No. 21-7234

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IN THE SUPREME COURT OF THE UNITED STATES

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DYLANN STORM ROOF, PETITIONER

v.

UNITED STATES OF AMERICA

(CAPITAL CASE)

---

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

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# BRIEF FOR THE UNITED STATES IN OPPOSITION

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CAPITAL CASE

## QUESTIONS PRESENTED

1. Whether petitioner's Sixth Amendment right to the assistance of counsel entitled him to override counsel's determinations about the mitigation evidence to present during the penalty phase of his capital trial.

2. Whether 18 U.S.C. 247(a)(2), which prohibits intentional obstruction of the free exercise of religious beliefs in circumstances that are "in or affect[] interstate or foreign commerce," 18 U.S.C. 247(b), exceeds Congress's Commerce Clause power as applied to petitioner's mass shooting of worshippers in a Charleston church, which he planned using the internet, propagandized on a foreign-hosted website, and carried out with instruments that traveled in interstate commerce.

3. Whether 18 U.S.C. 249(a)(1), which makes it a crime willfully to cause bodily injury "because of the actual or perceived race, color, religion, or national origin of any person," is a facially valid exercise of Congress's power under Section 2 of the Thirteenth Amendment.

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-94a) is reported at 10 F.4th 314. An opinion of the district court memorializing a pretrial ruling (Pet. App. 121a-126a) is unpublished. The opinion of the district court denying petitioner's motion to dismiss (Pet. App. 128a-150a) is reported at 225 F. Supp. 3d 438. The opinion of the district court denying petitioner's motion for a new trial or a judgment of acquittal (Pet. App. 151a-171a) is reported at 252 F. Supp. 3d 469.

## JURISDICTION

The judgment of the court of appeals was entered on August 25, 2021. A petition for rehearing was denied on September 27, 2021 (Pet. App. 175a-176a). On December 15, 2021, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including February 24, 2022, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a jury trial in the United States District Court for the District of South Carolina, petitioner was convicted on nine counts of racially motivated hate crimes resulting in death, in violation of 18 U.S.C. 249(a)(1); three counts of racially motivated hate crimes involving an attempt to kill, in violation of 18 U.S.C. 249(a)(1); nine counts of obstructing religious exercise resulting in death, in violation of 18 U.S.C. 247(a)(2) (2012) and 18 U.S.C. 247(d)(1); three counts of obstructing religious exercise, involving an attempt to kill and use of a dangerous weapon, in violation of 18 U.S.C. 247(a)(2) (2012), 18 U.S.C. 247(d)(1), and (d)(3); and nine counts of causing death by murder by using a firearm to commit murder during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A), (j)(1), and 18 U.S.C. 924(c)(1)(C) (2012 & Supp. II 2015). Indictment 4-10; Judgment 1.

The district court sentenced petitioner to death for each violation of Section 247 resulting in death and for each violation of Section 924 resulting in death, and to life imprisonment on all other counts. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-94a.

1. On June 17, 2015, 12 black parishioners and church leaders of the historic Emanuel African Methodist Episcopal Church (Mother Emanuel) in Charleston, South Carolina, gathered in the church's Fellowship Hall for their weekly Bible study. Pet. App. 19a-20a. At 8:16 p.m., petitioner entered the church carrying a tactical bag that concealed a Glock .45 semi-automatic handgun and eight loaded magazines. Id. at 19a-20a, 69a. The parishioners welcomed petitioner, handing him a Bible and a study sheet. Id. at 20a.

Petitioner sat with the parishioners for about 45 minutes. Pet. App. 20a. Then, as the parishioners rose and shut their eyes for a closing prayer, petitioner took out his gun and started shooting them. Ibid. He reloaded multiple times as the parishioners dove under tables to avoid the gunfire. Ibid. After firing approximately 74 bullets, petitioner approached Polly Sheppard, who was praying aloud. Ibid.; C.A. App. 5017. Petitioner told Sheppard to "shut up" and asked if he had shot her yet. Ibid. When she responded "no," petitioner said, "I'm not

going to. I'm going to leave you here to tell the story." C.A. App. 5017; see Pet. App. 20a.

Petitioner left Mother Emanuel around 9:06 p.m. Pet. App. 20a. Seven of the parishioners were dead when police arrived, and another two victims died soon after. Ibid. Reverend Sharonda Coleman-Singleton, Cynthia Hurd, Susie Jackson, Ethel Lee Lance, Reverend DePayne Middleton-Doctor, Reverend Clementa Pinckney, Tywanza Sanders, Reverend Daniel Simmons, Sr., and Reverend Myra Thompson were all killed by petitioner's shooting spree. Ibid. Sheppard survived, as did Felicia Sanders and her granddaughter K.M., both of whom had played dead under a table. C.A. App. 3700-3701, 3751-3752, 3761-3763, 5017; Pet. App. 20a, 131a.

Officers stopped petitioner's car the next morning in Shelby, North Carolina. Pet. App. 20a. He agreed to an interview with FBI agents and confessed. Ibid. Petitioner referred to himself as a "white nationalist" and told agents he committed the crime because "black people are killing white people every day" and "rap[ing] white women." Ibid. (citation omitted; brackets in original). He admitted that he was trying to agitate race relations, in the hope that it could potentially lead to a race war. Ibid.

To plan his crime, petitioner used the internet to research South Carolina's black churches, settling on Mother Emanuel because of its historic importance. Pet. App. 20a, 69a. He also

used his home telephone to call Mother Emanuel and a GPS device to navigate to the area surrounding Mother Emanuel for repeated surveillance trips. Id. at 69a. He purchased and used a gun, ammunition, a tactical pouch, and magazines that had traveled in interstate or foreign commerce. Ibid. On the day of the crime, petitioner posted writings on his website, hosted on a foreign internet server, foreshadowing his attack and explaining his racist ideology. Id. at 21a, 69a. He then used a GPS device and an interstate highway to reach Mother Emanuel from his home in Columbia, South Carolina. Id. at 69a.

