No. 25-1342

IN THE

Supreme Court of the United States

DERICK IRISHA BROWN, PETITIONER

v.

UNITED STATES

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

BRIEF OF PROFESSOR RANDY E. BARNETT AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICUS CURIAE*[1]

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Professor Barnett has a substantial interest in ensuring that this Court's jurisprudence on the Necessary and Proper and Commerce Clauses remains faithful to the Constitution's original public meaning and to the structural limits that preserve the distinction between national and local authority. He submits this brief to explain why this Court should grant certiorari to make clear that the original meaning of the Clauses, as implemented by this Court's precedential doctrines, requires a concrete nexus between the use of an instrumentality and the regulation of interstate trade or transportation.

SUMMARY OF ARGUMENT

At the heart of our Constitution is the principle that the "United States have no claim to any authority but such as the States have surrendered to them." *Chisholm* v. *Georgia*, 2 U.S. (2 Dall.) 419, 435 (1793) (Iredell, J.), *superseded on other grounds by constitutional amendment*, U.S. Const. amend. XI. That basic proposition is as old as the Constitution itself, see The

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus curiae* or his counsel made a monetary contribution to this brief's preparation or submission. All parties have received timely notice of the filing of this brief.

Federalist No. 45, at 292 (James Madison) (Clinton Rossiter ed., 1961) (The powers "delegated by the … Constitution to the federal government are few and defined."), and as recent as this Court's decision in *NFIB* v. *Sebelius*, 567 U.S. 519 (2012). Under its Commerce Clause power, Congress may make laws for the regulation of interstate commerce, and this power extends to the regulation of some intrastate activities when it is both necessary and proper to carrying into execution Congress's power over "Commerce … among the several States." Congress many not regulate whatever activity it deems sufficiently serious to federalize. There is no National Problems Power in the Constitution.

As the Court very recently reaffirmed, the Necessary and Proper Clause "authorizes Congress to employ 'necessary and proper' means for 'carrying into Execution' its other enumerated powers. Put another way, the Clause allows Congress to enact laws 'incidental to those powers which are expressly given.'" *Landor* v. *La. Dep't of Corr. & Pub. Safety*, 608 U.S. — , 2026 WL 1791277, at *9 (June 23, 2026) (Gorsuch, J.) (first quoting U.S. Const. art. I, § 8, cl. 18; then quoting *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 411 (1819)). As in *Landor*, the question presented here is whether a law "is a necessary and proper incident to Congress's constitutionally enumerated power to" regulate commerce among the several states. *Id.*

The decision in *Landor* underscores importance of this constitutional limit here. Relying on circuit precedent, the Eleventh Circuit held below that an automobile is a per se instrumentality of interstate commerce and thus subject to congressional regulation even if its use is purely intrastate and noneconomic. See *United States* v. *Brown*, No. 23-10870, 2025 WL 3771990, at *2 (11th Cir. Dec. 31, 2025); *United States* v. *Bryan*, 159 F.4th 1274, 1295–96 (11th Cir. 2025). On that view, the government may convict under 18 U.S.C. § 1201(a)(1)—and the Article I inquiry is satisfied—so long as the government can prove that a defendant used a car in committing a kidnapping. The Eleventh Circuit's rule thus converts one of the most common—and local—objects of everyday life into an all-purpose jurisdictional hook. That is not a faithful implementation of the Commerce power. It is an end-run around its limits.

The original public meaning of the Necessary and Proper and Commerce Clauses doesn't permit that result. At the Founding, "necessary and proper" was understood to limit Congress to means incidental to an enumerated power and genuinely directed toward carrying that power into execution. And "commerce" was understood to encompass trade, exchange, intercourse, and transportation; it did not include every local activity involving an object that could, in some other circumstance, move across state lines. Together, the Clauses empower Congress to regulate intrastate activities only when doing so is a necessary and proper means of regulating interstate trade, exchange, intercourse, or transportation.

