No. 25-6124

In the Supreme Court of the United States

MUJERA BENJAMIN LUNG'AHO,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The petition presents a straightforward question: Whether Congress may criminalize arson of *any* property owned by any "institutional receiving Federal financial assistance" (18 U.S.C. § 844(f)(1)), or whether the government must prove a nexus between the property and federal funds.

Petitioner here damaged police vehicles that three state and local police departments had purchased with state and local funds. The events took place entirely within state lines. "[I]n our system of enumerated federal powers, [this] was a local crime that belonged to Arkansas to punish, not the federal government." Pet. App. 21 (Grasz, J., dissenting). But the federal government prosecuted petitioner.

The courts of appeals have openly diverged on the reach of Section 844(f)(1). Pet. 17-28; *infra* 3-7. Two circuits hold that it does not apply if the property was not purchased with federal funds or the organization lacks substantial federal funding.

Four other circuits—including the Eighth Circuit below—hold that Section 844(f)(1) contains no such limit. In these circuits, Section 844(f)(1) criminalizes arson of *any* property belonging to *any* organization receiving *any* federal funding, no matter how modest the funding or how attenuated the connection to the damaged property.

This conflict is broadly acknowledged; as the First Circuit put it, "[w]e recognize that our construction is contrary to a decision by the Tenth Circuit." *United States* v. *Hersom*, 588 F.3d 60, 67 n.3 (1st Cir. 2009). The government cannot seriously contend otherwise. It barely responds to our showing that petitioner would have prevailed in the First Circuit. As for the

Sixth Circuit, the government calls the decision old—but that hardly makes it wrong.

This Court's review is warranted to resolve this division among the circuits. Indeed, it is important for confidence in the judiciary that the outcome of petitioner's prosecution not turn on the mere happenstance of geography. And the government does not deny that this is a suitable vehicle to resolve the question presented.

Review is additionally warranted because the decision below is wrong. The government rests on *Sabri* v. *United States*, 541 U.S. 600 (2004). But *Sabri* addressed federal regulation of the stewards of federal funds; if state and local entities accept federal money, their officials must submit to federal anti-bribery laws. That says nothing, however, about whether an entity's acceptance of some federal funds means that damage to *any* property owned by the entity is a federal offense. The implications of the government's contrary argument are extraordinary: As the government apparently sees it, Congress could regulate the property of any school that accepts any amount of federal funds (via Title I, IDEA, SNAP, or any other of the myriad federal programs); arson to theft to vandalism of school property nationwide would be subject to federal criminalization. The same would be true of virtually every healthcare facility, university, government contractor, state and local government, and all other entities that receive federal funds.

That is to say, if the government's "reading of *Sabri* is correct," Judge Grasz emphasized, "what *is* outside Congress's power to police in today's age of massive federal assistance?" Pet. App. 19 (Grasz, J., dissenting) (emphasis added). *Sabri* did not upend

centuries of precedent recognizing that the Constitution does not authorize a limitless federal police state.

Review is warranted to resolve this circuit conflict—and to check the federal government's rampant intrusion into the prosecution of local offenses. Property offenses addressed by Section 844(f)(1) are no doubt serious crimes, but state prosecutors may ably prosecute them.

A. The circuits are squarely divided.

The circuits are openly divided over the question presented. Pet. 17-28; see, *e.g.*, *United States* v. *Elliott*, 684 F. App'x 685, 696 (10th Cir. 2017) (declining to follow the First Circuit's "narrower view" of the statute and adhering to *United States* v. *Apodaca*, 522 F.2d 568 (10th Cir. 1975)); *Hersom*, 588 F.3d at 67 n.3 ("We recognize that our construction is contrary to a decision by the Tenth Circuit."); Pet. App. 19-20 (Grasz, J., dissenting) (contrasting the First Circuit's narrower approach with the court's majority opinion); *United States* v. *Montgomery*, 2023 WL 2298714, at *17-*18 (W.D. Pa. 2023) (contrasting the "more nuanced" approach with "broader analysis" from the Fourth and Tenth Circuits).[1]

The brief in opposition confirms as much. Although the government disputes the significance of individual cases (Opp. 11-12), it cannot contest that

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[1] See also *United States* v. *Stokes*, 2023 WL 6462066, at *2 (S.D. Fla. 2023) ("every federal court in the country (besides the First Circuit) has read § 844(f)(1) the same way"); *United States* v. *Pittman*, 600 F. Supp. 3d 597, 600 (E.D.N.C. 2022) ("A majority of courts appear to rely on a literal ('clear and unambiguous language') reading of the statute"), *aff'd*, 125 F.4th 527 (4th Cir. 2025).

petitioner would have prevailed in the First and Sixth Circuits, but not in others.

