No. 23-219

In the Supreme Court of the United States

SHERMAN MOORE, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's two Texas convictions for indecency with a child qualify as offenses "relating to the sexual exploitation of children" for purposes of the second sentencing enhancement in 18 U.S.C. 2251(e).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 71 F.4th 392. The order of the district court (Pet. App. 23a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 23, 2023. The petition for a writ of certiorari was filed on September 5, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Texas, petitioner was convicted of enticing a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, in violation of 18 U.S.C. 2251(a). Judgment 1. The district court sentenced petitioner to

35 years of imprisonment, to be followed by five years of supervised release. Judgment 2. The court of appeals affirmed. Pet. App. 1a-15a.

1. In 2019, law enforcement received tips from Google concerning petitioner's possession of child sexual abuse images on one of his Google accounts. Presentence Investigation Report (PSR) ¶¶ 10-11. The ensuing investigation revealed, among other things, that petitioner had used his cell phone to record a lewd video of a seven-year-old female child. *Id.* ¶¶ 23-24. Petitioner had filmed the child walking on top of a bed wearing only a T-shirt and no underwear; during the video, he focused the camera on the child's vagina. *Id.* ¶ 23. Petitioner then transmitted the video over the Internet. *Ibid.*

After waiving indictment, petitioner was charged by information in the Northern District of Texas with enticing a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, in violation of 18 U.S.C. 2251(a). Pet. App. 2a; C.A. ROA 7-8, 10. He pleaded guilty pursuant to a plea agreement. C.A. ROA 133-142.

2. Section 2251's sentencing provision has a default statutory sentencing range of 15-30 years of imprisonment. 18 U.S.C. 2251(e). Section 2251(e) also contains two enhancements that apply based on a defendant's criminal history. The first enhancement provides that if the defendant:

> has one prior conviction under this chapter [chapter 110 of title 18], section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact

> involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years.

18 U.S.C. 2251(e). The second enhancement states that if the defendant:

> has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life.

Ibid.

Here, the presentence report (PSR) found that petitioner had two prior Texas convictions for committing indecency with a child by intentionally exposing his genitals to a minor with the intent to arouse or gratify his or another's sexual desire, in violation of Texas Penal Code Ann. § 21.11(a)(2) (West 1992). PSR ¶¶ 59-60; see Pet. App. 14a-15a. Notwithstanding those convictions, the presentence report applied Section 2251(e)'s default sentencing range. PSR ¶ 86.

The government objected, and at sentencing, the district court concluded that the Probation Office's criminal-history findings in fact meant that Section 2251(e)'s second enhancement would apply, because petitioner's two Texas convictions were for offenses "relating to the sexual exploitation of children," 18 U.S.C. 2251(e). See Pet. App. 23a. The court cited decisions from the Third and Fourth Circuits explaining that the phrase

"relating to the sexual exploitation of children" was not, as petitioner had asserted, limited solely to offenses relating to the production of child pornography. *Ibid.* The court then sentenced petitioner to 35 years of imprisonment, to be followed by five years of supervised release. C.A. ROA 112-114.

3. The court of appeals affirmed. Pet. App. 1a-15a. The court observed that the phrase "relating to the sexual exploitation of children" is not defined anywhere in Section 2251, and the court did not view dictionary definitions of "exploit" as determinative in and of themselves. *Id.* at 6a. But the court found that the "broader statutory context" made clear that the phrase is not limited to child-pornography offenses. *Id.* at 8a; see *id.* at 7a-9a. While acknowledging that Section 2251 is titled "'Sexual exploitation of children'" and substantively "criminalizes activities related to child pornography," the court found that "the rest of the context" counseled in favor of a broader definition of the phrase in the enhancement. *Id.* at 8a (quoting 18 U.S.C. 2251).