This Court's precedents implementing the constitutional text confirm that understanding. They do not treat instrumentality status as a categorical label that attaches to an object for all purposes and at all times simply because the object can be or often is used in interstate commerce. Rather, properly understood, they require a concrete nexus between the regulated use of the particular object at issue and the regulation of interstate commerce. And they do not permit Congress to regulate an object involved in purely local, noneconomic activity when unnecessary to a broader regulation of interstate commerce.

Both these limitations are essential. Without them, Congress's authority over instrumentalities would collapse the distinction between what is national and what is local, effectively supplying Congress with a general police power every time a local act involves any number of commonplace objects capable of interstate transit.

The Eleventh Circuit's rule cannot be squared with these limitations and must be corrected. If every automobile is always an instrumentality of interstate commerce, then Congress may regulate virtually every local use of every car—from school drop-offs, to neighborhood errands, to ordinary street crimes—without showing that the use at issue bears any real connection to interstate trade, exchange, intercourse or transportation.

What's more, the problem is not confined to the Eleventh Circuit; several other circuits have treated automobiles as per se instrumentalities too. This Court should grant certiorari to restore the proper limits of the instrumentalities doctrine and confirm that the local use of an automobile, standing alone, is not enough to satisfy Article I.

ARGUMENT

I. THE CONSTITUTION LIMITS CONGRESS'S POWER TO REGULATE PURELY LOCAL, NONECONOMIC ACTIVITY.

A. The Necessary and Proper and Commerce Clauses reach intrastate activities only to effectuate regulation of interstate exchange or trade.

The Necessary and Proper Clause does not enlarge the Constitution's scheme of "few and defined" federal powers. The Federalist No. 45, at 292. Rather, it provides a "*limitation* on the means which may be used" to carry into execution an enumerated power. *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 187 (1824) (emphasis added). Such means "shall" be both "necessary" and "proper."

By its plain terms, the Clause is "a declaration, for the removal of all uncertainty, that the means of carrying into execution those [powers] otherwise granted are included in the grant." *Kinsella* v. *United States ex rel. Singleton*, 361 U.S. 234, 247 (1960) (alteration in original) (quoting VI *Writings of James Madison* 383 (Gaillard Hunt ed. 1903)). The Clause preserves the Constitution's scheme of limited federal powers by cabining Congress's lawmaking power to appropriate means directed at carrying "some other identifiable constitutional power" into execution. Gary Lawson & Patricia B. Granger, *The "Proper" Scope of Federal Power: A Jurisdictional Interpretation of the Sweeping Clause*, 43 Duke L.J. 267, 274–75 (1993).

The Court very recently reaffirmed this fundamental principle in *Landor*. There, it stated that the Necessary and Proper Clause "authorizes Congress to employ 'necessary and proper' means for 'carrying into

Execution' its other enumerated powers." 2026 WL 1791277, at *9 (quoting U.S. Const. art. I, § 8, cl. 18). That is, "the Clause allows Congress to enact laws 'incidental to those powers which are expressly given.'" *Id.* (quoting *McCulloch*, 17 U.S. at 411).

The enumerated power at issue in *Landor* was the Spending Clause power, but the principle applies with equal force to Congress's Commerce Clause power. The Necessary and Proper Clause gives Congress power over intrastate matters only to effectuate a regulation of interstate trade, exchange, intercourse, and transportation.

1. The original meaning of "necessary and proper" at the Founding embraced means that were closely tethered to an enumerated power and weren't otherwise prohibited by the Constitution or inconsistent with its letter and spirit. See *Printz* v. *United States*, 521 U.S. 898, 923–24 (1997); *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 326 (1816); see also *Zivotovsky ex rel. Zivotovsky* v. *Kerry*, 576 U.S. 1, 47 (2015) (Thomas, J., concurring in part).

Contemporary sources illustrate the limited reach of the language used in the Clause. Dictionaries defined "necessary" to include what was "needful" or "requisite," along with what was strictly indispensable. See Randy E. Barnett, *Necessary and Proper*, 44 UCLA L. Rev. 745, 751–60 (1997). And Founding-era legal usage treated "proper" as marking what belongs to a particular office, authority, or governmental department. See Lawson & Granger, *supra*, at 291–97. Thus, a law could be useful, convenient, or closely related to a federal end and still fall outside Congress's proper authority if, for example, it invaded the reserved province of the States or the retained rights of the people.

