U.S. at 27.

This Court should clarify the standard required to trigger lenity and affirm the application of the reasonable doubt standard for criminal statutes. As this case illustrates, "[a]ny other approach would be unsafe and dangerous—risking the possibility that judges rather than legislators control the power to define crimes and their punishments." *Wooden*, 595 U.S. at 395 (Gorsuch, J., concurring) (citation and quotation marks omitted).

III. The Reasonable Doubt Standard Would Have Resolved the Statutory Question in Mr. Christopher's Favor.

Under the reasonable doubt standard, there is no question that lenity applies: reasonable minds already have differed on the correct interpretation of § 2260A. *See Wooden*, 590 U.S. at 388 (Gorsuch, J., concurring). As one court opined when holding that § 2260A did not apply to FBI stings, "the phrase 'involving a minor' in § 2260A is, in our view, clear and unambiguous." *Dahl*, 81 F. Supp. 3d at 411. To the reasonable jurist who wrote the published decision in *Dahl*, the statutory question was not a close one.[13]

The plain text demonstrates why. As Mr. Christopher explained below, the word involving "primarily means to include or contain as a *necessary element*." *Eychaner*, 326 F. Supp. 3d at 102 (emphasis added); *accord* Involve, Merriam-Webster (11th ed. 2003) ("[T]o require as a necessary accompaniment"). The word "minor" is expressly defined in the statute as "any person under the age of eighteen years." 18

[13] That reasonable minds could differ on the correct interpretation of § 2260A is reinforced by Judge Kolar's grant of a certificate of appealability on this question. Pet. App. 21a–22a.

U.S.C. § 2256(1). Thus, for a crime to "involve a minor," a minor—a person under the age of eighteen—is a necessary element.[14]

In its decision, the panel justified its broader definition of the world involving by citing 18 U.S.C. §2252A, a statute that is part of the Child Pornography Prevention Act (CPPA), which uses the phrase "actual minor." Pet. App. 18a. The panel found it "reasonable to think that Congress would have used 'actual minor' in § 2260A if it wanted to limit the provision's reach to offenses targeting real minors." *Id.* But a "reasonable" read in favor of the government turns lenity on its head and creates an intolerable risk that the judiciary will fashion offenses "that have never received legislative approbation, and about which adequate notice has not been given to those who might be ensnared." *Thompson*, 484 F.3d at 881.

The panel's decision also failed to contend with the origin of the term "actual minor" in § 2252A, which belies its relevance in reading § 2260A. As the *Dahl* decision details, the term "actual minor" was added to § 2252A only after this Court held that certain provisions of the CPPA violated the First Amendment by prohibiting the possession or distribution of images "which may be created by using adults who look like minors or by using computer imaging." *Ashcroft v.*

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[14] The average person would not describe an FBI sting as involving a minor, which only creates more doubt. *See* Amy Coney Barrett, *Congressional Insiders and Outsiders*, 84 U. Chi. L. Rev. 2193, 2194 (2017) ("What matters . . . is how the ordinary English speaker . . . would understand the words of a statute."); *McBoyle*, 283 U.S. at 27 ("[A] fair warning should be given to the world in language that the common world will understand.").

Free Speech Coal., 535 U.S. 234, 239–40 (2002). Criminalizable child pornography, the Court held, included only depictions of "actual" children. *Id.* In direct response to *Free Speech Coalition*, adopting the decision's very language, Congress added "actual minor" to § 2252A to make the CPPA constitutional. *Dahl*, 81 F. Supp. 3d at 408. In other words, Congress used "actual minor" to ameliorate a specific constitutional problem arising from a specific statute. The term "actual minor" is not used outside of the child pornography context, and § 2252A is not even one of the predicate offenses listed in § 2260A. Thus, the presence of "actual minor" in § 2252A has no bearing on the statutory question here.

The panel's other reason for choosing an interpretation of § 2260A that "casts a broader net" fares no better. *See* Pet. App. 18a–19a. Everyone agrees that Mr. Christopher's predicate conviction, § 2422(b), would not include adults posing as minors but for its attempt clause—by talking to an FBI agent he thought was under-age, Mr. Christopher attempted to entice a minor. But § 2260A does not have an attempt clause. As the *Dahl* court reasoned, "[s]ince § 2260A does not include an attempt clause, it does not apply to an offense where the person being enticed is an adult posing as a minor." 81 F. Supp. 3d at 409–10.

The panel resisted this conclusion by resorting to tautology: "The problem with this reasoning is that it presupposes that 'involving a minor' means an actual minor." Pet. App. 19a. But this retort only works if you "presuppose" the broader definition of "involving a minor" that the panel settled on. Statutory interpretation should not be conducted by working backwards from a predetermined outcome.

That the panel was compelled to do so here only underscores the doubt.

The point is that there is certainly reason to doubt whether § 2260A covers FBI stings. Under the reasonable doubt standard, the rule of lenity applies and Mr. Christopher's attempt crime falls outside the ambit of § 2260A.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 7, 2026

APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED OCTOBER 14, 2025

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

October 14, 2025

Before

DAVID F. HAMILTON, *Circuit Judge*
JOHN Z. LEE, *Circuit Judge*
NANCY L. MALDONADO, *Circuit Judge*

No. 23-2976

CHARLES W. CHRISTOPHER,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Central District of Illinois.
No. 4:22-cv-4187

Sara Darrow,
Chief Judge.

Appendix A

ORDER

On consideration of the petition for rehearing and petition for rehearing en banc, no judge in regular active service has requested a vote on the petition for rehearing en banc and the judges on the original panel have voted to deny rehearing. It is, therefore, **ORDERED** that the petition for rehearing and petition for rehearing en banc is **DENIED**.

APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, DATED AUGUST 18, 2025

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 23-2976

CHARLES W. CHRISTOPHER,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

April 8, 2025, Argued;
August 18, 2025, Decided

Appeal from the United States District Court
for the Central District of Illinois.
No. 4:22-cv-4187 — Sara Darrow, *Chief Judge.*

Before Hamilton, Lee, and Maldonado, *Circuit Judges.*

Lee, *Circuit Judge.* Charles Christopher pleaded guilty to attempting to entice a minor to engage in unlawful sexual activity in violation of 18 U.S.C. § 2422(b) and to committing a felony offense "involving a minor" while under a reporting requirement in violation of 18 U.S.C. § 2260A. The latter offense was predicated on his § 2422(b) conviction.

The following year, Christopher filed a *pro se* motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 on several grounds, including ineffective assistance of counsel. As he saw it, his § 2260A conviction was invalid because his § 2422(b) attempt offense did not involve a minor but instead involved a government agent pretending to be a minor. Christopher faulted his counsel for failing to challenge the § 2260A charge on this basis or advise him that the charge was legally defective before his guilty plea.

The district court rejected Christopher's interpretation of § 2260A and denied relief. We agree with the district court. Even if we were to assume that Christopher's counsel's performance was deficient, Christopher was not prejudiced by his counsel's actions because his conviction for attempted enticement of a minor under § 2422(b) triggers § 2260A. We therefore affirm.

I

In 2020, while on supervised release for a previous conviction for attempting to entice a minor to engage in illicit sexual activity, Christopher began sending online messages to someone he believed to be a 15-year-old girl. Unbeknownst to him, he was really communicating with an undercover law enforcement agent.

