

No. 25-1262

IN THE
Supreme Court of the United States

GABRIELLA VICTORIA OROPESA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

**PETITIONER'S REPLY TO
BRIEF IN OPPOSITION**

MATTHEW FARMER
Counsel of Record
FARMER & FITZGERALD, P.A.
800 West De Leon Street
Tampa, FL 33606
(813) 928-1131
mattfarmer1@aol.com

QUESTIONS PRESENTED

The questions presented are:

1. Whether criminal statutes containing their own comprehensive enforcement provisions and penalties are, as in 42 U.S.C. § 1983, excluded from serving as predicate “laws” for additional criminal enforcement under 18 U.S.C. § 241.
2. Whether the criminal enforcement remedies contained in the FACE Act, 18 U.S.C. § 248(a) & (b), are sufficiently comprehensive to preclude additional criminal enforcement through Section 241.

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OPINIONS BELOW

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

BASIS FOR JURISDICTION IN THIS COURT

The judgment of the court of appeals was entered on November 20, 2025. A petition for rehearing en banc was denied on February 2, 2026. The petition for a writ of certiorari was timely filed on May 4, 2026. The jurisdiction of this Court is invoked under by 28 U.S.C. § 1254(1).

ARGUMENT

This case concerns the government's use of the Free Access to Clinic Entrances (FACE) Act, 18 U.S.C. § 248, as the statutory predicate for an indictment alleging a violation of 18 U.S.C. § 241, the criminal conspiracy-against-rights statute. Enacted in 1870, Section 241 provides a criminal action against individuals who violate “any right or privilege secured to [citizens] by the Constitution or laws of the United States.” Its civil counterpart, 42 U.S.C. § 1983, similarly provides private plaintiffs a civil action to remedy the “deprivation of any rights, privileges, or immunities secured by the Constitution and laws.”

Beginning with *Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1 (1981), and continuing through *City of Ranch Palos Verdes v. Abrams*, 544 U.S. 113 (2005), this Court has recognized an important limitation on the term “laws”

as it appears in Section 1983, excluding statutes that contain their own comprehensive enforcement schemes. This Court has not yet had occasion to determine whether this important limitation on the Section 1983 cause of action - the exclusion of statutes containing their own comprehensive enforcement schemes - also applies to the criminal “laws” enforceable by Section 241.

The issue in this case is not, as the United States suggests, whether the United States can enforce two of its criminal statutes, Section 241 and the FACE Act. Instead, the discrete issue Oropesa raises is whether Section 241 is subject to a limitation long imposed upon its civil counterpart, Section 1983, by preventing the United States from employing the FACE Act as one of Section 241’s otherwise wide-ranging statutory (and constitutional) predicates. Analogizing to Section 1983’s *Sea Clammers/Abrams* exclusion, Oropesa contends that Section 241’s potential predicates should not include the FACE Act because of its sufficiently comprehensive enforcement scheme.

In its Brief in Opposition, the United States raises three arguments.

First, the United States contends that Oropesa’s argument is simply that the FACE Act has its own criminal penalties and therefore the government is precluded from relying on Section 241. Oversimplifying Oropesa’s argument this way, the United States argues that it “makes no difference that the FACE Act contains its own criminal penalties.” Brief in Opposition, 4. But, again, Oropesa’s argument is not that the FACE Act contains its own criminal penalties, but that the comprehensiveness

of the FACE Act's enforcement scheme excludes that statute from serving as a valid predicate for a Section 241 prosecution under the rationale of the *Sea Clammers/Abrams* exclusion.

The United States relies generally on *Epic Systems Corp. v. Lewis*, 584 U.S. 497 (2018), for instance, to note that when two statutes touch on the same subject, this Court is not free to pick and choose between them and must strive to give effect to both. *Id.* at 510 (citation omitted). The next sentence in the passage, though, acknowledges that although it is a heavy burden, a party suggesting that the two statutes cannot be harmonized must show a congressional intention that one statute displaces another. *Id.* And this is precisely the nature of the *Sea Clammers/Abrams* exclusion, as this Court held, “When the remedial devices provided in a particular act are sufficiently comprehensive, they may suffice to demonstrate congressional intent to preclude the remedy of suits under § 1983.” *Sea Clammers*, 453 U.S. at 20.