See *id.* at 297; Barnett, *Necessary and Proper*, *supra*, at 772–77.

Even ardent champions of broad federal power conceded the limitations of "necessary and proper." While defending the constitutionality of the First Bank of the United States, Alexander Hamilton accepted that the Clause's reach turned on "[t]he *relation* between the *measure* and the *end*; between the *nature* of *the mean* employed towards the execution of a power and the object of that power." Alexander Hamilton, *Final Version of an Opinion on the Constitutionality of an Act to Establish a Bank [23 February 1791]*, *in* 8 *The Papers of Alexander Hamilton* 97 (Harold C. Syrett ed., 1965).

Chief Justice Marshall likewise noted in *McCulloch* both the required connection between means and enumerated ends and the Constitution's limited allocation of authority: Congress can select means "plainly adapted" to an end "within the scope of the constitution." 17 U.S. at 421. But it may not, "under the pretext of executing its powers," pass laws for "objects not entrusted to the government." *Id.*, at 423.

2. The Commerce Clause is not a National Problems Clause. As originally understood, "the Commerce Clause authorizes Congress only 'to regulate the buying and selling of goods and services trafficked across state lines.'" *United States* v. *Hemani*, 608 U.S. — , 2026 WL 1751710, at *13 (June 18, 2026) (Thomas, J., concurring) (quoting *Gonzales* v. *Raich*, 545 U.S. 1, 58 (2005) (Thomas, J., dissenting)); see also *United States* v. *Lopez*, 514 U.S. 549, 585–89 (1995) (Thomas, J., concurring).

Founding-era dictionary definitions of "commerce" illustrate that the term's reach was limited to trade, exchange, commercial intercourse, and transportation. See, *e.g.*, 1 Samuel Johnson, *A Dictionary of the English Language* (6th ed. 1785) (defining "commerce" as "[i]ntercourse; exchange of one thing for another; interchange of any thing; trade; traffick [sic]"); Nathan Bailey, *An Universal Etymological English Dictionary* (26th ed. 1789) ("trade or traffick [sic]"); Thomas Sheridan, *A Complete Dictionary of the English Language* 585–86 (6th ed. 1796) ("[e]xchange of one thing for another; trade, traffick [sic]"). Samuel Johnson defined "intercourse" as "1. Commerce; exchange" and "2. Communication: followed by with." 1 Johnson, *supra*.

"Commerce" thus was understood as a discrete activity; trade or transportation of things was separate from the production of articles later traded. See Randy E. Barnett, *Jack Balkin's Interaction Theory of "Commerce"*, 2012 U. Ill. L. Rev. 623, 623 (2012); see also The Federalist No. 11, at 89 (Hamilton) (describing interstate commerce as "trade" advanced by the "interchange" of state productions).

Debates during the drafting of the Constitution confirm that "commerce" meant the discrete act of trade and transportation. For example, Madison proposed to the Philadelphia Convention that Congress have the power "[t]o establish public institutions, rewards, and immunities for the promotion of agriculture, commerce, trades, and manufactures," treating "commerce" as a distinct activity from the others. James Madison, *Notes of Debates in the Federal Convention of 1787*, at 478 (Ohio Univ. Press 1966).

The same was true during ratification. In defending the Constitution's taxing power, Hamilton made the same distinction: he described "commerce" as "nearly allied" to "the mechanic and manufacturing arts," not as encompassing them, and explained that those arts merely "furnish the materials of mercantile enterprise and industry." The Federalist No. 35, at 214, 216.