At one point, Christopher requested a video call, and the agent joined the call, posing as the child. But for whatever reason, Christopher could not hear anything she was saying during the call, and his camera appeared to be

malfunctioning. So, they ended the call, and Christopher and the agent continued their conversation via text messages.

During that exchange, Christopher made explicit sexual references, laying bare his desire to have sex with the 15-year-old girl. He asked if he could pick her up and go to a hotel. The agent gave Christopher an address, and the next morning Christopher drove there with alcoholic beverages in tow (which he had agreed to bring for her).

Law enforcement agents observed Christopher circling the neighborhood in his vehicle and then parking a block away from the given address. He then walked to the residence, where the agents arrested him.

Christopher was charged in a two-count superseding indictment with attempted enticement of a minor in violation of 18 U.S.C. § 2422(b) and committing one of several enumerated felony sex offenses, while being required to register as a sex offender, in violation of 18 U.S.C. § 2260A. He subsequently entered a plea of guilty to both counts. The district court held a change-of-plea hearing on August 5, 2021, during which the court conducted a thorough plea colloquy, ensuring Christopher was entering his plea knowingly and voluntarily.

A few months later, the court sentenced Christopher to 144 months of imprisonment on the attempted enticement count and the mandatory 120 months of imprisonment on the § 2260A count, which by statute had to be served consecutively. *See* 18 U.S.C. § 2260A. The district court also sentenced Christopher to an additional 24 months of

custody for violating his supervised release, and it imposed lifetime supervised release for the new convictions. Christopher appealed but later filed a motion to dismiss his appeal, which we granted.

Christopher then moved under § 2255 to vacate his conviction and sentence. In that motion, he asserted, among other things, that he was actually innocent of the § 2260A charge because the offense did not involve a real minor and that his counsel was ineffective for allowing him to plead guilty without raising that argument in violation of his Sixth Amendment right to counsel. The district court denied the motion without an evidentiary hearing, concluding, in relevant part, that Christopher's counsel had not provided constitutionally ineffective assistance by advising him to plead guilty to the § 2260A offense. *See* 28 U.S.C. § 2255(b) (requiring an evidentiary hearing unless the records of the case conclusively show that the prisoner is entitled to no relief). The court declined to issue a certificate of appealability.

Christopher sought appellate review and requested a certificate of appealability from this court. We granted this request as to one issue: whether Christopher's counsel was ineffective for not arguing that, for § 2260A to apply, a predicate offense "involving a minor" must involve an actual minor.[1] We appointed counsel, and the parties briefed the issue.

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1. Christopher collaterally attacked his conviction and sentence on two other grounds. The district court rejected those arguments and declined to certify the issues for appeal. Our review is limited to the sole question that we certified.

Appendix B

II

The centerpiece of this appeal is 18 U.S.C. § 2260A, which provides, in pertinent part:

> Whoever, being required by Federal or other law to register as a sex offender, commits a felony offense *involving a minor* under section 1201, 1466A, 1470, 1591, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, shall be sentenced to a term of imprisonment of 10 years in addition to the imprisonment imposed for the offense under that provision.

18 U.S.C. § 2260A (emphasis added). Christopher maintains on appeal that his counsel was ineffective for failing to argue and advise him that he could not have violated § 2260A because it required the predicate offense to be based on conduct targeting a real minor.

A federal prisoner may bring an ineffective assistance of counsel claim in a collateral proceeding under § 2255, alleging a violation of his Sixth Amendment right to counsel. *See Norweathers v. United States*, 133 F.4th 770, 775 (7th Cir. 2025) (citing *Massaro v. United States*, 538 U.S. 500, 509, 123 S. Ct. 1690, 155 L. Ed. 2d 714 (2003)). To prevail, the claimant must satisfy the two-part test announced in *Strickland v. Washington. See Bridges v. United States*, 991 F.3d 793, 803 (7th Cir. 2021) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). This test requires the claimant

to show both that counsel's performance was deficient and that the claimant was prejudiced as a result. *See Strickland*, 466 U.S. at 687. It is not an easy test to satisfy. Deficient performance and prejudice "are at best difficult showings to make." *Lickers v. United States*, 98 F.4th 847, 857 (7th Cir. 2024) (quoting *Ebert v. Gaetz*, 610 F.3d 404, 411 (7th Cir. 2010)), *reh'g denied*, No. 22-1179, 2024 U.S. App. LEXIS 14076, 2024 WL 2848676 (7th Cir. June 5, 2024), and *cert. denied*, 145 S. Ct. 407, 220 L. Ed. 2d 159 (2024).

The first inquiry, deficient performance, turns on whether "counsel's conduct 'fell below an objective standard of reasonableness.'" *Anderson v. United States*, 94 F.4th 564, 581 (7th Cir. 2024) (quoting *Strickland*, 466 U.S. at 688). To mitigate the distortive effects of hindsight, our scrutiny of counsel's performance is "highly deferential," and we "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689.

To establish the second showing, prejudice, Christopher must demonstrate "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

We examine the performance and prejudice prongs of *Strickland* sequentially, reviewing *de novo* any legal questions that arise. *See White v. United States*, 8 F.4th 547, 551 (7th Cir. 2021) (citing *Waagner v. United States*, 971 F.3d 647, 653 (7th Cir. 2020)).

Appendix B

A

We begin by reviewing whether counsel's representation fell below an objective standard of reasonableness. *See Strickland*, 466 U.S. at 687-88. Christopher contends that counsel's performance was deficient because he did not consider, much less argue, that § 2260A did not cover Christopher's attempt violation under § 2422(b). According to Christopher, the phrase "involving a minor" in § 2260A limits the provision's applicability to felony offenses targeted at real minors and excludes offenses targeted at adult members of law enforcement. 18 U.S.C. § 2260A. Thus, Christopher argues, because it was undisputed that no real minor was implicated in the conduct underlying his § 2422(b) conviction, his counsel's failure to challenge the § 2260A charge was objectively unreasonable.

In applying the objective standard of reasonableness to assess counsel's performance, we generally defer to counsel's strategic decisions. *See Bridges*, 991 F.3d at 803. Yet that deference only goes so far. As the Supreme Court has held:

> [S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.

Hinton v. Alabama, 571 U.S. 263, 274, 134 S. Ct. 1081, 188 L. Ed. 2d 1 (2014) (quoting *Strickland*, 466 U.S. at 690-91).

Thus, counsel's "ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under *Strickland*." *Bridges*, 991 F.3d at 803 (first quoting *Hinton*, 571 U.S. at 274; and then citing *Osagiede v. United States*, 543 F.3d 399, 409 (7th Cir. 2008) (explaining that "all lawyers that represent criminal defendants are expected to know the laws applicable to their client's defense," and where "simple computer research would have turned [those laws] up," counsel is ineffective for failing to rely on them absent a strategic justification) (citation modified)).

That said, "[w]e have long recognized the general principle that the Sixth Amendment does not require counsel to forecast changes or advances in the law." *Coleman v. United States*, 79 F.4th 822, 831 (7th Cir. 2023) (citation modified). And just "because an argument has some remote chance of prevailing does not mean that a lawyer is constitutionally deficient for failing to bring it." *Lickers*, 98 F.4th at 857. "Nevertheless, 'there are some circumstances where [defense counsel] may be obliged to make, or at least to evaluate, an argument that is sufficiently foreshadowed in existing case law.'" *Coleman*, 79 F.4th at 831 (quoting *Bridges*, 991 F.3d at 804).

