

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KAULANA ALO-KAONOHU,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

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Appointed Under the Criminal Justice Act of 1964

QUESTIONS PRESENTED

The questions presented are:

1. Did Congress exceed its authority under Section 2 of the Thirteenth Amendment when it enacted 18 U.S.C. § 249(a)(1), the federal hate crimes statute, which criminalizes all acts of racially motivated violence—even those that have nothing to do with slavery or involuntary servitude?
2. Should the Court should overrule *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968) and apply the congruent-and-proportional and current-needs tests that govern the enforcement clauses of the Fourteenth and Fifteenth Amendments to the Thirteenth Amendment’s substantively identical enforcement clause?

PARTIES TO THE PROCEEDING

Petitioner is Kaulana Alo-Kaonohi, the defendant-appellant in the proceedings below. Respondent is the United States of America.

RELATED PROCEEDINGS

The proceedings identified below are directly related to the above-captioned case in this Court.

- *United States v. Alo-Kaonohi*, No. 1:20-cr-136, U.S. District Court for the District of Hawaii. Judgment entered March 6, 2023.
- *United States v. Alo-Kaonohi*, No. 23-373, U.S. Court of Appeals for the Ninth Circuit. Memorandum decision entered July 10, 2025. Petition for rehearing or rehearing en banc denied on March 6, 2026.

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The court of appeals decision affirming Mr. Alo-Kaonohi's conviction is unpublished and available at 2025 U.S. App. LEXIS 17266. App-2.

The district court's order denying Mr. Alo-Kaonohi's motion to dismiss based on the unconstitutionality of 18 U.S.C. § 249(a)(1) is not reported. App-16-25.

JURISDICTION

The court of appeals' denial of rehearing en banc issued on March 6, 2026. App-1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment XIII:

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

18 U.S.C. section 249(a)(1):

(a) In General.—

(1) Offenses involving actual or perceived race, color, religion, or national origin.—Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

(i) death results from the offense; or

(ii) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

INTRODUCTION

On February 13, 2014, petitioner Kaolana Alo-Kaonohi, a Native Hawaiian, assaulted a white man on the island of Maui (OB 12¹). About six months later, the State of Hawaii prosecuted Mr. Alo-Kaonohi for first-degree assault (OB 12). He eventually pled guilty and was sentenced to four years of felony probation (OB 12-13).

Seemingly unsatisfied with this state-court outcome, the federal government decided to try again. It prosecuted Mr. Alo-Kaonohi for the exact same assault under 18 U.S.C. § 249(a)(1), the federal hate crimes statute, and argued to the jury that it could convict under § 249(a)(1) so long as it found that race was even just a “really tiny” reason for the assault. *United States v. Alo-Kaonohi*, 2025 U.S. App. LEXIS 17266, at *3 (9th Cir. Jul. 10, 2025). This time Mr. Alo-Kaonohi went to trial. He was convicted and the federal district court sentenced him to 78 months in prison (App-9-10).

This petition concerns the constitutionality of § 249(a)(1), the statute the government used to second-guess Hawaii’s judgment in Mr. Alo-Kaonohi’s case, and to prosecute a Native Hawaiian for a race-motivated assault on a white man.

Section 249(a)(1) was enacted in 2009, as part of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. It is a sweeping federal hate crimes statute. Section 249(a)(1) federally criminalizes any assault that is motivated by the

¹ “OB” refers to Mr. Alo-Kaonohi’s opening brief (cross appeal first brief) in the Ninth Circuit; “AB” refers to the government’s brief as appellee/cross-appellant in the Ninth Circuit; “ER” refers to the excerpts of record filed in the Ninth Circuit; and “App.” refers to the appendix to this petition.

victim’s “race, color, religion, or national origin.” Under § 249(a)(1), all private racial violence—even where it has nothing to do with the promotion of slavery or involuntary servitude—is federally criminalized.

In enacting § 249(a)(1), Congress purported to rely on its authority—under section 2 of the Thirteenth Amendment—to enforce that amendment’s abolition of slavery and involuntary servitude in the United States. *See* National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, § 470, 123 Stat. 2190, 2836 (2009). And in a series of recent cases, the circuit courts—applying, often with significant reservations, the sixty-year-old rational basis test set out in *Jones v. Alfred H. Mayer, Co.*, 392 U.S. 409 (1968)—have upheld this statute as a constitutional exercise of the Thirteenth Amendment’s enforcement clause. Jurists increasingly recognize that *Jones*’s Thirteenth-Amendment rational-basis review is out-of-step with the heightened tests this Court has announced for the Fourteenth and Fifteenth Amendments, under which Congress may only exercise its enforcement authority to enact “congruent and proportional,” *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997), legislation that is responsive to “current needs,” *Shelby County v. Holder*, 570 U.S. 529, 551-53 (2013). But, feeling bound by *Jones*, they continue to apply “discretionary” rational basis review to legislation enacted under the Thirteenth Amendment, and they have upheld § 249(a)(1) on this basis.