The court of appeals observed, for example, that another prohibition in the same chapter as Section 2251, 18 U.S.C. 2252A, has a title referring to "material constituting or containing child pornography"—undermining the inference that Congress clearly intended "sexual exploitation" to be a synonym for the production or distribution of such material. Pet. App. 8a-9a. The court also found it significant that the Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act), Pub. L. No. 109-248, 120 Stat. 587—which amended Section 2251(e) in other respects—repeatedly "uses the phrase 'child exploitation' in a broader sense than just child pornography." Pet. App. 9a. Specifically, the court noted, one provision of the Adam Walsh Act

defines "'child exploitation enterprise'" to include "sexual abuse of a minor victim," *ibid.* (citing Adam Walsh Act § 701, 120 Stat. 647-648 (18 U.S.C. 2252A)), and another describes "'offenses relating to the sexual exploitation of children'" as "including types of sexual abuse against a minor victim." *Ibid.* (quoting Adam Walsh Act § 704, 120 Stat. 649).

The court of appeals also observed that the phrase "sexual exploitation of children" did not originally appear in Section 2251's sentencing provision but was instead added to both recidivist enhancements in 1996. Pet. App. 9a-10a. The court further noted that in 2004, the Third and Eighth Circuits interpreted the phrase to encompass criminal conduct beyond child-pornography offenses. See *id.* at 11a. And it observed that Congress acted against that backdrop in 2006, when the Adam Walsh Act amended Section 2251(e)'s first enhancement to replace the "sexual exploitation of children" phrase with a more specific list of state offenses, while leaving the phrase intact in the second enhancement. See *ibid.* The court explained that "Congress's choice to amend part of 2251(e) but not all of it may be a sign of Congressional acquiescence in the existing judicial interpretation of the phrase." *Ibid.*

Based on those considerations and others, the court of appeals concluded—consistent with definitions adopted by the majority of circuits to have considered the issue—that the second enhancement encompasses state offenses involving "any criminal sexual conduct involving children." Pet. App. 13a (quoting *United States* v. *Winczuk*, 67 F.4th 11, 17 (1st Cir. 2023), petition for cert. pending, No. 23-5619 (filed Sept. 14, 2023)); see *id.* at 12a. Declining to follow the Ninth Circuit's lone contrary opinion, *id.* at 12a n.5, the court of appeals

emphasized that the predominant circuit interpretation aligns with statutory context and gives due weight to the enhancement's use of the expansive phrase "relating to," *id.* at 12a-13a. The court accordingly affirmed the application of the second enhancement based on petitioner's two Texas indecency-with-a-child convictions. *Id.* at 14a-15a.

ARGUMENT

Petitioner renews his contention (Pet. 8-9, 14-18) that the second enhancement in 18 U.S.C. 2251(e) applies only to convictions for state offenses involving child pornography. Petitioner further contends (Pet. 8-14) that the Court should grant review to resolve a conflict among the courts of appeals on that question. But the court of appeals correctly interpreted the enhancement to apply to other forms of criminal sexual conduct involving children—consistent with the holdings of five other circuits—and the Ninth Circuit's outlier decision in *United States* v. *Schopp*, 938 F.3d 1053 (2019), does not provide a sound basis for further review. The petition for a writ of certiorari should be denied.[1]

1. The court of appeals correctly recognized that the enhancement at issue applies to petitioner's state indecency-with-a-child convictions.

a. Section 2251 does not define the phrase "sexual exploitation of children," for purposes of the sentencing enhancement in Section 2251(e) or otherwise. When that is the case, a court's "job is to interpret the words consistent with their 'ordinary meaning . . . at the time Congress enacted the statute.'" *Wisconsin Central*

[1] The same issue is presented in the pending petitions in *Winczuk* v. *United States*, No. 23-5619, and *Sykes* v. *United States*, No. 23-5429.

Ltd. v. *United States*, 138 S. Ct. 2067, 2070 (2018) (quoting *Perrin* v. *United States*, 444 U.S. 37, 42 (1979)). And it was as true in 1996, when Section 2251(e)'s language was amended to include the term, as it is now that "exploitation" is ordinarily defined to mean "[a]n unjust or improper use of another person for one's own profit or advantage." *Webster's Third New International Dictionary of the English Language* 802 (1993); see *The American Heritage Dictionary of the English Language* 646 (3d ed. 1992) ("[u]tilization of another person or group for selfish purposes"); 5 *Oxford English Dictionary* 574 (2d ed. 1989) ("[t]he action of turning to account for selfish purposes, using for one's own profit"); see also Pet. App. 9a-10a. Applying that ordinary meaning of "exploitation," the "sexual exploitation of children" does not naturally connote child pornography alone, but instead describes sexual conduct that improperly takes advantage of children.

