No. 24-6178

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL HARVEL, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether willful deprivation of civil rights involving kidnapping or aggravated sexual abuse, in violation of 18 U.S.C. 242, constitutes an "offense punishable by death" for purposes of the federal criminal statute of limitations in 18 U.S.C. 3281.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A30) is reported at 115 F.4th 714. The order of the district court is available at 2022 WL 2678730.

JURISDICTION

The judgment of the court of appeals was entered on August 29, 2024. A petition for rehearing and rehearing en banc was denied on September 30, 2024 (Pet. App. B1). The petition for a writ of certiorari was filed on December 17, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Middle District of Tennessee, petitioner was convicted on nine counts of deprivation of civil rights under color of law, five of which involved kidnapping or aggravated sexual abuse, in violation of 18 U.S.C. 242. Judgment 1-2. The court sentenced petitioner to 204 months of imprisonment, to be followed by five years of supervised release. Judgment 3. The court of appeals affirmed. Pet. App. A1-A30.

1. From 2010 to 2018, petitioner worked for Cumberland County, Tennessee, as the Director of the Solid Waste Department. Pet. App. A2; Gov't C.A. Br. 5. In that role, petitioner oversaw the county's recycling center and supervised the people who worked there -- a group that included both paid employees and individuals who had been sentenced to perform community service at the recycling center to pay off fines imposed for their minor crimes. Pet. App. A2.

For years, petitioner sexually assaulted many of the women that he supervised at the recycling center, including while on the job. Pet. App. A3. Petitioner's abuse long went unreported, as many of his victims felt that police would not believe them because they had criminal records and because petitioner was a high-ranking county official. Ibid. But an employee eventually tipped off law enforcement, and in 2018, local police opened an investigation

into petitioner's conduct. Ibid. A few years later, the FBI opened its own investigation into petitioner's actions. Ibid.

2. In 2021, a federal grand jury in the Middle District of Tennessee charged petitioner with ten counts of deprivation of civil rights under color of state law, in violation of 18 U.S.C. 242. Superseding Indictment 2-8.* The indictment alleged that between 2014 and 2018, petitioner used his authority as a county official to sexually assault eight women he supervised, thereby willfully abridging his victims' due-process rights to bodily integrity, in violation of 18 U.S.C. 242. Id. at 1; see Pet. App. C1.

Section 242 makes it a crime to, "under color of any law, * * * willfully subject[] any person * * * to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States." 18 U.S.C. 242. The statute further provides that "if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill," a defendant "shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death." Ibid.

* The indictment also charged petitioner with one count of kidnapping, in violation of 18 U.S.C. 1201, see Superseding Indictment 4-5, but the government dismissed that charge before trial.

Counts 2 and 3 of the indictment alleged offenses that took place in September 2014, each of which involved kidnapping and aggravated sexual abuse. Id. at 2-3. As the jury would later hear, the victim of both offenses was J.C., a woman who had just finished her community service at the recycling center and been offered a job by petitioner. Pet. App. A4. Petitioner asked J.C. to accompany him to his office to fill out the paperwork. Ibid. When they arrived, petitioner locked the door and forced J.C. to perform oral sex on him. Ibid.; Gov't C.A. Br. 9. J.C. returned to the recycling center the next day to start her first day of employment. Pet. App. A4; Gov't C.A. Br. 9. Again, petitioner brought her to his office, locked the door, and forced her to perform oral sex. Ibid.

Counts 4 and 5 of the indictment alleged offenses that took place in the summer of 2015, likewise involving kidnapping and aggravated sexual abuse. Superseding Indictment 2-3. The victim of those offenses was E.D., a woman whom petitioner hired after she had completed her community service at the recycling center. Pet. App. A4. One evening while petitioner and E.D. were alone together at the recycling center, petitioner invited E.D. into his office, then raped her and told her that she could lose her job if she told anyone. Ibid. A few weeks later, petitioner took E.D. to a remote landfill and raped her a second time. Ibid.

