

No. 25-6911

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IN THE  
**Supreme Court of the United States**

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GREGORY W. PHEASANT,

*Petitioner,*

*v.*

UNITED STATES,

*Respondent.*

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

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**BRIEF OF *AMICI CURIAE*  
NINTH CIRCUIT FEDERAL PUBLIC  
AND COMMUNITY DEFENDER OFFICES  
IN SUPPORT OF PETITIONER**

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

The Ninth Circuit Federal Public and Community Defenders (the Defenders) represent indigent defendants in federal courts throughout the Ninth Circuit. As the institutional defenders for indigent federal defendants, these organizations have an interest in all federal criminal law issues. Given the proliferation of federal regulatory offenses, the Defenders have a particular interest in the scope of the nondelegation doctrine. And because the great majority of land owned by the federal government and administered by the Bureau of Land Management (BLM) lies within the Ninth Circuit, the Defenders have an especially strong interest in the scope of the BLM's authority to promulgate regulations that carry criminal penalties.

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1. Under Rule 37.6 of the Rules of this Court, *amici curiae* state that no counsel for a party has written this brief in whole or in part and that no person or entity, other than *amici curiae*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. Under Rule 37.2, *amici curiae* state that all parties received notice of its intention to file this amicus brief at least 10 days before the due date.

## SUMMARY OF ARGUMENT

Gregory Pheasant was charged with driving an off-road vehicle on BLM land in Nevada after dusk without a taillight, in violation of an administrative regulation, 43 C.F.R. § 8341.1(f)(5). This regulation was promulgated by the Secretary of the Interior under the Federal Land Policy and Management Act (FLPMA), which broadly directs the Secretary to “issue regulations necessary to implement the provisions of [the] Act with respect to the management, use, and protection of the public lands, including the property located thereon.” 43 U.S.C. § 1733(a). A violation of such regulations is a Class A misdemeanor, punishable by a fine of no more than \$1,000 and up to 12 months in prison. *See* 43 U.S.C. § 1733(a); *see also* 18 U.S.C. § 3559(a)(6) (defining Class A misdemeanors).

Given the incredibly broad delegation of authority by Congress to the Secretary, the district court held that § 1733(a) violates the nondelegation doctrine because it fails to cabin the Secretary’s (and his designees’) ability to declare what is and is not a crime on BLM land. *See United States v. Pheasant*, No. 3:21-CR-00024-RCJ, 2023 WL 3095959, at \*7 (D. Nev. Apr. 26, 2023), *rev’d*, 129 F.4th 576 (9th Cir. 2025). The Ninth Circuit reversed, applying the ordinary “intelligible principle” test to this criminal matter, which it characterized as an “exceedingly modest limitation,” and held that the broad delegation of authority to the Secretary of the Interior complied with its interpretation of the nondelegation doctrine. *See United States v. Pheasant*, 129 F.4th 576, 579 (9th Cir. 2025) (quoting *United States v. Melgar-Diaz*, 2 F.4th 1263, 1266 (9th Cir. 2021)).

The Defenders agree with Petitioner that the Constitution does not permit the Executive Branch to exercise such unfettered legislative authority to define criminal offenses on BLM land, and then enforce those same regulatory crimes. Instead, because enacting criminal law is exclusively a legislative function, the nondelegation doctrine demands heightened specificity when Congress delegates to administrative agencies the authority to create federal crimes. Here, the delegation to the Secretary of the Interior was open ended and nonspecific, and does not pass constitutional muster.

Given our significant experience representing defendants in jurisdictions with vast swathes of federal land, the Defenders will highlight three additional reasons why the Court should grant certiorari. First, the Ninth Circuit's permissive approach to legislative delegation in the criminal context exacerbates the widely acknowledged problem of overcriminalization in the federal criminal law, which is especially rife on BLM lands. Second, administrative misdemeanors like the one at issue here are overwhelmingly resolved in summary "petty offense" proceedings through the Central Violations Bureau, without meaningful due process. The large majority of defendants simply pay the fine for what appears to be a "ticket" for a civil infraction. But by paying the "ticket," many thousands of defendants each year are in fact unwittingly pleading guilty to Class A misdemeanors, without being fully apprised of their constitutional rights and the consequences of their decision, and without any judicial oversight.