Based on these principles, the adequacy of Christopher's counsel's performance depends on whether, at the time of Christopher's plea, case law sufficiently

foreshadowed the argument that § 2260A requires a predicate offense based on conduct targeted at a real minor. If existing case law portended that argument, then Christopher's counsel performed deficiently for failing to raise it, absent some strategic reason for the decision. Alternatively, if the argument was so far afield from extant precedent that requiring counsel to have raised it would have, in effect, demanded counsel to forecast the law, then counsel's performance was reasonable under the Sixth Amendment.

We have considered similar questions in the past. In *Coleman*, for example, the petitioner claimed that his counsel's failure to inform him of the government's intention to seek to enhance his sentence based on prior state cocaine-related convictions amounted to a violation of his Sixth Amendment rights. *See* 79 F.4th at 825. We concluded that it would have been objectively unreasonable for counsel to have not considered a categorical challenge to the government's reliance on those prior state cocaine convictions. *See id.* at 832. By the time of the petition, such a challenge would have succeeded. *See id.* at 831. And at the time of the petitioner's sentencing, "numerous" decisions had at least foreshadowed the groundwork for such categorical challenges, *id.*, and our case law recognized that a challenge to cocaine delivery predicate offenses "was neither novel ... nor foreclosed," *id.* at 832 (quoting *White*, 8 F.4th at 557). As such, we rejected the government's argument that the categorical approach was too new at the time of the petitioner's sentencing to have been recognized by competent defense counsel. *Id.* at 832.

Similarly, in *Bridges*, the petitioner claimed that his lawyer should have argued that Hobbs Act robbery, to which the petitioner pleaded guilty, did not qualify as a crime of violence under the applicable sentencing guidelines, so the petitioner would not have been categorized as a career offender. *See* 991 F.3d at 797. We held that counsel's apparent failure to investigate or raise a challenge to the career offender enhancement could have been deemed deficient performance and remanded the case for a hearing on the petitioner's allegations. *See id.* at 804-05.

In reaching this conclusion, we observed that "it would not have taken long" at the time of the petitioner's plea "for counsel to have found the Tenth Circuit decision holding that Hobbs Act robbery is not a crime of violence" under the applicable guideline amendment. *Id.* at 805. And we recognized that other existing federal appellate opinions had discussed the new guideline definition of crime of violence and its applicability to the Hobbs Act. *See id.* at 805-06.

Here, whether Christopher's counsel's performance was similarly deficient is a close call. At the time of Christopher's plea, only three cases had addressed the argument that a § 2260A conviction predicated on a § 2422(b) attempt offense requires conduct targeting a real minor. The two federal courts of appeals to have considered the issue rejected the argument that Christopher makes here. *See United States v. Slaughter*, 708 F.3d 1208, 1216 (11th Cir. 2013); *United States v. Fortner*, 943 F.3d 1007, 1010 (6th Cir. 2019). The remaining case, from the Eastern

District of Pennsylvania, held the opposite. *See United States v. Dahl*, 81 F. Supp. 3d 405, 411 (E.D. Pa. 2015).[2]

Thus, whether these cases foreshadowed the argument Christopher thinks his counsel should have made is not as plain as in *Coleman* or *Bridges*. Those cases considered the degree to which the Sixth Amendment requires counsel to anticipate legal arguments based on cases that were supportive of them. By contrast, here, Christopher's counsel was faced with two federal appellate decisions flatly rejecting Christopher's view of § 2260A.

And yet, even though *Slaughter* and *Fortner* opposed Christopher's interpretation of § 2260A, they were not controlling and, at the time of Christopher's plea, provided a blueprint for the "actual minor" challenge that the text of the statute arguably suggests. *See Brock-Miller v. United States*, 887 F.3d 298, 311 (7th Cir. 2018) ("Reading statutes and discerning their plain meaning is neither convoluted nor sophisticated; it is what lawyers must do for their clients every day."); *see also Bridges*, 991 F.3d at 805 (explaining that "[w]ith modern methods of legal research, it would not have taken long" for counsel to have found the pertinent case).

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2. Christopher also references a case from the First Circuit, *United States v. Jones*, 748 F.3d 64, 71-72 (1st Cir. 2014), in support. But that case does not help him. In fact, after discussing the Eleventh Circuit's decision in *Slaughter*, the First Circuit in *Jones* observed that the petitioner had "done no more than raise the possibility of a reasonable dispute about what § 2260A requires" and his "preferred approach to the actual-child issue [was] far from obvious." *Id.* at 73.

And so, rather than answering this thorny question, we, like the district court, take the more restrained approach and assume without deciding that counsel performed deficiently by forgoing a challenge to the § 2260A charge and failing to advise Christopher of that potential challenge before he pleaded guilty.[3] This brings us to prejudice.

B

As the Supreme Court stated in *Strickland*, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691. Accordingly, unless Christopher can demonstrate a reasonable probability that, but for his counsel's deficient performance, the result

3. Because we do not decide whether Christopher's counsel performed deficiently, we also need not address whether counsel's failure to contest the § 2260A charge was strategic. The question of whether counsel acted strategically is the subject of Christopher's motion to supplement the record pursuant to Federal Rule of Appellate Procedure 10(e)(2). Christopher attached to his motion an affidavit from his counsel, which attests that his failure to raise this issue was not strategic but an unfortunate oversight. Although not material to the disposition of this appeal, for the sake of completeness, we deny Christopher's motion to supplement the record because the affidavit is brand new evidence not previously presented to the district court and not omitted or misstated from the record by error or accident. *See* Fed. R. App. P. 10(e)(2); *Ruvalcaba v. Chandler*, 416 F.3d 555, 562 n.2 (7th Cir. 2005) ("[W]e generally decline to supplement the record on appeal with materials that were not before the district court.").

of his sentence would have been different, he is not entitled to relief. *See id.* at 694.

A defendant claiming prejudice in the plea context must make two showings. First, he "must show the outcome of the plea process would have been different with competent advice." *Lafler v. Cooper*, 566 U.S. 156, 163, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012). And, where, as here, a defendant claims that ineffective assistance led to the improvident entry of a guilty plea, we ask whether, but for counsel's errors, the defendant "would not have pleaded guilty and would have insisted on going to trial." *Brock-Miller*, 887 F.3d at 311 (quoting *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985)).

Second, a defendant must prove that, but for the deficient representation, "it is reasonably probable that the judge would have imposed a lower sentence." *Resnick v. United States*, 7 F.4th 611, 619 (7th Cir. 2021) (first quoting *Day v. United States*, 962 F.3d 987, 992 (7th Cir. 2020); and then citing *Lafler*, 566 U.S. at 164).

Christopher's petition falters on this second showing. "[W]here," as Christopher acknowledges, "the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the prejudice inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial." *Hill*, 474 U.S. at 59 (internal quotation marks omitted). Dismissal of the § 2260A charge would have reduced Christopher's sentence by 10 years. *See* 18 U.S.C. § 2260A. Therefore, to evaluate prejudice, we

must examine the merit of Christopher's interpretation of § 2260A.

As explained, Christopher reads § 2260A to require targeting of a "real-life minor." Alternatively, Christopher argues that he should prevail under the rule of lenity, because the ambiguity in § 2260A's language must be construed in his favor.

