APPENDIX

Opinion of the Eighth Circuit Court of Appeals

Judgment of the Eighth Circuit Court of Appeals

Eighth Circuit Court of Appeals Order Denying Petition for Rehearing En Banc

Judge Linda R. Reade's Order Denying Defendant's Motion to Dismiss

United States Court of Appeals
For the Eighth Circuit

No. 16-4006

United States of America

Plaintiff - Appellee

v.

Randy Joe Metcalf, also known as Randy Joe Weyker

Defendant - Appellant

Cato Institute; Reason Foundation; Individual Rights Foundation; Gail Louise Heriot; Peter N. Kirsanow; Center for Equal Opportunity

Amici on Behalf of Appellant(s)

Appeal from United States District Court
for the Northern District of Iowa - Dubuque

Submitted: September 21, 2017
Filed: February 2, 2018

Before SMITH, Chief Judge, WOLLMAN and GRUENDER, Circuit Judges.

WOLLMAN, Circuit Judge

A jury convicted Randy Joe Metcalf of committing a hate crime in violation of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249(a)(1) (the Act).[1] The district court[2] sentenced Metcalf to the statutory maximum sentence of 120 months' imprisonment. Metcalf appeals, arguing that the Act is unconstitutional because Congress lacked the authority to enact it under the Thirteenth Amendment. Metcalf also argues that the district court erred in denying his request for a proposed jury instruction on character evidence and that the evidence was insufficient to support his conviction. We affirm.

I. Background

On January 11, 2015, Metcalf and his fiancee Noelle Weyker went to a bar in Dubuque, Iowa, where Metcalf met a friend, Jeremy Sanders (Jeremy) and Jeremy's son, Joseph Sanders (Joseph). As the evening progressed, Metcalf, Weyker, Jeremy, and Joseph drank alcohol and played pool. As recorded by the bar's surveillance cameras, at around 11:00 p.m. Metcalf became involved in an argument with Katie Flores, Sarah Kiene, and Lamarr Sandridge, an African American man. Although the confrontation was mostly verbal, Metcalf pushed Sandridge before Becky Burks, the bartender, and Ted Stackis, the bar's owner, intervened.

Following the confrontation, Metcalf spoke with Stackis, bragging about how he had burned crosses at an African American family's home in Dubuque. Metcalf told Stackis, "I hate f---ing n----rs," and asked if Stackis wanted anyone taken care of. Metcalf and Stackis then went outside, where Metcalf showed Stackis his swastika tattoo and repeated how he "hate[d] them f---ers."

---

[1]After trial and before sentencing, Metcalf married his fiancee and legally changed his surname to "Weyker." Because the name "Metcalf" was used during trial and at sentencing, we will refer to the defendant as "Metcalf."

[2]The Honorable Linda R. Reade, then Chief Judge, United States District Court for the Northern District of Iowa.

As the night continued, Metcalf, Flores, and Kiene continued to harass each other, with Metcalf referring to Flores and Kiene as "n----r loving c--ts" and "n----r lovers." Metcalf also continued to use the word "n----r." The women responded by calling Metcalf a "stupid f---er." While visiting with Jeremy, Metcalf displayed his swastika tattoo and said, "That's what I'm about."

Tensions in the bar peaked around 1:20 a.m., when Kiene confronted Metcalf. Weyker started recording the confrontation on her cell phone and a fight ensued when Flores slapped Weyker's phone out of her hands. During the melee, Metcalf charged at Flores, hit her in the head, slammed her into the bar, and pulled her to the ground by her hair. Other individuals then piled on top of each other. Trying to stop the attack, Sandridge struck Metcalf a few times. Jeremy then grabbed Sandridge and held him in a headlock, while son Joseph punched Sandridge in the face ten to fifteen times. As people got up from the floor, Metcalf pushed past Jeremy and Flores to get to Sandridge, who was lying disoriented on the floor. Metcalf then repeatedly kicked and stomped on Sandridge's head, saying, "f---ing n----r" and "die n----r" until Burks pushed him away.

Metcalf left the bar momentarily, but he soon returned and maneuvered around the people standing near Sandridge. As Sandridge lay on the ground, dazed from the initial attacks, Metcalf kicked and stomped on Sandridge's head a second time, continuing in his attack until Flores pushed him away. Metcalf responded by slapping Flores to the ground and walking away. The day following the attack, Metcalf told Jeremy that "the n----r got what he had coming to him."