Legal usage accords with that understanding. At the time the phrase was added to Section 2251's sentencing enhancements, *Black's Law Dictionary* defined "exploitation" as "[t]aking unjust advantage of another for one's own advantage or benefit." *Black's Law Dictionary* 579 (6th ed. 1990). In addition, *Black's* has since defined "sexual exploitation" to mean "[t]he use of a person, esp[ecially] a child, in prostitution, pornography, or *other sexually manipulative activity*.'" *Black's Law Dictionary* 1652 (11th ed. 2019) (emphasis added); see *Black's Law Dictionary* 1407 (8th ed. 2004) (similar definition first appears). And the second enhancement's use of "relating to" reinforces that the category of state offenses should be read broadly rather than idiosyncratically. See 18 U.S.C. 2251(e) ("the laws of any State relating to the sexual exploitation of children");

see also Pet. App. 13a; *United States* v. *Winczuk*, 67 F.4th 11, 17 (1st Cir. 2023), petition for cert. pending, No. 23-5619 (filed Sept. 14, 2023); *United States* v. *Sykes*, 65 F.4th 867, 885 (6th Cir. 2023), petition for cert. pending, No. 23-5429 (filed Aug. 22, 2023).

The phrase at issue also appears following a list of federal offenses that likewise serve as predicates for the second enhancement, and those federal predicates "criminalize a broad range of sexual conduct related to minors." *Winczuk*, 67 F.4th at 17. For instance, Chapter 109A of Title 18 of the United States Code includes the offenses of "Sexual abuse of a minor" and "Abusive sexual contact." 18 U.S.C. 2243, 2244. Chapter 117 includes offenses like "Transportation of minors" to engage in criminal sexual activity and "Use of interstate facilities to transmit information about a minor" to entice the minor to engage in criminal sexual activity. 18 U.S.C. 2423(a), 2425. And 10 U.S.C. 920 criminalizes various forms of rape and sexual assault by members of the military. 10 U.S.C. 920(a) and (b). As the courts of appeals have recognized, "[i]t is implausible that Congress intended to include so many prior federal offenses but chose to restrict qualifying state offenses to child pornography production." *Sykes*, 65 F.4th at 885 (citation omitted); see *id.* at 887; *Winczuk*, 67 F.4th at 17; *United States* v. *Pavulak*, 700 F.3d 651, 675 (3d Cir. 2012).

b. As the courts of appeals have also recognized, Section 2251(e)'s statutory history further refutes such a limitation. See Pet. App. 9a-11a; *Winczuk*, 67 F.4th at 14-16, 18; *Sykes*, 65 F.4th at 888. As noted above, Section 2251's text (as opposed to its title) did not contain the phrase "sexual exploitation of children" until 1996, when Congress inserted it into both sentencing

enhancements in (what is now) Section 2251(e). See Child Pornography Prevention Act of 1996 (Child Pornography Prevention Act), Pub. L. No. 104-208, Div. A, Tit. I, § 121(4), 110 Stat. 3009-30; see also Protection of Children Against Sexual Exploitation Act of 1977, Pub. L. No. 95-225, § 2(a), 92 Stat. 7. "These amendments were accompanied by findings," in the text of the same 1996 statute, "detailing Congress's concern with the close connection between child pornography and child sexual abuse." *Winczuk*, 67 F.4th at 15; see Child Pornography Prevention Act § 121(1), 100 Stat. 3009-26. And when Congress amended the provision again in 2003 to add 10 U.S.C. 920 to the list of federal predicates for both enhancements, it made a finding identifying "those who sexually exploit [children]" as "including both child molesters and child pornographers." PROTECT Act, Pub. L. No. 108-21, §§ 501(2), 507, 117 Stat. 676, 683.

