

No. ____

In The
Supreme Court of the United States

BENJAMIN CARPENTER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
To the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Title 18 U.S.C. § 2339B prohibits attempting to knowingly provide material support or resources to a foreign terrorist organization. The term “material support or resources” is defined as “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials[.]” 18 U.S.C. 2339A(b)(1). These terms “expert advice or assistance”, “training”, and “personnel” each have specific definitions outlined in 18 U.S.C. 2339A(b)(2)-(3) and 18 U.S.C. 2339B(h).

As interpreted by the Sixth Circuit, a defendant can be convicted under the “service” prong of the statute in cases where the Government actually presents a case under one of the clearly defined terms, such as expert advice or assistance, personnel, or training to the jury without pleading or proving the statutory definitions.

The question presented is:

When the Government charges a material support offense under the prong “any service,” may the defendant be convicted based on evidence of a different subsection when those definitions have not been provided to the jury for consideration?

PARTIES TO THE PROCEEDING

Benjamin Carpenter, petitioner on review, was the appellant below.

The United States of America, respondent on review, was the appellee below.

RELATED PROCEEDINGS

United States v. Benjamin Carpenter, United States Court of Appeals for the Sixth Circuit, Case No. 24-5656, (Oct. 31, 2025).

United States v. Benjamin Carpenter, United States District Court for the Eastern District of Tennessee, Case No. 3:21-cr-038 (Oct. 19, 2023).

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JURISDICTION

The United States District Court for the Eastern District of Tennessee entered a judgment of conviction against Carpenter on October 19, 2023. He timely appealed and the Sixth Circuit affirmed his conviction on October 31, 2025. Mr. Carpenter timely filed a petition for rehearing *en banc*, which was denied on December 3, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The federal statutory provisions at issue are 18 U.S.C. § 2339A and § 2339B.

INTRODUCTION

This case raises the question of whether the Government can circumvent the legislative intent of a statute by charging one variation of the statute while simultaneously proceeding to trial and securing a conviction based on a theory of a different variation of the statute.

18 U.S.C. § 2339B prohibits the act of attempting to provide material support or resources to a foreign terrorist organization. Material support or resources is a term that is defined in 18 U.S.C. 2339A(b) as

any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.” The statute provides specific definitions for the terms training, expert advice or assistance, and personnel. 18 U.S.C. 2339A(b)(2)-(3). These definitions are additional elements that must be proven to a jury beyond a reasonable doubt when a defendant is charged in connection with that specific term.

Mr. Carpenter was charged and convicted of attempting to provide material support and resources to a foreign terrorist organization. In the Government’s second superseding indictment, the Government alleged that Mr. Carpenter attempted to provide material support and resources under the “any service” prong of the statute, specifying “translation services.” R. 108, PageID# 1143.

In Mr. Carpenter’s case, the Government went to trial and secured a conviction based on the “service” prong of the statute. However, at trial, the Government argued the “expert advice or assistance” prong to the jury.

To be convicted under the “expert advice or assistance” prong of the statute, the Government must prove that the defendant provided material support and resources through “advice or assistance derived from scientific, technical, or other specialized knowledge.” 18 U.S.C. § 2339A(b)(3). The jury was never instructed on this definition. R. 155, PageID# 1668. A jury convicted Mr. Carpenter based on a prong of the statute that was not charged by the grand jury and is unconstitutionally vague as applied in this case.

Under this interpretation of the term “service,” the Government could use a charge conduct that is clearly intended to be covered by one of the defined terms and simply charge the defendant under the “service” prong to avoid proving the definitions. For example, the Government could charge a defendant for providing material support under the “service” prong in the form of “instruction services” instead of training. Based on existing precedent, if the Government charged a case in this way, they would not have to prove “instruction or teaching designed to impart a specific skill, as opposed to general knowledge.” 18 U.S.C. § 2339A(b).

The application of the statute in this way in Mr. Carpenter’s case rendered the narrowing definitions of the statute meaningless.

STATEMENT

Mr. Carpenter was charged and convicted of attempting to provide material support in the form of translation services to a foreign terrorist organization. The conduct stems from an interaction that Mr. Carpenter had with an FBI Online Covert Employee ("OCE"). The OCE entered into conversations with Mr. Carpenter about translations of various ISIS propaganda videos. The OCE asked if Mr. Carpenter would be willing to translate a video called Bleeding Campaigns. R. 209, PageID#3053-54. Mr. Carpenter initially declined, stating that he could not help with videos. Trial Tr. R. 208, PageID#3054. The OCE then asked if Mr. Carpenter could assist with editing a partially translated transcript. R. 208, PageID# 3068. Mr. Carpenter informed the OCE that he sent the transcript to someone else. R. 209, PageID# 3105.

Eventually, Mr. Carpenter forwards a new version of the transcript to the OCE. R. 209, PageID# 3245. The OCE then asks Mr. Carpenter to assist with another transcript of an ISIS propaganda video called To Be Absolved Before Your Lord. Mr. Carpenter does not follow up with the OCE. R. 209, PageID#3257-60. Shortly after these interactions, Mr. Carpenter was arrested, interviewed, and charged with attempting to provide material support and resources to a foreign terrorist organization.

As soon as he was indicted, Mr. Carpenter began challenging the indictment and the way that he was charged. R. 40, PageID#305. The first indictment only alleged "material support and resources" without providing any defined terms. After

Mr. Carpenter challenged the initial indictment, the Government superseded twice. R.73, 108. In the second superseding indictment, the Government included language charging Mr. Carpenter with attempting to provide material support and resources, “namely, services, to wit, translation services” to a foreign terrorist organization. R.108.