Metcalf was indicted on one count of violating Section 249(a)(1) of the Act. The indictment alleged that Metcalf had "willfully caused bodily injury to [Sandridge], who is African American, because of [Sandridge's] actual or perceived race, color, and national origin." Metcalf challenged the indictment on constitutional grounds and filed a motion to dismiss, which the district court denied.

The parties agreed during trial that Metcalf had attacked Sandridge, leaving for the jury the question whether Sandridge's race was the reason for the attack. Witnesses for the government, including Stackis, Flores, Kiene, Burks, and Jeremy, testified about Sandridge's use of the word "n----r," his swastika tattoo, and his statements made throughout the night of the attack and the next day. In response, Metcalf called seven witnesses who had seen him interact with African American people, all of whom testified that they believed Metcalf was not racist. Based on this testimony, Metcalf requested the following jury instruction:

> You have heard the testimony of {Witness}, who said that the defendant has a reputation and character for a lack of racism. Along with all the other evidence you have heard, you may take into consideration what you believe about the defendant's lack of racism when you decide whether the government has proved, beyond a reasonable doubt, that the defendant committed the crime. Evidence of the defendant's lack of racism alone may create a reasonable doubt whether the government proved that the defendant committed the crime.

The court denied the request and instead gave a general instruction, which stated that "[t]he jurors [were] the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who ha[d] testified in this case." Metcalf's attorney argued to the jury that because Metcalf is not a racist, he could not have committed a hate crime.

II. Discussion

Metcalf argues that the district court erred in denying his motion to dismiss the indictment, claiming that the Act is unconstitutional because Congress lacked the authority to enact it under the Thirteenth Amendment. We review *de novo* the denial of Metcalf's motion to dismiss. United States v. Coppock, 765 F.3d 921, 922 (8th Cir. 2014).

The Act provides that "[w]hoever . . . willfully causes bodily injury to any person . . . because of the actual or perceived race, color, religion, or national origin of any person . . . shall be imprisoned not more than 10 years, fined in accordance with this title, or both[.]" 18 U.S.C. § 249(a)(1). Congress enacted Section 249(a)(1) through the power conferred upon it by the Thirteenth Amendment, which states:

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

In Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968), the Supreme Court held that the Thirteenth Amendment empowered Congress to prohibit racial discrimination in the public or private sale or rental of real estate. Id. at 437-39. The Court explained that Section 2 of the Amendment gave Congress not only the authority to abolish slavery, but also the "power to pass *all laws necessary and proper for abolishing all badges and incidents of slavery in the United States*." Id. at 439 (citing Civil Rights Cases, 109 U.S. 3, 20 (1883)). Rather than itself defining the "badges and incidents of slavery," the Court wrote, "Surely Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation." Id. at 440. Adopting the Supreme Court's analysis in Jones, we upheld the constitutionality of Section 249(a)(1) in United States v. Maybee, 687 F.3d 1026, 1031 (8th Cir. 2012). Although Metcalf raises a constitutional challenge different from that raised in Maybee, the fundamental premise of Maybee still applies: Section 2 of the Thirteenth Amendment confers upon Congress the authority to "rationally [] determine what are the badges and incidents of slavery." Id. at 1030 (quoting Jones, 392 U.S. at 439-400); see also United States v. Bledsoe, 728 F.2d 1094 (8th Cir. 1984) (discussing 18 U.S.C. § 245(b)).

Metcalf argues, however, that the Supreme Court's decisions in Shelby County v. Holder, 133 S. Ct. 2612 (2013), and City of Boerne v. Flores, 521 U.S. 507 (1997), undermine the legal underpinnings of Jones and Maybee, because in both Shelby County and Flores the Court ruled that Congress had exceeded its lawmaking authority under the Reconstruction Amendments. In Shelby County, the Court held that the coverage formula under Section 5 of the Voting Rights Act of 1965 exceeded Congress's authority under the Fifteenth Amendment because the legislation was not supported by current evidence of racial discrimination in voting. 133 S. Ct. at 2619, 2631. In Flores, the Court held that the Religious Freedom and Restoration Act of 1993 exceeded Congress's authority under the Fourteenth Amendment because it lacked a congruence and proportionality with the injury to be prevented. 521 U.S. at 511, 516, 520. Metcalf asks that we apply to Section 249(a)(1) the same limiting principles outlined in those two cases.

