No. 15-776

In the Supreme Court of the United States

LARRY MICHAEL BOLLINGER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether 18 U.S.C. 2423(c) and (f)(1)—which prohibit an American citizen or lawful permanent resident from traveling in foreign commerce and engaging in illicit sexual conduct with a minor outside the United States—exceed Congress's power under the Constitution's Foreign Commerce Clause (Art. I, § 8, Cl. 3).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-45a) is reported at 798 F.3d 201. The order of the district court denying petitioner's motion to dismiss (Pet. App. 62a-76a) is reported at 966 F. Supp. 2d 568.

JURISDICTION

The judgment of the court of appeals was entered on August 19, 2015. A petition for rehearing was denied on September 15, 2015 (Pet. App. 61a). The petition for a writ of certiorari was filed on December 14, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a conditional guilty plea in the United States District Court for the Western District of North Carolina, petitioner was convicted on two counts of traveling in foreign commerce and engaging in illicit

sexual conduct with a minor, in violation of 18 U.S.C. 2423(c) and (f)(1). The district court sentenced petitioner to concurrent terms of 25 years in prison, to be followed by a life term of supervised release. Pet. App. 48a-49a. The court of appeals affirmed. *Id.* at 1a-45a.

1. In 2004, petitioner, a United States citizen and ordained Lutheran minister, traveled from his home in Gastonia, North Carolina, to Port Au Prince, Haiti, to direct a ministry. That ministry included a school that served hundreds of children as well as a gated compound with housing for missionary teams. Between 2004 and 2009, petitioner and his wife stayed in Haiti most of the year, but petitioner occasionally returned to North Carolina for board meetings or promotional speeches. Pet. App. 3a; Gov't C.A. Br. 4.[1]

From early in petitioner's tenure, girls knocked on the gates of the ministry's compound, asking to be fed before school. Gov't C.A. Br. 5. In August or September 2009, petitioner began having sexual contact with a 16- or 17-year-old girl. *Ibid.*; Presentence Investigation Report (PSR) ¶ 5. According to petitioner, he touched her sexually and she masturbated him but refused to perform oral sex on him. Gov't C.A. Br. 5; PSR ¶ 5. Also in August 2009, petitioner claimed that three 11-year-old girls had "made themselves available" to him. Gov't C.A. Br. 5. On multiple occasions in September and October 2009, petitioner engaged in various acts of illicit sexual conduct with those girls, including performing oral sex on them, fondling them, rubbing his penis on their genitals until he ejaculated,

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[1] Petitioner "estimate[d]" for the Probation Office that he had "traveled to Haiti on approximately fifteen occasions." Presentence Investigation Report ¶ 68.

or having them masturbate him. *Id.* at 5-6; PSR ¶¶ 6-8.

On September 27, 2009, petitioner confessed to his wife that he had "been picking women up on the street and that he just couldn't stop." Gov't C.A. Br. 6. Petitioner agreed to counseling. *Ibid.* He returned to the United States and, in November 2009, met with Dr. Milton Magness, a psychologist who specializes in the treatment of clergy members with sex addictions. *Id.* at 7; PSR ¶ 4. During a counseling session, petitioner admitted that he had engaged in illicit sexual conduct with young girls in Haiti. Gov't C.A. Br. 7-8; PSR ¶¶ 4-9. Although Dr. Magness cautioned petitioner that he would have to report any injuries to a child, petitioner continued to detail his sexual contacts with the girls. Gov't C.A. Br. 8.[2] Law-enforcement personnel later interviewed petitioner's child victims in Haiti, who confirmed that petitioner had engaged in illicit sexual conduct with them. PSR ¶¶ 12-19.

2. On May 15, 2012, a federal grand jury in the Western District of North Carolina charged petitioner with two counts of traveling in foreign commerce and engaging in illicit sexual conduct with two of the 11-year-old victims between August 1, 2009, and November 18, 2009, in violation of 18 U.S.C. 2423(c). Pet. App. 63a; PSR ¶¶ 17-18.

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[2] Dr. Magness testified that petitioner did not seem "overly concerned" about his conduct in Haiti but was "adamant about saying that he had not done anything like that in the [United States]." Pet. App. 4a-5a. Dr. Magness concluded that petitioner may have "thought he was beyond the reach of the law because . . . his behavior had taken place in another country." *Id.* at 5a.