Mr. Alo-Kaonohi’s case vividly illustrates the wrongheadedness of the path down which the circuit courts have embarked. Section 249(a)(1) ranges far beyond the legitimate purpose of the Thirteenth Amendment—the abolition of chattel

slavery in the United States—and it ranges far beyond the outer limits of Congress’s legitimate Thirteenth Amendment enforcement authority. There can be no more powerful illustration of this point than the federal prosecution of Mr. Alo-Kaonohi himself. Deplorable as it may be, an act of native-on-white violence on the island of Maui simply has nothing to do with the Peculiar Institution that the Thirteenth Amendment abolished.

The Ninth Circuit’s contrary decision merits this Court’s review. Under any standard of review, § 249(a)(1) is unconstitutional because it applies to any act of racially motivated violence, regardless of whether it has anything to do with the promotion of slavery or involuntary servitude. As this case shows, such a broad, generalized federal hate crime statute operates as a license for the federal government to second-guess state charge and sentencing decisions, raising serious federalism concerns.

Additionally, though the Thirteenth, Fourteenth, and Fifteenth Amendments have identical enforcement clauses, the circuits feel bound by *Jones* to apply an outdated rational basis test to legislation enacted under the Thirteenth Amendment, instead of the stricter standards this Court’s recent decisions require when reviewing Fourteenth and Fifteenth Amendment-based legislation. Lower courts have recognized this dissonance—and acknowledged the serious federalism concerns created by continued application of *Jones*’s rational basis test—but say they are bound to apply the anomalous Thirteenth Amendment test absent direct guidance from this Court. The Court should provide that guidance in this case—one

that vividly illustrates the federal overreach that the *Jones* test, as applied by the lower courts, presently countenances. Review is necessary to unify the standards for evaluating Congress’s enforcement powers under the three Reconstruction Amendments.

STATEMENT OF THE CASE

On February 13, 2014, Kaolana Alo-Kaonohi assaulted Christopher Kunzelman in Kahakuloa Village on the island of Maui. Mr. Alo-Kaonohi was first prosecuted for this conduct in Hawaii state court (OB-12). He pled no-contest to state first-degree assault and was sentenced to a term of probation (OB-12-13).

Apparently unsatisfied with the outcome in state court, the federal government then elected to charge Mr. Alo-Kaonohi—a Native Hawaiian—with a federal hate crime. To that end, the government secured a single-count indictment charging him with violating 18 U.S.C. § 249(a)(1) (OB-17). It told the jury they could convict Mr. Alo-Kaonohi even if they found race was only “a really tiny” motivating factor in Mr. Alo-Kaonohi’s assault on Mr. Kunzelman. *United States v. Alo-Kaonohi*, 2025 U.S. App. LEXIS 17266, at *3 (9th Cir. Jul. 10, 2025). And it presented evidence that Mr. Alo-Kaonohi assaulted Mr. Kunzelman because of his decision, as a “haole”² outsider, to purchase a foreclosed home in Kakakuloa Village (2-ER-202).

Before trial, Mr. Alo-Kaonohi moved to dismiss the indictment, asserting

² “Haole” is “a Hawaiian term, sometimes used derogatorily, referring to persons of the Caucasian race.” *Campbell v. Hawaii Dep’t of Educ.*, 892 F.3d 1005, 1010 n.1 (9th Cir. 2018).

both facial and as-applied challenges to the constitutionality of § 249(a)(1) (OB-17-18). Mr. Alo-Kaonohi argued there—as he has consistently argued on appeal—that Congress exceeded its authority under the Thirteenth Amendment in enacting the federal hate crimes statute (*id.*) He also argued (both at trial and throughout this appeal) that—even if some applications of § 249(a)(1) are constitutional because aimed at remediating the badges and incidents of slavery—there is simply no credible argument that Mr. Alo-Kaonohi’s assault on Mr. Kunzelman poses any risk of advancing the badges and incidents of slavery, given that Mr. Alo-Kaonohi is a member of an historically oppressed, colonized minority group while Mr. Kunzelman is a member of the historically slave-owning majority. *See Alo-Kaonohi*, 2025 U.S. App. LEXIS 17266, at *3.

The district court rejected these arguments (App-16-25). Mr. Alo-Kaonohi then proceeded to a jury trial. Following nearly two days of deliberations, the jury convicted Mr. Alo-Kaonohi, and he was eventually sentenced to 78 months in federal prison (OB-30; App-9-10).

Mr. Alo-Kaonohi and the government then cross-appealed to the Ninth Circuit. In his appeal, Mr. Alo-Kaonohi acknowledged that the Ninth Circuit’s decision in *United States v. Hougen*, 76 F.4th 805 (9th Cir. 2023), foreclosed his facial constitutional challenge to § 249(a)(1), but he expressly preserved that challenge for this Court’s review. *Alo-Kaonohi*, 2025 U.S. App. LEXIS 17266, at *4. He also argued that § 249(a)(1) was unconstitutional as applied to him and his conduct. *Id.* at *3. The government, for its part, argued that the district court erred

in failing to apply USSG § 3A1.1(a)—the hate crimes enhancement—to Mr. Alo-Kaonohi. *Alo-Kaonohi*, 2025 U.S. App. LEXIS 17266, at *5-6.