1. The divergence stems directly from disagreement over the answer to the question presented: courts are openly divided over whether Congress may criminalize damaging property solely because its owner receives federal funds.

Two circuits—the First and Sixth—read Section 844(f)(1) to stay within constitutional limits.

The First Circuit limits Section 844(f)(1) only to property actually purchased with federal funds or property owned by entities "substantially or primarily funded" by the federal government. *Hersom*, 588 F.3d at 65-67. Absent that limiting construction, the First Circuit concluded, Section 844(f)(1) would transform "a broad swathe of 'traditionally local criminal conduct' into a 'matter for federal enforcement'" and "alter[] the federal-state balance." *Hersom*, 588 F.3d at 67.

The Sixth Circuit, analyzing Section 844(f)(1) under the Necessary and Proper Clause, limited it to property belonging to a federal instrumentality—an entity the government uses "in lieu of its own agency or facility to carry out a federal program." *United States* v. *Brown*, 384 F. Supp. 1151, 1159 (E.D. Mich. 1974), *aff'd on this ground*, 557 F.2d 541, 559 (6th Cir. 1977).

Four other circuits, including the Eighth in the decision below, impose no restrictions on Section 844(f)(1)'s reach. In their view, Congress intended to—and can—criminalize damaging any property owned by any organization receiving any federal funding, no matter how small the grant and no matter how

attenuated the connection between the funds and the property damaged. See, *e.g.*, *United States* v. *Pittman*, 125 F.4th 527, 533 & n.2 (4th Cir. 2025); *Elliott*, 684 F. App'x at 696 (re-adhering to *Apodaca*, 522 F.2d 568); *United States* v. *Kimberlin*, 805 F.2d 210, 242-243 (7th Cir. 1986); Pet. App. 11-12.

2. The same statute accordingly subjects similar organizations and similar property in different circuits to disparate outcomes, and the conduct at issue here is a clear example of that disparity.

In the First Circuit, petitioner prevails. The state and local police vehicles here were neither (1) property belonging to an organization "substantially or primarily funded by the federal government" or (2) "particular property" for which an "organization[] receiv[ed] federal financial assistance related to specific property." *Hersom*, 588 F.3d at 65-67. Federal dollars provided only "2%, 1%, and 0.7% * * * of the department budgets," and no federal money paid for any of the three damaged vehicles. Pet. App. 12.

The government focuses on the First Circuit's observation that Section 844(f) might reach some limited category of non-federally funded property (*Hersom*, 588 F.3d at 67) and its accompanying reference to *Sabri*. Opp. 11-12. But those aspects of the opinion underscore rather than contradict the court's central holding. The court's potential carve-out for "non-federally funded property" applies only where "federal interests are implicated, for example, because the proximity of the federally funded and non-federally funded property creates a risk of injury to federal property from arson as to the non-federal property." *Hersom*, 588 F.3d at 67. The First Circuit never suggested that the mere fact that an organization received some

modicum of unrelated federal funding could justify application of Section 844(f). And *Hersom* cited *Sabri* as "dissimilar from the present case" to illustrate the question it was not deciding—one involving a fundamentally "different federal interest" than arson of state property. 588 F.3d at 66. That the First Circuit treated bribery of state officials as an entirely distinct question refutes the government's insistence (at 6-10) that *Sabri* controls this case. See *infra* 8-10. The First Circuit clearly held otherwise.

So too did the Sixth Circuit. *Brown* held that Section 844(f)(1) covers only the property of federal instrumentalities: "agencies which the federal government uses in lieu of its own agency * * * to carry out a federal program." 384 F. Supp. at 1159. That would not cover these state and local police departments, which received minimal federal funding through general operational grants and were not implementing specific federal programs nor operating under federal supervision.