The statute provided, in relevant part, as follows:

> (c) ENGAGING IN ILLICIT SEXUAL CONDUCT IN FOREIGN PLACES.—Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.
>
> * * * * *
>
> (f) DEFINITION.—As used in this section, the term "illicit sexual conduct" means (1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age.

18 U.S.C. 2423 (2012). In response to petitioner's motion for a bill of particulars, the government specified that the allegations involved noncommercial sexual conduct under Section 2423(f)(1), though it also intended to prove that petitioner gained access to his victims in part by providing them with food and clothing. Pet. App. 5a-6a.

Petitioner moved to dismiss the indictment, arguing that Section 2423(c)'s prohibition on noncommercial conduct exceeds Congress's authority under the Foreign Commerce Clause. Pet. App. 6a, 62a. The government defended the statute under both the Foreign Commerce Clause and as a means necessary and proper to implementing the United States' obligations under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child

Prostitution and Child Pornography, *adopted* May 25, 2000, S. Treaty Doc. No. 37, 106th Cong., 2d Sess., 2171 U.N.T.S. 227 (Optional Protocol). See Pet. App. 6a. The district court sustained the statute as being necessary and proper to the implementation of the Optional Protocol, *id.* at 66a-74a, and therefore did not address petitioner's Foreign Commerce Clause argument, *id.* at 65a-66a.

Preserving his right to challenge the district court's ruling, petitioner pleaded guilty to both counts of the indictment. Pet. App. 7a. The court sentenced petitioner to 25 years of imprisonment on each count, to be served concurrently, followed by a life term of supervised release. *Id.* at 48a-49a.

3. The court of appeals affirmed. Pet. App. 1a-45a. It held that the Foreign Commerce Clause authorized Congress to criminalize illicit sexual conduct abroad by a U.S. citizen after he traveled overseas; it therefore did not address whether the statute is also valid as an implementation of the Optional Protocol. *Id.* at 14a.

The court of appeals rejected petitioner's suggestion that this Court's jurisprudence about the limitations on Congress's power to regulate interstate commerce "should be wholly transposed into the foreign context." Pet. App. 18a. The court explained that the interstate-commerce cases implicate "federalism concerns that are inapposite in the international arena" and that this Court has already recognized that Congress's authority under the Commerce Clause to regulate interstate commerce, commerce with Indian Tribes, and commerce with foreign nations warrant "distinct treatment." *Id.* at 18a, 20a-21a. The court further noted that "[t]he regulation of commerce with foreign nations, like matters of foreign affairs and

foreign relations more generally, requires a unitary federal voice and expansive authority." *Id.* at 23a. Even so, it emphasized that Congress still must satisfy two textual limitations: a statute must "regulate Commerce" (just as in the interstate context), and, to implicate commerce "with foreign Nations," there must be a "nexus between the United States and a foreign country." *Id.* at 25a, 27a.

The court of appeals expressly rejected petitioner's suggestion that Congress simply "cannot regulate conduct that occurs inside another country." Pet. App. 28a. Instead, the court explained that "when a U.S. citizen acts in a foreign country," that action, by virtue of the citizenship of the actor, constitutes an engagement between the United States and that country. *Ibid.* Moreover, "[t]he nationality principle of international law * * * permits a country to apply its statutes to extraterritorial acts of its own nationals without infringing on the other nation's sovereignty." *Ibid.* Thus, the United States can "prohibit [U.S.] citizens from spending money inside Cuba or recruiting terrorists in Syria without violating principles of sovereignty." *Id.* at 29a.

