NO. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

MUJERA LUNG'AHO,

Petitioner

VS.

UNITED STATES OF AMERICA,

Respondent

_____

ON PETITION FOR A WRIT OF CERTITORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

_____

PETITION FOR WRIT OF CERTIORARI

_____

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QUESTION PRESENTED

1. Whether Congress may federalize the arson of any property belonging to any organization that receives any amount of federal funding under the Spending Clause and Necessary and Proper Clause?

PARTIES TO THE PROCEEDING

Petitioner Mujera Lung'aho is a prisoner at the Beaumont Medium Federal Correctional Institution. Respondent is the United States of America, who maintains custody of the Beaumont Medium Federal Correctional Institution, represented by Assistant United States Attorney John Ray White of the United States Attorney's Office for the Eastern District of Arkansas.

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PETITION FOR A WRIT OF CERTIORARI

Mujera Lung'aho respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit (App. 11) is reported at 144 F.4th 1026. The Eighth Circuit's denial of Lung'aho's petition for rehearing en banc (App. 22) is reported at 2025 U.S. App. LEXIS 20846.

JURISDICTION

The Eighth Circuit entered its opinion on July 18, 2025. Lung'aho filed a petition for rehearing en banc, which was denied on August 14, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1331.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Spending Clause: "[t]he Congress shall have Power To . . . pay the Debts and provide for the common Defen[s]e and general Welfare of the United States[,]" and the Necessary and Proper Clause: "the Congress shall have Power . . . [t]o make all Laws which shall be necessary and proper for carrying into

Execution" all the powers vested in the Government of the United States. U.S. Const. Art I, § 8, cl. 18.

This case additionally involves 18 U.S.C. § 844(f)(1): "Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, or any institution or organization receiving Federal financial assistance, shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both."

STATEMENT OF THE CASE

This case arises from Mujera Lung'aho's conviction under 18 U.S.C. § 844(f) for the arson of property owned by an organization receiving marginal federal financial assistance unrelated to the property at issue. The material facts regarding the property at issue are not in dispute. The property damaged was Arkansas State Police, North Little Rock Police Department, and Little Rock Police Department patrol vehicles, respectively. The total property damage was approximately $86,099.37.

Each department received federal financial assistance in varying amounts. Between 2017 and 2020 the Arkansas State Police received approximately $10 million in federal funding and the North Little Rock Police Department received approximately $160,000 in federal funding. Between 2017 and 2021, the Little Rock

Police Department received approximately $280,000. This federal funding accounts for 2% of the Arkansas State Police total operating budget, 0.7% of the North Little Rock Police Department total operating budget, and 1% of the Little Rock Police Department total operating budget. None of the police patrol vehicles were purchased using any federal financial assistance.

This case presents the question of whether the property owned, possessed, used by, or leased to an organization receiving federal financial assistance must have a connection to the federal financial assistance that organization received to transform the conduct from a state matter to federal jurisdiction pursuant to 18 U.S.C. § 844(f)(1).

1. **United States District Court for the Eastern District of Arkansas.**

On February 3, 2021, Lung'aho was charged by superseding indictment with three counts of conspiracy to commit arson of property owned by an organization receiving federal financial assistance in violation 18 U.S.C. § 844(f)(1); three counts of arson of property owned by an organization receiving federal financial assistance in violation of 18 U.S.C. § 844(f)(1); three counts of possessing a destructive device in furtherance of an attempted crime of violence in violation of 18 U.S.C. § 924(c)(1)(B); three counts of possessing an unregistered destructive device in violation of 26 U.S.C. § 5861(d); and one count of knowingly making a destructive device in violation of 26 U.S.C. § 5861(f). App. 1-10.

The district court granted Lung'aho's motion to dismiss the three 924(c) counts, App. 10, and the Eighth Circuit affirmed the district court's dismissal on

interlocutory appeal by the United States. *United States v. Lung'aho*, 72 F.4th 845 (2023).

Lung'aho also moved to dismiss the six arson-related counts charged under 18 U.S.C. § 844(f)(1) as an unconstitutional application of Congress's Property Clause powers. App. 3-4. Moreover, Lung'aho argued § 844(f)(1) could not be sustained under the Property Clause or under the Necessary and Proper Clause and Spending Clause together. App. 4-5. The district court held a hearing on the motion to dismiss where the government conceded that the statute could not be maintained under the Property Clause but argued that it was constitutional on its face pursuant to the Spending Clause and the Necessary and Proper Clause. App. 3-6.

The district court denied Lung'aho's motion to dismiss the six arson-related charges, reasoning that while the statute could not be maintained under the Property Clause because the property at issue was not federal property or paid for with federal financial assistance, the statute could be upheld under the Spending Clause coupled with the Necessary and Proper Clause. App. 3-6.

2. The Eighth Circuit's Opinion

Lung'aho appealed the district court's denial of his motion to dismiss those six charges under 18 U.S.C. § 844(f)(1) to the Eighth Circuit, arguing the district court erred by holding the statute constitutional as applied to him under Congress's Spending Clause powers, regardless of whether federal funds were used to acquire the specific property. App. 11-17.