2. A grand jury in the District of South Carolina returned an indictment charging petitioner with nine counts of racially motivated hate crimes resulting in death, in violation of 18 U.S.C. 249(a)(1); three counts of racially motivated hate crimes involving an attempt to kill, in violation of 18 U.S.C. 249(a)(1); nine counts of obstructing religious exercise resulting in death, in violation of 18 U.S.C. 247(a)(2) (2012) and 18 U.S.C. 247(d)(1); three counts of obstructing religious exercise, involving an attempt to kill and use of a dangerous weapon, in violation of 18 U.S.C. 247(a)(2) (2012), 18 U.S.C. 247(d)(1), and (d)(3); and nine counts of causing death by murder by using a firearm to commit murder during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A), (j)(1), and 18 U.S.C. 924(c)(1)(C) (2012 & Supp. II 2015). Indictment 4-10. The government gave notice of

its intent to seek capital punishment and declined petitioner's offer to plead guilty in exchange for life imprisonment. Pet. App. 21a.

Petitioner moved to dismiss the indictment on the theories that Section 247 exceeds Congress's authority under the Commerce Clause both on its face and as applied and that Section 249(a)(1) exceeds Congress's power under the Thirteenth Amendment. See Pet. App. 131a. The district court denied the motion. Id. at 132a-146a.

3. As trial approached, petitioner expressed to his attorneys his goal of avoiding capital punishment. C.A. App. 574, 662. And during a competency evaluation, he told the court's examiner that he wanted to stay alive as long as possible and that part of his strategy was to insist on a trial that would create appellate issues and thereby "prolong * * * his life span." Id. at 5563; see id. at 5545.

Defense counsel explored various aspects of mitigation, including petitioner's medical history and mental health. C.A. App. 537-546. But petitioner became upset when he learned that his lawyers planned to call an autism expert during the trial's penalty phase. Pet. App. 22a. Petitioner wrote a letter to the prosecution stating, "what my lawyers are planning to say in my defense is a lie and will be said without my consent or permission." Id. at 22a, 35a (quoting C.A. App. 587).

At defense counsel's request, the district court held an ex parte hearing to address the situation. See Pet. App. 22a, 35a; C.A. App. 573-574. Counsel argued that aside from certain fundamental issues entrusted to a defendant concerning the objectives of the representation -- such as whether to plead guilty, waive a jury trial, testify in his own defense, or take an appeal -- counsel has full authority to manage the trial, including decisions about what evidence to introduce at capital sentencing. Pet. App. 35a; C.A. App. 579-580. In response to questions from the court, petitioner stated that he would "rather die than be labeled autistic" and that mental-health mitigation evidence "discredits the reason why [he] did the crime." Pet. App. 22a-23a, 36a, 106a-109a (citation omitted). Defense counsel stated that they had considered petitioner's perspective but determined, in their professional judgment, that presenting the evidence was in petitioner's best interests because it was his "only sentencing defense." Id. at 23a, 36a; C.A. App. 833.

The district court agreed with defense counsel that counsel's authority to make strategic judgments includes the authority to make judgments about the evidence to introduce at capital sentencing. Pet. App. 36a, 121a-126a; C.A. App. 1741-1743. The court explained that the Sixth Amendment does not give a defendant the right "to instruct his counsel not to present certain mitigation evidence in his capital sentencing proceeding, when

counsel believe they have a professional obligation to present such evidence." Pet. App. 124a; see id. at 126a. After the district court's ruling, petitioner invoked his Sixth Amendment right to self-representation under Faretta v. California, 422 U.S. 806 (1975). Pet. App. 36a. The court granted that request and appointed petitioner's lawyers as standby counsel. Id. at 36a-37a. Petitioner represented himself during voir dire, then asked to be represented by counsel for the guilt phase, which the court allowed. Id. at 37a-38a.

4. The jury found petitioner guilty on all counts. Pet. App. 22a; Judgment 1. After the verdict, petitioner advised the court that he wished to represent himself during the penalty phase. Pet. App. 38a; C.A. App. 5180-5181. The court accepted petitioner's waiver of the right to counsel and reappointed his lawyers as standby counsel. C.A. App. 5181. Petitioner did not cross-examine any witnesses or present any evidence during the penalty phase, but he delivered an opening statement and closing argument. Pet. 8; C.A. App. 5793-5794, 6712-6714.

The jury found four independent gateway factors that each made petitioner eligible for capital punishment, further found that aggravating factors outweighed mitigating factors, and voted unanimously for a capital sentence on each relevant count. C.A. App. 6793-6794, 6806. The district court then imposed such sentences for the violations of Sections 247 and 924(c) resulting

in death, and imposed sentences of life imprisonment for the Section 249(a)(1) violations and the Section 247 violations involving an attempted killing. Judgment 2-3; Pet. App. 56a.

5. The court of appeals affirmed. Pet. App. 1a-94a.

a. Petitioner contended that the Sixth Amendment entitled him to override his attorneys' decision to present evidence of mental health in mitigation and that his waiver of counsel was invalid because it was predicated on the district court's contrary determination. Pet. App. 38a. He relied principally on this Court's decision in McCoy v. Louisiana, 138 S. Ct. 1500 (2018), which held that "a defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experience[]-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty." Id. at 1505.

