No. ___________

IN THE

Supreme Court of the United States

ROSEZZETTEA LEE LOPEZ, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Title 8 U.S.C. § 1324 prohibits transporting an undocumented person in furtherance of unlawful presence. Furthermore, Congress imposed a heightened penalty for this crime only when the transportation is done "for the purpose of commercial advantage or private financial gain."[1] That requirement separates the basic transportation offense from an offense committed for a narrow set of purposes, and the distinction protects against expanding the enhanced penalty beyond the statutory limitation which Congress enacted.

Petitioner Rosezzettea Lee Lopez was convicted of transporting undocumented persons for private financial gain near Eagle Pass, Texas. The government introduced no meaningful direct evidence that petitioner was paid, promised payment, or agreed upon compensation for transporting the four individuals who formed the basis of the charged transportation offense. Instead, it relied on prior paid transports, generalized smuggling-pattern testimony, and inferences from phone communications. The Fifth Circuit nevertheless affirmed, holding that the jury could infer the private-financial-gain element from the surrounding evidence. The question presented is therefore as follows:

May § 1324(a)(1)(B)(i)'s private-financial-gain element be satisfied by evidence of prior paid transports and generalized smuggling-pattern evidence, without proof of a payment arrangement concerning the persons actually transported?

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[1] 8 U.S.C. § 1324(a)(1)(B)(i).

PARTIES TO THE PROCEEDING

The parties are Rosezzettea Lee Lopez and the United States of America.

RELATED PROCEEDINGS

United States Court of Appeals for the Fifth Circuit:

United States of America v. Rosezzettea Lee Lopez, No. 25-50395

United States District Court for the Western District of Texas:

United States of America v. Rosezzettea Lee Lopez, No. 2:24-cr-00248-EG-1

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The unpublished decision of the Fifth Circuit Court of Appeals is attached as [App. A]. The district court's judgment is attached as [App. B].

JURISDICTION

The decision of the Fifth Circuit Court of Appeals was entered on April 14, 2026 [App. A]. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The jurisdiction of the court of appeals was invoked under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

STATUTORY PROVISIONS

The relevant statutory provisions are as follows:

This case involves 8 U.S.C. § 1324(a)(1)(A)(ii), which provides in relevant part:

> Any person who— . . .
> (ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law.

This case also involves 8 U.S.C. § 1324(a)(1)(B)(i), which provides in relevant part:

> (B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—
> in the case of a violation of subparagraph (A)(i) or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, be fined under title 18, imprisoned not more than 10 years, or both.

This case also involves the Due Process Clause of the Fifth Amendment, which provides in relevant part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law[.]

This case further implicates the constitutional right to interstate travel.

STATEMENT OF THE CASE

This case concerns the proof required to impose felony punishment under 8 U.S.C. § 1324's private-financial-gain provision. On January 12, 2024, petitioner Rosezzettea Lee Lopez drove her pickup truck to a United States Border Patrol checkpoint near Eagle Pass, Texas. Her boyfriend and four other individuals were in the vehicle. Border Patrol agents referred the vehicle to secondary inspection. An immigration check revealed that the four other occupants were unlawfully present in the United States. Petitioner and the passengers were arrested. A grand jury in the Western District of Texas charged petitioner with conspiracy to transport undocumented individuals, in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I) and (B)(i), and transportation of undocumented individuals for the purpose of commercial advantage or private financial gain, in violation of § 1324(a)(1)(A)(ii) and (B)(i).

The government theorized at trial that petitioner's transportation of the four individuals on January 12 was part of a broader paid transportation arrangement. The government asked the jury to infer the private-financial-gain element from surrounding circumstances, including prior transportation activity and payment-related communications. At the close of the government's case, petitioner moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29. The district court denied the motion. The jury found petitioner guilty on both counts and further found that the transportation offense was committed for the purpose of commercial advantage and private financial gain.

The district court sentenced petitioner to 26 months of imprisonment on each count, to run concurrently, followed by three years of supervised release on each count, also concurrent. Petitioner timely appealed.

The Fifth Circuit affirmed in an unpublished summary-calendar opinion. As relevant here, the court held that the evidence was sufficient to support the private-financial-gain finding. The court acknowledged that "the record does not establish the precise dollar amount Lopez anticipated for the January 12th trip" but concluded that this did not make the evidence insufficient because the financial-purpose element is "prospective and intent-based." The court therefore held that a rational jury could infer from the surrounding circumstances that petitioner expected to be paid for the charged transportation, including prior paid transports and prior payment discussions. This petition follows.

