No. 24-279

In the Supreme Court of the United States

360 VIRTUAL DRONE SERVICES LLC ET AL.,
PETITIONERS

v.

ANDREW L. RITTER, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE NORTH CAROLINA BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS, ET AL.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR REHEARING

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CORPORATE DISCLOSURE STATEMENT

The information in the corporate disclosure statement at page ii of petitioners' petition for a writ of certiorari remains accurate, current, and complete.

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INTRODUCTION

360 Virtual Drone Services LLC and Michael Jones respectfully petition under Rule 44.2 for rehearing of the Court's April 20, 2026 order denying their petition for a writ of certiorari. On March 31, the Court decided *Chiles* v. *Salazar*, 146 S. Ct. 1010 (2026). That decision makes this case a compelling candidate for a GVR—the most common ground on which rehearings of cert denials are granted—because it directly calls into question the premise of the decision below. Both decisions dealt with the test for "drawing the line between a regulation aimed at professional conduct that incidentally burdens speech and one aimed at speech as speech." Pet. App. 17a; *Chiles*, 146 S. Ct. at 1026 ("Colorado does not regulate speech incident to conduct; it regulates 'speech as speech.'"). Yet the speech-incident-to-conduct standard developed by the Fourth Circuit differs wildly from the speech-incident-to-conduct standard synthesized in *Chiles*.

Just put the two opinions side by side. According to *Chiles*, this Court's "speech-incident-to-conduct precedents" focus on "two . . . questions": "whether the law in question restricts speech only because it is integrally related to unlawful conduct," and "whether the law restricts expressive conduct only for reasons unrelated to its content." 146 S. Ct. at 1026. The Fourth Circuit, meanwhile, opted instead for an idiosyncratic, "non-exhaustive list of factors." Pet. App. 24a. That standard bears no likeness to the standard of *Chiles*. In fact, the Fourth Circuit invoked a conversion-therapy decision that *Chiles* would later abrogate by name. Worse, *Chiles* itself could well have turned out differently under the Fourth Circuit's standard. Two of that court's three factors—whether the regulated speech carries "health-related consequences" and whether it is conveyed in a "private sphere"—would

signal that Colorado's conversion-therapy law "regulates professional conduct and only incidentally burdens speech." Pet. App. 24a-25a.

Given that gulf between the two opinions, there is, at minimum, "a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration." *Lawrence ex rel. Lawrence* v. *Chater*, 516 U.S. 163, 167 (1996) (per curiam). And whatever one's views of petitioners' case, the equities favor a GVR order here. Post-*Chiles*, how the First Amendment applies to occupational-licensing laws may implicate several open questions. *Chiles*, 146 S. Ct. at 1028; *id.* at 1031 (Kagan, J., concurring). These cases will continue to arise, as First Amendment challenges like this one "continu[e] to percolate in courts across the country." Br. in Opp. 26. Yet for as long as the decision below remains binding circuit precedent, courts in the Fourth Circuit will be shut out of the dialogue—with a speech-incident-to-conduct standard that finds no support in precedent and a "quite different," "more relaxed," and "loosened" level of First Amendment scrutiny that sets it apart from the rest of the Nation. Giving the Fourth Circuit an immediate clean slate to address this Court's most recent precedent thus would well serve not just the development of the law in that circuit, but this Court's own decisional process. *Brown* v. *Polk County*, 141 S. Ct. 1304, 1304 (2021) (statement of Sotomayor, J., respecting the denial of certiorari) (discussing percolation). GVRs have issued in circumstances far less compelling than these.

BACKGROUND

1. In the modern era, every State requires a license to perform "surveying." But States differ dramatically in what does and doesn't qualify. Some require licenses only for projects that affect real property rights. Others carve out exemptions—for aerial images, for instance. Others opt instead for breadth, defining "surveying" in terms so expansive as to be triggered simply by the communicative content in photographs.

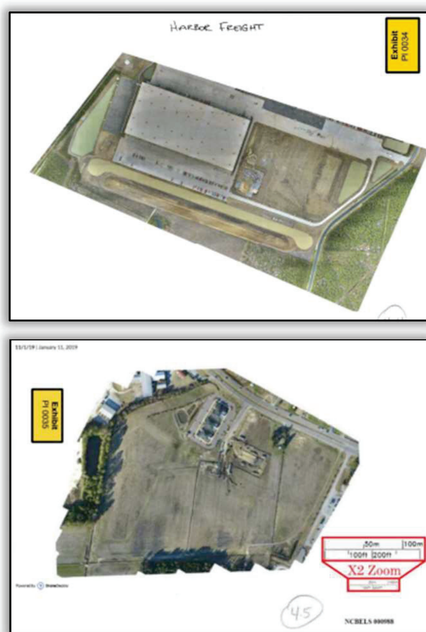
North Carolina falls into this last category. Not only does it require a surveyor license to perform projects that have legal implications for property rights (e.g., stamping and recording plats), it requires the license to communicate *any* aerial photos that "contain location information, georeferenced data, or any information that a recipient could use to make measurements on the maps." Pet. App. 43a (citation omitted). Affixing a scale bar to an aerial image (think Google Earth) is enough to expose you to enforcement.