On July 10, 2026, the Ninth Circuit affirmed Mr. Alo-Kaonohi’s conviction but reversed his sentence, instructing the district court to apply the hate crimes enhancement at resentencing. *Id.* at *6. Mr. Alo-Kaonohi then petitioned for rehearing en banc, which the Court denied on March 6, 2026. *See United States v. Alo-Kaonohi*, 2026 U.S. App. LEXIS 6784, *1 (9th Cir. Mar. 6, 2026). App-1.

Mr. Alo-Kaonohi now petitions for certiorari.

REASONS FOR GRANTING THE PETITION

- I. The Court should grant review because Congress exceeded its authority under the Thirteenth Amendment’s enforcement clause when it criminalized all acts of racially motivated violence, even those that have nothing to do with slavery or involuntary servitude, thus enabling federal prosecutors to second-guess state charge and sentence decisions in any case where the defendant’s conduct was at all motivated by race.**

In 2009, 18 U.S.C. § 249(a)(1) was enacted as part of the Matthew Shepard and James Byrd Hate Crimes Prevention Act. This provision makes it a federal crime to assault somebody because of their “actual or perceived race, color, religion, or national origin.” In enacting § 249(a)(1), Congress purported to rely on its authority, under section 2 of the Thirteenth Amendment, to enforce that amendment’s abolition of slavery and involuntary servitude in the United States. *See National Defense Authorization Act for Fiscal Year 2010*, Pub. L. No. 111-84 § 4702, 123 Stat. 2190, 2836 (2009). Because the Thirteenth Amendment does not give Congress the power to proscribe all acts of racially motivated violence in the

United States, § 249(a)(1) is unconstitutional and Mr. Alo-Kaonohi's conviction under it cannot stand.

A. The Thirteenth Amendment's enforcement clause authorizes Congress to enact appropriate legislation to abolish the badges and incidents of slavery and involuntary servitude.

The Thirteenth Amendment is one of three Reconstruction-era amendments ratified between 1865 and 1870 in the wake of the Civil War. It provides:

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

U.S. Const. amend. XIII.

Section 1 embodies a simple substantive guarantee: it functions to “abolish[] slavery, and establish[] universal freedom” in the United States. *Civil Rights Cases*, 109 U.S. 3, 20 (1883); *see also id.* at 24 (“The Thirteenth Amendment has respect, not to distinctions of race, or class, or color, but to slavery.”).

When the Thirteenth Amendment was ratified, the terms “slavery” and “involuntary servitude” had established meanings. “Slavery” “referred to a specific and legally codified ‘private economical relation’ between a ‘master’ and a ‘servant’ . . . ‘which had existed in certain states of the Union since the foundation of the government.” *Hougen*, 76 F.4th at 819 (Ikuta, J., dissenting) (citations omitted). “Involuntary servitude,” in turn, referred to “those forms of compulsory labor akin to African slavery which, in practical operation, would tend to produce like undesirable results.” *Butler v. Perry*, 240 U.S. 328, 332 (1916); *see also Kozminski v.*

United States, 487 U.S. 931, 952 (1988) (“[I]nvolutionary servitude’ necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.”). Section 1’s substantive guarantee abolished slavery and involuntary servitude in the United States.

Section 2 of the Thirteenth Amendment, for its part, establishes Congress’s authority to enforce Section 1’s substantive guarantee, which extends beyond abolishing slavery itself. *Hougen*, 76 F.4th at 820 (Ikuta, J., dissenting). As the Supreme Court explained in 1883, “the power vested in Congress to enforce the article by appropriate legislation, clothes Congress with power to pass all laws necessary and proper for abolishing *all badges and incidents* of slavery in the United States.” *Civil Rights Cases*, 109 U.S. at 20 (emphasis added).

It is this power—the power to abolish the “badges and incidents of slavery”—that Congress relied upon in enacting § 249(a)(1). But, as Judge Ikuta’s dissent in the Ninth Circuit’s *Hougen* explains, that phrase “has a specific meaning set by history and Supreme Court interpretation,” which does not encompass acts of private racially motivated violence. *Hougen*, 76 F.4th at 820 (Ikuta, J., dissenting). “The term ‘badge of slavery’ . . . refers to indicators, physical or otherwise, of African Americans’ slave or subordinate status.” *Id.* (quoting Jennifer Mason McAward, *Defining the Badges and Incidents of Slavery*, 14 U. Pa. J. Const. L. 561, 575 (2012)). As the Supreme Court recognized in the *Civil Rights Cases*, “[m]ere discriminations on account of race or color were not regarded as badges of slavery.”

Civil Rights Cases, 109 U.S. at 25.

