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

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER

Petitioner Mujera Benjamin Lung'aho respectfully submits this supplemental brief to address the Court's recent decision in *Landor* v. *Louisiana Department of Corrections and Public Safety*, No. 23-1197 (U.S. June 23, 2026), which confirms that the Court should either grant, vacate, and remand or set the case for plenary review.

The petition presents the straightforward question whether Congress may criminalize arson of *any* property owned by any "institution or organization 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.

In *Landor*, the Court held that Congress's funding condition in the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) (42 U.S.C. §§ 2000cc-1(a), (b)(1)) requiring state prison systems to agree to answer certain suits could not extend to individual officers. Slip op. 8. "Congress lacks regulatory authority" under the Spending Clause, the Court explained, "to impose liability" on individual officers directly without their consent. *Id.* In so holding, the Court reaffirmed the fundamental principle that "[a] Spending Clause statute does not carry independent regulatory force." *Id.* at 12. And "a penny of federal spending" does not give Congress free rein to "regulate [a person's] conduct directly based on the fiction that he has consented to regulation." *Id.* at 13.

Landor vindicates petitioner's contention (Pet. 8-13; Reply 8-10) that the decision below grievously erred in holding that the Spending and Necessary and Proper Clauses provide Congress carte blanche to regulate arson involving any property owned by an institution "receiving Federal financial assistance" (18 U.S.C. § 844(f)(1)), no matter how attenuated the connection between the federal funds and the property (Pet. App. 15-16). As the dissent below recognized, the majority opinion relied on an overreading of *Sabri* v. *United States*, 541 U.S. 600 (2004), which if "correct," would put little "outside Congress's power to police in today's age of massive federal assistance." Pet. App. 19 (Grasz, J., dissenting).

Landor rejected precisely such a broad reading of *Sabri* (slip op. 15-17): while "Congress may punish people who seek to sap federal funds from their intended beneficiaries," that power extends only to "safeguard[ing] from graft the federal funds Congress distributes pursuant to its spending power." Otherwise, "[w]ith even a modest federal expenditure somewhere nearby, Congress could then proceed to regulate directly the conduct of countless nonconsenting individual[s]" and "regulate directly, too, in innumerable spheres, including ones traditionally reserved to the States." Slip op. 18.

That principle applies with equal force here: petitioner damaged police vehicles belonging to three state and local police departments purchased with state and local funds. That local conduct did not become a federal crime simply because of "a modest federal expenditure somewhere nearby" (*Landor*, slip op. 18)—federal dollars provided "around 2%, 1%, and .07% * * * of the department budgets" (Pet. App. 12).

Landor thus compels the conclusion that the decision below is wrong. The Court should grant, vacate, and remand or grant plenary review.

A. The Court should grant, vacate, and remand in light of *Landor*.

Landor calls the decision below into serious doubt. This Court often issues a grant-vacate-remand order when an intervening decision clarifies the legal principles governing resolution of the question presented in a pending petition. See, *e.g.*, *Lawrence* v. *Chater*, 516 U.S. 163, 167-168 (1996) (per curiam). Because *Landor* fatally undermines the Eighth Circuit's reasoning, petitioner respectfully requests a GVR to allow the court of appeals to reconcile this case with the principles articulated in *Landor*.

The decision below endorsed an expansive view of Congress's powers under the Spending and Necessary and Proper Clauses. The Eighth Circuit held that the federal government could prosecute petitioner for arson under 18 U.S.C. § 844(f)(1) even though the damaged state and local police vehicles were not purchased with federal funds, and the police departments that owned the cars received at most 2% of their annual budgets from the federal government. Pet. App. 12, 16. In so holding, the Eighth Circuit endorsed Congress's near-limitless authority to prosecute general crime. *Id.* at 14.

This Court rejected this precise view in *Landor*: Congress may not "regulate on nearly any topic it wishes, backed by practically any sanction it chooses, so long as it does so in service of the 'general Welfare.'" Slip op. 5. While the Spending Clause authorizes Congress to "raise and spend money," it does not "endow Congress with any power to regulate conduct." *Ibid.* (quoting *Medina* v. *Planned Parenthood South Atlantic*, 606 U.S. 357, 370-371 (2025) (brackets omitted)). Congress lacks near-limitless authority to prosecute general crime just because some "penny of federal spending makes its way" into the picture, "however indirectly." *Landor*, slip op. 13.

Landor thus critically undermines the reasoning in the decision below in three ways.