Usage of "commerce" at state ratification conventions tells the same story. See 2 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 57–58 (Jonathan Elliot ed., 2d ed. 1836) (statement of Thomas Dawes) (distinguishing "agriculture, commerce, and manufactures" and describing commerce as "our own domestic traffic that passes from state to state"); *id.* at 17, 20 (statement of William Davie) (distinguishing "commerce, agriculture, and manufactures" and explaining that commerce supplied markets for planter's produce); see generally Randy E. Barnett, *The Original Meaning of the Commerce Clause*, 68 U. Chi. L. Rev. 101 (2001) (surveying every use of the word "commerce" in the Convention, the ratification debates, and *The Federalist Papers*); Randy E. Barnett, *New Evidence of the Original Meaning of the Commerce Clause*, 55 U. Ark. L. Rev. 847 (2003) (surveying every use of the word "commerce" in the *Pennsylvania Gazette* from 1728 to 1800).

The words surrounding "commerce" in the Clause further restrict the scope of Congress's power. "Among the several States" limited the power to exchange, transportation, or intercourse *between* States and left internal trade *within* a State beyond Congress's direct control. So said Hamilton. See The Federalist No. 23, at 153 (describing the object of the commerce power as "the regulation of commerce with other nations and between the States"). So too said James Madison. See The Federalist No. 42, at 267 (referring to the power "to regulate the trade between State and State"). The Clause thus gave Congress no direct dominion over commerce—however broadly or narrowly it is defined—that is wholly internal to a State, much less over purely local, noneconomic conduct.

This Court's early cases recognized as much. In *Gibbons*, Chief Justice Marshall explained that the specification of commerce "among the several States" in the Clause left outside of Congress's power "[t]he completely internal commerce of a State," which "may be considered as reserved for the State itself." 22 U.S. at 194–95. In other words, the Clause itself gives Congress "no power of regulation nor … direct control" over "internal commerce or domestic trade." *The License Tax Cases*, 72 U.S. (5 Wall.) 462, 470–71 (1867).

3. Congress's authority under the Commerce Clause to reach wholly intrastate activity must therefore be limited to those means that are "necessary and proper" for carrying into execution its enumerated power over interstate commerce—that is, only insofar as doing so is necessary and proper to effectuate regulation of "the [interstate] trade or transportation of things or persons." Barnett, *Jack Balkin's Interaction Theory of "Commerce"*, *supra*, at 623. A legislative "act" that reaches further—regulating local activity without the required connection to interstate commerce—falls beyond Congress's reach and is not a "proper" law. See *McCulloch*, 17 U.S. at 423 ("[S]hould congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted [sic] to the government; it would become the painful duty of this tribunal … to say, that such an act was not the law of the land.").

B. Commerce Clause precedents do not permit Congress to regulate intrastate activity merely because an automobile is used.

1. Courts may, of course, adopt implementing doctrines to effectuate the original meaning of the Constitution's text. See *Vidal* v. *Elster*, 602 U.S. 289, 324 (2024) (Barrett, J., concurring in part) ("In the course of applying broadly worded text … , courts must inevitably articulate principles to resolve individual cases."); Stephen E. Sachs, *Originalism: Standard and Procedure*, 135 Harv. L. Rev. 777, 780 (2022); Randy E. Barnett, *Interpretation and Construction*, 34 Harv. J.L. & Pub. Pol'y 65, 69 (2011). The Court has done so for the Necessary and Proper Clause's effectuation of the Commerce power. In particular, the Court has recognized three "categories of activity" as appropriate subjects of regulation under the Commerce Clause. *Taylor* v. *United States*, 579 U.S. 301, 306 (2016) (quoting *Lopez,* 514 U.S. at 558–59).

First, Congress may regulate "activities having a substantial relation to interstate commerce, … *i.e.,* those activities that substantially affect interstate commerce." *Id.*, at 306.

Second, Congress may regulate "the use of the channels of interstate commerce," *Lopez,* 514 U.S. at 558—the "interstate transportation routes through which persons and goods move," *United States* v. *Morrison*, 529 U.S. 598, 613 n.5 (2000) (quoting *United States* v. *Lankford*, 196 F.3d 563 (5th Cir. 1999)).

