

No. 25-7371

IN THE SUPREME COURT OF THE UNITED STATES

TRAVIS McMICHAEL, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether application of the kidnapping statute, 18 U.S.C. 1201(a)(1), to petitioner's conduct violates the Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3.

2. Whether sufficient evidence supported the jury's finding that the streets of Satilla Shores were "provided or administered by" Glynn County, Georgia, 18 U.S.C. 245(b)(2)(B), for purposes of a prosecution for interfering with someone's ability to enjoy them.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A56)¹ is reported at 159 F.4th 1274.

JURISDICTION

The judgment of the court of appeals was entered on November 14, 2025. A petition for rehearing was denied on February 5, 2026 (Pet. App. C2-C3). The petition for a writ of certiorari was filed on May 5, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

¹ The appendix to the petition for a writ of certiorari is not consecutively paginated. This brief refers to the pages in each lettered appendix as if they were consecutively paginated.

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Georgia, petitioner was convicted on one count of attempted kidnapping, in violation of 18 U.S.C. 1201(a)(1) and (d); one count of interfering with rights, in violation of 18 U.S.C. 245(b)(2)(B); and one count of using, carrying, brandishing, and discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c). Pet. App. B1. The district court sentenced petitioner to life plus ten years of imprisonment, to be followed by five years of supervised release. Id. at B2-B3. The court of appeals affirmed. Id. at A1-A56.

1. On February 23, 2020, Ahmaud Arbery, a black male, "went for a run through Satilla Shores, a non-gated neighborhood" in Glynn County, Georgia. Pet. App. A3; see id. at A2. After "stopp[ing] at a construction site in the neighborhood," Arbery ran past the house where petitioner and his father, "both white males, lived together." Id. at A3-A4. "[S]uspecting Arbery of some recent burglaries in the neighborhood," petitioner and his father "grabbed their guns" and "got in [petitioner's] white F-150 pickup truck" to pursue Arbery on the streets of Satilla Shores. Id. at A4-A5.

Another resident of the neighborhood, also a white male, witnessed the pursuit and "got in his own pickup truck" to join the chase. Pet. App. A5. Eventually, petitioner blocked Arbery's path

with his truck and exited his vehicle with his shotgun. Id. at A6. "Arbery ran at [petitioner] to grab the shotgun." Ibid. "A struggle ensued and [petitioner] fired at Arbery," killing him. Ibid.

2. A federal grand jury in the Southern District of Georgia charged petitioner with one count of attempted kidnapping, in violation of 18 U.S.C. 1201(a)(1) and (d); one count of interfering with rights, in violation of 18 U.S.C. 245(b)(2)(B); and one count of using, carrying, brandishing, and discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c). Indictment 1-2, 4-5.

Section 1201(a)(1) provides:

Whoever unlawfully * * * kidnaps * * * any person,
 * * * when * * * the offender * * * uses the mail
 or any means, facility, or instrumentality of interstate
 or foreign commerce in committing or in furtherance of
 the commission of the offense * * *, shall be punished
 by imprisonment for any term of years or for life and,
 if the death of any person results, shall be punished by
 death or life imprisonment.

18 U.S.C. 1201(a)(1). Section 1201(d), in turn, provides that attempting to commit that offense is punishable "by imprisonment for not more than twenty years." 18 U.S.C. 1201(d). The indictment alleged that petitioner had "used an instrumentality of interstate commerce (a truck driven by [petitioner])" in committing and in furtherance of "an attempt to restrain Arbery, restrict his free movement, corral and detain him against his will, and prevent his escape." Indictment 4.

Separately, Section 245(b)(2)(B) makes it unlawful for anyone, "by force or threat of force," to "willfully injure[], intimidate[] or interfere[] with * * * any person because of his race, color, religion or national origin and because he is or has been * * * enjoying any * * * facility * * * provided or administered by any State or subdivision thereof." 18 U.S.C. 245(b)(2)(B). The indictment alleged that the relevant "facility" in this case was "the public streets" of "the Satilla Shores neighborhood" on which "Arbery was running" when petitioner and his father "armed themselves with firearms, got into a truck, and chased Arbery." Indictment 1.

