

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL JOSEPH PEPE, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a defendant who travels back from a trip for the purpose of engaging in illicit sexual conduct can be found guilty of traveling in foreign commerce for the purpose of engaging in illicit sexual conduct, in violation of 18 U.S.C. 2423(b) (Supp. V 2005), and of crossing a state line with the intent to engage in a sexual act with a child under 12, in violation of 18 U.S.C. 2241(c) (Supp. V 2005).

2. Whether, in such a prosecution, the jury may properly be instructed that it can find a defendant guilty if a "dominating, significant, or motivating purpose" of his travel was to engage in illicit sexual conduct.

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No. 23-6643

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-33a) is reported at 81 F.4th 961. The order of the district court (Pet. App. 34a-40a) is unreported. A prior opinion of the court of appeals is reported at 895 F.3d 679.

JURISDICTION

The judgment of the court of appeals was entered on August 28, 2023. A petition for rehearing was denied on November 3, 2023 (Pet. App. 41a). The petition for a writ of certiorari was filed on January 29, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for Central District of California, petitioner was convicted on seven counts of engaging in illicit sexual conduct in a foreign place, in violation of 18 U.S.C. 2423(c) (Supp. V 2005). See 895 F.3d 679, 682. The court sentenced him to 210 years of imprisonment. Id. at 683. The court of appeals vacated petitioner's convictions and remanded. Id. at 691-692.

Following another jury trial in the United States District Court for the Central District of California, petitioner was convicted on two counts of traveling in foreign commerce for the purpose of engaging in illicit sexual conduct, in violation of 18 U.S.C. 2423(b) (Supp. V 2005), and two counts of crossing a state line with the intent to engage in a sexual act with a child under 12, in violation of 18 U.S.C. 2241(c) (Supp. V 2005). Am. Judgment 1. The court sentenced him to 210 years of imprisonment, to be followed by a life term of supervised release. Ibid. The court of appeals affirmed. Pet. App. 1a-33a.

1. Petitioner, a United States citizen, left the United States for Cambodia in 2003. Pet. App. 5a. Petitioner told his sister that he thought Cambodia "was a very dysfunctional country * * * like the wild, wild west," "there weren't any rules," and its people "were a lower class of citizen." Ibid. Sometime after his arrival, petitioner hired a prostitute. Ibid. The prostitute

"procured children for [petitioner] to sexually abuse and taught * * * some of the children how to behave" while being sexually abused by petitioner. Ibid.

In June 2005, shortly after petitioner traveled to the United States and then to Cambodia, the prostitute brought a young Cambodian girl, N.P., to petitioner's house. Pet. App. 6a. Petitioner raped her and, over the course of at least 13 days, took 67 nude and other photographs of her. Ibid.

Petitioner repeatedly engaged in that conduct with other minor girls. In August 2005, the prostitute brought her "niece," K.S., to petitioner's house. Pet. App. 6a. For several months, K.S. stayed at petitioner's house, where petitioner raped her and photographed her nude. Ibid. As a result of petitioner's sexual abuse, K.S. was hospitalized for a week. Ibid.

In September 2005, petitioner again traveled to the United States and then to Cambodia. Pet. App. 6a. In late October or early November, the prostitute brought L.K. to petitioner's house, where she remained for eight months. Ibid. During that period, petitioner raped L.K. around once a week and, during some intervals, every day. Ibid. Authorities later found 493 photos of L.K. on petitioner's camera. Ibid.

In late 2005, two other minor girls -- S.R. and her sister, S.S. -- arrived at petitioner's house. Pet. App. 6a-7a. Petitioner sexually abused S.R. "every night he was home" and S.S.

"frequently." Id. at 7a. Authorities later found 315 photos of S.R. and 278 photos of S.S. on petitioner's camera. Ibid.

Petitioner raped and photographed multiple other minor girls -- including T.C., N.T.D., and I.T. -- at his house during this period. Pet. App. 7a. In June 2006, Cambodian police, along with a United States agent observer, arrested petitioner. Ibid. Officers found condoms, drugs, KY jelly, baby oil, rope, and "strips of cloth that were tied together" at petitioner's home. Id. at 8a. They also found drugs that could be used to sedate children as well as stuffed animals, children's bedding, and children's clothes. Ibid. Officers additionally discovered a massage table, photos of petitioner's victims, digital storage devices containing photos of the victims, and cuttings of newspaper articles discussing pedophiles in Cambodia. Ibid.

