

No. _____

IN THE
Supreme Court of the United States

GABRIELLA VICTORIA OROPESA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case concerns the government’s use of the Free Access to Clinic Entrances (FACE) Act, 18 U.S.C. § 248, as the statutory predicate for an indictment alleging a violation of 18 U.S.C. § 241, the criminal conspiracy-against-rights statute. Enacted in 1870, Section 241 provides a criminal action against individuals who violate “any right or privilege secured to [citizens] by the Constitution or laws of the United States.” Its civil counterpart, 42 U.S.C. § 1983, quite similarly provides private plaintiffs a civil action to remedy the deprivation of any “rights, privileges, or immunities secured by the Constitution and laws.” Beginning with *Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1 (1981), and continuing through *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113 (2005), this Court has recognized an important limitation on the term “laws” as it appears in Section 1983, excluding statutes that contain their own comprehensive enforcement schemes.

This Court has not yet had occasion to determine whether this important limitation on the Section 1983 cause of action - the exclusion of statutes containing their own comprehensive enforcement schemes - also applies to the criminal “laws” enforceable by Section 241.

The questions presented are:

1. Whether criminal statutes containing their own comprehensive enforcement provisions and penalties are, as in Section 1983, excluded from serving as predicate “laws” for additional criminal enforcement under Section 241.

2. Whether the criminal enforcement remedies contained in the FACE Act, 18 U.S.C. § 248(a)&(b), are sufficiently comprehensive to preclude additional criminal enforcement through Section 241.

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner Gabriella Oropesa was the Defendant-Appellant in the courts below. Respondent United States of America was the Appellee in the court below.

LIST OF PROCEEDINGS RELATED TO THE CASE

United States District Court (M.D. Fla.)
United States v. Freestone, et al.,
No. 8:23-cr-205-VMC-AEP (March 13, 2025)

United States Court of Appeals (11th Cir.)
United States v. Oropesa,
No. 25-10928 (November 20, 2025)

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**CITATIONS OF THE REPORTS OF THE
OPINIONS AND ORDERS ENTERED IN THE CASE**

The court of appeals' opinion (App., *infra*, 1a-22a) is reported at 159 F. 4th 912. The district court's opinion (App., *infra*, 23a-37a) is available at 2023 WL 4824481.

BASIS FOR JURISDICTION IN THIS COURT

The judgment of the court of appeals was entered on November 20, 2025. (App., *infra*, 1a-22a). A petition for rehearing en banc was denied on February 2, 2026. (App., *infra*, 38a-39a). The jurisdiction of this Court is invoked under by 28 U.S.C. § 1254(1).

STATUTES INVOLVED IN THE CASE

1. 18 U.S.C. § 241, the felony conspiracy-against-rights statute, provides:

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured –

They shall be fined under this title or imprisoned not more than ten years, or both; and 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 kill, they 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. § 241.

2. 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

3. 18 U.S.C. § 248(a)&(b), the criminal provision of the FACE Act, provides:

(a) Prohibited Activities.—Whoever—

(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;

(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

(3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages or destroys the property of a place of religious worship,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section

for such activities insofar as they are directed exclusively at that minor.

(b) Penalties.—Whoever violates this section shall—

(1) in the case of a first offense, be fined in accordance with this title, or imprisoned not more than one year, or both; and

(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with this title, or imprisoned not more than 3 years, or both;

except that for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than \$10,000 and the length of imprisonment shall be not more than six months, or both, for the first offense; and the fine shall, notwithstanding section 3571, be not more than \$25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

18 U.S.C. § 248(a)&(b).

STATEMENT OF THE CASE

The basis for federal jurisdiction in the court of first instance, the United States District Court for the Middle District of Florida, was 18 U.S.C. § 3231.

Gabriella Oropesa was one of four defendants charged in March 2023 with violation of the felony conspiracy-against-rights statute, 18 U.S.C. § 241, based on a predicate offense of violation of the Free Access to Clinic Entrances (FACE) Act, 18 U.S.C. § 248. A superseding indictment charged that Oropesa violated Section 241 which, unlike the FACE Act (in her circumstances),¹ carries only felony penalties, by interfering with employees of facilities providing reproductive health services in the free exercise of their right to provide those services, a right secured by the FACE Act. More specifically, in the manner and means section of the conspiracy alleged in the superseding indictment, Oropesa was alleged to have joined her codefendants after hours to spray-paint symbols and messages on the exteriors of two reproductive health services facilities. One of the messages was, “If abortions aren’t SAFE then niether (*sic*) are you.”

Oropesa moved to dismiss the superseding indictment. Her primary argument was that the FACE Act is not among the qualifying “laws of the United States” enforceable through the conspiracy-against-rights statute, 18 U.S.C. § 241. Looking to Section 241’s companion civil statute,

1. Although the FACE Act also contains felony penalties, the substantive conduct Oropesa was charged with conspiring to commit is punishable under the FACE Act as a misdemeanor. *See* 18 U.S.C. § 248(b)(1).

42 U.S.C. § 1983, and its materially identical terms,² Oropesa argued that a line of Supreme Court opinions, including *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113 (2005) (*Abrams*) established that, if the specific “law” sought to be incorporated into a Section 1983 cause of action carries its own comprehensive enforcement scheme, it may not be enforced through Section 1983.³ She argued that this principle has even greater resonance for criminal statutes, where constitutional considerations of fair notice and avoiding vagueness are paramount. Further, she identified the problem of disproportionality that occurs when a defendant is charged with a felony under Section 241 for conspiring to commit substantive conduct that is itself punishable only as a misdemeanor under the FACE Act.

The district court denied Oropesa’s motion to dismiss. App., *infra*, 23a-37a. Oropesa was the only defendant who proceeded to trial, and the jury returned a guilty

2. The pertinent text of Section 241 provides, “If two or more persons conspire to injure any person ... in the free exercise or enjoyment of any *right* or privilege *secured* to him by the Constitution or *laws* of the United States ... ” 18 U.S.C. § 241 (emphasis added). Section 1983 employs almost identical language, as it prohibits the “deprivation of any *rights*, privileges, or immunities *secured* by the Constitution and *laws*....” 42 U.S.C. § 1983 (emphasis added).

3. In the district court, the government made this same argument in the context of determining the meaning of the term “right,” acknowledging that, “Because there are relatively few cases considering whether a civil rights statute creates a right enforceable under Section 241, it is helpful to examine the law that has developed under 42 U.S.C. § 1983.” *United States v. Freestone, et al.*, Case No. 8:23-cr-25-VMC-AEP (M.D. Fla. 2023) (Doc. 108 at 7).

verdict. On March 13, 2025, she was adjudicated guilty of the Section 241 felony and sentenced to 120 days' imprisonment, which she has since served, and a pending term of supervised release. Oropesa then appealed to the Eleventh Circuit, which issued its published opinion affirming her conviction. App., *infra*, 1a-22a.

The *Oropesa* majority addressed her contention that the conviction must be vacated because the government may not properly charge a conspiracy to violate the FACE Act through Section 241. App., *infra*, 6a.⁴ The majority framed the issue as one of statutory construction, specifically of the text of the 1870 Enforcement Act (since codified as Section 241). *Id.* Section 241, the majority reasoned, “reaches conspiracies to violate a ‘right’ secured by the ‘laws of the United States.’” *Id.*, quoting 18 U.S.C. § 241. Relying primarily on *United States v. Price*, 383 U.S. 787 (1966), the *Oropesa* majority noted that the language of Section 241 is “‘plain and unlimited’ and ‘embraces *all* of the rights and privileges secured to citizens by ... *all* of the laws of the United States.’” *Id.* at 7a, quoting *Price*, at 800 (emphasis added by *Oropesa* court). Because *Price* requires reading Section 241 with “‘full credit to its language,’” and because the FACE Act is a federal law, the plain text of § 241 reaches the FACE Act. *Id.*, quoting *Price*, at 806.

The majority acknowledged that “*Oropesa* ... concedes that the FACE Act creates a right and is a ‘law of the

4. In his concurring opinion, Judge Jordan did not join this section of the panel’s opinion, reasoning that *Oropesa*’s conviction should be affirmed because the FACE Act’s saving clause would preserve the government’s right to pursue prosecution under 18 U.S.C. § 241. App., *infra*, 18a (Jordan, J., concurring). *Oropesa* briefly addresses the saving clause issue below.

United States.” App., *infra*, 7a, *quoting* Section 241. The majority accurately noted that Oropesa’s argument, instead, is that the FACE Act does not belong to the category of “laws of the United States” that could be enforced through Section 241 because it provides its own comprehensive enforcement scheme in which Congress authorized “less extensive” penalties (for her specific criminal conduct) than those available under Section 241. *Id.*⁵

The majority observed that Oropesa analogizes to caselaw limiting the extent to which 42 U.S.C. § 1983⁶ – which has the same statutory language authorizing enforcement of “any rights ... secured by the ... Constitution and laws” – affords a private right of action to enforce violations of federal statutes. App., *infra*, 7a-8a. *quoting* Section 1983. The *Oropesa* majority reasoned that one such limitation is that a defendant may show that the federal statute in question does not secure a “right.” *Id.* at 8a.⁷ The second limitation is that a Section 1983 defendant

5. For this argument, Oropesa relies on *Abrams*, which held that, because “[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others’ ... , the existence of a more restrictive private remedy for statutory violations has been the dividing line between those cases in which we have held that an action would lie under § 1983 and those in which we have held that it would not.” *Abrams*, 544 U.S. at 121, *quoting Alexander v. Sandoval*, 532 U.S. 275, 290 (2001).

6. Section 1983 was enacted in 1871 as a provision of the Civil Rights Act by the same Reconstruction Congress that enacted the Enforcement Act, codified as Section 241, the previous year.

7. Again, Oropesa has always acknowledged that the FACE Act clears this first hurdle.

can rebut the presumption that a statutory right may be enforced against her by demonstrating that Congress did not intend to extend that remedy to enforce a “newly created right.”⁸ *Id.*, quoting *Smith v. Robinson*, 468 U.S. 992, 1012 (1984). One way of demonstrating Congress’s lack of intent is when the statute creates a “comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983.” *Id.* at 8a-9a, quoting *Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1, 19-20 (1981) (*Sea Clammers*).