The United States also argues that this *Epic Systems* principle also applies in criminal cases. Specifically, the United States cites a footnote in *Loughrin v. United States*, 573 U.S. 351 (2014), to argue that in criminal statutes, “‘overlap’ ‘is not uncommon.’” Brief in Opposition, 4, quoting *Loughrin*, 573 U.S. at 358, n. 4. The *Loughrin* footnote, however, does not evaluate “overlap” between two different criminal statutes. Instead, it only addressed “overlap” found in a single statute, the bank fraud statute, 18 U.S.C. § 1344. *Id.* (stating, “[T]he overlap between the two clauses is substantial on our reading, but that is not uncommon in criminal statutes.”) The *Loughrin* footnote has no relevance to the issue of statutory interpretation raised in this case.

The United States then cites *United States v. Batchelder*, 442 U.S. 114 (1979), to assert that, “this Court has long recognized that when an act violates more than one criminal statute, the Government may prosecute under either.” Brief in Opposition, 4, *quoting Batchelder*, at 123-124. Although Oropesa has no dispute with this general principle, *Batchelder* also has no relevance to the issue of statutory interpretation raised in this case.

The *Batchelder* Court addressed two statutes, 18 U.S.C. § 922(h) and 18 U.S.C. § 1202(a), that “are identical as applied to a convicted felon who unlawfully receives a firearm.” 442 U.S. at 116. The two statutes, however, contained two different penalties. *Id.* A violation of Section 922(h) carries a five-year maximum term of imprisonment, while a violation of Section 1202(a) carries a maximum of only two years. *Id.* at 116-17. Although the defendant in *Batchelder* was charged and convicted of violating only Section 922(h), the circuit court of appeals reasoned that application of the rule of lenity requires a maximum sentence of only the two years available under Section 1202(a). *Id.* at 117. Reversing, this Court concluded that, when Congress identifies a proscribed act and fixes a specific penalty for its commission, no constitutional consideration compels a sentencing court to select a less severe penalty that would have been available had the government elected to prosecute a defendant for the same act under a different statute. *Id.* at 123-24.

Batchelder likewise does address the questions presented in this petition. Oropesa does not contend that, although she was charged and convicted of violating Section 241, she may be punished only as provided by the FACE Act, a statute under which she was neither charged

nor convicted. In other words, she does not argue that, following her conviction for violating the only offense charged against her, Section 241, the district court was required to sentence her under the less severe penalties available under the FACE Act for her conduct, despite the fact she was not charged with violating that statute.

The United States also contends that Section 241, which only proscribes conspiracies to violate rights, and the FACE Act, which proscribes only substantive acts, address different conduct. The United States argues that this Court has consistently recognized that Congress may appropriately punish inchoate offenses, which present their own dangers to the public. Brief in Opposition, 5-6, *citing Callahan v. United States*, 364 U.S. 587, 593-94 (1961) (listing special threats posed by “collective criminal punishment”); *Iannelli v. United States*, 420 U.S. 770, 777-78 (1975) (endorsing principle that separate sentences may be imposed for conspiring to do an act and completing it, as a “conspiracy poses distinct dangers quite apart from those of the substantive offense”); and *United States v. Jimenez Recio*, 537 U.S. 270, 274-75 (2003) (reasoning that a conspiratorial agreement is a distinct evil that may be punished apart from a substantive crime).

Again, Oropesa has no dispute with this general principle. She acknowledges that a defendant can generally be simultaneously prosecuted and punished, for instance, for committing a Section 241 conspiracy-against-rights, and its substantive counterpart, 18 U.S.C. § 242, which proscribes the deprivation of “rights...secured or protected by the Constitution or laws of the United States.” Oropesa also acknowledges that a defendant may be prosecuted simultaneously for violating Section 241 and for violating another substantive criminal statute.

Oropesa’s claim, however, is that a defendant may not be prosecuted under Section 241 – which enforces violation of the Constitution and laws of the United States – only when the Section 241 prosecution relies on a predicate law of the United States that contains its own comprehensive enforcement structure. Oropesa simply contends that the FACE Act specifically is not among the predicate “laws” that may serve as a valid statutory predicate for the Section 241 conspiracy-against-rights statute (or for its substantive counterpart, Section 242). This is because, in the FACE Act, Congress had fashioned a comprehensive criminal statute that specifically addresses the conduct committed by Oropesa.