A federal grand jury in the Central District of California charged petitioner with seven counts of engaging in illicit sexual conduct in a foreign place, in violation of the version of 18 U.S.C. 2423(c) (Supp. V 2005) in force at the time of the charged conduct. See 895 F.3d at 682. A jury found petitioner guilty on all counts and the district court sentenced him to 210 years of imprisonment. Id. at 683. The court of appeals vacated petitioner's convictions, taking the view that a conviction under the applicable version of Section 2423(c) applied only to

defendants whose time in a foreign country is "temporary." Id. at 685; see id. at 691-692.¹

2. On remand, a grand jury returned a superseding indictment charging petitioner with two counts of traveling in foreign commerce for the purpose of engaging in illicit sexual conduct, in violation of 18 U.S.C. 2423(b) (Supp. V 2005), and two counts of crossing a state line with the intent to engage in a sexual act with a child under 12, in violation of 18 U.S.C. 2241(c) (Supp. V 2005). D. Ct. Doc. 601 (Dec. 6, 2019). Those charges were based on petitioner's travel from the United States to Cambodia, and his attendant crossing of state lines, in May and September 2005. Ibid. At the time of petitioner's charged conduct, Section 2423(b) applied to any "person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person." 18 U.S.C. 2423(b) (Supp. V 2005).²

¹ In 2013, Congress amended Section 2423(c) to explicitly cover defendants who "permanently" reside in a foreign country. 18 U.S.C. 2423(c); see Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 1211(b), 127 Stat. 142.

² In 2018, Congress amended the provision to change the phrase "for the purpose" to "with a motivating purpose." Abolish Human Trafficking Act of 2017, Pub. L. No. 115-392, § 14(1), 132 Stat. 5256. In 2023, Congress again amended the provision to change the phrase "with a motivating purpose of engaging in" to

a. Petitioner proceeded to trial. At the close of the evidence, petitioner proposed that the jury be instructed according to his theory of defense:

[o]ne who takes an innocent round trip -- that is, leaves his residence to travel elsewhere for purposes unrelated to criminal sexual activity and then returns to his residence -- does not travel with the purpose of engaging in illicit sexual conduct (as required for [the Section 2423(b) counts]) or the intent to engage in a sexual act with a person who was under the age of twelve years (as required for [the Section 2241(c) counts]), even if such conduct occurred at that residence before the trip and resumed after the trip.

Pet. App. 28a-29a. On petitioner's view, because he purportedly traveled to the United States for innocent purposes, he could not be held liable for then traveling to Cambodia (and crossing state lines to do so) under Section 2423(b) or Section 2241(c). Ibid. The district court declined to give that instruction. Id. at 29a.

In addition, over petitioner's objection, the district court instructed the jury that "[t]he government does not have to prove that [petitioner] traveled in foreign commerce for the sole and exclusive purpose of engaging in illicit sexual conduct." Pet. App. 29a. The court further instructed that, to prove a violation of Section 2423(b), the government had to demonstrate "that a dominant, significant, or motivating purpose of [petitioner's] travel in foreign commerce was to engage in illicit sexual

"with intent to engage in." Preventing Child Sex Abuse Act of 2023, Pub. L. No. 118-31, Div. E, Tit. LI, § 5102(c)(1), 137 Stat. 934.

conduct.” Id. at 30a. The court gave a similar instruction for the Section 2241(c) counts. Ibid.

The jury found petitioner guilty on all counts. Pet. App. 4a, 9a; Am. Judgment 1.

b. The district court denied petitioner’s post-verdict motion for a judgment of acquittal. Pet. App. 34a-40a. Among other things, the court rejected the contention that petitioner was entitled to an acquittal under this Court’s decision in Mortensen v. United States, 322 U.S. 369 (1944). Pet. App. 34a-36a.

The defendants in Mortensen were convicted of violating the Mann Act, Act of June 25, 1910, ch. 395, 36 Stat. 825, which at the time criminalized transporting in interstate commerce a woman or girl “for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice.” 322 U.S. at 373-374. The defendants operated a brothel in Nebraska and two of their prostitutes accompanied them on vacation to Utah; no acts of prostitution occurred on the trip. Id. at 372. This Court found insufficient evidence to support the defendants’ convictions, finding that “[t]he sole purpose of the journey from beginning to end was to provide innocent recreation and a holiday for [the defendants] and the two girls” and that the

trip was "entirely disassociated" from the prostitution business. Id. at 375; see id. at 373-377.