“Incident,” in turn, refers to the legal aspects of slavery, i.e., “the inseparable incidents of the institution” of slavery. *Hougen*, 76 F.4th at 820 (Ikuta, J., dissenting). These inseparable incidents include “[c]ompulsory service of the slave for the benefit of the master, restraint of his movements except by the master’s will, disability to hold property, to make contracts, to have standing in court, to be a witness against a white person, and such like burdens and incapacities.” *Civil Rights Cases*, 109 U.S. at 22.

B. Not all racially motivated violence qualifies as a badge or incident of slavery.

Racially motivated violence can qualify as a badge or incident of slavery—but only when 1) it interferes with the exercise of fundamental civil rights by 2) a member of an historically enslaved or subordinated group in 3) a way “that is so widespread or influential as to pose the risk that, cumulatively, the action will result in the de facto reimposition of slavery or involuntary servitude.” McAward, *Defining the Badges and Incidents of Slavery*, 14 U. Pa. J. Const. L. at 615.

First, to qualify as a badge or incident of slavery, racially motivated violence must interfere with the victim’s exercise of fundamental civil rights. In *Griffin v. Breckenridge*, for example, this Court upheld the constitutionality of 42 U.S.C. § 1985(3) under the Thirteenth Amendment, but only after observing that the statute applies only to “racially discriminatory private conduct *aimed at* depriving [African Americans] of the basic rights that the law secures to all free men.” 403 U.S. 88, 105 (1971) (emphasis added). Similarly, in *Jones v. Alfred H. Mayer Co.*,

this Court upheld 42 U.S.C. § 1982, which guarantees all citizens the same right “to inherit, purchase, lease, sell, hold, and convey real and personal property.” 392 U.S. at 412-13. Like § 1985(3), § 1982 by its terms seeks to protect the exercise of fundamental civil rights. But the Thirteenth Amendment does not “empower Congress to address all modern forms of injustice” or “racial violence.” *Hougen*, 76 F.4th at 823 (Ikuta, J., dissenting). Instead, as §§ 1985(3) and 1982 illustrate, Congress may proscribe such violence only if it bears sufficient relationship to “the constitutional right at issue [in the Thirteenth Amendment]—the right to ‘universal civil freedom,’ via the eradication of slavery and involuntary servitude.” *Id.* at 822 (quoting *Bailey v. Alabama*, 219 U.S. 219, 241 (1911)).

Second, only racially motivated violence that interferes with the civil rights of an historically enslaved or subordinated group can qualify as a badge or incident of slavery. That’s because the Thirteenth Amendment addresses—and seeks to remediate—a specific historical problem: the institution of “slavery in the United States.” *Civil Rights Cases*, 109 U.S. at 20. That institution centrally involved the enslavement and subordination of “African Americans,” and certain other discrete minority groups, by a white slavocracy. *Hougen*, 76 F.4th at 820 (Ikuta, J., dissenting) (quoting McAward, *Defining the Badges and Incidents of Slavery*, 14 U. Pa. J. Const. L. at 575); see *United States v. Cannon*, 570 F.3d 492, 501 (5th Cir. 2014) (slavery centrally involves the infliction of “legal restrictions” or “widespread violence and discrimination” onto “African-Americans to try to enforce inferior status on them” (emphasis added)); see also *Civil Rights Cases*, 109 U.S. at 22 (to

eliminate the badges and incidents of slavery is to ensure all freedmen enjoy the same fundamental rights that are “enjoyed by *white citizens*” (emphasis added)). Violence and other private action directed at groups that have never been at risk of enslavement or subordination in the United States, by contrast, has nothing to do with the problem of slavery and involuntary servitude that the Thirteenth Amendment seeks to address.

Third, under its Thirteenth Amendment enforcement authority, Congress may only proscribe “private action that is so widespread or influential as to pose the risk that, cumulatively, that action will result in the de facto reimposition of slavery or involuntary servitude.” McAward, *Defining the Badges and Incidents of Slavery*, 14 U. Pa. J. Const. L. at 615. Put another way, the Thirteenth Amendment’s enforcement power extends only to conduct “that, left unaddressed . . . would have the cumulative effect of subordinating an entire race to the point that it would render it unable to participate in and enjoy the benefits of civil society.” *Id.* at 629.

Simply put, the Thirteenth Amendment abolished slavery and involuntary servitude—not racial animus writ large. It follows that Congress’s power to enforce the Abolition Amendment extends only to legislation that is necessary and proper to proscribing the de facto or de jure reinstitution of slavery and involuntary servitude in the United States.

C. Section 249(a)(1) exceeds Congress’s authority under the Thirteenth Amendment’s enforcement power because it federally criminalizes all acts of racial violence—even those that have nothing to do with slavery, involuntary servitude, or their badges and incidents.