REASONS FOR GRANTING THE WRIT

I. The decision below weakens an important statutory limitation in a frequently prosecuted federal offense.

Thousands of prosecutions under 8 U.S.C. § 1324 are brought each year, making the proper interpretation of Congress's limiting language a recurring question of national importance.[2] Section 1324 does not subject every transportation offense to the heightened penalty prescribed by § 1324(a)(1)(B)(i). For the heightened penalty at issue here, Congress required that the government must prove that the transportation was done "for the purpose of commercial advantage or private financial gain."[3]

Importantly, that limiting element separates ordinary conduct from a more serious offense. Transportation is ordinary conduct. Americans drive on public highways every day. They give rides to friends, relatives, coworkers, strangers, and acquaintances. Some of those trips may be unwise. Some may occur near the border. Some may involve people whose immigration status is unknown or misunderstood. But Congress did not authorize the heightened penalty under § 1324(a)(1)(B)(i) unless the government proves that the charged transportation was undertaken for the purpose of commercial advantage or private financial gain.

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[2] See Transactional Records Access Clearinghouse, *Convictions for Transporting or Harboring Undocumented Immigrants Jump Under Biden* (July 13, 2023).

[3] 8 U.S.C. § 1324(a)(1)(B)(i).

The private-financial-gain requirement is one of those elements. It separates alien-smuggling liability from transportation that lacks a commercial or pecuniary purpose. It also protects against an expansive construction of § 1324 that would allow ordinary movement on public highways to be punished as felony alien transportation based on suspicion, association, or generalized assumptions about how smuggling organizations operate.

This Court's decision in *Hansen* confirms the importance of enforcing § 1324's limiting principles.[4] There, the Court rejected an overbreadth challenge only after construing § 1324(a)(1)(A)(iv)'s "encourages or induces" language narrowly, emphasizing that statutory terms must be read in their legal context and not in the broadest possible sense.[5] The same principle applies here. The private-financial-gain element must be enforced as a real statutory limitation, not reduced to an inference from generalized smuggling patterns or prior conduct.

This case illustrates the danger of relying on such inferences. Miss Rosezzettea Lee Lopez was stopped while driving on Highway 57 near Eagle Pass, Texas. The government relied primarily on evidence of prior paid transports, generalized testimony about smuggling patterns, and inferences from phone communications. But the government introduced no meaningful direct evidence that Miss Lopez was paid, promised payment, or specifically expected payment for the charged January

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[4] *United States v. Hansen,* 599 U.S. 762 (2023).
[5] *Id.*

12 transportation. The Fifth Circuit nevertheless affirmed, allowing the private-financial-gain element to be inferred from surrounding evidence and prior conduct.

That approach dilutes the statutory element. If the government may prove private financial gain for the charged transportation by relying on prior transactions and generalized smuggling-pattern evidence, then the element no longer performs its limiting function. The question presented is therefore important not merely to Miss Lopez but to the proper scope of § 1324 and the constitutional boundary between criminal smuggling and protected movement on public highways.

II. The decision below permits the private-financial-gain finding without proof of a payment arrangement for the passengers actually transported.

The statutory text focuses on the offense charged. Section 1324(a)(1)(B)(i) applies when "the offense was done for the purpose of commercial advantage or private financial gain."[6] That language requires proof that the charged transportation itself was undertaken for a financial purpose. It is not enough to show that the defendant had previously been paid for other conduct, that smuggling organizations often pay drivers, or that the defendant's conduct looked suspicious in light of a broader pattern.

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[6] 8 U.S.C. § 1324(a)(1)(B)(i).

The Fifth Circuit's own precedent recognizes that the financial-gain element has real content. In *Garcia*, the court held that private financial gain requires an anticipated gain beyond mere reimbursement; a person who seeks only to recoup expenses has not sought an economic benefit.[7] That principle should have required proof that the charged transportation was undertaken for payment or some other material benefit.

Miss Lopez does not argue that the statute requires completed payment. Nor does she argue that an express written agreement or direct cash transfer is always necessary. Circumstantial evidence may suffice, but the circumstantial evidence must establish the financial purpose of the charged transportation. It cannot merely show that the defendant previously participated in paid activity or that alien-smuggling operations often involve payment.