The Eighth Circuit affirmed the district court's denial of Lung'aho's motion to dismiss those arson-related counts. App. 16. The majority reasoned that Congress could, under its Necessary and Proper Clause powers, prevent the arson of state and local property owned by agencies or departments receiving federal funding, regardless of whether the property was purchased with federal funds. App.14-15. In its view, "there is no reason to distinguish arson from bribery" and therefore, *Sabri* controls. App. 15. The Eighth Circuit addressed this Court's decision in *Jones v. United States*, 529 U.S. 848 (2000) by merely stating this Court "invoked constitutional avoidance to interpret an ambiguous statute," and claimed that "no one suggests that §844(f)(1) is ambiguous." App. 15.

The dissent found that "the majority's reasoning suggests Congress may simply purchase that [plenary] police power through financial assistance – including miniscule assistance unrelated to the affected property." App. 16. The dissent wrote:

> In *Jones*, the Supreme Court addressed the statutory scope of 18 U.S.C. § 844(i), a sister provision to the § 844(f)(1) offense under which Lung'aho was charged….To avoid the constitutional concerns if § 844(i) were read to apply to "[p]ractically every building in our cities, towns, and rural areas," the Supreme Court held that "the provision covers only property currently used in commerce or in an activity affecting commerce." *Jones*, 529 U.S. at 857, 859. It was not enough that the property was constructed with supplies that had moved in interstate commerce or was served by some entity with a trace to interstate commerce. *Id.* at 857. Jones cautions that Congress cannot turn every arson into a federal crime.
>
> Like § 844(i), § 844(f)(1) includes similar expansive language capable of upending the federal-state balance. Section 844(f)(1) covers arson of "any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, . . . any institution or organization receiving Federal financial assistance." 18 U.S.C. § 844(f)(1). Countless institutions

> and organizations receive federal financial assistance today. Can Congress declare that burning property belonging to one of those organizations makes one a federal arsonist subject to five to twenty years of imprisonment, regardless of whether that property has any connection to federal assistance?
>
> *Jones* responds no, but under the majority's approach, the answer is yes. *Jones* cautioned that the federal-state balance does not allow Congress to use the Commerce Clause "to make virtually every arson in the country a federal offense," so Congress could only protect property that was itself tied to commerce, the basis for the exercise of federal power. *Jones*, 529 U.S. at 859. Nevertheless, *Sabri v. United States*, 541 U.S. 600, 124 S. Ct. 1941, 158 L. Ed. 2d 891 (2004), the majority claims, allows Congress to safeguard federal spending by criminalizing any damage or destruction to any property of the funding recipient, regardless of the relationship between the exercise of federal power and the property at issue. *Ante*, at 3-5. This interpretation risks nullifying *Jones*, and *Sabri* need not be interpreted so broadly, especially in this case of first impression.

App. 16-17. The dissent would have held that 18 U.S.C. § 844(f)(1) could not "constitutionally apply where the property destroyed is not tied to the federal financial assistance[,]" and therefore that Lung'aho's conduct fell outside the scope of §844(f)(1). App. 20-21.

REASONS FOR GRANTING THE WRIT

The Eighth Circuit misapplied this Court's opinion in *Sabri v. United States*, 541 U.S. 600 (2004), and ignored this Court's opinion in *Jones v. United States*, 529 U.S. 848 (2000), holding that arson is paradigmatically a state-law offense. Lung'aho's charges under 18 U.S.C. § 844(f)(1) are an unconstitutional application of the Spending Clause coupled with the Necessary and Proper Clause as applied to him.

In *Sabri*, this Court held:

> Congress has authority under the Spending Clause to appropriate federal monies to promote the general welfare, Art. I, § 8, cl. 1, and it has corresponding authority under the Necessary and Proper Clause, Art. I, § 8, cl. 18, to see to it that taxpayer dollars appropriated under that power are in fact spent for the general welfare, and not frittered away in graft or on projects undermined when funds are siphoned off or corrupt public officers are derelict about demanding value for dollars.

541 U.S. at 605. Moreover, this Court noted that the statute at issue, 18 U.S.C. § 666(a)(2), was designed to protect the integrity of large amounts of federal dollars distributed to state and local jurisdictions from corrupt officials. *Id.* Because of that goal, this Court stated that corrupt officials could move money from one place to another to accomplish the corrupt conduct, making the traceability of federal funds a difficult if not impossible task. *Id.* Therefore, this Court held that "[i]t is certainly enough that the statutes condition the offense on a threshold amount of federal dollars defining the federal interest . . ." *Id.* Section § 844(f)(1) has no such "threshold amount of federal dollars defining the federal interest[.]" *Id.*

According to the Eighth Circuit the same rationale in *Sabri* applies to this case: "preventing the arson of state and local police cars owned by departments receiving federal funding is a rational way of safeguarding federal dollars. And it doesn't matter that the police cars were not purchased with federal funds." App. 13. The Eighth Circuit's opinion ignores this Court's rationale in *Sabri* that corruption and bribery can extend beyond the specific federal funds at issue and still affect those federal funds because "[m]oney is fungible, bribed officials are untrustworthy stewards of federal funds, and corrupt contractors do not deliver dollar-for-dollar value." 541 U.S. at 606. Despite the clear distinction between the safeguarding of

federal funds from corruption and the safeguarding of property owned by a state or local government receiving federal funds but not using those funds to acquire the property at issue, the Eighth Circuit held the interests were the same.