First, it clarified the proper scope of *Sabri*, 541 U.S. at 600. In *Sabri*, the Court rejected a facial challenge to a bribery statute targeting public corruption. *Id.* at 603-605. Although the statute did not require any proof of connection between the bribe and federal money, that was because of the nature of a bribery offense. *Sabri*, 541 U.S. at 603-605. As *Landor* agreed, Congress may use the Necessary and Proper Clause to "safeguard from graft the federal funds Congress distributes pursuant to its spending power." *Landor*, slip op. 17.

The Eighth Circuit expanded *Sabri* to also reach arson of state and local police vehicles—even though the police cars were neither purchased with federal funds nor did the police departments receive any more than 2% of their budgets from federal funding. Pet. App. 12-13. The Eighth Circuit treated a third party's arson the same as Congress's interest in "bribed officials [who] are untrustworthy stewards of federal funds." *Sabri*, 541 U.S. at 603. In so doing, it brushed aside the dissent's concern that this would give Congress the power to "simply purchase police power by giving a few dollars to entities that later become arson victims" (Pet. App. 21 (Grasz, J., dissenting)) because, according to the majority, "*Sabri* is that broad" (*id.* at 15-16).

Landor makes clear that *Sabri* is *not* that broad. The Court rejected the petitioner's argument that, under *Sabri*, the Necessary and Proper Clause authorized Congress to impose a personal-capacity cause of action on the individual officers simply because it was "incidental to RLUIPA's policy [of] protecting religious exercises." *Landor*, slip op. 16. As the Court explained, the correct question is whether federal regulation "is a necessary and proper incident to Congress's constitutionally enumerated power to spend money." *Ibid.* The statute in *Sabri* met that condition because it directly addressed "thieves, fraudsters, bribers, and others who threaten to 'fritte[r] away in graft'" federal funds. *Ibid.* (quoting *Sabri*, 541 U.S. at 605). *Sabri* could not be extended to the RLUIPA cause of action because it had no role to play in "safeguard[ing] from graft the federal funds Congress distributes pursuant to its spending power." *Id.* at 17. Thus, as Judge Grasz explained in dissent below, although Congress can, "consistent with the Constitution, root out financial corruption" in order to "ensure that" federal benefits "are not squandered," it "exceeds its power 'to ensure that its appropriation goes where it directs'" when "the defendant's actions are not 'interfering with the disbursement of federal funds.'" Pet. App. 19 (Grasz, J., dissenting) (quoting *Barnett* v. *Short*, 129 F.4th 534, 543 (8th Cir. 2025)).

This case is illustrative. Criminalizing petitioner's conduct has no connection to safeguarding federal funds from graft; the property was neither purchased with federal funds nor did the departments receive any more than 2% of their budgets from the federal government. Pet. App. 12. Applying *Landor's* framing, *Sabri* cannot justify the federal government's overreach here.

Second, *Landor* rejected the Eighth Circuit's theory that the fungibility of money permits near-limitless Spending Clause regulation. The Eighth Circuit held that the government did not need to show "a connection between the burned police cars and the federal assistance" because "money is fungible." Pet. App. 14 (internal quotation marks omitted). In the court's view, because federal funds could theoretically be used to "replace cars" or "backfill other funding diverted to replace the cars" (*ibid.*), that justifies direct congressional regulation.

The Court in *Landor* rejected that maximalist interpretation of Congress's power: Congress cannot regulate conduct directly any time that conduct implicates "a penny of federal funding." Slip op. 13. Given the "explosion of Spending Clause legislation in recent decades" (*ibid.* (quoting *Medina*, 606 U.S. at 373)), such an expansive interpretation would give Congress "an effectively unbridled police power" (*ibid.*). If Congress could "directly regulate [a] third party's conduct" simply because a federal-funds recipient "spent some formerly federal money," Congress's Necessary and Proper Clause power would swallow its other limited, enumerated powers. *Ibid*. As the Court explained, "the fungibility of money" is not a blank check enabling Congress to regulate whenever a federal dollar is in jeopardy (*id.* at 12-13)—to accept such an interpretation of the Constitution would be to impermissibly allow Congress "to regulate private behavior directly" (*id.* at 14).

Third, Landor supports the dissent below's contention that "[t]he Spending and Necessary and Proper Clauses" are subject to "federalism concerns," especially where, as here, they are applied to arson, an area of "paradigmatic" state enforcement. Pet.

App. 19-20 (Grasz, J., dissenting) (quoting *Jones* v. *United States*, 529 U.S. 848, 858 (2000)).