That danger is hardly theoretical. In recent years, the State's surveying board has issued a raft of cease-and-desist letters warning small-time drone photographers against offering aerial images that communicate even basic locational information. Only "[i]f there is no meta data or other information about coordinates, distances, property boundaries or anything that falls within the definition of land surveying" can a photographer lawfully give customers aerial images of their land. Pet. App. 35a.

2. After petitioners—a photographer and his one-man company—received one such letter, they filed this as-applied First Amendment challenge. Petitioners have no interest in performing traditional "surveying," like stamping plans, setting monuments, formalizing metes and bounds, and the like. They just want to offer aerial

photos containing basic locational data. They also want to offer 3D digital models—photos combined to make three-dimensional visual representations of buildings or land. Under North Carolina's surveying law, however, it is unlawful for them to communicate these sorts of images unless they have a land-surveyor license. Pet. 9 (noting that petitioner Jones would need to spend nine years working under a licensed surveyor and gaining expertise in work that he has no interest in performing).

As applied to petitioners, moreover, the record would come to confirm the obvious: North Carolina's law is triggered solely by the communicative content in their photos. Of their two images below, for instance, the first would be lawful for them to share. The second? A crime—due to the scale bar in the corner.



3. The Fourth Circuit rejected petitioners' First Amendment claim. As the court saw it, the dispositive issue was the standard for "drawing the line between a regulation aimed at professional conduct that incidentally burdens speech and one aimed at speech as speech." Pet. App. 17a. To draw that line, the court staked out a new set of "guideposts." Pet. App. 13a. Rather than adhere to this Court's traditional speech–conduct standard, the court articulated a "non-exhaustive list of factors" to "distinguish[] between licensing regulations aimed at conduct and those aimed at speech as speech." Pet. App. 24a. Those factors are "whether the speech carries economic, legal, public-safety, or health-related consequences," "whether the speech takes place in a traditionally public space," and "whether the regulation seeks to quell unpopular or dissenting speech." Pet. App. 24a.

Applying that "variety of factors" to petitioners, the court held that North Carolina's surveying law "regulates professional conduct and only incidentally burdens speech." Pet. App. 17a, 25a. The court then developed a new level of First Amendment scrutiny. For "a regulation of professional conduct that only incidentally impacts speech," the court debuted a "quite different" and "lower" level of review—one "more relaxed" than traditional intermediate scrutiny. Pet. App. 10a, 19a, 21a. Using that "loosened" level of scrutiny, Pet. App. 20a, the court upheld North Carolina's mapping-and-modeling ban.

4. Petitioners sought certiorari, and their petition appears to have been held pending the Court's decision in *Chiles* v. *Salazar*. Following that decision, the petition was denied.

GROUNDS FOR REHEARING

Rehearing should be granted and the case GVR'd in light of *Chiles* v. *Salazar*.

Rehearing of a denial of certiorari is warranted only in "the most extraordinary circumstances." 16B Charles Alan Wright et al., *Federal Practice & Procedure* § 4004.6 at 133 (3d ed. 2012). Among the most common is when a recent precedent of this Court counsels in favor of a GVR. *E.g.*, *Oklahoma* v. *United States*, 145 S. Ct. 2836 (2025) (mem.); *Kent Recycling Servs., LLC* v. *Army Corps of Eng'rs*, 578 U.S. 1019 (2016) (mem.); *Liberty Univ.* v. *Geithner*, 568 U.S. 1022 (2012) (mem.); *Melson* v. *Allen*, 561 U.S. 1001 (2010) (mem.); *Friend* v. *United States*, 517 U.S. 1152 (1996) (mem.).

This is just such a case. "[U]ndoubtedly the largest category of 'GVRs' that now exists" involves cases in which a recent precedent of this Court potentially casts doubt on the decision below. *Lawrence ex rel. Lawrence* v. *Chater*, 516 U.S. 163, 180 (1996) (Scalia, J., dissenting). And this case checks all the boxes. *Chiles* supports "a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration." *Id.* at 167 (per curiam). It is likely "that such a redetermination may determine the ultimate outcome of the litigation." *Id.* And given the persistent lower-court confusion over the First Amendment implications for occupational-licensing laws, "the equities and legal uncertainties" counsel strongly in favor of giving the Fourth Circuit an immediate clean slate to revisit its analysis. *Id.* at 175.