Other courts have treated the financial-gain requirement as a meaningful limitation. In *Munoz*, the Ninth Circuit reversed financial-gain convictions under § 1324(a)(2)(B)(ii) because the jury was permitted to convict without finding that the defendant herself intended to derive a financial benefit from the alien-smuggling transaction.[8]

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[7] *United States v. Garcia*, 883 F.3d 570, 574 (5th Cir. 2018) ("Relevant to this case, it means that the Government must prove an anticipated gain beyond that of a pure reimbursement.").

[8] *United States v. Munoz*, 412 F.3d 1043, 1047 (9th Cir. 2005) ("We hold that, in order to impose § 1324(a)(2)(B)(ii)'s enhanced penalties on a defendant prosecuted as a principal, the government must prove that she intended to derive a financial gain from the transaction.").

Those cases confirm the relevant distinction: Actual payment is unnecessary, but the government must prove that the charged offense was undertaken for financial gain. The decision below blurs that line. The court treated prior paid transports, earlier payment-related messages, and the asserted similarity between those trips and the charged trip as sufficient to prove financial gain for January 12. That approach permits a jury to infer present financial purpose largely from prior conduct and generalized smuggling-pattern evidence, even without direct proof that the charged transportation itself involved payment, a promised fee, or a financial arrangement for the four passengers actually found in the vehicle.

Inference is not what the statute requires. Congress did not impose the financial-gain requirement as a general character inquiry. Nor did it ask whether the defendant had ever transported someone for money before. It asked whether the offense charged was done for the purpose of commercial advantage or private financial gain. A person who previously accepted payment for transportation may later provide a ride for another reason. A person who communicates with someone previously involved in paid transport may later engage in transportation without any payment arrangement. And a person who drives in a way that law enforcement views as consistent with smuggling patterns is not, for that reason alone, acting for private financial gain.

The government's theory collapses those distinctions. It allows the financial-gain element to be satisfied by generalized proof that alien-smuggling operations often involve payment, together with evidence that the defendant previously engaged in similar conduct. But if that is enough, the government need not prove the financial purpose of the charged transportation at all. The element becomes an inference from pattern rather than a fact proved beyond a reasonable doubt.

This Court should not permit that erosion. Due process requires the government to prove every element of the charged offense beyond a reasonable doubt.[9] And under *Jackson*, a conviction cannot stand unless a rational juror could find each essential element beyond a reasonable doubt.[10] Those principles apply with special force when the element at issue is what authorizes the heightened penalty Congress attached to transportation undertaken for private financial gain. Expanding the heightened penalty beyond Congress's financial-purpose limitation risks chilling ordinary travel and association on public highways.

Ultimately, this Court's intervention is necessary to clarify a recurring question that lower courts have addressed in differing ways: whether § 1324's private-financial-gain element requires proof tied to the charged transportation itself or whether it may be inferred from prior conduct, earlier payment-related messages, and generalized smuggling-pattern evidence. Without this Court's clarification, expanding the private-financial-gain enhancement to ordinary transportation, without proof that the charged trip was undertaken for payment or material benefit,

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[9] *In re Winship*, 397 U.S. 358 (1970).
[10] *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) ("[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.").

risks chilling ordinary movement on public highways and the constitutional liberty interests associated with travel.

III. The decision below creates serious constitutional concerns by weakening the limitation on enhanced penalties.

Miss Lopez does not independently seek review of the Fifth Circuit's plain-error disposition of her constitutional claims. Rather, the constitutional concerns reinforce the importance of enforcing Congress's statutory limitation on the heightened penalty for transportation undertaken for private financial gain. The need for a clear statutory rule is reinforced by constitutional concerns involving travel, movement on public highways, and ordinary association. This Court has long recognized that the right to travel from one State to another is fundamental.[11] This case does not require the Court to hold that § 1324 is unconstitutional. Nor does it require the Court to immunize alien smuggling. The question is narrower: whether § 1324's private-financial-gain requirement must be enforced as a real limiting element before the heightened penalty under § 1324(a)(1)(B)(i) may be imposed.

That limiting construction is necessary to avoid constitutional tension. Transportation on public highways is ordinary, protected movement. If the

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[11] *United States v. Guest*, 383 U.S. 745, 757 (1966) ("The District Court was in error in dismissing the indictment as to this paragraph. The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized."); see also *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Saenz v. Roe*, 526 U.S. 489 (1999).

government can convert such movement into aggravated felony liability without proof that the charged trip was undertaken for financial gain, then the statute risks chilling innocent travel and association. Drivers near the border, family members, acquaintances, and others may face felony exposure based not on proof of a financial purpose for the charged transportation but on suspicion, prior associations, or generalized assumptions about smuggling patterns.