Congress amended Section 2251(e) to its current form in the Adam Walsh Act in 2006. Pet. App. 9a-10a. Before that time, two courts of appeals had interpreted the phrase "relating to the sexual exploitation of children" to extend beyond crimes involving child pornography. See, *e.g.*, *United States* v. *Randolph*, 364 F.3d 118, 122 (3d Cir. 2004) (finding that the phrase encompasses sexual-misconduct offenses, including child molestation and statutory rape); *United States* v. *Smith*, 367 F.3d 748, 751 (8th Cir. 2004) (per curiam) (finding that the phrase "refers to any criminal sexual conduct with a child"). The Adam Walsh Act then edited the list of predicates for Section 2251(e)'s first enhancement, but left the list of predicates for its second enhancement—including the phrase at issue—intact. See Adam Walsh Act § 206(b), 120 Stat. 614. Against that legal

backdrop, it is unlikely that the 2006 Congress understood, or expected courts to newly interpret, the textually broad phrase "relating to the sexual exploitation of children" as limited to child pornography. See *Winczuk*, 67 F.4th at 18; see also *Ryan* v. *Gonzales*, 568 U.S. 57, 66 (2013) (noting Congress's presumed awareness of judicial precedent when it enacts statutes).

Indeed, other provisions of the Adam Walsh Act "use[d] the phrase 'child exploitation' in a broader sense than just child pornography." Pet. App. 9a. Most notably, Section 704 of the Act specifically defines "offenses relating to the sexual exploitation of children" for purposes of a prosecutor-hiring provision to include offenses listed in Chapters 109A, 109B, and 117 of Title 18 and 18 U.S.C. 1591, all of which include non-child-pornography crimes. Adam Walsh Act § 704, 120 Stat. 649. All of "[t]hese additional indicators of statutory meaning reinforce [the] conclusion that the plain text of 'relating to the sexual exploitation of children' unambiguously refers to any criminal sexual conduct involving children." *Winczuk*, 67 F.4th at 18.

2. In arguing for a narrow reading limiting the second enhancement's application to state offenses involving child pornography, petitioner relies heavily (Pet. 1-3, 17) on a footnote in a law review article published in 1977 stating that a different phrase—"child sexploitation"—refers to "using children as prostitutes and as subjects in pornographic materials." C. David Baker, *Preying on Playgrounds: The Sexploitation of Children in Pornography and Prostitution*, 5 Pepp. L. Rev. 809, 809 n.2 (1977). But among other problems with that argument, it elides that the statutory phrase in question was first added to Section 2251(e) in 1996, not upon Section 2251's first enactment in 1978. See pp. 8-9, *supra*.

Even petitioner represents that the phrase's supposedly more narrow meaning was "waning" by that point. Pet. 3 (citing David P. Shouvlin, *Preventing the Sexual Exploitation of Children: A Model Act*, 17 Wake Forest L. Rev. 535, 537 (1981)); cf. Shouvlin 537 n.10. And common dictionary definitions from both time periods define "exploitation" (in the sense relevant here) the same way. Compare, *e.g.*, *Webster's Third New International Dictionary of the English Language* 802 (1976) ("an unjust or improper use of another person for one's own profit or advantage") and *The American Heritage Dictionary of the English Language* 463 (New College ed. 1976) ("[t]he utilization of another person for selfish purposes), with p. 7, *supra* (same definitions in 1990s-era editions).

Petitioner also relies (Pet. 8-9, 15-16) on the Ninth Circuit's decision in *Schopp*, which defined the phrase to refer to "the production of child pornography" only. 938 F.3d at 1061. But the Ninth Circuit, like petitioner, erred in placing predominant weight on the fact that Section 2251 is titled "Sexual exploitation of children" and substantively describes offenses involving sexually explicit depictions of a minor. See *id.* at 1059-1061; *id.* at 1060 (viewing the title to "largely resolve[] [the] question"); see also Pet. 15-16. "A title is not the same as a formal definitional section." *Winczuk*, 67 F.4th at 18. This Court has long espoused the "wise rule" that, although titles and headings can help "shed light on some ambiguous word or phrase," "they cannot undo or limit that which the text makes plain." *Brotherhood of R.R. Trainmen* v. *Baltimore & Ohio R.R.*, 331 U.S. 519, 528-529 (1947). The Ninth Circuit accordingly erred in treating Section 2251's title as a "sufficient basis" for the narrow construction it adopted. *Schopp*, 938 F.3d

at 1061; see *Winczuk*, 67 F.4th at 18-19; *Sykes*, 65 F.4th at 886.