Third, adopting a more robust nondelegation rule in the criminal context would not leave federal

lands unprotected. Congress would, of course, still be able to promulgate federal crimes itself or delegate legislative authority to BLM—so long as it also provides adequate guidance. And absent Congressional action, the Assimilative Crimes Act would apply to federal enclaves like BLM land, and citizens would be subject to criminal laws passed democratically by state legislatures rather than the edicts of federal bureaucrats. The Defenders thus urge the Court to grant the petition for a writ of certiorari.

## ARGUMENT

### **I. The BLM’s unfettered discretion to promulgate regulations that create Class A misdemeanors has significant negative consequences for the federal criminal justice system.**

The negative effects of the BLM’s unfettered discretion to promulgate regulatory crimes is largely a consequence of the sheer amount of BLM land, particularly in states within the western United States. The BLM administers over 245 million acres of public land, which is over one tenth of the entire landmass of the United States. *See* BLM What We Manage, *available at* <https://www.blm.gov/about/what-we-manage> (last accessed Mar. 11, 2026). Over 70% of that land lies within the Ninth Circuit, with the balance overwhelmingly lying within the Tenth Circuit. *See id.* And in Nevada, where this case arose, the BLM controls about 63% of the entire landmass of the state. *See* BLM Nevada Public Room, *available at* <https://www.blm.gov/media/public-room/nevada> (last accessed Mar. 11, 2026). In 2022, approximately 81 million people visited BLM-managed lands. *See House Appropriations Subcommittee Hearing BLM/Fish and Wildlife/National*

*Park Service Budget: FY 2024 Budget Priorities & Mission of the Bureau of Land Management* (Mar. 29, 2023) (statement of Tracy Stone-Manning, Director, BLM), available at [https://www.blm.gov/sites/default/files/docs/2023-04/congressional\\_20230329\\_House%20Appropriations\\_Interior%20subc\\_Fy24%20budget.pdf](https://www.blm.gov/sites/default/files/docs/2023-04/congressional_20230329_House%20Appropriations_Interior%20subc_Fy24%20budget.pdf) (last accessed Mar. 11, 2026).

The Secretary of the Interior (and his designees), then, exercise enormous power when they promulgate thousands of administrative regulations and orders that carry the power of criminal punishment. This near limitless power to create regulatory crimes has resulted in overcriminalization on BLM land, frequently leads defendants unwittingly to admit guilt to Class A misdemeanors, and is unnecessary given the body of already-existing state criminal law that can apply instead to federal enclaves.

**A. The BLM's nearly limitless power to create regulatory crimes has resulted in severe overcriminalization on BLM land.**

Judges, politicians, and academics frequently lament the sprawling growth of federal criminal law over the past decades, decrying this trend toward overcriminalization. The number of federal criminal laws has grown so large over the past century that there is no agreed estimate of precisely how many federal criminal laws exist. See A.B.A. Task Force on the Federalization of Criminal Law, *The Federalization of Criminal Law* 9 (A.B.A. Criminal Justice Section 1998) (“So large is the present body of federal criminal law that there is no conveniently accessible, complete

list of federal crimes.”); *see also* Thomas J. Maroney, *Fifty Years of Federalization of Criminal Law: Sounding the Alarm or “Crying Wolf?”*, 50 *Syracuse L. Rev.* 1317, 1329–30 (2000) (noting the existence of “thousands of administrative regulations that have the force of law” and that it is difficult to ascertain the total number of federal crimes).

Federal regulations that carry criminal penalties play a major role in driving up the total number of federal crimes, and comprise a majority of all federal criminal offenses. *See* John C. Coffee, Jr., *Does “Unlawful” Mean “Criminal”?: Reflections on the Disappearing Tort/Crime Distinction in American Law*, 71 *B.U. L. Rev.* 193, 216 (1991). Indeed, in the early 1990s, it was estimated that there were over 300,000 federal regulations that carried criminal penalties. *See id.* The number is almost certainly much higher now.

This overcriminalization allows for arbitrary enforcement of criminal law, especially on federal land, because it is all too easy for people to violate some law, which they did not even know existed. *See, e.g., Nieves v. Bartlett*, 587 U.S. 391, 412 (2019) (Gorsuch, J., concurring in part and dissenting in part) (“In our own time and place, criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something.”). Indeed, even the Executive Branch has recently acknowledged its own historic role in the proliferation of regulatory offenses, estimating that there are hundreds of thousands of crimes created only through the Code of Federal Regulations, more than any person could possibly be aware of, and many of which are strict-liability offenses.

*See* Exec. Order No. 14,294, 90 Fed. Reg. 20,363 (May 9, 2025).