The same constitutional-avoidance principle applied in *Hansen* supports review here. *Hansen* involved a different subsection of § 1324 and a First Amendment overbreadth challenge, but the methodological point has bearing here because the Court avoided the overbreadth problem by reading § 1324 according to its traditional legal meaning rather than its broadest literal sweep.[12] Here too, § 1324 should not be read so broadly that movement on public highways may be punished under the heightened private-financial-gain provision without proof of the statutory element that Congress used to separate commercial smuggling from noncommercial transportation.

This Court has repeatedly refused to allow vague or expansive readings of criminal statutes to erase important limiting principles. In *Bouie*, the Court held that due process is violated when criminal liability rests on an unforeseeable

[12] *United States v. Hansen*, 599 U.S. 762, 775 (2023) ("When words have several plausible definitions, context differentiates among them. Here, the context of these words indicates that Congress used them as terms of art.")

retroactive expansion of statutory text.[13] And in *Santos*, a plurality applied lenity where competing interpretations of a criminal statute created uncertainty over the scope of liability.[14]

Those principles apply here. Section 1324 should be construed so that its aggravating element does real work. The phrase "for the purpose of commercial advantage or private financial gain" should not be reduced to an inference from a defendant's prior conduct or from law-enforcement testimony about how smuggling organizations usually operate.[15] The government must prove the financial purpose of the charged transportation.

The Fifth Circuit's approach moves in the opposite direction. It permits the government to satisfy the financial-gain element without proof of payment, promised payment, or expected payment for the charged transportation. That approach weakens the statutory line and increases the risk that protected travel will be treated as evidence of criminal intent. The Court should grant review to make clear that § 1324's private-financial-gain requirement must be proved as to the charged transportation.

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[13] *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964) ("There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language.").
[14] *United States v. Santos*, 553 U.S. 507 (2008).
[15] 8 U.S.C. § 1324(a)(1)(B)(i).

IV. The preserved private-financial-gain issue is squarely presented in an appropriate vehicle.

This case cleanly presents the issue. Miss Lopez preserved her sufficiency challenge by moving for judgment of acquittal under Federal Rule of Criminal Procedure 29 at the close of the government's case. The district court denied that motion, and the Fifth Circuit reviewed the preserved sufficiency challenge de novo.

The preserved question is whether the government proved the private-financial-gain element required by § 1324(a)(1)(B)(i). On appeal, Miss Lopez argued that the government failed to prove that she was paid, promised payment, or specifically expected payment for the charged January 12 transportation. The government responded that actual payment was not required and that the jury could infer a financial purpose from prior paid transports, payment-related messages from earlier dates, and the surrounding circumstances. The Fifth Circuit accepted that theory and affirmed. Thus, the question is squarely presented: whether the private-financial-gain requirement must be tied to the charged transportation or whether it may be inferred from prior conduct and generalized smuggling-pattern evidence.

A decision requiring sufficient proof that the charged transportation was undertaken for private financial gain would require vacatur of the private-financial-gain finding and appropriate further proceedings. Miss Lopez does not ask this Court to decide whether actual payment is always necessary. It is not. The question is whether the government must prove that the charged transportation was undertaken for the purpose of financial gain.

The constitutional concerns raised by this case bolster the need to enforce § 1324's financial-gain element as a real statutory limitation. The financial-gain sufficiency issue was raised in petitioner's Rule 29 motion, fully litigated on appeal, and decided by the Fifth Circuit. It is dispositive of the jury's private-financial-gain finding. That issue also recurs in § 1324 prosecutions. Border prosecutions often rely on circumstantial evidence, phone records, generalized testimony about smuggling organizations, and prior conduct. Without a clear rule requiring the financial-gain element to be tied to the charged transportation, the aggravated penalty can be imposed based on pattern evidence rather than proof of the offense-specific financial purpose. This case therefore presents a recurring and important question concerning the scope of § 1324 and the government's burden of proof.

V. The decision below is wrong.

The Fifth Circuit's decision cannot be squared with the text of § 1324. The statute asks whether "the offense was done for the purpose of commercial advantage or private financial gain."[16] "The offense" means the charged transportation, not prior conduct and not the defendant's general course of activity.