Noting that Oropesa’s contention is that the FACE Act’s comprehensive enforcement scheme reflects Congress’s intent to preclude additional enforcement through Section 241 – observing, for example, that the FACE Act’s penalties are more restrictive than the those available under Section 241⁹ – the *Oropesa* majority nonetheless reasoned that the Eleventh Circuit has never suggested that a criminal statute containing its own penalties prevents prosecution under Section 241 for conspiring to violate those same statutory rights. App., *infra*, 9a.

8. The FACE Act was enacted in 1994.

9. Here, the majority cited *Abrams*, 544 U.S. at 121. *Id.* at 917 & n. 4. In this section of *Abrams*, this Court held, “[T]he existence of a more restrictive private remedy for statutory violations has been the dividing line between those cases in which we have held that an action would lie under § 1983 and those in which we held it would not.” 544 U.S. at 121. To reiterate, although the FACE Act contains felony penalties for aggravated conduct or recidivism, the specific conduct that Oropesa and her codefendants were alleged to have conspired to commit is punishable under the FACE Act only as a misdemeanor. *See* 18 U.S.C. § 248(b)(1).

The majority explained the reason is that “[o]ur caselaw limiting the scope of Section 1983 simply has no bearing on whether the FACE Act is among the ‘laws of the United States’ enforceable through Section 241.” App., *infra*, 10a (*quoting* statute). Relying exclusively on *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 145 S. Ct. 2219 (2025), the *Oropesa* majority reasoned, “In the Section 1983 context, the fact that a federal statute ‘has displaced § 1983’s general cause of action with a more specific remedy’ is relevant to whether that ‘statute secures an enforceable *right*,’ not whether that statute is a ‘law’ to begin with.” *Id.*, *quoting Medina*, 145 S. Ct. at 2229 (emphasis added by *Oropesa* court.)¹⁰

10. The *Oropesa* majority misreads this Court’s opinion in *Medina*. The relevant paragraph states in full:

To prove that a statute secures an enforceable right, privilege, or immunity, and does not just provide a benefit or protect an interest, a plaintiff must show that the law in question “clearl[ly] and unambiguous[ly]” uses “rights-creating terms.” [*Gonzaga Univ. v. Doe*, 536 U.S. 273, 284, 290 (2002)]. In addition, the statute must display “‘an unmistakable focus’ on individuals like the plaintiff. *Id.* at 284 (emphasis deleted); *accord*, [*Health and Hospital Corporation of Marion Cty. v. Talevski*, 599 U.S. 166, 183 (2023)]. We have described this as a “stringent” and “demanding” test. *Id.* at 180; *accord, post*, at 2250-2251 (JACKSON, J., dissenting) (describing *Gonzaga* as setting forth “a restrictive test”). *And even for the rare statute that satisfies it, this Court has said, a § 1983 action still may not be available if Congress has displaced § 1983’s general cause of action with a more specific remedy. Ranchos Palos Verdes v. Abrams*, 544 U.S. 113, 120 (2005).

The *Oropesa* majority then noted that the *Medina* Court identified the separation of powers considerations underlying limitations on private statutory actions through Section 1983. App., *infra* 10a-11a, *citing Medina*, 145 S. Ct. at 2229-30. A presumption against implied private causes of action brought under Section 1983 requires either an express congressional provision of the remedy, or a clear implication from the text of the statute. *Id.* at 11a, *citing* A. Scalia and B.A. Garner, *Reading Law: The Interpretation of Legal Texts* 313 (2012); *Medina*, 145 S. Ct. at 2233. “But that principle,” the *Oropesa* majority continued,

Medina, 145 S. Ct. at 2229 (emphasis added). This passage in *Medina* highlights the two distinct hurdles a plaintiff must clear to demonstrate that a federal statute can be enforced through Section 1983. The first – which *Oropesa* concedes would be satisfied by the FACE Act – is that the statute confers an enforceable “right.” This first hurdle is the only one addressed in *Medina*. If the first hurdle is cleared, then – as the final sentence of the above paragraph states – a plaintiff must then clear the second, which is demonstrating that the statute displaces Section 1983 by providing a more specific remedy. The *Medina* Court made this two-step process clear. It cites *Abrams*, a Supreme Court case that began by assuming – as the parties there agreed – that the statute in question created judicially enforceable rights. 544 U.S. at 120. Thus, in *Abrams*, the plaintiff cleared the first hurdle. *Abrams* then reasoned, again in the passage above from *Medina*, that even after a showing that the pertinent statute creates an enforceable right, there is only a presumption that the right is enforceable under Section 1983, and a defendant may rebut the presumption by demonstrating the statute itself creates a comprehensive enforcement scheme that is incompatible with individual enforcement through Section 1983. *Id.* Thus, contrary to the *Oropesa* majority’s reading of *Medina*, the fact that a federal statute has displaced § 1983’s general cause of action with a specific remedy, the second hurdle, is not pertinent to determining whether the statute secures a right, the first hurdle.

has little bearing in the criminal context, and even less here, as the Supreme Court has told us in no uncertain terms that Section 241, “from original enactment through subsequent codifications, was intended to deal ... with conspiracies to interfere with “Federal rights, and with *all* Federal rights.” *Price*, 383 U.S. at 803 (emphasis added). In this sense, the respective scopes of the rights enforceable through Section 1983 and Section 241 each reflect a willingness to apply each statute’s penalties as Congress intended; it is just that Congress intended for Section 241 to cover “all rights and privileges under the Constitution and laws of the United States,” as is clear from the plain text of the statute. *Id.* at 802.

Id. at 11a-12a.

Finally, the *Oropesa* majority reasoned that, even if the presence of a comprehensive enforcement scheme could (like Section 1983) limit the scope of Section 241, the FACE Act’s enforcement scheme is not “comprehensive” because of its saving clause, which provides that nothing in the statute “shall be construed ... to provide exclusive criminal penalties ... with respect to the conduct prohibited by this section.” App., *infra*, 12a, *quoting* 18 U.S.C. § 248(d).¹¹ The majority reasoned that the FACE Act is not sufficiently “comprehensive” to preclude it from serving as a predicate for Section 241 because the FACE Act does

11. In his concurring opinion, Judge Jordan emphasizes the FACE Act’s saving clause as the primary reason that the Act may serve as a predicate for a civil rights conspiracy prosecution brought under § 241. *Id.* at 920 (Jordan, J., concurring).

not include a conspiracy provision, and the saving clause preserves the opportunity for the government to prosecute a Section 241 conspiracy with the FACE Act serving as the predicate “law.” *Id.*¹²

Thus, declining *Oropesa*’s invitation to apply Section 1983 caselaw to limit the scope of Section 241, the *Oropesa* court concluded that the superseding indictment alleged a valid offense under Section 241. App., *infra*, 13a.

REASONS FOR GRANTING THE PETITION

The Petition should be granted because a court of appeals has decided an important question of federal law that has not, but should be, settled by this Court. This Court has not yet had occasion to determine whether an important limitation on the Section 1983 cause of action – the exclusion of statutes containing their own comprehensive enforcement schemes – also applies to the criminal “laws” enforceable by Section 241.

Question 1. Whether criminal statutes containing their own comprehensive enforcement provisions and penalties are, as in Section 1983, excluded from serving as predicate “laws” for additional criminal enforcement under Section 241.

Despite the statutes’ materially identical terms, the *Oropesa* court declined to apply to 18 U.S.C.

12. However, both *Sea Clammers*, 453 U.S. at 20, n. 1, and *Abrams*, 544 U.S. at 126-27, held that the saving clauses in their respective statutes only preserved remedies under *other* statutes, not the same statutes that were enforced through Section 1983 as predicate “laws.”

§ 241 the significant limiting principle that this Court has consistently applied to its civil counterpart, 42 U.S.C. § 1983, since 1981. This Court’s pertinent Section 1983 authority, particularly *Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1 (1981), and *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113 (2005),¹³ established the rule that, if a predicate statute contains its own comprehensive enforcement scheme with more restrictive remedies than those afforded by Section 1983, then the predicate statute is not among the “laws of the United States” that can be enforced through that statute.

Oropesa submits that, because of its own comprehensive criminal enforcement scheme and misdemeanor penalties (as opposed to the felony penalties afforded by Section 241), the FACE Act, 18 U.S.C. § 248, is not among the “laws of the United States” that may be incorporated as a predicate for a felony prosecution under the 1870 conspiracy-against-rights statute, 18 U.S.C. § 241. Indeed, the purpose of this critical limiting principle has even greater resonance for a criminal statute like Section 241, given the enhanced importance of fair notice and the requirement to avoid vagueness. It is Congress and not the Executive Branch that has the exclusive constitutional authority to define crimes, and it is this separation-of-powers consideration that should govern.

13. The limiting factor for Section 1983 was reaffirmed in *Health and Hospital Corp. of Marion County v. Talevski*, 599 U.S. 166, 143 S. Ct. 1444, 1460 (2023), and again in *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 145 S. Ct. 2219, 2229 (2025).

This Court has not yet considered whether the *Sea Clammers/Abrams* exclusion also applies to Section 241. Yet, the best explanation simply may be how rare, until recently, Section 241 prosecutions based on violation of federal statutes – as opposed to the Constitution – have been. According to the Congressional Research Service,¹⁴ in a 2020 article addressing Section 241’s substantive counterpart, 18 U.S.C. § 242,

With regard to the “laws of the United States,” it is unclear if [the Department of Justice] has brought Section 242 charges in recent history based solely on statutory violations. In the analogous context of civil claims under Section 1983, courts have shown reluctance to imply a civil remedy for statutory violations; the courts may be even less likely to impose criminal liability under statutes that do not expressly provide for it.

Congressional Research Service, “*Federal Police Oversight: Criminal Civil Rights Violations Under 18 U.S.C. § 242*,” p. 2 (June 15, 2020) (emphasis in original). (available at crsreports.congress.gov/crs-product/LSB10495.) Before 2022, the United States never attempted to prosecute a Section 241 criminal conspiracy-against-rights indictment in which the predicate offense was the FACE Act. See *United States v. Handy*, No. 22-096 (CKK), 2023 WL 4744057 at *3 (D.D.C., July 25, 2023) (noting that the first such effort occurred in 2022).