Throughout this case, the Government always intended to proceed under multiple categories of the material support and resources statute without charging them so as to avoid the additional evidentiary burden. In fact, the Government argued that Mr. Carpenter should be considered capable of providing expert advice or assistance in a pretrial pleading before arguing that the trial court “need not address this argument since the Defendant is charged with attempting to provide ‘services,’ not ‘expert advice and assistance.’” Doc. 68, PageID# 542.

In closing, the Government made it clear that it intended to argue a broader interpretation of the conduct alleged in the indictment. First, the Government argued that material support means *any* property or *any* service, even though Mr. Carpenter’s indictment limited the material support conduct to “translation services.” Doc. 212, PageID#4139. The Government further argued that Mr. Carpenter had the “expertise” and provided “advice” in this case. R. 212, PageID# 4140, 4161.

When it came time to provide jury instructions, Mr. Carpenter asked for a jury instruction on the definition of expert advice or assistance. R. 155, PageID#1668. Mr. Carpenter also requested a jury instruction defining translation services. The Court declined to give either instruction. Mr. Carpenter’s objection to the trial court’s failure

to provide an instruction on translation services was based on the potential for a variance. R. 213, PageID#4238.

The Court's failure to dismiss the indictment resulted in the statute being unconstitutionally vague as applied in this case as well as a fatal variance and amendment in the indictment.

I. The Statute was Unconstitutionally Applied to Mr. Carpenter because the Prosecution Relied on the Defined Subsections Without Having to Plead or Prove the Statutory Subsections.

The material support statute clearly outlines specific defined terms that the government is required to prove beyond a reasonable doubt when a defendant is charged with that form of material support or resources. If someone is charged with providing material support and resources in the form of expert advice or assistance, the Government must prove "scientific, technical or other specialized knowledge." 18 U.S.C. § 2339A(b)(3). If charged with "training" the Government must prove instruction or teaching designed to impart a specific skill, as opposed to general knowledge." 18 U.S.C. § 2339A(b)(2). Likewise, the statute outlines parameters for charging under personnel: "No person may be prosecuted under this section in connection with the term "personnel" unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with 1 or more individuals (who may be or include himself) to work under that terrorist organization's direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Individuals who act entirely independently

of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization's direction and control." 18 U.S.C. 2339B(h).

The "service" prong of the statute is vague as applied to Mr. Carpenter because "translation services" under the "service" prong exceeds the scope of the legislative intent of that portion of the definition. The term "service" under the material support and resources statute cannot mean any service. If that is the case, there is no point in the remaining terms in the definition. If the Government is permitted to charge any service that would normally fall under one of the defined terms but falls short of the parameters outlined by Congress in the statute, the existence of that defining language is meaningless.

This Court addressed a vagueness challenge in *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010). In *Holder*, this Court determined that the statute was not unconstitutionally vague because the proposed conduct would fall under "training" and "expert advice or assistance." *Id.* at 21. The Court looked at the legislative history of the material support or resources statute, noting that after the statute had been challenged as unconstitutionally vague, the legislature provided definitions for several of the terms outlined in the material support or resources definition. *Id.* at 12-13. In finding that the statute was not unconstitutionally vague as applied, this Court emphasized that Congress added narrowing definitions for training, expert advice and assistance, and personnel in the material-support statute, reducing "any potential for vagueness." *Id.* at 21.

However, in a second superseding indictment, the Government elected to charge Mr. Carpenter with attempted material support in the form of “services, to wit, translation services.” R. 108, PageID# 1143.

When Congress added the narrowing definitions, they also added the term at issue in this case: “service.” *Holder*, 561 U.S. at 12. Because Congress added the term service at the same time as adding the narrowing definitions to the already existing terms, the legislative intent was for service to be a distinct term and not absorb every other term in the definition.

In Mr. Carpenter’s case, the panel found that the statute was not unconstitutionally vague because the statute provided reasonable notice, and that the facilitation of a translation would fall under the statute. *United States v. Benjamin Carpenter*, United States Court of Appeals for the Sixth Circuit, Case No. 24-5656, p. 5 (October 31, 2025). However, the panel failed to address the primary concern that Mr. Carpenter raised: the fact that the Government was permitted to present a theory and evidence to the jury that implicated “expert advice or assistance,” without being required to prove that the attempted support was “derived from scientific, technical or other specialized knowledge.” 18 U.S.C. § 2339A(b)(3). Mr. Carpenter does not contest that there are factual circumstances where translation could fall under this statute. However, because the Government charged “services” and not another prong, the statute was vague in this case. *See United States v. Salisbury*, 983 F.2d 1369, 1378 (6th Cir. 1993) (citing *Smith v. Goguen*, 415 U.S. 566, 577-578 (1974) (statutes which clearly prohibit some activity may be

unconstitutionally vague as applied because “though the terms and judicial constructions of a statute may make it apply unquestionably to certain activities, its application to other activities may remain uncertain due to the absence of a stated standard for inclusion or exclusion of activities from its scope.”).

Allowing the Government to proceed on the any “service” theory of prosecution, while simultaneously arguing under an uncharged prong of the statute, renders the definitions that congress enacted meaningless.

II. The Proof and Instructions Presented to the Jury Resulted in a Fatal Variance or an Amendment to the Indictment that Deprived Mr. Carpenter of his Right to Notice and to be Charged by Grand Jury.

The Government presented proof and argument to the jury that fundamentally expanded the scope of the indictment in a way that deprived Mr. Carpenter his right to be charged by the grand jury. “A fundamental principle stemming from [the Fifth Amendment] is that a defendant can only be convicted for a crime charged in the indictment.” *United States v. Keller*, 916 F.2d 628, 633 (11th Cir. 1990). When a person is convicted of a crime other than what has been charged in the indictment, the indictment has been amended. *Id.*

Charging a prong and arguing a different prong of material support and resources circumvents the protection of the grand jury. *See United States v. Ford*, 872 F.2d 1231 (6th Cir. 1989); *see also United States v. Awan*, 459 F. Supp. 167, 175 (E.D.N.Y. 2006) (dismissing an indictment that charged “material support and

resources” without specifying a category because it is impossible to determine if the grand jury considered this information).