A. Because the Fourth Circuit's speech-incident-to-conduct standard differs from *Chiles*'s, there is a reasonable probability the court would reject its standard if given the chance.

To start, there is "a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration" in light of *Chiles*. *Id.* at 167.

Put the two opinions alongside one another. In *Chiles*, a central issue was this: whether, as applied to Ms. Chiles's talk therapy, Colorado's conversion-therapy law "regulate[s] speech incident to conduct" or instead "regulates 'speech as speech.'" 146 S. Ct. at 1026. According to Colorado, the law "only incidentally prohibited Ms. Chiles's speech." *Id.* at 1025. Yet the Court rejected that proposition as "fundamentally misconceiv[ing] this Court's speech-incident-to-conduct precedents." *Id.* at 1026. "If a government could reclassify talk therapy as speech incident to conduct," the Court reasoned, "it might just as easily do the same for speech incident to 'teaching or protesting.'" *Id.* at 1025. And the Court's "precedents in *Cohen* and *Holder* already foreclose exactly this move." *Id.* Instead, the speech-incident-to-conduct standard looks to "two . . . questions": "whether the law in question restricts speech only because it is integrally related to unlawful conduct" and "whether the law restricts expressive conduct only for reasons unrelated to its content." *Id.* at 1026.

Below, this case raised the same methodological question. Petitioners urged precisely the standard this Court has since articulated in *Chiles*. *E.g.*, Appellants' C.A. Brief 33-40 (explaining why *Holder*'s principles apply); C.A. Oral Arg. 11:17-17:54 (same, for *Holder* and *Cohen*). But "in drawing the line between a regulation aimed at

professional conduct that incidentally burdens speech and one aimed at speech as speech," the Fourth Circuit opted for a different standard altogether. Pet. App. 17a. The court did not consider whether petitioners' "speech bears a close causal connection to some separately unlawful conduct like a traditional crime." *Chiles*, 146 S. Ct. at 1026. (It doesn't, and North Carolina nowhere argued otherwise.) Nor did the court consider "whether the law restricts expressive conduct only for reasons unrelated to its content." *Id.* Rather, the court introduced a different standard entirely: its "non-exhaustive list of factors" to "distinguish[] between licensing regulations aimed at conduct and those aimed at speech as speech." Pet. App. 24a.

With *Chiles* on the books, there is every reason to think (and certainly a "reasonable probability") that the Fourth Circuit would conclude that its nonexhaustive-list-of-factors standard "rests upon a premise" at odds with this Court's precedent. *Lawrence*, 516 U.S. at 167. After all, the court's "variety of factors" (Pet. App. 17a) bears no resemblance to the "speech-incident-to-conduct precedents" synthesized in *Chiles*. 146 S. Ct. at 1026. In developing it, the Fourth Circuit even invoked a conversion-therapy decision that *Chiles* would later abrogate. Pet. App. 17a (citing *Tingley* v. *Ferguson*, 47 F.4th 1055 (9th Cir. 2022)).

And more: the Fourth Circuit's standard would quite likely have produced a different outcome in *Chiles* itself. Just apply the "variety of factors." Ms. Chiles's talk therapy surely can be said to carry "public-safety[] or health-related consequences"—the first of the factors. Pet. App. 24a; *see also Chiles*, 146 S. Ct. at 1029. Her client communications "take[] place in the private sphere," not "a traditionally public space"—the second factor. As for the third? Whether Colorado's law "seeks to quell unpopular

or dissenting speech"? That one might belong on Ms. Chiles's side of the ledger. But does a plaintiff-side checkmark on one of the factors outweigh government-side checkmarks on the others? Who knows?

One thing is clear. Under this Court's understanding of its "speech-incident-to-conduct precedents," Colorado's conversion-therapy law cannot be said to "regulate speech incident to conduct." *Chiles*, 146 S. Ct. at 1026. But under the Fourth Circuit's competing approach? At best, a coin-toss. Simply, there is not the slightest overlap between the Fourth Circuit's standard and *Chiles*'s. Given that gulf, in fact, future Fourth Circuit panels would be well within their rights to hold that *Chiles* outright abrogated the decision below. But for GVR purposes, the bar is far lower, and it is readily met here. The mismatch between *Chiles* and the decision below supports, at minimum, a reasonable probability the Fourth Circuit would rethink its premises if given the chance.