In light of such considerations, the court of appeals turned to "the pivotal question" of "how directly an activity must affect foreign commerce for it to be a proper subject of congressional regulation." Pet. App. 29a. It noted that "[t]he small number of courts" to have considered the question had adopted different approaches. *Ibid.* It found that the three categories of interstate-commerce regulations summarized in *United States* v. *Lopez*, 514 U.S. 549 (1995), are "a useful starting point" for analyzing a statute under the Foreign Commerce Clause. Pet. App. 30a. With respect

to the first two categories, it found that "Congress clearly may regulate (1) 'the use of the channels of [foreign] commerce,' and (2) 'the instrumentalities of [foreign] commerce, or persons or things in [foreign] commerce." *Ibid.* (quoting and adding brackets to *Lopez*, 514 U.S. at 558). But the court concluded that "the third *Lopez* category—permitting the regulation of 'activities that substantially affect interstate commerce'—is unduly demanding in the foreign context." *Id.* at 30a-31a (citing *International Bancorp, LLC* v. *Societe des Bains de Mer et du Cercle des Etrangers a Monaco*, 329 F.3d 359, 369 (4th Cir. 2003), cert. denied, 540 U.S. 1106 (2004)). The court thus held that "the Foreign Commerce Clause allows Congress to regulate activities that demonstrably affect such commerce." *Id.* at 31a.

The court of appeals recognized that, in the domestic context, it (and other courts of appeals) had already sustained, as a regulation of the channels and instrumentalities of commerce, a provision that requires sex offenders to register or update their registrations after traveling in interstate commerce. Pet. App. 33a-36a (discussing 18 U.S.C. 2250(a)). While noting that analogous reasoning "could provide a solid basis for upholding Section 2423(c) on the ground that it regulates the channels and instrumentalities of foreign commerce," the court chose to rely on "a second, more limited, ground" to support Section 2423(c)'s constitutionality. *Id.* at 36a. The court found it "eminently rational" for Congress to have believed that "prohibiting the non-commercial sexual abuse of children by Americans abroad" would have a "demonstrable effect on foreign commerce" because it would affect "sex tourism and the commercial sex industry." *Ibid.* In-

deed, Congress had not included a requirement (like the one contained in 18 U.S.C. 2423(b)) that an offender travel in foreign commerce "for the purpose of engaging in any illicit sexual conduct," precisely because it believed that the omission of that requirement would "more effectively curtail the stream of Americans traveling in foreign commerce to abuse children in other countries." Pet. App. 37a. In that regard, the court noted that the international community, in the Optional Protocol, has favored a holistic approach to limiting commercial sexual exploitation of children, which justifies the regulation of noncommercial conduct as well. *Id.* at 37a-38a.

Finally, the court of appeals observed that a contrary holding would mean that "a citizen could effectively avoid all police power by leaving U.S. soil and traveling to a nation with weak or non-existent sexual abuse laws," affecting the United States' "standing in the world, potentially disrupting diplomatic and even commercial relationships." Pet. App. 40a. The court found no warrant for concluding that the Constitution requires "a vacuum of all police power, state and federal, within which citizens may commit acts abroad that would clearly be crimes if committed at home." *Ibid.*[3]

ARGUMENT

Petitioner contends (Pet. 9-12) that this Court's "intervention" is necessary because the courts of appeals have announced "at least three different tests" for "measuring the scope of Congress's power under the

[3] The court of appeals also rejected petitioner's challenges to his sentence, Pet. App. 40a-45a, which petitioner does not renew in this Court.

Foreign Commerce Clause generally" and more specifically of the constitutionality of 18 U.S.C. 2423(c) and (f)(1). Despite some differences in their analysis, the courts of appeals have repeatedly agreed that the provisions at issue in this case are within Congress's foreign-commerce power. As a result, no conflict exists that would warrant this Court's review. And petitioner's own constitutional argument lacks merit. The petition for a writ of certiorari should be denied.[4]

1. Petitioner does not identify any court of appeals decision invalidating either Section 2423(c), or any other federal statute, on the ground that it exceeds Congress's power over foreign commerce. Nor could he. Every court of appeals to have considered Section 2423(c)'s regulation of travel in foreign commerce combined with illicit sexual conduct with a minor has found it to be constitutional. See *United States* v. *al-Maliki*, 787 F.3d 784, 794 (6th Cir.) (noting that "[n]o circuit court has declared § 2423(c) unconstitutional"), cert. denied, 136 S. Ct. 204 (2015); *id.* at 792-794 (acknowledging "skeptic[ism]" about the statute but rejecting, on plain-error review, constitutional challenge to Section 2423(c) in the context of noncommercial sexual conduct); *United States* v. *Pendleton*, 658 F.3d 299, 305-311 (3d Cir. 2011) (holding Section 2423(c) constitutional in the context of noncommercial sexual conduct), cert. denied, 132 S. Ct. 2771 (2012); *United States* v. *Clark*, 435 F.3d 1100, 1109-1117 (9th Cir. 2006) (holding Section 2423(c) constitutional in the context of commercial sexual conduct), cert. denied, 549 U.S. 1343 (2007); see also *United States* v. *Bian-*