McCoy explained that a counseled defendant may set the "objectives" of his defense, including "the objective * * * to assert innocence," and that defense counsel is responsible for "[t]rial management" and "strategic choices," including "'what arguments to pursue.'" 138 S. Ct. at 1508 (citation omitted). The court of appeals rejected petitioner's assertion that a desire not to be portrayed as autistic or mentally ill is an "objective" of the defense, explaining that the "presentation of mental health mitigation evidence" is "'a classic tactical decision left to counsel . . . even when the client disagrees.'" Pet. App. 40a

(citation omitted). The court observed that McCoy "does not subvert the long-established distinction between an objective and tactics" and that petitioner's interpretation of McCoy "would leave little remaining in the tactics category by allowing defendants to define their objectives too specifically." Id. at 41a.

b. Petitioner separately challenged his convictions under 18 U.S.C. 247(a)(2) (2012) and 18 U.S.C. 247(d)(1), for intentionally obstructing persons in the free exercise of their religious beliefs by force and threat of force, as exceeding Congress's power under the Commerce Clause. Pet. App. 68a. The court of appeals rejected his facial claim, pointing to the statute's jurisdictional element requiring proof that "the offense is in or affects interstate or foreign commerce," id. at 70a (quoting 18 U.S.C. 247(b)), and upheld the constitutionality of the statute as applied, id. at 72a-75a.

The court of appeals pointed to this Court's instruction in United States v. Lopez, 514 U.S. 549 (1995), that Congress's commerce power "extends to regulating instrumentalities of interstate commerce even when the threat of their misuse 'may come only from intrastate activities.'" Pet. App. 74a (quoting Lopez, 514 U.S. at 558). It observed that petitioner had used the internet, a channel and instrumentality of interstate commerce, to "conduct[] internet research to pick his church target and to

maximize the impact of his attack," and "to spread his racist ideology" and "advertise" the "rampage that he would undertake." Id. at 74a. The court found that internet usage to be "closely linked, both in purpose and temporal proximity," to his crimes. Ibid. And it further found that even if petitioner's internet use alone did not bring his conduct within the scope of Congress's authority, his crime was marked by "multiple other connections to the means of commerce," including his use of a telephone to call Mother Emanuel, a GPS device to navigate to the church, and an interstate highway within South Carolina to travel to the church, including on the day of the attack. Id. at 75a. The court did not reach the government's separate argument that petitioner's use of a gun, ammunition, and tactical pouch that had previously moved in interstate commerce independently established the requisite nexus with commerce. Id. at 75a n.46.

c. Petitioner additionally challenged his convictions under Section 249(a)(1), for willfully causing bodily injury to his victims based on their race, on the theory that the statute exceeds Congress's enforcement authority under the Thirteenth Amendment. Pet. App. 78a. Like every other court of appeals to consider the issue, the court of appeals here recognized that Congress's authority under that Amendment to "enforce * * * by appropriate legislation" the constitutional ban on "slavery [and] involuntary servitude * * * within the United States," U.S. Const. Amend.

XIII, includes the authority to enact Section 249(a)(1). Pet. App. 79a-80a & n.52.

The court of appeals pointed to this Court's recognition in Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968), that the Constitution gives "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.'" Pet. App. 80a (quoting Jones, 392 U.S. at 439). The court explained that Congress had "ample grounds for finding that '[s]lavery and involuntary servitude were enforced . . . through widespread public and private violence directed at persons because of their race, color, or ancestry,'" such that "'eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.'" Ibid. (quoting 34 U.S.C. 30501(7)) (brackets in original).

The court of appeals rejected petitioner's argument that Section 249(a)(1) should be evaluated pursuant to the tests for enforcement legislation under the Fourteenth and Fifteenth Amendments, as set forth in City of Boerne v. Flores, 521 U.S. 507 (1997), and Shelby County v. Holder, 570 U.S. 529 (2013). See Pet. App. 80a-82a. The court observed that neither decision mentions the Thirteenth Amendment or Jones, and "neither discusses Congress's

power to identify and legislate against the badges and incidents of slavery." Id. at 82a.

ARGUMENT

Petitioner renews his contentions that his waiver of the right to counsel was invalid because the district court misadvised him as to whether he could control counsel's presentation of mitigation evidence (Pet. 10-21); that 18 U.S.C. 247(a)(2), as applied to his planning, execution, and proselytization of his shooting spree, exceeds Congress's Commerce Clause power (Pet. 21-32); and that 18 U.S.C. 249(a)(1) is facially unconstitutional (Pet. 32-40). The court of appeals correctly rejected those contentions, and its decision does not implicate any conflict among the lower courts warranting this Court's intervention. Further review is unwarranted.

1. The court of appeals correctly determined that petitioner was not entitled to enjoy the assistance of counsel while directing presentation of mitigation evidence. Any conflict on that question in the lower courts is far narrower than petitioner suggests and does not warrant this Court's review.

a. The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defence." U.S. Const. Amend. VI. Although a criminal defendant who chooses to be represented by counsel retains "the ultimate authority to make certain

fundamental decisions regarding the case" -- namely, whether to plead guilty or otherwise concede guilt, waive a jury trial, testify in his own behalf, or appeal -- he does not have a more general right to supersede counsel's judgment on how to present a defense. Jones v. Barnes, 463 U.S. 745, 751 (1983); see McCoy v. Louisiana, 138 S. Ct. 1500, 1505, 1508 (2018). As this Court has emphasized, "the lawyer has -- and must have -- full authority to manage the conduct of the trial." Taylor v. Illinois, 484 U.S. 400, 418 (1988); Gonzalez v. United States, 553 U.S. 242, 248-249 (2008).

Counsel thus exercises strategic judgment about "what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence." McCoy, 138 S. Ct. at 1508 (citation omitted); see, e.g., New York v. Hill, 528 U.S. 110, 114-115 (2000); see also Brookhart v. Janis, 384 U.S. 1, 8 (1966) (opinion of Harlan, J.) ("[A] lawyer may properly make a tactical choice of how to run a trial even in the face of [the] client's * * * explicit disapproval."); American Bar Ass'n, Criminal Justice Standards for the Defense Function § 4-5.2 (4th ed. 2017) (describing division of decision-making authority between client and counsel). An attorney is not simply "an adviser to a client with the client's having the final say at each point." United States v. Chapman, 593 F.3d 365, 370 (4th Cir. 2010), cert. denied, 562 U.S. 1134 (2011) (quoting United

States v. Burke, 257 F.3d 1321, 1323 (11th Cir. 2001), cert. denied, 537 U.S. 940 (2002)). Instead, defense counsel "is an officer of the court and a professional advocate pursuing a result -- almost always, acquittal -- within the confines of the law; his chief reason for being present is to exercise his professional judgment to decide tactics." Ibid. (quoting Burke, 257 F.3d at 1323); see Jones, 463 U.S. at 751.