While the facts alleged in the indictment did not change, the variation of the statute charged did, resulting in an amendment or fatal variance in the indictment. *See United States v. Beard*, 436 F.2d 1084, 1086 (1971) (finding reversible error when a defendant who was charged under one statute, but convicted of a different statute based on the same factual basis alleged in the indictment because the Grand Jury only indicted the statute charged and there was no proof that they considered the elements of a different offense).

While an indictment may allege alternative theories or schemes, that is not the case in Mr. Carpenter’s case. Mr. Carpenter was not charged with one of the terms that are defined in the statute. The Government’s proof and argument in closing, however, expanded the scope of the indictment to include those terms. The Government argued that Mr. Carpenter had an opportunity to “leverage the expertise that he had spent years developing” in their closing argument. The Government argued that Mr. Carpenter provided “advice” to an undercover agent.

The Government’s argument that Mr. Carpenter provided both advice and expertise shows that the Government was also proceeding on a theory of expert advice and assistance, which required the Government to prove specific as opposed to general knowledge. This created an extreme likelihood that Mr. Carpenter was convicted of an offense other than what he was charged with.

This expansion of the indictment “destroyed the defendant’s substantial right to be tried only on charges presented in an indictment returned by a grand jury.” *Stirone v. United States*, 361 U.S. 212, 217 (1960). Further, because the Government was permitted to present a case under a prong of the statute that was not charged, Mr. Carpenter was deprived of his Fifth and Sixth Amendment rights because the jury failed to make the necessary findings that are required when a defendant is alleged to have committed a material support case alleging “expert advice or assistance.” *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000) (quoting *Jones v. United States*, 526 U.S. 227, 243, n. 6 (1999) (“any fact. . . that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.”)).

This resulted in not only a variance in the proof, but an amendment to the indictment because Mr. Carpenter was likely convicted based on a term that has a specific definition that the jury must find beyond a reasonable doubt. Despite requesting the instruction, it was not provided to the jury.

REASONS FOR GRANTING PETITION FOR WRIT OF CERTIORARI

In *Holder v. Humanitarian Law Project*, this Court emphasized that it could not analyze whether the term “service” was vague as applied to hypothetical situations involving advocacy because “gradations of fact or charge would make a difference as to criminal liability” and so “adjudication of the reach and constitutionality of [the statute] must await a concrete fact situation.” 561 U.S. at 25. That situation is Mr. Carpenter’s case.

The lower court’s decision in this case allows for broad prosecutorial discretion to expand so far as to not only substitute their own judgment for that of the legislature but the grand jury as well.

This Court should grant review because Mr. Carpenter’s conviction under the “services” prong creates precedent that allows the Government to circumvent the legislature’s intent in drafting specific definitions for the various examples of material support or resources listed in the statute. The government was permitted to prosecute a case of “expert advice or assistance” without having to prove that the “advice or assistance” was “derived from scientific, technical, or other specialized knowledge.” 18 U.S.C. § 2339A. The application of the statute in this way effectively negates the defined portion of the statute because the Government may simply charge the service prong when they are unable to prove their case under the defined terms.

The application of “service” conflicts with this Court’s rationale in *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010). While *Holder* did not directly address the services prong as applied to the petitioners’ conduct in that case, the Court

emphasized the importance in the expansion of the material support statute to include the defined terms of “personnel,” “expert advice or assistance,” and “training.” *Id.* at 11-13.

Because this case conflicts in rationale with *Holder* and creates a precedent that essentially renders the narrowing portions of the material support and resources statute meaningless, the Court should hear grant this petition.

CONCLUSION

For the foregoing reasons, the Court should grant the petition.



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APPENDIX

APPENDIX A --- UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF TENNESSEE ORDER DENYING RENEWED MOTION FOR
JUDGMENT OF ACQUITTAL

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
v.)	NO.: 3:21-CR-38-KAC-DCP
)	
)	
BENJAMIN ALAN CARPENTER,)	
)	
Defendants.)	

ORDER

This case is before the Court on Defendant’s “Renewed Motion for Judgment of Acquittal” [Doc. 199]. A Second Superseding Indictment charged Defendant with attempting to provide material support and resources, “namely, services, to wit, translation services,” to a foreign terrorist organization, in violation of 18 U.S.C. § 2339B(a)(1) [Doc. 108]. Defendant’s trial began on October 10, 2023 [See Doc. 176]. On October 16, after the United States rested its case, Defendant moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29 [See Doc. 180]. See Fed. R. Crim. P. 29(a). The Court denied the motion and stated its reasons in full on the record [See *id.*]. That same day, Defendant presented evidence, rested his

case, and then renewed his motion for a judgment of acquittal on precisely the same bases as his initial motion [*See id.*]. The Court denied the motion, stating its reasons on the record [*See id.*]. On October 19, the jury returned a guilty verdict [Doc. 190].

In the instant Motion, Defendant “renews the arguments that he made at the close of the [United States]’s proof and at the close of proof” [Doc. 199 at 1]. Defendant’s renewed motion is unavailing for the reasons the Court previously stated on the record when denying Defendant’s previous motions for judgment of acquittal [*See Doc. 180*].

