

IN THE SUPREME COURT OF THE UNITED STATES

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MUJERA BENJAMIN LUNG' AHO, PETITIONER

v.

UNITED STATES OF AMERICA

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

—————

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly determined that 18 U.S.C. 844(f)(1) is constitutional as applied to petitioner under the Spending and Necessary and Proper Clauses.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Ark.):

United States v. Lung'aho, No. 20-cr-288 (Dec. 12, 2023)

United States Court of Appeals (8th Cir.):

United States v. Lung'aho, No. 23-3696 (July 18, 2025)

United States v. Lung'aho, No. 22-3168 (July 6, 2023)

IN THE SUPREME COURT OF THE UNITED STATES

No. 25-6124

MUJERA BENJAMIN LUNG' AHO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 11-21) is reported at 144 F.4th 1026. The order of the court of appeals denying a petition for rehearing (Pet. App. 22) is available at 2025 WL 2348764. A prior opinion of the court of appeals is reported at 72 F.4th 845. The order of the district court (Pet. App. 1-10) is available at 2022 WL 10716767.

JURISDICTION

The judgment of the court of appeals was entered on July 18, 2025. A petition for rehearing was denied on August 14, 2025 (Pet. App. 22). The petition for a writ of certiorari was filed on

November 11, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of Arkansas, petitioner was convicted on one count of maliciously damaging and destroying a vehicle owned by an organization receiving federal financial assistance, in violation of 18 U.S.C. 844(f)(1). Judgment 1. He was sentenced to 66 months of imprisonment, to be followed by three years of supervised release. Judgment 2, 4. The court of appeals affirmed. Pet. App. 11-21.

1. In 2020, petitioner threw Molotov cocktails that damaged or destroyed three law-enforcement vehicles. Pet. App. 11. Each of the three law-enforcement agencies whose vehicles were damaged was the recipient of federal funds at the time that the property was damaged. Id. at 12. None of the federal funding was directly used to pay for the specific police vehicles that were damaged. Ibid.

A grand jury in the Eastern District of Arkansas charged petitioner with three counts of conspiring to maliciously damage and destroy a vehicle owned by an organization receiving federal financial assistance by means of fire, in violation of 18 U.S.C. 844(f)(1) and (n); one count of attempting to maliciously destroy and damage a vehicle of an organization receiving federal financial assistance by means of fire, in violation of 18 U.S.C. 844(f)(1);

three counts of possessing a destructive device in furtherance of a 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), 5841, and 5871; one count of making a destructive device, in violation of 26 U.S.C. 5861(f); and two counts of maliciously damaging and destroying of a vehicle of an organization receiving federal financial assistance by means of fire, in violation of 18 U.S.C. 844(f)(1). Superseding Indictment 1-6.

Petitioner moved to dismiss the counts alleging violations of 18 U.S.C. 844(f) and 924(c). D. Ct. Doc. 164, at 2-7 (Nov. 23, 2021). The district court granted the motion as to the Section 924(c)(1) counts¹ and denied the motion as to Section 844(f)(1) counts. Pet. App. 1-10. As to the latter, the court rejected petitioner's contention that Congress lacked authority to proscribe his conduct under Section 844(f)(1), *id.* at 5, which authorizes criminal penalties against an individual who "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 * * * any institution or organization receiving Federal financial assistance," 18 U.S.C. 844(f)(1).

¹ That decision was affirmed by the Eighth Circuit. See United States v. Lung'aho, 72 F.4th 845 (2023).

The district court explained that Section 844(f)(1) "is a valid exercise of congressional power granted in the Spending Clause coupled with the Necessary and Proper Clause." Pet. App. 4; see id. at 5. And the court observed that "criminalizing the destruction of any property that happens to be owned by these agencies 'is an appropriate means plainly adapted to achieving Congress's end.'" Id. at 5 (quoting United States v. Sabri, 326 F.3d 937, 949 (8th Cir. 2003), cert. granted, 540 U.S. 944 (2003), aff'd and remanded, 541 U.S. 600 (2004)).