Third—and critical here—the Court has recognized that Congress may regulate "the instrumentalities of interstate commerce." *Lopez*, 514 U.S. at 558. Those include "persons … in interstate commerce." *Id.*; see

Caminetti v. *United States*, 242 U.S. 470, 491 (1917) (upholding statute that prohibited transporting women in interstate commerce for purposes of debauchery or prostitution). They also include "things in interstate commerce." *Lopez*, 514 U.S. at 558; see *Perez* v. *United States*, 402 U.S. 146, 150 (1971) (airplanes); *Japan Line*, *Ltd.* v. *Los Angeles County*, 441 U.S. 434, 445–46 (1979) (shipping containers).

The theory behind the instrumentalities category is straightforward: regulation of instrumentalities effectuates the regulation of "the [interstate] trade or transportation of things or persons," Barnett, *Jack Balkin's Interaction Theory of "Commerce"*, *supra*, at 623, when it "save[s] the act of interstate commerce from prevention or interruption, or … make[s] that act more secure, more reliable, or more efficient," *The Second Emps.' Liab. Cases*, 223 U.S. 1, 48 (1912); see also *The Shreveport Rate Cases*, 234 U.S. 342, 353 (1914) (Congress can "take all measures necessary [and] appropriate" to "foster and protect interstate commerce."). Congress can therefore regulate to "protect the instrumentalities of interstate commerce … even though the threat may come only from intrastate activities." *Pierce County* v. *Guillen*, 537 U.S. 129, 147 (2003) (quoting *Lopez*, 514 U.S. at 558); see also *Perez*, 402 U.S. at 150 (noting Congress's power to regulate for the "protection of the instrumentalities of interstate commerce").

2. "When determining how broadly or narrowly to read" precedents like these, or "whether to extend, limit, or narrow [those] precedent[s]," the Court should "consider how the precedent squares with the Constitution's text and history." *United States* v. *Rahimi*, 602 U.S. 680, 730 (2024) (Kavanaugh, J., concurring); see also *Hester* v. *United States*, 586 U.S. 1104, 1105

(2019) (Alito, J., concurring in the denial of certiorari); *Kelo* v. *City of New London*, 545 U.S. 469, 523 (2005) (Thomas, J., dissenting). Any judge-made implementing doctrines for the Commerce power must, of course, be faithful to the original ends, objects, or purposes of the Commerce Clause as effectuated through the Necessary and Proper Clause.

Viewed in light of the original public meaning of the Commerce and Necessary and Proper Clauses, the Court's precedents reveal important limitations on Congress's power over instrumentalities of interstate commerce. Two are relevant here. First, instrumentality status turns on actual use of an item, not its categorical capability or potential. And second, the instrumentality must be involved in economic activity. These principles ensure there is a sufficient nexus between the instrumentality and "the [interstate] trade or transportation of things or persons" for regulation consistent with the Necessary and Proper Clause. Barnett, *Jack Balkin's Interaction Theory of "Commerce"*, *supra*, at 623.

a. The first limitation concerns the level at which a court identifies an instrumentality. The operative word supplies the rule of analysis. From the founding onward, an "instrumentality" has been understood as the "agency of any thing as means to an end." 1 Samuel Johnson, *A Dictionary of the English Language* (1773) (defining "instrumentality"); accord Noah Webster, *An American Dictionary of the English Language* (1828) ("[s]ubordinate or auxiliary agency; agency of any thing as means to an end"). A thing furnishes that agency only while it is actually employed toward the relevant end. So whether an object is an "instrumentality of interstate commerce" depends on its employment as a means of the interstate trade or transportation of persons or things, assessed at the level of that actual use.