The government's proof did not establish that required link. The government's evidence may have supported an inference of prior paid activity, but it did not prove beyond a reasonable doubt that the charged transportation itself was undertaken for

[16] 8 U.S.C. § 1324(a)(1)(B)(i).

private financial gain. The Fifth Circuit's contrary rule effectively permits propensity-style reasoning to satisfy an element of the offense. Because Miss Lopez allegedly participated in prior paid transports, the jury could infer that the charged transportation was also for pay. But the Constitution requires proof of every element of the charged offense, not proof that the defendant may have committed similar acts before.[17]

The rule below also creates serious constitutional concerns. If the government may infer financial purpose from surrounding suspicious circumstances and prior conduct, § 1324 can reach far beyond commercial smuggling. Ordinary driving, association with undocumented persons, and routine communications may be recast as evidence of felony alien transportation. That inference threatens the right to interstate travel and blurs the distinction Congress drew between transportation and aggravated transportation for private financial gain.

The better rule is straightforward: The government need not prove actual payment, but it must prove that the charged transportation was undertaken for the purpose of obtaining payment or another material benefit. That rule respects the statutory text, preserves the financial-gain element as a real limitation, and avoids the constitutional problems created by an overbroad construction of § 1324.

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[17] *In re Winship*, 397 U.S. 358; *Jackson*, 443 U.S. 307.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 25-50395
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
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Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROSEZZETTEA LEE LOPEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:24-CR-248-1

Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Rosezzettea Lee Lopez challenges the sufficiency of the evidence supporting her convictions for conspiracy to transport undocumented individuals, in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I) and (B)(i), and transportation of undocumented individuals for the purpose of commercial advantage or private financial gain, in violation of 8 U.S.C.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

§ 1324(a)(1)(A)(ii) and (B)(i). She also raises several constitutional claims for the first time on appeal. We AFFIRM.

I

On January 12, 2024, Lopez drove her pickup truck to a United States Border Patrol checkpoint near Eagle Pass, Texas. Her boyfriend, Edward Flores, and four other individuals were also in the vehicle. After detecting the odor of marijuana, agents directed the vehicle to a secondary inspection area. An immigration check revealed that Lopez and Flores were United States citizens, but that the four other occupants were unlawfully in the United States without documentation. All were arrested and transported to a border patrol station. Lopez waived her *Miranda*[1] rights, agreed to speak with law enforcement, and consented to a search of her cellphone.

Agents conducted three recorded interviews with Lopez. She explained that she had lost her job in December 2023 and applied for a driver position posted online by an individual she knew as "Josh Drivers." Josh described the job as picking up and transporting people to different locations. Lopez began picking up people in the Houston area, and Josh later told her additional jobs were available involving people from El Salvador and Venezuela. She received "pings" showing pickup locations, and Josh paid her in cash or through her WhatsApp account.

As for the four individuals found at the checkpoint, Lopez initially stated that after an original passenger did not appear, Flores encountered the group at a casino, and they requested a ride to Austin. She denied knowing they were undocumented and stated no monetary arrangements were made. In her final interview, however, Lopez abandoned the casino story and stated

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966)

she received a "ping" to pick up the group. When asked who coordinated "this smuggling event," she claimed it was organized "through Josh." She also stated she expected to receive $500 for the original solo passenger.

Lopez's cellphone also contained extensive communications with Josh and another individual, "Randy," spanning from December 11, 2023, through January 12, 2024. When Lopez first inquired about the position, Josh told her it was an "under the table type of thing" involving driving individuals who had "just crossed the border and just need a ride past the cops," with pay of "1K per person." Lopez responded that she was "interested" and understood "what the job [was] requesting." Later messages showed Lopez coordinating dates, times, and locations for transporting individuals on multiple occasions. The messages also discussed whether the checkpoint was open or closed, with Josh noting that "this job gets a little bit more complicated when its open." Lopez transported individuals or groups at least six times between December 14, 2023, and January 11, 2024.

On January 11th, the day before the charged offense, messages showed Lopez traveled to Eagle Pass with Flores, received location coordinates from Randy, and picked up and dropped off an individual. The next day, Lopez and Randy exchanged voice calls and messages, including directions. Lopez shared her location with Randy shortly before arriving at the checkpoint.