B. The Fourth Circuit's revisiting its decision could well change the outcome of the case.

It likewise "appears that such a redetermination may determine the ultimate outcome of the litigation"—the second consideration counseling a GVR. *Lawrence*, 516 U.S. at 167. Had the Fourth Circuit applied anything resembling *Chiles*'s speech-incident-to-conduct standard, the outcome could well have been different. As applied to petitioners, North Carolina's surveying law is not triggered by any non-communicative conduct. It does not, for example, regulate the mechanics of flying drones. Rather, it is triggered by one act alone: communicating information. Petitioners "can create aerial orthomosaic maps *but cannot give the maps to anyone* if the maps contain location information, georeferenced data, or any information that a recipient could use to make measurements

on the maps." Pet. App. 43a (emphasis added; citation omitted). Like Ms. Chiles, petitioners "seek[] to engage only in speech." *Chiles*, 146 S. Ct. at 1023. And "as applied to [them] the law regulates what [they] may say." *Id.* A photo sporting a scale bar? Verboten. One without? Allowed. On this record, the speech–conduct analysis is no less straightforward than in *Chiles*.

In reevaluating this case with the benefit of *Chiles*, there is thus a reasonable probability the Fourth Circuit would recognize that it "fundamentally misconceive[d] this Court's speech-incident-to-conduct precedents." *Id.* at 1026. There is a reasonable probability the court would conclude that North Carolina regulates petitioners' speech directly, not incidentally. There is a reasonable probability it would apply traditional First Amendment scrutiny rather than the "quite different," "loosened," "more relaxed," and "lower" version it deployed below—one, it stressed, that is unique to "restrictions [that] are primarily aimed at professional conduct and only incidentally burden speech." Pet. App. 10a, 19a-21a, 23a. And under either strict scrutiny or intermediate, there is a reasonable probability petitioners would prevail. Indeed, the Fourth Circuit all but admitted that, under any traditional level of First Amendment review, petitioners' willingness to use a "disclaimer" might well "suffice to resolve the concerns in this case." Pet. App. 28a.

C. Whatever one's views about this case, a GVR would well serve the development of the law in the lower courts.

One doesn't need to be convinced that petitioners should win to grasp the value a GVR would have for our "multitiered judicial system." *Lawrence*, 516 U.S. at 181 (Scalia, J., dissenting). Over the past decade, the federal courts have remained mired in "marked judicial disagree-

ment on the First Amendment implications of licensing." Claudia E. Haupt, *Licensing Knowledge*, 72 Vand. L. Rev. 501, 502 (2019). Even while petitioners' certiorari petition was pending, the Seventh Circuit remarked that the "division between speech and conduct has not been evenly applied throughout the country"—and "particularly when it comes to licensing schemes that determine which individuals can speak about certain topics." *Richwine* v. *Matuszak*, 148 F.4th 942, 953 (2025). A month after that, the Second Circuit weighed in as well. In considering a First Amendment challenge to New York's UPL statute, the court applied, not the Fourth Circuit's variety-of-factors standard, but one that tracks the speech–conduct analysis this Court would use in *Chiles*. *Upsolve, Inc.* v. *James*, 155 F.4th 133, 141-42 (2d Cir. 2025), *cert. denied*, 607 U.S. __ (2026); *id.* at 143-44 (holding law content-neutral and remanding for the district court to apply traditional intermediate scrutiny).

In short, how the First Amendment applies to occupational-licensing laws remains hotly contested. And even after *Chiles*, these cases implicate several open questions. As the Court in *Chiles* noted, for example, licensing boards may argue that their laws have a unique historical pedigree exempting them from ordinary First Amendment principles. *Chiles*, 146 S. Ct. at 1028. *But see* Paul M. Sherman & Daniel Nelson, *The (Weak) Historical Case for Licensing Speech*, 3 Tex. A&M J. L. & Civ. G. __ (forthcoming 2027), https://tinyurl.com/5yhvz55a. Two members of the Court further suggested that, in the professional sphere, speech restrictions that are content-based but viewpoint-neutral may face something less than strict scrutiny. 146 S. Ct. at 1030-31 (Kagan, J., concurring). But for as long as the decision below is recognized as circuit precedent, courts in the Fourth Circuit will be stuck at the analytic starting gate: with a standard that

finds no support in case law and a level of First Amendment scrutiny unique to the Mid-Atlantic region.

Against this backdrop, "the equities and legal uncertainties of this case" readily "merit a GVR order." *Lawrence*, 516 U.S. at 175. The issues in this case are important, and they will recur in the lower courts for years to come. Br. in Opp. 26. Efficiency thus counsels giving the Fourth Circuit an immediate clean slate so that it can fully consider *Chiles*'s implications in resolving these types of controversies.

CONCLUSION

The petition for rehearing should be granted and the case GVR'd for further consideration in light of *Chiles* v. *Salazar*.[*]

Respectfully submitted.

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[*] A similar petition for rehearing is being filed today in *Crownholm* v. *Moore*, No. 24-276.

CERTIFICATION OF COUNSEL

As counsel of record for petitioners, I certify that this petition for rehearing is restricted to the grounds specified in Rule 44.2 and is presented in good faith and not for delay.

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MAY 15, 2026