The government observes that *Brown* "rejected a [defendant's] constitutional challenge" to Section 844(f). Opp. 12. So it did—but only "as applied" because the damaged property belonged to a "federal instrumentality," i.e., an organization carrying out a federal program with federal funds. 557 F.2d at 559. When the Sixth Circuit adopted the district court's reasoning (*ibid.*), it sustained Section 844(f) only by narrowing the statute's reach to the property of federal instrumentalities. See 384 F. Supp. at 1158-1160.[2] Because the state and local police departments

[2] The government attempts to minimize *Brown* as a "fifty-year-old decision of [a] district court." Opp. 12. But the Sixth Circuit

were not such federal instrumentalities, petitioner would have prevailed in the Sixth Circuit, too.

Elsewhere, petitioner loses. The Fourth Circuit requires only that an organization receive some federal financial assistance—no nexus between the federal funds and the property is needed. *United States* v. *Pittman*, 125 F.4th 527, 533 n.2 (4th Cir. 2025) (historic building owned by a city regardless of "whether any such [federal] funds were ultimately spent" on the building); see also *United States* v. *Davis*, 98 F.3d 141, 145 (4th Cir. 1996) (rejecting constitutional challenge on basis of federal interest in property "used by an organization receiving federal funds"). The Tenth reads Section 844(f) the same way. *Elliott*, 684 F. App'x at 696 (quoting *Apodaca*, 522 F.2d at 572). And the Seventh applies Section 844(f) to entities receiving federal funds to "effectuate[] a national program," or "perform[]" some "federally encouraged function" (*Kimberlin*, 805 F.2d at 242-243). In these circuits—like the Eighth below—the state and local government's receipt of *any* federal funds and unrelated ownership of the vehicles suffices to federally criminalize arson.

This open and outcome-dispositive division warrants the Court's review.

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expressly adopted Judge Kennedy's analysis, "affirm[ing] the constitutionality of § 844(f) as applied * * * for the reasons stated in the District Court's opinion." *Brown*, 557 F.2d at 559. The district court's reasoning is thus the Sixth Circuit's. See *Bridgeport Music, Inc.* v. *Smith*, 714 F.3d 932, 941-942 & n.10 (6th Cir. 2013) (treating as circuit decision a decision adopting the reasoning of the district court (citing *Southerland* v. *County of Oakland*, 77 F.R.D. 727, 732 (E.D. Mich. 1978), *aff'd*, 628 F.2d 978 (6th Cir. 1980) (per curiam)).

B. The decision below is wrong.

The decision below—upholding a federal conviction for arson of state and local police vehicles simply because their departments received small, unconnected amounts of federal funds—is deeply flawed. See Pet. 12-13. *Sabri* does not justify the near-boundless assertion of Congress's powers the government urges (Opp. 8-9).

This Court has long recognized that "arson is a paradigmatic common-law state crime" (*Jones* v. *United States*, 529 U.S. 848, 858 (2000)), and Arkansas law unsurprisingly provides harsh penalties for vehicular arson (see Ark. Code §§ 5-4-401(a), 5-38-301(a)(1)(A), 5-38-301(b)(5); Pet. App. 16 (Grasz, J., dissenting) ("[petitioner's] conduct was subject to severe penalties under state laws")).

The decision below, however, upholds federal power to criminalize arson without any clear federal interest or federal connection. See Pet. App. 13-15. Here, federal dollars neither paid for the vehicles nor substantially funded the organizations that did. *Id.* at 12 (federal dollars provided "around 2%, 1%, and .07% * * * of the department budgets"). This expansive reading of Section 844(f)(1) "intrudes on the police power of the States." *Bond* v. *United States*, 572 U.S. 844, 860 (2014). As Judge Grasz explained, "in our system of enumerated federal powers, [this] was a local crime that belonged to Arkansas to punish, not the federal government." Pet. App. 21 (Grasz, J., dissenting).

The government's reliance (at 8-9) on *Sabri* is misplaced. *Sabri* addressed Congress's power to criminalize bribery of state, local, and tribal officials of entities that receive federal funds via 18 U.S.C. § 666(a)(2).

541 U.S. at 603. The Court held that the government need not establish "proof of connection with federal money as an element of the offense" *because* of the nature of the bribery offense: Congress determined that "bribed officials are untrustworthy stewards of federal funds," and thus, when localities accept federal funds, they submit their officials to federal regulations prohibiting bribery. *Id*. at 606. Ultimately, the Court held, "[t]he power to keep a watchful eye on expenditures and on the reliability of those who use public money is bound up with congressional authority to spend in the first place." *Id*. at 608.