[4] The Court previously denied review of the same question in *Pendleton* v. *United States*, 132 S. Ct. 2771 (2012) (No. 11-7711), and *Clark* v. *United States*, 549 U.S. 1343 (2007) (No. 06-8169).

chi, 386 Fed. Appx. 156, 160-162 (3d Cir. 2010) (holding Section 2423(c) constitutional in the context of both commercial and noncommercial sexual conduct), cert. denied, 562 U.S. 1200 (2011).

More broadly, the courts of appeals have also rejected foreign-commerce challenges to other statutes that, like Section 2423(c), impose criminal liability for conduct that necessarily involves foreign travel. See, *e.g.*, *United States* v. *Bredimus*, 352 F.3d 200, 204-208 (5th Cir. 2003) (upholding 18 U.S.C. 2423(b), which criminalizes "travel[ing] in foreign commerce[] for the purpose of engaging in any illicit sexual conduct with another person"), cert. denied, 541 U.S. 1044 (2004); *United States* v. *Cummings*, 281 F.3d 1046, 1048-1049 (9th Cir.) (upholding 18 U.S.C. 1204(a), which criminalizes, *inter alia*, "retain[ing] a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights"), cert. denied, 537 U.S. 895 (2002).

Although petitioner notes (Pet. 6, 9) that different circuits have relied on different rationales in sustaining the constitutionality of Section 2423(c) and (f), the decision below sought to identify a *narrower* ground than those that were found dispositive by other courts of appeals or in the context of other statutes involving both travel and noncommercial conduct. Pet. App. 29a-30a. As a result, petitioner provides no basis to believe that he would have been any more successful had his prosecution been brought in a different court of appeals. Petitioner deems (Pet. 11) it "[i]nteresting[]" that the Ninth Circuit's decision in *Clark* "explicitly abstained from extending its reasoning to the noncommercial sex prong at issue in this case." But *Clark* limited its discussion to the context of "commer-

cial sex acts" as a matter of "judicial restraint," because that is all that was presented by the "factual posture" of the case, not to suggest that it would reach a different conclusion in the context of noncommercial sexual conduct. 435 F.3d at 1110 & n.16. Moreover, in contravention of petitioner's own approach (Pet. 10, 13-16), *Clark* concluded that Congress's powers over foreign commerce are broader than its powers over interstate commerce and extend to conduct "on foreign soil" that is "necessarily tied to travel in foreign commerce, even where the actual use of the channels has ceased." 435 F.3d at 1116. While the Third Circuit was "hesitant" to follow *Clark* in adopting a different framework for foreign than for interstate commerce, it still rejected petitioner's assumption (Pet. 10) that noncommercial sexual conduct would lie beyond Congress's ability to regulate the channels or instrumentalities of commerce. *Pendleton*, 658 F.3d at 308-311. Such divergences in reasoning in cases that reach consistent outcomes do not create a conflict that warrants this Court's review.

2. With respect to the merits of his constitutional argument, petitioner contends (1) that, notwithstanding his travel in foreign commerce, his illicit sexual conduct in Haiti was itself noncommercial "local conduct that Congress almost certainly could not regulate under the Interstate Commerce Clause" if it had occurred within the United States (Pet. 6); and (2) that Congress's powers over foreign commerce are no broader than its powers over interstate commerce (Pet. 13-14). Even assuming for the sake of argument that petitioner's first assumption is correct, the court of appeals correctly rejected the implicit conclusion to petitioner's syllogism (*i.e.*, that Congress cannot regu-

late conduct by a U.S. citizen in Haiti that it could not regulate in North Carolina).

a. The Commerce Clause (Art. I, § 8, Cl. 3) vests in Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Because the three subparts of the Clause implicate "considerably different interests," they have "been subject to markedly divergent treatment by the courts." *Clark*, 435 F.3d at 1111.