This distinguishes the instrumentalities inquiry from the substantial-effects inquiry. Although the Court has long identified "classes of activities" that, in the aggregate, substantially affect interstate commerce, see *Perez*, 402 U.S. at 151–53 (collecting "class of activities" effects cases), it has never held that an object qualifies as an instrumentality by virtue of its membership in a category of objects, apart from any showing that the object is used as a means of interstate commerce, see *Hemani*, 2026 WL 1751710, at *13 (Thomas, J. concurring) ("Nor does [18 U.S.C. § 927(g)] 'regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce' because it requires no showing that *the* [*firearm*] *possession in question* poses any risk to interstate buying, selling, shipping, or transportation." (emphasis added)); cf. *Raich*, 545 U.S. at 73 (Thomas, J., dissenting) ("There is no reason why, when Congress exceeds the scope of its commerce power, courts may not invalidate Congress' overreaching on a case-by-case basis.").

Indeed, this Court has required exactly such a use-specific inquiry. In *The Employers' Liability Cases*, 207 U.S. 463 (1908), the Court considered a statute that made common carriers engaged in interstate commerce liable to "any" employee injured by the negligence of "any" officer, agent, or employee. *Id.* at 463, 498. The Court concluded that the statute imposed liability on those who were "engaged in interstate commerce, and [was] not confined solely to regulating the interstate commerce business which such persons may do, [sic]—that is, it regulate[d] the persons because they engage[d] in interstate commerce, and [did] not alone regulate the business of interstate commerce." *Id.* at 497. That breadth proved fatal. Because the statute "impos[ed] liability upon them in favor of any of their employees, without qualification or restriction as to the business in which the carriers or their employees may be engaged at the time of the injury," the statute "of necessity include[d] subjects wholly outside of the power of Congress to regulate commerce." *Id.* at 498. Liability turned on the carrier's actual employment at the time, and a statute that swept in carriers without regard to that employment reached past the commerce power.

The Court's instrumentalities decisions confirm the same use-based test, for in each the Court tied instrumentality status to the object's employment in interstate commerce. See *Pensacola Tel. Co.* v. *W. Union Tel. Co.*, 96 U.S. (6 Otto) 1, 9–11 (1878) (describing interstate telegraph lines as necessary instrumentalities of interstate commerce); *Overstreet* v. *N. Shore Corp.*, 318 U.S. 125, 129 (1943) (describing roads and bridges as instrumentalities "[i]f they are used by persons and goods passing between the various States"); *The Shreveport Rate Cases*, 234 U.S. at 354 (describing an "interstate [rail] carrier" as "an instrument of interstate commerce").

The vessel cases make the test explicit. In *The Daniel Ball*, 77 U.S. (10 Wall.) 557 (1870), a steamer carrying goods on a river wholly within Michigan was "employed as an instrument of that commerce" because, and only so far as, she was "employed in transporting goods destined for other States, or goods brought from without the limits of Michigan." *Id.* at 565. Her employment in moving interstate goods is what made her an instrument of that commerce; the same steamboat carrying only intrastate goods would have fallen outside the description. The Court relied on this definition this term in a case interpreting "engaged in commerce." *Flowers Foods, Inc.* v. *Brock*, 146 S. Ct. 1358, 1364 (2026) (noting that a vessel "employed in transporting goods destined for other States" is thereby "engaged in commerce between the States" (quoting *The Daniel Ball*, 77 U.S. (10 Wall.) at 565)).

These authorities describe whole facilities—telegraph lines, interstate railroads, vessels on the navigable waters—as instrumentalities because such facilities operate within the system of interstate transportation as a matter of their *ordinary* employment. That description reflects the actual function of the facilities and supplies no warrant for treating an entire category of objects as instrumentalities without regard to their ordinary use.

The aircraft example points the same way. *Perez* offered the destruction-of-aircraft statute as an illustration of protecting an instrumentality of interstate commerce, see 402 U.S. at 150, and that statute reaches "any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce," 18 U.S.C. § 32(a)(1). The illustration keys instrumentality status to aircraft employed in air commerce. To read *Perez* as declaring every civil aircraft an instrumentality whatever its use would stretch the Court's reference to "aircraft" past the scope of the statute it invoked as an example. And the Court's very next example was that of "persons or things in commerce, as, for example, thefts from interstate shipments." 402 U.S. at 150.

b. This Court's cases also impose a nexus requirement. "[T]hus far in our Nation's history [the Court's] cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature," *Morrison*, 529 U.S. at 613, or the regulation is "a necessary part of a more general regulation of interstate commerce," *Raich*, 541 U.S. at 37 (Scalia, J., concurring); see also *Lopez*, 514 U.S. at 561 (noting that a regulation was not "an essential part of a larger regulation of economic activity"). That is true in both the substantial-effects and instrumentalities contexts.