The BLM, which has liberally exercised its virtually unlimited authority to promulgate administrative crimes through federal regulations under the authority of § 1733(a), has been a significant part of this problem. The current paper edition of the Code of Regulations for the BLM runs to 1,144 pages. *See* 43 C.F.R. § 1600–9269 (2022). The numerous criminal regulations run the gamut, and include such crimes as:

- moving any table in a BLM picnic area, *see* 43 C.F.R. § 8365.2–3(f);
- playing a radio too loudly in a developed BLM recreation site, *see* 43 C.F.R. § 8365.2–2(a);
- bringing a dog into such a site on a leash longer than six feet, *see* 43 C.F.R. § 8365.2–1(c);
- making “unreasonable noises” while on BLM land, *see* 43 C.F.R. § 8365.1–4(a)(1);
- cleaning clothing or household articles at any faucet in a developed recreation site, *see* 43 C.F.R. § 8365.2–1(a);
- cleaning a fish at any faucet in a developed recreation site, *see id.*;
- using a television or radio antenna in a developed recreation site, unless it is mounted on a vehicle, *see* 43 C.F.R. § 8365.2–2(c);

- leaving personal property unattended for longer than 10 days (12 months in Alaska), *see* 43 C.F.R. § 8365.1–2(b); and
- bringing any animal (other than a service dog) to a swimming area, *see* 43 C.F.R. § 8365.2–5(b).

Under § 1733(a), all of these administrative crimes are Class A misdemeanors, punishable by up to 12 months in prison.<sup>2</sup>

Although the challenged regulatory crime here actually appears in the Code of Federal Regulations, BLM regulations themselves also delegate to state BLM directors the authority to issue “supplementary rules as he/she deems necessary.” 43 C.F.R. § 8365.1-6. Violations of such supplementary rules, though not published in the Code of Federal Regulations, likewise are Class A misdemeanors, carrying a possible 12-month prison sentence and \$1,000 fine if violated. 43 C.F.R. § 8360.0–7. Some criminal prohibitions promulgated through these supplementary rules include:

- possessing a metal detector on all BLM lands in the Cotoni-Coast Dairies unit of the California

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2. The above-listed offenses are not fanciful outliers that go unenforced. They all appear in a BLM manual for its law enforcement officers, listing the “principal criminal laws and regulations” that the BLM enforces. *See* United States Department of the Interior Bureau of Land Management Office of Law Enforcement and Security, *Principal Criminal Laws & Regulations Enforced by BLM* (Nov. 2005), *available at* <https://publiclandjurisdiction.com/wp-content/uploads/2020/01/2005-Criminal-Laws-Regulations-Enforced-by-BLM.pdf> (last accessed Mar. 11, 2026).

Coastal National Monument in Santa Cruz County, California, *see* 89 Fed. Reg. 33238-01 (Apr. 29, 2024);

- failing to properly dispose of pet excrement in the trash in developed BLM recreation sites in Gila, Maricopa, Pima, Pinal and Yavapai Counties, Arizona, *see* 86 Fed. Reg. 14009-01 (Mar. 12, 2021);
- failing to “keep and leave your camp clean” at the Kelly Island Campground in Idaho, *see* 76 Fed. Reg. 33346-01 (June 8, 2011);
- possessing any alcoholic beverage within a tent in the Lower Lake Creek Falls Special Recreation Management Area in Oregon, *see* 87 Fed. Reg. 69204-01 (Nov. 18, 2022); and
- possessing a glass beverage container in a developed campsite in the BLM’s California Desert District, *see* 76 Fed. Reg. 33342-02 (June 8, 2011).

Finally, any “authorized [BLM] officer may issue” temporary “closure orders,” which close or restrict the use of specific BLM lands. *See* 43 C.F.R. § 8364.1(a). Violations of such orders are also Class A misdemeanors and may subject a defendant to 12 months in prison. *See id.* § 8364.1(e).

Although § 8364.1 authorizes the BLM to issue only “temporary” closure orders, as a practical matter, such orders often remain in effect for years on end. *See, e.g., United States v. Wells*, 873 F.3d 1241, 1248 (10th Cir. 2017)

(noting that a “temporary” BLM closure order issued in 2007 restricting use of all-terrain vehicles in a specified area remained in effect in 2014). And violations of such administrative closure orders can easily morph into more serious federal offenses, such as a conspiracy charge if the defendant entered into an agreement with someone else to violate such an order. *See, e.g., id.* at 1255–56 (affirming convictions under 18 U.S.C. § 371 for conspiracy to violate a temporary BLM closure order).