We review a district court's interpretation of a statute *de novo, see United States v. Miller*, 883 F.3d 998, 1003 (7th Cir. 2018), and we start with the plain language in § 2260A. *See River Rd. Hotel Partners, LLC v. Amalgamated Bank*, 651 F.3d 642, 648-49 (7th Cir. 2011) ("When attempting to decipher the proper interpretation of a statute, we begin by determining 'whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.'") (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997)), *aff'd sub nom., RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 132 S. Ct. 2065, 182 L. Ed. 2d 967 (2012).

In doing so, we must be mindful that the "meaning attributed to a phrase 'depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.'" *Id.* at 649 (quoting *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 7, 131 S. Ct. 1325, 179 L. Ed. 2d 379 (2011)). We give "words their ordinary meaning unless the context counsels otherwise." *United States v. Webber*, 536 F.3d 584, 593 (7th Cir. 2008)

(citing *McCarthy v. Bronson*, 500 U.S. 136, 139, 111 S. Ct. 1737, 114 L. Ed. 2d 194 (1991)). And "[i]f we find that the language in a statute is unambiguous, we will not conduct further inquiry into its meaning and enforce the statute in accordance with its plain meaning." *River Rd.*, 651 F.3d at 649.

Taking another look at the language of § 2260A, it provides that "[w]hoever, being required by Federal or other law to register as a sex offender, commits a felony offense *involving a minor* under [various enumerated sections, including § 2422], shall be sentenced to a term of imprisonment of 10 years." 18 U.S.C. § 2260A (emphasis added). Christopher focuses on the word "minor," which § 2256 (the provision that lays out definitions for words that appear in the chapter) defines as "any person under the age of eighteen years." 18 U.S.C. § 2256(1). From this, he reasons that the predicate offense must entail a "person," that is, an actual minor. But what are we to make of the word "involving?"

As Christopher points out, "involving" is not defined in § 2256 or elsewhere in the chapter. And so, referring to English dictionaries, he points to one common definition of "involve"—"to require as a necessary accompaniment." *Involve*, Merriam-Webster's Collegiate Dictionary 660 (11th ed. 2020). This restrictive definition, Christopher posits, supports his reading of the statute.

But this is not the only commonly used definition of the word "involve." Another is "to relate closely." *Id.* Under this definition, the phrase "involving a minor" does not

necessarily mean that the offense *must* entail an actual minor; it is more flexible and casts a broader net.

Two things convince us that this broader reading of "involving a minor" is the better one. First, like our sister circuits, we think it significant that other provisions in the chapter use the phrase "actual minor" when referring to real minors. *See, e.g.*, 18 U.S.C. § 2252A(a)(3)(B)(ii) (prohibiting the knowing advertising, promoting, presenting, distributing, or soliciting of "a visual depiction of an actual minor engaging in sexually explicit conduct"); *id.* § 2252A(c)(2) (establishing the affirmative defense that "the alleged child pornography was not produced using any actual minor or minors"). And, because these provisions predated § 2260A, it is reasonable to think that Congress would have used "actual minor" in § 2260A if it wanted to limit the provision's reach to offenses targeting real minors. *See Slaughter*, 708 F.3d at 1216; *Fortner*, 943 F.3d at 1010; *United States v. Carnell*, 972 F.3d 932, 939 (7th Cir. 2020) ("When 'Congress includes particular language in one section of a statute but omits it in another' a court must presume that Congress intended a difference in meaning.") (quoting *Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983)).

Second, recall that Christopher was convicted under § 2422(b) for *attempting* to persuade, induce, entice, or coerce a minor to engage in illicit sexual activity. This is important because, to obtain a conviction for an attempt crime, the government need only prove that "the defendant intended to complete the crime and took a substantial step toward its completion." *See United States v. Sanchez*, 615 F.3d 836, 843 (7th Cir. 2010) (citation

modified). Thus, for an attempt offense under § 2422(b), it is not necessary for the intended target to be a real minor so long as the defendant *believed* that the target was a real minor, intended to entice the target into illegal sexual activity, and took a substantial step to carry out his plan. *See Fortner*, 943 F.3d at 1011 (observing that, for many attempt crimes, "real victims of any sort frequently are not needed"). In this way, such offenses "involve a minor" even though the target may not be an actual minor.

For his part, Christopher acknowledges that § 2422(b) has an attempt component but points out that § 2260A does not. To him, this is a material distinction. Presumably, Christopher means to argue that § 2260A is directed at a subset of § 2422(b) offenses, those implicating actual minors, as compared to attempt offenses that do not. The problem with this reasoning is that it presupposes that "involving a minor" means an actual minor. If one were to adopt the more expansive construction, Christopher's distinction would disappear.

Christopher also contends that the broader construction of "involving a minor" would render that phrase surplusage. This is incorrect. Some of the statutes enumerated in § 2260A address conduct targeted at adults as well as minors. *See, e.g.*, 18 U.S.C. § 1201 (kidnapping), § 2421 (transporting individual with intent such individual engage in criminal sexual activity). Therefore, the phrase "involving a minor" in § 2260A does the work of limiting its scope to conduct intended to target minors (real or not).

Thus, like our sister circuits that have addressed the issue, we conclude that § 2260A encompasses a

defendant's § 2422(b) violation of attempting to entice into criminal sexual activity a law enforcement agent whom the defendant believes to be a minor. *See Slaughter*, 708 F.3d at 1215; *Fortner*, 943 F.3d at 1009.[4]

Lastly, Christopher invokes the rule of lenity. But the rule "only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute such that the court must simply guess as to what Congress intended." *Maracich v. Spears*, 570 U.S. 48, 76, 133 S. Ct. 2191, 186 L. Ed. 2d 275 (2013) (citation modified). As we have explained, the text, structure, and context of § 2260A has provided us with an answer; the rule of lenity has no role to play here.

In sum, the district court was correct to reject Christopher's Sixth Amendment ineffective assistance of counsel claim. Because the argument Christopher wishes his counsel had made lacks merit, Christopher has not demonstrated that his counsel's failure to make the argument prejudiced him as *Strickland* requires.

III

For the foregoing reasons, we AFFIRM the district court's judgment denying Christopher's 28 U.S.C. § 2255 petition to vacate, set aside, or correct his sentence.

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4. We decline to follow the district court's decision in *Dahl*, 81 F. Supp. 3d at 405, which focused almost exclusively on the word "minor" without giving much consideration to the entire phrase "involving a minor."

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED MAY 8, 2024

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

May 8, 2024

Before

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2976

CHARLES W. CHRISTOPHER,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Central District of Illinois.

No. 4:22-CV-04187-SLD

Sara Darrow,
Chief Judge.

Appendix C

ORDER

The district court denied Charles Christopher's motion to vacate his conviction and sentence under 28 U.S.C. § 2255. After reviewing the district court's order and the record on appeal, we conclude that Christopher has made a substantial showing of the denial of his right to effective counsel under the Sixth Amendment. *See* 28 U.S.C. § 2253(c)(2). The parties should address whether Christopher's counsel was ineffective for not arguing that, for a sentence under 18 U.S.C. § 2260A, a predicate offense "involving a minor" must involve an actual minor, whereas here Christopher's predicate offense was an attempt crime involving only an adult posing as a minor.

Accordingly, we **GRANT** Christopher's request for a certificate of appealability and his motion to proceed *in forma pauperis*. Because the court would benefit from additional counseled briefing and oral argument, we also *sua sponte* appoint counsel for Christopher. An order designating counsel and setting a briefing schedule will follow.

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF ILLINOIS, ROCK ISLAND DIVISION, FILED SEPTEMBER 22, 2023

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

Case Nos. 4:20-cr-40072-SLD-JEH
4:22-cv-04187-SLD

CHARLES W. CHRISTOPHER,

Petitioner-Defendant,

v.