14. The *Medina* Court recently cited another Congressional Research Service report. *Medina*, 145 S. Ct. at 2226.

Yet, 28 years after enactment of the FACE Act, the United States for the first time asserted this novel prosecutorial experiment in four indictments¹⁵ nationwide. This case is the only one of the four to be considered by a court of appeals.

Oropesa urges this Court to grant this Petition to harmonize Section 241 and Section 1983 by applying the same limitation on the types of “laws” that are enforceable by either statute. Specifically, this Court can do so by excluding from the reach of both statutes equally those predicate statutes containing, like the FACE Act, their own comprehensive enforcement schemes.

The Eleventh Circuit declined to do so for two reasons.

First, the *Oropesa* court relied on the language in *Price*, decided in 1966, which interpreted the term “laws” in Section 241 categorically, that is, to mean that it embraces all “laws,” without exception. The *Oropesa* court reasoned that this Court has not applied to Section 241 the *Sea Clammers/Abrams* limitation to Section 1983, and therefore the absolute language of *Price* continues to govern 60 years later. *Oropesa*, 159 F. 4th at 918, *citing Price*, 383 U.S. at 804 (noting that *Price* observed that Section 241, by its plain language, covers conspiracies to

15. In addition to *Handy* and this case, in which four defendants were charged, the others are *United States v. Gallagher, et al.*, Case No. 22-cr-327 (M.D. Tenn. 2022), and *United States v. Zastrow, et al.*, Case No. 23-cr-20100 (E.D. Mich. 2023). While the appeals in *Handy*, *Gallagher*, and *Zastrow* were pending, the total of 23 defendants in those cases received Presidential pardons in January and February 2025. Oropesa and her codefendants have not received pardons.

violate “*all* Federal rights.” (Emphasis added by *Oropesa* court). The *Oropesa* majority reasoned that this plain, absolute language reflects a deliberate congressional intent in Section 241 to recognize no limitations on the term “laws” that would exclude statutes containing their own comprehensive enforcement schemes.

This reasoning, though, overlooks an important fact: the equally plain and absolute language of Section 1983 likewise recognizes no such exclusion, but this has not prevented this Court from recognizing one for the past 45 years. As late as 1980, well after *Price* and one Term before *Sea Clammers*, this Court in *Maine v. Thiboutot*, 448 U.S. 1 (1980), rejected the argument that the phrase “laws” in Section 1983 should be limited to some subset of statutes. *Id.* at 4 (observing that Congress attached no modifiers to the plain language of Section 1983). Yet only one Term later in *Sea Clammers*, this Court ruled that the term “laws” in Section 1983 was not absolute. Thus, in the same way that *Thiboutot* did not forever bar this Court from recognizing, in *Sea Clammers* and again in *Abrams*, that the term “laws” in Section 1983 is not absolute, *Price* would not bar this Court from recognizing that the term “laws” in Section 241 need not forever remain absolute.

The second reason the Eleventh Circuit declined to apply the *Sea Clammers/Abrams* limiting principle to Section 241 was because the separation of powers concerns that exist when assessing the private right of action provided by Section 1983 “ha[ve] little bearing in the criminal context.” *Oropesa*, at 918. But a separation of powers issue is also present here, because *Oropesa*’s substantive conduct is punishable only as a FACE Act misdemeanor, yet the United States sought and obtained

a conviction under Section 241 for conspiring to commit that very same conduct.

This Court has recently addressed the separation of powers problem that emerges when the government attempts to prosecute a citizen for violating a broad, “coverall” criminal statute rather than a statute, carrying less severe penalties, in which Congress has carefully proscribed a defendant’s specific criminal conduct. In *Fischer v. United States*, 603 U.S. ___, 144 S. Ct. 2176 (2024), this Court rejected the application of a “coverall” obstruction statute, 18 U.S.C. § 1512(c)(2), which carries a 20-year maximum sentence, to all forms of obstruction, even those forms that Congress specifically identified and to which it applied much less severe penalties. *Id.* at 2187. As the *Fischer* Court explained,

Doing so affords proper respect to “the prerogatives of Congress” in carrying out the quintessentially legislative act of defining crimes and setting the penalties for them. We have long recognized that “the power of punishment is vested in the legislative, not in the judicial department,” and we have as a result “traditionally exercised restraint in assessing the reach of a federal criminal statute.” The Government’s reading of Section 1512 would intrude on that deliberate arrangement of constitutional authority over federal crimes, giving prosecutors broad discretion to seek a 20-year maximum sentence for acts Congress saw fit to punish only with far shorter terms of imprisonment.

Id. at 2189-90 (quotations omitted).

The enduring *Sea Clammers/Abrams* exclusion has served as a useful limitation on an otherwise limitless and duplicative use of Section 1983 to enforce statutory rights that Congress has deliberately and specifically defined in the predicate “laws.” For Section 1983, this Court primarily evaluates whether the “law” sought to be enforced contains its own sufficiently comprehensive enforcement scheme. If it does, this Court consistently holds, supplemental enforcement through Section 1983 is not available. In *Sea Clammers*, for instance, this Court held that, “When the remedial devices provided in a particular act are sufficiently comprehensive, they may suffice to demonstrate congressional intent to preclude the remedy of suits under § 1983.” 453 U.S. at 20. Noting that the two environmental statutes addressed in *Sea Clammers* provided an array of civil remedies including government compliance orders, civil suits, civil penalties, and civil suits by private citizens, the Court found that Section 1983 was unavailable as an additional enforcement tool. *Id.* at 13, 20. This Court concluded, “It is hard to believe that Congress intended to preserve the § 1983 remedy when it created so many specific statutory remedies.” *Id.* at 20.

Later, the *Abrams* Court reaffirmed that, “a defendant may demonstrate that Congress did not intend to create a remedy under §1983 for a statutory right by showing that the statute created a ‘comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983.’” 544 U.S. at 120 (quotation omitted). According to Justice Scalia’s opinion for the *Abrams* Court,

The provision of an express, private means of redress in the statute itself is ordinarily an

indication that Congress did not intend to leave open a more expansive remedy under § 1983. As we have said in a different setting, “[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.” Thus, the existence of a more restrictive private remedy for statutory violations has been the dividing line between those cases in which we have held that an action would lie under § 1983 and those in which we have held it would not.

Id. at 121 (quotation omitted).

In sum, applying the *Sea Clammers/Abrams* exclusion to Section 1983’s criminal counterpart, Section 241, would achieve the same objective of deference to Congress’s intent to replace an expansive, indeed limitless, remedy for criminal conduct with a deliberate, carefully tailored statutory response to specific criminal conduct that Congress seeks to proscribe.

Question 2: Whether the criminal enforcement remedies contained in the FACE Act, 18 U.S.C. § 248(a)&(b), are sufficiently comprehensive to preclude additional criminal enforcement through Section 241.

The penalty provision of Section 241 provides, for persons committing the offense of conspiracy to violate civil rights, a minimum sentence of up to ten years. 18 U.S.C. § 241. Then, based on increasingly aggravated civil rights violations, the maximum penalty increases to any term of years, to mandatory life, and to the death penalty. *Id.*

In contrast, the 1994 FACE Act is markedly comprehensive. The statute first identifies certain “prohibited activities,” and provides that anyone who engages in such activities “shall be subject to the [criminal] penalties provided in subsection (b) and the civil remedies provided in subsection (c).” *See* 18 U.S.C. § 248(a). The “prohibited activities” relevant to this case are found in 18 U.S.C. §§ 248(a)(1) and (3).¹⁶

The first of these relevant “prohibited activities” provides, “Whoever, by force or threat of force, or by physical obstruction, intentionally injures, intimidates, or interferes with any person because that person is or has been, or in order to intimidate such person or any other person or any other person or any class of persons from, obtaining or providing reproductive health services.” *See* 18 U.S.C. § 248(a)(1). The second relevant “prohibited activity” provides, “Whoever intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services.” *See* 18 U.S.C. § 248(a)(3).

The comprehensive enforcement scheme of the FACE Act provides that commission of these “prohibited activities” can be penalized in four distinct ways, one criminal and three civil.

16. The third and final “prohibited activity” in the FACE Act, which is not pertinent to this case, is found in Section 248(a)(2), and applies to any individual who “by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with ... any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.” 18 U.S.C. § 248(a)(2).

The criminal penalties applicable to violation of § 248(a) of the FACE Act establish a series of progressively higher statutory maximums corresponding either to increasingly aggravated conduct, to recidivism, or to a combination of the two. The FACE Act's criminal penalties provision, Section 248(b), provides, in its entirety,

(b) Penalties – Whoever violates this section shall –

(1) in the case of a first offense, be fined in accordance with this title, or imprisoned not more than one year, or both, and

(2) in the case of a second or subsequent offense after a prior conviction under this title, be fined in accordance with this title, or imprisoned not more than 3 years, or both:

except that for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than \$10,000 and the length of imprisonment shall be not more than six months, or both, for the first offense; and the fine shall be, notwithstanding section 3571 [establishing maximum fines] be not more than \$25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; and except that if bodily injury results, the length of imprisonment shall

not be more than 10 years, and if death results, it shall be for any term of years or for life.

18 U.S.C. § 248(b).

Thus, the criminal penalties applicable to violations of the FACE Act establish a series of seven progressively severe maximum sentences responsive to aggravated conduct and recidivism. The lowest maximum sentence, six months' imprisonment, applies to non-violent physical obstruction. Maximum sentences then range upward to one year's imprisonment for force (or threat of force), to 18 months' imprisonment for second or subsequent convictions for non-violent physical obstruction, to three years' imprisonment for second or subsequent convictions for force (or threat of force), to 10 years' imprisonment in the event of bodily injury, and if death results, to life imprisonment, or death.

Thus, in the absence of any aggravated conduct or recidivism, offenders under the FACE Act are subject to up to one year's imprisonment (and only six months' imprisonment in the event of non-violent physical obstruction). Although Oropesa was not charged with a substantive violation of the FACE Act, the conduct she allegedly conspired to commit would establish a maximum penalty of one year's imprisonment, as there was an allegation of the threat of force, but no allegations of aggravated conduct or recidivism.