This Court specifically related its decision in *Sabri* to the "power to keep a watchful eye on expenditures and on the reliability of those who use public money" under the Spending Clause coupled with the Necessary and Proper Clause. 541 U.S. at 607. That reasoning addressed congressional authority to ensure that federal dollars are used by state and local officials as intended, and the congressional authority to pass a law to address that corruption concern being valid exercises of Congress's Necessary and Proper Clause powers to effectuate its spending powers. Neither interest is at issue here. This Court must grant the writ accordingly.

I. THE EIGHTH CIRCUIT MISCONSTRUED THIS COURT'S HOLDING IN *SABRI* AND FAILED TO FULLY ADDRESS *JONES*, FEDERALIZING ALL ARSON OF ANY PUBLIC PROPERTY IN THE PROCESS.

The Eighth Circuit found that *Sabri* allows Congress to safeguard federal spending by criminalizing any damage or destruction to any property of the funding recipient, regardless of the relationship between the exercise of federal power and the property at issue. This interpretation risks nullifying *Jones* and ignores the clear distinction between the facial challenge to the bribery statute at issue in *Sabri* and the as-applied challenge to the arson statute at issue here. *See Jones*, 529 U.S. 848. The Eighth Circuit's decision also ignores the significant differences between bribery of public officials and arson of public property.

Sabri dealt with 18 U.S.C. § 666, a bribery statute that prohibited anyone from corruptly giving anything of value to someone with the intent to influence an agent of an organization in connection with any business exceeding $5,000 if that organization receives more than $10,000 in federal benefits per year. Sabri brought a facial challenge, arguing the statute was wholly unconstitutional because it did not "require proof of any connection between a bribe or kickback and some federal money." *Sabri*, 541 U.S. at 604.

This Court concluded the Spending and Necessary and Proper Clauses authorized Congress to ensure that taxpayer dollars appropriated under those powers are actually spent for the general welfare and "not frittered away in graft or on projects undermined when funds are siphoned off or corrupt public officers are derelict about demanding value for dollars." *Id.* at 605. This Court did not require the bribe to itself involve the funds from the federal benefit because money is interchangeable and cannot always be easily traced back to a specific source. *Id.* at 606.

Corruption does not have to be limited to specific federal funds in order to implicate a federal interest because "money can be drained off here because a federal grant is pouring in there." *Id.* Federal prosecution of persons bribing organizations receiving a threshold amount of federal funding protects the congressional purpose behind the federal funds from being "siphoned off" for improper purposes. *Id.* at 605. The need for a connection between the given bribe and federal dollars is unnecessary because the ultimate issue is the misuse,

misappropriation, and mishandling of federal dollars for purposes not intended by Congress. *Id.* at 606.

Arson does not share these characteristics. Bribery of a funding recipient on one project indicates the recipient or its agents are susceptible to bribes involving federal money or are otherwise likely to waste it. But destruction of police vehicles says nothing about the law enforcement entities' stewardship of federal dollars. It does not indicate the recipients are wasting taxpayer dollars or show the recipients are likely to fail to protect items actually secured by federal funds. Making arson a federal offense as to any property belonging to a recipient of federal financial assistance does not protect federal dollars when those dollars do not pay for the property in question. Money is fungible, but property is not inherently so, and police cars certainly are not.

In these circumstances where there is no "interference with the disbursement of federal funds," Congress exceeds its power "to ensure that [its appropriation] goes where it directs." *See Barnett v. Short*, 129 F.4th 534, 543 (8th Cir. 2025). It is instead trying to "impose liability on anybody it wants through Spending Clause legislation without that person's consent." *Id. Sabri* simply doesn't go that far. App. 19.

Moreover, in *Sabri*, this Court held that "[i]t is certainly enough that the statutes condition the offense on a threshold amount of federal dollars defining the federal interest…" *Sabri*, 541 U.S. at 606. Section § 844(f)(1) has no such "threshold amount of federal dollars defining the federal interest[.]" *Id.* The lack of any such

threshold requirement with the arson statute fails to ensure that federal power will not be extended to the prosecution of merely local matters such as the arson of local police vehicles purchased using entirely local funds, and is unconstitutional as applied accordingly.

The entities at issue received federal assistance that was a negligible part of their overall budget, and none of which went to purchase the damaged property. Preventing arson of these organizations' property that was purchased without any federal assistance is not a rational way to safeguard federal dollars simply because those organizations received federal money. The Eighth Circuit's decision made it so that "there is little or no property destruction that Congress could not federalize." App. 19.

