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IN THE  
SUPREME COURT OF THE UNITED STATES

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ANDREW CHARLES BEARD,  
Petitioner,

VS.

UNITED STATES OF AMERICA,  
Respondent.

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ON PETITION FOR REHEARING

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SECOND  
SUPPLEMENTAL BRIEF FOR  
ANDREW CHARLES BEARD

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SECOND SUPPLEMENTAL BRIEF OF ANDREW CHARLES BEARD

NEW MATTER

Pursuant to Rule 15.8 of the Rules of the Supreme Court, Andrew Charles Beard files this second supplemental brief to bring to the Court's attention the following new matter:

Since the time of Mr. Beard's petition for rehearing, the Supreme Court has "distributed for conference" Holly Ann Elkins (co-conspirator of Mr. Beard) petition for writ of certiorari. See *Elkins v. United States*, No. 25-1061. Her sole question presented to the Court is:

This Court has identified three broad categories of activity that Congress may regulate under its commerce power, the second of which comprises 'the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though that threat may come only from intrastate activities.' *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). Some courts take a categorical approach to this category, as the Fifth Circuit did here: phones just are instrumentalities of interstate commerce. *United States v. Elkins*, 161 F.4th 899, 912 (2025). In the Tenth Circuit, however, something that can be an instrumentality, like a motor vehicle, is not necessarily one. *United States v. Chavarria*, 140 F.4th 1257, 1265 (10th Cir. 2025). It must actually 'affect interstate commerce in some way for its use to warrant federal interest.' *Id.*

Is the Fifth Circuit's categorical approach to instrumentalities of interstate commerce constitutional?

*Elkins*, No. 25-1061 at i.

Put more narrowly, Ms. Elkins asks the Court to determine whether her federal cyberstalking pursuant to 18 U.S.C. §2261A(2) exceeds Congress's Commerce Clause powers under Article I, Section 8, of the United States Constitution. The Court has directed "response requested" from the United States to address this

question by May 13, 2026. See Elkins, No. 25-1061.

Applicable here, this exact claim was presented by Mr. Beard in his own pro se petition, but the Court denied it without reviewing the merits. See Beard v. United States, No. 25-5400 (Oct. 6, 2025) ("Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied").

Since Mr. Beard's pending petition for rehearing is fully reliant upon his federal cyberstalking conviction, the Supreme Court's interest in Elkins v. US identical claim will have a substantial and controlling effect. See Sup.Ct.R. 44.2 (Rehearings are "limited to intervening circumstances of a substantial or controlling effect"); see also Sup.Ct.R. 15.1 (Explaining that a brief in opposition to a petition for certiorari is only required in capital cases or when requested by the Court). Thus, the high likelihood of the Court granting certiorari in Elkins v. US should warrant additional review in Beard's pending rehearing. See Dan Schweitzer, How to Write a Successful Brief in Opposition: A Guide for State Lawyers, at 3 (Nat'l Ass'n of Att'ys Gen. Aug 2019) ("The [Supreme] Court never grants certiorari without asking for a response").


Finally, as co-conspirators in each others cases, Ms. Elkins' petition for certiorari --filed after Mr. Beard submitted for rehearing-- will not only substantially effects the outcome of his case, but will also have a controlling effect. And since Mr. Beard preserved his adoption of this constitutional challenge on direct appeal, see United States v. Beard, No. 23-10594 (5th Cir. Feb. 14, 2025), it should be --at minimum-- consolidated with

Elkins' petition for certiorari. See Sup.Ct.R. 12.4 (Joint Petitions); Sup.Ct.R. 12.5 (Cross-Petition For Cert.).

CONCLUSION

On the basis of this new material, as well as all the material previously submitted, Andrew Charles Beard requests that this Court grant the petition for rehearing, or his petition for certiorari be consolidated with Elkins v. US, No. 25-1061.

Respectfully submitted,

X 

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