

No. 25-1342

In the Supreme Court of the United States

DERICK IRISHA BROWN, 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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QUESTIONS PRESENTED

1. Whether petitioner “use[d] * * * any * * * instrumentality of interstate or foreign commerce in committing or in furtherance of” a kidnapping resulting in death, in violation of 18 U.S.C. 1201(a)(1), when she used a Toyota Sequoia automobile to kidnap a three-year-old girl.

2. Whether application of the kidnapping statute to petitioner’s conduct violates the Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is available at 2025 WL 3771990. The order of the district court (Pet. App. 11a-19a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 31, 2025. A petition for rehearing was denied on February 24, 2026 (Pet. App. 20a). The petition for a writ of certiorari was filed on May 21, 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 Northern District of Alabama, petitioner was convicted on one count of kidnapping resulting in death, in violation of 18 U.S.C. 1201(a)(1); and one count of conspiring to commit kidnapping, in violation of 18

U.S.C. 1201(c). Judgment 1; Superseding Indictment 1-4. The district court sentenced petitioner to life imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-10a.

1. On October 12, 2019, petitioner and her boyfriend lured a three-year-old girl into petitioner's Toyota Sequoia, telling her that they would take her to get candy. Presentence Investigation Report (PSR) ¶¶ 13-14; 11/14/22 Trial Tr. 39-41. They drove with the girl from Birmingham, Alabama, to their apartment in Center Point, Alabama. PSR ¶¶ 13-15.

Ten days later, the girl's body was discovered in a landfill. PSR ¶ 20. The girl had been drugged and asphyxiated, and her body had been placed in a dumpster near the apartment complex where petitioner and her boyfriend had taken the girl. *Ibid.* After obtaining evidence that linked petitioner's car and her boyfriend's cellphone to the girl's abduction, law enforcement officers interviewed petitioner and her boyfriend, who each tried to cast blame on the other for killing the girl. PSR ¶¶ 13-19.

2. A federal grand jury in the Northern District of Alabama charged petitioner with one count of kidnapping resulting in death, in violation of 18 U.S.C. 1201(a)(1); and one count of conspiring to commit kidnapping, in violation of 18 U.S.C. 1201(c). Superseding Indictment 1-4. Section 1201(a)(1) provides:

Whoever unlawfully * * * kidnaps * * * any person,
 * * * when * * * the offender * * * uses the mail
 or any means, facility, or instrumentality of inter-
 state or foreign commerce in committing or in fur-
 therance of the commission of the offense * * * ,
 shall be punished by imprisonment for any term of

years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

18 U.S.C. 1201(a)(1). Section 1201(c), in turn, provides that “[i]f two or more persons conspire to violate [Section 1201] and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.” 18 U.S.C. 1201(c).

The indictment alleged that petitioner had used “a means, facility and instrumentality of interstate commerce, including, but not limited to, a Toyota Sequoia motor vehicle, in committing and in furtherance of” the charged offenses. Superseding Indictment 2; see *id.* at 1, 3. Petitioner moved to dismiss the indictment, arguing that Section 1201(a)(1) “is an invalid exercise of Congress’ commerce power, facially and as applied to her, because it reaches purely intrastate conduct,” including petitioner’s use of an automobile within Alabama. Pet. App. 12a-13a; see D. Ct. Doc. 85, at 8 (July 18, 2022).

The district court denied the motion. Pet. App. 11a-19a. The district court observed that this Court in *United States v. Lopez*, 514 U.S. 549 (1995), had reaffirmed that the Commerce Clause empowers Congress “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.” Pet. App. 13a (quoting *Lopez*, 514 U.S. at 558). The district court then explained that “automobiles” are “instrumentalities of interstate commerce.” *Id.* at 14a (brackets and citation omitted).

3. The jury found petitioner guilty on both counts alleged in the indictment. Judgment 1. The district court sentenced petitioner to life imprisonment on each count, to be served concurrently and to be followed by five years

of supervised release. Judgment 2-3. The court specified that petitioner’s federal term of imprisonment “shall run consecutively with any yet-to-be imposed sentence” in state court, where petitioner has been charged with capital murder for the death of the same girl. Judgment 2; see Pet. App. 11a.