This Court, for instance, has previously explained that it is "well established that the Interstate Commerce and Indian Commerce Clauses have very different applications," in part because the limitations on Congress's powers over interstate commerce are "premised on a structural understanding of the unique role of the States in our constitutional system that is not readily imported to cases involving the Indian Commerce Clause." *Cotton Petroleum Corp.* v. *New Mexico*, 490 U.S. 163, 192 (1989). Similarly, when comparing the "parallel phrases" governing interstate and foreign commerce, the Court has found "evidence that the Founders intended the scope of the foreign commerce power to be the greater." *Japan Line Ltd.* v. *County of Los Angeles*, 441 U.S. 434, 448 (1979) (citation omitted); see *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U.S. 427, 434 (1932); *Buttfield* v. *Stranahan*, 192 U.S. 470, 492-493 (1904) (comparing Congress's "plenary power" over foreign commerce with its power over commerce with Indian Tribes, and contrasting it with "the limitations * * * resulting from other provisions of the Constitution, so far as interstate commerce is concerned"). Again, that conclusion recognizes that the power to regulate foreign commerce is not limited by the same "considerations of

federalism and state sovereignty" that apply to federal regulation of commerce among the States. *Japan Line*, 441 U.S. at 449 n.13.

In response, petitioner suggests (Pet. 13) that the Foreign Commerce Power is broader only for purposes of what he calls "the Dormant Foreign Commerce Clause." In other words, he concedes (Pet. 14) that Congress's need to "unify the national voice with respect to commerce with other nations" supports giving Congress a "greater power vis-à-vis the [S]tates." He nevertheless contends (*ibid.*) that Congress's unitary national voice cannot speak to what conduct is permitted "inside foreign nations." That distinction has matters backwards. The Constitution reflects concern about protecting the powers of *States* from unauthorized federal encroachment. See, *e.g.*, U.S. Const. Amend. X. It has no parallel concern for the powers of foreign governments, particularly with respect to the conduct of a U.S. citizen abroad. Nor is Congress's ability to regulate commerce "with" a foreign nation limited to the portion of that commerce that occurs within the United States. Indeed, under background principles of international law, the United States, like other sovereigns on the international stage, possesses the authority to regulate the extraterritorial conduct of its own nationals.[5]

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[5] See 1 Restatement (Third) of Foreign Relations Law of the United States § 402(2) (1986) ("a state has jurisdiction to prescribe law with respect to * * * the activities, interests, status, or relations *of its nationals* outside as well as within its territory") (emphasis added); *id.* § 402 cmt. e (noting, for purpose of the nationality principle, that "[i]nternational law has increasingly recognized the right of a state to exercise jurisdiction on the basis of domicile or residence, rather than nationality").

The Court has long recognized that federal statutes may apply in foreign territory to U.S. citizens. See, *e.g.*, *Blackmer* v. *United States*, 284 U.S. 421, 436 (1932) ("By virtue of the obligations of citizenship, the United States retained its authority over [the defendant], and he was bound by its laws made applicable to him in a foreign country."). Of course, a federal statute will not prevent a foreign country from imposing its own regulations on what U.S. citizens do within that country. But, as the court of appeals observed, the U.S. government may, for example, "prohibit [U.S.] citizens from spending money inside Cuba or recruiting terrorists in Syria without violating principles of sovereignty." Pet. App. 29a.

b. Congress's more extensive power over foreign commerce is especially justifiable when, as here, it intersects with the federal government's other powers over foreign affairs. See Pet. App. 23a-25a. Petitioner correctly contends (Pet. 15 n.1) that Section 2423(c) specifically invokes Congress's foreign-commerce powers because it includes a jurisdictional hook that requires a defendant to travel in foreign commerce. But the statute also includes another jurisdictional hook: by limiting its reach to the conduct of "[a]ny United States citizen or alien admitted for permanent residence" (18 U.S.C. 2423(c)), the provision equally invokes the United States' power to regulate the extraterritorial conduct of its own nationals. See p. 13 & n.5, *supra*.

In the context of maintaining good relations with other countries, the United States has a strong interest in taking steps to limit international sex tourism by U.S. citizens that may result in the abuse of foreign children. See H.R. Rep. No. 525, 107th Cong., 2d Sess.