For purposes of clarity, Defendant’s argument that the United States’s “proof varied from what was alleged in the indictment” is a species of his attack on the sufficiency of the evidence [*See Doc. 199 at 2*]. Defendant’s argument appears to be that the United States should have indicted him for attempting “to provide personnel (by getting someone else to edit) or expert advice or assistance” to a foreign terrorist organization [*See id.*]. The theory goes that because he was instead indicted for attempting to provide material support and resources, “namely, services, to wit, translation services,” “[t]he difference between the indictment and [the] proof at trial constitutes a material variance” [*See id.*]. This “material variance” allegedly “resulted in the proof being insufficient to sustain a conviction based on what the indictment charged” [*Id.*]. But the grand jury indicted Defendant for attempting to provide material support and resources, “namely, services, to wit, translation services,” to a foreign terrorist organization, in violation of 18 U.S.C. § 2339B(a)(1) [*See Doc. 108*]. And for the reasons previously stated on the record, the United States presented

sufficient evidence to sustain a conviction for that offense under Rule 29 [*See* Doc. 180]. *See* Fed. R. Crim. P. 29(a). Further, to the extent Defendant argues that the purported variance “renders the statute [Section 2339B(a)(1)] unconstitutionally vague as applied” to him based on the evidence at trial,¹ [*see id.*], Section 2339B(a)(1) is not unconstitutionally vague as applied. In fact, the evidence at trial supported the conclusion that the statute provided a person of ordinary intelligence, including Defendant himself, fair notice of what conduct is prohibited [*See* U.S. Exhibit 106 (video of Defendant’s post-arrest interview)]. Accordingly, the Court DENIES Defendant’s “Renewed Motion for Judgment of Acquittal” [Doc. 199].

SO ORDERED.

¹ Defendant’s Renewed Motion for Judgment of Acquittal relies on “the reasons raised by Mr. Carpenter in his pretrial motions” to support this argument [*See* Doc. 199 at 2 (citations omitted)]. And the Court previously denied those motions in orders that the Court incorporates into its analysis here. But those pretrial motions did not, and could not, address the precise proof elicited at trial.

APPENDIX B--- OPINION OF THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT, FILED OCTOBER 31, 2025

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

No. 24-5656

BENJAMIN ALAN CARPENTER, aka Abu Hamza,

Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Tennessee
at Knoxville.

No. 3:21-cr-00038-1—Katherine A. Crytzer, District Judge.

Argued: October 23, 2025

Decided and Filed: October 31, 2025

Before: SUTTON, Chief Judge; GIBBONS and CLAY, Circuit Judges.

COUNSEL

ARGUED: Wade V. Davies, THE DAVIES LAW FIRM, PLLC, Knoxville, Tennessee, for Appellant. Joseph P. Minta, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee. ON BRIEF: Wade V. Davies, THE DAVIES LAW FIRM, PLLC, Knoxville, Tennessee, for Appellant. Joseph P. Minta, Gavan W. Duffy Gideon, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., Kyle J. Wilson UNITED STATES ATTORNEYS OFFICE, Knoxville, Tennessee, for Appellee.

OPINION

SUTTON, Chief Judge. Benjamin Carpenter provided translation and other services to a terrorist organization, ISIS, to permit its propaganda videos to be understood in English. That led to charges, and eventually a jury conviction, that Carpenter knowingly provided material support to a known terrorist organization. *See* 18 U.S.C. § 2339B. On appeal, he challenges his conviction and sentence on several grounds. We affirm.

I.

Benjamin Carpenter admired the work of ISIS, more formally known as the Islamic State of Iraq and al-Sham. To that end, he founded Ahlud-Tawhid Publications (ATP), an organization that translated and published ISIS propaganda in a variety of languages. Carpenter translated ISIS materials into English and wrote original material for ATP. He also started an ATP group on the secure-messaging platform Telegram, where he sought and obtained assistance for his ATP projects.

An FBI covert agent obtained access to the ATP Telegram group. He reached out to Carpenter's account about his translation projects. Over several months, Carpenter and the agent built a rapport. The agent would help Carpenter create graphics or facilitate conversations in the Telegram groups. They would discuss ISIS's goals and ways in which ISIS could amplify its message to the global community through translated videos and other propaganda. The agent portrayed himself as, and Carpenter understood him to be, affiliated with ISIS. The agent spoke on behalf of ISIS and described ISIS's priorities from an insider's perspective. On several occasions, Carpenter recommended to the agent which propaganda ISIS

should translate into English, and the agent reported back to him after claiming to confer with ISIS leadership.

On February 1, 2021, the agent asked Carpenter to help him translate an ISIS propaganda video. He told Carpenter that the “diwan”—ISIS leadership—needed it. R.209 at 32. Carpenter reviewed the partially completed translation and told the agent it was “very good.” R.209 at 68. Carpenter sent the work to a “brother” “with ATP,” and returned the completed video transcript to the agent. R.209 at 94, 97, 110–11. On February 17, the agent sent a second video transcript to Carpenter, one that Carpenter recommended ISIS prioritize. Carpenter replied to the agent’s new assignment with a “hugging sticker,” and reported that he sent the new transcript to the same ATP member to complete. R.209 at 114–15, 117. Federal authorities arrested Carpenter before he sent the second translation back to the agent.

The government charged Carpenter with one count of attempting to provide material support or resources to a terrorist organization. *See* 18 U.S.C. § 2339B. After a five-day trial, the jury convicted Carpenter. The district court sentenced him to 240 months.

II.

Carpenter challenges (1) the indictment and the statute’s application to his conduct; (2) the admission of certain evidence; (3) a protective order; (4) the jury instructions; and (5) his sentence.

A.

Carpenter claims that 18 U.S.C. § 2339B does not cover his conduct.

The statute prohibits anyone from “knowingly provid[ing] material support or resources to a foreign terrorist organization.” 18 U.S.C. § 2339B(a)(1). It defines “material support or resources” to include “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials[.]” *Id.* § 2339A(b)(1). The relevant indictment clarified that Carpenter was being charged for providing “translation services.” R.108 at 1.