A grand jury returned a two count indictment charging Lopez with conspiracy to transport undocumented individuals, in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I) and (B)(i), and transportation of undocumented individuals for the purpose of commercial advantage or private financial gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (B)(i). At the close of the Government's case, Lopez moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29, which the district court denied. Lopez then rested without putting forward any evidence in her defense. The jury found her guilty on both counts and further found that her commission of the transportation offense was for the purpose of commercial advantage and private financial gain. Lopez timely appealed.

II

Lopez argues that the evidence presented at her trial was insufficient to support either conviction. Additionally, she argues that her prosecution chilled her First Amendment right of freedom of association, that her consent for law enforcement to search her cellphone was involuntarily given, in violation of the Fourth Amendment, and that her prosecution violated her constitutional right to interstate travel. We address each claim in turn.

A

We review Lopez's preserved sufficiency challenges de novo, asking "whether a reasonable jury could have properly concluded, weighing the evidence in a light most deferential to the verdict rendered by the jury, that all of the elements of the crime charged had been proven beyond a reasonable doubt." *United States v. Shaughnessy*, 157 F.4th 378, 385 (5th Cir. 2025) (quoting *United States v. Hope*, 487 F.3d 224, 227 (5th Cir. 2007)).

To convict Lopez of conspiracy to transport undocumented individuals under § 1324(a)(1)(A)(v)(I), the Government was required to prove that she "(1) agreed with one or more persons (2) to transport an undocumented alien inside the United States (3) in furtherance of his unlawful presence (4) knowingly or in reckless disregard of the fact that the alien's presence in the United States was unlawful." *United States v. Jimenez-Elvirez*, 862 F.3d 527, 533–34 (5th Cir. 2017) (citing *United States v. Chon*, 713 F.3d 812, 818 (5th Cir. 2013)). The agreement need not be explicit or formal; a tacit agreement suffices. *Chon*, 713 F.3d at 818. And the elements of conspiracy "may be established solely by circumstantial evidence, including the presence, association, and concerted action of the defendant with others." *Jimenez-Elvirez*, 862 F.3d at 534 (citations and internal quotations omitted).

We conclude the evidence on the conspiracy count was sufficient. Lopez's cellphone messages established that she was aware of the nature of the enterprise from the outset. Josh told her the job was an "under the table type of thing" involving people who had "just crossed the border and just need a ride past the cops," paying "1K per person." Lopez confirmed she understood and, over the following month, repeatedly initiated and accepted transportation jobs, coordinated pickup and drop-off locations and times, discussed checkpoint status, and received instructions on evading detection. She transported individuals or groups at least six times between December 2023 and January 2024. And on January 12th, Lopez was in contact with Randy and shared her location shortly before arriving at the Eagle Pass checkpoint. These communications reflect a sustained, knowing agreement to transport undocumented individuals in furtherance of their unlawful presence.

Lopez's inconsistent statements to law enforcement further support the verdict. She initially claimed Flores encountered a group at a casino who requested a ride. She later abandoned that account and admitted she received a "ping" to pick up the group, and that the "smuggling event" was coordinated "through Josh." A jury may reasonably infer guilty knowledge from such inconsistent and implausible explanations. *See United States v. Cano-Guel*, 167 F.3d 900, 904–05 (5th Cir. 1999). In sum, viewing the evidence in the light most favorable to the verdict, a rational jury could have found beyond a reasonable doubt that Lopez conspired with one or more persons to transport undocumented individuals into the United States.

We likewise conclude that the evidence was sufficient to prove Lopez transported undocumented individuals within the United States for commercial advantage or private financial gain under § 1324(a)(1)(B)(i).[2] To establish the financial-gain element, the Government must prove Lopez sought "to profit or otherwise secure some economic benefit from [the] smuggling endeavor." *Ruiz-Hernandez*, 890 F.3d at 210 (quoting *United States v. Garcia*, 883 F.3d 570, 574 (5th Cir. 2018)). The statute "does not require proof of *actual* payment, only evidence that the smuggling activity was undertaken for the *purpose* of financial gain." *Id.* "[A] jury is free to infer such a purpose from circumstantial evidence, including evidence that the defendant did not previously know the individuals being smuggled, and evidence that others in the same smuggling operation had received or would receive money." *Id.* (internal citations omitted).