Section 249(a)(1)’s sweeping federal criminalization of all racially motivated

assaults dramatically exceeds Congress’s Thirteenth Amendment enforcement power. “There is no constitutional right to be free from private acts of violence, even if they are committed due to a discriminatory motive.” *Hougen*, 76 F.4th at 824 (Ikuta, J., dissenting). To be sure, “[s]lavery was historically enforced through legally sanctioned violence by masters against slaves or—once the former slaves were freed—through violence that was intended to prevent them from exercising their fundamental rights as citizens.” *Id.* But the findings Congress made in support of § 249(a)(1)’s constitutionality do not explain how a general criminal prohibition against “racially motivated violence,” “without an element require the government to prove a connection between such violence and the deprivation of civil rights, is addressed to either eradicating slavery or its badges and incidents.” *Id.*

Section 249(a)(1) also wholly fails to limit itself to violence perpetrated against members of demographic groups that have “experienced or been at risk of slavery in this country.” *Id.* at 825. This case—involving a Native Hawaiian’s assault on a white man—vividly illustrates that point. While Hawaii has its own unique history with demographic oppression, that history centrally involves white Americans and Europeans—the West—colonizing Native Hawaiians. *See Rice v. Cayetano*, 528 U.S. 495, 500 (2000) (describing this history). Indeed, Congress eventually issued an apology for America’s role in overthrowing the Kingdom of Hawaii, *see Overthrow of Hawaii*, 107 Stat. 1510 (Nov. 23, 1993), an act that subordinated Native Hawaiians to white rule.

By contrast, white Americans—the demographic group of which the victim in

this case is part—have never been at risk of enslavement or subordination either in the United States or, particularly, in Hawaii. A statute that enables the federal government to second-guess the decisions of Hawaii state prosecutors in connection with prosecuting racially motivated violence committed by Native Hawaiians against white people simply has “nothing to do” with eradicating slavery, involuntary servitude, or their badges and incidents. *Civil Rights Cases*, 109 U.S. at 24.

Finally, nothing in § 249(a)(1) limits its reach to widespread violence that poses the risk of advancing the cause of slavery or involuntary servitude in the United States. Yet again, Mr. Alo-Kaonohi’s own prosecution is case in point. A Native Hawaiian lashing out at a white man on the island of Maui is simply not the sort of widespread violence against a politically vulnerable or historically oppressed group that is liable to “result in the de facto reimposition of slavery or involuntary servitude” in the United States. McAward, *Defining the Badges and Incidents of Slavery*, 14 U. Pa. J. Const. L. at 615. Its federal criminalization advances no legitimate constitutional purpose. Section 249(a)(1) cannot pass constitutional muster under the Thirteenth Amendment’s enforcement clause.

D. The facts of this case shine a spotlight on the grave damage § 249(a)(1) does to federalism.

This case is an ideal vehicle through which to limit the illegitimate exercise of federal power under the Thirteenth Amendment because it spotlights the serious federalism problems § 249(a)(1) creates. “When Congress criminalizes conduct already denounced as criminal by the States, it effects a change in the sensitive

relation between federal and state criminal jurisdiction.” *United States v. Lopez*, 514 U.S. 549, 561 n.3 (1995).

That’s what happened with § 249(a)(1). At the time it was enacted, 45 states and the District of Columbia had laws punishing hate crimes on their books. *See* H.R. Rep. No. 111-86, Pt. 1, at 39, 42, 44 (2009) (Dissenting Views). By enacting § 249(a)(1), therefore, Congress did not merely legislate in a hitherto unregulated domain. Rather, it set the federal government on a collision course with the states over all racially motivated violent crimes.

This case is the ensuing crash. The federal government chose to prosecute Mr. Alo-Kaonohi because of a policy dispute over the charge and sentencing outcome of his prosecution in Hawaii State Court. Absent clear constitutional authorization, there can be no more serious federalism injury inflicted on a state than this. But the only constitutional basis the government has ever asserted for a § 249(a)(1) prosecution is the Thirteenth Amendment.

There have no doubt been times, places, and contexts where Thirteenth Amendment interests have justified federal intervention into the traditional domain of the states. *See Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 234-36 (2023) (Thomas, J. concurring) (describing post-reconstruction history of Black Codes). Hawaii—with its unique history, not of slavery at the hands of the states, but of colonialism at the hands of the federal government—is not one of them. *See Rice*, 528 U.S. at 503-06 (describing this history); *id.* at 534 (Stevens, J., and Ginsburg, J., dissenting) (“The descendants of

the native Hawaiians share with the descendants of the Native Americans on the mainland or in the Aleutian Islands . . . a history of subjugation at the hands of colonial forces. . . .”). The federal government’s decision to use a purported anti-slavery statute to second-guess the Hawaii state sentence a Native Hawaiian received for assaulting a white man dramatically illustrates just how far astray § 249(a)(1) is from the Thirteenth Amendment’s legitimate purposes, and just how grave a risk to federalism the statute poses. These issues merit certiorari in this case.

II. The Court should grant review to overrule *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), and hold that the same congruent and proportional test that applies to the Fourteenth and Fifteenth Amendments’ enforcement clauses applies to the Thirteenth Amendment’s enforcement clause as well.