UNITED STATES OF AMERICA,

Respondent-Plaintiff.

ORDER

Before the Court is Petitioner-Defendant Charles W. Christopher's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, Doc. 62. Christopher argues: (1) that he is actually innocent of his conviction under 18 U.S.C. § 2260A because no minor was involved in the offense (and that his counsel was ineffective for failing to pursue this argument); (2) that his attorney should have argued that his sentences should not have been imposed consecutively; and (3) that 18 U.S.C. § 2244(b) is unconstitutional. For the reasons explained

below, the Court DENIES Petitioner's § 2255 Motion and DECLINES to issue a certificate of appealability.

BACKGROUND

While on supervised release for a 2008 conviction for attempted enticement of a minor to engage in illicit sexual activities in the Southern District of Iowa, Christopher repeated his criminal patterns with very similar conduct. In November 2020, Christopher began communicating on a mobile dating application with someone he believed to be a 15-year-old girl. *See* PSR ¶ 14, Doc. 43. However, it was actually an online covert employee (OCE) engaging in an undercover operation. *Id*. Christopher requested a video chat and, after the chat, told the OCE that "I thought you weren't real." *Id.* He then told her he wanted to "[m]ake a baby lol jk" and later asked "can I cum inside you." *Id.* ¶ 15. Christopher continued the conversation, agreeing to come to the purported minors residence in Rock Island, Illinois, on November 15, 2020. Christopher parked down the street from the residence and then came to the residence with White Claws, an alcoholic drink he had agreed to bring. *Id.* ¶ 17. Law enforcement officers arrested him after he knocked on the door of the residence. *Id.* ¶ 19.

On April 20, 2021, a grand jury charged Christopher in a superseding indictment with attempted enticement of a minor, in violation of 18. U.S.C. § 2422(b) (Count 1s); and committing a felony sex offense while a registered sex offender, in violation of 18 U.S.C. § 2260A (Count 2s). Superseding Indictment, Doc. 27. On August 5, 2021, Christopher entered an open guilty plea to both counts in

the superseding indictment. At the change of plea hearing, Christopher was placed under oath. He affirmed that he understood the potential imprisonment penalties were ten-years to life imprisonment on Count 1s and a mandatory consecutive ten year imprisonment sentence on Count 2s—making the total minimum penalty twenty years imprisonment. P.Tr. 5–10, Doc. 59. The Court explained how the advisory sentencing guidelines impact sentencing and the rights he was giving up by pleading guilty. *Id.* at 11–14. Next, the government recited the essential elements of the offenses, and Christopher affirmed that he understood the elements. *Id.* at 14–15. In his own words, Christopher explained that he was pleading guilty because:

> I used a cell phone with internet to have communications with someone that was— I believed to be under 18 for the purpose of arranging a meeting for a sexual relation. And I was—at the time, I was required to register as a sex offender in the state of Iowa.

Id. at 16. After the government provided an independent factual basis to support the plea, the Court accepted Christopher's guilty plea. *Id.* at 16–19.

The United States Probation Office prepared the Presentence Investigation Report. PSR. The PSR determined Christopher was subject to a enhancement under U.S.S.G. § 4B1.5 because his prior conviction for attempted enticement of a minor in 2008 made him a "repeat and dangerous sex offender against minors." *Id.*

With this enhancement, his offense level was 37. After a three-point reduction in his offense level for acceptance of responsibility, his total offense level became 34. His criminal history category was V. Accordingly, his sentencing guideline range on Count 1s was 235 to 293 months of imprisonment, followed by the mandatory ten-year consecutive sentence on Count 2s. *Id.* at ¶ 93.

The Court held a sentencing hearing on December 15, 2021. After granting Christopher's objection to a supervised release condition related to gambling, the Court adopted the calculations in the PSR. S.Tr. 7, Doc. 60. The government made its commentary at sentencing, asking for a sentence at the low end of the guidelines. *Id.* at 10–22. Christopher's counsel argued that the sentencing range without the § 4B1.5(a) enhancement would be 120 months and that the mandatory minimum of twenty years imprisonment would already be double Christopher's last sentence. *Id.* at 22–29. Ultimately, defense counsel argued that twenty years of imprisonment was sufficient under the facts of the case. *Id.* at 29–33.

After Christopher made his allocution, the Court addressed the sentencing factors under 18 U.S.C. § 3553(a). The Court told Christopher that its biggest concern was "the risk that you pose to the public" and that it had an "absolute responsibility to keep the public safe from future crimes by you." S.Tr. 40–41. The Court sentenced Christopher to 144 months of imprisonment on Count 1s, plus an additional 120 months on Count 2s to run consecutive to Count 1s. *Id.* at 45–47. The Court also sentenced Christopher to an additional twenty-

four months of imprisonment for the supervised release violation, to be served consecutively. *Id*. at 47–48. Finally, lifetime supervised release was imposed for the new convictions. S.Tr. 48. Christopher filed a timely appeal, but later filed a motion to dismiss the appeal with prejudice. The motion to dismiss was granted on April 15, 2022. *See* Mandate, Doc. 61.

Christopher filed this Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, Doc. 62, on December 21, 2022. He argues three grounds for relief: (1) that he is actually innocent of Count 2s (18 U.S.C. § 2260A) because no "actual" minor was involved in the predicate offense and counsel was ineffective for allowing him to plead guilty without raising this argument; (2) that the Court erred when the Court imposed a consecutive sentence for Count 2s because it failed to consider the provisions in 18 U.S.C. § 3584(a) and that his counsel was ineffective for failing to object at sentencing or raise the issue on appeal; and (3) that 18 U.S.C. § 2422(b) is unconstitutional. The government filed a response in opposition, Doc. 67, and Christopher has filed a reply, Doc. 68. After careful review, this order now follows.

DISCUSSION

I. Legal Standard

Section 2255, "the federal prisoner's substitute for habeas corpus," *Brown v. Rios,* 696 F.3d 638, 640 (7th Cir. 2012), permits a prisoner incarcerated pursuant to an Act of Congress to request that his sentence be vacated,

set aside, or corrected if "the sentence was imposed in violation of the Constitution or laws of the United States, or . . . the court was without jurisdiction to impose such sentence, or . . . the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). Relief under § 2255 is appropriate for "an error of law that is jurisdictional, constitutional, or constitutes a fundamental defect which inherently results in a complete miscarriage of justice." *Harris v. United States*, 366 F.3d 593, 594 (7th Cir. 2004) (quotation marks omitted). However, a "failure to raise an ineffective-assistance-of-counsel claim on direct appeal does not bar the claim from being brought in a later, appropriate proceeding under § 2255." *Massaro v. United States,* 538 U.S. 500, 509 (2003).

Christopher brings claims under the Sixth Amendment. The Sixth Amendment guarantees criminal defendants effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 684–86 (1984). Under *Strickland's* two-part test, a petitioner must show both that his attorney's performance was deficient and that he was prejudiced as a result. *Vinyard v. United States*, 804 F.3d 1218, 1225 (7th Cir. 2015). Courts, however, must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland,* 466 U.S. at 690. A petitioner must also prove that he has been prejudiced by his counsel's representation by showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 694. Absent a sufficient showing of both cause and prejudice, a petitioner's claim

must fail. *United States v. Delgado,* 936 F.2d 303, 311 (7th Cir. 1991).