The separation-of-powers consideration underlying Oropesa’s contention is not novel. In *Cisco Systems, Inc. v. Doe*, 609 U.S. __ (June 23, 2026), this Court very recently addressed the preemptive effect of Congress’s creation of a specific remedial structure to regulate specific conduct. The issue in *Cisco Systems* was whether the Alien Tort Statute (ATS) creates a private cause of action. *Slip op.* at 1. Finding that the statute did not, this Court noted that a plaintiff must show that it would be prudent for the court to create a cause of action when Congress has not acted, as “creating rights of action is Congress’s prerogative.” *Id.* at 5. This Court observed that, of late, “we have firmly committed to the view that judicially created causes of action offend the separation of powers in almost every circumstance.” *Id.* at 10. One reason is that “if Congress has created ‘an alternative remedial structure,’ then ‘that alone’ precludes the creation of a cause of action.” *Id.* at 10-11, *quoting Ziglar v. Abbasi*, 582 U.S. 120, 137 (2017) (emphasis added by *Cisco Systems* Court). This Court found that the Torture Victims Protection Act (TVPA), 106

Stat. 73, note following 28 U.S.C. § 1350, which creates an express cause of action under the Alien Tort Statute but only to “specific subject matter,” torture, that is implicated by the general terms of the ATS. *Id.* at 11. This Court concluded that this leads to the necessary conclusion that no cause of action under the ATS should be recognized judicially. *Id.* at 12.

This Court then turned to a second question, namely the interpretation of the reach of liability under the TVPA. *Id.* at 12-13. The issue was whether the TVPA, which provides a cause of action against someone who “subjects” another person to torture, also creates a specialized form of liability, for aiding-and-abetting. *Id.* at 13. This Court reasoned that, unlike other statutes, the TVPA does not include any express mention of aiding-and-abetting liability. *Id.* In short, it is “crystal clear” that aiding-and-abetting liability does not exist under the TVPA “because Congress has not expressly provided for it.” *Id.*

Cisco Systems is relevant here in two respects. First, it recognizes that separation-of-powers considerations are at the foundation of a rule that Congress’s creation of a specific remedial structure precludes recognition of a right of action in a more general statute. Second, it recognizes that Congress must expressly provide for forms of liability under the comprehensive remedial statute. As this Court is unwilling to read aiding-and-abetting liability into the TVPA, so too should a conspiracy theory of liability not be read into the FACE Act if Congress did not include such liability in an otherwise comprehensive statute.

The United States’s second broad argument is that, in *Health and Hospital Corp. of Marion County v.*

Talevski, 599 U.S. 166 (2023), this Court disavowed the *Sea Clammers/Abrams* exclusion applicable to Section 1983. Brief in Opposition, 6. It did not.

Instead, *Talevski* reaffirmed that the test is whether Congress has created by statute a comprehensive enforcement scheme that is incompatible with alternative enforcement through § 1983. *Id.* at 186. The *Talevski* Court reasoned that the assessment of incompatibility requires a determination of whether there are any indicia of congressional intent to preclude § 1983 enforcement, “such as an express private judicial right of action or any other provision that may signify that intent.” *Id.* at 188. More specifically, “The existence of a more restrictive private remedy [in the statute itself] for statutory violations has been the dividing line between those cases in which we have held that an action would lie under § 1983 and those in which we have held that it would not.” *Id.* (cleaned up) (brackets in original). The *Talevski* Court found that it had previously found that incompatibility exists with “statutes with self-contained enforcement schemes that included statute-specific rights of action.” *Id.* at 189. Moreover, in these instances, “each statute-specific right of action offered fewer benefits than those available under § 1983,” and § 1983 provided remedies that were unavailable under the specific statutes.” *Id.*¹

In short, the *Talevski* Court found that “[t]hose ‘comprehensive enforcement schemes’ were ‘incompatible

1. Here, Section 241 provides at least two remedies that are not available under the FACE Act. First, the FACE Act does not include a conspiracy provision. Second, in the circumstances of this case, Oropesa is subject to only misdemeanor penalties under the FACE Act, while Section 241 provides only for felony penalties.

with individual enforcement under § 1983.” *Id.*, quoting *Abrams*, 544 U.S. at 120. Because of the absence of a private right of action or an administrative remedy, for example, in the Federal Nursing Home Reform Act (FNHRA), the *Talevski* Court concluded that there is nothing in that statute that is incompatible with enforcement through Section 1983. *Id.* at 190.