Translation work fits within the statute’s prohibition on providing “any . . . service” to a terrorist organization. 18 U.S.C. § 2339A–B. By translating videos from Arabic into English, Carpenter provided a service to ISIS that furthered its propaganda mission. As the Supreme Court has explained in construing the same statute, “service” encompasses “concerted activity” in support of another. *Holder v. Humanitarian L. Project*, 561 U.S. 1, 23 (2010). That is just what Carpenter did in helping ISIS to make its propaganda videos available to those who speak only English.

Context confirms this interpretation. A word, as they say, is “known by the company it keeps,” *Russell Motor Car Co. v. United States*, 261 U.S. 514, 519 (1923), and “translation services” fits comfortably with the various examples of “any . . .

service” enumerated in the statute. Take some of the examples: expert advice or assistance, financial services, training support, and personnel support. The law’s application to “expert services” and “financial services” in particular shows that Congress meant to include methods of material, professional, and intellectual support within the meaning of “service.” Translation services after all require expertise in languages. They thus are cut from the same cloth as other “expert” services, and they thus amount to professional services “done for the benefit or at the command of another” and thus come within Congress’ inclusion of “any . . . service.” *Holder*, 561 U.S. at 24 (quotation omitted).

That the statute’s list of “service” examples does not include a reference to translation work does not undercut this conclusion. The list of examples begins with a word of expansion (“including”), not a phrase of limitation (“including only”). The question is whether translation is akin to the enumerated examples. It is. As just shown, several of them—financial services, expert assistance, personnel support—show that translation and arranging for translation belong in this company.

But this approach, Carpenter complains unsuccessfully, fails to respect *Fischer v. United States*, 603 U.S. 480 (2024). *Fischer* dealt with “a general or collective term at the end of a list of specific items,” not the encompassing term “including” as a prelude to a list of examples. 603 U.S. at 487 (quotation omitted). Our interpretation of 18 U.S.C. § 2339A–B does just what *Fischer* asks. It interprets a general phrase—“service”—in light of the included examples. That explains why the conclusion that

translation work is included in the relevant “services” does not mean that, as Carpenter worries, “[m]aterial support could be almost anything.” Appellant’s Br. 32.

Nor does this approach make § 2339B unconstitutionally vague. A statute violates the Due Process Clause of the Fifth Amendment if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *United States v. Williams*, 553 U.S. 285, 304 (2008); *see Holder*, 561 U.S. at 20. Carpenter’s claim faces the same fate as prior vagueness attacks on § 2339A–B. In *Holder*, another as-applied challenge, the Supreme Court distinguished the statute from laws that required “wholly subjective judgments,” such as tying culpability to conduct that is “annoying” or “indecent.” 561 U.S. at 20 (quotation omitted). The statute’s list of examples shows that the provision of professional skills is part of the “services” picture. *See* § 2339A(b)(1) (including “financial services” and “expert advice or assistance”). And *Holder* confirmed that “services” maintains its “ordinary meaning” of “concerted activity” between two entities. 561 U.S. at 23–24. No subjective or other slippery judgments are required on either front.

When the federal agent asked Carpenter to help translate his ISIS videos, Carpenter facilitated their translation. He understood that his efforts would help ISIS spread its message. A person of ordinary intelligence would know that this amounted to work conducted “for the benefit or at the command of another.” *Holder*, 561 U.S. at 24 (quotation omitted). The statute provided Carpenter with all the notice

a reasonable person would need to know that this support to a foreign terrorist organization would violate the law.

B.

Carpenter challenges several of the district court's evidentiary decisions. Abuse-of-discretion review applies. *United States v. Churn*, 800 F.3d 768, 774 (6th Cir. 2015).

Exhibits in the Government's September 12 notice. Before trial, the government filed a notice stating that it intended to introduce evidence of Carpenter's role in ATP, ATP's work product, and Carpenter's interaction with ISIS's work product. Carpenter objects to the district court's determination that the evidence included in the government's notice was intrinsic to the crime charged and claims that in truth it amounted to "other acts" evidence under Rule 404(b).

Evidence of an extrinsic "crime, wrong, or act" is inadmissible "to prove a [defendant]'s character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). But "intrinsic acts" do not fall under this umbrella. *Churn*, 800 F.3d at 779. Such evidence is "inextricably intertwined with the criminal act charged or a part of the criminal activity," *id.* (quotation omitted), and is "necessary to complete the story of the charged offense," *United States v. Hardy*, 228 F.3d 745, 748 (6th Cir. 2000). In addition to determining whether the evidence falls into this category, a court must also determine whether the evidence complies with Evidence Rule 403. *Churn*, 800 F.3d at 779.

We have no quarrel with the district court's ruling that the evidence in the government's notice amounted to intrinsic acts. It saw evidence of Carpenter's role in ATP as "intrinsic to the translation services" charged, and it reasoned that evidence of ATP's and ISIS's work product was "intertwined with . . . alleged knowledge of ISIS's terrorism-related activity and status and the alleged materiality of any support provided." R.252 at 52. Consistent with our precedent, the evidence "provides background information, establishes a nexus between individuals, or completes the story of the charged offense," and does not provide "a backdoor to circumvent the goals of Rule 404(b)." *United States v. Gibbs*, 797 F.3d 416, 423–24 (6th Cir. 2015) (quotation omitted).