The bribery statute facially passed muster because Congress can "protect spending objects from the menace of local administrators on the take." *Sabri*, 541 U.S. at 608. Congress's ability to spend required it to be able "to keep a watchful eye on expenditures and on the reliability of those who use public money," which allowed it to impose liability even when the federal funds were not used because bribery in one area suggests wastefulness in all aspects of spending, including the ones given by Congress. *Id.* at 606-608. Thus, the federal interest in the benefit recipient's treatment of its expenditures extends broadly. But for property, the federal interest applies only to the property for which Congress expects its funds to be used. If the federal funds were not used to purchase that property, Congress is

not "protecting spending objects." *Id.* at 608. Rather, it exceeds its enumerated authority.

Sabri does not authorize the Eighth Circuit's federalization of nearly all acts of arson. Congress lacks a general police power as the Constitution "withhold[s] from Congress a plenary police power." *United States v. Lopez*, 514 U.S. 549, 556 (1995). The Necessary and Proper Clause does not confer upon Congress a broad police power; it does, however, allow Congress the luxury to choose from an array of means with which to implement its enumerated powers, including its Spending Power. *United States v. Sabri*, 326 F.3d 937, 948-949 (8th Cir. 2003); *Lopez*, 514 U.S. at 567. Congress may not simply purchase police power by giving relatively meager assistance to entities that later become arson targets. But that is precisely the effect of the decision here.

Moreover, the Eighth Circuit failed to meaningfully address this Court's limitation of § 844(f)(1)'s sister-statute § 844(i). The Eighth Circuit merely stated that its decision would not "risk nullifying *Jones*," without explaining why. App. 15. The Eighth Circuit interpreted *Jones* as one of constitutional avoidance of an ambiguous statute and nothing more. App. 15. Because the Eighth Circuit concluded that § 844(f)(1) was unambiguous, it reasoned that *Jones* could not resolve the case. App. 15. The Eighth Circuit merely stated, without analysis, that the arson statute "clearly applie[d] to Lung'aho's conduct." App. 15.

The Eighth Circuit also stated that "federal criminal jurisdiction may be extended to traditional crimes of local concern." App. 15. Yet the court failed to

address this Court's clear statement that "given the concerns brought to the fore in *Lopez*, it is appropriate to avoid the constitutional question that would arise if we were to read § 844(i) to render the traditionally local criminal conduct . . . a matter for federal enforcement." *Jones*, 529 U.S. at 858. (internal quotations omitted). The Eighth Circuit's disregard for this Court's holdings in *Sabri* and *Jones* was erroneous. This Court must grant certiorari to correct this error.

II. AS APPLIED, 18 U.S.C. § 844(F) IS AN UNCONSTITUTIONAL EXERCISE OF CONGRESS'S SPENDING CLAUSE AND NECESSARY AND PROPER CLAUSE POWERS BECAUSE IT FEDERALIZES ARSON OF ANY PROPERTY USED BY A GOVERNMENT ENTITY RECEIVING EVEN ONE DOLLAR IN FEDERAL FUNDING.

So that the Constitution "be not a splendid bauble," the Framers inserted the Necessary and Proper Clause into the Constitution to "remove all doubts respecting the right to legislate on that vast mass of incidental powers which must be involved in the constitution." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 420-21 (1819). The Clause provides that "the Congress shall have Power . . . [t]o make all Laws which shall be necessary and proper for carrying into Execution" all the powers vested in the Government of the United States. U.S. Const. art. I, § 8, cl. 18.

Both the Spending Power and the Necessary and Proper Clause are contained in section 8 of the first Article, and the Necessary and Proper Clause applies to the spending power, enabling Congress to enact all laws which are convenient to the exercise of disbursing federal funds. *Fullilove v. Klutznick*, 448 U.S. 448, 474 (1980) ("The power to 'provide for the . . . general Welfare' is an independent grant of legislative authority, distinct from other broad congressional

powers."); *Buckley v. Valeo*, 424 U.S. 1, 90 (1976) ("The General Welfare Clause . . . is . . . a grant of power, the scope of which is quite expansive, particularly in view of the enlargement of power by the Necessary and Proper Clause."); *McCulloch*, 17 U.S. at 421.

The spending power is a limited power. *South Dakota v. Dole*, 483 U.S. 203, 207 (1987). It is not a regulatory power. *Pennhurst State Sch. And Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). When congressional legislation provides funds to a State, the federal government may condition those funds upon compliance with federally imposed obligations. *Id.* However, those obligations are not absolute either. *Dole*, 483 U.S. at 207.