3. The jury found petitioner guilty on all counts. D. Ct. Doc. 218, at 2, 5-6 (Feb. 22, 2022). Petitioner moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29. D. Ct. Doc. 228 (Mar. 8, 2022). The district court denied the motion. D. Ct. Doc. 257 (Aug. 4, 2022).

The district court rejected petitioner's contention that his attempted kidnapping conviction was invalid due to insufficient evidence that he had used an "instrumentality of interstate * * * commerce" under Section 1201(a)(1). D. Ct. Doc. 257, at 20 (citation omitted). The court observed that "automobiles are instrumentalities of interstate commerce within the meaning of the statute." Id. at 26. And the court found that "[t]he evidence plainly showed that [petitioner and his father] used their * * *

truck to chase Arbery through the Satilla Shores neighborhood, block his path, and trap him." Ibid.

The district court also rejected petitioner's contention that, "if the kidnapping statute covers the facts here, then the statute is unconstitutional as applied." D. Ct. Doc. 257, at 26 n.5. The court explained, as a threshold matter, that "a motion for judgment of acquittal under Rule 29 is not the proper way to raise an 'as applied' challenge, since that 'does not challenge the sufficiency of the evidence, which is the sole ground set out in Fed. R. Crim. P. 29.'" Ibid. (brackets and citation omitted). And the court found that, in any event, petitioner's as-applied challenge lacked merit. Ibid.

Finally, the district court rejected petitioner's contention that, with respect to his interference-with-rights conviction, the evidence was insufficient to show that "the [s]treets of Satilla Shores were 'provided or administered' by Glynn County" under Section 245(b)(2)(B). D. Ct. Doc. 257, at 6. The court explained that a "facility" is "'provided or administered by'" a local government as long as that government "supplies the resources or oversees the tasks necessary for the public to use it," "regardless of whether the local government owns the particular facility." Id. at 11. And the court found the evidence "more than sufficient" to show that "Glynn County treats the streets of Satilla Shores as public -- and, in fact, undertakes to keep them in working order." Id. at 11-12.

The district court subsequently sentenced petitioner to 240 months of imprisonment on the Section 1201(a)(1) count and life imprisonment on the Section 245(b)(2)(B) count, to be served concurrently. Pet. App. B2. The court also sentenced petitioner to ten years of imprisonment on the Section 924(c) count, to be served consecutively to his sentences on the other counts. Ibid. The court specified that petitioner's federal term of imprisonment "shall be served concurrently" with his sentence in state court, ibid., where he was convicted of murder and other state offenses and sentenced to life imprisonment without the possibility of parole, see id. at A2; Presentence Investigation Report ¶ 88.

4. The court of appeals affirmed. Pet. App. A1-A56. The court observed at the outset that petitioner "d[id] not raise any constitutional challenges on appeal"; "instead," petitioner challenged only the sufficiency of the evidence supporting his convictions. Id. at A2. The court then rejected petitioner's renewed challenge to the sufficiency of the evidence supporting his Section 1201(a)(1) conviction. Id. at A31-A43. The court explained that the indictment alleged, and the evidence showed, that petitioner used his "'truck'" "to chase Arbery and prevent his escape." Id. at A34. And the court reasoned that "automobiles" like his truck are "'instrumentalities of interstate commerce' under § 1201(a)(1) regardless of whether their use during a kidnapping is interstate or 'purely local.'" Id. at A38 (citation omitted).

The court of appeals also rejected petitioner's renewed challenge to the sufficiency of the evidence supporting his Section 245(b)(2)(B) conviction. Pet. App. A18-A30. The court observed that the phrase "'provide[] or administer[]'" in Section 245(b)(2)(B) "does not require the county to own or have title to the facility (express or implied) -- rather, it is sufficient that a county maintain the particular facility in a condition suitable for use." Id. at A28. And the court found the evidence sufficient to show that "the streets of Satilla Shores were maintained by Glynn County in a condition suitable for use." Ibid.

Judge Calvert dissented from the court of appeals' decision to uphold petitioner's Section 1201(a)(1) conviction. Pet. App. A44-A56. In her view, petitioner's "use of a truck to drive and park on streets in a residential neighborhood was insufficient to confer jurisdiction under § 1201(a)." Id. at A55.