Petitioner subsequently pleaded guilty to a Section 844(f)(1) count, and the government dismissed the remaining counts. Judgment 1. The district court sentenced petitioner to 66 months of imprisonment, to be followed by three years of supervised release. Judgment 2, 4.

2. a. The court of appeals affirmed, agreeing with the district court that Section 844(f)(1) was constitutional as applied to petitioner's conduct. Pet. App. 11-16. Quoting this Court's decision in Sabri v. United States, 541 U.S. 600, 605 (2004), the court of appeals observed that "[u]nder the Spending Clause, Congress has authority 'to appropriate federal moneys 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,'" Pet. App. 13. And the court found that "preventing the arson of state

and local police cars owned by departments receiving federal funding is a rational way of safeguarding federal dollars.” Ibid. Quoting Sabri, the court explained that because “[m]oney is fungible,” “the dollars spent on the burned cars need not be ‘traceabl[e]’ to ‘specific federal payments.’” Ibid. (quoting Sabri, 541 U.S. at 605-606) (second set of brackets in original). And the court observed that “[e]ven though the cars were not bought with federal money, their destruction necessarily depleted the resources of the three departments” and, accordingly, caused “interference with the value of disbursed federal dollars.” Id. at 14.

The court of appeals also explained that petitioner’s invocation of Jones v. United States, 529 U.S. 848 (2000) -- which addressed a different provision of the federal arson statute -- was misplaced. Pet. App. 15. In Jones, this Court examined 18 U.S.C. 844(i), which criminalizes arson of “[a]ny building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce,” and determined that “an owner-occupied residence not used for any commercial purpose does not qualify as property ‘used in’ commerce or commerce-affecting activity.” 529 U.S. at 850-851, 853 (citation omitted). The court of appeals noted that, while Jones “invoked constitutional avoidance to interpret an ambiguous statute, * * * no one suggests that [Section] 844(f)(1) is ambiguous” and it “clearly applies to [petitioner’s] conduct.”

Pet. App. 15. And the court emphasized that Sabri, which recognized Congress's broad power "'to protect spending objects,'" "control[led]" the present dispute. Ibid. (quoting Sabri, 541 U.S. at 608).

b. Judge Grasz dissented. Pet. App. 16-21. In his view, Section 844(f)(1)'s application to petitioner's conduct exceeded Congress's power under the Spending and Necessary and Proper Clauses. See ibid.

ARGUMENT

Petitioner renews (Pet. 8-17) his contention that 18 U.S.C. 844(f)(1) is unconstitutional as applied to him. The court of appeals correctly rejected that contention, and its decision does not implicate any conflict among the courts of appeals that would warrant this Court's review. No further review is warranted.

1. Under the Spending Clause, Congress has authority "to appropriate federal moneys to promote the general welfare." Sabri v. United States, 541 U.S. 600, 605 (2004); see U.S. Const. Art. I § 8, Cl. 1. And as this Court observed in Sabri, Congress also has a "corresponding authority under the Necessary and Proper Clause * * * to see to it that taxpayer dollars appropriated under that power are in fact spent for the general welfare." Sabri, 541 U.S. at 605 (citing U.S. Const. Art. I § 8, Cl. 18). Accordingly, the Court recognized in Sabri that those two clauses support statutes that "safeguard the integrity of the state, local, and tribal recipients of federal dollars." Ibid.

Sabri addressed the constitutionality of 18 U.S.C. 666(a)(2), which criminalizes bribing a person with intent to influence a state or local official of an entity receiving at least \$10,000 in federal funds. 541 U.S. at 602-608. The defendant in Sabri argued that Section 666(a)(2) was facially unconstitutional "because it fails to require proof of any connection between a bribe or kickback and some federal money." Id. at 604. In addressing that argument, this Court acknowledged that "not every bribe or kickback offered or paid * * * will be traceably skimmed from specific federal payments, or show up in the guise of a quid pro quo for some dereliction in spending a federal grant." Id. at 605-606. But the Court observed that "[m]oney is fungible" and "can be drained off here because a federal grant is pouring in there." Id. at 606. And it accordingly found that the "federal interest" in policing such bribes did not require such traceability. Ibid.