This Court has held that "Congress cannot punish felonies generally . . . it may enact only those criminal laws that are connected to one of its constitutionally enumerated powers." *Torres v. Lynch*, 578 U.S. 452, 457 (2016) (quoting *Cohens v. Virginia*, 19 U.S. 264 (1821)). Moreover, this Court has noted that "arson is a paradigmatic common-law state crime[,]" and that "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance in the prosecution of crimes." *Jones*, 529 U.S. at 859 (quoting *United States v. Bass*, 404 U.S. 336, 349 (1971) (internal quotations omitted)).

In *Jones*, this Court observed that 18 U.S.C. § 844(i), which makes the arson of any building or property used in interstate commerce or in any activity affecting interstate commerce a federal crime, would have little to no limitations if this Court adopted the Government's expansive interpretation of the statute. 529 U.S. at 857.

An expansive interpretation as the Government sought would create a scenario where "hardly a building in the land would fall outside the federal statute's domain." *Id.* Moreover, such a broad interpretation would disrupt the federal-state balance because "practically every building in our cities, towns, and rural areas is constructed with supplies that have moved in interstate commerce, served by utilities that have an interstate connection, financed or insured by enterprises that do business across state lines, or bears some other trace of interstate commerce." *Id.*

The same reasoning relied upon in *Jones* applies in this case. 18 U.S.C. § 844(f), if interpreted as expansively as the Government contends, would federalize all arson of any property of any organization receiving any amount of federal funding. There is no threshold amount of federal funding required to trigger the federal statute; there is no threshold timeframe limiting the statute to those receiving federal funding within a set number of years prior; and there is no threshold federal interest—such as directly impacting interstate commerce, as in *Jones*—to limit the reach of the statute so as to avoid disrupting the federal-state balance. Given the lack of limitations or threshold requirements presented in the statute, there are—as evidenced by the current circuit split—numerous, varied interpretations as to the reach of 18 U.S.C. § 844(f).

"[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [this Court's] duty is to adopt the latter." *Jones*, 529 U.S. at 857

(quoting *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)).

As it stands, the application of 18 U.S.C. § 844(f) is susceptible to the following two interpretations: (1) arson of any property of any organization that received any amount of federal funding at any point; or (2) arson of property of an organization who received specific federal funding for specific property and only when an organization is primarily funded through federal dollars would all of that organization's property fall under the scope of § 844(f). The first interpretation creates grave and doubtful constitutional questions as to Congress's authority to federalize arson, a traditionally state law crime. *Jones*, 529 U.S. at 860 (Stevens, J., concurring). The second interpretation avoids those constitutional questions by limiting the statute's scope to the actual federal interests at stake.

Obviously, Congress has the ability under the Spending Clause coupled with the Necessary and Proper Clause to ensure that federal dollars that are expended for the general welfare are actually spent for that purpose and can pass laws to safeguard those funds. *United States v. Comstock*, 560 U.S. 126, 135 (2010). However, that federal interest in protecting federal funding is absent when there is no relation between the property destroyed and the federal funds expended. It is a well-established principle that federal preemption of state law will not be presumed unless Congress clearly conveys its purpose to do so. *Jones*, 529 U.S. at 858 (quoting *Bass*, 404 U.S. at 349). The stated purpose of 18 U.S.C. § 844(f) does not clearly convey a congressional intent to federalize virtually all arson and disrupt the

federal-state balance in the prosecutions of arson crimes. In fact, 18 U.S.C. § 848 states that "[n]o provision of this chapter shall be construed as indicating an intent on the part of Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter[.]"

The Eighth Circuit's reasoning extends beyond the "defin[ed] federal interest" at stake and interprets §844(f)(1) such that its application to Lung'aho's conduct constitutes an improper use of Congress's Spending Clause and Necessary and Proper Clause powers. *Sabri*, 541 U.S. at 606. There is nothing in the Spending and Necessary and Proper Clauses that would "uniquely evade these federalism concerns, particularly when they are not invoked to create a contractual obligation on the recipient." App. 20. The idea that Congress lacks a general police power "means little if we accept the idea that Congress can simply purchase police power by giving a few dollars to entities that later become arson victims." App. 21. However, adopting a more limited interpretation similar to the First Circuit's interpretation of 18 U.S.C. § 844(f) comports with this Court's reading of § 844(i) in *Jones* and avoids a scenario where traditionally state law crimes are federalized without reference to any federal interest at stake. *See United States v. Hersom*, 588 F.3d 60, 66-67 (1st Cir. 2009).

III. THERE IS A CIRCUIT SPLIT ON WHETHER 18 U.S.C. § 844(f) AUTHORIZES THE FEDERALIZATION OF ALL ARSON OF PROPERTY OWNED, POSSESSED, USED BY, OR LEASED TO AN ORGANIZATION RECEIVING ANY FEDERAL FUNDING OR WHETHER THERE IS A LIMITATION BASED ON THE FEDERAL INTEREST AT ISSUE.

In applying 18 U.S.C. § 844(f)(1), the circuits are divided on the proper method to define the federal interest where an organization received a meager amount of federal financial assistance and the damaged property was not purchased with federal funds. Some circuits have held that § 844(f)(1) applies regardless of whether the damaged property was acquired using federal funds, while others have held that it applies only when the damaged property is traceable to federal financial assistance. *Compare United States v. Elliott*, 684 Fed. Appx. 685 (10th Cir. 2017), *with Hersom*, *supra*.