ARGUMENT

Petitioner contends (Pet. 8-16) that the application of the kidnapping statute, 18 U.S.C. 1201(a)(1), to his conduct in this case violates the Commerce Clause.² Petitioner forfeited that contention by failing to challenge the constitutionality of Section 1201(a)(1) in the court of appeals. In any event, his contention that the statute is unconstitutional as applied lacks merit, and the court of appeals' decision to uphold his Section

² Another pending petition for a writ of certiorari involves a similar contention. See Brown v. United States, No. 25-1342 (filed May 21, 2026).

1201(a)(1) conviction does not conflict with any decision of this Court or another court of appeals. Moreover, this case would be a poor vehicle for this Court's review, not only because petitioner forfeited any as-applied Commerce Clause challenge, but also because further review would not affect how long petitioner must serve in prison.

Petitioner also contends (Pet. 16-20) that the evidence was insufficient to support the jury's finding that the streets of Satilla Shores were "provided or administered by" Glynn County within the meaning of 18 U.S.C. 245(b)(2)(B). The court of appeals correctly rejected that contention, and that decision likewise does not warrant this Court's review. The petition for a writ of certiorari should be denied.

1. Petitioner first contends (Pet. 7) that application of Section 1201(a)(1) to his conduct in this case "exceeds the outer limits of Commerce Clause power." That contention, which he did not raise in the court of appeals, does not warrant this Court's review.

a. Petitioner "d[id] not raise any constitutional challenges on appeal." Pet. App. A2. Instead, with respect to his Section 1201(a)(1) conviction, petitioner challenged only the sufficiency of the evidence that he violated the statute. Ibid.; see id. at A46 (Calvert, J., concurring in part and dissenting in part) (observing that petitioner "only raised a statutory challenge"); Pet. C.A. Br. 60 (arguing that "[t]he government did not prove beyond a reasonable doubt that [petitioner] used an instrumentality

of interstate commerce in committing the attempted kidnaping charge"); Pet. C.A. Reply Br. 23 (arguing that "[t]he government did not prove that [petitioner] used an instrumentality of interstate commerce as required by the attempted kidnaping statute"). Accordingly, petitioner has forfeited any separate argument that Section 1201(a)(1) is unconstitutional as applied to the facts of his case. See United States v. Jones, 565 U.S. 400, 413 (2012) (deeming forfeited an argument not raised below). For that reason alone, no further review is warranted.

In any event, petitioner's constitutional challenge to the application of Section 1201(a)(1) to his case lacks merit. The Commerce Clause grants Congress the power to "regulate Commerce * * * among the several States." U.S. Const. Art. I, § 8, Cl. 3. In United States v. Lopez, 514 U.S. 549 (1995), and United States v. Morrison, 529 U.S. 598 (2000), this Court "identified three broad categories of activity that Congress may regulate under its commerce power." Lopez, 514 U.S. at 558; Morrison, 529 U.S. at 608 (same). One of those categories (the second) allows Congress "to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." Lopez, 514 U.S. at 558; see Morrison, 529 U.S. at 609 (same). The automobile that petitioner used in this case was such an instrumentality.

Instrumentalities of interstate commerce include the means of using the channels of interstate commerce. See Japan Line, Ltd.

v. County of Los Angeles, 441 U.S. 434, 444, 446 (1979). Railroads and airspace, for example, are channels of interstate commerce. See Omaha & Council Bluffs St. Ry. Co. v. ICC, 230 U.S. 324, 336 (1913); Fejes v. FAA, 98 F.4th 1156, 1160 (9th Cir. 2024). And railcars and airplanes are means of using railroads and airspace, respectively. Accordingly, this Court has recognized that railcars and airplanes are instrumentalities of interstate commerce, which Congress may regulate even in cases involving only “intrastate activities.” Lopez, 514 U.S. at 558; see Perez v. United States, 402 U.S. 146, 150 (1971); Southern Ry. Co. v. United States, 222 U.S. 20, 26-27 (1911).