The district court in this case observed that "Mortensen involve[d] the specific and particular intent of Congress in enacting the Mann Act" and that Mortensen had read the Mann Act "as barring the initial transportation for the purpose of establishing the woman or girl in the practice of prostitution, not every incidental reentry into the state where the prostitution was already being practiced." Pet. App. 36a. The court found "no reason to believe that § 2423(b) or § 2241(c) was adopted with the same Congressional intent." Ibid. The court also emphasized that petitioner was "charged with his own personal travel in order to commit sexual acts," while the defendants in Mortensen were charged with moving other persons for illegal purposes. Id. at 35a.

c. The district court sentenced petitioner to 210 years of imprisonment, to be followed by a life term of supervised release. Am. Judgment 1.

3. The court of appeals affirmed. Pet. App. 1a-33a.

The court of appeals agreed with the district court that petitioner was not entitled to a judgment of acquittal under Mortensen. Pet. App. 12a-16a. The court of appeals observed that, "in the unique circumstances of that case," this Court had determined "a rational jury could not have found" that the defendants intended to transport the prostitutes to and from Utah

for the purpose of prostitution. Id. at 13a. And the court of appeals further observed that the “‘integral relation’ between the return journey and the ‘innocent round trip as a whole’” was “[c]ritical to [Mortensen’s] reasoning.” Ibid. (quoting Mortensen, 322 U.S. at 375). The court noted that “because the Mortensens had an innocent purpose for bringing the prostitutes to Utah, they could not have had an illicit purpose in returning the prostitutes to Nebraska.” Ibid. “After all,” the court explained, someone “who undertakes responsibility for another’s round trip transportation on a vacation is likely to have the same motive for taking that other person to the vacation destination as his motive for taking that other person home -- namely, that the person desires the other person to take the vacation.” Id. at 14a.

The court of appeals emphasized that here, in contrast to Mortensen, petitioner “was convicted of traveling -- or transporting himself -- with illicit intent.” Pet. App. 14a. The court explained that “[a] person’s motives for embarking on his own round trip are not so tied to his motives for his return trip that a jury could not rationally find that one of the person’s motivating purposes for returning is to resume illegal activity.” Ibid. The court observed that, for example, “a person coming to the close of his vacation may depart for home because of some mix of family obligations, work, and hobbies -- purposes that necessarily differ from those that prompted the traveler to embark

on his trip.” Ibid. The court therefore determined that “[t]he facts that gave rise to the ‘integral relation’ between the outbound and return journeys in Mortensen are * * * not present in [petitioner’s] case.” Ibid.

Having “decline[d] [petitioner’s] invitation to expand Mortensen beyond its rationale and facts,” Pet. App. 15a, the court of appeals relied on similar logic in determining that petitioner’s proposed theory-of-defense jury instruction -- which was premised on his reading of Mortensen -- “conflicted with the law and the district court did not err in declining to give it,” id. at 29a. The court of appeals also determined that “a jury could have rationally found that one of [petitioner’s] primary motivations for returning to Cambodia was to sexually abuse young girls.” Id. at 16a; see id. at 16a-19a. The court highlighted evidence that petitioner had used a prostitute as his “child broker”; that he “had a house set up to facilitate the sex abuse,” including a room “furnished and decorated specifically for children”; and that he had “remained in Cambodia -- a country he knew had a poor reputation for stopping child sex abuse -- despite speaking ill of the country generally.” Id. at 16a-17a.

Finally, the court of appeals found that the district court appropriately exercised its discretion when it instructed the jury that it could find petitioner guilty if illicit sexual conduct was “a dominant, significant, or motivating purpose” of his travel.

Pet. App. 30a; see id. at 29a-33a. The court of appeals noted that prior Ninth Circuit decisions approved that formulation. Id. at 30a (citing United States v. Lindsay, 931 F.3d 852, 864 (2019), cert. denied, 140 S. Ct. 1288 (2020), and United States v. Lukashov, 694 F.3d 1107, 1118-1119 (2012), cert. denied, 569 U.S. 912 (2013)).

ARGUMENT

Petitioner renews his contention (Pet. 10-26) that this Court's decision in Mortensen v. United States, 322 U.S. 369 (1944), precludes his convictions for traveling in foreign commerce for the purpose of engaging in illicit sexual conduct, in violation of 18 U.S.C. 2423(b) (Supp. V 2005), and for crossing a state line with the intent to engage in a sexual act with a child under 12, in violation of 18 U.S.C. 2241(c) (Supp. V 2005). Petitioner also renews his contention (Pet. 27-37) that the district court erred in instructing the jury on the mens rea elements of those offenses. The court of appeals correctly rejected both contentions and its decision does not conflict with any decision of this Court or another court of appeals. The decision below moreover addresses a version of Section 2423(b) that has since been superseded. See p. 5 nn. 1-2, supra. No further review is warranted.