Here, as in Sabri, Congress has a valid interest in "safeguarding federal dollars," and "preventing the arson of state and local police cars owned by departments receiving federal funding is a rational way" of accomplishing that goal. Pet. App. 13. As the court of appeals recognized, petitioner's destruction of the cars "necessarily deplete[s] the resources of the [recipient] departments." Id. at 14. That depletion, in turn, "interfere[s] with the value of disbursed federal dollars" because those "fungible" dollars may be "used to backfill other funding diverted to replace the" damaged property. Ibid.

Congress thus reasonably sought to ensure that “taxpayer dollars appropriated * * * are in fact spent for the general welfare, and not frittered away * * * on projects undermined when funds are siphoned off,” Sabri, 541 U.S. at 605, to address funding shortfalls caused by acts of arson. And as the court of appeals recognized, “[b]ased on the facts of this case,” the “federal interest” is in no sense “‘miniscule.’” Pet. App. 14 (citation omitted). To the contrary, each law-enforcement department received hundreds of thousands to millions of dollars, and it is “undisputed” that petitioner “caused over \$86,000 in damage to the three police cars.” Ibid.; see id. at 12. In authorizing federal criminal penalties for such acts, Section 844(f)(1) “by rational means, * * * safeguard[s] the integrity of th[ose] * * * recipients of federal dollars.” Sabri, 541 U.S. at 605. It accordingly reflects a permissible exercise of Congress’s power under the Spending Clause and the Necessary and Proper Clause.

2. Petitioner’s contrary arguments lack merit. Petitioner first attempts (Pet. 9-10) to distinguish Sabri on the theory that, unlike arson, the “ultimate issue” in bribery is the misuse of federal funds and, therefore, “[t]he need for a connection between the given bribe and federal dollars is unnecessary.” But as the court of appeals observed, quoting this Court’s decision in United States v. Comstock, 560 U.S. 126, 133-134 (2010), “the Necessary and Proper Clause makes clear that the Constitution’s grants of

specific federal legislative authority are accompanied by broad power to enact laws that are 'convenient, or useful' or 'conducive' to the authority's 'beneficial exercise.'" Pet. App. 14. Just as "Congress does not have to sit by and accept the risk of operations thwarted by local and state improbity," Sabri, 541 U.S. at 605, it also "should be able to protect them * * * from destruction or loss by direct, violent action," including "the use of explosives," United States v. Brown, 384 F. Supp. 1151, 1160 (E.D. Mich. 1974), rev'd on other grounds, 557 F.2d 541, 559 (6th Cir. 1977) (affirming the district court's rejection of constitutional claim).

Nor is Sabri distinguishable because Section 844(f)(1) does not specify a "threshold amount of federal funding required to trigger the federal statute." Pet. 15; see Pet. 10-11. Section 844(f)(1) applies only where the property destroyed belongs to an "institution or organization receiving Federal financial assistance," 18 U.S.C. 844(f)(1), thus ensuring the government's federal interest in protecting such property. And as the court of appeals highlighted, "the facts in this case" are what matter in the context of petitioner's as-applied challenge. Pet. App. 13. Here, "[i]t is undisputed that [petitioner] caused over \$86,000 in damage to the three police cars" and that the amount of federal funding is well over "the thresholds that * * * were enough in Sabri." Id. at 14.

As the court of appeals recognized (Pet. App. 15), petitioner's reliance (Pet. 8, 12-13) on Jones v. United States, 529 U.S. 848 (2000), is misplaced. The statute at issue in Jones, 18 U.S.C. 844(i), criminalizes the damage or destruction "by means of fire or an explosive, [of] any * * * property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce." In finding that Section 844(i) did not apply to "arson of an owner-occupied private residence," Jones, 529 U.S. at 850, the Court reasoned that the word "'used'" "is most sensibly read to mean active employment for commercial purposes" and that private residences are not "'used'" that way in the ordinary sense, id. at 855-856; see id. at 852-857.