3. Before trial, petitioner moved to dismiss Counts 2 through 5 as time-barred under 18 U.S.C. 3282. Pet. App. C1.

Section 3282 establishes a five-year statute of limitations "for any offense, not capital." 18 U.S.C. 3282. And, in turn, 18 U.S.C. 3281 provides that "[a]n indictment for any offense punishable by death may be found at any time without limitation."

The government maintained that Counts 2 through 5 charged "offense[s] punishable by death" to which no limitations period applies, because Congress provided in 18 U.S.C. 242 that a defendant "may be sentenced to death" for deprivations of civil rights that involve kidnapping or aggravated sexual abuse. 18 U.S.C. 242. Petitioner "agree[d] 18 U.S.C. § 242 includes death as a penalty," but contended that Counts 2 through 5 do not qualify as "'offenses punishable by death'" because this Court has held that the Constitution forbids the use of capital punishment for nonhomicidal crimes. Pet. App. C2. Accordingly, petitioner contended that Section 3282's five-year statute of limitations for noncapital offenses applied, and that Counts 2 through 5 were untimely. Id. at C1.

The district court denied petitioner's motion. Pet. App. C3. The court observed that because Congress provided that a defendant who violates 18 U.S.C. 242 using kidnapping or aggravated sexual abuse "may be sentenced to death," petitioner's convictions on Counts 2 through 5 were "'punishable by death'" under 18 U.S.C. 3281, and thus no limitations period applied. Pet. App. C2-C3 & n.2. And the court explained that "[c]onstitutional considerations regarding whether a defendant can actually be

sentenced to death for a certain crime do not impact the statute of limitations analysis." Id. at C2-C3 (citation omitted).

Following an eight-day trial -- during which the jury heard testimony from 34 witnesses, including victims of petitioner's sexual abuse -- the jury found petitioner guilty of nine counts of of willful deprivations of civil rights in violation of 18 U.S.C. 242, and acquitted petitioner on one misdemeanor count of the same. Jury Verdict 1-9; Gov't C.A. Br. 4. The counts of conviction included Counts 2-5 and one other count charging the enhanced form of the offense, involving kidnapping and/or sexual abuse. Judgment 1-2. The district court sentenced petitioner to 204 months of imprisonment on Counts 1 through 5 and 12 months of concurrent imprisonment on the remaining counts, to be followed by five years of supervised release. Judgment 3-4.

4. The court of appeals affirmed. Pet. App. A1-A30.

The court of appeals rejected petitioner's contention that Counts 2 through 5 cannot be "offense[s] punishable by death" under Section 3281 because this Court's Eighth Amendment precedents prohibit the death penalty for nonhomicide offenses. Pet. App. A8-A11. The court of appeals observed that this Court rejected an analogous argument in the context of a statute-of-limitations provision in the Uniform Code of Military Justice (UCMJ) in United States v. Briggs, 592 U.S. 69 (2020). Pet. App. A8. And the court recognized that Briggs's reasons for interpreting the phrase "punishable by death" as a reference solely to the statutorily

authorized punishment, and not to any Eighth Amendment caselaw, mapped directly onto Section 3281. See id. at A8-A10.

The court of appeals also rejected petitioner's alternative argument that even if the phrase "punishable by death" in 18 U.S.C. 3281 looks only to the penalty provisions in Title 18, Section 242's penalty provisions are best read to provide for the death penalty only for offenses that cause death. Pet. App. A11-A13. The court observed that petitioner did "not attempt to reconcile his reading with § 242's text," which "could not be clearer: if a defendant's actions 'include kidnapping' or 'aggravated sexual abuse,' the defendant 'may be sentenced to death.'" Id. at A11 (quoting 18 U.S.C. 242). And while petitioner contended that Congress could not have intended that result, because Congress added the "may be sentenced to death" language to the provision after this Court had held that Congress could not impose the death penalty for rape of an adult or kidnapping, the court declined to elevate such "speculation" about Congress's intentions over the plain text. Id. at A11-A12. The court also identified possible reasons why Congress would have extended the death-penalty provision to nonhomicide aggravators in Section 242 notwithstanding this Court's precedent, including to move the crimes outside of Section 3282's statute of limitations, or to "influence the Supreme Court's evolving-standards caselaw." Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 6-16) that Counts 2 through 5 are not offenses "punishable by death" under 18 U.S.C. 3281 and are therefore time-barred. The court of appeals correctly rejected that argument, and its decision does not conflict with any decision of this Court or any other federal court of appeals. No further review is warranted.