This Court should also grant certiorari to harmonize the standards used to assess Congress’s authority under the Reconstruction Amendments. While the Court has adopted stringent tests for analyzing legislation under the Fourteenth and Fifteenth Amendments, an outdated and overly-deferential test still applies to laws enacted under the Thirteenth Amendment. The three Reconstruction Amendments contain nearly identical enforcement provisions that empower Congress to pass “appropriate legislation” to achieve their respective goals.³ And for nearly a century following their adoption, this Court applied a uniform “necessary

³ Section 2 of the Thirteenth and Fifteenth Amendments provide that “Congress shall have power to enforce this article by appropriate legislation.” U.S. Const. amend. XIII, § 2; *id.* amend. XV, § 2. Section 5 of the Fourteenth Amendment gives Congress the “power to enforce, by appropriate legislation, the provisions of this article.” *Id.* amend. XIV, § 5.

and proper” test to evaluate laws enacted under each.

The Court subsequently developed strict tests with evidence-based limits to check congressional authority under the Fourteenth Amendment, which guarantees due process and equal protection, and the Fifteenth Amendment, which ensures the right to vote regardless of race. But absent direction from the Court that these evidence-based limits are equally applicable to the Thirteenth Amendment, lower courts remain bound to apply an overly-deferential standard that fails to meaningfully link Thirteenth Amendment legislation with that amendment’s goal—abolishing slavery.

Review by this Court is needed to harmonize Congress’s enforcement powers under the three Reconstruction Amendments.

A. The lower courts, awaiting direction from this Court, apply a deferential standard to the Thirteenth Amendment and more stringent tests to the Fourteenth and Fifteenth Amendments.

For nearly a century following Reconstruction, this Court applied a uniform “necessary and proper” test to analyze Congress’s “defined and limited” enforcement powers under the Reconstruction Amendments. *Oregon v. Mitchell*, 400 U.S. 112, 128-29 (1970) (reading Reconstruction Amendments’ enforcement provisions as subject to identical limitations). That test gave Congress powers that were broad but still limited by the principle that legislation must be “necessary” to serve a legitimate goal and “proper” in scope.

For example, in the decades immediately following Reconstruction, the Court struck down Thirteenth Amendment legislation guaranteeing “the full and equal enjoyment” of public accommodations to all persons, *Civil Rights Cases*, 109 U.S. at

9, and upheld legislation imposing penalties for “the holding of any person to service or labor,” *Clyatt v. United States*, 197 U.S. 207, 208 (1905). The difference was that the denial of access to public accommodations had “nothing to do with slavery or involuntary servitude,” *Civil Rights Cases*, 109 U.S. at 24, whereas banning peonage fit squarely within Congress’s Thirteenth Amendment domain.

In *Jones*, however, the Court changed tack, affirming Congress’s exercise of its Thirteenth Amendment authority to outlaw racial discrimination in real estate transactions under a deferential “rational basis” test that gave Congress wide discretion to define the “badges and incidents of slavery” and enact legislation aimed at eradicating them. Lower courts have since seized on *Jones*’s “rational basis” language to loosen the reins on Congress’s power under the Thirteenth Amendment. See Jack M. Balkin & Sanford Levinson, *The Dangerous Thirteenth Amendment*, 112 Colum. L. Rev. 1459, 1469 (2012).

Meanwhile, this Court’s modern jurisprudence has given rise to a more robust system of checks and balances to ensure legislators do not abuse their limited powers under the other Reconstruction Amendments. In *City of Boerne v. Flores*, 521 U.S. 507 (1997), the Court struck down the Religious Freedom Restoration Act as an invalid exercise of Congress’s Fourteenth Amendment enforcement power. It held that absent any “modern instances of generally applicable laws passed because of religious bigotry,” the legislation lacked “congruence and proportionality between th[at] injury” and “the means adopted to” remedy it. *Id.* at 530. The Court cautioned that “[l]acking such a connection,

legislation may become substantive in operation and effective,” exceeding its “remedial” objective and rewriting the Constitution. *Id.* at 520.

Similarly, in *Shelby County v. Holder*, 570 U.S. 529 (2013), the Court invalidated a statute expanding portions of the Voting Rights Act, holding that it exceeded Congress’s enforcement authority under the Fifteenth Amendment. As the Court explained, earlier civil rights legislation had succeeded in removing numerous barriers to voting that persisted after Reconstruction, and new restrictions, which were “based on decades-old data and eradicated practices,” could not be justified by the community’s “current needs.” *Id.* at 531-32.