To summarize, Oropesa's conviction for violating Section 241 exposed her to a felony sentence of up to ten years' imprisonment. The criminal section of the FACE Act, though, provides for first-time offenders

like Oropesa a maximum sentence of only one year's imprisonment.

It is clear, then, that the FACE Act's criminal enforcement scheme is markedly comprehensive. If this Court chooses to apply the *Sea Clammers/Abrams* exclusion to Section 241, Oropesa submits that the FACE Act's enforcement structure would be deemed to sufficiently comprehensive to satisfy the standard and preclude the United States from prosecuting her for the offense of conspiracy-against-rights.

CONCLUSION

The Petition should be granted so that this Court can harmonize the Nation's two premier civil rights statutes and apply to Section 241 to same exclusion – of “laws” that carry their own comprehensive enforcement schemes – that this Court has applied to Section 1983 in the 45 years since *Sea Clammers*. For the foregoing reasons, Gabriella Oropesa respectfully requests that her Petition for Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT, FILED NOVEMBER 20, 2025**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 25-10928

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GABRIELLA VICTORIA OROPESA,
a.k.a. GABS, a.k.a. GABY, a.k.a. GUMMY,

Defendant-Appellant.

Filed November 20, 2025

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:23-cr-00025-VMC-AEP-4

Before JORDAN, LAGOA, and WILSON, Circuit Judges.

PER CURIAM:

Appellant Gabriella Oropesa was convicted on one count of conspiracy against rights, in violation of 18 U.S.C. § 241, for her role in planning and executing a series of

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vandalisms at crisis-pregnancy centers across Florida. On appeal, Oropesa argues that a Section 241 conspiracy against rights does not cover a conspiracy to violate the Freedom of Access to Clinic Entrances Act (“FACE Act”), Pub. L. No. 103-259, 108 Stat. 694 (1994) (codified as amended at 18 U.S.C. § 248). With the benefit of oral argument, we now affirm Oropesa’s conviction.

I. FACTUAL AND PROCEDURAL HISTORY

Around Spring 2022, Appellant Gabriella Oropesa and three other abortion-rights activists—Caleb Freestone, Amber Smith-Stewart, and Annarella Rivera—formed a plan to spraypaint threatening messages on crisis-pregnancy centers (“CPCs”) across Florida.¹ On May 28, 2022, Oropesa and her co-conspirators travelled to Hollywood, Florida, to vandalize a local CPC. Donning “disguises such as masks, hats, and gloves,” they spraypainted threats on the building, including one proclaiming, “If abortions aren’t SAFE then niether [sic] are you.” Permutations of the group targeted two more CPCs over the next several weeks: (1) on June 26, Freestone, Smith-Stewart, and Rivera spraypainted “YOUR TIME IS UP!! WE’RE COMING for U” and “We are everywhere” on a CPC in Winter Haven; and (2) on July 3, Oropesa and Freestone reprised the “If abortions aren’t SAFE the [sic] neither are you” threat on a CPC in Hialeah.

1. Crisis-pregnancy centers are health facilities that “provide social support, material aid, and counseling against abortion.” See A. Kissling et al., *Crisis Management: Pathways to Crisis Pregnancy Centers*, 64 WOMEN & HEALTH 604 (2024).

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Oropesa was indicted in the Middle District of Florida on one count of conspiracy against rights, in violation of 18 U.S.C. § 241. That statute provides:

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same[,] . . . [t]hey shall be fined under this title or imprisoned not more than ten years, or both; and 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, they 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. § 241. The superseding indictment alleged that Oropesa and the others conspired to violate “the right to provide and seek to provide reproductive health services” as provided by the FACE Act.

The FACE Act prohibits (1) the use or threat of force and physical obstruction that injures, intimidates, or interferes with a person seeking to obtain or provide reproductive health services; (2) the same against any person lawfully exercising the First Amendment right of

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religious freedom at a place of religious worship; and (3) the intentional destruction of the property of a facility that provides reproductive health services. *See id.* § 248(a)(1)-(3). The FACE Act creates both criminal penalties and a private cause of action. A first-time criminal offender is generally subject to a fine and a term of imprisonment “not more than one year.” *Id.* § 248(b)(1). Offenses resulting in “bodily injury” may be punished by up to ten years in prison, and those resulting in “death” can yield a life sentence. *Id.* § 248(b).²

Oropesa first moved to dismiss the conspiracy-against-rights charge on May 4, 2023, arguing that the superseding indictment failed to allege state action and that the FACE Act is not “among the laws of the United States” which may be enforced through Section 241. According to Oropesa, because “the FACE Act contains its own enforcement mechanism, . . . it is improper [for the government] to seek duplicative enforcement for the same conduct through [Section 241].” The district court rejected both arguments, concluding that state action is not an element of a Section 241 conspiracy and that the FACE Act secures a right that is enforceable through Section 241.³

2. Unlike her co-defendants, Oropesa was not charged with any substantive violations of the FACE Act, apparently because Oropesa did not personally participate in vandalizing any of the CPCs located in the Middle District of Florida.

3. Oropesa also moved to dismiss on a third ground that the indictment improperly alleged that the defendants conspired to violate a “non-enforceable provision of the FACE Act[,]” which, like the state action argument, was rejected by the district court and is not at issue in this appeal.

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On August 2, 2024—about eight months after the deadline to file pre-trial motions had passed—Oropesa filed a second motion to dismiss, now asserting that the Supreme Court’s intervening decisions in *Fischer v. United States*, 603 U.S. 480, 144 S.Ct. 2176, 219 L.Ed.2d 911 (2024), and *Snyder v. United States*, 603 U.S. 1, 144 S.Ct. 1947, 219 L.Ed.2d 572 (2024), “compel the conclusion that the FACE Act is not among the ‘laws of the United States’ enforceable through [Section 241].” The district court denied Oropesa’s second motion, finding those cases to be irrelevant and that Oropesa had thus failed to show good cause to excuse her untimely motion.

Oropesa proceeded to trial on the conspiracy-against-rights charge. Following the close of evidence, Oropesa orally moved for a judgment of acquittal, reiterating the arguments raised in her pretrial motions. The district court denied that motion as well. Oropesa was adjudicated guilty on one count of conspiracy against rights and was sentenced to a term of 120 days’ imprisonment, followed by three years of supervised release. Oropesa timely appealed her conviction.

II. STANDARDS OF REVIEW

We review *de novo* whether an indictment sufficiently alleges a statutorily proscribed offense. *United States v. Steele*, 178 F.3d 1230, 1233 (11th Cir. 1999). We review the denial of a pretrial motion “on grounds of untimeliness” for abuse of discretion. *United States v. Smith*, 918 F.2d 1501, 1509 (11th Cir. 1990).

*Appendix A***III. ANALYSIS**

Oropesa challenges her conviction on two grounds. First, she argues that a conspiracy to violate the FACE Act cannot be prosecuted under Section 241 because the FACE Act already provides a “comprehensive enforcement scheme,” and thus cannot provide a predicate offense for a Section 241 conspiracy. Second, she asserts that the district court abused its discretion in denying her untimely second motion to dismiss because the Supreme Court’s intervening decisions in *Fischer* and *Snyder* prevent the government from using Section 241 as a “coverall” statute to increase the available statutory maximum for the underlying offense. We consider, and reject, both arguments in turn.

A. A Conspiracy to Violate the FACE Act May Be Prosecuted under 18 U.S.C. § 241.

Oropesa first argues that her conviction must be vacated because the government may not charge a conspiracy to violate the FACE Act through Section 241. We disagree.

We begin, as always with statutory interpretation, with the text. *See United States v. Kluge*, 147 F.4th 1291, 1298 (11th Cir. 2025). First adopted by the Reconstruction Congress in the Enforcement Act of 1870, Pub. L. No. 41-114 § 6, 16 Stat. 140, 141, the federal conspiracy-against-rights statute, now codified at 18 U.S.C. § 241, reaches conspiracies to violate a “right” secured by the “laws of the United States.” “The language of § 241 is plain and

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unlimited,” and “embraces *all* of the rights and privileges secured to citizens by . . . *all* of the laws of the United States.” *United States v. Price*, 383 U.S. 787, 800, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966) (emphases added). And “laws of the United States” simply means “federal law.” *See, e.g., United States v. Kozminski*, 487 U.S. 931, 941, 108 S.Ct. 2751, 101 L.Ed.2d 788 (1988); *United States v. Waddell*, 112 U.S. 76, 79, 5 S.Ct. 35, 28 L.Ed. 673 (1884); *see also Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 172, 143 S.Ct. 1444, 216 L.Ed.2d 183 (2023) (“‘Laws’ means ‘laws,’ no less today than in the 1870s.”). Given that the FACE Act provides a statutory right to be free from threatened and actual force while seeking “to obtain or provide reproductive health services,” 18 U.S.C. § 248(a)(1), and is a federal statute, Section 241’s plain text reaches a conspiracy to violate the FACE Act, *see Price*, 383 U.S. at 806, 86 S.Ct. 1152 (“[I]t is incumbent upon us to read § 241 with full credit to its language.”).

Oropesa does not really dispute any of this, as she concedes that the FACE Act creates a right and is a “law of the United States.” But she maintains that, notwithstanding Section 241’s plain meaning, the FACE Act is not one of the “laws of the United States” that may be enforced through Section 241 because the FACE Act provides its own “comprehensive enforcement scheme” in which Congress has authorized less extensive penalties than those available under Section 241.

To make this point, Oropesa analogizes to caselaw limiting the extent to which 42 U.S.C. § 1983 affords a private cause of action to challenge violations of federal

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statutory law. Like Section 241's criminal penalty for conspiracies against "any right or privilege" secured by "the Constitution or laws of the United States," 18 U.S.C. § 241, Section 1983 creates a private cause of action to vindicate certain "deprivation[s] of any rights, privileges, or immunities secured by the Constitution and laws," 42 U.S.C. § 1983; *see also id.* § 1985(3) (creating private cause of action for conspiracy to deprive persons of rights or privileges).