In sum, the BLM has liberally exercised its authority to create myriad regulatory misdemeanors, resulting in severe overcriminalization—a trend enabled largely by the nondelegation doctrine’s failure to impose any meaningful constitutional check on agency lawmaking untethered from congressional direction.

**B. Most BLM administrative crimes are resolved through summary Central Violations Bureau proceedings, which result in defendants unwittingly pleading guilty to Class A misdemeanors without being advised that they are doing so.**

The full extent to which these myriad BLM administrative crimes are prosecuted is difficult to ascertain. As Defenders, we are appointed in only a tiny fraction of such cases, arising from atypical situations like the Petitioner’s, in which the defendant was also charged with a felony. *See Pheasant*, 129 F.4th at 579; *see also, e.g., United States v. Ehmer*, 87 F.4th 1073, 1089 (9th Cir. 2023), *cert. denied*, 145 S. Ct. 574 (2024) (affirming mix of felony convictions and regulatory-offense convictions).

Although administrative crimes enacted by the BLM under the FLPMA all potentially carry a punishment of up to 12 months in prison, in most such prosecutions no jail time is sought, and thus no counsel is appointed. *See* 18 U.S.C. § 3006A; *see also Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) (holding that the Sixth Amendment right to appointed counsel attaches for misdemeanors only when a jail term is possible). Further, the vast majority of such Class A misdemeanors are processed as “petty offenses” in which no judge, prosecutor, or defense lawyer ever reviews the case, and which are summarily resolved by the defendant acquiescing to a fine (known as “forfeiture of collateral”) paid to the Central Violations Bureau (CVB).

Specifically, Federal Rule of Criminal Procedure 58 allows for unique rules that apply to “petty offenses.” *See* Fed. R. Crim. P. 58. So long as no sentence of imprisonment will be imposed, Rule 58 permits district courts wide leeway to depart from ordinary procedures that apply in criminal cases. *See* Fed. R. Crim. P. 58(a). In practice, most regulatory misdemeanors prosecuted on federal enclaves, like BLM land, are initiated when a federal law enforcement officer issues a Violation Notice, with one copy of the Notice being issued to the defendant, and another sent to the CVB in Texas. *See* Mary C. Warner, *The Trials and Tribulations of Petty Offenses in the Federal Courts*, 79 N.Y.U. L. Rev. 2417, 2424–25 (2004). Proceedings resolved directly with the CVB (via mailing a check or paying online) do not appear on any public docket, and do not appear on Public Access to Court Electronic Records (PACER).

Violation notices look like a “ticket” one would receive for a traffic infraction. *See* CVB Sample Violation Notice,

available at <https://www.cvb.uscourts.gov/sites/default/files/2022-11/CVB-Sample-Violation.pdf> (last accessed June 2, 2025). For most violations, the officer will check the “APPEARANCE IS OPTIONAL” box on the notice and list a collateral forfeiture amount, which is essentially a fine. *See Warner, supra*, at 2425–26. Each district court has the authority to set its own collateral forfeiture schedule, *see* Fed. R. Crim. P. 58(d)(1), and district courts issue lengthy general orders listing collateral forfeiture amounts that apply for petty misdemeanors (or require mandatory appearance in court for certain offenses). *See, e.g.*, N.D. Cal. General Order 52. Collateral forfeiture amounts are not uniform: a violation of a temporary closure order results in a \$100 forfeiture of collateral in Idaho, \$250 in Nevada, and \$300 in Oregon. *See* D. Idaho General Order No. 278; D. Nev. 7th Amended Special Order No. 60; D. Or. Collateral Forfeiture Schedule, available at [https://www.ord.uscourts.gov/index.php/component/rsfiles/download-file/files?path=court\\_policies%252FCollateral%2BForfeiture%2BSchedule%2Bfor%2BMisdemeanors%2Band%2BPetty%2BOffenses.pdf&Itemid=1581](https://www.ord.uscourts.gov/index.php/component/rsfiles/download-file/files?path=court_policies%252FCollateral%2BForfeiture%2BSchedule%2Bfor%2BMisdemeanors%2Band%2BPetty%2BOffenses.pdf&Itemid=1581) (last accessed Mar. 11, 2026).