That holding says nothing about whether a federal interest may attach when members of the public at large (not local officials) commit arson as to pieces of property with no established connection to federal funds. As Judge Grasz observed, petitioner's "destruction of police vehicles says little about the law enforcement entities' stewardship of federal dollars. It does not indicate the recipients are wasting taxpayer dollars on boondoggles or overpaid contractors. Nor does it show the recipients are likely to fail to protect the items secured by federal funds." Pet. App. 18-19.

The decision below mistakenly extends *Sabri* far beyond this holding—and any expansion of *Sabri* warrants careful review. See *Sabri*, 541 U.S. at 614 (Thomas, J., concurring in judgment) ("[T]he Court's approach seems to greatly and improperly expand the reach of Congress' power under the Necessary and Proper Clause."). Section 666's regulation of stewards of public funds simply says nothing about whether Congress can criminally regulate the property of any state or local entity that receives federal funds. Were it otherwise, Congress could render it a federal crime

for an elementary school student to bring home a school-purchased pencil, for any school that receives Title 1, IDEA, SNAP, or any other federal funds.

Sabri does not authorize such unbounded federal criminalization. The Spending Clause does not permit the federal government to wield a general police power. See *Snyder* v. *United States*, 603 U.S. 1, 14 (2024) (listing "bedrock federalism principles" as a reason to limit the construction of a federal criminal law enacted under the Spending Clause). Nor does it allow the federal government the authority to "commandeer local law enforcement to carry out federal programs." Pet. 24 (citing *Printz* v. *United States*, 521 U.S. 898, 926 (1997)).

Here, because the federal government failed to prove that petitioner's conduct had any nexus to federal funds, Section 844(f)(1) may not be constitutionally applied to him.

C. This case is an attractive vehicle for resolving this important question.

The broad view adopted below of Congress's authority would dramatically expand federal government's control over local crime. Pet. 14-15. Left in place, it risks "obliterat[ing] the distinction between what is national and what is local." *United States* v. *Lopez*, 514 U.S. 549, 557 (1995).

The over-federalization of criminal law is of grave concern. Federal "overcriminalization" through criminal statutes that are "too broad and undifferentiated" "give prosecutors too much leverage." *Yates* v. *United States*, 574 U.S. 528, 569-570 (2015) (Kagan, J., dissenting). As Justice Thomas has warned, "Congress has taken from the People authority that they never gave" and "that much of Title 18, among other parts

of the U.S. Code, is * * * an incursion into the States' general criminal jurisdiction and an imposition on the People's liberty." *Gamble* v. *United States*, 587 U.S. 678, 710 n.1 (2019) (Thomas, J., concurring). See also *Veneno* v. *United States*, 146 S. Ct. 52, 53 (2025) (Gorsuch, J., dissenting from denial of certiorari) ("Congress does not enjoy some 'general right to punish' crimes of its choosing 'within * * * the States' however and whenever it pleases. Our Constitution 'withhold[s] from Congress' that kind of 'plenary police power.'") (citations omitted); *Ciminelli* v. *United States*, 598 U.S. 306, 315-316 (2023) (unanimous) (cautioning against "vastly expand[ing] federal jurisdiction [and placing] 'under federal superintendence a vast array of conduct traditionally policed by the States'") (quoting *Cleveland* v. *United States*, 531 U.S. 12, 27 (2000)).

The decision below—and those that reach the same result—criminalize vast swaths of localized conduct that has no appropriate federal nexus. Given the ubiquity of federal funds that appear throughout education, transportation, healthcare, law enforcement, and in virtually every facet of modern life, the result reached below is a recipe to eviscerate any limitation on the scope of Congress's power to criminalize.

Review is imperative to restore the appropriate reach of Section 844(f)(1)—and to ensure that federal law is appropriately balanced with local law enforcement prerogatives.

D. Alternatively, the Court should hold pending *Landor*.

The government explicitly acknowledges that *Landor* v. *Louisiana Department of Public Corrections & Public Safety*, No. 23-1197, implicates the scope of

federal authority under the Spending and Necessary and Proper Clauses. Opp. 12 n.2. If the Court does not grant the petition for plenary review—as petitioner submits is warranted—it should at minimum hold for its disposition of *Landor* and then dispose of this petition accordingly.

CONCLUSION

The Court should grant the petition or, alternatively, hold it pending *Landor*.

Respectfully submitted.

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