Lopez and *Morrison*, both substantial effects cases, suggest that the proper constitutional default is that purely intrastate, noneconomic activity is beyond the commerce power because such activity is too "remote" from the regulation of interstate commerce. Cf. *United States* v. *Dewitt* 76 U.S. (9 Wall.) 41, 44 (1869) ("This consequence is too remote and too uncertain to warrant us in saying that the prohibition is an appropriate and plainly adapted means for carrying into execution the power of laying and collecting taxes.").

The canonical statement of this constitutional principle is *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937):

> Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.

Id. at 37. The *Lopez-Morrison* doctrine distinguishing economic from noneconomic activity provides a judicially administrable means of implementing this general principle.

Applying this distinction, *Lopez* and *Morrison* concluded that Congress could not reach certain instances of purely intrastate, noneconomic activity—gun possession in school zones and gender-motivated violence—because even after aggregating all instances of each activity, the connection to interstate commerce was too "tenuous[]" to justify the regulations as proper means to effectuate the Commerce power. *Morrison*, 529 U.S. at 613 (quoting *Lopez*, 514 U.S. at 564).

That neither activity could be understood as "'commerce' or any sort of economic enterprise, however broadly one might define those terms," was central to the Court's holdings. *Lopez*, 514 U.S. at 561; see *Morrison*, 529 U.S. at 615–16. Nor could the regulated activities be described as "essential part[s] of a larger regulation of economic activity." *Lopez*, 514 U.S. at 561. It would be more than passing strange if those foundational precedents applied only to crimes committed on foot.

These limitations on the regulation of purely intrastate, noneconomic activity are not confined to the effects category. In fact, they are of a piece with the Court's instrumentalities precedents; in the few cases where the Court has upheld Congress's power to regulate intrastate activity via an instrumentality, the regulated activity was economic in nature.

In *Southern Railway Co.* v. *United States*, 222 U.S. 20 (1911), for example, the Court upheld a railcar-safety regulation that covered the operation of railcars on interstate railways regardless whether they carried interstate or intrastate "traffic," reasoning that such railcars were used "interchangeably" to carry both types of traffic and were "frequently commingled in the same train." *Id.* at 26–27. The railcars at issue were engaged in the transportation of goods as part of a commercial enterprise—quintessentially economic activity.

3. All of that boils down to this: Congress may regulate purely intrastate conduct involving an instrumentality only if doing so is a "necessary and proper means to achieve the legitimate objective of regulating interstate commerce." Barnett, *The Original Meaning of the Commerce Clause*, *supra*, at 127. The constitutional inquiry cannot look only at a class of objects in the aggregate apart from how the object is used and the connection of that use to the regulation of interstate commerce. Nor can it allow regulation of an object involved in exclusively noneconomic activity unless that regulation is an "a necessary part of a more general regulation of interstate commerce." *Raich*, 541 U.S. at 37 (Scalia, J., concurring). To permit as much would defy fundamental limitations on the scope of federal power—that a regulation must be necessary and proper to effectuate congressional control of interstate trade or transportation of things or persons.

II. THE ELEVENTH CIRCUIT'S RULE THAT AUTOMOBILES ARE PER SE INSTRUMENTALITIES IMPERMISSIBLY EXTENDS FEDERAL POWER.

Below, the Eleventh Circuit applied its rule that "an automobile is *per se* an instrumentality of interstate commerce, even if it is used purely intrastate." *Brown*, 2025 WL 3771990, at *2 (relying on *Bryan*, 159 F.4th at 1293–95). Under that rule, the government can satisfy 18 U.S.C. § 1201(a)'s jurisdictional element if the "indictment allege[s], and trial evidence establishe[s], that [a defendant] used a car … in the commission of" the kidnapping offense. *Id.* That rule defies the boundaries set by the Necessary and Proper and Commerce Clauses.