The Supreme Court, however, has narrowed the availability of Section 1983 suits for enforcing violations of federal law. Because "the text of § 1983 permits the enforcement of 'rights, not the broader or vaguer 'benefits' or 'interests,'" . . . to sustain a § 1983 action, the plaintiff must demonstrate that the federal statute creates an individually enforceable right in the class of beneficiaries to which he belongs." *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 119-120, 125 S.Ct. 1453, 161 L.Ed.2d 316 (2005) (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283, 122 S.Ct. 2268, 153 L.Ed.2d 309 (2002)). If a Section 1983 plaintiff can make that showing, the defendant can still rebut the "presumption that the right is enforceable under § 1983' . . . by demonstrating that Congress did not intend that remedy for a newly created right." *Id.* at 120, 125 S.Ct. 1453 (first quoting *Blessing v. Freestone*, 520 U.S. 329, 341, 117 S.Ct. 1353, 137 L.Ed.2d 569 (1997); then citing *Smith v. Robinson*, 468 U.S. 992, 1012, 104 S.Ct. 3457, 82 L.Ed.2d 746 (1984)). One way Congress's intent to not create such a right can be inferred, the Court has explained, is "from the statute's creation of a 'comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983.'" *Id.* (first quoting *Blessing*, 520 U.S. at 341, 117 S.Ct. 1353;

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then citing *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 19-20, 101 S.Ct. 2615, 69 L.Ed.2d 435 (1981)).

Drawing from this doctrine, Oropesa says that the FACE Act's "comprehensive enforcement structure" likewise reflects congressional intent to preclude Section 241 charges based on the FACE Act. True, the FACE Act provides its own penalties for substantive violations thereof, some of which are indeed "more restrictive" than those available under Section 241. *See Abrams*, 544 U.S. at 121, 125 S.Ct. 1453.⁴ But we have never suggested that a criminal statute's inclusion of its own penalties prevents a conspiracy to violate the rights afforded by that statute from being prosecuted under Section 241.⁵ And for good reason.

4. *Compare, e.g.*, 18 U.S.C. § 241 (authorizing a ten-year maximum prison sentence for a non-violent first offense), *with id.* § 248(b) (authorizing a six-month maximum prison sentence for a non-violent first offense).

5. In *United States v. DeLaurentis*, 491 F.2d 208 (2d Cir. 1974), the Second Circuit rejected the government's attempt to use Section 241 as a vehicle to enforce the National Labor Relations Act, which included neither criminal nor civil penalties and merely defined conduct that constituted an "unfair labor practice." *DeLaurentis*, 491 F.2d at 211-13. The court concluded it was "unreasonable" to assume Congress intended Section 241 to reach the rights created in the NLRA, given that Congress did not promulgate any penalties for a substantive violation thereof. *Id.* at 213-14. The FACE Act, by contrast, does provide criminal penalties and civil remedies—and even explicitly notes that the enforcement mechanisms enumerated therein are not "exclusive." 18 U.S.C. § 248(d)(3). Thus, *DeLaurentis* is distinguishable and inapposite here.

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Our caselaw limiting the scope of Section 1983 simply has no bearing on whether the FACE Act is among the “laws of the United States” enforceable through Section 241. In the Section 1983 context, the fact that a federal statute “has displaced § 1983’s general cause of action with a more specific remedy” is relevant to whether that “statute secures an enforceable *right*,” *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 145 S. Ct. 2219, 2229, 222 L.Ed.2d 567 (2025) (emphasis added)—not whether that statute is a “law” to begin with, *cf.* 42 U.S.C. § 1983. And Oropesa concedes that the FACE Act secures a right.

Moreover, the Supreme Court recently clarified its reasoning for limiting the panoply of enforceable rights under Section 1983, explaining:

Those rules seek to “vindicat[e] the separation of powers.” To be sure, there was a time in the mid-20th century when “the Court assumed it to be a proper judicial function to provide” whatever “remedies” it deemed “necessary to make effective a statute’s purpose.” But, as this Court has since come to appreciate, no statute pursues any single “purpos[e] at all costs.” And, often enough, Congress may “not wish to pursue [a] provision’s purpose to the extent of authorizing private suits.” After all, the decision whether to let private plaintiffs enforce a new statutory right poses delicate questions of public policy. New rights for some mean new duties for others. And private enforcement actions, meritorious or

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not, can force governments to direct money away from public services and spend it instead on litigation. The job of resolving how best to weigh those competing costs and benefits belongs to the people's elected representatives, not unelected judges charged with applying the law as they find it.

Medina, 145 S. Ct. at 2229-30 (internal citations omitted) (first quoting *Talevski*, 599 U.S. at 183, 143 S.Ct. 1444; then quoting *Ziglar v. Abbasi*, 582 U.S. 120, 131-132, 137 S.Ct. 1843, 198 L.Ed.2d 290 (2017); then quoting *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 234, 133 S.Ct. 2304, 186 L.Ed.2d 417 (2013); and then quoting *Hernandez v. Mesa*, 589 U.S. 93, 100, 140 S.Ct. 735, 206 L.Ed.2d 29 (2020)).

This limitation on the reach of Section 1983 is based in the presumption against implied private causes of action, namely that a “statute’s mere prohibition of a certain act does not imply creation of a private right of action for its violation” unless Congress has made that remedy “either express or clearly implied from the text of the statute.” A. Scalia & B.A. Garner, *Reading Law: The Interpretation of Legal Texts* 313 (2012); see *Medina*, 145 S. Ct. at 2233 (“Statutory provisions must unambiguously confer individual federal rights’ before a § 1983 claim might proceed.” (alteration adopted) (quoting *Talevski*, 599 U.S. at 183, 143 S.Ct. 1444)). But that principle has little bearing in the criminal context, and even less here, as the Supreme Court has told us in no uncertain terms that Section 241, “from original enactment through

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subsequent codifications, was intended to deal . . . with conspiracies to interfere with ‘Federal rights, and with *all* Federal rights.’” *Price*, 383 U.S. at 803, 86 S.Ct. 1152 (emphasis added). In this sense, the respective scopes of the rights enforceable through Section 1983 and Section 241 each reflect a willingness to apply each statute’s penalties as Congress intended; it is just that Congress actually intended for Section 241 to cover “all rights and privileges under the Constitution and laws of the United States,” as is clear from the plain text of the statute. *Id.* at 802, 86 S.Ct. 1152.

But even if the presence of a “comprehensive enforcement scheme” could limit the scope of Section 241, Oropesa’s argument would still fail because the FACE Act’s enforcement scheme is not comprehensive. The FACE Act expressly provides that nothing therein “shall be construed . . . to provide exclusive criminal penalties . . . with respect to the conduct prohibited by this section.” 18 U.S.C. § 248(d)(3). It is well-settled that a conspiracy offense—which is not included in the FACE Act’s enforcement scheme, *see id.* § 248(b)—is distinct from, and may be punished more harshly than, the underlying substantive offense. *See, e.g., Iannelli v. United States*, 420 U.S. 770, 777-78, 95 S.Ct. 1284, 43 L.Ed.2d 616 (1975); *Callanan v. United States*, 364 U.S. 587, 593-97, 81 S.Ct. 321, 5 L.Ed.2d 312 (1961); *Clune v. United States*, 159 U.S. 590, 594-95, 16 S.Ct. 125, 40 L.Ed. 269 (1895). So, even accepting Oropesa’s theory, the text of the FACE Act provides no evidence “demonstrating that Congress did not intend” Section 241 to cover conspiracies to abridge the rights created by the FACE Act—it shows the opposite. *Abrams*, 544 U.S. at 120, 125 S.Ct. 1453.

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We therefore hold that conspiracy to violate the FACE Act falls squarely within Section 241’s prohibition against conspiracies to violate a “right” secured by the “laws of the United States.” 18 U.S.C. § 241. And we decline Oropesa’s invitation to apply inapposite Section 1983 caselaw so as to give Section 241 “a meaning that it cannot bear.” Scalia & Garner, *supra*, at 31. Accordingly, we conclude that the superseding indictment sufficiently alleged a valid offense in charging Oropesa under Section 241 based on her participation in a conspiracy to violate the FACE Act.

B. The District Court Did Not Abuse Its Discretion in Denying Oropesa’s Untimely Second Motion to Dismiss.

On the eve of trial, Oropesa renewed her motion to dismiss, arguing that the Supreme Court’s intervening decisions in *Fischer* and *Snyder* foreclosed Section 241 prosecutions based on the FACE Act, and that this change of law warranted good cause to excuse her untimely filing. But *Fischer* and *Snyder*—neither of which interprets Section 241 or the FACE Act—are essentially irrelevant here.

In *Fischer*, the Supreme Court applied familiar canons of statutory interpretation to hold that the scope of 18 U.S.C. § 1512(c)(2)—which creates an offense for one who “otherwise obstructs, influences, or impedes any official proceeding”—was necessarily limited by 18 U.S.C. § 1512(c)(1)’s offense for one who corruptly tampers with evidence to be used in an official proceeding. *See Fischer*, 603 U.S. at 498, 144 S.Ct. 2176 (limiting 18

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U.S.C. § 1512(c)(2) to instances where “the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, . . . [or] other things used in the proceeding, or attempted to do so.”). In reaching that conclusion, the Court observed that reading the “otherwise” clause to “cover all forms of obstructive conduct would override Congress’s careful delineation” of specific penalties for specific obstructive conduct elsewhere in the statute. *Id.* at 493-94, 144 S.Ct. 2176.

Oropesa attempts to transpose that premise onto the FACE Act, which also enumerates different penalties for different conduct. *See* 18 U.S.C. § 248(b). But the conspiracy-against-rights offense provided in Section 241 and a substantive violation of the FACE Act are wholly separate offenses, found in wholly separate statutes. *See Iannelli*, 420 U.S. at 778, 95 S.Ct. 1284. So, our interpretation of Section 241 poses no risk of “overrid[ing] Congress’s careful delineation” of penalties in the FACE Act by reading a provision therein as a “catchall” offense, *Fischer*, 603 U.S. at 493, 144 S.Ct. 2176—especially since the FACE Act itself disclaims that its provided remedies are not exclusive, *see* 18 U.S.C. § 248(d). Instead, allowing Section 241 prosecutions based on the FACE Act effectuates Congress’s intent of explicitly promulgating a separate offense for conspiracy to violate civil rights independent of the underlying offense. *See Price*, 383 U.S. at 802-03, 86 S.Ct. 1152.