In cases where a defendant disagrees with his attorney's strategic decisions, he may "preserve actual control over the case he chooses to present to the jury" by waiving the right to counsel and representing himself. McKaskle v. Wiggins, 465 U.S. 168, 178 (1984); see Faretta v. California, 422 U.S. 806, 819 (1975). But where a defendant decides to be represented by counsel, he necessarily "consent[s]" to his counsel's control over "trial strategy." Id. at 820.

b. The decision below properly applied the foregoing principles. Consistent with this Court's recognition that a defendant retains the autonomy to make "fundamental decisions" regarding the objectives of his defense, Jones, 463 U.S. at 751, petitioner made the decision to plead not guilty and to invoke his right to a jury trial, see id. at 759. He also determined that the ultimate objective of his defense was to avoid the death penalty, see, e.g., C.A. App. 77, 161, 373, 574, 5563 -- an

objective that his attorneys respected and sought to achieve, see, e.g., id. at 662.

Petitioner was not, however, entitled to control his counsel's strategy for achieving that objective by dictating the mitigation evidence that they could introduce. Those strategic judgments fall squarely within counsel's purview to determine "what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence," Gonzalez, 553 U.S. at 248 (citations omitted), in an effort to achieve the defendant's objectives. Unlike the decisions reserved to a defendant, such strategic judgments do not involve the defendant's right to assert his innocence or the assertion (or forfeiture) of a legal entitlement, like the right to a jury. Instead, the decision of what mitigation evidence to introduce is "a classic tactical decision left to counsel." Pet. App. 40a (citation omitted).

In challenging the decision below, petitioner does not directly engage with the scope of counsel's authority to make strategic judgments, and instead simply asserts that a desire not to present mental-health evidence is an "autonomy" interest akin to the decision whether to concede guilt that McCoy held to be within the defendant's control. Pet. 17-18. But McCoy did not confer on a defendant a comprehensive autonomy right "over his defense," as petitioner suggests. Pet. 17; see, e.g., United

States v. Rosemond, 958 F.3d 111, 123 (2d Cir. 2020) ("McCoy [i]s limited to a defendant preventing his attorney from admitting he is guilty of the crime with which he is charged."), cert. denied, 141 S. Ct. 1057 (2021).

To the contrary, McCoy reaffirmed that "[t]rial management is the lawyer's province" and distinguished "choices about what the client's objectives in fact are" (which the client makes) from "strategic choices about how best to achieve a client's objectives" (which counsel makes). 138 S. Ct. at 1508. Here, petitioner's objective was to obtain a non-capital sentence, and the introduction of mitigation evidence was a strategic decision to achieve that objective. Petitioner's contrary view would render the line between "objectives" and "strategic choices" incoherent and establish an unprecedented right to insist on the assistance of counsel while simultaneously insisting on superseding any number of counsel's strategic judgments. See Pet. App. 41a.

Petitioner asserts (Pet. 20-21) that even if counsel controls some decisions about what mitigation evidence to introduce, the decision to introduce evidence of mental health should be treated differently because it "resembles the choice to present an insanity or diminished capacity defense, which nearly all jurisdictions reserve for defendants." Pet. 20 (citing, e.g., United States v. Read, 918 F.3d 712, 719 n.2 (9th Cir. 2019)). But "an insanity defense entails an admission of guilt," Pet. App. 41a (citing 18

U.S.C. 17(a)), and a defendant is subject to confinement if the defense is successful, see ibid. (citing 18 U.S.C. 4243(a) and (e)).

Petitioner's reliance on Schriro v. Landrigan, 550 U.S. 465, 475 (2007), and Blystone v. Pennsylvania, 494 U.S. 299, 306 n.4 (1990), is misplaced. In Landrigan, the Court found no unreasonable application of clearly established law in a lower court's finding that counsel had not been constitutionally ineffective in declining to investigate mitigating evidence on behalf of a defendant who had told counsel that he did not want counsel to present any such evidence. 550 U.S. at 478. Not only does this case not involve an ineffective-assistance claim, which would be governed by a different test (compare McCoy, 138 S. Ct. at 1508, with Strickland v. Washington, 466 U.S. 668, 687 (1984)), but "the fact that counsel could be found not ineffective for conforming to the wishes of a defendant does not mean that counsel must conform to the defendant's wishes," Pet. App. 40a n.16. And Blystone did not involve any question about the Sixth Amendment, but simply observed in a footnote that the defendant had decided not to present any mitigation at sentencing, contrary to counsel's advice. 494 U.S. at 306 n.4.

c. Petitioner fails to identify any meaningful disagreement in the lower courts on the application of well-settled Sixth Amendment doctrine to his case.

Petitioner principally relies (Pet. 11 n.4, 12 n.9) on decisions similar to Landrigan, which find that attorneys were not constitutionally ineffective for acquiescing to a defendant's desire not to present mitigation evidence. See Ramirez v. Stephens, 641 Fed. Appx. 312, 326-327 (5th Cir.), cert. denied, 137 S. Ct. 279 (2016); Tyler v. Mitchell, 416 F.3d 500, 504 (6th Cir. 2005), cert. denied, 547 U.S. 1074 (2006); Wallace v. Davis, 362 F.3d 914, 919-920 (7th Cir.), cert. denied, 543 U.S. 1008 (2004); Singleton v. Lockhart, 962 F.2d 1315, 1316, 1321-1322 (8th Cir.), cert. denied, 506 U.S. 964 (1992); People v. Brown, 326 P.3d 188, 204-211 (Cal. 2014), cert. denied, 574 U.S. 1160 (2015); State v. Maestas, 299 P.3d 892, 958-962 (Utah 2012), cert. denied, 568 U.S. 1252 (2013); Commonwealth v. Puksar, 951 A.2d 267, 287-293 (Pa. 2008); Brawner v. State, 947 So. 2d 254, 263-264 (Miss. 2006); Zagorski v. State, 983 S.W.2d 654, 657 (Tenn. 1998), cert. denied, 528 U.S. 829 (1999); Trimble v. State, 693 S.W.2d 267, 279 (Mo. Ct. App. 1985); see also Shaw v. State, 207 So. 3d 79, 115 (Ala. Crim. App. 2014) (defendant argued "that the circuit court interfered with his right to counsel by permitting him to waive the presentation of mitigation evidence"), cert. denied, 137 S. Ct. 828 (2017); Boyd v. State, 910 So. 2d 167, 189-190 (Fla. 2005) (per curiam) (similar), cert. denied, 546 U.S. 1179 (2006); State v. Grooms, 540 S.E.2d 713, 734-735 (N.C. 2000) (similar), cert. denied, 534 U.S. 838 (2001); State v. White, 508 S.E.2d 253, 271

(N.C. 1998) (similar), cert. denied, 527 U.S. 1026 (1999); State v. Roscoe, 910 P.2d 635, 649-651 (Ariz.) (similar), cert. denied, 519 U.S. 854 (1996); cf. State v. Thomas, 625 S.W.2d 115, 123-124 (Mo. 1981) (counsel not ineffective for failing to present mental incapacity defense where defendant forbade that defense and insisted he did not commit the crime). As discussed above, such decisions do not suggest that counsel must accede to such a request, and thus do not conflict with other decisions (see Pet. 13 & n.11) that take no position on that issue.

Next, in many of the decisions that petitioner cites (Pet. 11 n.4, 12 n.9, 14 n.12), the defendant decided to waive mitigation altogether because he preferred death to life imprisonment. In upholding counsel's decision to comply with that request, those decisions recognized that foregoing mitigation advanced the defendant's objective of avoiding life imprisonment. See Ramirez, 641 Fed. Appx. at 326-327; Singleton, 962 F.2d at 1321-1322; Brown, 326 P.3d at 204-211; State v. Hausner, 280 P.3d 604, 628-630 (Ariz. 2012); Zagorski, 983 S.W.2d at 655-661; Morrison v. State, 373 S.E.2d 506, 508-509 (Ga. 1988), cert. denied, 490 U.S. 1012 (1989); see also People v. Amezcua, 434 P.3d 1121, 1146-1149 (Cal. 2019) (similar); St. Clair v. Commonwealth, 140 S.W.3d 510, 560-561 (Ky. 2004) (similar). Here, in contrast, petitioner's acknowledged objective was life imprisonment. As one of his own cited cases explains, the strategic judgment about the evidence to present in

furtherance of that objective belonged to counsel. See State v. Cross, 132 P.3d 80, 95 (Wash.), cert. denied, 549 U.S. 1022 (2006) (concluding that "[a] competent defendant may forbid counsel to put on a mitigation case if his goal is to have the death penalty imposed," but once the defendant decides to seek life imprisonment, "the strategy is largely in the hands of his attorneys"), abrogated on other grounds by State v. Gregory, 427 P.3d 621 (2018).

Several decisions cited by petitioner (Pet. 11 n.4) assess whether a defendant's waiver of the right to present mitigating evidence was knowing and intelligent. That is a different question, governed by a different legal standard, from whether counsel is required to acquiesce to a defendant's desire not to present specific evidence or testimony in mitigation. See Singleton, 962 F.2d at 1321; Boyd, 910 So. 2d at 188; St. Clair, 140 S.W.3d at 560-561; State v. Barton, 844 N.E.2d 307, 314-315 (Ohio 2006). Other decisions (Pet. 11 n.4, 12 n.9) are a variant on that same theme, finding a reasonable mitigation investigation was necessary to ensure the validity of a mitigation waiver. See Blystone v. Horn, 664 F.3d 397, 422 n.21 (3d Cir. 2011); Dobbs v. Turpin, 142 F.3d 1383, 1388 (11th Cir. 1998); Grim v. State, 971 So. 2d 85, 100 (Fla. 2007) (per curiam); People v. Steidl, 685 N.E.2d 1335, 1343-1344 (Ill. 1997). Still others (Pet. 11 n.4, 12 n.8, 14 n.12) address whether permitting a defendant to override counsel's mitigation decisions compromises the government's

independent interest in a fair and reliable sentencing verdict. See Amezcua, 434 P.3d at 1149; State v. Johnson, 401 S.W.3d 1, 13-16 (Tenn.), cert. denied, 571 U.S. 992 (2013); Wallace v. State, 893 P.2d 504, 512 (Okla. Crim. App.), cert. denied, 516 U.S. 888 (1995). And almost all of the remainder (Pet. 11 n.4) are inapposite for individual reasons. See Wertz v. State, 434 S.W.3d 895, 906 n.1 (Ark. 2014) (determining that counsel presented an adequate mitigation case); Cooke v. State, 97 A.3d 513, 538 (Del. 2014) (rejecting as "illogical" defendant's argument that his capital sentence should be vacated because counsel introduced mitigation evidence over his objection), cert. denied, 574 U.S. 1085 (2015); State v. Robert, 820 N.W.2d 136, 143-144 (S.D. 2012) (concluding that defendant's "death sentence does not appear to have been the result of passion, prejudice, or any other arbitrary factor").