But *Talevski* does not disavow the *Sea Clammers/Abrams* exclusion. Instead, it applies the same standard and simply finds that FNHRA is not sufficiently comprehensive to reflect any incompatibility that would prevent the use of FNHRA as a statutory predicate for a Section 1983 action.

The United States also noted that the *Talevski* Court bolstered its conclusion that FNHRA is an appropriate statutory predicate for Section 1983 because FNHRA’s saving clause provides that the remedies available under FNHRA supplement those available under state or federal law and should not be construed to limit other remedies such as Section 1983. *Id.* at 191 & n. 14.

The United States notes that the FACE Act also contains a saving clause and suggests that the FACE Act’s “saving clause”² means that citizens may face prosecution under Section 241 despite the FACE Act’s comprehensive enforcement scheme. But this identical “saving clause” argument has been squarely rejected in *Sea Clammers*

2. Section 248(d)(3) provides that, “Nothing in this section shall be construed - to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this section, or to preempt State or local laws that may provide such penalties or remedies...” 18 U.S.C. § 248(d)(3).

and *Abrams*. In *Sea Clammers*, this Court reached the commonsense conclusion that the saving clause in an environmental statute only preserved the right to enforce standards arising under *other* statutes (and the common law) because § 1983 was simply a means of enforcing the same environmental statute, not an independent cause of action. 453 U. S. at 20, n. 31 (holding, “The language of these [saving] clauses does not, however, support the view that Congress expressly preserved § 1983 remedies for violations of *these statutes*. (Emphasis in original)). In *Abrams*, this Court reaffirmed *Sea Clammers*, reasoning that the saving clause in the telecommunications statute in that case only preserved the availability of other statutes, and not Section 1983, again because the latter simply provided additional remedies for violation of the same statute. 544 U.S. at 126-27. In fact, the *Talevski* Court reaffirmed the holdings in *Sea Clammers* and *Abrams* that a saving clause in a comprehensive statute did not operate to authorize the Section 1983 remedy. 599 U.S. at 191, n. 14.³

Third, the United States argues that Oropesa has not identified any conflict among courts of appeal. Petitioner relies on Sup. Ct. R. 10(c) as the reason for granting the writ, as a court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court. The issue of Section 241 conspiracy-

3. The *Talevski* Court held that, unlike the saving clauses in *Sea Clammers* and *Abrams*, the saving clause in the Federal Nursing Home Reform Act (FNHRA) did not preclude use of § 1983 for two reasons: 1) the other two savings clauses did not, unlike FNHRA’s, preserve “other remedies,” as opposed to other statutes, and 2) those statutes included private rights of action, unlike FNHRA. *Id.* at 191 n. 14.

against-rights prosecutions that incorporate the FACE Act as the statutory predicate is likely to reemerge in the future. In 2022, 28 years after enactment of the FACE Act, the United States for the first time prosecuted individuals for Section 241 violations predicated on the FACE Act. Oropesa is one of at least 27 citizens who have been so prosecuted in at least four indictments nationwide. Also, this case presents an opportunity to examine the scope of the Section 241 saving clause, which has implications for interpreting the scope of the similarly worded Section 1983 saving clause.

CONCLUSION

The Petition should be granted so that this Court can harmonize the Nation's two premier civil rights statutes and apply to Section 241 to same exclusion – of “laws” that carry their own comprehensive enforcement schemes – that this Court has applied to Section 1983 in the 45 years since *Sea Clammers*. For the foregoing reasons, Petitioner respectfully requests that her Petition for Writ of Certiorari be granted.

Respectfully submitted,

MATTHEW FARMER
Counsel of Record
FARMER & FITZGERALD, P.A.
800 West De Leon Street
Tampa, FL 33606
(813) 928-1131
mattfarmer1@aol.com