Even those circuits that hold § 844(f)(1) applies to virtually any damaged property of an organization that received any federal funds at any time diverge in their analysis. Specifically, the circuits who hold an expansive interpretation of the statute are nonetheless split on the issues of whether there is a threshold amount requirement sufficient to establish the federal interest, whether the organization's property at issue was required to be used in furtherance of a federal program or goal, and whether there is a requirement that the federal government utilize an existing organization as a de facto instrumentality. *Compare Elliott*, *supra*, *with United States v. Kimberlin* 805 F.2d 210 (7th Cir. 1986), *with United States v. Davis*, 98 F.3d 141 (4th Cir. 1996).

This Court must grant certiorari to resolve this circuit split.

A. THE TENTH CIRCUIT'S RIGID, OVEREXPANSIVE INTERPRETATION.

The Tenth Circuit held that any property owned, possessed, leased to, or used by an organization receiving federal financial assistance falls under the scope of §

844(f). *See, e.g., United States v. Apodaca*, 522 F.2d 568 (10th Cir. 1975); *Elliott*, *supra*. The Tenth Circuit's approach focuses only on whether the organization at issue (1) received federal financial assistance; and (2) owned, possessed, used, or leased the property at issue. *Apodaca*, 522 F.2d at 572, *Elliott*, 684 Fed. Appx. at 696. The Tenth Circuit's approach means that any property of any organization receiving any amount of federal funding at any time falls under the scope of the statute, thereby disrupting the federal-state balance in the prosecution of crimes.

This interpretation "suggests Congress may simply purchase [a general] police power through financial assistance – including miniscule assistance unrelated to the affected property." App. 16. The Tenth Circuit's overexpansive interpretation of §844(f)(1) risks undermining the federal-state balance by converting a traditionally local crime into a federal one without defining the federal interest at stake. "If federal assistance is given to an organization so it can purchase equipment to improve its technology, burning its decorative shrubs or doormat does not undermine that expenditure – that organization's improved technology is unaffected[,]" and the same is true of the arson of property not purchased with federal dollars. *Id.* at 1032. Congress has not specifically conveyed its intent to disrupt this balance and *Jones* makes clear that the arson of property without a sufficient connection to the federal funding falls outside the scope of the federal interest.

Yet, the Tenth Circuit left open the question of whether the amount of federal funds received needed to be more than minimal because it determined that the

amount of federal funding at issue in *Elliott* was not minimal. 684 Fed. Appx. at 697. In *Elliott*, the organization at issue received approximately 12% of its budget in federal funding. 684 Fed. Appx. at 697. The organizations at issue in the case at bar received 2% or less of their budget from federal funds. Even the Tenth Circuit's rigid approach would not encompass the charged conduct here given the agencies' decidedly minimal federal funding.

The Tenth Circuit's approach disrupts the federal-state balance in the prosecution of crimes, especially in the case of arson – a traditionally state law matter. Preventing arson of an organizations' property that was purchased without any federal assistance is not a rational way to safeguard federal dollars simply because those organizations received federal money. A constitutionally sound interpretation of §844(f)(1) would limit its applicability to specific property purchased with federal funds to avoid these federalism concerns.

This Court should reject the Tenth Circuit's approach accordingly.

B. THE SEVENTH CIRCUIT FOCUSES ON WHETHER THE RECEIPT OF FEDERAL FUNDING HELPS EFFECTUATE A FEDERAL GOAL.

In *United States v. Kimberlin*, the Seventh Circuit upheld the application of 18 U.S.C. § 844(f)(1) to a non-governmental co-op that was providing special education services to a school that received federal financial assistance. 805 F.2d 210 (7th Cir. 1986). The Seventh Circuit reasoned that "an organization that is carrying out federal programs with federal money and distributing it to effectuate

those goals could cause the secondary recipients to be considered within the scope of § 844(f)." *Id.*

This inquiry focused on the federal purpose or function of the funding. The *Kimberlin* court looked at the purpose of the grant funding that the organization received and its relation to a national goal or program. 805 F.2d at 242. Where the federal funding provided to an organization that was used to effectuate a national program, the organization acted as an instrumentality of the federal government and came within the purview of § 844(f). *Id.*

While this interpretation seems slightly narrower than the Tenth Circuit's reading of the statute, the organization's receipt of federal financial assistance under this interpretation need not be direct or even directly received. *Kimberlin*, 805 F.2d at 242. The Seventh Circuit attempted to establish the link between the federal interest and the property at issue by requiring the organization's receipt of federal funding to relate back to a federal goal or program. *Id*, at 243. This approach fails to identify the federal interest in the specific property at issue. Therefore, the link cannot be established without reference to the property at issue; just because the organization itself may further a federal goal has no bearing on whether the property at issue furthered that goal sufficient to establish the federal interest.