Snyder is no help to Oropesa either. There, the Supreme Court held that 18 U.S.C. § 666(a)(1)(B)—which creates a criminal offense for a state and local official

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who “corruptly solicits . . . or accepts” a benefit from any person, “intending to be influenced” in his official duties thereby—applies only to *ex ante* “bribes” and not to *ex post* “gratuities.” *Snyder*, 603 U.S. at 10, 144 S.Ct. 1947. The Court mainly relied on the statute’s text to reach that holding. *See id.* at 11-12, 144 S.Ct. 1947. But the Court also noted that reading Section 666(a)(1)(B) to cover both bribes and gratuities would result in markedly disparate statutory punishments between state and federal officials for identical conduct.⁶ *See id.* at 13-14, 144 S.Ct. 1947.

Oropesa asserts that Section 241 and the FACE Act present another instance where “[t]he Government cannot explain why Congress would have created such substantial sentencing disparities.” *See id.* at 13, 144 S.Ct. 1947. But, unlike in *Snyder*, we do not face the problem of allowing different sentences for “identical” conduct, *see id.*, since Section 241 and the FACE Act provide different punishments for different offenses, *see Iannelli*, 420 U.S. at 776, 95 S.Ct. 1284. And there is nothing unlawful about Congress deciding to punish a conspiracy more harshly than the underlying act. *See, e.g., Clune*, 159 U.S. at 595, 16 S.Ct. 125 (“Whatever may be thought of the wisdom or propriety of a statute making a conspiracy to do an act

6. For federal officials, Congress has separated bribery and gratuities into two distinct provisions of 18 U.S.C. § 201. As the *Snyder* Court explained, reading § 666(a)(1)(B) to also cover gratuities for state and local officials would mean that “Congress would have authorized punishing gratuities to state and local officials five times more severely than gratuities to federal officials—10 years for state and local officials compared to 2 years for federal officials.” *Snyder*, 603 U.S. at 13, 144 S.Ct. 1947.

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punishable more severely than the doing of the act itself, it is a matter to be considered solely by the legislative body.” (citing *Callan v. Wilson*, 127 U.S. 540 -55, 8 S.Ct. 1301, 32 L.Ed. 223 (1888)); *Iannelli*, 420 U.S. at 778, 95 S.Ct. 1284 (“This Court repeatedly has recognized that a conspiracy poses distinct dangers quite apart from those of the substantive offense.”).⁷

In sum, *Fischer* and *Snyder* do not alter our interpretation of the relationship between the FACE Act and Section 241, and Oropesa has presented no relevant “change in law” that could justify her untimely second motion to dismiss.⁸ See *Outler v. United States*, 485 F.3d 1273, 1281 (11th Cir. 2007). We thus conclude that the district court did not abuse its discretion in holding that

7. Nor is there any problem with Congress punishing the separate offense of conspiracy *against civil rights* more harshly than a garden-variety criminal conspiracy. Compare 18 U.S.C. § 241, *with id.* § 371; see *Price*, 383 U.S. at 801-07, 86 S.Ct. 1152 (addressing the specific harms Congress sought to address through Section 241).

8. “[W]hen a party fails to establish good cause for an untimely motion under Federal Rule of Criminal Procedure 12, the issue in the motion is not preserved and [this Court’s] review is limited to a plain error analysis.” *United States v. Andres*, 960 F.3d 1310, 1315 (11th Cir. 2020). To the extent that Oropesa now relies on *Fischer* and *Snyder* to offer additional caselaw supporting of her position that the FACE Act cannot serve as a valid statutory predicate for Section 241 prosecutions, *cf. ECB USA, Inc. v. Chubb Ins. Co. of N.J.*, 113 F.4th 1312, 1320 (11th Cir. 2024) (“Litigants can waive or forfeit positions or issues through their litigation conduct in the district court but not authorities or arguments.”), we are satisfied that those arguments fail under any standard of review.

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Oropesa had failed to show good cause for her untimely motion to dismiss.

IV. CONCLUSION

For the reasons stated, we affirm Oropesa's conviction for conspiracy against rights, in violation of 18 U.S.C. § 241.

AFFIRMED.

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JORDAN, Circuit Judge, Concurring:

I join all of the court’s opinion except for Part III.A. I generally agree with what the court says in Part III.A, but its analysis is, in my view, incomplete. I would not, for example, assume that a comprehensive enforcement scheme could limit the scope of 18 U.S.C. § 241. Instead, I would analyze Ms. Oropesa’s attack on the saving clause of the FACE Act as set out below.

The FACE Act’s saving clause, entitled “Rules of Construction[,]” provides that “[n]othing in this section shall be construed . . . to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this section, or to preempt State or local laws that may provide such penalties or remedies.” 18 U.S.C. § 248(d)(3). Ms. Oropesa argues that, under several Supreme Court cases applying 42 U.S.C. § 1983, a saving clause cannot overcome Congress’ intent to create a comprehensive enforcement scheme. *See Middlesex Cnty. Sewerage Auth. v. Nat’l Sea Clammers Ass’n*, 453 U.S. 1, 15, 101 S.Ct. 2615, 69 L.Ed.2d 435 (1981); *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 126, 125 S.Ct. 1453, 161 L.Ed.2d 316 (2005); *Health & Hosp. Corp. v. Talevski*, 599 U.S. 166, 191, 143 S.Ct. 1444, 216 L.Ed.2d 183 (2023). This argument fails for three reasons.

First, the saving clauses in those cases are materially dissimilar. And that matters greatly given that the Supreme Court’s holdings rested on the text of the clauses.

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In *Sea Clammers*, the saving clause in the Federal Water Pollution Control Act read: “Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).” 33 U.S.C. § 1365(e). The Court held that the saving clause did not help the § 1983 plaintiff because “[i]t is doubtful that the phrase ‘any statute’ includes the very statute in which this statement was contained.” *Sea Clammers Ass’n*, 453 U.S. at 15-16, 101 S.Ct. 2615. In contrast, the FACE Act’s saving clause speaks directly to “the conduct prohibited by *this* section.” 18 U.S.C. § 248(d)(3) (emphasis added).

As for *Rancho Palos Verdes*, the saving clause of the Telecommunications Act provided: “This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.” 544 U.S. at 126, 125 S.Ct. 1453 (quoting 47 U.S.C. § 152). The Supreme Court held that interpreting the word “impair” “to be an express statement of Congress[] intent *not* to preclude an action under § 1983” is a bridge too far. *See id.* (emphasis in original).

In *Talevski*, at issue was the Federal Nursing Home Reform Act’s saving clause, which stated that the Act’s remedies were “in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies.” 599 U.S. at 191, 143 S.Ct. 1444 (quoting 42 U.S.C. § 1396r(h)(8)) (emphasis omitted).

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This clause did not alter the outcome for the § 1983 plaintiff because it required a court to ask whether relief under § 1983 is “otherwise available” to the aggrieved FNHRA claimant—a question which the Court had already answered. *See id.* at 191 n.14, 143 S.Ct. 1444 (noting that saving clauses must be read “in light of the different (and significant) textual and contextual evidence of preclusion that the statutes at issue provided,” and distinguishing *Sea Clammers* and *Rancho Palos Verdes*).

These three cases do not help Ms. Oropesa. The FACE Act’s saving clause does not mirror the language the Supreme Court interpreted.

Second, Ms. Oropesa’s argument overlooks the Supreme Court’s analysis in *United States v. Johnson*, 390 U.S. 563, 88 S.Ct. 1231, 20 L.Ed.2d 132 (1968)—a case under 18 U.S.C. § 241 addressing a saving clause. In February of 1967, four white men “operating in the fashion of the Ku Klux Klan” beat a group of black men who sought service at a restaurant, the 53 Truck Stop, in Braselton, Georgia. *See id.* at 566, 88 S.Ct. 1231. The Civil Rights Act was the law of the United States sought to be enforced through § 241 because the men who were beaten were “exercising their right to equality in public accommodations” when assaulted. *See id.* at 563, 88 S.Ct. 1231. The Court considered the Civil Rights Act’s saving clause, § 207 (b) of the Act, 78 Stat. 246, now codified at 42 U.S.C. § 2000a-6(b), which read:

The remedies provided in this title shall be the exclusive means of enforcing the rights

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based on this title, but nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

Id. at 564 n.1, 88 S.Ct. 1231. Notwithstanding the “exclusive means” language, the Court interpreted the saving clause to establish “within the four corners of § 207(b) evidence that it was not designed as pre-empting every other mode of protecting a federal ‘right’ or as granting immunity to those who had long been subject to the regime of § 241.” *Id.* at 566, 88 S.Ct. 1231.

Johnson has not been overruled or watered down by later decisions of the Supreme Court. We thus cannot ignore the *Johnson* Court’s interpretation of a saving clause (which speaks directly to criminal penalties) in this context in favor of the triad of cases in a different context (in which the saving clauses said nothing of criminal enforcement).

Ms. Oropesa briefly argues in her reply brief that *Johnson* is distinguishable because, in her view, Title II of the Civil Rights Act does not have a comprehensive enforcement scheme that would have applied to the defendants there. This does not convince me that we

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should disregard its analysis of the saving clause in the § 241 realm in favor of § 1983 cases.

Third, Ms. Oropesa’s broad contention highlights why the application of the body of § 1983 caselaw here is an attempt to fit a square (civil) peg into a round (criminal) hole. As explained by the court’s opinion, the comprehensive enforcement scheme cases, *Sea Clammers* and its progeny, are concerned with “the separation of powers.” *See Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 145 S. Ct. 2219, 2223, 222 L.Ed.2d 567 (2025) (quoting *Talevski*, 599 U.S. at 183, 143 S.Ct. 1444). The separation of powers concern here is not on equal footing with the judiciary’s restriction of private plaintiffs seeking statutory remedies. *See id.* We should not engraft (or assume) a judge-made “comprehensive enforcement scheme” rule onto § 241 when that rule’s driving force is the separation of powers. We must instead take seriously Congress’ express statement that the FACE Act shall not be construed to set out the “exclusive criminal penalties . . . with respect to the conduct prohibited” by it. *See* 18 U.S.C. § 248(d)(3).