II. Analysis

a. Christopher's Attorney Was Not Ineffective for Advising Him to Plead Guilty to the 18 U.S.C. § 2260A Offense.

Christopher argues that his conviction on Count 2s under 18 U.S.C. § 2260A is invalid because (1) by using the phrase "involving a minor," the statute requires an actual minor and Christopher's conduct did not, (2) his predicate charge was for attempt under 18 U.S.C. § 2422(b) and § 2260A does not cover attempt, and (3) the rule of lenity applies. Mot. 2–6. The Court addresses each argument in turn.

i. "Involving a Minor"

Christopher first argues that his conviction on Count 2s under 18 U.S.C. § 2260A is invalid because the predicate offense involved an undercover officer instead of an "actual" minor and was only an attempt conviction. He argues he is entitled to relief because his counsel was ineffective for failing to raise this argument prior to advising him to plead guilty. The Court finds that Christopher's underlying argument does not have merit, so he cannot show the prejudice required for an ineffective assistance of counsel claim. Moreover, given the strong caselaw rejecting this argument, the Court is doubtful that his attorney's conduct could be classified as deficient

for failing to raise the claim. Regardless, Christopher is not entitled to relief.

A conviction under 18 U.S.C. § 2260A requires a mandatory ten-year consecutive sentence for "[w]hoever, being required by Federal or other law to register as a sex offender, commits a felony offense *involving a minor* under section 1201, 1466A, 1470, 1591, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425." 18 U.S.C. § 2260A (emphasis added). Here, Christopher's predicate offense was for attempted enticement of a minor, in violation of 18 U.S.C. § 2422(b). His offense conduct did not involve an *actual* minor, but rather an undercover agent posing as a minor. Christopher now argues, as a matter of statutory interpretation that "involving a minor" under § 2260A means an *actual* minor must be involved.

While the Seventh Circuit has not addressed this issue, the Sixth and Eleventh Circuits have found that an actual minor is not required when a defendant's predicate conviction is for attempted enticement of a minor under 18 U.S.C. § 2422(b). In *United States v. Fortner*, 943 F.3d 1007, 1009 (6th Cir. 2019), the Sixth Circuit found that the plain meaning of the phrase "involving a minor" in § 2260A "did not purport to eliminate all attempt crimes, as the reach extending term 'involves' suggests. A conviction arising from an attempt to have sex with a minor "involves" a minor no matter whether it arose from a sting operation (as here) or it related to a real child." *Id.* at 1009. As further support, the Sixth Circuit considered the language of the enticement statute, § 2422(b), and noted that, to be guilty of attempted enticement of a minor,

the statute only requires the perpetrator to have the requisite mental state and take a substantial step towards completing the offense. *Id.* at 1010. Despite the fact that in some cases an actual minor was not used, the offense always "involves" a minor due to the requisite mental state. *Id.* Further, the Sixth Circuit highlighted that Congress had clearly indicated in neighboring statutes when an actual minor was required for a conviction by using the terms "actual minor" or "identifiable minor," as opposed to simply "minor." *Id.* (citing 18 U.S.C. § 2252A(a)(3)(B)(ii), (c)(2), (e); 18 U.S.C. § 2256(8)). Finally, the Sixth Circuit looked at the "statutory context" of these laws, which are "designed to root out child predation frequently cover attempt crimes against non-existing children precisely to avoid completed crimes against existing children." *Id.* at 1011. Given the need for attempt crimes in this area of the law, the Sixth Circuit found "nothing linguistically unusual about calling an unsuccessful attempt to abuse a minor a crime that involves a minor." *Id.*

The Eleventh Circuit had previously considered the issue in *United States v. Slaughter*, 708 F.3d 1208 (11th Cir. 2013), and came to the same conclusion. Looking at both the language in § 2260A and § 2422(b), the Eleventh Circuit found that the plain language in § 2422(b) allowed for an attempt conviction even when an actual minor was not involved. *Id.* at 1215. Accordingly, the Eleventh Circuit found that "[t]he question that follows, then, is whether the plain language of § 2260A negates the plain language of § 2422(b), so that a defendant cannot be convicted of § 2260A without having committed conduct involving an actual minor, even if the same conduct would sustain a

conviction for attempted enticement under § 2422(b)." *Id.* at 1215. The Eleventh Circuit found that:

> We read nothing in the plain language of § 2260A that negates the plain language of § 2422(b). Rather, we read the language in each section to be complementary. Section 2260A limits liability to "felony offense[s] involving a minor." For purposes of the chapter where § 2260A is located, the term "'minor' means any person under the age of eighteen years." Similarly, § 2422(b) limits liability for enticement to conduct involving "an[ ] individual who has not attained the age of 18 years." Thus, considered together, these two sections operate to criminalize enticement and attempted enticement of an individual under the age of eighteen years, and when such an offense is committed by a registered sex offender, that defendant faces an additional ten years in prison. And because a violation of § 2422(b) does not require an actual minor due to its attempt clause . . . neither does a violation of § 2260A require the involvement of an actual minor when that violation is predicated on a violation of § 2422.

Slaughter, 708 F.3d at 1215 (quotation marks omitted). Like the Sixth Circuit, the Eleventh Circuit also found the neighboring statues' use of the term "actual minor" and the broad purpose of the statutes to protect minors from sexual abuse supported its holding. *Id.*

Nonetheless, Christopher's view does find support in *United States v. Dahl*, 81 F. Supp. 3d 405 (E.D. Pa. 2015).[1] In *Dahl*, the district court found *Slaughter's* reasoning "flawed." *Id.* at 408. Instead, the court relied primarily on the definition of minor under 18 U.S.C. § 2256(1): a "'minor' means any person under the age of eighteen years." The district court held that pursuant to that definition "involving a minor" under § 2260A must be an offense where an actual minor was involved, not one where an undercover agent posed as a minor. *Id.* at 409.

Here, the Court finds the reasoning of the Sixth and Eleventh Circuits persuasive. While the term "minor" by itself may indicate that an actual minor is needed, § 2260A qualifies the term minor by using the phrase "*involving a* minor." The Court agrees with the Sixth and Eleventh Circuits that this phrase does not indicate that an actual minor must be victimized in committing the predicate offense. And, considering the phrase along with the statutory framework and the required mental

1. Christopher also purports to find support in *United States v. Eychaner*, 326 F. Supp. 3d 76 (E.D. Va. 2018). Mot. 4. However, this case did not address the issue presented here. Rather, in *Eychaner,* the predicate conviction for the § 2260A offense was for Attempted Receipt of Visual Depictions that Depict Minors Engaging in Sexually Explicit Conduct and are Obscene, in violation of 18 U.S.C. § 1466A(a)(1). *Eychaner*, 326 F. Supp. 3d at 99. The district court issued a narrow holding "[a] minor is not "involved" in the offense . . . when the depiction in question involves a fictional cartoon character with no relation to any actual person in the real world." *Id.* at 102. Notably, the defendant did not even need to believe that an actual minor was involved to commit the offense.

state for an attempted enticement of a minor conviction under § 2422(b), the Court finds that an actual minor was not needed to support Christopher's § 2260A conviction. Accordingly, as the Court does not find that Christopher's argument has merit, counsel's failure to raise this ground not was prejudicial to him.