None of the patrol vehicles in this case were purchased using federal funding. Further, the agencies at issue here do not act to further a federal goal or program. Unless Congress has clearly conveyed its intent to disrupt the federal-state balance, the courts "should narrowly interpret federal criminal laws that overlap with state

authority." *Jones*, 529 U.S. at 860 (J. Stevens, concurring). Moreover, "[m]aking arson a federal offense as to any property belonging to a recipient of financial assistance does not protect federal dollars when those dollars do not pay for the property in question and the government fails to show that the assistance could be used to purchase similar property." App. 19.

The Seventh Circuit's interpretation would "render[] traditionally local criminal conduct a matter for federal enforcement and would also involve a substantial extension of federal police [powers]." *United States v. Bass*, 404 U.S. 336, 350. Congress has not clearly conveyed its intent to disrupt this balance: 18 U.S.C. § 848 states that "[n]o provision of this chapter shall be construed as indicating an intent on the part of Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter[.]"

This Court should reject the Seventh Circuit's approach accordingly.

C. THE FOURTH CIRCUIT'S STATUTORY-FUNCTION APPROACH.

In *United States v. Davis*, the Fourth Circuit held the destruction of a housing unit occupied by a tenant receiving rental assistance from the Virginia Housing Development Authority (VHDA), a public housing agency receiving federal financial assistance through the United States Department of Housing (HUD), fell within the scope of § 844(f). 98 F.3d 141, 144 (4th Cir. 1996).

The Fourth Circuit looked at the purpose of both HUD and VHDA programs and found that because VHDA received federal financial assistance to fulfill its

statutory function of "providing sanitary and safe residential housing at prices or rentals which persons and families of low income can afford[,]" its payments to a tenant to be used for rental assistance brought arson of the property at issue under the scope of 18 U.S.C. § 844(f)(1). *Id.* at 145. When VHDA provided the tenant with rental payment assistance, "it was accomplishing its statutory function[,]" and therefore, the tenant's housing unit fell under the scope of § 844(f)(1). *Id.*

The Fourth Circuit's reasoning in *Davis* that a private tenant's receipt of rental assistance from an organization receiving federal funding renders arson of that private tenant's apartment within the scope of § 844(f) contradicts this Court's reasoning in *Jones*, where this Court held that the fact that an owner-occupied residence received utilities and had insurance did not justify the federal connection to commerce sufficient to invoke §844(i). 529 U.S. at 856.

Similar to the Seventh Circuit approach, the Fourth Circuit looked to the statutory purpose and whether the federal financial assistance the organization received furthered that purpose in order for the destruction of that property to fall under the scope of § 844(f)(1). The Fourth Circuit's approach similarly invokes such an expansive reading of the statute that "hardly a building in the land would fall outside the federal statute's domain." *Jones* 529 U.S. at 857.

The Fourth Circuit's approach is contrary to this Court's "well-established presumption against federal pre-emption of state law." *Jones*, 529 U.S. at 859 (J. Stevens, concurring). *Jones* "cautions that Congress cannot turn every arson into a federal crime." *Lung'aho*, 114 F.4th at 1031. The federal government cannot

commandeer local law enforcement to carry out federal programs without disrupting the federal-state balance. *See Printz v. United States*, 521 U.S. 898, 926 (1997).

This Court should reject the Fourth Circuit's approach accordingly.

D. THE SIXTH CIRCUIT'S INSTRUMENTALITY AND GOVERNMENTAL FUNCTION INTERPRETATION.

In *United States v. Brown,* the Sixth Circuit found 844(f) applied to the facts at issue but ultimately reversed on other grounds. 557 F.2d 541 (6th Cir. 1977). The district court rejected the government's position that the basis for congressional authority for § 844(f)(1) was the Property Clause. *United States v. Brown*, 384 F. Supp 1151 (E.D. Mich. 1974). The district court reasoned that in order for the Property Clause to be properly invoked there must be "some actual and substantial property interest of the federal government [] involved." *Id.* at 1157.

The district court looked for congressional authority for the statute under the Necessary and Proper Clause. In doing so, the district court held that Congress "must have the means to protect those institutions it is currently funding to carry out federal programs . . . It should not have to create a federal instrumentality in each instance but should be able to use existing instrumentalities" in lieu of creating its own. *Id.* at 1160. The district court's interpretation of § 844(f)(1) requires an organization that received federal funds to be carrying out a federal goal or program on behalf of the federal government, acting as a *de facto* federal instrumentality, in order for destruction of that organization's property to come under the scope of § 844(f)(1). *Brown*, 557 F.2d at 559.

This approach differs from the Fourth Circuit's application of § 844(f)(1) in that it suggests a need for a more substantial relation between the federal funding and the organization's engagement in what are traditionally federal governmental functions. While defining an organization as a sort of *de facto* instrumentality of the federal government aids in defining the federal interest related to the organization's functions, it does nothing to relate that interest back to the property. The crux of this rationale is that "[w]hile actively using and funding such instrumentalities, Congress should be able to protect them with criminal sanctions form destruction or loss[.]" *Brown*, 384 F. Supp. 1160.