**APPENDIX B — ORDER OF THE UNITED STATES
DISTRICT COURT, MIDDLE DISTRICT
OF FLORIDA, TAMPA DIVISION,
ORDERED JULY 27, 2023**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No.: 8:23-cr-25-VMC-AEP

UNITED STATES OF AMERICA

v.

CALEB HUNTER FREESTONE, AMBER MARIE
SMITH-STEWART, ANNARELLA RIVERA,
AND GABRIELLA VICTORIA OROPESA

Ordered July 27, 2023

ORDER

This matter comes before the Court pursuant to Defendant Gabriella Victoria Oropesa's Motion to Dismiss Count One of the Superseding Indictment (Doc. # 102), filed on May 4, 2023, which the three co-defendants have adopted. (Doc. ## 104, 106, 112). The United States of America responded in opposition on May 17, 2023. (Doc. # 108). Oropesa filed a reply on May 31, 2023. (Doc. # 118). At the Court's direction, the United States filed a sur-reply on July 7, 2023. (Doc. # 138). For the reasons that follow, the Motion is denied.

*Appendix B***I. Background**

On March 23, 2023, Oropesa and three co-defendants, Caleb Hunter Freestone, Amber Marie Smith-Stewart, and Annarella Rivera, were indicted via superseding indictment. (Doc. # 54). Count One charges all four defendants with conspiracy to violate rights secured by the Free Access to Clinic Entrances Act (“FACE Act”), 18 U.S.C. § 248: the defendants allegedly conspired “to injure, oppress, threaten, and intimidate employees of facilities providing reproductive health services in the free exercise and enjoyment of the rights and privileges secured to them by the laws of the United States, namely, the right to provide and seek to provide reproductive health services as provided by Title 18, United States Code, Section 248(c)(1), in violation of Title 18, United States Code, Section 241.” (*Id.* at 1–2). Counts Two and Three charge Freestone, Smith-Stewart, and Rivera with substantive violations of the FACE Act. (*Id.* at 4–5).

Section 241 provides in relevant part:

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; . . . [t]hey shall be fined under this title or imprisoned not more than ten years, or both.

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18 U.S.C. § 241. The “law of the United States” that creates the right at issue here is the FACE Act. The FACE Act “subjects to both criminal and civil penalties anyone who ‘by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services.’” *McCullen v. Coakley*, 573 U.S. 464, 491, 134 S. Ct. 2518, 189 L. Ed. 2d 502 (2014) (quoting 18 U.S.C. § 248(a)(1)). Section 248(c)(1) of the Act creates a private right of action for any “person aggrieved by reason of the conduct prohibited by” the Act. 18 U.S.C. § 248(c)(1)(A).

Oropesa seeks to dismiss Count One of the superseding indictment, which is the conspiracy charge. (Doc. # 102). All defendants have joined in the Motion. (Doc. ## 104, 106, 112). The United States has responded. (Doc. # 108). Oropesa has replied (Doc. # 118), and the United States filed a sur-reply. (Doc. # 138). The Motion is ripe for review.

II. Discussion

“This Court may resolve a motion to dismiss in a criminal case when the ‘infirmity’ in the indictment is a matter of law and not one of the relevant facts is disputed.” *United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1332 (M.D. Fla. 2004). Here, Oropesa moves under Federal Rule of Criminal Procedure 12(b)(3)(B)(v), which provides for a motion to dismiss an indictment for “failure to state

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an offense.” Fed. R. Crim. P. 12(b)(3)(B)(v). “In ruling on a motion to dismiss for failure to state an offense, a district court is limited to reviewing the *face* of the indictment and, more specifically, the *language used* to charge the crimes.” *United States v. Sharpe*, 438 F.3d 1257, 1263 (11th Cir. 2006). An indictment is facially sufficient so long as it “present[s] the essential elements of the charged offense, notifie[s] the accused of the charges to be defended against, and plainly enable[s] him to rely upon a judgment under the indictment as a bar against double jeopardy for any subsequent prosecution for the same offense.” *United States v. Woodruff*, 296 F.3d 1041, 1048 (11th Cir. 2002).

Oropesa argues that Count One of the superseding indictment should be dismissed for three reasons: (1) “the offense of conspiracy against rights, 18 U.S.C. § 241, requires state action” but “[n]o state action is alleged in Count One”; (2) “because the FACE Act contains its own independent regulatory - indeed criminal - enforcement mechanisms prescribed by Congress, the FACE Act may not also be enforced through the open-ended ‘Constitution or laws’ provision of 18 U.S.C. § 241”; and (3) “to the extent Count One alleges a conspiracy to violate the FACE Act, the Superseding Indictment alleges as the object of the conspiracy an unenforceable provision of the Act.” (Doc. # 102 at 3–4).

A. State Action is Not Required

The first argument is easily rejected. As the United States notes, Section 241 – unlike Section 242 with which defendants are not charged – “by its own terms,

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is not limited to conspiracies committed under color of law.” (Doc. # 108 at 13). Furthermore, “private actors are regularly charged with and convicted of Section 241 conspiracies.” (*Id.*); see, e.g., *United States v. Stewart*, 65 F.3d 918 (11th Cir. 1995) (against private actors who burned a cross in a Black family’s yard); *United States v. Wood*, 780 F.2d 955 (11th Cir. 1986) (against private actors who beat a white woman in and around her home because she associated with members of the Black community); *United States v. Pacelli*, 491 F.2d 1108 (2nd Cir. 1979) (against private actors who conspired to oppress a woman in the free exercise of her right to testify at a federal trial). Indeed, the Supreme Court upheld the convictions under Section 241 of private actors – “outside hoodlums” – for conspiring to violate the right of Black citizens to equality in public accommodations under the Civil Rights Act of 1964. *United States v. Johnson*, 390 U.S. 563, 563 & 567, 88 S. Ct. 1231, 20 L. Ed. 2d 132 (1968).

Oropesa misreads the earlier Supreme Court decision, *United States v. Price*, 383 U.S. 787, 86 S. Ct. 1152, 16 L. Ed. 2d 267 (1966), as establishing an “under color of state law” requirement for Section 241. But, in fact, state action was only required in that case because defendants there were charged with conspiracy to violate the Fourteenth Amendment Due Process Rights of certain individuals. Because the Fourteenth Amendment only “protects the individual against state action, not against wrongs done by individuals,” the *Price* Court concluded that private actors could participate in a conspiracy to violate Fourteenth Amendment rights only if state actors were also involved. *Id.* at 799–800. Here, the right at issue does not flow from the Fourteenth Amendment, so *Price* does not apply.

*Appendix B***B. The FACE Act Confers a Right**

Oropesa’s argument that the superseding indictment “alleges as the object of the conspiracy an unenforceable provision of the” FACE Act, (Doc. # 102 at 4), also fails.

Oropesa notes that “defendants are charged with violating [Section] 241 not by conspiring to interfere with any substantive provision of the FACE Act – such as, for instance, the misdemeanors charged in Count Two (18 U.S.C. §248(a)(1)) and in Count Three (18 U.S.C. § 248(a)(3)) – but with conspiring to interfere with 18 U.S.C. 248(c)(1),” which is “the sub-section of the Act that creates a private civil action for certain violations of the FACE Act.” (*Id.* at 13). Thus, according to her, Section 248(c)(1) “cannot serve as an object of the conspiracy.” (*Id.*). After noting that Count One charges defendants with “a conspiracy offense and with the offense of aiding and abetting that conspiracy,” she also contends – without citation to authority – that “[t]his portion of Count One is also facially defective, as 18 U.S.C. § 2 does not create an offense of aiding and abetting a conspiracy.” (*Id.*).

These arguments are unpersuasive. First, as for Oropesa’s argument regarding Section 2 “aiding and abetting,” the United States is correct that “Section 2 is a theory of liability that is available for all federal criminal charges” and does not create a separate offense. (Doc. # 138 at 3); see *United States v. Hassoun*, 476 F.3d 1181, 1184 n.2 (11th Cir. 2007) (“Section 2 does not represent a distinct offense, but rather simply codifies an alternate theory of liability inherent ‘in every count, whether explicit

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or implicit, and the rule is well-established, both in this circuit and others, that one who has been indicted as a principal may be convicted on evidence showing that he merely aided and abetted the commission of the offense.” (citation omitted). And the United States may proceed under the theory of aiding and abetting a conspiracy. *See United States v. Jarvis*, 335 F. App’x 845, 847 (11th Cir. 2009) (“[E]ven if the jury convicted Jarvis of conspiracy to possess with intent to distribute cocaine under an aiding and abetting theory, his offense of conviction would remain the same.”). Thus, the Motion is denied as this argument.

Next, Section 248(c)(1) can serve as the object of a criminal conspiracy. The United States is correct that “Section 248(c)(1), the civil provision of the FACE Act, secures the right to provide and obtain reproductive health services free from force or threat of force, physical obstruction, injury, intimidation, or interference.” (Doc. # 108 at 5). Section 241 prohibits “only intentional interference with rights made specific either by the express terms of the federal Constitution or laws or by decisions interpreting them.” *United States v. Kozminski*, 487 U.S. 931, 941, 108 S. Ct. 2751, 101 L. Ed. 2d 788 (1988). The parties agree that the Court should look to the law surrounding Section 1983 for guidance on whether the FACE Act creates an individual right. (Doc. # 108 at 7; Doc. # 118 at 4).

There are “three factors to guide judicial inquiry into whether or not a statute confers a right: [1] Congress must have intended that the provision in question benefit the plaintiff, [2] the plaintiff must demonstrate that

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the right assertedly protected by the statute is not so ‘vague and amorphous’ that its enforcement would strain judicial competence, and [3] the provision giving rise to the asserted right must be couched in mandatory, rather than precatory, terms.” *Gonzaga Univ. v. Doe*, 536 U.S. 273, 282, 122 S. Ct. 2268, 153 L. Ed. 2d 309 (2002) (quoting *Blessing v. Freestone*, 520 U.S. 329, 340, 117 S. Ct. 1353, 137 L. Ed. 2d 569 (1997) (internal quotation marks omitted)). “For a statute to create such private rights, its text must be phrased in terms of the persons benefited,” with the use of “rights-creating’ language” and “individually focused terminology.” *Id.* at 282, 287 (citation and internal quotation marks omitted).