3 (2002) (explaining that the provision that was later enacted as Section 2423(c) and (f) was necessary in part because foreign countries "experiencing significant problems with sex tourism" had "requested that the United States act to deal with this growing problem" and that some countries were "blam[ing] the United States for the problem" because "many of the sex tourists are American"); Pet. App. 36a-40a (discussing how prohibitions on noncommercial sexual acts combat "sex tourism" and help strengthen regulation, pursuant to the Optional Protocol, of commercial sexual exploitation of children); cf. *Nichols* v. *United States*, No. 15-5238 (Apr. 4, 2016), slip op. 8 (noting that "Congress has recently criminalized" a sex offender's knowing failure to provide information "'relating to intended travel in foreign commerce,'" including his "'address or other contact information'" within the foreign country) (quoting provisions to be codified at 18 U.S.C. 2250(b) and 42 U.S.C. 16914(a)(7)).

c. Petitioner's quotation (Pet. 15) from Alexander Hamilton's defense of the Jay Treaty does not support the suggestion that Congress cannot adopt rules that govern the conduct of U.S. nationals in a foreign country. To the contrary, Hamilton (writing under the pen-name Camillus) sought to show merely that Congress's "*legislative* power of regulating trade" does not constitute "an exception" from the scope of the separate treaty power. *The Defence No. XXXVI* (Jan. 2, 1796), in 20 *The Papers of Alexander Hamilton* 10 (Harold C. Syrett ed., 1974). In doing so, he explained that the legislative power extends to "the persons and property within the jurisdiction of" the United States. *Id.* at 8. Congress alone, however, cannot grant U.S. citizens "rights" and "privileges" in a foreign country. *Id.* at 8-

9. Because that requires "the will and regulation" of the foreign country, it calls for an exercise of the treaty power, which, through "mutual consent" of the United States and a foreign country, can provide for "mutual regulation of Trade." *Id.* at 9, 10. The case against petitioner, however, did not implicate any right or privilege to which Haiti needed to consent. Instead, it fell within Congress's power to regulate the travel in foreign commerce of a person who—in light of the international-law principle discussed above—was indeed "within the jurisdiction of" the United States in the sense that Hamilton associated with Congress's non-treaty-based legislative powers. *Id.* at 8.

d. Finally, petitioner errs in suggesting (Pet. 14) that the Foreign Commerce Clause cannot authorize Congress to adopt regulations that might be independently supported by other constitutional powers that may also pertain to conduct "inside foreign nations," such as the power to define and punish offenses against the law of nations (Art. I, § 8, Cl. 10) or to effectuate treaties under the Necessary and Proper Clause (Art. I, § 8, Cl. 18). In petitioner's view (Pet. 14), that would "render[] redundant other enumerated powers in the Constitution." But Congress's Article I powers often have the potential to overlap, and that observation provides no basis for imposing limitations on the foreign-commerce power.

Here, for example, Section 2423(c) could also be sustained on the basis of other grounds on which the court of appeals declined to express an opinion. Section 2423(c) is valid as a permissible regulation of the channels or instrumentalities of commerce.[6] And, as

[6] See Pet. App. 33a-34a, 36a (recognizing that the rationale for sustaining the constitutionality of the criminal penalty in 18 U.S.C.

the district court held, and as the government argued in both courts below, Section 2423(c) is also valid as a permissible exercise of Congress's power to enact measures necessary and proper to implementing the United States' treaty obligations under the Optional Protocol. See Pet. App. 67a-74a; Gov't C.A. Br. 44-50. No reason exists why Congress could not draw on multiple sources of authority to regulate petitioner's illicit sexual conduct while overseas. Those mutually consistent rationales reinforce that no further review is warranted of petitioner's foreign-commerce challenge.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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2250(a) for a sex offender who travels in interstate or foreign commerce and thereafter fails to update their sex-offender registration could also "provide a solid basis for upholding Section 2423(c) on the ground that it regulates the channels and instrumentalities of foreign commerce"); *Pendleton*, 658 F.3d at 310 (holding that the "same rationale" supports the constitutionality of Section 2250 and Section 2423(c)); see also *Carr* v. *United States*, 560 U.S. 438, 453-454 (2010) (noting that "[t]he act of travel by a convicted sex offender" is "the very conduct at which Congress took aim" in Section 2250(a)).