It is a disruption of the federal-state balance for the federal government to commandeer local law enforcement to carry out federal programs. *See Printz*, 521 U.S. 898, 926 (1997). Therefore, it would undermine this Court's dual sovereignty precedent to assert that local agencies' receipt of federal financial assistance equates to the federal government using existing instrumentalities to carry out federal programs. This erosion of dual sovereignty would be even more pronounced if there was no restriction on the relation between the property at issue and federal financial assistance received by the state and local law enforcement agencies.

Even under the Sixth Circuit's approach, there is not a close enough nexus between the federal funding received by the law enforcement agencies and the national goal being effectuated to bring Lung'aho's conduct within the scope of the statute. The law enforcement agencies did not receive federal funding to carry out any federal function on behalf of the federal government.

It is contrary to the principles of federalism to hold that arson of local patrol vehicles purchased with local dollars constitutes a matter of federal concern merely because those law enforcement agencies received some federal funding at some point in time. Such a construction cannot be upheld; §844(f)(1) must be limited to the specific property purchased with federal funds to avoid a judicially created disruption of the federal-state balance where Congress has not clearly conveyed its intent to do so. *Jones*, 529 U.S. at 860 (J. Stevens, concurring).

E. THE FIRST CIRCUIT'S CONSTITUTIONALLY SOUND INTERPRETATION REQUIRING SPECIFIC PROPERTY TO BE CONNECTED TO SPECIFIC FEDERAL FUNDS.

The First Circuit held that 844(f)(1) applies to the property "of an organization whose operations are substantially or primarily funded by the federal government," but found "in the case of organizations receiving federal financial assistance related to specific property" that it is "limited in general to arson of that particular property." *Hersom*, 588 F.3d at 66-67. The First Circuit reasoned that legislative history suggested that Congress intended to pass the statute pursuant to its authority under the Property Clause and therefore § 844(f) should be limited to the protection of its own property. *Id.* at 66. Moreover, the First Circuit found that the Necessary and Proper Clause "add[ed] little to the analysis." *Id.*

The First Circuit found this Court's reasoning in *Jones* instructive. In *Jones*, this Court held that even though 18 U.S.C. § 844(i) did not include any exclusions or limitations on the types of buildings it covered, the private, owner-occupied

residence at issue was not used in interstate commerce sufficient to come under the scope of the statute. *Hersom*, 588 F.3d at 67 (citing 529 U.S. at 848).

Because many public, private, and non-profit organizations receive some federal financial assistance to obtain specific property, applying 844(f) to all property regardless of that property's relation back to the federal funds would transform what is traditionally local criminal conduct into a matter of federal concern. *Id.* The First Circuit noted that construing § 844(f) to apply to all property of any organization receiving any federal financial assistance would risk "significantly altering the federal-state balance in the prosecution of crime[.]" *Id.* at 67. That is precisely what the Eighth Circuit's opinion does here.

The First Circuit's approach is consistent with the purpose of the statute, the traditional notions of federal-state balance in prosecution of crime, and avoids constitutional issues presented by the other circuit approaches. The other circuits' interpretations lack meaningful limits defining the reach of § 844(f), which has created a substantial risk of "enforcement beyond the scope of federal interest[s]" at stake. *Sabri*, 541 U.S. at 606.

A wide variety of organizations, both private and non-profit, as well as the state and local government entities here, receive some form of federal financial assistance to obtain property. App. 20. As a result, and contrary to *Jones*, applying §844(f) to cover all property owned by such entities would transform a broad swathe of criminal conduct into a matter for federal enforcement. App. 20.

Under the First Circuit's approach, Lung'aho's conduct does not fall under 18 U.S.C. § 844(f)(1) because the patrol vehicles were not purchased with federal funds. Since the law enforcement agencies did not purchase the patrol vehicles with any federal financial assistance, there cannot be sufficient federal interests to justify federalization of traditionally state law crimes like arson. *See Jones*, 529 U.S. at 858.

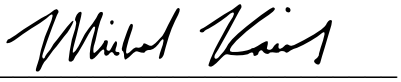
Since Congress has not specifically stated that it is disrupting that balance by passing 18 U.S.C. § 844(f)(1), adopting the more expansive interpretations put forth by other circuits would be an improper extension of federal power to prosecute damage to property owned by an organization receiving any federal funding for any purpose at any time without a clear link to the federal interest. The First Circuit's interpretation of § 844(f) is consistent with this Court's decisions in *Sabri* and *Jones* and avoids disrupting the federal-state balance.

This case exposes the lack of uniformity between courts in determining the scope of the federal arson statute. Application of § 844(f)(1) to Lung'aho's case exceeded Congress's power and was a disruption of the federal-state balance that this Court must correct.

CONCLUSION

For the foregoing reasons, the Writ should be granted.

Dated, this the 9th day of November, 2025.



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