To start, the Eleventh Circuit's rule establishes automobiles' instrumentality status on a category-wide basis and without care for whether the actual object at issue bears a sufficient connection to interstate commerce. The court reached that sweeping conclusion by leaning on dicta addressing objects like airplanes, boats, and shipping containers. See *Bryan*, 159 F.4th at 1295–96. But none of the cited cases held that the Commerce Clause invites a categorical inquiry focused on objects devoid of sufficient connection to interstate commerce. And only by squinting at that dicta can one find support for treating those objects categorically as "instrumentalities." See *Perez*, 402 U.S. at 150 (aircraft); *Gibbons*, 22 U.S. at 189–90 (vessels); *Japan Line*, 441 U.S. at 445–46 (shipping containers). That is no way to read the Constitution or this Court's cases.

Worse still, the Eleventh Circuit's rule permits Congress to regulate the purely intrastate use of an automobile—untethered to any economic activity. See *Bryan*, 159 F.4th at 1295–96. That reasoning has no logical stopping point. If an automobile is always an instrumentality, then Congress may regulate virtually any activity that involves the use of a car.

The Court has repeatedly warned that such reasoning violates constitutional "first principles" because it "obliterate[s] the distinction between what is national and what is local": "The powers delegated … to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." *Lopez*, 514 U.S. at 552, 557 (first quoting *Jones & Laughlin Steel*, 301 U.S. at 37; then quoting The Federalist No. 45, at 292–93).

In *Morrison*, for instance, the Court rejected reasoning that sought "to follow the but-for causal chain from the initial occurrence of violent crime … to every attenuated effect upon interstate commerce," warning that doing so "would allow Congress to regulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on … transit." 529 U.S. at 615.

Indeed, by the Eleventh Circuit's logic, Congress could go even further. It could set speed limits on local (or even private) roads, establish licensing rules for local drivers, regulate the length and process of school drop-off lines, or dictate when and how residential streets must be plowed after a snowstorm—all because those activities involve the use of automobiles.

The Eleventh Circuit's rule thus invites regulating nothing short of that "which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States." *Gibbons*, 22 U.S. at 194.

All the more troubling, the Eleventh Circuit's rule is not an outlier. The Third, Fourth, Sixth, Seventh, and Ninth Circuits have also deemed automobiles per se instrumentalities. See *United States* v. *Bishop*, 66 F.3d 569, 588 (3d Cir. 1995); *United States* v. *Cobb*, 144 F.3d 319, 322 (4th Cir. 1998); *United States* v. *Windham*, 53 F.4th 1006, 1013 (6th Cir. 2022); *United States* v. *Protho*, 41 F.4th 812, 828–29 (7th Cir. 2022); *United States* v. *Oliver*, 60 F.3d 547, 550 (9th Cir. 1995). The Eleventh Circuit's rule thus reflects the circuits' troubling trend toward an instrumentalities doctrine untethered from the Commerce and Necessary and Proper Clauses' original meaning, this Court's precedents, and common sense.

Put simply, the Commerce and Necessary and Proper Clauses permit Congress to reach intrastate activity only insofar as it is "necessary … for carrying into Execution," U.S. Const. art. I, § 8, cl. 18—or effectuate—the regulation of the interstate trade or transportation of things or persons. The Eleventh Circuit erred by treating every use of an automobile as federally regulable without demanding an adequate connection to interstate commerce.

In *Landor*, the Court reaffirmed the fundamental principle that laws must be necessary and proper to carrying into execution an enumerated power; this case presents a ripe opportunity for the Court to apply this principle in the context of the Commerce Clause by confirming that the mere local use of an automobile, without more, is insufficient to justify the exercise of federal power. The Court should grant certiorari and seize that opportunity.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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