Whatever force Metcalf's arguments might have in other contexts, neither Shelby County nor Flores addressed Congress's power to legislate under the Thirteenth Amendment. For the reasons set forth by the Fifth and Tenth Circuit Courts of Appeals in their discussions of Section 249(a)(1), we conclude that Jones constitutes binding precedent that we must follow. See United States v. Cannon, 750 F.3d 492, 505 (5th Cir. 2014); United States v. Hatch, 722 F.3d 1193, 1201 (10th Cir. 2013). As did the Tenth Circuit in its most thorough discussion of the history of the Reconstruction Amendments and its specific analysis of Section 249(a)(1), we too conclude that Congress rationally determined that racially motivated violence constitutes a badge and incident of slavery. Id. at 1201, 1206. The district court thus did not err in denying Metcalf's motion to dismiss the indictment on constitutional grounds.

With respect to the district court's refusal to give the proposed jury instruction on character evidence, Metcalf argued at trial that he should be allowed to present character evidence of specific instances of conduct under Federal Rule of Evidence

405 because his character for a lack of racism was an essential element of the charge and his defense. The district court, "out of an abundance of caution," admitted the evidence. Assuming that Metcalf's character for a lack of racism was an element of the charge and his defense, we conclude that the district court did not abuse its discretion in refusing to give the requested instruction. See United States v. Gianakos, 415 F.3d 912, 920 (8th Cir. 2005) (standard of review).

In United States v. Krapp, 815 F.2d 1183 (8th Cir. 1987), we ruled that a district court was not required to give a character evidence instruction even though the defendant's character evidence went directly to an element of the offense. Id. at 1187. Additionally, we ruled that "[a] district court has wide discretion in formulating jury instructions, and a defendant is not entitled to a particularly worded instruction if the instructions as a whole adequately cover the substance of the requested instruction." Id. at 1187-88. Here, the district court's instruction that the jurors were "the sole judges of . . . the value to be given to the testimony of each witness" would of necessity have included testimony regarding Metcalf's character and thus accurately and sufficiently set forth the law. Metcalf's reliance on Salinger v. United States, 23 F.2d 48 (8th Cir. 1927), for the proposition that a defendant is entitled to a jury instruction on character evidence whenever character evidence is introduced at trial, is misplaced. Salinger addressed evidence of good character in general—the defendant's reputation for honesty and integrity—not character evidence that was an essential element of the charge or a defense.

Metcalf argues in the alternative that the district court should have given his proposed instruction because it explained his legal theory. Again, however, we conclude that the district court did not abuse its discretion in denying Metcalf's request, because "the instructions as a whole, by adequately setting forth the law, afford[ed] counsel an opportunity to argue the defense theory and reasonably ensure[d] that the jury appropriately consider[ed] it." United States v. Christy, 647 F.3d 768, 770 (8th Cir. 2011).

Finally, Metcalf argues that insufficient evidence exists to sustain his conviction. We review this claim *de novo*, viewing the evidence in the light most favorable to the verdict. United States v. Wiest, 596 F.3d 906, 910 (8th Cir. 2010). In light of Metcalf's repeated racially based comments, coupled with the surveillance cameras' depiction of the viciousness of his racially based initial attack upon the defenseless Sandridge, followed by his return to the bar to administer an equally vicious renewed attack, we need say no more than that the evidence was clearly sufficient to support the conviction.

The judgment is affirmed.

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

February 02, 2018

Ms. Heather Quick
FEDERAL PUBLIC DEFENDER'S OFFICE
Northern District of Iowa
222 Third Avenue, S.E.
Cedar Rapids, IA 52401-1542

RE: 16-4006 United States v. Randy Metcalf

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

YML
Enclosure(s)

cc: Mr. Thomas Chandler
Ms. Gail Louise Heriot
Mr. Randy Joe Metcalf
Mr. Anthony R. Morfitt
Mr. John Park Jr.
Mr. Christopher J. Perras
Mr. Rob Phelps
Ms. Francesca Lina Procaccini
Ms. Ilya Shapiro

District Court/Agency Case Number(s): 2:15-cr-01032-LRR-1

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

February 02, 2018

West Publishing
Opinions Clerk
610 Opperman Drive
Building D D4-40
Eagan, MN 55123-0000

RE: 16-4006 United States v. Randy Metcalf

Dear Sirs:

A published opinion was filed today in the above case.

Counsel who presented argument on behalf of the appellant and appeared on the appellant brief was Heather Quick, AFPD, of Cedar Rapids, IA.