Petitioner additionally points to the fact that the Adam Walsh Act amended Section 2251(e)'s first enhancement to include a more specific list of state offenses—including offenses relating to "aggravated sexual abuse" and "sexual abuse"—while leaving the distinct phrase "sexual exploitation of children" in the second enhancement. Pet. 12-13 & n.3. Petitioner suggests that there would have been no need for Congress to make such changes to the first enhancement if the term "sexual exploitation" already encompassed such crimes. See *ibid.* But as the First Circuit has explained, that inference does not hold up: Congress's amendment to the first enhancement swept in state "aggravated sexual abuse" and "sexual abuse" offenses against *adults* as well as children, whereas the previous language was limited to state offenses against children only. *Winczuk*, 67 F.4th at 19. Moreover, Congress also added various offenses related to "child pornography" to the first enhancement's state-offense list, 18 U.S.C. 2251(e)—further undercutting petitioner's view that Congress clearly intended the distinct phrase "sexual exploitation of children" to mean the exact same thing in the same subsection. See *Winczuk*, 67 F.4th at 19-20.

Finally, petitioner argues (Pet. 15-18) that the court of appeals employed methodology at odds with this Court's decisions in *Esquivel-Quintana* v. *Sessions*, 581 U.S. 385 (2017); *Dubin* v. *United States*, 599 U.S. 110 (2023); and *United States* v. *Hansen*, 599 U.S. 762 (2023). But petitioner's reliance on the first two decisions simply reiterates his argument that the court of appeals should have afforded controlling weight to Section 2251's title and the fact that the provision

criminalizes child-pornography offenses. Pet. 15-17. Neither *Esquivel-Quintana* nor *Dubin* treated a statutory title as near-determinative of the interpretive issue under consideration. See *Esquivel-Quintana*, 581 U.S. at 391-397 (considering the "ordinary meaning" of the phrase at issue, dictionary definitions, statutory structure, and a survey of state-criminal-code usage in addition to a federal offense titled the same way); *Dubin*, 599 U.S. at 124, 131 (emphasizing that a provision's title is "just the beginning" of the statutory analysis and declining to decide whether such a consideration would have been sufficient reason to adopt the defendant's reading of the provision in that case). Further, in *Esquivel-Quintana*, the Court found a federal statutory offense titled "Sexual abuse of a minor or ward" to be probative regarding the similar phrase in the Immigration and Nationality Act in part because the federal offense "contains the only definition of that phrase in the United States Code." 581 U.S. at 394. As noted above, that is not true with respect to the phrase "sexual exploitation." See pp. 5, 10, *supra*.

As for the Court's decision in *Hansen*, the Court there adopted a "specialized" reading of the statutory phrase "encourages or induces" based on, *inter alia*, over a century of usage of those terms in the criminal context to refer to the crimes of solicitation and facilitation. See 599 U.S. at 771-775. Petitioner does not even attempt to replicate that record of well-understood, consistent usage to support his claim of a specialized term-of-art meaning here. See Pet. 1-3. Nor could any such effort succeed, given that—as just noted—the phrase is used in criminal contexts in ways that are not limited to child pornography. Moreover, *Hansen* emphasized that "[s]tatutory history is an important part

of * * * context," 599 U.S. at 775, and that history supports the court of appeals' interpretation of Section 2251(e) here. See pp. 8-10, *supra*.

3. Petitioner asserts (Pet. 8-14) that certiorari is warranted to resolve a conflict in the courts of appeals regarding the question presented. But he overstates the extent of the disagreement, which has produced a lopsided 6-1 split that does not warrant this Court's intervention at this time.