4. The court of appeals affirmed in an unpublished decision. Pet. App. 1a-10a.

On appeal, petitioner argued that, as a matter of statutory interpretation, Section 1201(a)(1)’s reference to the “use[]” of “any means, facility, or instrumentality of interstate or foreign commerce” should not be construed to encompass the “wholly intrastate” use of an automobile. Pet. App. 2a (citation omitted; brackets in original). The court of appeals rejected that argument. *Id.* at 2a-3a. The court explained that “Congress used the phrase ‘uses . . . any means, facility, or instrumentality of interstate or foreign commerce’ in § 1201(a) to exercise to the fullest extent its power under the Commerce Clause to regulate instrumentalities of interstate commerce.” *Id.* at 3a. The court accordingly interpreted Section 1201(a)(1) “to unambiguously extend to the wholly intrastate use of an automobile as an instrumentality of interstate commerce if the regulation of such a use falls within Congress’s power under the Commerce Clause.” *Ibid.*

The court of appeals then rejected petitioner’s contention that her use of the Toyota Sequoia to kidnap her victim fell outside Congress’s power under the Commerce Clause. Pet. App. 3a-4a. Relying on circuit precedent, the court stated that “an automobile is *per se* an instrumentality of interstate commerce, even it is used purely intrastate.” *Id.* at 4a; see *United States v. Bryan*, 159 F.4th 1274, 1295 (11th Cir. 2025), petition for cert. pending *sub nom. McMichael v. United States*, No. 25-7371

(filed May 5, 2026). And the court determined that because “the indictment alleged, and trial evidence established, that [petitioner] used a car—a Toyota Sequoia—in the commission of her kidnapping offense,” her Section 1201(a)(1) conviction “does not violate the Commerce Clause.” Pet. App. 4a.

ARGUMENT

Petitioner contends (Pet. 15-18) that the court of appeals erred in determining, as a matter of statutory interpretation, that automobiles are “instrumentalities of interstate commerce” under 18 U.S.C. 1201(a)(1). Petitioner further contends (Pet. 18-22) that treating automobiles as instrumentalities of interstate commerce under the statute would exceed Congress’s authority under the Commerce Clause.* The court of appeals’ decision is correct and does not conflict with any decision of this Court or another court of appeals. The petition for a writ of certiorari should be denied.

1. The court of appeals correctly rejected petitioner’s contention that, as a matter of statutory interpretation, the “wholly intrastate” use of an automobile is not the “use[]” of an “instrumentality of interstate * * * commerce” under Section 1201(a)(1). Pet. App. 2a (citation omitted; brackets in original).

a. Before 2006, Section 1201(a)(1) prohibited “unlawful[]” “kidnap[pings]” where the victim “[wa]s willfully transported in interstate or foreign commerce.” 18 U.S.C. 1201(a)(1) (2000). In 2006, however, Congress amended Section 1201(a)(1) to prohibit unlawful kidnappings in various additional circumstances, including where “the

* Another pending petition for a writ of certiorari involves a similar contention. See *McMichael v. United States*, No. 25-7371 (filed May 5, 2026).

offender * * * uses * * * any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense.” 18 U.S.C. 1201(a)(1); see Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 213(1), 120 Stat. 616.

Congress added that provision against the backdrop of this Court’s decisions in *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000). In both of those decisions, the Court “identified three broad categories of activity that Congress may regulate under its commerce power.” *Lopez*, 514 U.S. at 558; *Morrison*, 529 U.S. at 608 (same). One of those categories (the second) allows Congress “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.” *Lopez*, 514 U.S. at 558; see *Morrison*, 529 U.S. at 609 (same).

In amending Section 1201(a)(1) to prohibit unlawful kidnappings where the offender uses an “instrumentality of interstate * * * commerce,” 18 U.S.C. 1201(a)(1), Congress plainly meant to exercise “the fullest extent [of] its power” under *Lopez* and *Morrison* to regulate such instrumentalities, Pet. App. 3a; see *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010) (explaining that this Court “normally assume[s] that, when Congress enacts statutes, it is aware of relevant judicial precedent”). That provision therefore encompasses the use of such instrumentalities, even in cases involving only “intrastate activities,” *Lopez*, 514 U.S. at 558; see *Morrison*, 529 U.S. at 609 (same).