Counsel who presented argument on behalf of the appellee and appeared on the appellee brief was Francesca Lina Procaccini, of Washington, D.C., DC. The following attorney(s) appeared on the appellee brief; Thomas Chandler, of Washington, DC.

The following attorney(s) appeared on the amicus brief of Cato Institute; Reason Foundation; Individual Rights Foundation was Ilya Shapiro, of Washington, DC., The following attorney(s) appeared on the amicus brief of Gail Louise Heriot; Peter N. Kirsanow, was Gail Louise Heriot, of San Diego, CA., Peter N. Kirsanow of San Diego, CA. The following attorney(s) appeared on the amicus brief of Center for Equal Opportunity, was John Park, Jr., of Atlanta, GA.

The judge who heard the case in the district court was Honorable Linda R. Reade. The judgment of the district court was entered on October 5, 2016.

If you have any questions concerning this case, please call this office.

Michael E. Gans
Clerk of Court

YML

Enclosure(s)

cc: MO Lawyers Weekly

District Court/Agency Case Number(s): 2:15-cr-01032-LRR-1

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 16-4006

United States of America

Plaintiff - Appellee

v.

Randy Joe Metcalf, also known as Randy Joe Weyker

Defendant - Appellant

Cato Institute; Reason Foundation; Individual Rights Foundation; Gail Louise Heriot; Peter N. Kirsanow; Center for Equal Opportunity

Amici on Behalf of Appellant(s)

Appeal from U.S. District Court for the Northern District of Iowa - Dubuque
(2:15-cr-01032-LRR-1)

JUDGMENT

Before SMITH, Chief Judge, WOLLMAN and GRUENDER, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

February 02, 2018

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 16-4006

United States of America

Appellee

v.

Randy Joe Metcalf, also known as Randy Joe Weyker

Appellant

Cato Institute, et al.

Amici on Behalf of Appellant(s)

Appeal from U.S. District Court for the Northern District of Iowa - Dubuque
(2:15-cr-01032-LRR-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Kelly did not participate in the consideration or decision of this matter.

March 19, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. RANDY JOE METCALF, Defendant.	No. 15-CR-1032-LRR **ORDER**

TABLE OF CONTENTS

I. INTRODUCTION

The matter before the court is Defendant Randy Joe Metcalf's "Motion to Dismiss Indictment" ("Motion") (docket no. 15).

II. RELEVANT PROCEDURAL BACKGROUND

On December 15, 2015, the grand jury returned a one-count Indictment (docket no. 2) charging Defendant with committing a hate crime, in violation of 18 U.S.C. § 249(a)(1). On January 14, 2016, Defendant filed the Motion. On January 22, 2016, the government filed a Resistance (docket no. 16). The Motion is fully submitted and ready for decision.

III. ANALYSIS

In the Motion, Defendant seeks dismissal of the Indictment on the grounds that the charged offense, 18 U.S.C. § 249(a)(1), is an unconstitutional exercise of Congress's power under the Thirteenth Amendment of the United States Constitution. "Defendant's Brief in Support of Motion to Dismiss Indictment" ("Defense Brief") at 1.

Section 249(a)(1) provides:

> Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person [shall be subject to punishment].

18 U.S.C. § 249(a)(1). Section 249(a)(1) "rests solely on Congress's authority under § 2 of the Thirteenth Amendment." *United States v. Cannon*, 750 F.3d 492, 498 (5th Cir. 2014).

Section One of the Thirteenth Amendment abolishes slavery and involuntary servitude within the United States, and Section Two provides that "Congress shall have power to enforce [the Thirteenth Amendment] by appropriate legislation." U.S. Const. amend. XIII. The amendment "clothes Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States." *The Civil Rights Cases*, 109 U.S. 3, 20 (1883). It is the role of Congress to "rationally . . . determine what are the badges and the incidents of slavery, and . . . to translate that determination into effective legislation." *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 440 (1968). Therefore, under *Jones*, § 249(a)(1) comports with Congress's power under the Thirteenth Amendment if Congress could have rationally determined that violence motivated by "actual or perceived race, color, religion, or national origin" was a badge or incident of slavery.

The Eighth Circuit has not directly addressed a Thirteenth Amendment challenge to § 249(a)(1).[1] However, other courts faced with the issue have upheld the law, relying on *Jones* to conclude that Congress rationally determined that racially motivated violence was a badge or incident of slavery. *See Cannon*, 750 F.3d 492; *United States v. Hatch*, 722 F.3d 1193 (10th Cir. 2013); *see also United States v. Henery*, 60 F. Supp. 3d 1126 (D. Idaho 2014).