The court of appeals below joined the First, Third, Fourth, Sixth, and Eighth Circuits in holding that state offenses "relating to the sexual exploitation of children" include child-sexual-misconduct offenses beyond child-pornography crimes. Pet. App. 13a; see *Winczuk*, 67 F.4th at 14 (interpreting phrase to include "any 'conduct through which a person manipulates, or takes advantage of, a child to sexual ends'") (citation omitted); *Sykes*, 65 F.4th at 887-888 (interpreting phrase to include "a broad array of state sexual offenses against children, rather than only state child-pornography offenses"); *United States* v. *Mills*, 850 F.3d 693, 697 (4th Cir. 2017) (interpreting phrase to mean "to take advantage of children for selfish and sexual purposes"); *Smith*, 367 F.3d at 751 (interpreting phrase to "refer[] to any criminal sexual conduct with a child"); *Randolph*, 364 F.3d at 122 (interpreting phrase to include sexual-misconduct offenses, including child molestation).

While acknowledging the weight of authority against him, *e.g.*, Pet. 3-4, petitioner at times contends that the Sixth Circuit adopted an intermediate position distinct from other courts on the long side of the split, Pet. i, 3; but see Pet. 10 (indicating uncertainty on this score). However, the Sixth Circuit did not suggest that it saw any meaningful daylight between its interpretation and

that of its sister circuits; to the contrary, the *Sykes* court expressly stated that it was agreeing with the Fourth and Eighth Circuits. 65 F.4th at 887; see Pet. App. 12a (describing the Sixth Circuit's position as "broad[]"). And contrary to petitioner's understanding (Pet. i) that the Sixth Circuit strictly limited its definition to "child pornography or child abuse" crimes, the court's analysis suggested that the phrase encompasses "'sexually manipulative activity'" in addition to "a variety of sexual abuse offenses." *Sykes*, 65 F.4th at 887 (citation omitted).

Petitioner also suggests (Pet. 11 n.2) that the Third Circuit's position is indeterminate. But the Third Circuit has squarely rejected petitioner's view that only child-pornography offenses count. *E.g.*, *Randolph*, 364 F.3d at 122. And the Third Circuit has also found that an offense akin to petitioner's prior convictions here—child molestation under Georgia law, defined as performing "any immoral or indecent act to or in the presence of or with any child under the age of 14 years with the intent to arouse or satisfy the sexual desires of either the child or the person"—qualifies. See *ibid.* (citation omitted); see also *United States* v. *Pavulak*, 700 F.3d 651, 674 (3d Cir. 2012) (holding that "unlawful sexual contact" qualifies); *United States* v. *Galo*, 239 F.3d 572, 583 (3d Cir. 2001) (finding that the phrase would apply to "deviate sexual intercourse" with a child younger than 13 and "statutory rape"). In any event, to the extent that the contours of any circuit's position are unclear, that would at most counsel in favor of allowing that court an opportunity to refine its interpretation in a future case before this Court wades in.

In short, the Ninth Circuit stands alone in interpreting the second enhancement in Section 2251(e) to apply

only to state child-pornography offenses. Such a lopsided split does not warrant this Court's intervention at this time. Petitioner presents no arguments regarding the importance of the question presented or the frequency with which it arises. Several circuits have not yet had occasion to address this particular phrase in the enhancement at issue—which applies only to defendants subject to Section 2251's sentencing provision, see 18 U.S.C. 2251(e), 2260(c)(1), and even then only when the defendant has two qualifying prior convictions, including at least one state conviction.[2]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 2023

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[2] In a parenthetical aside, petitioner suggests (Pet. 14) that his Texas convictions for indecency with a child do not categorically qualify as offenses relating to child sexual abuse. But although petitioner raised a similar argument in the district court, see C.A. ROA 105-107, he failed to preserve it in the court of appeals, see Pet. C.A. Opening Br. 2, 9-36 (arguing only that the court should follow *Schopp*). He has therefore forfeited the issue—which is not fairly encompassed within the question presented—and cannot resurrect it before this Court. See *Babcock* v. *Kijakazi*, 595 U.S. 77, 82 n.3 (2022); see also *Fry* v. *Pliler*, 551 U.S. 112, 120-121 (2007).