The district court also had good reason to find that the "probative value" of this evidence was "not substantially outweighed by a danger of unfair prejudice" under Rule 403. R.252 at 52. The evidence was highly probative. It framed Carpenter's knowledge of, and involvement with, ISIS, and one element of the crime required proof that Carpenter "knowingly provide[d] material support" to a terrorist organization. 18 U.S.C. § 2339B(a)(1). And it connected Carpenter to ATP, an organization that translated ISIS propaganda into English. Through it all, the evidence was not unduly prejudicial. Evidence is not unduly prejudicial "simply because it provides powerful evidence that the defendant committed the charged crimes." *United States v. Harvel*, 115 F.4th 714, 737 (6th Cir. 2024). Evidence is unduly prejudicial when it "might lead the jury to convict for an inappropriate reason." *Id.* (emphasis omitted). No such problem raised its head.

Carpenter claims that the evidence in the notice was cumulative and inflammatory and prevented him from receiving a fair trial. He does not elaborate how. Even after showing that a Rule 403 problem did not exist, the district court invited Carpenter to object at trial “[i]f at any point [he] believes that the evidence becomes so cumulative such that the 403 analysis has changed.” R.252 at 52–53. Carpenter never alerted the court to such a concern after this invitation, and he has not shown an abuse of discretion with the initial admission.

Exhibits 32–35. Carpenter contends that the district court erred by admitting screenshots of his WhatsApp messages with an ISIS-supporting romantic interest because the government did not provide notice of this plan. *See* Fed. R. Evid. R. 404(b)(3). But Carpenter misapprehends what happened. The government introduced the screenshots—enthusiastic discussions of ISIS beheadings—to counter Carpenter’s entrapment defense. That defense required the government to show Carpenter’s predisposition to commit the offense beyond a reasonable doubt, making it an “essential element” of their case. Fed. R. Evid. Rule 405(b); *see also United States v. McMahan*, 129 F. App’x 924, 930–31 (6th Cir. 2005). The screenshots thus came in under Rule 405, not 404(b). Once Carpenter “voluntarily joined his ‘character’ as an issue . . . by pursuing his affirmative defense of entrapment,” he “opened the door” for the government to demonstrate his predisposition to commit the crime “without resorting to or relying upon Rule 404(b) and the limitations of its notice requirement.” *United States v. Roper*, 135 F.3d 430, 433 (6th Cir. 1998) (quotation omitted). No notice requirement applied.

Carpenter resists this conclusion, arguing that his entrapment defense did not give the prosecution license to “roam at will through his past.” Appellant’s Br. 43 (quotation omitted). No such roaming occurred. The government remained “constrained by familiar rules of relevancy” and “policies against undue prejudice or unfair surprise” in answering his entrapment defense. *United States v. Ambrose*, 483 F.2d 742, 748 (6th Cir. 1973). Consistent with that obligation, the district court conducted a relevance and undue-prejudice analysis under Rule 403 for each of the exhibits. No abuse of discretion occurred.

FBI Agent Richard Smith’s testimony. Carpenter objects to the inclusion of lay testimony from an FBI agent, who explained the meaning of “JJ” in Carpenter’s WhatsApp messages. The agent testified that “JJ” “likely” referred to “Jihadi John,” a member of ISIS frequently featured in Islamic State execution videos. R.210 at 120–21. Carpenter must “state some claim that the identification was faulty or debatable, and show how the answer was prejudicial” in order to “challenge a lay witness’s identification testimony on appeal.” *United States v. Kilpatrick*, 798 F.3d 365, 383 (6th Cir. 2015). While Carpenter maintains that the identification should have been made through expert testimony, he does not disclaim its accuracy or show how the evidence unfairly prejudiced him. What is more, plenty of other evidence confirmed that Carpenter committed these crimes, making this fragment of unfavorable testimony harmless. We cannot say with “fair assurance” that this small factual matter “substantially swayed” the verdict against Carpenter. *Kotteakos v. United States*, 328 U.S. 750, 765 (1946).

Exhibit 17. Carpenter takes issue with the government's use of a screenshot of a message from Carpenter in which he sought to draw the covert agent's attention to the locations of American military bases in Syria. Carpenter objects (skeletal) under Evidence Rules 404(b) and 403. He states only that the screenshot is "shocking and prejudicial" and "provides little probative value towards the essential elements of the offense." Appellant's Br. 46. Because Carpenter has not developed his argument regarding Rule 404(b) either on appeal or at trial, we address his claim of prejudice under only Rule 403. We look for "*unfair* prejudice caused by admission of the evidence." *United States v. Sanders*, 95 F.3d 449, 453 (6th Cir. 1996). And we must view the evidence "in the light most favorable to the government by maximizing the probative value of the evidence and minimizing its potential prejudice." *Id.*

The district court appropriately considered the admissibility of this screenshot under Rule 403. It found the exhibit relevant for the purpose of establishing that Carpenter understood the covert agent to be "an operator within ISIS, or at least affiliated with ISIS." R.208 at 199. This connection showed that Carpenter knowingly provided material support to the agent, all while thinking he was affiliated with ISIS. When looking to prejudice, the court found that it was "simply an image of locations of American military bases that purportedly are in Syria," and identified no reason to think it would elicit "extreme prejudice" against Carpenter. R.208 at 199. The court thus appropriately weighed the probative value against the risk of unfair prejudice. No error occurred.

Stipulation. Carpenter challenges the district court’s refusal to allow him to stipulate that he knew ISIS was a terrorist organization. The general rule is that the government is “entitled to prove its case by evidence of its own choice.” *Old Chief v. United States*, 519 U.S. 172, 186–87 (1997). An exception arises when a defendant wishes to stipulate that he satisfies the prior conviction element of an offense. *Id.* at 191. This court has consistently declined invitations to expand the government’s obligation beyond this exception. *United States v. Luck*, 852 F.3d 615, 624–25 (6th Cir. 2017). We hold that line today.