Defendant argues that these out-of-circuit cases were wrongly decided because *Jones* has been overruled by *City of Boerne v. Flores*, 521 U.S. 507 (1997), *superseded by statute*, Religious Land Use and Institutionalized Persons Act of 2000, Pub. L. No. 106-274, 114 Stat. 803, *as recognized in Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2761-62 (2014) and *Shelby Cty. v. Holder*, 133 S. Ct. 2612 (2013). *See* Defense Brief at 4-5. Defendant contends that, under *City of Boerne* and *Shelby County*, § 249(a)(1) is an unconstitutional exercise of Congress's power under the Thirteenth Amendment. *Id.* at 6. Defendant further argues that § 249(a)(1) is unconstitutional even if *Jones* applies, both because Congress could not rationally determine that racially motivated violence is a badge or incident of slavery and because the statute is contrary to federalism principles. *See id.* at 8-10. The government argues that *Jones* has not been overruled and that § 249(a)(1) comports with the Thirteenth Amendment under the *Jones* framework. "Brief in Support of the Resistance to Defendant's Motion to Dismiss" ("Government Brief") at 7-8.

---

[1] In *United States v. Maybee*, 687 F.3d 1026 (8th Cir. 2012), the Eighth Circuit upheld § 249(a)(1) against a defendant's "single and quite narrow challenge to [its] constitutionality." *Maybee*, 687 F.3d at 1030-31. The defendant argued that § 249(a)(1) was unconstitutional under the Thirteenth Amendment because "the victim's enjoyment of a public benefit" was not a statutory element of the offense. *Id.* at 1031. The Eighth Circuit rejected the defendant's argument, but declined to comment more generally on the statute's constitutionality. *See id.*

A. Jones v. Alfred H. Mayer Co.

In 1968, the Supreme Court addressed a challenge to 42 U.S.C. § 1982, which guarantees to all citizens "the same right . . . as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property." *See Jones*, 392 U.S. at 412. The Court considered whether Congress had the constitutional authority to enact a statute with such scope. *See id.* at 437-44. Central to its analysis were statements by Senator Trumbull, one of the chief proponents of the passage of the Thirteenth Amendment, which he made in support of the Civil Rights Act of 1866:

> I have no doubt that under [the Thirteenth Amendment] we may destroy all these discriminations in civil rights against the black man; and if we cannot, our constitutional amendment amounts to nothing. It was for that purpose that the second clause of that amendment was adopted, which says that Congress shall have authority, by appropriate legislation, to carry into effect the article prohibiting slavery. Who is to decide what that appropriate legislation is to be? The Congress of the United States; and it is for Congress to adopt such appropriate legislation as it may think proper, so that it be a means to accomplish the end.

Id. at 440 (quoting Cong. Globe, 39th Cong., 1st Sess., 322) (alterations omitted). The Court concurred with Senator Trumbull's interpretation, stating that "[s]urely Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation."[2] *Id.* at 440. Because Congress's determination was not "an irrational one,"

---

[2] The Court recognized that a prior case, *Hodge v. United States*, 203 U.S. 1 (1906), had interpreted the scope of the Thirteenth Amendment far more narrowly. *Jones*, 392 U.S. at 441 n.78. However, the Court found that *Hodges* "rested upon a concept of congressional power under the Thirteenth Amendment . . . incompatible with the history and purpose of the [a]mendment itself," and explicitly overruled the case to the extent it stood for a more limited view of Congress's power under the amendment. *Id.*

the Court upheld § 1982 as consistent with Congress's power under the Thirteenth Amendment. *Id.* at 440-41.

Since *Jones*, courts have defined Congress's power under the Thirteenth Amendment using the "rational determination" standard. *See, e.g.*, *Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971) (relying on *Jones* to conclude that Congress acted within its power to enact 42 U.S.C. § 1985); *United States v. Allen*, 341 F.3d 870, 883-84 (9th Cir. 2003) (relying on *Jones* to conclude that Congress acted within its power to enact 18 U.S.C. § 245(b)(2)(B)); *United States v. Nelson*, 277 F.3d 164, 190-91 (2d Cir. 2002) (same); *United States v. Bledsoe*, 728 F.2d 1094, 1097 (8th Cir. 1984) (same).

