

No. 25-1262

In the Supreme Court of the United States

GABRIELLA VICTORIA OROPESA, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly recognized that petitioner's conspiracy to violate rights secured by the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. 248, was a valid basis for a charge of "conspir[ing] to injure, oppress, threaten, or intimidate any person in any State * * * in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States," 18 U.S.C. 241.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 159 F.4th 912. The order of the district court (Pet. App. 23a-37a) is available at 2023 WL 4824481.

JURISDICTION

The judgment of the court of appeals was entered on November 20, 2025. A petition for rehearing was denied on February 2, 2026. The petition for a writ of certiorari was filed on May 4, 2026. 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 Middle District of Florida, petitioner was convicted of conspiring against rights, in violation of 18 U.S.C. 241 and 2. Judgment 1. The court sentenced

petitioner to 120 days of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-22a.

1. After the leak of this Court’s draft opinion in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), petitioner and three other individuals devised a plan to terrorize pro-life pregnancy centers in Florida. Pet. App. 2a. Disguised in masks, hats, and gloves, petitioners and her co-conspirators spray-painted threats such as “YOUR TIME IS UP!! WE’RE COMING FOR U” and “If abortions aren’t SAFE then niether [sic] are you!” on the pro-life pregnancy-center buildings. *Ibid.*

A grand jury indicted petitioner on one count of “conspir[ing] to injure, oppress, threaten, or intimidate any person in any State * * * in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States,” in violation of 18 U.S.C. 241. Pet. App. 3a (quoting 18 U.S.C. 241). The charge was predicated on petitioner’s conspiracy to violate the right secured by the Freedom of Access to Clinic Entrances Act of 1994 (FACE Act), 18 U.S.C. 248, to provide and seek to provide reproductive health services. Pet. App. 3a-4a.

The district court denied petitioner’s motion to dismiss the indictment, rejecting (*inter alia*) her contention that a Section 241 conspiracy-against-rights charge may not be predicated on a conspiracy to violate the FACE Act. Pet. App. 23a-37a. The jury found petitioner guilty, and the court sentenced her to 120 days of imprisonment, to be followed by three years of supervised release. Judgment 1-3.

2. The court of appeals affirmed. Pet. App. 1a-22a.

The court of appeals, like the district court, recognized that a Section 241 conspiracy-against-rights charge may be predicated on a conspiracy to violate the FACE Act. Pet. App. 6a-13a. The court of appeals observed that Section 241 prohibits conspiracies to violate any “right” secured by the “laws of the United States.” 18 U.S.C. 241; see Pet. App. 6a. The court noted that petitioner “concedes that the FACE Act creates a right and is a ‘law of the United States.’” Pet. App. 7a. And the court rejected petitioner’s contention that criminal penalties provided in the FACE Act itself precluded prosecuting petitioner for a violation of Section 241. *Id.* at 6a-13a.

The court of appeals observed that it had “never suggested that a criminal statute’s inclusion of its own penalties prevents a conspiracy to violate the rights afforded by that statute from being prosecuted under Section 241.” Pet. App. 9a. The court also cited the FACE Act’s saving clause, which states that nothing in the Act “shall be construed * * * to provide exclusive criminal penalties.” 18 U.S.C. 248(d)(3); see Pet. App. 12a.

Judge Jordan issued a concurring opinion. Pet. App. 18a-22a. Judge Jordan, who “generally agree[d]” with the court of appeals’ analysis, explained in more detail why the FACE Act’s saving clause forecloses petitioner’s argument. *Id.* at 18a.

ARGUMENT

Petitioner renews her contention (Pet. 13-24) that a conspiracy-against-rights charge under Section 241 may not be predicated on a conspiracy to violate the rights secured by the FACE Act. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or any other

court of appeals. The petition for a writ of certiorari should be denied.

1. Section 241 makes it a federal crime to “conspire to injure, oppress, threaten, or intimidate any person in any State * * * in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.” 18 U.S.C. 241. The FACE Act, in turn, prohibits using “force or threat of force” to “intimidate” a person from “obtaining or providing reproductive health services.” 18 U.S.C. 248(a)(1). Petitioner concedes that the FACE Act secures a “right” to access reproductive health services and that the Act is a “law of the United States.” See Pet. App. 7a; Pet. 7-8. Section 241’s plain text therefore encompasses a conspiracy to violate rights secured by the FACE Act.

Contrary to petitioner’s contention (Pet. 13-24), it makes no difference that the FACE Act contains its own criminal penalties. “When confronted with two Acts of Congress allegedly touching on the same topic,” a court “is not at ‘liberty to pick and choose among congressional enactments’ and must instead strive ‘to give effect to both.’” *Epic Systems Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (citation omitted). That principle applies to criminal statutes, in which “overlap” “is not uncommon.” *Loughrin v. United States*, 573 U.S. 351, 358 n.4 (2014). And “Congress may, and often does, enact separate criminal statutes that may, in practice, cover some of the same conduct.” *Hubbard v. United States*, 514 U.S. 695, 714 n.14 (1995) (opinion of Stevens, J.).

Accordingly, “when an act violates more than one criminal statute, the Government may prosecute under either.” *United States v. Batchelder*, 442 U.S. 114, 123-124 (1979). The FACE Act’s criminal penalties thus do not displace criminal penalties imposed by other stat-

utes, such as Section 241. Indeed, underscoring the point, the FACE Act includes a saving clause that provides: “Nothing in this section shall be construed * * * to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this section.” 18 U.S.C. 248(d)(3). That saving clause shows that Congress contemplated and accepted overlap between the FACE Act and other criminal statutes.

Further undercutting petitioner’s theory, the FACE Act and Section 241 address different conduct. The FACE Act punishes the underlying substantive offense of intimidating a person from obtaining or providing reproductive health services. See 18 U.S.C. 248(a)(1). Section 241, in contrast, punishes the inchoate offense of *conspiring* to violate rights secured by the FACE Act (or other federal laws), see 18 U.S.C. 241—conduct that the FACE Act does not specifically address, see Pet. App. 12a. As this Court has repeatedly recognized, conspiracy is “‘a distinct evil,’ which ‘may exist and be punished whether or not the substantive crime ensues.’” *United States v. Jimenez Recio*, 537 U.S. 270, 274 (2003) (quoting *Salinas v. United States*, 522 U.S. 52, 65 (1997)).

“[C]onspiracy poses distinct dangers quite apart from those of the substantive offense.” *Iannelli v. United States*, 420 U.S. 770, 778 (1975); see, e.g., *Jimenez Recio*, 537 U.S. at 275. In particular, “collective criminal agreement” “increases the likelihood that the criminal object will be successfully attained,” “decreases the probability that the individuals involved will depart from their path of criminality,” “makes possible the attainment of ends more complex than those which one criminal could accomplish,” and “makes more likely the commission of crimes unrelated to the original pur-

pose for which the group was formed.” *Callanan v. United States*, 364 U.S. 587, 593-594 (1961).

It is therefore common for conspiracy to be punishable under a statute separate from the one setting out the substantive offense. Indeed, the general prohibition in 18 U.S.C. 371 against “conspir[ing] * * * to commit any offense against the United States” works precisely that way. It would therefore be anomalous—particularly in light of the FACE Act’s saving clause—to construe the FACE Act’s criminal penalties for substantive offenses as implicitly precluding a Section 241 conspiracy prosecution for violating a right concededly secured by the Act.

2. Petitioner invokes (Pet. 13-14) this Court’s cases interpreting 42 U.S.C. 1983, a statute that provides a civil remedy for state actors’ violations of federal rights. She contends (Pet. 14) that a plaintiff may not invoke Section 1983 to enforce a federal statute that contains its own comprehensive enforcement scheme, and that the same principle should constrain prosecutions under Section 241. That argument is unsound.

This Court has explained that, although rights secured by federal law “are presumptively enforceable under § 1983,” “a defendant ‘may defeat the presumption by demonstrating that Congress did not intend’ that § 1983 be available to enforce those rights.” *Health & Hospital Corp. v. Talevski*, 599 U.S. 166, 186 (2023) (brackets and citation omitted). Contrary to petitioner’s suggestion (Pet. 14), a statute’s inclusion of a “comprehensive enforcement scheme” does not, by itself, show that Congress meant to foreclose relief under Section 1983. Instead, “the *sine qua non* of a finding that Congress implicitly intended to preclude a private right of action under § 1983 is incompatibility between

enforcement under § 1983 and the enforcement scheme that Congress has enacted.” *Talevski*, 599 U.S. at 187; see *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 120 (2005) (“[S]uch congressional intent may be * * * inferred from the statute’s creation of a ‘comprehensive enforcement scheme *that is incompatible with individual enforcement under § 1983.*’”) (emphasis added; citation omitted).

Assuming for the sake of argument that the same analytical framework carries over to Section 241, petitioner cannot make the necessary showing that “Congress implicitly intended” in the FACE Act “to preclude” criminal prosecutions under Section 241. *Talevski*, 599 U.S. at 187. The FACE Act’s saving clause, which expressly provides that “[n]othing in this section shall be construed * * * to provide exclusive criminal penalties,” 18 U.S.C. 248(d)(3), forecloses any contention that “Congress intended [the FACE Act’s] remedial scheme to ‘be * * * exclusive,’” *Talevski*, 599 U.S. at 187 (citation omitted). And the petition does not appear to include any argument—of the sort rejected in detail in Judge Jordan’s concurrence below, see Pet. App. 18a-22a—that the saving clause should be disregarded. See Pet. 20-24 (arguing that FACE Act scheme is preclusive without addressing saving clause).

Even putting aside the saving clause, petitioner has not identified any “incompatibility,” *Talevski*, 599 U.S. at 187, between the FACE Act’s penalties for the underlying substantive offense and Section 241’s penalties for the distinct conspiracy offense. Petitioner notes (Pet. 23) that the penalties available under Section 241 may exceed the penalties available under the FACE Act in some circumstances, but—for reasons discussed above—this Court has “held that the conspiracy can be

punished more harshly than the accomplishment of its purpose.” *Iannelli*, 420 U.S. at 778; see *Clune v. United States*, 159 U.S. 590, 595 (1895).

3. Petitioner identifies no conflict among courts of appeals about whether Section 241 prosecutions may rest on conspiracies to violate rights secured by the FACE Act. To the contrary, she acknowledges (Pet. 16) that no court of appeals (apart from the court below) has even considered the issue.

Petitioner notes (Pet. 16 & n.15) that the question presented has arisen at the district-court level in three other cases. But the district courts in two of those cases reached the same conclusion as the court of appeals here. See *United States v. Gallagher*, 680 F. Supp. 3d 886, 904-905 (M.D. Tenn. 2023); *United States v. Handy*, No. 22-cr-96, 2023 WL 4744057, at *3 (D.D.C. July 25, 2023). The defendant in the third case, meanwhile, received a presidential pardon before the district court resolved the issue. See 23-cr-20100 D. Ct. Doc. 372, at 61-62 (E.D. Mich. Oct. 29, 2024); 23-cr-20100 D. Ct. Doc. 394 (E.D. Mich. Mar. 19, 2025). Petitioner thus cannot show even a conflict among district courts—which in any event would not suffice for certiorari, see Sup. Ct. R. 10(a).

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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