1. Petitioner no longer appears to contest that, under the logic of United States v. Briggs, 592 U.S. 69 (2020), Section 3281's reference to offenses "punishable by death" is a reference to the statutorily authorized punishment, irrespective of Eighth Amendment caselaw. Instead, he argues that Section 242 authorizes a sentence of death for the offense of willful deprivation of civil rights involving kidnapping or aggravated sexual assault only if death results. See Pet. 6-16. As the court of appeals recognized, that argument is unsound. Pet. App. 11-12.

Section 242 straightforwardly states that "[i]f death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, [the defendant] shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death." 18 U.S.C. 242 (emphasis added). That language is unambiguous: if an offense under the statute "include[s] kidnapping" or "aggravated sexual abuse," or attempts

to commit those crimes, the defendant "may be sentenced to death." Ibid. Those offenses are thus "punishable by death" under 18 U.S.C. 3281.

Petitioner offers no reading of the plain text under which acts involving kidnapping and/or aggravated sexual assault are not in themselves subject to the death penalty. He instead argues (Pet. 10) that the Court should reject the clear meaning of the plain text under the canon against absurd results. He notes (Pet. 7-8) that Congress added the possibility of a death sentence to 18 U.S.C. 242 in 1994, after this Court decided that the death penalty could not constitutionally be applied to nonhomicidal rape. See Coker v. Georgia, 433 U.S. 584, 592 (1977). And he asserts (Pet. 7-11) that Congress could not possibly have intended to apply the death penalty to civil-rights kidnappings and sexual assaults at that time, because doing so would have conflicted with this Court's interpretation of the Eighth Amendment.

Petitioner's argument cannot be squared with the statute's continued authorization of the death penalty for an "attempt to kill" -- an authorization that would be meaningless had Congress intended to authorize the death penalty if and only if the crime resulted in death. Furthermore, as the court of appeals observed, there are multiple plausible explanations for why Congress might have put the death penalty on the table for civil-rights kidnappings and sexual assaults even in 1994. See Pet. App. A12. For example, Congress may have sought to extend the statute of

limitations for those crimes. Ibid. Or it might have sought to "influence the Supreme Court's evolving-standards caselaw -- which ties the constitutionality of the death penalty for a crime to the number of jurisdictions that authorize it for that crime." Ibid. (citing Kennedy v. Louisiana, 554 U.S. 407, 431-433 (2008)). Those are reasonable explanations for Congress's handiwork, not "absurd results" that justify disregarding the unambiguous statutory text.

Petitioner raises several other atextual arguments that are equally unavailing. He contends (Pet. 11-13) that his reading is supported by Section 242's legislative history and the original title of the 1994 amendment that added the death penalty to 18 U.S.C. 242. But even assuming those factors supported him, they cannot overcome the plain language that Congress used in Section 242. See Whitfield v. United States, 543 U.S. 209, 215 (2005) ("We need not accept petitioners' invitation to consider the legislative history" when "the meaning of [the statutory] text is plain and unambiguous."); Florida Dep't of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33, 47 (2008) ("The title of a statute . . . cannot limit the plain meaning of the text.") (brackets and citation omitted). Petitioner also invokes (Pet. 13-14) the concepts of repose and lenity. "But 'the rule of lenity only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute, such that the Court must simply guess as to what Congress

intended.'" United States v. Castleman, 572 U.S. 157, 172-173 (2014) (citation omitted). No such ambiguity exists here.

3. Petitioner does not identify any case that conflicts with the decision below. Indeed, "other circuit courts have unanimously held that a crime is 'punishable by death' under § 3281 if the penalty provisions in the statute of conviction permit a death sentence." Pet. App. A10 (citing decisions in the Second, Fourth, Eighth, Ninth, and Tenth Circuits). And none has held that Section 242 offenses involving kidnapping or aggravated sexual abuse are not "punishable by death." Given the absence of any conflict among the lower courts, further review of petitioner's claim is especially unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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