1. Petitioner does not dispute that sufficient evidence supports his convictions on the ground that petitioner, who had

set up residence in Cambodia (a country whose people he generally disliked) to enable him to sexually abuse minors, traveled back there twice from the United States in 2005 with the purpose to do just that. See, e.g., Pet. App. 19a (“The jury could rationally find that one of [petitioner’s] primary motivations for returning to Cambodia was sexually abusing young girls.”). Petitioner instead contends (Pet. 10-26) that he was entitled to a judgment of acquittal as a matter of law under Mortensen, asserting that he had an innocent purpose in leaving Cambodia to come to the United States and that the innocent purpose likewise applies to his travel back to Cambodia. That contention lacks merit, and the decision below does not conflict with any decision of another court of appeals.

a. This Court in Mortensen found that the Mann Act’s “purpose” requirement was not met where Nebraska brothel operators invited their prostitutes to accompany them to Utah on vacation. 322 U.S. at 372-378. Although the prostitutes resumed sex work after returning to Nebraska, the Court found that the “sole purpose” of the group’s travel “from beginning to end” was “innocent recreation” “entirely disassociated” from prostitution. Id. at 375.

The Court was not able to locate any record evidence to support the inference that “this interstate vacation trip, or any part of it, was undertaken by” the defendant brothel operators

"for the purpose of, or as a means of effecting or facilitating," prostitution by third parties, as opposed to facilitating a vacation for two prostitutes. Mortensen, 322 U.S. at 375. And because the Mann Act prohibited only "the use of interstate commerce as a calculated means for effectuating sexual immorality," the Court reasoned that an "interstate trip undertaken for an innocent vacation purpose" could not support the defendants' convictions. Ibid. The Court further noted a dearth of "evidence of any change in the purpose of the trip during its course" and thus declined to "arbitrar[ily] split[] * * * the round trip into two parts," which might have allowed an inference that the outbound leg had an innocent purpose while the return leg was for the illegal purpose of sending the women back into prostitution. Ibid.

Even assuming that the Mann Act's mens rea requirement is directly relevant here, the court of appeals in this case correctly identified "critical circumstances" differentiating petitioner's conduct from the conduct of the defendants in Mortensen. Pet. App. 13a. In particular, "the Mortensens had been charged with transporting other people with illicit intent." Id. at 13a-14a. In such circumstances, there is "an 'integral relation' between the provider of transportation's motive in providing the outbound transportation and that provider's motivation in providing the return transportation." Id. at 14a (quoting Mortensen, 322 U.S.

at 375). A vacation provider who transports someone to and from a vacation destination does not provide the return journey for the purpose of facilitating a nonvacation activity; instead, the return journey is the conclusion of the overall service of providing the person with a vacation from that activity.

Petitioner, in contrast, "was convicted of traveling -- or transporting himself -- with illicit intent." Pet. App. 14a. In that setting, "[a] person's motives for embarking on his own round trip are not so tied to his motives for his return trip that a jury could not rationally find that one of the person's motivating purposes for returning is to resume illegal activity." Ibid. A person who travels to a vacation destination might well want to stay longer (or forever), and the journey back may well be motivated by the desire or need to engage in a particular activity upon return. The possibility that a third-party transporter would not share such a purpose, as was the case in Mortensen, does not suggest that a person himself lacks one.

Contrary to petitioner's assertion (Pet. 10), Mortensen did not adopt an "innocent-round-trip doctrine applicable to" all "statutes that make it a crime to travel in commerce or across state lines with an improper purpose or intent." Instead, Mortensen explicitly tethered its sufficiency-of-the-evidence holding to "the evidence adduced" in that case. 322 U.S. at 375; see id. at 374 (finding insufficient evidence of improper purpose

based on “[o]ur examination of the record in this case”); see also Pet. App. 12a-16a (identifying the ways in which the outcome in Mortensen turned on the specific facts of the case).³