b. Petitioner’s contrary arguments (Pet. 15-18) lack merit. First, petitioner asserts (Pet. 15) that “other provisions in Title 18” that “create federal offenses involv-

ing automobiles” do not reach wholly intrastate activities. But “Congress need not legislate to its maximum constitutional authority in every statute, and the fact that Congress chose to regulate a more limited class of vehicles in other statutes does not mean Congress limited § 1201(a)(1) in the same way.” *United States v. Bryan*, 159 F.4th 1274, 1298 (11th Cir. 2025), petition for cert. pending *sub nom. McMichael v. United States*, No. 25-7371 (filed May 5, 2026). “Indeed, the textual differences between the kidnapping statute—referring to ‘instrumentalities of interstate . . . commerce’—and [petitioner’s] cited statutes,” many of which “refer[] to motor vehicles ‘in interstate commerce,’” “is good evidence that Congress deliberately chose not to limit the kidnapping statute as [petitioner] describes.” *Ibid.* (brackets and citation omitted).

Second, petitioner argues (Pet. 16) that if Congress had intended the “instrumentality” provision to be a “jurisdictional hook[]” that “do[es] not involve crossing state lines,” it would not have placed that provision alongside “other jurisdictional hooks” that do “involve the actual crossing of state lines.” But the fact that the other jurisdictional hooks in Section 1201(a)(1) “involve the actual crossing of state lines” does not mean that the “instrumentality” provision should be construed to require the same thing. *Ibid.* To the contrary, the text of that provision mirrors the language of *Lopez* and *Morrison*, which makes clear that Congress may “regulate and protect the instrumentalities of interstate commerce, * * * even though the threat may come only from intrastate activities.” *Lopez*, 514 U.S. at 558; see *Morrison*, 529 U.S. at 609 (same).

Third, petitioner contends (Pet. 16) that *Lopez* and *Morrison* support her interpretation of the “instrumen-

tality” provision because those decisions rejected an “anything-goes interpretation of the Commerce Clause.” But as just explained, *Lopez* and *Morrison* reaffirmed that the Commerce Clause empowers Congress to “regulate and protect the instrumentalities of interstate commerce,” even in cases involving only “intrastate activities.” *Lopez*, 514 U.S. at 558; see *Morrison*, 529 U.S. at 609 (same). Those decisions therefore undermine, rather than support, petitioner’s view that Section 1201(a)(1) does not reach the “wholly intrastate” use of an automobile. Pet. App. 2a.

Fourth, petitioner contends (Pet. 17) that the canon of constitutional avoidance counsels in favor of her interpretation of Section 1201(a)(1). But that canon “comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction.” *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018) (citation omitted). And here, “[i]t is clear that Congress used the phrase ‘uses . . . any means, facility, or instrumentality of interstate or foreign commerce’ in § 1201(a) to exercise to the fullest extent its power under the Commerce Clause to regulate instrumentalities of interstate commerce.” Pet. App. 3a. Moreover, the canon of constitutional avoidance applies only “[w]hen ‘a serious doubt’ is raised about the constitutionality of an Act of Congress.” *Jennings*, 583 U.S. at 296 (citation omitted). As explained below, no serious doubt about the constitutionality of Section 1201(a)(1)’s application exists here.

2. The court of appeals correctly rejected petitioner’s Commerce Clause challenge to the application of Section 1201(a)(1) to her case. Pet. App. 3a-4a.

a. The Commerce Clause grants Congress the power to “regulate Commerce * * * among the several States.”

U.S. Const. Art. I, § 8, Cl. 3. As noted, the Clause empowers Congress 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.” *Lopez*, 514 U.S. at 558; see *Morrison*, 529 U.S. at 609 (same). The automobile that petitioner used in this case was such an instrumentality.

Instrumentalities of interstate commerce include the means of using the channels of interstate commerce. See *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 444, 446 (1979). Railroads and airspace, for example, are channels of interstate commerce. See *Omaha & Council Bluffs St. Ry. Co. v. ICC*, 230 U.S. 324, 336 (1913); *Fejes v. FAA*, 98 F.4th 1156, 1160 (9th Cir. 2024). And railcars and airplanes are means of using railroads and airspace, respectively. Accordingly, this Court has recognized that railcars and airplanes are instrumentalities of interstate commerce, which Congress may regulate even in cases involving only “intrastate activities.” *Lopez*, 514 U.S. at 558; see *Perez v. United States*, 402 U.S. 146, 150 (1971); *Southern Ry. Co. v. United States*, 222 U.S. 20, 26-27 (1911).

The same reasoning applies to the automobile here. Highways are channels of interstate commerce. See *Pierce County v. Guillen*, 537 U.S. 129, 146-147 (2003); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 243, 256-258 (1964). And there is no dispute that automobiles like the one here are a means of using highways. Such an automobile is thus an instrumentality of interstate commerce, which Congress may regulate even in cases involving only “intrastate activities.” *Lopez*, 514 U.S. at 558; see *Bryan*, 159 F.4th at 1295-1296.

b. Petitioner accepts (Pet. 20-21) that railcars and airplanes are per se instrumentalities of interstate commerce—*i.e.*, instrumentalities that Congress may regulate even in cases involving only intrastate activities. Petitioner nevertheless contends (Pet. 21) that automobiles are different because, according to petitioner, “the dominant use of automobiles is not to engage in interstate commerce.” But petitioner did not make that argument below, see, *e.g.*, D. Ct. Doc. 85, at 8-12; Pet. C.A. Br. 35-44, Pet. C.A. Reply Br. 4-10, Pet. C.A. Pet. for Reh’g En Banc 4-8, and it is in any event unsound. Petitioner’s “dominant use” test has no basis in this Court’s precedent. And even if it did, there is no sound reason to conclude that automobiles, let alone the Toyota Sequoia here, fail to satisfy it. Beyond her own ipse dixit, petitioner offers nothing to support her assertion (Pet. 21) that “the dominant use of automobiles is not to engage in interstate commerce.”

3. Contrary to petitioner’s contention (Pet. 6-8), the decision below does not conflict with the decision of any other court of appeals.

Every court of appeals to address the issue has recognized automobiles as instrumentalities of interstate commerce, which Congress may regulate even in cases involving only intrastate activities. See *United States v. Bishop*, 66 F.3d 569, 588-590 (3d Cir.), cert. denied, 516 U.S. 1032 (1995), and 516 U.S. 1066 (1996); *United States v. Cobb*, 144 F.3d 319, 322 (4th Cir. 1998); *United States v. Windham*, 53 F.4th 1006, 1011-1013 (6th Cir. 2022); *United States v. Protho*, 41 F.4th 812, 827-829 (7th Cir.), cert. denied, 143 S. Ct. 465 (2022); *United States v. Oliver*, 60 F.3d 547, 550 (9th Cir. 1995); *Bryan*, 159 F.4th at 1296-1297 (11th Cir.). Multiple courts have done so in cases involving Section 1201(a)(1). See *Windham*,

53 F.4th at 1011-1013; *Prothro*, 41 F.4th at 827-829; *Bryan*, 159 F.4th at 1296-1297.

The Tenth Circuit in *United States v. Chavarria*, 140 F.4th 1257 (2025), did not address whether automobiles are instrumentalities of interstate commerce under either Section 1201(a)(1) or the Commerce Clause. Although the indictment in that case charged the defendant with using a “motor vehicle” in committing a kidnapping, it did not specify whether the motor vehicle was an automobile. *Id.* at 1260 (emphasis omitted). As the Tenth Circuit emphasized, the two terms—“[a]utomobile” and “motor vehicle”—“are not coextensive.” *Id.* at 1264 n.14 (citations omitted). The court explained that “[a]utomobile” is considerably narrower than “motor vehicle,” *ibid.*, which the court viewed as encompassing not just cars, but also “e-bikes,” “[l]awnmowers,” “[e]lectric scooters,” “[e]levators,” and “[m]otorized [w]heelchairs,” *id.* at 1266. The court thus reasoned that even if “all cars are instrumentalities of interstate commerce, it does not follow that all motor vehicles are,” *id.* at 1267, and it held “only that ‘motor vehicles’—an undefined, generic term—are not per se instrumentalities of interstate commerce for purposes of the federal kidnapping statute,” *id.* at 1268.

Here, unlike in *Chavarria*, the indictment did not simply say “motor vehicle.” Rather, it specified that petitioner committed the charged offenses by using a “Toyota Sequoia motor vehicle,” Superseding Indictment 2—*i.e.*, a particular sport utility vehicle that is clearly an automobile, rather than a “[l]awnmower[],” “[e]levator[],” or the like, *Chavarria*, 140 F.4th at 1266. Given that the Tenth Circuit in *Chavarria* reserved judgment on whether “all cars are instrumentalities of interstate commerce,” *id.* at 1267, its decision does not conflict with

the court of appeals' decision in this case, see *Bryan*, 159 F.4th at 1296 n.17 (distinguishing *Chavarria*).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 2026