ii. Attempt Crimes and § 2260A

Christopher next argues that his conviction is invalid because an attempt to commit § 2422(b) is not a sufficient predicate for § 2260A. Mot. at 5–6. He seeks to rely on *United States v. Taylor*, 142 S.Ct. 2015 (2022), in which the Supreme Court held that attempted Hobbs Act robbery does not qualify as a predicate "crime of violence" for purposes of a conviction for using a firearm in furtherance of a "crime of violence." 142 S.Ct. at 2020. Christopher's argument is unavailing. As stated above, a conviction under 18 U.S.C. § 2260A requires a mandatory ten-year consecutive sentence for "[w]hoever, being required by Federal or other law to register as a sex offender, *commits a felony offense* involving a minor under section 1201, 1466A, 1470, 1591, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425." 18 U.S.C. § 2260A (emphasis added). In being convicted of attempted enticement of a minor under § 2422(b), Christopher did not *attempt* to commit a felony, he *did* commit a felony: both attempting to entice a minor and enticing a minor are felonies. Christopher's attorney was not ineffective for failing to raise this meritless argument.

iii. Rule of Lenity

Finally, Christopher argues that the rule of lenity applies to his arguments that § 2260A requires an actual minor and a conviction of a completed offense. However, the rule of lenity "applies only when a criminal statute contains a grievous ambiguity or uncertainty, and only if, after seizing everything from which aid can be derived, the Court can make no more than a guess as to what Congress intended." *Ocasio v. United States*, 578 U.S. 282, 295 (2016) (quotation marks omitted). The Court does not find the rule of lenity applies here. While Christopher's argument that § 2260A requires an actual minor finds support in one district court case, the Court does not find that it is left to make "no more than a guess" as to whether an actual minor is required. Rather, the Court's finding that no actual minor is required finds strong support in the statutory language and context of the statute. And, Christopher's argument that § 2260A requires a predicate conviction of a completed offense finds no support in the statutory language at all. Accordingly, again, the Court finds that Christopher's attorney was not ineffective for failing to raise this meritless argument.

b. The Court Properly Sentenced Christopher to a Mandatory Consecutive Sentence on His § 2260A Conviction.

Christopher next argues that not only was it not mandatory to sentence him to a consecutive sentence on his § 2260A conviction, but it was not permissible. Christopher's argument stems from language in the

Fourth Circuit case of *United States v. Beck*, 957 F.3d 440, 447 (4th Cir. 2020). In *Beck*, in previous direct appeal the defendant had:

> argued for the first time that it was error for the plea agreement to require a consecutive ten-year sentence on [his § 2260A conviction] and that his counsel had been ineffective for failing to identify this error. The government agreed that "the plea agreement erroneously specified that the district court was required by statute to impose consecutive sentences for the two offenses," and the parties moved jointly to remand the case so that the district court could address the error in the first instance.

Id. at 444. In *Beck*, the defendant had been charged, in relevant part, with producing child pornography, in violation of 18 U.S.C. § 2251(a) (Count One), and with violating 18 U.S.C. § 2260A by committing an enumerated felony offense involving a minor—the crime underlying Count One—while being required to register as a sex offender (Count Five). But, in his plea agreement, in order to avoid a potential mandatory minimum sentence under Count One, the government agreed to dismiss Count One. Accordingly, because § 2260A only requires the ten year sentence to be imposed consecutive "to any sentence imposed for the offense under [the named felony offense provisions]" and by dismissing Count One in Beck's case there was no sentence imposed for the underlying offense, it was not mandatory that that the § 2260A offense be imposed consecutive for any other offense.

Here, as is typical, Christopher was convicted and sentenced for his predicate felony offense, so *Beck* is unavailing. There was no error in finding that the ten-year § 2260A sentence needed to be imposed consecutively under the statute's very clear language. Christopher's attorney was not ineffective for failing to raise this meritless argument.

c. Christopher's Argument that 18 U.S.C. § 2422(b) is Unconstitutional is Procedurally Defaulted and Meritless.

Finally, Christopher argues that § 2422(b) is unconstitutional. Section 2422(b) provides that:

> Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or 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 and imprisoned not less than 10 years or for life.

18 U.S.C. § 2422(b). Christopher argues that the phrase "a criminal offense" is overbroad and void for vagueness, the phrase "any sexual activity" is vague, and that the statute is likely to "chill speech." Mot. 8–13. The government argues that these arguments are procedurally defaulted

and meritless. Resp. 11–20. Christopher has clarified in his reply, however, that he is arguing that his counsel was ineffective for failing to raise these arguments. Reply 12. With that clarification, the Court addresses whether Christopher's counsel rendered ineffective assistance of counsel for failing to raise novel arguments about the constitutionality of § 2422(b). As explained below, Christopher cannot show prejudice, as none of the novel arguments has any merit and Christopher cannot show his counsel's conduct was deficient for failing to consider or pursue these meritless arguments.

i. "A Criminal Offense"

Christopher argues that the phrase "a criminal offense" is unconstitutional because "[h]aving liability turn on what a State or municipality, or even potentially a foreign county[], may decide to criminalize is . . . patently unconstitutional." Mot. 10. In support, Christopher cites case law relating regarding the nondelegation doctrine. *Id.*[2] The nondelegation doctrine derives from Article 1 of the United States Constitution, which provides that "[a] ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a

2. Christopher also cites to *United States v. Taylor*, 640 F.3d 255, 256 (7th Cir. 2011), in which Judge Poser stated in dicta that "[f]or a federal statute to fix the sentence for a violation of a broad category of conduct criminalized by state law, such as 'any sexual activity for which any person can be charged with a criminal offense,' is a questionable practice." However, this dicta does not support any argument that doing so would violate the nondelgation doctrine or otherwise violate the constitution.

Senate and House of Representatives." U.S. Const. Art. 1, § 1. The Supreme Court has held "that a statutory delegation is constitutional as long as Congress lay[s] down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform." *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) (quotation marks omitted; brackets in original). Here, Christopher is arguing that by using the phrase "a criminal offense," Congress has "delegated" to the states the role of defining criminal offenses. However, this is a backwards view of the law. Rather than "delegating" any job to the state, the statute simply refers to state laws. It does not require any action on the part of the states or otherwise delegate power that a state does not already have to create criminal offenses. The fact that a state could have a more expansive criminal code than another state or change its criminal code does not make the nondelegation doctrine applicable when no powers were delegated to the states.

Christopher also argues that the phrase "a criminal offense" fails to give fair notice of what is prohibited because "[t]here is not an 'ordinary person' alive who knows the laws of every state in every country of the world." Mot. 11. However, that a statute has broad reach does not mean that it fails to give notice of what is prohibits. Moreover, ignorance of the law is not a defense to criminal prosecution, *see, e.g., United States v. Dutcher*, 851 F.3d 757, 763 (7th Cir. 2017) (citing the "familiar maxim [that] ignorance of the law is no excuse") (quotation marks omitted), so the fact a person might not be aware that their conduct will violate the law is immaterial. Accordingly,

because this argument is meritless and finds no support in any case law, the Court does not find that Christopher's counsel was ineffective for failing to raise this claim.

ii. "Any Sexual Activity"

Christopher next turns to the constitutionality of the phrase "any sexual activity," arguing it is void for vagueness in violation of the Fifth Amendment. Mot. 11–12. "A conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams*, 553 U.S. 285, 304 (2008).