The court of appeals thus appropriately determined that Mortensen’s sufficiency-of-the-evidence conclusion did not preclude a determination that the jury could find guilt on the facts of this case. Pet. App. 15a. And in any event, further review of the court’s factbound decision is unwarranted because “[t]he primary responsibility for reviewing the sufficiency of the evidence to support a criminal conviction rests with the Court of Appeals.” Hamling v. United States, 418 U.S. 87, 124 (1974).

b. Petitioner has not identified a court of appeals decision that adopts his expansive interpretation of Mortensen, under which there would be an “innocent-round-trip doctrine applicable to” all “statutes that make it a crime to travel in commerce or across state lines with an improper purpose or intent.” Pet. 10; see Pet. 18-19. Instead, courts of appeals routinely recognize Mortensen’s limited sufficiency-of-the-evidence conclusion and decline to “treat[]” Mortensen “as controlling”

³ Petitioner’s reliance (Pet. 15-16) on this Court’s orders in Becker v. United States, 348 U.S. 957 (1955) (per curiam), and Oriolo v. United States, 324 U.S. 824 (1945) (per curiam), is likewise misplaced. Those summary orders merely granted petitions for writs of certiorari and reversed court of appeals decisions in Mann Act cases in light of Mortensen; they did not expound on the limited Mortensen decision, let alone expand it to the circumstances here.

where there are “[c]rucial differences” between Mortensen’s application of the Mann Act to Mortensen’s facts and the statutory and factual circumstances of the case at hand. United States v. Torres, 894 F.3d 305, 315 (D.C. Cir. 2018); see, e.g., United States v. Lebowitz, 676 F.3d 1000, 1014 (11th Cir. 2012) (per curiam) (“This court has long declined to extend the doctrine of Mortensen beyond its facts.”) (citation omitted), cert. denied, 568 U.S. 1212 (2013); United States v. Wheeler, 444 F.2d 385, 387 (10th Cir. 1971) (similar); United States v. Kotakes, 440 F.2d 342, 345 (7th Cir.) (similar), cert. denied, 403 U.S. 919 (1971); Forrest v. United States, 363 F.2d 348, 350 (5th Cir. 1966) (similar), cert. denied, 386 U.S. 995 (1967).

The decisions reversing convictions that petitioner identifies (Pet. 18) do not conflict with the decision below. Rather, those decisions all reversed Mann Act convictions based on evidentiary records materially similar to the record in Mortensen. See Twitchell v. United States, 330 F.2d 759, 761 (9th Cir. 1964) (defendant’s purpose in taking a woman on “the return trip * * * was to get her sobered up and away from home”); United States v. Hon, 306 F.2d 52, 54 (7th Cir. 1962) (“purpose of the planned journey” was to visit the woman’s “mother and child” and therefore “other than prostitution”); United States v. Ross, 257 F.2d 292, 292 (2d Cir. 1958) (defendant traveled out-of-state with a woman for “weekends * * * devoted to recreation and refreshment”);

Smart v. United States, 202 F.2d 874, 875 (5th Cir. 1953) (defendant transported women out-of-state briefly "for the sole purpose of taking care of some legal matters that were pending in that state"). None of those decisions adopted the broad rule petitioner proffers; applied Section 2423(b), Section 2241(c), or another statute that involves the intent a person has regarding his own travel; or otherwise addressed facts analogous to those here. Accordingly, the court of appeals' sufficiency-of-the-evidence determination in this case does not implicate any disagreement in the courts of appeals.

2. Petitioner separately contends (Pet. 27-37) that his convictions must be vacated because the district court erred in instructing the jury on the mens rea requirements of Section 2423(b) and Section 2241(c). The court of appeals correctly rejected that contention, and its resolution of that issue does not conflict with any decision of this Court or of another court of appeals.

The district court instructed the jury that it could find petitioner guilty only if illicit sexual conduct was "a dominant, significant, or motivating purpose" of his travel. Pet. App. 30a. Petitioner contends that the court was required to instruct the jury that illicit sexual conduct was the "sole or dominant purpose" of his travel. Pet. 27 (citations omitted).

The court of appeals correctly rejected that claim on the ground that neither Section 2423(b) nor Section 2241(c) requires that "the improper conduct * * * be a but-for cause of the [defendant's] travel." Pet. App. 33a. Some criminal statutes contain a "but-for" causality requirement. See Burrage v. United States, 571 U.S. 204, 211 (2014). Under such statutes, the government must adduce "proof that the harm would not have occurred in the absence of -- that is, but for -- the defendant's conduct." Ibid. (citation and internal quotation marks omitted). Certain statutory language, such as "results from," "because of," "based on," and "by reason of," may denote a but-for causality requirement. Id. at 212-213 (citations and internal quotation marks omitted).