Ultimately, petitioner identifies only a single decision, Louisiana v. Brown, 330 So. 3d 199 (La. 2021), cert. denied, 142 S. Ct. 1702 (2022), that involves the question presented here. In Brown, the defendant wanted to avoid the death penalty and was not wholly opposed to a mitigation case, but did not want his uncle to testify and stated that he was "willing to accept death before [he would] let [his] mother get on the stand." Id. at 219; see id. at 218-220. He opted to represent himself in the penalty phase after the trial court advised him that counsel was entitled to call the

witnesses over his objection. Id. at 219-221. The Louisiana Supreme Court deemed that advice erroneous, on the theory (which it viewed to be supported by McCoy) that the defendant "had a 'constitutional right to impose a condition of employment on his counsel,'" and thus could "'limit his defense consistent with his wishes at the penalty phase of trial.'" Id. at 224 (quoting State v. Felde, 422 So. 2d 370, 395 (La. 1982), cert. denied, 461 U.S. 918 (1983)); see id. at 225. But neither the Louisiana Supreme Court's decision nor the State's petition for a writ of certiorari in that case even cited the decision below, and any nascent, unacknowledged disagreement between the Fourth Circuit and a single out-of-circuit state court does not warrant further review of petitioner's case.

2. Petitioner separately contends (Pet. 21-32) that his convictions under the religious-obstruction statute, 18 U.S.C. 247(a)(2) (2012), exceed Congress's Commerce Clause authority. Petitioner's contention is unsound, and the court of appeals' factbound determination that petitioner's crimes had the requisite nexus with interstate commerce does not merit this Court's review.

a. At the time of petitioner's crimes, Section 247(a)(2) prohibited "intentionally obstruct[ing], by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs, or attempt[ing] to do so," under "any of the circumstances referred to in subsection (b)." 18 U.S.C. 247(a)(2)

(2012). Subsection (b), in turn, required the government to prove that "the offense is in or affects interstate or foreign commerce." 18 U.S.C. 247(b).

That jurisdictional element differentiates this case from United States v. Lopez, 514 U.S. 549 (1995), and United States v. Morrison, 529 U.S. 598 (2000), in which this Court concluded that Congress had exceeded its commerce powers in enacting certain statutes that, inter alia, lacked any such jurisdictional hook. Lopez, 514 U.S. at 561 (noting that the statute there "contain[ed] no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce"); Morrison, 529 U.S. at 613 (similar). And petitioner does not dispute that subsection (b) invokes Congress's full authority under the Commerce Clause. Pet. App. 72a-73a n.45.

This Court has "identified three broad categories of activity that Congress may regulate under its commerce power." Lopez, 514 U.S. at 558. "First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce." Id. at

558-559 (citations omitted); see Morrison, 529 U.S. at 608-609; see also, e.g., Taylor v. United States, 579 U.S. 301, 306 (2016). Petitioner's crimes were well within that authority.

Petitioner used the internet -- which is both a channel and an instrumentality of interstate commerce -- in direct furtherance of his crime ("to pick his church target") and "to maximize the impact of his attack" (by posting his "racist manifesto and call to action" on a foreign server). Pet. App. 73a, 74a; see id. at 20a-21a, 69a. Petitioner's crime was also characterized by "multiple other connections to the means of commerce," including the use of a telephone to call Mother Emanuel and the repeated use of a GPS and interstate highway to travel to Mother Emanuel. Id. at 75a. "[T]aken together," those uses of the channels and instrumentalities of interstate commerce bring petitioner's conduct within the ambit of Congress's commerce authority. Ibid.

b. Petitioner's contrary argument lacks merit. He primarily contends (Pet. 24) that the decision below conflicts with Lopez and Morrison, each of which involved a statute whose validity rested on its inclusion in the third category of commerce that Congress may regulate ("activities having a substantial relation to interstate commerce"). Lopez, 514 U.S. at 558-559; see Morrison, 529 U.S. at 609. The Court concluded that the connection between the challenged statutes, which lacked jurisdictional elements, and that third category was too "attenuated" for

congressional regulation. Morrison, 529 U.S. at 615; see id. at 601-602 (statute providing civil remedy for victims of gender-motivated violence); Lopez, 514 U.S. at 551 (statute penalizing possession of firearm in a school zone). Petitioner's conduct here, in contrast, involved the direct use of the channels and instrumentalities of commerce. See Pet. App. 73a-75a.

Petitioner asserts (Pet. 25) that his uses of the instrumentalities and channels of interstate commerce were "commonplace acts" that could not sustain federal jurisdiction. But the court of appeals found that those uses, which both enabled and exacerbated his crimes, were in fact "closely linked, both in purpose and temporal proximity, to his violation of the religious-obstruction statute." Pet. App. 74a. Petitioner also asserts (Pet. 27) that "[t]ransactions merely preceded by interstate acts * * * are not 'in' interstate commerce." But "the authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses * * * is no longer open to question," Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 256 (1964) (citation omitted), and petitioner acknowledges that "this Court has held that Congress can punish interstate travel or use of interstate instrumentalities to 'promote' intrastate harm," Pet. 29 n.25 (quoting Brooks v. United States, 267 U.S. 432, 436 (1925)); see Pet. App. 74a (citing cases).

Here, petitioner employed multiple instrumentalities and channels of interstate commerce to "promote" his mass shooting at Mother Emanuel. Brooks, 267 U.S. at 436. Petitioner argues that the relevant precedents do not support the decision below "[b]ecause Section 247(a)(2) punishes religious obstruction itself, not interstate travel or use of interstate instrumentalities to further religious obstruction." Pet. 29 n.25. But, as noted above, Section 247(a)(2) incorporates an express jurisdictional element that requires proof that "the offense is in or affects interstate or foreign commerce." 18 U.S.C. 247(b). Moreover, the proper focus of petitioner's as-applied challenge is on his own conduct. See, e.g., Sabri v. United States, 541 U.S. 600, 605, 609 (2004). In finding that the specific conduct at issue here fell within Congress's regulatory authority, the court of appeals emphasized that it was "not suggesting that a defendant's internet usage before or even while committing a federal offense will always place his conduct within the reach of Congress's Commerce Clause authority." Pet. App. 74a.

The court of appeals' narrow, factbound determination is neither "far-reaching," Pet. 22, nor deserving of this Court's review. Petitioner does not identify any circuit that has ever found Section 247(a)(2) unconstitutional, either on its face or as applied. Nor does petitioner explain how the court of appeals'

circumstance-specific analysis would control the outcome in future cases presenting different facts. In addition, the court did not address a separate ground for affirmance that the government raised. In particular, the government observed that in Scarborough v. United States, 431 U.S. 563 (1977), this Court held that the jurisdictional element in the federal felon-in-possession statute was satisfied by proof that the firearm had previously traveled in interstate commerce, id. at 568, 575, 578, and argued that the requisite commerce nexus here was independently provided by petitioner's use of a gun, ammunition, and a tactical pouch that had all themselves traveled in interstate commerce, see Pet. App. 75a-77a & nn.46, 48.

In any event, this would be an unsuitable vehicle for further review of this issue because, even if the Court were to overturn petitioner's Section 247(a)(2) convictions, that would not itself suggest that petitioner's capital sentence should be set aside. Petitioner was convicted on 18 capital counts: nine counts for violations of the religious-obstruction statute resulting in death, under 18 U.S.C. 247(a)(2) (2012) and 18 U.S.C. 247(d)(1), and nine counts for using a firearm to commit murder during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c) and (j)(1). Judgment 2. Although only one predicate crime of violence was necessary to sustain each of the Section 924 counts, the government proved (and the jury found) two alternative

predicates -- a violation of Section 247(a)(2) and a violation 18 U.S.C 249(a)(1) -- to support each. Indictment 9; Judgment 1; Pet. App. 56a, 90a, 93a. Petitioner's Section 924(c) convictions would therefore be infirm only if he prevailed on his constitutional challenges to both the Section 247(a)(2) and the Section 249(a)(1) convictions, as petitioner does not directly challenge the validity of those Section 924(c) convictions.

3. Petitioner's challenge (Pet. 32-40) to his hate-crime convictions under Section 249(a)(1), which effectively asks this Court to overrule its precedent interpreting the scope of Congress's enforcement powers under the Thirteenth Amendment, is unsound and provides no justification for further review. This Court has previously denied other petitions presenting similar arguments. See, e.g., Metcalf v. United States, 139 S. Ct. 412 (2018) (No. 17-9340); Cannon v. United States, 574 U.S. 1029 (2014) (No. 14-5356); Hatch v. United States, 572 U.S. 1018 (2014) (13-6765). The same course is warranted here.

a. The Thirteenth Amendment states that "[n]either slavery nor involuntary servitude * * * shall exist within the United States," and provides that "Congress shall have power to enforce this article by appropriate legislation." U.S. Const. Amend. XIII. In the Civil Rights Cases, 109 U.S. 3 (1883), the Court recognized that the Thirteenth Amendment authorizes Congress "to pass all laws necessary and proper for abolishing all badges and incidents of

slavery in the United States." Id. at 20. And in Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968), the Court relied on the Civil Rights Cases and explained that the Amendment "empowered Congress to do much more" than abolish slavery and that "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 439-440. Applying that standard, Jones upheld a federal statute prohibiting racial discrimination in the sale of property on the ground that Congress had rationally determined that such discrimination is among the badges and incidents of slavery. Id. at 438-444. Other decisions of this Court have since reiterated the principle explicated and applied in Jones. See, e.g., Runyon v. McCrary, 427 U.S. 160, 170, 179 (1976) (relying on Jones to uphold prohibition on racial discrimination in making and enforcing contracts); Griffin v. Breckenridge, 403 U.S. 88, 105 (1971) (relying on Jones to uphold private cause of action for conspiring to violate equal rights).

The court of appeals correctly applied those precedents to reject petitioner's facial challenge to Section 249(a)(1), which prohibits "willfully caus[ing] bodily injury to any person or, through the use of * * * a firearm, * * * attempt[ing] to cause bodily injury to any person, because of the actual or perceived race * * * of any person." 18 U.S.C. 249(a)(1). As the court explained, Congress soundly recognized that "[s]lavery and

involuntary servitude were enforced through widespread public and private violence directed at persons because of their race, color, or ancestry," and permissibly determined that "eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery." Pet. App. 80a (quoting 34 U.S.C. 30501(7)) (brackets in original). Section 249(a)(1) is therefore "'appropriate' in exactly the manner envisioned in Jones." Ibid. Indeed, petitioner does not contend otherwise.

Instead, petitioner argues (Pet. 32) that this Court should effectively overrule its precedents on this issue, asserting a need to "harmonize" the standard for enforcement legislation under the Thirteenth Amendment with the purportedly more "stringent tests for analyzing legislation under the Fourteenth and Fifteenth Amendments." Petitioner thus invokes City of Boerne v. Flores, 521 U.S. 507 (1997), which required "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end" to bring a statute within Congress's enforcement authority under the Fourteenth Amendment, id. at 520, and Shelby County v. Holder, 570 U.S. 529 (2013), which observed that "a statute's 'current burdens' must be justified by 'current needs'" in analyzing a statute's constitutionality as an exercise of Congress's power under the Fifteenth Amendment, id. at 550 (citation omitted).

Petitioner's argument (Pet. 38) for reflexively transposing Fourteenth or Fifteenth Amendment tests into the context of the Thirteenth Amendment is misplaced. As the court of appeals recognized, neither City of Boerne nor Shelby County "mentions the Thirteenth Amendment, neither cites Jones, and neither discusses Congress's power to identify and legislate against the badges and incidents of slavery." Pet. App. 82a. And each amendment is characterized by its "own unique history, structure, and caselaw." United States v. Diggins, 36 F.4th 302, 313 (1st Cir. 2022) (upholding Section 249(a)(1) against a similar challenge). Accordingly, in explicating the proper approach to Thirteenth Amendment legislation, Jones examined the Amendment's text and historical context, including early precedent and contemporary congressional debates. See 392 U.S. at 429-430, 437-444. Petitioner does not take issue with that interpretive approach; indeed, the Court's interpretation of the Fourteenth Amendment in City of Boerne "employ[ed] parallel methodologies and modes of reasoning," Diggins, 36 F.4th at 313, but simply analyzed a different Amendment. Petitioner offers no sound basis for disregarding Jones to impose an artificial "uniform[ity]," Pet. 38, that the individual contexts of the different Amendments would not themselves support.

Petitioner also disregards the different implications that the different Amendments have for federalism. By their terms, the

Fourteenth and Fifteenth Amendments apply only to state action. The challenged federal statutes in both City of Boerne and Shelby County directly regulated the States, and the Court's analysis accordingly took account of an interest in state autonomy. See City of Boerne, 521 U.S. at 532-535; Shelby County, 570 U.S. at 542-545. The Thirteenth Amendment, however, permits the direct regulation of private actors, see Civil Rights Cases, 109 U.S. at 23, and Section 249(a)(1) reflects an exercise of that authority. That distinction, which renders the state-autonomy interest at issue in City of Boerne and Shelby County inapposite, "has great significance," District of Columbia v. Carter, 409 U.S. 418, 423 (1973), to the separate consideration of the Thirteenth Amendment.

Petitioner additionally fails to show that overruling Jones would be appropriate as a matter of stare decisis. See, e.g., Evans v. Michigan, 568 U.S. 313, 327 (2013) ("declin[ing] to revisit" prior decisions). Jones considered and rejected a narrow reading of the Thirteenth Amendment, and this Court and lower courts have repeatedly recognized and applied Jones in the 50 years since it was decided. See, e.g., Runyon, 427 U.S. at 168, 179; Griffin, 403 U.S. at 105; p. 34, infra (citing cases); see also City of Memphis v. Greene, 451 U.S. 100, 125 n.39 (1981) (quoting Jones, 392 U.S. at 440, for proposition that "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"); Palmer v. Thompson, 403 U.S. 217, 227 (1971) (noting that under Jones, Congress has broad power to outlaw the "badges of slavery").

b. Petitioner does not allege a circuit conflict over Jones's continuing viability or the constitutionality of Section 249(a)(1), or otherwise present a sound basis for granting certiorari on the issue of Section 249(a)(1)'s constitutionality. To the contrary, the courts of appeals have unanimously upheld that provision against constitutional challenge. See Diggins, 36 F.4th at 317; United States v. Metcalf, 881 F.3d 641, 644-645 (8th Cir.), cert. denied, 139 S. Ct. 412 (2018); United States v. Cannon, 750 F.3d 492, 505 (5th Cir.), cert. denied, 574 U.S. 1029 (2014); United States v. Hatch, 722 F.3d 1193, 1200-1201, 1206, 1209 (10th Cir. 2013), cert. denied, 572 U.S. 1018 (2014). And two additional circuits have applied Jones to uphold 18 U.S.C. 245(b)(2)(B) -- a similar statute prohibiting certain forms of racially motivated violence. See United States v. Nelson, 277 F.3d 164, 173-191 (2d Cir.), cert. denied, 537 U.S. 835 (2002); United States v. Allen, 341 F.3d 870, 883-884 (9th Cir. 2003), cert. denied, 541 U.S. 975 (2004).

In any event, Section 249(a)(1) satisfies the tests articulated in both City of Boerne and Shelby County. In City of Boerne, the Court determined that the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb et seq., was "so out of

proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior," as opposed to an impermissible effort "to attempt a substantive change in constitutional protections." 521 U.S. at 532. The Court emphasized, however, that Congress has "wide latitude" in enacting enforcement legislation, id. at 520, and that "[l]egislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into 'legislative spheres of autonomy previously reserved to the States,'" id. at 518 (citation omitted). And in Shelby County, the Court invalidated Section 4(b) of the Voting Rights Act of 1965, 52 U.S.C. 10303(b) (Supp. IV 2016), because that provision imposed requirements based on factual circumstances that had existed "[n]early 50 years" earlier, and the Court concluded that "things ha[d] changed dramatically" in the intervening decades, 570 U.S. at 547, such that the legislation was not justified by "current conditions," id. at 557.

The issues the Court identified in City of Boerne and Shelby County are absent here. The connection between Section 249(a)(1) and the "slavery" and "involuntary servitude" prohibited by the Thirteenth Amendment, U.S. Const. Amend. XIII, § 1, is direct and does not reflect a "substantive change in constitutional

protections." City of Boerne, 521 U.S. at 532. The statute targets the use of private violence against minorities based on their race, and petitioner does not challenge Congress's finding that "[s]lavery and involuntary servitude were enforced * * * through widespread public and private violence directed at persons because of their race, color, or ancestry." 34 U.S.C. 30501(7).

Section 249(a)(1) is also warranted in light of "current conditions." Shelby County, 570 U.S. at 550. A 2002 Senate Report discussing a predecessor bill had observed that "the number of reported hate crimes has grown almost 90 percent over the past decade," averaging "20 hate crimes per day for 10 years straight." S. Rep. No. 147, 107th Cong., 2d Sess. 2 (2002). And the 2009 House Report accompanying Section 249(a)(1)'s enactment cited FBI data identifying over 118,000 reported violent hate crimes since 1991, including nearly 4900 motivated by bias based on race or national origin and ethnicity in 2007 alone, in finding that "[b]ias crimes are disturbingly prevalent." H.R. Rep. No. 86, 111th Cong., 1st Sess. 5 (2009). Based on this evidence, Congress properly determined that racially motivated violence remains "a serious national problem," 34 U.S.C. 30501(1), and permissibly acted to criminalize such violence, including petitioner's racially motivated mass shooting here.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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