Here, Christopher points to a circuit split as evidence of the phrases "vagueness." In *Taylor*, the Seventh Circuit applied the rule of lenity to interpret "any sexual activity" to be no broader than the term "sexual act," meaning it does include conduct where "the defendant neither made nor, . . . attempted or intended physical contact with the victim." *Taylor*, 640 F.3d at 260. Other circuit courts have since disagreed, finding that interpersonal contact is not required. *See United States v. Dominguez*, 997 F.3d 1121, 1123 (11th Cir. 2021); *United States v. Fugit*, 703 F.3d 248, 255 (4th Cir. 2012).

However, the fact that judges may disagree on one aspect of a criminal statute does not make it "void for vagueness." *See Williams,* 553 U.S. at 306 ("What renders a statute vague is not the possibility that it will sometimes

be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is."). Moreover, courts to have considered this issue have consistently found that the statute and phrase "any sexual activity" is not void for vagueness. *See, e.g., United States v. Panfil*, 338 F.3d 1299, 1301 (11th Cir. 2003) ("[The defendant] argues that the same failure to define . . . "sexual activity for which any person can be charged with a criminal offense" leaves ordinary citizens to guess at what communications would constitute illegal enticement or inducement. This contention is without merit because the terms cited by [the defendant] have plain and ordinary meanings."); *United States v. Shill*,740 F.3d 1347, 1355 (9th Cir. 2014) ("The plain language of § 2422(b) criminalizes 'any sexual activity' which could constitute a 'criminal offense.' A person of ordinary intelligence would have no doubt that criminal liability under the statute does not depend on whether the conduct constitutes a misdemeanor or a felony under state law."); *United States v. Rojas*, 145 F. App'x 647, 649 (11th Cir. 2005) (focusing on the phrase "any sexual activity for which any person can be charged with a criminal offense" and finding that "[t]he manner in which the other uses of 'any' are used does not encourage arbitrary and discriminatory enforcement since the statute applies only to those who 'knowingly' engage in the illegal conduct."); *United States v. Hite*, 896 F. Supp. 2d 17, 23 (D.D.C. 2012). Faced with this backdrop of cases, no reasonable counsel would have proceeded with this argument, nor can Christopher show that he was prejudiced, as the argument is meritless.

iii. First Amendment Claim

Finally, Christopher argues that the statute chills protected speech in violation of the First Amendment. Mot. 12–13. As Christopher does not contend that his conduct was protected by the First Amendment, his argument is that the statute is facially unconstitutional. However, there is no "First Amendment right to attempt to persuade minors to engage in illegal sexual acts." *United States v. Bailey*, 228 F.3d 637, 639 (6th Cir. 2000); *United States v. Meek*, 366 F.3d 705, 721 (9th Cir. 2004) ("Speech is merely the vehicle through which a pedophile ensnares the victim."); *United States v. Gagliardi*, 506 F.3d 140, 148 (2d Cir. 2007) ("Because no protected speech would be chilled by § 2422(b), and because the statute's terms are sufficiently unambiguous, we conclude that § 2422(b) is not unconstitutionally vague or overbroad."). Christopher cites hypotheticals that the Seventh Circuit used in *Taylor* to support its holding that sexual activity must include intrapersonal contact:

> We need to decide whether "sexual activity" encompasses a broader range of acts than "sexual act." If it did, one would expect the term to be defined in the statute, to indicate just how broad that range was. Is watching a pornographic movie, or a pole dancer, or a striptease artist, or Balthus's erotic paintings, or Aubrey Beardsley's pornographic sketches, or Titian's "Rape of Europa," or "Last Tango in Paris" a "sexual activity"? How about inducing someone to watch one of these shows?

Taylor, 640 F.3d at 257. However, in light of the Seventh Circuit's holding in *Taylor* that intrapersonal contact is required, none of this conduct would fall under the definition of "sexual activity" within the meaning of the statute. At best, assuming criminalizing these actions in the context of enticing a minor would provide for First Amendment issues, this dicta from *Taylor* supports adopting the Seventh Circuit's interpretation to avoid First Amendment issues and may provide some support to a litigant seeking to convince another circuit to follow the Seventh Circuit's approach. But there is no risk that any of these scenarios would be criminalized under Seventh Circuit law, so Christopher's hypotheticals are irrelevant here.

Christopher also provides additional hypothetical scenarios to which the law might apply. First, he argues that a teacher could be convicted under § 2422(b) by "teaching sex education to minors" and discussing "LGBTQ sexual activities" which could violate "Florida's 'Don't Say Gay' law." Mot. 13. Regardless of any other issues with this hypothetical scenario, it also would not be covered under the Seventh Circuit's interpretation of the term "sexual activity" as it does not involve intrapersonal contact. Second, Christopher argues that a "healthcare worker" could be charged with violating § 2422(b) for "exploring medical options for an unwanted pregnancy, especially if the patient happens to be under 18 years of age." Mot. 13. It is very unclear how receiving medical treatment could be classified as "sexual" in any sense of the term or how receiving this healthcare could be classified as "persuad[ing], induc[ing], entic[ing], or coerc[ing]" sexual activity. Again, no reasonable counsel would have proceeded with this argument, nor can Christopher show that he was prejudiced, as the argument is meritless.

III. Evidentiary Hearing

An evidentiary hearing is not always necessary in § 2255 cases. *See Bruce v. United States*, 256 F.3d 592, 597 (7th Cir. 2001). However, "[a] hearing is required unless the record conclusively shows that the movant is not entitled to relief." *Hicks v. United States*, 886 F.3d 648, 650 (7th Cir. 2018); 28 U.S.C. § 2255(b). Here, the Court finds that an evidentiary hearing is unnecessary because even if Christopher's factual claims are correct, he is not entitled to relief.

IV. Certificate of Appealability

If Christopher seeks to appeal this decision, he must first obtain a certificate of appealability. *See* 28 U.S.C. § 2253(c) (providing that an appeal may not be taken to the court of appeals from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability). A certificate of appealability may issue only if Christopher has made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where a claim is resolved on procedural grounds, a certificate of appealability should issue only if reasonable jurists could disagree about the merits of the underlying constitutional claim *and* about whether the procedural ruling was correct. *Flores-Ramirez v. Foster*, 811 F.3d 861, 865 (7th Cir. 2016) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). The Court finds that the issues are meritless and that no reasonable jurists could disagree. Accordingly, the Court declines to issue a certificate of appealability.

Appendix D

CONCLUSION

For the reasons stated, the Court DENIES Petitioner Christopher's Motion to Vacate, Set Aside or Correct Sentence Under 28 U.S.C. § 2255, Doc. 62. The Court DECLINES to issue a certificate of appealability. The Clerk is DIRECTED to enter the Judgment and close the accompanying civil case, 22-cv-4187. This case is CLOSED.

Signed on this 22nd day of September 2023.

/s/ Sara Darrow
Sara Darrow
Chief United States District Judge

APPENDIX E — RELEVANT STATUTORY PROVISIONS

18 U.S. Code § 2260A – Penalties for registered sex offenders

Whoever, being required by Federal or other law to register as a sex offender, commits a felony offense involving a minor under section 1201, 1466A, 1470, 1591, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, shall be sentenced to a term of imprisonment of 10 years in addition to the imprisonment imposed for the offense under thatprovision. The sentence imposed under this section shall be consecutive to any sentence imposed for the offense under that provision.

Appendix E

18 U.S. Code § 2422 – Coercion and enticement

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in anysexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall befined under this title or imprisoned not more than 20 years, or both.

(b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with acriminal offense, or attempts to do so, shall be finedunder this title and imprisoned not less than 10 years or for life.