Ample circumstantial evidence supports the jury's verdict. From the outset, Lopez's participation in the enterprise was financially motivated. She told agents she had lost her job and was trying to earn money. Josh's initial job posting promised "1K per person." Her messages referred to specific payment amounts, including up to $2,200 for certain jobs. Lopez admitted that she had earned three to four thousand dollars. And she stated she expected to receive $500 for the original passenger she was to pick up on the

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[2] A conviction under 8 U.S.C. § 1324(a)(1)(A)(ii) requires proof that "(1) the defendant transported or attempted to transport an alien within the United States, (2) the alien was in the United States illegally, (3) the defendant knew of or recklessly disregarded the fact that the alien was in the United States illegally, and (4) the defendant acted willfully in furtherance of the alien's violation of the law." *United States v. Carmona-Ramos*, 638 F. App'x 351, 355 (5th Cir. 2016). Section 1324(a)(1)(B)(i) increases the maximum penalty from five to ten years of imprisonment if the offense was committed for the purpose of commercial advantage or private financial gain. *United States v. Ruiz-Hernandez*, 890 F.3d 202, 210 (5th Cir. 2018). Lopez challenges only the financial-gain enhancement; she does not contest the sufficiency of the evidence supporting the four elements of the underlying transportation offense.

date of the charged offense. Her conduct on January 11th and 12th followed the same pattern as her prior paid transports.

That the record does not establish the precise dollar amount Lopez anticipated for the January 12th trip does not render the evidence insufficient. The financial-purpose element is prospective and intent-based. *Garcia*, 883 F.3d at 575. A rational jury could have found beyond a reasonable doubt that Lopez expected to be paid for transporting the four undocumented individuals on January 12th, just as she had been paid on prior occasions. *See Ruiz-Hernandez*, 890 F.3d at 210.

B

Lopez also raises several constitutional claims for the first time on appeal: that her prosecution violated her right to interstate travel, that her consent to the cellphone search was involuntary under the Fourth Amendment, and that the Government's theory of liability chills First Amendment associational rights. Because she did not raise these claims below, our review is limited to plain error. *Shaughnessy*, 157 F.4th at 387 (citing *United States v. Cervantes*, 706 F.3d 603, 616 (5th Cir. 2013)).

None of Lopez's constitutional claims demonstrate plain error. As to the right to interstate travel, Lopez cites no precedent holding that a prosecution under § 1324 violates a defendant's right to interstate travel, nor does she show error in the straightforward application of existing cases. *United States v. Jones*, 88 F.4th 571, 574 (5th Cir. 2023). And, as discussed above, the evidence established far more than Lopez's mere presence on a highway. As to the Fourth Amendment, Lopez signed a written consent form, and the mere presence of armed officers does not necessarily render a situation coercive. *United States v. Martinez*, 410 F. App'x 759, 764 (5th Cir. 2011). Indeed, Lopez concedes that this argument "is likely foreclosed in the Fifth Circuit." As to the First Amendment, the contention that § 1324 prosecutions chill associational rights is speculative, and Lopez offers no supporting precedent.

III

The judgment of the district court is AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 14, 2026

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 25-50395 USA v. Lopez
USDC No. 2:24-CR-248-1

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

By: ______________________
Jasmine J. Forman, Deputy Clerk
504-310-7649

Enclosure(s)

Mr. Joseph Ostini
Ms. Angela Sandoval Raba
Mr. Zachary Carl Richter

APPENDIX B

FILED

MAY 22 2025

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ______
DEPUTY CLERK

UNITED STATES DISTRICT COURT
Western District of Texas
DEL RIO DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 2:24-CR-00248(1)-EG
USM Number: 94641-510

(1) Rosezzettea Lee Lopez
Defendant

AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, (1) Rosezzettea Lee Lopez, was represented by Gregory Torres.

The defendant pled guilty to Count(s) One and Two of the Superseding Indictment on December 20, 2024. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s)

Title and Section	Nature of Offense	Offense Ended	Count(s)
8 U.S.C. § 1324(a)(1)(A)(v)(I)&(B)(i)	Conspiracy to Transport Illegal Aliens	January 12, 2024	One
8 U.S.C. § 1324(a)(1)(A)(ii)&(B)(i)	Illegal Alien Transportation (Profit)	January 12, 2024	Two

As pronounced on May 15, 2025, the defendant is sentenced as provided in pages 2 through 6 of the judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for the district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by the Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 22nd day of May 2025.