The statute at issue here lacks a similar textual feature. And while the Court went on to observe that its decision in Jones was "in harmony" with the constitutional-avoidance canon, as its reading avoided constitutional questions regarding the reach of the Commerce Clause were the statute to cover "'traditionally local criminal conduct,'" 529 U.S. at 857-858 (citation omitted), that observation does not suggest an extratextual limitation on Section 844(f)(1) to avoid a different constitutional argument. To the contrary, Sabri itself "rejected that it was 'convert[ing] congressional authority under the Commerce Clause to a general police power of the sort retained by the States.'" Pet. App. 15 (quoting Sabri, 541 U.S. at 607-608) (brackets in original). As the Court explained there, Congress's "power to keep a watchful

eye on expenditures * * * is bound up with congressional authority to spend in the first place." Sabri, 541 U.S. at 608.

3. The court of appeals' decision also does not implicate any conflict among the courts of appeals that warrants this Court's review. Contra Pet. 17-28.

As petitioner acknowledges (Pet. 18-26), the Fourth, Sixth, Seventh, and Tenth Circuits have affirmed convictions under Section 844(f) irrespective of whether federal funds were used to purchase the destroyed or damaged property. See United States v. Davis, 98 F.3d 141, 144-145 (4th Cir. 1996), cert. denied, 520 U.S. 1129 (1997); Brown, 557 F.2d at 559 (6th Cir.); United States v. Kimberlin, 805 F.2d 210, 241-243 (7th Cir. 1986), cert. denied, 483 U.S. 1023 (1987); United States v. Apodaca, 522 F.2d 568, 571-572 (10th Cir. 1975).

Petitioner notes (Pet. 26-28) that the First Circuit in United States v. Herson, 588 F.3d 60 (2009), stated "that section 844(f) is generally limited to property owned or possessed using federal financial assistance," id. at 67. But the court of appeals there limited its analysis to a circumstance in which "the federal financial assistance is limited to the acquisition, renovation, or lease of a specific property." Id. at 66. In so doing, it expressly declined to "address * * * the scope of the statute in other situations dissimilar from the present case where a different federal interest might be implicated." Ibid. And it specifically cited Sabri, and the recognized federal interest there, as a

circumstance that it was not addressing. Ibid. Moreover, even as to “organizations receiving federal financial assistance related to specific property,” the court reserved the possibility “that the statute should be construed to apply in some limited instances to non-federally funded property where federal interests are implicated.” Id. at 67.

Petitioner’s other citations (Pet. 19-20, 24) likewise do not show any conflict warranting this Court’s review. The Tenth Circuit’s unpublished decision in United States v. Elliott, 684 Fed. Appx. 685 (10th Cir. 2017), rejected the defendant’s contention that Section 844(f) was inapplicable to an entity receiving “minimal” federal funds on the ground that the amount of “federal funding was not ‘minimal’” in that case, id. at 697. The decision below did essentially the same. See Pet. App. 14 (noting that “the departments each received more than \$10,000” in federal assistance and rejecting the contention that this “interest is ‘miniscule’”).

Nor could the fifty-year-old decision of the district court in Brown, 384 F. Supp. 1151, which rejected a constitutional challenge to a prosecution under Section 844(f), provide a sound basis for this Court’s review. See Sup. Ct. R. 10; see also Camreta v. Greene, 563 U.S. 692, 709 n.7 (2011).²

² In Landor v. Louisiana Department of Corrections and Public Safety, No. 23-1197 (filed May 3, 2024), this Court is considering “whether an individual may sue a government official in his individual capacity for damages for violations of [the Religious Land Use and Institutionalized Persons Act of 2000],”

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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including the issue of whether such an individual-capacity damages remedy is constitutional under the Spending and Necessary and Proper Clauses. Br. for Pet. at i, 30-50, Landor v. Louisiana Dep't of Corr. and Pub. Safety, No. 23-1197 (Aug. 27, 2025). Petitioner does not request that this Court should hold his petition pending the outcome in Landor, and the petition could accordingly be denied. Otherwise, the Court may wish to hold this case pending the decision in Landor.