Notably, another district court recently held, after citing case law on establishing a right in the Section 1983 context, that the FACE Act “plainly does” confer an individual right. *United States of Am. v. Gallagher*, No. 3:22-CR-00327, 2023 U.S. Dist. LEXIS 114213, 2023 WL 4317264, at *13 (M.D. Tenn. July 3, 2023). Thus, that court denied a motion to dismiss the Section 241 charge premised on the violation of the FACE Act, stating that the Section 241 conspiracy against rights charge had “been sufficiently stated.” 2023 U.S. Dist. LEXIS 114213, [WL] at *14.

And the Court agrees with the United States that “because Section 248(c)(1) satisfies all three factors established by the Supreme Court in *Blessing* and *Gonzaga*, Section 248(c)(1) created an individual right.” (Doc. # 108 at 10). First, the government and the *Gallagher* court are correct that the language of Section 248(c)(1) of the FACE

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Act is “rights-creating” and “individually focused,” with the victims of the crime – clinics offering reproductive health services – clearly falling within the persons and entities imbued with the right. *See* 18 U.S.C. § 248(c)(1)(A) (“Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services”); *see also D.O. v. Glisson*, 847 F.3d 374, 378 (6th Cir. 2017) (holding that the Child Welfare Act created a federal right; it satisfied the first factor because it mandated payments “on behalf of each child,” showing a “focus on individual recipients”). As the *Gallagher* court persuasively explained:

[The FACE Act] defines the ways that an individual can violate the Act in reference to the interests of specific individuals. “Interference,” under the Act, for example, “means to restrict a person’s freedom of movement.” 18 U.S.C. § 248(e)(1). “Intimidation” means “to place a person in reasonable apprehension of bodily harm to him-or herself or to another.” 18 U.S.C. § 248(e)(3). This focus on the individual supports the conclusion that the FACE Act is a right-conferring statute.

Gallagher, 2023 U.S. Dist. LEXIS 114213, 2023 WL 4317264, at *13.

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Next, Section 248(c)(1) is not so vague and amorphous as to strain judicial competence, given its clearly defined terms and contours of the right to obtain or provide reproductive health services without force or threat of force, physical obstruction, injury, intimidation, or interference. *See Glisson*, 847 F.3d at 378 (explaining that the Child Welfare Act lacks vague and amorphous terms that might strain judicial competence because it “confers a monetary entitlement upon qualified foster families and includes an itemized list of expenses that the state must cover”).

Section 248 also satisfies the third factor, requiring a right be “couched in mandatory, rather than precatory, terms.” Section 248(a) states that a person who engages in the conduct made unlawful under the statute “shall be subject” to both criminal and civil penalties described in Sections 248(b) and (c). 18 U.S.C. § 248(a). The mandatory language “shall” fulfills the mandatory requirement. *See Harris v. Olszewski*, 442 F.3d 456, 462 (6th Cir. 2006) (“Third, the ‘must . . . provide’ language of the provision confirms that the statute is ‘couched in mandatory, rather than precatory, terms.’” (citation omitted)); *Glisson*, 847 F.3d at 378 (holding that the statute’s “shall make’ language ‘unambiguously impose[s] a binding obligation on the States,” thus satisfying the third factor (citation omitted)).

Thus, in short, the United States has shown that Section 248 of the FACE Act confers an individual right enforceable through Section 241.

*Appendix B***C. The Right created by the FACE Act is Enforceable through Section 241**

Oropesa also maintains that “using [Section] 241 to enforce the FACE Act, transforming a substantive criminal offense punishable as a misdemeanor to a felony conspiracy, is incompatible with the Supreme Court’s jurisprudence in the closely related [Section] 1983 context.” (Doc. # 102 at 12–13). According to her, “[b]ecause the FACE Act contains its own enforcement mechanism, . . . it is improper to seek duplicative enforcement for the same conduct through the civil rights felony conspiracy statute.” (*Id.* at 9). Oropesa frames her argument as challenging whether the FACE Act is a “law of the United States” on which a violation of Section 241 can be based. *See* (Doc. # 118 at 5) (“Oropesa’s argument focuses not on whether the FACE Act creates a ‘right’ enforceable under Section 241, but whether it is a ‘law’ enforceable under Section 241.”).

She notes that, in the context of analyzing whether a Section 1983 action lies for violation of a federal statutory right, the Supreme Court has opined: “The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under [Section] 1983. . . . Thus, the existence of a more restrictive private remedy for statutory violations has been the dividing line between those cases in which we have held that an action would lie under [Section] 1983 and those in which we have held that it would not.” *City of Rancho Palos Verdes, Cal. v. Abrams*, 544 U.S. 113, 121, 125 S. Ct. 1453, 161 L. Ed. 2d 316 (2005).

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But the *City of Rancho Palos Verdes* Court did not say this regarding whether the statute at issue was a “law of the United States.” Rather, this statement was made in the context of what a defendant must show to rebut the presumption that a statutorily created right is enforceable through Section 1983. *See Id.* at 120 (“The defendant may defeat this presumption by demonstrating that Congress did not intend that remedy for a newly created right. Our cases have explained that evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute’s creation of a ‘comprehensive enforcement scheme that is incompatible with individual enforcement under [Section] 1983.’” (citations omitted)).

The Court rejects Oropesa’s arguments. The FACE Act, a federal statute, is clearly a “law[] of the United States” for purposes of Section 241. 18 U.S.C. § 241; *see also Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 143 S. Ct. 1444, 1450, 216 L. Ed. 2d 183 (2023) (stating, regarding Section 1983’s “unqualified reference to ‘laws,’” that “‘Laws’ means ‘laws’”). Furthermore, as the United States puts it, “[e]nforceability under [Section] 1983 and enforceability under [Section] 241 are distinct questions and require distinct analyses.” (Doc. # 138 at 5). The Court agrees that, while the precedent regarding Section 1983 was helpful to determining whether the FACE Act creates an individual right, case law concerning whether an individual right is enforceable in a civil action under Section 1983 is not helpful here.

Rather, the Court must focus on the few cases addressing Section 241 to determine enforceability.

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Again, the one other court to address a Section 241 charge premised on a violation of the FACE Act has found that the FACE Act created an individual right that was enforceable through Section 241. *See Gallagher*, 2023 U.S. Dist. LEXIS 114213, 2023 WL 4317264, at *13–14. And the Court does not consider the existence of both criminal and civil penalties under the FACE Act to preclude enforcement through Section 241. Rather, as the United States argues, “the fact that the FACE Act includes criminal penalties and civil remedies weighs in favor of enforceability under [Section] 241.” (Doc. # 138 at 8). Indeed, in *United States v. De Laurentis*, 491 F.2d 208 (2d. Cir. 1974), the Second Circuit held that a section of the National Labor Relations Act could not form the basis of a Section 241 conspiracy charge where that statute did not provide criminal penalties or civil remedies for violations of the rights it created. *Id.* at 212–13; *see also Id.* at 213 (“It seems unreasonable to believe that Congress would provide that the consummated violation of the rights under Section 157 would constitute only an unfair labor practice, without even a fine or any punishment as a misdemeanor, but should punish as a ten year felony the mere conspiring to do such thing.”).

Notably, the FACE Act also states that it shall not “be construed to provide exclusive criminal penalties with respect to the conduct prohibited” by the Act. 18 § U.S.C. § 248(b). This language weighs against the argument that Congress intended the criminal penalties and civil remedies enumerated in the FACE Act to preclude enforcement through Section 241 or other means.

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Furthermore, the Court is unpersuaded by Oropesa's complaint that she is being charged with felony conspiracy through Section 241 when the FACE Act itself only provides misdemeanor criminal penalties. The *Gallagher* court rejected a similar argument, and this Court adopts that reasoning:

[T]he defendants argue that applying [Section] 241 in this situation “conflicts with both the spirit and the letter of” the FACE Act, as “Congress could not have been clearer in its intention that first offense violations of FACE be charged as misdemeanors.” But a [Section] 241 conspiracy charge based on a conspiracy to violate FACE Act rights is not the same thing as a charge under the FACE Act. The defendants' argument is not so much one based on any statutory language – which it is not – but on the fact that it simply seems, to them, unfair to consider it a felony to conspire to commit some misdemeanors. Whatever the moral persuasiveness of that thought, the defendants are asking this court to second-guess both the legislative decisions of Congress and the charging decisions of the Executive in a way that this court has no power to do. Nor can the defendants defeat those separation-of-powers concerns by recasting this argument as one involving disproportionate punishment, because there is no caselaw supporting such a holding regarding the punishments available under [Section] 241.

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Gallagher, 2023 U.S. Dist. LEXIS 114213, 2023 WL 4317264, at *14 (internal citation omitted). Oropesa has presented no law supporting that a Section 241 conspiracy against rights charge is impermissible because the statute creating the individual right itself only provides for misdemeanor penalties.

The superseding indictment sufficiently states the charge of conspiracy against rights under Section 241 against all defendants. The Motion to Dismiss is denied.

Accordingly, it is hereby

ORDERED, ADJUDGED, and DECREED:

Defendant Gabriella Victoria Oropesa's Motion to Dismiss Count One of the Superseding Indictment (Doc. # 102) is **DENIED**.

DONE and ORDERED in Chambers, in Tampa, Florida, this 27th day of July, 2023.

/s/ Virginia M. Hernandez Covington
VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

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**APPENDIX C — DENIAL OF REHEARING EN BANC
OF THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT, FILED FEBRUARY 2, 2026**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 25-10928

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GABRIELLA VICTORIA OROPESA,
a.k.a. GABS, a.k.a. GABY, a.k.a. GUMMY,

Defendant-Appellant.

Filed February 2, 2026

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:23-cr-00025-VMC-AEP-4

ON PETITION FOR REHEARING AND PETITION
FOR REHEARING EN BANC

Before JORDAN, LAGOA, and WILSON, Circuit Judges.

PER CURIAM:

Appendix C

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. FRAP 40, 11th Cir. IOP 2.