This Court has not yet addressed how *City of Boerne*’s “congruent and proportional” and *Shelby County*’s “current needs” tests apply to the Thirteenth Amendment’s substantively-identical enforcement provision. Absent the Court’s guidance, lower courts remain bound by *Jones* to apply its “rational basis” test to legislation enacted under the Thirteenth Amendment. Thus the Ninth Circuit upheld Mr. Alo-Kaonohi’s conviction under § 249(a)(1) based on its precedent holding that Congress “rationally could have determined” that racially-motivated violence was one of the “badges and incidents” of slavery. *Alo-Kaonohi*, 2025 U.S. App. LEXIS 17266, at *3 (quoting *Hougen*, 76 F.4th at 814-15). And five other courts of appeals have similarly upheld § 249(a)(1) under “rational basis” review. *See United States v. Diggins*, 36 F.4th 302, 306-11 (1st Cir. 2022), *cert. denied*, 143 S. Ct. 383 (2022); *United States v. Roof*, 10 F.4th 314 (4th Cir. 2021), *cert. denied*, 143 S. Ct. 303 (2022); *United States v. Metcalf*, 881 F.3d 641, 644-45 (8th Cir. 2018),

cert. denied, 143 S. Ct. 303 (2018); *Cannon*, 750 F.3d at 499-500; *United States v. Hatch*, 722 F.3d 1193, 1201-06 (10th Cir. 2013). In all these cases, the defendant challenged § 249(a)(1) as an invalid exercise of Congress’s Thirteenth Amendment authority because it criminalizes conduct unconnected to slavery and because legislators did not establish that the legislation was necessary to serve an existing need. But in each case the court declined to apply *City of Boerne*’s “congruent and proportional” test or *Shelby County*’s “current needs” test. Instead, citing the “rational basis” standard from *Jones*, the courts accepted without question Congress’s broad assertion that any injurious act motivated by another’s race, color, religion, or national origin constitutes a “badge” or “incident” of slavery.

B. The Court should grant certiorari to overrule *Jones*’s rational basis test and hold that—like its twins in the Fourteenth and Fifteenth Amendment—the Thirteenth Amendment’s enforcement clause authorizes only “congruent and proportional” legislation justified by “current needs.”

Until this Court clarifies *City of Boerne*’s and *Shelby County*’s relevance to the Thirteenth Amendment, lower courts will continue to apply different standards to the three Reconstruction Amendments’ nearly-identical enforcement clauses.

For as long as it persists, this state of affairs will represent an intolerable inconsistency in Reconstruction jurisprudence. For more than two decades, judges and scholars have voiced concerns over the irreconcilable conflict between Congress’s seemingly boundless power under the Thirteenth Amendment and its tightly-cabined authority under the Fourteenth and Fifteenth Amendments. *See Hatch*, 722 F.3d at 1204 (describing Congress’s power to define the “badges and incidents” of slavery as having “few limits”); Jennifer Mason McAward, *The Scope of*

Congress's Thirteenth Amendment Enforcement Power After City of Boerne v. Flores, 88 Wash. U. L. Rev. 77 (2010); Laurence H. Tribe, *American Constitutional Law* § 5-15, at 926-27 (3d ed. 2000) (arguing *Jones* empowers Congress to “define the infringement of [any] right[] as a form of domination or subordination and thus as an aspect of slavery, and proscribe such infringement as a violation of the Thirteenth Amendment”).

Even jurists weighing in on the precise issue here—section 249(a)(1)’s constitutionality—have expressed concern over the “growing tension between the Supreme Court’s precedent regarding the scope of Congress’s [Thirteenth Amendment] power[]” and later opinions curbing Congress’s authority under the Fourteenth and Fifteenth Amendments. *Cannon*, 750 F.3d at 509 (Elrod, J., concurring); see *Hatch*, 722 F.3d at 1204 (“Given slaves’ intensely deplorable treatment and slavery’s lasting effects, nearly every hurtful thing one human could do to another and nearly every disadvantaged state of being might be analogized to slavery—and thereby labeled a badge or incident of slavery under *Jones*’s rational determination test.”).

As it is presently applied, the *Jones* test creates grave federalism and separation-of-powers problems. The circuits apply *Jones* so deferentially that they interpret it to confer on “Congress not only . . . the power to *enforce* the [Thirteenth Amendment] but also to a certain extent to define its *meaning*”—a power that is squarely vested in the judiciary, not Congress. *Hatch*, 722 F.3d at 1200; see *Marbury v. Madison*, 5 U.S. 137, 177 (1803). And by defining Congress’s Thirteenth

Amendment enforcement authority this broadly, *Jones* creates the precise federalism problem that motivates the more restrictive tests in *City of Boerne* and *Shelby County*. See *City of Boerne*, 521 U.S. at 536 (invalidating RFRA in light of damage it does to “the federal balance”); *Shelby County*, 570 U.S. at 540 (seeking to guard against “substantial federalism costs” of the Voting Rights Act § 5). As Judge Elrod has put it, “[u]nder . . . existing Thirteenth Amendment jurisprudence, it has indeed become difficult to conceive of a principle that would limit congressional power.” 750 F.3d at 511 (Elrod, J., concurring).