The district court concluded that the exception did not apply, and for ample reason. Carpenter’s knowledge of ISIS “play[ed] a vital role in the United States’ proffered narrative,” and the evidence had utility beyond simply registering Carpenter’s knowledge. R.173 at 2 (quotation omitted). It therefore properly acknowledged “cognizable difference[s] between the evidentiary significance” of a stipulation and the evidence of Carpenter’s years-long relationship with ISIS propaganda. *See Old Chief*, 519 U.S. at 191. No abuse of discretion occurred.

C

Carpenter contests the district court’s decision to allow the FBI agent to use a pseudonym at trial. We review the district court’s decision to grant a protective order for abuse of discretion. *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004).

The trial court has broad latitude to “deny, restrict, or defer discovery or inspection” “for good cause.” Fed. R. Crim. P. 16(d)(1). On top of that, the Classified

Information Procedures Act says that a court may “authorize the United States” to withhold classified information from a defendant and allows the United States to “make a request for such authorization” in a statement “to be inspected by the court alone.” 18 U.S.C. app. 3 § 4. Classified information is that which “has been determined by the United States Government . . . to require protection against unauthorized disclosure for reasons of national security.” *Id.* app. 3 § 1.

Even classified information must occasionally “give way” “to a criminal defendant’s right to present a meaningful defense.” *United States v. Hanna*, 661 F.3d 271, 295 (6th Cir. 2011) (quotation omitted). We thus require a district court to consider (1) “whether the material in dispute is discoverable,” (2) “whether the material is privileged,” and (3) whether “the information is at least helpful to the defense.” *Id.* (quotation omitted).

As to the agent’s pseudonym, the government’s “limited privilege” to withhold the identity of a witness “must give way” when the identity is “relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause.” *United States v. Ray*, 803 F.3d 244, 273 (6th Cir. 2015) (quotation omitted). This requires “balancing the public interest in protecting the flow of information against the individual’s right to prepare his defense.” *Roviaro v. United States*, 353 U.S. 53, 62 (1957). Carpenter bears the burden of providing “some evidence,” beyond conjecture, “that disclosure of the . . . identity would assist in his defense before disclosure will be warranted.” *Ray*, 803 F.3d at 274.

Carpenter has not “demonstrate[d] how disclosure of information about the [covert agent] would substantively assist his defense or that disclosure was essential to a fair trial.” *Id.* (quotation omitted). Carpenter stated the “strongest weight for disclosure” of the covert agent’s identity was that it could allow him to find “relevant cross-examination material relating to the witness’s credibility.” R.252 at 57. He thus “advanced no more than a simple statement that [the covert agent’s] testimony might assist in his defense.” *United States v. Moore*, 954 F.2d 379, 381 (6th Cir. 1992). This does not suffice. *See id.*; *see also United States v. Sharp*, 778 F.2d 1182, 1187 (6th Cir. 1985) (per curiam) (finding disclosure inappropriate where defendant merely asserts it would be relevant); *United States v. Doxey*, 833 F.3d 692, 707 (6th Cir. 2016) (same). Carpenter needed to explain how the agent’s identity would materially bolster his defense, and he did not.

Other factors insulate this conclusion. Keep in mind that the government still retained a duty to turn over material evidence favorable to Carpenter, *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and it may not present material evidence it knows to be false, *Giglio v. United States*, 405 U.S. 150, 153–54 (1972). The district court asked the government to confirm it had complied with its obligations under *Brady* and *Giglio*. The government did just that.

No violation of the Confrontation Clause occurred either. Carpenter “enjoy[s] the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. But this does not “give criminal defendants absolute control over cross-examination.” *Dorsey v. Parke*, 872 F.2d 163, 166 (6th Cir. 1989). The district court

instead retains “wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits” on cross-examination “based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986); see *United States v. Phillips*, 872 F.3d 803, 809 (6th Cir. 2017).

The district court had “latitude” to limit the agent’s identity on cross-examination. See *Arsdall*, 475 U.S. at 679. In asking for this protective order, the government argued that “disclosing the witness’s identity would pose a risk to his safety.” R.139 at 6. The district court agreed, noting that the agent has “a real and substantial risk of danger” to himself and his family if his true identity were disclosed. R.171 at 2. All in all, the court fairly balanced Carpenter’s and the agent’s competing interests.

D.

Carpenter challenges the district court’s jury instructions in two ways—once with respect to an instruction the court did not give and once with respect to an instruction the court gave. Abuse-of-discretion review applies. *United States v. Maddux*, 917 F.3d 437, 447 (6th Cir. 2019); *United States v. Clinton*, 338 F.3d 483, 487 (6th Cir. 2003).

Proposed jury instruction on bad acts. Carpenter asked the district court to instruct the jury about the proper way to assess bad-acts evidence under Evidence Rule 404(b). The court declined. In assessing a court's refusal to give an instruction, we ask if it "(1) correctly states the law, (2) is not substantially covered by the instructions actually given, and (3) concerns a point so important that failure to give it substantially impairs the defendant's defense." *Maddux*, 917 F.3d at 447 (quotation omitted).

The court did not abuse its discretion in refusing to give this instruction for a basic reason. The court never permitted the introduction of any bad-acts evidence under Rule 404(b). The court reasonably feared that the instruction would serve only to confuse jurors about how to interpret the government's *Rule 405* evidence that permissibly sought to prove a distinct point—Carpenter's disposition—and that was relevant to disproving his argument that the government entrapped him. *See United States v. Franco*, 484 F.3d 347, 352 (6th Cir. 2007).

Carpenter points to *United States v. Underwood*, an unpublished Eleventh Circuit case in which the court noted in dicta that "jury instructions . . . can minimize [Rule 404(b)] evidence's prejudicial impact." 654 F. App'x 403, 407 (11th Cir. 2016) (per curiam). But that decision has nothing to say about today's dispute. Whether in trial courts of this circuit or even courts of the Eleventh Circuit, the case does not require a 404(b) jury instruction when the court admits other types of evidence.