The Violation Notice does not advise defendants that they are being charged with a criminal misdemeanor, that they are pleading guilty to a misdemeanor by paying the forfeiture amount, or of the numerous constitutional rights they are waiving by paying the forfeiture amount. *See Warner, supra*, at 2424–26. This stands in marked contrast to the numerous advisements required before a magistrate judges may accept a guilty plea for an ordinary misdemeanor. *Compare id., with* Fed. R. Crim. P. 11(b) (outlining required advisements before accepting guilty pleas in non-petty-offense cases). Likewise, the

CVB website refers to Violation Notices as “tickets,” further bolstering the false impression that such notices are for mere civil infractions. *See* [www.cvb.uscourts.gov/pay-ticket](http://www.cvb.uscourts.gov/pay-ticket) (last accessed Mar. 11, 2026). If the defendant forfeits the collateral (i.e., pays the “ticket”), which is done via the CVB website or by mail, then the matter is closed, without any federal judge, prosecutor, or defense lawyer ever having reviewed the case. *See* Warner, *supra*, at 2425–26.

Most courts, however, have held that the effect of such a forfeiture of collateral (i.e., paying the ticket) constitutes an admission of guilt to the offense. *See* Warner, *supra*, at 2435–36 & n.117 (collecting cases); *see also, e.g., Scharf v. United States*, 606 F. Supp. 379, 382 (E.D. Va. 1985) (“To be sure, forfeiture of collateral constitutes a guilty plea despite the lack of notice on the ticket to its legal effect.”). Thus, the CVB system results in thousands of defendants every day unwittingly pleading guilty to criminal misdemeanors (including Class A misdemeanors) by paying what appears to be a mere ticket for a civil infraction. *See* Warner, *supra*, at 2417, 2435–36.

While the CVB does not regularly release to the public any detailed statistics about the amount and type of cases it processes, a 2010 report stated that it processed over 350,000 cases annually, and collected approximately \$22 million in fines and forfeitures, coupled with another \$5.5 million in processing fees. *See* Administrative Office of the United States Courts, *Annual Report of the Director* (2010), at 42, *available at* <https://www.uscourts.gov/sites/default/files/annualreport2010.pdf> (last accessed Mar. 10, 2026). This contrasts with only 27,384 total petty offenses disposed of in court proceedings by magistrate judges in

a recent year, suggesting that the overwhelming majority of petty offenses are processed through summary CVB proceedings without any judge or lawyer ever reviewing the matter. *See* Administrative Office of the United States Courts, *Federal Judicial Caseload Statistics 2025 Tables*, Table M2, available at <https://www.uscourts.gov/data-news/data-tables/2024/03/31/federal-judicial-caseload-statistics/m-2> (last accessed Mar. 10, 2026).

In sum, most people charged with BLM administrative crimes promulgated under § 1733(a) are unaware that they are being charged with Class A misdemeanors, due to the nature of federal Violation Notices and the CVB process, and are unwittingly pleading guilty to Class A misdemeanors by simply paying a relatively small fine for what appears to be a mere “ticket” for a civil infraction. The proliferation of federal administrative crimes, abetted by no meaningful check on congressional delegation of its legislative powers, has no doubt contributed to the rise of the summary CVB process and the erosion of constitutional protections afforded federal defendants charged with such crimes.

**C. The Assimilated Crimes Act provides a body of criminal law to apply on federal lands in the absence of regulatory offenses, while respecting the democratic will of the citizens in each state with BLM land.**

Adopting a more robust, less deferential approach to the nondelegation doctrine like that adopted by the district court and advocated by the Petitioner—rather than the “exceedingly modest limitation” adopted by the Ninth Circuit below, *see* 129 F.4th at 579—would not result

in lawlessness on BLM lands and other federal enclaves. Rather, if the Court were to hold that the FLPMA's broad delegation under § 1733(a) to enact criminal regulations did not comport with the nondelegation doctrine, Congress would remain free to enact any criminal laws and penalties it wished to on BLM lands, particularly where there was some important federal interest at stake, or to delegate that legislative authority to BLM—so long as it also provides adequate guidance. And absent Congressional action, the Assimilative Crimes Act (ACA), 18 U.S.C. § 13, would apply state criminal law to such lands. *See Lewis v. United States*, 523 U.S. 155, 159–60 (1998).

Specifically, the ACA makes state criminal law enforceable in federal court on federal enclaves when those acts or omissions are not otherwise covered by any federal criminal law. *See* 18 U.S.C. § 13(a); *Lewis*, 523 U.S. at 160 (“The ACA’s basic purpose is one of borrowing state law to fill gaps in the federal criminal law that applies on federal enclaves.”). Thus, in situations where Congress has declined to enact any federal criminal statute criminalizing conduct that is illegal under state law, the law of the state where a federal enclave is located would still apply through the ACA. *See* 18 U.S.C. § 13(a); *Lewis*, 523 U.S. at 159–65.

For instance, if the Court were to hold that the delegation to the Department of the Interior here exceeded constitutional limits, people traveling on BLM land in Nevada would remain subject to all laws concerning off-road vehicle operations enacted by the Nevada Legislature. *See* 18 U.S.C. § 13(a). And the Nevada Legislature has enacted an entire chapter of the Nevada Revised Statutes specifically addressing off-highway

vehicles like the one driven by Petitioner here. *See* Nev. Rev. Stat. §§ 490.010–490.525. So limiting the power of executive branch agencies to promulgate administrative misdemeanors would by no means turn federal enclaves into lawless zones; rather, they would continue to be subject to the laws of the states in which they lie, to the extent that Congress has not already passed statutes that apply to such enclaves. And, it bears repeating, Congress can always pass any new criminal law it wishes, particularly when a uniquely federal interest is at stake.

Relying on assimilated state laws in federal enclaves also respects the democratic will of the people of the states where federal lands are located. Instead of being subject to administrative misdemeanors promulgated through an opaque bureaucratic process in the Executive Branch, reliance on state law to define the contours of criminal conduct on federal enclaves would instead reflect a more democratic approach in which citizens on federal land are subject to laws passed by elected legislators and signed into law by elected governors. *Cf.* F. Andrew Hessick & Carissa Byrne Hessick, *Nondelegation and Criminal Law*, 107 Va. L. Rev. 281, 300 (2021) (“This need for community condemnation has led criminal theorists to conclude that only laws which were enacted by a democratically accountable body may form the basis of criminal punishment.”); Guyora Binder & Brenner Fissell, *A Political Interpretation of Vagueness Doctrine*, 2019 U. Ill. L. Rev. 1527, 1582–83 (2019) (“Popular participation in lawmaking is particularly important in criminal law. The decision to criminalize conduct is not simply a technical matter of measuring its social cost and assigning a price to

optimize its frequency. Criminal laws forbid and denounce offenses and their penalties impose suffering on the basis of moral judgments of blame.”).

Reliance on the ACA would also reflect a greater respect for different policy preferences among these democratically accountable state legislatures, and thus a greater respect for federalism in criminal law. *See, e.g.,* Wayne A. Logan, *Creating A “Hydra in Government”: Federal Recourse to State Law in Crime Fighting*, 86 B.U. L. Rev. 65, 71–72 (2006) (“[T]he ACA is thought to serve federalism values by permitting U.S. law to reflect local conditions and minimizing federal interference with state authority over crimes within state boundaries.”). In this same vein, this Court has noted that the ACA “is a practical accommodation of the mechanics of the legislative functions of State and Nation in the field of police power where it is especially appropriate to make the federal regulation of local conduct conform to that already established by the State.” *United States v. Sharpnack*, 355 U.S. 286, 294 (1958).

Indeed, the early history of the Republic reflected a preference for reliance on state law to define criminal conduct on federal enclaves. Congress enacted the original version of the Assimilative Crimes Act in 1825, reflecting exactly this preference for relying on the states to provide a source for most criminal law in federal enclaves. *See Sharpnack*, 355 U.S. at 290 (noting that in the original ACA “Congress expressly adopted the fundamental policy of conformity to local law,” and that the 1825 Act continued to provide “the basis from which has grown the

Assimilative Crimes Act now before us”); Assimilative Crimes Act of 1825, 4 Stat. 115; *see also* Nikhil Bhagat, *Filling the Gap? Non-Abrogation Provisions and the Assimilative Crimes Act*, 111 Colum. L. Rev. 77, 83 (2011) (“Originally enacted as part of the Federal Crimes Act of 1825, at a time when there were fewer federal crimes, the ACA was envisioned as a gap filling measure that would operate as a sort of default body of criminal law on federal land.”). Thus, before the modern proliferation of federal regulatory crimes, the longstanding approach of the federal government was to rely on state law to provide a framework for law and order in federal enclaves. *See Sharpnack*, 355 U.S. at 290.

In sum, if the Court were to adopt a more robust approach to enforcing the nondelegation doctrine in the criminal context, the ACA would act as a backstop to protect federal enclaves against lawlessness and disorder. Further, a shift toward greater reliance on the ACA would represent a return to the Congress’s traditional approach to relying on state law to define the contours of criminal law in federal enclaves, reflecting greater respect for federalism and greater democratic accountability.

**CONCLUSION**

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

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