Ernest Gonzalez

ERNEST GONZALEZ
United States District Judge

Arresting Agency: United States Border Patrol

Defendant: Rosezzettea Lee Lopez
Case Number: 2:24-CR-00248 (1)-EG

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **TWENTY-SIX (26) MONTHS as to each of counts One and Two to run concurrently to each other** with credit for time served, pursuant to 18 U.S.C. § 3584(a).

The Court makes the following recommendation to the Bureau of Prisons:

That the defendant be incarcerated in a federal facility as close to Houston, Texas as possible.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this judgment as follows:

____
____
____
____

Defendant delivered on ____________________ to ____________________
At __________________________________ with a certified copy of the Judgment.

____
United States Marshal

By ________________________
Deputy Marshal

Defendant: Rosezzettea Lee Lopez
Case Number: 2:24-CR-00248 (1)-EG

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **THREE (3) YEARS as to each of counts One and Two to run concurrently to each other**.

While on supervised release, the defendant shall comply with the mandatory, standard, and if applicable, the special conditions that have been adopted by the court, and shall comply with the following additional condition(s):

_X_ The defendant shall abstain from the use of alcohol and/or all other intoxicants during the term of supervision.

_X_ The defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The program shall include testing and examination to determine if the defendant has reverted to the use of drugs or alcohol. The probation officer shall supervise the participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall pay the costs of such treatment based on the ability to pay.

_X_ The defendant shall not use or possess any controlled substances without a valid prescription. If a valid prescription exists, the defendant must disclose the prescription information to the probation officer and follow the instructions on the prescription.

_X_ The defendant shall submit to substance abuse testing to determine if the defendant has used a prohibited substance. The defendant shall not attempt to obstruct or tamper with the testing methods. The defendant shall pay the costs of testing based on the ability to pay.

_X_ The defendant shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption.

_X_ The defendant shall participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, shall supervise participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall pay the costs of such treatment based on the ability to pay.

_X_ The defendant shall take all mental health medications that are prescribed by the treating physician, as prescribed.

_X_ The defendant shall provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

Defendant: Rosezzettea Lee Lopez
Case Number: 2:24-CR-00248 (1)-EG

MANDATORY CONDITIONS

1) The defendant shall not commit another federal, state, or local crime during the term of supervision.

2) The defendant shall not unlawfully possess a controlled substance.

3) The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug test thereafter (as determined by the court) but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.

4) The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).

5) If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq (*formally 42 U.S.C. § 16901, *et seq)*) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.

6) If convicted of a domestic violence crime as defined in 18 U.S.C. §3561(b), the defendant shall participate in an approved program for domestic violence.

7) If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

8) The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.

9) The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Defendant: Rosezzettea Lee Lopez
Case Number: 2:24-CR-00248 (1)-EG

STANDARD CONDITIONS OF SUPERVISION

1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time-frame.

2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.

3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

4) The defendant shall answer truthfully the questions asked by the probation officer.

5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.

7) The defendant shall work full-time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant excused from doing so. If the defendant does not have full time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

10) The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified, for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11) The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12) If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.

13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

14) If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.

15) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.

16) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.

17) If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

Defendant: Rosezzettea Lee Lopez
Case Number: 2:24-CR-00248 (1)-EG

CRIMINAL MONETARY PENALTIES/SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, Attn: Mail Log, 111 E. Broadway Ste. 100, Del Rio, Texas 78840, or online by Debit (credit cards not accepted) or ACH payment (direct from Checking or Savings Account) through pay.gov (link accessible on the landing page of the U.S.District Court's Website). **Your mail-in or online payment must include your case number in the exact format of DTXW224CR000248-001 to ensure proper application to your criminal monetary penalty.**

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

	Assessment	Fine	Restitution	AVAA Assessment*	JVTA Assessment**
TOTAL:	$200.00	$1,000.00	$0.00	$0.00	$0.00

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of $200.00. The debt is incurred immediately.

Fine

The defendant shall pay a fine of $1,000.00. The Court finds the defendant has the present and future ability to pay a reduced fine. This is the total of the fines imposed on individual counts, as follows. $500.00 on count 1, $500.00 on count 2.

Schedule of Payments

Payment shall be made at the rate of no less than $40.00 per month, due by the third day of each month beginning no earlier than 60 days after release from imprisonment. The Court imposed payment schedule shall not prevent statutorily authorized collection efforts by the U.S. Attorney. The defendant shall cooperate fully with the U.S. Attorney and the U.S. Probation Office to make payment in full as soon as possible.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than $2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA Assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
**Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22