However, Congress's powers under the enforcement clauses of the other Reconstruction Amendments, the Fourteenth and Fifteenth, are assessed under different standards. In *City of Boerne*, the Supreme Court examined the relevant text, legislative history and case law to conclude that Congress's power to enforce the Fourteenth Amendment is limited to enacting preventative or remedial legislation to ensure against constitutional violations perpetrated by states against their citizens. *See City of Boerne*, 521 U.S. at 517-20. The Fourteenth Amendment enforcement power does not, therefore, provide Congress with the power to decide "what constitutes a constitutional violation." *Id.* at 519. In *Shelby County*, the Court concluded that legislation passed under Congress's Fifteenth Amendment enforcement power must remedy contemporary discrimination, rather than historical discrimination. *See Shelby Cty.*, 133 S. Ct. at 2629 ("The Amendment is not designed to punish for the past; its purpose is to ensure a better future.").

Defendant argues that *City of Boerne* and *Shelby County*, both decided more recently than *Jones*, apply to the Thirteenth Amendment and overrule *Jones*. *See* Defense Brief at 6-7. However, neither of those cases implicated the Thirteenth Amendment in its holding or analysis. On the other hand, *Jones* is a Supreme Court precedent with direct

application to the Thirteenth Amendment and, accordingly, to this case. "If a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [lower courts] should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989); *see also Northport Health Servs. of Ark., LLC v. Rutherford*, 605 F.3d 483, 490 (8th Cir. 2010) ("The Supreme Court 'does not normally overturn, or so dramatically limit, earlier authority *sub silentio*.'" (quoting *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 18 (2000))). In short, it is not the court's role to conclude that the Supreme Court has implicitly overruled itself, and the court will not do so. Whether or not *City of Boerne* and *Shelby County* have created "a growing tension" among interpretations of the three Reconstruction Amendments, *see Cannon*, 750 F.3d at 509 (Elrod, J., concurring), *Jones* continues to be binding precedent, absent a contrary directive from the Supreme Court. *Accord Cannon*, 750 F.3d at 505; *Hatch*, 722 F.3d at 1205; *Henery*, 60 F. Supp. 3d at 1131.

B. Rational Determination Analysis

The court turns now to an assessment of Congress's determination that racially motivated violence is a badge or incident of slavery and thereby subject to regulation under the Thirteenth Amendment.

Defendant argues that "the focus of the Amendment, beyond ending slavery and involuntary servitude, was economic rights of former slaves." Defense Brief at 8. Because § 249(a)(1) does not relate to economic rights, Defendant argues that it does not implicate any badge or incident of slavery. *Id.* Defendant's view is unavailing. The Amendment's focus is both the badges *and* incidents of slavery. Incidents of slavery refer "to the legal restrictions placed on slaves," such as the inability to own property or enter into contracts. *See Hatch*, 722 F.3d at 1198. Defendant's view that the Thirteenth

Amendment focuses on "economic rights" appears to contemplate only these incidents of slavery. However, badges of slavery can reach beyond purely legal restrictions to encompass "the psychological scars that slavery inflicted upon slaves" and the subjugation of slaves to a lesser status—including "widespread private violence and discrimination, disparate enforcement of racially neutral laws, and eventually, Jim Crow laws." *Id.* (quoting Jennifer Mason McAward, *Defining the Badges and Incidents of Slavery*, 14 U. Pa. J. Const. L. 561, 581 (2012)) (alteration omitted).

Consistent with the traditional definitions of badges and incidents of slavery, Congress justified its enactment of § 249(a)(1) on various grounds, including the following:

> For generations, the institutions of slavery and involuntary servitude were defined by the race, color, and ancestry of those held in bondage. Slavery and involuntary servitude were enforced, both prior to and after the adoption of the 13th [A]mendment to the Constitution of the United States, through widespread public and private violence directed at persons because of their race, color, or ancestry, or perceived race, color, or ancestry. Accordingly, eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.

Matthew Shepard & James Byrd, Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, 123 Stat. 2836 (2009), § 4702(7).[3]

---

[3] Congress did not support the statute solely on historical grounds. Congress also found that racially motivated violence "poses a serious national problem," 123 Stat. 2835, § 4702(1), and that "[e]xisting [f]ederal law is inadequate to address this problem," *id.* § 4702(4). However, as the court concluded above, *Shelby County* does not apply to the instant case and the constitutionality of the statutory scheme does not turn on Congress's findings of contemporary discrimination. Therefore, the court takes no position as to whether these findings alone would render § 249(a)(1) constitutional under an alternative interpretation of the Thirteenth Amendment.