This case is a vivid illustration of the federalism problems *Jones*—and § 249(a)(1)—creates. Here, the federal government used § 249(a)(1) to encroach on the traditional, constitutional preserve of Hawaii, prosecuting Mr. Alo-Kaonohi based on a policy disagreement with his Hawaii conviction and sentence. *Cf. Lopez*, 514 U.S. at 561 n.3 (“Under our federal system, the States possess primary authority for defining and enforcing the criminal law”). And it did so even though Mr. Alo-Kaonohi’s conduct had nothing to do with slavery or involuntary servitude, and there was—and has been—absolutely no showing that “current needs” in Hawaii (of all places) require muscular federal enforcement to guard against the reestablishment of the peculiar institution in that state. *Shelby County*, 570 U.S. at 553.

C. This case is an ideal vehicle for invalidating the general federal hate crimes statute, overruling *Jones*, and restoring harmony to the Court’s Reconstruction jurisprudence.

This case is an ideal vehicle. Mr. Alo-Kaonohi challenged his federal hate

crime conviction as an invalid exercise of Congress's Thirteenth Amendment authority in both the district and appeals courts, and each court squarely rejected his claims (App-4-5, 23-24). Had the courts applied any of the well-established limits on Congress's Thirteenth Amendment enforcement authority, they would have invalidated § 249(a)(1). Likewise, had the courts applied the "congruent and proportional" and "current needs" tests as Mr. Alo-Kaonohi urged, § 249(a)(1) would not have passed constitutional muster.

The criminalization of all offenses motivated by race, color, religion, or national origin has no rational relationship—much less a congruent and proportional relationship—to the Thirteenth Amendment's goal of eradicating the relics of slavery, and Mr. Alo-Kaonohi's prosecution stands as a glaring example why. Native-on-white violence in Hawaii simply has nothing to do with the institution of slavery. It may or may not have systemic explanations, but, to the extent it does, those explanations are rooted in the history of colonialism in Hawaii—not American chattel slavery. *See generally* David Barnard, *Law, Narrative, and the Continuing Colonialist Oppression of Native Hawaiians*, 16 Temp. Pol. & Civ. Rts. L. Rev. 1 (2006).

To the contrary, the history of slavery and servitude in the United States is the history of enslavement and subordination of "African Americans," and certain other discrete ethnic groups, by a white slavocracy. *Hougen*, 76 F.4th at 820 (Ikuta, J., dissenting). The badges and incidents of American slavery centrally involve infliction of "legal restrictions" and "widespread violence and discrimination" on

“*African-Americans* to try to enforce inferior status on them.” *Cannon*, 750 F.3d at 501 (emphasis added). The Thirteenth Amendment—and its enforcement clause—was thus ratified to give Congress the power to ensure that all freedmen enjoy the same fundamental rights that are “enjoyed by *white citizens*.” *Civil Rights Cases*, 109 U.S. at 22. Absolutely nothing in this history supports the federal government’s using the enforcement authority of the Thirteenth Amendment to prosecute a member of an historically oppressed minority group for perpetrating violence against a member of the white majority. *Cf. Rice*, 528 U.S. at 500-506 (describing the history of America’s colonization of Hawaii and the catastrophic impact it had on Native Hawaiians). Mr. Alo-Kaonohi’s prosecution is not rationally related, much less congruent and proportional, to the harm the Thirteenth Amendment aims to address.

Nor did Congress—in enacting the federal hate crimes statute—make any findings that § 249(a)(1) was necessary to address the nation’s current needs. *See Cannon*, 750 F.3d at 510 (Elrod, J., concurring) (In passing [§ 249(a)(1)], Congress focused on past conditions and did not make any findings that current state laws, or the individuals charged with enforcing them, were failing to adequately protect victims from racially-motivated crimes.”); *see* McAward, *Defining the Badges and Incidents of Slavery*, 14 U. Pa. J. Const. L. at 564 (noting findings Congress did make).

Yet again, Mr. Alo-Kaonohi’s own prosecution puts Congress’s failure to tailor § 249(a)(1) to current Thirteenth Amendment needs in particularly sharp relief.

While all violence is deplorable, there is no current Thirteenth Amendment need—certainly none that Congress has found—to federally criminalize racially motivated assaults committed by Native Hawaiians against white people on the island of Maui. Nor can there be any argument that Hawaii—which, after all, successfully prosecuted Mr. Alo-Kaonohi for felony first-degree assault—is slyly looking the other way as a system of modern white peonage is established on its islands. As Mr. Alo-Kaonohi’s case illustrates, current Thirteenth Amendment needs do not justify § 249(a)(1)’s sweeping federal prohibition on all racially motivated violence.

The facts of this case illustrate virtually every constitutional problem with § 249(a)(1) and the *Jones* test. It is an ideal vehicle for evaluating the constitutionality of § 249(a)(1) and reconciling the disparate interpretations of Congress’s powers under the nearly identical enforcement provisions of all three Reconstruction Amendments.

Conclusion

The Court should grant certiorari.

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Respectfully Submitted,

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