The same reasoning applies to the automobile here. Highways are channels of interstate commerce. See Pierce County v. Guillen, 537 U.S. 129, 146-147 (2003); Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 243, 256-258 (1964). And there is no dispute that automobiles like the one here are a means of using highways. Such an automobile is thus an instrumentality of interstate commerce, which Congress may regulate even in cases involving only “intrastate activities.” Lopez, 514 U.S. at 558; see Pet. App. A34-A38.

b. Contrary to petitioner’s contention (Pet. 12-13), the decision below does not conflict with the decision of any other court of appeals.

Every court of appeals to address the issue has recognized automobiles as instrumentalities of interstate commerce, which

Congress may regulate even in cases involving only intrastate activities. See United States v. Bishop, 66 F.3d 569, 588-590 (3d Cir.), cert. denied, 516 U.S. 1032 (1995), and 516 U.S. 1066 (1996); United States v. Cobb, 144 F.3d 319, 322 (4th Cir. 1998); United States v. Windham, 53 F.4th 1006, 1011-1013 (6th Cir. 2022); United States v. Protho, 41 F.4th 812, 827-829 (7th Cir.), cert. denied, 143 S. Ct. 465 (2022); United States v. Oliver, 60 F.3d 547, 550 (9th Cir. 1995); Pet. App. A38-A40. Multiple courts have done so in cases involving Section 1201(a)(1). See Windham, 53 F.4th at 1011-1013; Protho, 41 F.4th at 827-829; Pet. App. A38-A40.

The Tenth Circuit in United States v. Chavarria, 140 F.4th 1257 (2025), did not address whether automobiles are instrumentalities of interstate commerce under either Section 1201(a)(1) or the Commerce Clause. Although the indictment in that case charged the defendant with using a "motor vehicle" in committing a kidnapping, it did not specify whether the motor vehicle was an automobile. Id. at 1260 (emphasis omitted). As the Tenth Circuit emphasized, the two terms -- "[a]utomobile" and "motor vehicle" -- "are not coextensive." Id. at 1264 n.14 (citations omitted). The court explained that "[a]utomobile" is considerably narrower than "motor vehicle," ibid., which the court viewed as encompassing not just cars, but also "e-bikes," "[l]awnmowers," "[e]lectric scooters," "[e]levators," and "[m]otorized [w]heelchairs," id. at 1266. The court thus reasoned that even if "all cars are instrumentalities of interstate commerce, it does not follow that

all motor vehicles are,” id. at 1267, and it held “only that ‘motor vehicles’ -- an undefined, generic term -- are not per se instrumentalities of interstate commerce for purposes of the federal kidnapping statute,” id. at 1268.

Here, unlike in Chavarria, the indictment did not “simply say ‘motor vehicle.’” Pet. App. A39 n.17. Rather, it specified that petitioner committed the charged offense by using “a truck,” Indictment 4 -- i.e., a vehicle that is clearly an automobile, rather than a “[l]awnmower[],” “[e]levator[],” or the like, Chavarria, 140 F.4th at 1266. Given that the Tenth Circuit in Chavarria reserved judgment on whether “all cars are instrumentalities of interstate commerce,” id. at 1267, its decision does not conflict with the court of appeals’ decision in this case, see Pet. App. A38 n.17 (distinguishing Chavarria).

The remaining citations on which petitioner relies (Pet. 10-12, 15-16) are dissenting opinions and a decision from the same circuit from which this case arises. But neither dissenting opinions nor any purported intracircuit conflict would warrant this Court’s review. See Sup. Ct. R. 10; Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam) (“It is primarily the task of a Court of Appeals to reconcile its internal difficulties.”). In any event, no intracircuit conflict exists, because Garcia v. Vanguard Car Rental USA, Inc., 540 F.3d 1242 (11th Cir. 2008), cert. denied, 555 U.S. 1174 (2009), “pass[ed]

over th[e] question" whether automobiles are "instrumentalities of commerce." Id. at 1250.

c. At all events, this case would be a poor vehicle for this Court's review. Not only did petitioner forfeit his as-applied challenge to Section 1201(a)(1), see pp. 8-9, supra, but any potential resolution of the first question presented in his favor would not affect how long petitioner must serve in prison. Even if petitioner were successful in challenging his 240-month sentence on the Section 1201(a)(1) count, he would still face a life sentence on his Section 245(b)(2)(B) count and a life sentence on his state offenses. See p. 6, supra.

2. Petitioner separately challenges (Pet. 16-20) his Section 245(b)(2)(B) conviction, contending that the evidence was insufficient to show that the streets of Satilla Shores were "provided or administered by" Glynn County. That contention also does not warrant this Court's review.

Section 245(b)(2)(B) prohibits willfully "interfer[ing] with * * * any person because of his race, color, religion or national origin and because he is or has been * * * enjoying any * * * facility * * * provided or administered by any State or subdivision thereof." 18 U.S.C. 245(b)(2)(B). As the court of appeals correctly recognized, the ordinary meaning of the phrase "provided or administered by," ibid., "does not include any requirement of formal title or ownership," Pet. App. A26. Instead, a facility is "provided or administered by" a local government, 18 U.S.C.

245(b) (2) (B), as long as that government "maintains the particular facility in a condition suitable for use," Pet. App. A26.

Here, the courts below both correctly found sufficient evidence for a reasonable jury to find that the streets of Satilla Shores were "provided or administered by" Glynn County, a subdivision of the State of Georgia. See Pet. App. A24-A30; D. Ct. Doc. 257, at 11-12. At trial, "[t]he government called Anthony Vicent, the roads and drainage division manager at the Glynn County Department of Public Works." Pet. App. A13. Vicent testified that "the streets in Satilla Shores were included in the department's list of public roads." Id. at A28. "Vicent also discussed public records showing that the county had responded to citizen service requests for streets in Satilla Shores -- which it does not do for private roads -- including filling a gap in a curb with asphalt, cleaning a spill from a trash truck, and remediating flooded roads." Id. at A28-A29. "Further, Vicent discussed county records showing that the county budgeted public funds to pave the streets in Satilla Shores." Id. at A13. And "[a]llthough records do not show that the county ever took formal title to these roads -- in fact, the county explicitly denied formal title in 1958 -- Vicent testified that he has 'no doubt' that the county maintained the streets where Arbery was pursued and killed." Ibid.

"Copious evidence" thus supported the jury's finding that "Glynn County 'provided or administered' the streets of Satilla Shores," Pet. App. A28, and petitioner errs in contending otherwise.

Petitioner emphasizes (Pet. 6, 16-19) Glynn County's rejection of the dedication of the streets of Satilla Shores from a private developer in 1958. But while the County's rejection of the dedication was evidence that the jury was allowed to consider, nothing required the jury to give it "dispositive weight." Pet. App. A28. As the court of appeals explained, the relevant question under Section 245(b)(2)(B) is not whether Glynn County "own[ed]" or "ha[d] title to" the streets. Ibid. Rather, the relevant question is whether the County "maintained" the streets "in a condition suitable for use." Ibid. When Congress enacted the statute, "'provide' was defined in relevant part as 'to supply what is needed for sustenance or support,'" and "'administer' was defined as 'to manage the affairs of' or 'to direct or superintend the execution, use, or conduct of.'" Id. at A26 (quoting Webster's Third New International Dictionary 27, 1827 (1966)). Had Congress meant to require ownership or formal title, it would have used different words.

Petitioner asserts (Pet. 19) that the citizen-service requests on which the government relied related mostly to "right-of-way and drainage issues," not "the streets themselves." "But even assuming this distinction matters, [petitioner] concedes that some work was done on the streets themselves -- [he] just argue[s] it was not significant work." Pet. App. A30. Petitioner also challenges (Pet. 20) the government's reliance on "County Commission minutes" showing that the streets at issue "had been identified during

discussions of funding for paving.” But as the court of appeals explained, “judging the reliability and probative value of the commission minutes is a task firmly within the province of the jury.” Pet. App. A30.

At all events, petitioner does not contend that the lower courts’ sufficiency findings conflict with the decision of another court of appeals. His factbound disputes concerning the particular evidence in this case do not warrant this Court’s review. See Sup. Ct. R. 10; United States v. Johnston, 268 U.S. 220, 227 (1925) (explaining that the Court “do[es] not grant a certiorari to review evidence and discuss specific facts”); Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) (observing that under “the ‘two-court rule,’ the policy [in Johnston] has been applied with particular rigor when [the] district court and court of appeals are in agreement as to what conclusion the record requires”) (citing Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 336 U.S. 271, 275 (1949)).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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