As the Court explained, the Necessary and Proper Clause cannot be stretched to "violate the principle of state sovereignty." *Landor*, slip op. 17 (quoting *Printz* v. *United States*, 521 U.S. 898, 924 (1997)). The mere existence of "a modest federal expenditure somewhere nearby" cannot provide a constitutional foothold whereby Congress can "regulate directly" in "innumerable spheres, including ones traditionally reserved to the States." *Id.* at 18. When, as here, the application of a law would be inconsistent "with both principles of state sovereignty and a federal government of limited and enumerated regulatory powers," it cannot be "a '*proper* means for carrying into execution' Congress's spending power." *Ibid.* (quoting *National Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 559 (opinion of Roberts, C.J.)). The same principle applies here. "Congress cannot turn every arson into a federal crime." Pet. App. 17 (Grasz, J., dissenting).

Landor makes clear that the Eighth Circuit erred by permitting Section 844(f)(1) to apply to any arson so long as there is "a modest federal expenditure somewhere nearby." Slip op. 18. Petitioner asks the Court to issue a GVR order so that the Eighth Circuit can correct its error.

B. Alternatively, plenary review is warranted.

Petitioner also renews his request for plenary review to remedy the entrenched circuit split. Pet. 17-28; Reply 3-7. Given the expansive scope of the Eighth Circuit's ruling, the substantial costs of prolonging uncertainty about Section 844(f)(1)'s constitutionality outweigh any benefits from further percolation.

As petitioner explained (Pet. 17-28; Reply 3-7), the circuits remain intractably divided over whether Congress may authorize the federal prosecution of arson *any time* the damaged property belongs to an "institution * * * receiving Federal financial assistance" (18 U.S.C. § 844(f)(1)), no matter how *de minimis* that assistance is.

In line with *Landor*, two circuits recognize that the government must demonstrate a meaningful nexus between the property at issue and federal funds. In *United States* v. *Hersom*, for example, the First Circuit limited Section 844(f)(1) to "property acquired, renovated, or leased using federal financial assistance" or owned by entities "substantially or primarily funded" by the federal government. 588 F.3d 60, 66-67 (1st Cir. 2009). Absent that limiting construction, 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. Accord *Landor*, slip op. 18 (rejecting notion that "a modest federal expenditure somewhere nearby" was enough to authorize Congress to directly regulate conduct).

The Sixth Circuit has reached a similar conclusion, limiting Section 844(f)(1) to property belonging to an entity the federal 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 Circuit in the decision below) disagree. These circuits hold, contrary to *Landor*, that Congress can authorize the federal prosecution of arson "so long as a penny of federal spending" (*Landor*, slip op. 13) made its way to the owner of the damaged property. See *United States* v. *Pittman,* 125 F.4th 527, 533 & n.2 (4th Cir. 2025); *United States* v. *Apodaca*, 522 F.2d 568, 571-572 (10th Cir. 1975); *United States* v. *Kimberlin,* 805 F.2d 210, 242-243 (7th Cir. 1986); Pet. App. 11-12.

This protracted division warrants the Court's plenary review, particularly given the dangers to our constitutional structure that flow from an overbroad conception of Congress's authority over nonrecipients of federal funds.

"[A]rson is a paradigmatic common-law state crime." *Jones*, 529 U.S. at 858. Congress cannot usurp the states' role in regulating arson any time there exists "a modest federal expenditure somewhere nearby." *Landor*, slip op. 18. While the Court has recognized Congress's general authority to safeguard federal funds, that exception is a narrow one. As the Court has now clarified, *Sabri* established only that "Congress may punish people who seek to sap federal funds from their intended beneficiaries." *Id.* at 16. It is possible—though not certain—that Congress could criminalize arson where the damaged property was purchased directly with federal funds, or where the property owner received substantial federal funding. But that is not this case. Where a property owner receives a negligible amount of funding from Congress—in this case, a contribution of no more than 2% to a state or local police department budget (Pet. App. 12)—that "penny of federal spending" cannot empower Congress to "directly regulate [a] third party's conduct" (*Landor*, slip op. 13).

To hold otherwise would be to grant Congress "an effectively unbridled police power." *Landor*, slip op.

13. But the Constitution "withhold[s] from Congress" such a "plenary police power." *United States* v. *Lopez*, 514 U.S. 549, 566 (1995). The Eighth Circuit's approach does not "fit[] within our system of limited and enumerated federal powers where all others are reserved to the States and the people." *Landor*, slip op. 13.

In the absence of summary action, review is thus warranted and necessary to resolve the confusion amongst the circuits and correct the Eighth Circuit's "expansive approach." *Landor*, slip op. 17.

CONCLUSION

The Court should grant, vacate, and remand to the Eighth Circuit. Alternatively, the Court should grant plenary review.

Respectfully submitted.

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