The statutory provisions at issue here, however, did not contain such language. The relevant version of Section 2423(b) applied to defendants who traveled in foreign commerce "for the purpose of engaging in any illicit sexual conduct with another." 18 U.S.C. 2423(b) (Supp. V 2005). And the relevant version of Section 2241(c) similarly applied to defendants who crossed a state line "with intent to engage in a sexual act" with a child under the age of 12. 18 U.S.C. 2241(c) (Supp. V 2005). Petitioner has identified nothing in those statutes to suggest that purpose or intent must be the but-for cause of the travel.

To the contrary, when considering those statutory provisions (or similar ones), the courts of appeals consistently have endorsed mens rea formulations similar to the “dominant, significant, or motivating purpose” standard endorsed by the lower courts here. Pet. App. 30a; see, e.g., United States v. Ellis, 935 F.2d 385, 389-390 (1st Cir.), cert. denied, 502 U.S. 869 (1991); United States v. Hayward, 359 F.3d 631, 637-638 (3d Cir. 2004); United States v. Campbell, 49 F.3d 1079, 1082-1083 (5th Cir.), cert. denied, 516 U.S. 874 (1995); United States v. Johnson, 775 Fed. Appx. 794, 797-798 (6th Cir. 2019); United States v. Vang, 128 F.3d 1065, 1069-1073 (7th Cir. 1997), cert. denied, 522 U.S. 1140 (1998); United States v. Perkins, 948 F.3d 936, 938-939 (8th Cir. 2020); United States v. Doak, 47 F.4th 1340, 1354-1355 (11th Cir. 2022), cert. denied, 143 S. Ct. 623 (2023). Petitioner has cited no court of appeals decision holding that Section 2423(b), Section 2241(c), or similar statutes require the jury to find that illicit sexual conduct was the dominant or but-for motive for a defendant’s travel.

Petitioner instead relies (Pet. 28-29) on this Court’s statement in Mortensen that under the Mann Act “[a]n intention that the women or girls shall engage in the conduct outlawed by” the statute “must be the dominant motive of [the] interstate movement.” 322 U.S. at 374. But that statement referred to the women or girls’ “interstate movement” -- i.e., the defendant’s

transportation of the women or girls -- rather than (as here) the defendant's own travel. Ibid. As the preceding sentence made clear, the "essential" requirement was "that the interstate transportation have for its object or be the means of effecting or facilitating the proscribed activities." Ibid. (emphasis added). The Court's statement in Mortensen accordingly does not address the scienter element at issue here, which concerns whether the purpose or intent of the defendant's own travel was to engage in illicit sexual conduct.⁴

Moreover, "[t]he sole purpose of the journey" in Mortensen "from beginning to end was to provide innocent recreation and a holiday for" the defendants and two of their prostitutes. 322 U.S. at 375. "It was a complete break or interlude in the operation of [the defendants'] house of ill fame and was entirely disassociated therefrom." Ibid. As a consequence, "the Court [in Mortensen] had no reason to consider the question of multiple purposes." Ellis, 935 F.2d at 390; see United States v. McGuire,

⁴ Statements in the two other decisions petitioner cites (Pet. 30) similarly address the purpose of the women's interstate movement in Mann Act prosecutions. See Hawkins v. United States, 358 U.S. 74, 79 (1958) ("Interstate transportation of the prosecutrix between Arkansas and Oklahoma was conceded, and the only factual issue in the case was whether petitioner's dominant purpose in making the trip was to facilitate her practice of prostitution in Tulsa, Oklahoma."); Cleveland v. United States, 329 U.S. 14, 20 (1946) ("There was evidence that this group of petitioners in order to cohabit with their plural wives found it necessary or convenient to transport them in interstate commerce and that the unlawful purpose was the dominant motive.").

627 F.3d 622, 625 (7th Cir. 2010) (“There were not multiple purposes, of which one was sexual, so there was no occasion to identify a dominant purpose.”); United States v. Sirois, 87 F.3d 34, 39 (2d Cir.) (similar), cert. denied, 519 U.S. 942 (1996); United States v. Bennett, 364 F.2d 77, 78 & n.4 (4th Cir. 1966) (similar). The Court in Mortensen thus did not hold that a defendant like petitioner, who travels across state lines or in foreign commerce for the purpose of engaging in illicit sexual activity, may avoid conviction on the ground that he also had another purpose for his journey.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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