Allen charge. Carpenter objects to the district court's *Allen* charge, a jury instruction given when juries deadlock. The two essential components of an *Allen*

charge are that it “must address both those in the majority and those in the minority” and “it must remind the jury that no one should surrender honest beliefs simply because others disagree.” *Clinton*, 338 F.3d at 490.

The court gave the Sixth Circuit pattern jury instruction. That instruction, as we have said before, “will, in most instances, insulate a resulting verdict from challenge on appeal.” *United States v. Roach*, 502 F.3d 425, 439 (6th Cir. 2007) (quotation omitted). The charge asked both those who believed the government’s case and those who did not to examine carefully their positions, and it instructed the jurors not to change their mind “just because other jurors see things differently.” R.253 at 8–9. No error occurred.

Carpenter claims that the charge coerced the jury into reaching a verdict. But the instruction did no such thing. “As important as it is for you to reach unanimous agreement,” the instruction said, “it is just as important that you do so honestly and in good conscience.” R.253 at 9. It asked the jurors only to “make every reasonable effort” “to reach unanimous agreement.” R.253 at 8.

Carpenter claims that the charge coerced the jury into reaching a verdict. But the instruction did no such thing. “As important as it is for you to reach unanimous agreement,” the instruction said, “it is just as important that you do so honestly and in good conscience.” R.253 at 9. It asked the jurors only to “make every reasonable effort” “to reach unanimous agreement.” R.253 at 8.

The timing of the charge also was not problematic. The risk “of coercion,” we have observed, “is reduced if the charge is given early rather than after days of deadlocked deliberations.” *Roach*, 502 F.3d at 440. The charge is “typically” given “as soon as the jury announce[s] its deadlock,” *United States v. Tines*, 70 F.3d 891, 896 (6th Cir. 1995), just as the court did here. The court administered the charge several days into the jury’s deliberation and promptly after the jury reported its deadlock. That was well within its discretion. Carpenter does not raise any reasons why the timing of the charge was wrong; he simply states, in conclusory fashion, that it was coercive. That does not suffice to reverse this verdict.

E.

Carpenter challenges his sentence as procedurally and substantively unreasonable.

Procedural reasonableness. Cognizable procedural errors in imposing a sentence include “failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence.” *Gall v. United States*, 552 U.S. 38, 51 (2007). We review such claims for abuse of discretion. *United States v. Rayyan*, 885 F.3d 436, 440 (6th Cir. 2018).

Carpenter claims that the district court misapplied U.S.S.G. § 3A1.4, which enhances a proposed sentence based on “federal crime[s] of terrorism.” *Id.* § 3A1.4(a).

Such crimes must be “calculated to influence or affect the conduct of a government by intimidation or coercion, or to retaliate against government conduct,” and the underlying offense must be included in § 2332b(g)’s list of eligible offenses. 18 U.S.C. § 2332b(g).

The court correctly applied the enhancement. The court had ample evidence that Carpenter had “the specific intent to influence or affect the conduct of the Egyptian government by intimidation or coercion and to retaliate against [the] Egyptian government[’s] conduct against ISIS.” R.250 at 32. Carpenter, in particular, knowingly facilitated the translation of *Bleeding Campaigns*, a documentary about ISIS’s warfare in the Sinai Peninsula, for an individual he thought to be an ISIS member. Carpenter did so knowing full well that the video included content “calculated to influence or affect the conduct of the Egyptian government by intimidation or coercion and to retaliate against the Egyptian government for previous conduct.” R.250 at 28. The record amply supports these factual predicates for applying the enhancement.

In addition, the court permissibly found that “provid[ing] material support or resources to a [designated] foreign terrorist organization” counts as an eligible offense. *See* 18 U.S.C. §§ 2339B, 2332b.

Carpenter insists that the government must make these showings by clear and convincing evidence, not a preponderance of the evidence. But circuit authority cuts the other way. *See United States v. Layne*, 324 F.3d 464, 473 (6th Cir. 2003).

Carpenter claims that the district court did not consider “the need to avoid unwarranted sentence disparities.” 18 U.S.C. § 3553(a)(6). But the court considered the very point. It just reached a different conclusion.

Substantive reasonableness. In challenging a sentence as substantively unreasonable, a defendant asks whether a sentence was “greater than necessary[] to comply” with the general purposes of sentencing, *Gall*, 552 U.S. at 50 n.6, whether, in short, the sentence was “too long,” *Rayyan*, 885 F.3d at 442. Abuse-of-discretion review applies. *Id.* We view within-Guidelines sentences as presumptively reasonable. *United States v. Vonner*, 516 F.3d 382, 389–90 (6th Cir. 2008) (en banc).

The trial court did not abuse its discretion. The term of imprisonment, 240 months, was within the Guidelines range. While lengthy, the term of supervised release, 20 years, also is well within the statutory authorization. *See* 18 U.S.C. § 3583(j). Through it all, the court thoroughly explained itself. It relied on the “seriousness of th[e] offense,” Carpenter’s “lack of repentance,” and his “high risk of recidivism.” R.250 at 89–90. All of this gave the court ample reason to impose this within-Guidelines sentence.

We affirm.

APPENDIX C --- ORDER DENYING PETITION FOR REHEARING EN BANC OF
THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED
DECEMBER 3, 2025

No. 24-5656

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,)	
Plaintiff-Appellee,)	
v.)	ORDER
BENJAMIN ALAN CARPENTER, aka Abu)	
Hamza,)	
Defendant-Appellant.)	

BEFORE: SUTTON, Chief Judge; GIBBONS and CLAY, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.