Congress's findings are supported by historical accounts, which identify threatened and actual violence as vital components of the institution of slavery. *See Hatch*, 722 F.3d at 1206 (recognizing that "unrestrained master-on-slave violence [was] one of slavery's most necessary features" and "operate[d] to produce a slave's necessary obedience" (quoting *State v. Mann*, 13 N.C. (2 Dev.) 263, 1829 WL 252, at *2-3) (internal quotation marks omitted)); *see also id.* (compiling various sources linking violence to the institution of slavery). Therefore, Congress rationally determined that racially motivated violence, as contemplated by § 249(a)(1), is a badge of slavery.

Defendant argues that, even if the Thirteenth Amendment permits Congress to regulate violence as a badge of slavery, § 249(a)(1) exceeds the scope of the Amendment because the statute is not limited to protecting African-Americans. *See* Defense Brief at 8. It is true that § 249(a)(1) regulates acts of violence taken against a person because of real or perceived "race, color, religion, or national origin"—without reference to any particular race. *See* 18 U.S.C. § 249(a)(1). However, each identity characteristic encompassed by § 249(a)(1) fits within the understanding of "race" at the time of the Thirteenth Amendment's passage. *See, e.g.*, 123 Stat. 2836, § 4702(8) ("Both at the time when the 13th, 14th, and 15th [A]mendments to the Constitution of the United States were adopted, and continuing to date, members of certain religious and national origin groups were and are perceived to be distinct 'races.'"); *Hatch*, 722 F.3d at 1205 (citing *Saint Francis College v. Al-Khazraji*, 481 U.S. 604, 613 (1987); *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617-18 (1987)). As such, targeting a victim because of any characteristic enumerated in § 249(a)(1) creates a race-based power dynamic of aggressor and victim, and Congress could rationally determine that such an effect is a badge of slavery in light of the connection between racial animus and the institution of slavery. Nothing about Congress's decision to extend protection to all races makes its determination regarding badges of slavery any less rational. Therefore, Congress rationally determined

that racially motivated violence, irrespective of the particular races involved, is a badge of slavery. Accordingly, Congress's enactment of § 249(a)(1) comports with its power under the Thirteenth Amendment.

C. Tenth Amendment

Defendant argues that § 249(a)(1) interferes with the police powers traditionally reserved to the states under the Tenth Amendment of the United States Constitution. *See* Defense Motion at 9-10.

The Tenth Amendment provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X. The Tenth Amendment does not independently impose limits on the federal government, but instead "confirms" preexisting federalism principles. *New York v. United States*, 505 U.S. 144, 156-57 (1992). Federalism demands that, while "[t]he States have broad authority to enact legislation for the public good—what [is] often called a 'police power,'" the federal government "can exercise only the powers granted to it." *Bond v. United States* (*Bond II*), 134 S. Ct. 2077, 2086 (2014) (quoting *McCulloch v. Maryland*, 4 Wheat. 316, 405, 4 L. Ed. 579 (1819)). A party may, in a proper case, "challenge a law as enacted in contravention of constitutional principles of federalism." *Bond v. United States* (*Bond I*), 564 U.S. 211, 131 S. Ct. 2355, 2365 (2011). However, "a Tenth Amendment challenge to a statute 'necessarily' fails if the statute is a valid exercise of a power relegated to Congress." *United States v. Louper-Morris*, 672 F.3d 539, 563 (8th Cir. 2012) (quoting *United States v. Wright*, 128 F.3d 1274, 1276 (8th Cir. 1997)).

The Thirteenth Amendment explicitly delegates to Congress the "power to enforce [the abolition of slavery and involuntary servitude] by appropriate legislation." U.S. Const. amend. XIII, § 2. As the court discussed above, Congress's enactment of § 249(a)(1) comported with this power. Therefore, because the Constitution granted

Congress the power to enact § 249(a)(1), the statute does not improperly intrude on the state police power and comports with the Tenth Amendment.

IV. CONCLUSION

For the foregoing reasons, Defendant Randy Joe Metcalf's "Motion to Dismiss Indictment" (docket no. 15) is **DENIED**.

IT IS SO ORDERED.

DATED this 2nd day of March, 2016.

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA