

No. 25-6911

IN THE SUPREME COURT OF THE UNITED STATES

GREGORY W. PHEASANT, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Federal Land Policy and Management Act's delegation of authority to the Secretary of the Interior to issue regulations under 43 U.S.C. 1733(a) violates the nondelegation doctrine.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 129 F.4th 576. The order of the district court (Pet. App. 15a-38a) is available at 2023 WL 3095959.

JURISDICTION

The judgment of the court of appeals was entered on February 19, 2025. A petition for rehearing was denied on October 31, 2025 (Pet. App. 39a-89a). On December 19, 2025, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including February 28, 2026. The petition for a writ of

certiorari was filed on February 20, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

A federal grand jury in the District of Nevada charged petitioner with assaulting a federal officer, in violation of 18 U.S.C. 111(a)(1) and (b); resisting arrest or issuance of a citation on public lands, in violation of 43 C.F.R. 8365.1-4(a)(4); and operating an off-road vehicle on public lands during night hours without lighted taillights, in violation of 43 C.F.R. 8341.1(f)(5) and (h). See Pet. App. 5a-6a. The district court dismissed all three counts of the indictment. Id. at 15a-38a. The court of appeals reversed the dismissal of the taillight count. Id. at 1a-14a.

1. In May 2021, Bureau of Land Management (BLM) rangers were patrolling Moon Rocks, an area of BLM-administered land north of Reno, Nevada, when they observed petitioner driving a motorcycle in the evening without the taillights illuminated. See Pet. App. 5a, 16a. The rangers turned on their vehicles' lights and sirens and directed petitioner multiple times to stop. See id. at 5a, 17a. Petitioner, however, repeatedly refused and sped away. See id. at 17a.

As the rangers pursued petitioner, he quickly braked and spun his motorcycle's rear wheel, spraying rocks and dirt at the rangers, before speeding away again, repeatedly making obscene gestures and abusive comments. See Pet. App. 5a, 17a-18a.

Petitioner was eventually apprehended after one of the rangers stuck a baton through his motorcycle's tire spokes, preventing him from fleeing further. See id. at 18a.

2. A federal grand jury charged petitioner with assaulting a federal officer, in violation of 18 U.S.C. 111(a)(1) and (b); resisting arrest or issuance of a citation on public lands, in violation of 43 C.F.R. 8365.1-4(a)(4); and operating an off-road vehicle on public lands during night hours without lighted taillights, in violation of 43 C.F.R. 8341.1(f)(5) and (h). See Pet. App. 5a-6a.

The taillight requirement, 43 C.F.R. 8341.1(f)(5), was promulgated by the Secretary of the Interior pursuant to section 303(a) of the Federal Land Policy and Management Act of 1976 (Act), 43 U.S.C. 1733(a), which directs the Secretary to "issue regulations necessary to implement the provisions of th[e] Act with respect to the management, use, and protection of the public lands, including the property located thereon." Section 1733(a) additionally specifies that "[a]ny person who knowingly and willfully violates any such regulation which is lawfully issued pursuant to this Act shall be fined no more than \$1,000 or imprisoned no more than twelve months, or both," ibid., which are penalties appropriate for a Class A misdemeanor, see 18 U.S.C. 3559(a)(6), 3571(b)(5) and (e).

The district court dismissed all three counts of the indictment. Pet. App. 15a-38a. The court concluded that the

indictment did not allege either the assault or resisting-arrest count with sufficient specificity. Id. at 21a-23a. And as to the resisting-arrest and taillight counts, the court took the view that 43 U.S.C. 1733(a) effects an unconstitutional delegation of legislative authority to the Secretary of the Interior to define crimes. Pet. App. 23a-33a. In the court's view, the statutory language limiting the Secretary to regulations "necessary to implement the provisions of th[e] Act with respect to the management, use, and protection of the public lands," 43 U.S.C. 1733(a), provided insufficient "guidance or restraint" on his authority. Pet. App. 26a.

3. The government appealed only the dismissal of the taillight count, see Pet. App. 6a, and the court of appeals reversed, id. at 1a-14a.

The court of appeals observed that under the longstanding "intelligible principle" test, "a statutory delegation is constitutional as long as Congress lays down by legislative act an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform." Pet. App. 7a (brackets, citation, and internal quotation marks omitted). And the court found that Section 1733(a) "easily satisfies" that test. Id. at 8a.

The court of appeals observed that the statute directs the Secretary of the Interior to "issue regulations necessary to implement the provisions of [the Act]," which in turn instructs

the Secretary to “manage the public lands under principles of multiple use and sustained yield,” 43 U.S.C. 1732(a), terms with specific statutory definitions. Pet. App. 8a-9a. And the court found that “[t]aken together, those provisions set out a clear principle: The Secretary must develop a long-term management strategy to realize the land’s value in a sustainable way.” Id. at 9a.

In finding that principle “sufficiently intelligible,” the court of appeals recognized that this Court’s decision in United States v. Grimaud, 220 U.S. 506 (1911), had upheld the Secretary of Agriculture’s issuance of a regulation backed by criminal penalties under a statute that “provide[d] similar guidance.” Pet. App. 9a. The court also rejected petitioner’s contention that Section 1733(a) “permit[s] the Secretary to issue any regulation he wishes with a colorable connection to the use of public lands,” explaining that “the remainder of the statute specifies the policy goals that the Secretary must advance.” Pet. App. 10a.

The court of appeals observed that the “BLM does not have plenary regulatory authority,” but instead only “defined responsibilities related to the ‘management of lands and resources.’” Pet. App. 11a-12a (quoting 43 U.S.C. 1731(a)). The court also explained that, “[i]f anything, [Section 1733(a)’s] relationship to public lands counsels in favor of more, rather than less, deference to Congress’s choice about the degree of responsibility to assign to the Executive Branch” because Congress

has plenary authority to manage governmental property. Id. at 11a-12a (citation omitted); see U.S. Const. Art. IV, § 3, Cl. 2. And the court rejected petitioner's argument that congressional authorization of misdemeanor penalties required heightened scrutiny, emphasizing that "[i]t is Congress, not BLM, that created a criminal offense" in Section 1733(a). Id. at 13a.

4. The court of appeals denied a petition for rehearing en banc. Pet. App. 41a-69a. Judge Bumatay authored a solo dissent from the denial of rehearing, setting forth the view that the Constitution requires Congress to define "both the actus reus and the penalty for any criminal offense," and that Section 1733(a) does not do so. Id. at 42a; see id. at 41a-69a. Judge VanDyke, joined in substantial part by Judge Bumatay, also dissented from the denial of rehearing, suggesting the adoption of "a three-pronged 'meaningful constraint' test" rather than the intelligible-principle test to assess delegations that implicate criminal penalties. Id. at 84a; see id. at 69a-89a.

ARGUMENT

Petitioner renews his contention (Pet. 7-19) that 43 U.S.C. 1733(a), which authorizes the Secretary of the Interior to "issue regulations necessary to implement the provisions of th[e] Act with respect to the management, use, and protection of the public lands," effects an unconstitutional delegation of legislative authority because Congress has authorized misdemeanor penalties for knowing and willful violations. Petitioner identifies neither

any error under this Court's precedents nor any conflict in the courts of appeals. And the decision below is interlocutory, rendering any review premature. Further review is unwarranted.

1. This Court has explained that while the Constitution "permits no delegation of [legislative] powers" to the executive branch, Whitman v. American Trucking Associations, 531 U.S. 457, 472 (2001), Congress does not run afoul of the nondelegation doctrine so long as Congress sets forth "an intelligible principle to which the person or body authorized to [act] is directed to conform." J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928).

Under that intelligible-principle test, Congress must delineate "both 'the general policy' that the agency must pursue and 'the boundaries of its delegated authority.'" FCC v. Consumers' Research, 606 U.S. 656, 673 (2025) (brackets and citations omitted). The assessment is contextual; "the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred." Ibid. (quoting American Trucking, 531 U.S. at 475); cf., e.g., United States v. Miller, 604 U.S. 518, 533 (2025) ("T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme.") (citation omitted). Read in context, the statute must provide "sufficient standards to enable both 'the courts and the public to ascertain whether the agency' has followed

the law." Consumers' Research, 606 U.S. at 673 (brackets and citation omitted).

The court of appeals correctly determined that 43 U.S.C. 1733(a) satisfies that intelligible-principle test. Congress set forth the "general policy," Consumers' Research, 606 U.S. at 673 (citation omitted), that the Secretary of the Interior must pursue in exercising his authority -- namely, to "manage the public lands under principles of multiple use and sustained yield," 43 U.S.C. 1732(a), and "to prevent unnecessary or undue degradation of the lands," 43 U.S.C. 1732(b). And in doing so, Congress explicitly defined the terms "multiple use" and "sustained yield" to provide significant detail as to how that authority should be carried out. See 43 U.S.C. 1702(c) and (h). For example, "sustained yield" means "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use." 43 U.S.C. 1702(h). And "multiple use" requires balancing a number of considerations, including "present and future needs" with respect to "renewable and nonrenewable resources" like "recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values," among other things. 43 U.S.C. 1702(c). As the court of appeals recognized, all of those detailed provisions "expressly define the terms that limit the scope of the Secretary's authority" -- and are "even more directly

relevant than the 'general policy declarations' that th[is] Court" has previously approved." Pet. App. 10a.

Congress then further delineated "the boundaries of [the] delegated authority," Consumers' Research, 606 U.S. at 673 (citation omitted), by authorizing only those regulations that are "necessary to implement the provisions of th[e] Act with respect to the management, use, and protection of the public lands." 43 U.S.C. 1733(a). As the court of appeals recognized, while that delineation can encompass "a wide range of conduct," by necessity "all of [the] regulations cover conduct with a strong connection to the management, use, and protection of public lands" -- such as conduct related to "noise disturbances," "camping," and "grazing." Pet. App. 12a (citing 43 C.F.R. 8365.1-4(a)(1), 8365.1-2(a), 4140.1).

2. Petitioner does not contend that Section 1733(a)'s delegation to the BLM to promulgate regulations, standing alone, fails to satisfy the intelligible-principle test. Instead, he contends (Pet. 12) that Section 1733(a) violates the nondelegation doctrine on the theory that it empowers the BLM to "create a federal crime." But as the court of appeals recognized (Pet. App. 13), it was Congress -- not the BLM -- that created a federal crime for "knowingly and willfully" violating BLM regulations. 43 U.S.C. 1733(a).

As the court of appeals observed (Pet. App. 13a), under this Court's precedents, regulatory authority "does not become more

legislative simply because its exerciser can issue rules backed by criminal penalties.” Pet. App. 13a. Instead, this Court has made clear that “[t]here is no absolute rule * * * against Congress’ delegation of authority to define criminal punishments.” Loving v. United States, 517 U.S. 748, 768 (1996). Such delegations are appropriate as long as the “agency defines by regulation what conduct will be criminal, Congress makes the violation of regulations a criminal offense and fixes the punishment, and the regulations ‘confine themselves within the field covered by the statute.’” Ibid. (brackets and citation omitted).

Accordingly, the Department of Homeland Security does not “create a federal crime” when it designates ports of entry at which aliens may lawfully enter the United States -- even though its designation affects the scope of criminal liability. See 8 U.S.C. 1325(a)(1) (prescribing criminal punishment for any alien who “enters or attempts to enter the United States at any time or place other than as designated by immigration officers”); see also United States v. Melgar-Diaz, 2 F.4th 1263, 1266-1269 (9th Cir. 2021), cert. denied, 142 S. Ct. 813 (2022). Nor does the Drug Enforcement Agency create a crime when it schedules a new controlled substance, see 21 U.S.C. 811(a)(1) and (2) (authorizing the agency to “add” or “remove” drugs from the schedules), which likewise has such an effect, see 21 U.S.C. 841(a) (criminalizing acts with respect to scheduled drugs). Indeed, in Touby v. United States, 500 U.S. 160 (1991), this Court rejected a nondelegation challenge to a drug-

scheduling provision that implicated criminal penalties. Id. at 164-169.

The same principle applies to the statutory scheme at issue here. More than a century ago, in United States v. Grimaud, 220 U.S. 506 (1911), this Court unanimously rejected a nondelegation challenge to a criminal conviction for violating Department of Agriculture regulations prohibiting the grazing of sheep without a license in a public forest preserve. See id. at 514-523. The Court acknowledged the “universally recognized” principle that “Congress cannot delegate legislative power,” id. at 521 (citation omitted), but explained that each parcel of public land has “its peculiar and special features; and in authorizing the Secretary of Agriculture to meet these local conditions Congress was merely conferring administrative functions upon an agent, and not delegating to him legislative power,” id. at 516.

The Court observed in Grimaud that the “Secretary of Agriculture could not make rules and regulations for any and every purpose,” but instead was authorized only “to regulate the occupancy and use and to preserve the forests from destruction.” 220 U.S. at 522. And the Court rejected the argument that the agency had itself defined a federal crime, noting that the “Secretary did not exercise the legislative power of declaring the penalty or fixing the punishment for grazing sheep without a permit, but the punishment is imposed by the act itself.” Ibid.

Likewise in this case, the BLM cannot make rules and regulations for any and every purpose, but instead only "to prevent unnecessary or undue degradation of the lands," 43 U.S.C. 1732(b), by issuing "necessary" regulations "with respect to the management, use, and protection of the public lands," 43 U.S.C. 1733(a). And just as in Grimaud, it is Congress, not the agency, that has "declar[ed] the penalty" and "fix[ed] the punishment" for violating BLM regulations promulgated under Section 1733(a). 220 U.S. at 523.

3. Petitioner suggests (Pet. 12-15) that courts should apply some standard stricter than the intelligible-principle test when addressing congressional delegations to issue regulations the violation of which might trigger criminal penalties. But as illustrated by Grimaud and Loving v. United States (among other examples), this Court has, in substance, "routinely applied the 'intelligible principle' test even when the challenged statute authorized regulations backed by criminal penalties." Pet. App. 13a-14a; see, e.g., Grimaud, 220 U.S. at 521; Loving, 517 U.S. at 771-772.

Petitioner also observes (Pet. 18) that BLM regulations apply to "vast swaths" of land. But the mere fact that the regulations might "affect a large area of land does not compel heightened constitutional scrutiny." Pet. App. 11a. Congress has plenary authority "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United

States," U.S. Const. Art. IV, § 3, Cl. 2 -- an authority that this Court has described as being "'without limitations'" and "analogous 'to the police power of the several states,'" Pet. App. 12a (first quoting United States v. City & County of San Francisco, 310 U.S. 16, 29 (1940), then quoting Camfield v. United States, 167 U.S. 518, 525 (1897)). If anything, that sweeping grant of authority over public lands "counsels in favor of more, rather than less, deference to Congress's choice about the degree of responsibility to assign to the Executive Branch." Ibid.

4. Petitioner does not contend that the decision below conflicts with any decision of this Court or another court of appeals. And although this Court stated in Touby that it is "not entirely clear as to whether more specific guidance is in fact required" when Congress delegates authority "to promulgate regulations that contemplate criminal sanctions," Touby, 500 U.S. at 165-166, the Court has never adopted any such higher standard. Instead, even after Touby, the Court has continued to apply the intelligible-principle test to statutes backed by criminal penalties. See, e.g., Loving, 517 U.S. at 753-754, 771-772 (upholding the executive's authority to determine the aggravating factors for imposing the death penalty in courts martial); Gundy v. United States, 588 U.S. 128, 144-148 (2019) (plurality opinion) (upholding the executive's authority to specify how the sex-offender registration statute applies to individuals who committed sex offenses prior to the statute's enactment).

5. At all events, the decision below does not warrant further review because it is interlocutory. The court of appeals reversed the district court's judgment and remanded the case for further proceedings. See Pet. App. 14a. The interlocutory posture of the case "alone furnishe[s] sufficient ground for the denial" of the petition for a writ of certiorari. Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916); see, e.g., National Football League v. Ninth Inning, Inc., 141 S. Ct. 56, 57 (2020) (statement of Kavanaugh, J., respecting the denial of certiorari). The Court routinely denies interlocutory petitions in criminal cases. See Stephen M. Shapiro et al., Supreme Court Practice § 4-18 & n.72, at 4-55 (11th ed. 2019).

That practice promotes judicial economy. If petitioner is acquitted on remand, his current claims will become moot. If he is convicted, he may raise his current claims, together with any other claims that may arise on remand, in a single petition for a writ of certiorari. See Major League Baseball Players Association v. Garvey, 532 U.S. 504, 508 n.1 (2001) (per curiam) ("[W]e have authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals."). Petitioner does not provide any sound basis for this Court to depart from its usual practice.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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