No. 26-___

IN THE

Supreme Court of the United States

CHRISTOPHER CLARK ARTHUR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

ANDREW DESIMONE
OFFICE OF THE FEDERAL PUBLIC DEFENDER, EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St., Suite 450
Raleigh, N.C. 27601
Andrew_DeSimone@fd.org

JO-ANN TAMILA SAGAR
Counsel of Record
HOGAN LOVELLS CADWALADER US LLP
555 Thirteenth St. N.W.
Washington, D.C. 20004
(202) 637-5600
jo-ann.sagar@hlc.com

DELIA SCOVILLE
HOGAN LOVELLS CADWALADER US LLP
125 High St., Suite 2010
Boston, M.A. 02110

Counsel for Petitioner

QUESTION PRESENTED

The First Amendment does not protect "[s]peech *intended* to bring about a particular unlawful act," *United States* v. *Hansen*, 599 U.S. 762, 783 (2023) (emphasis added). And this Court has long required the same intent before holding one person liable for another's crime, *see Rosemond* v. *United States*, 572 U.S. 65, 71 (2014).

Federal law nonetheless makes it a felony, punishable by up to twenty years' imprisonment, to teach or share information about explosives when the speaker "know[s]"—but the speaker does not intend—that a listener intends to use the information "in furtherance of" a federal crime of violence. 18 U.S.C. § 842(p)(2)(B).

The question presented is:

Whether § 842(p)(2)(B) is facially overbroad because the First Amendment forbids the Government from criminalizing speech based on the listener's criminal intent rather than the speaker's.

PARTIES TO THE PROCEEDING

Petitioner in this Court is Christopher Clark Arthur, who was Defendant-Appellant below. Respondent in this Court is the United States of America, which was Plaintiff-Appellee below.

STATEMENT OF RELATED PROCEEDINGS

U.S. Court of Appeals for the Fourth Circuit:

United States v. *Arthur*, No. 24-4306 (4th Cir. Dec. 3, 2025) (reported at 160 F.4th 597) (rehearing denied Aug. 21, 2026)

U.S. District Court for the Eastern District of North Carolina:

United States v. *Arthur*, No. 7:22-cr-00005-D-1 (E.D.N.C. Jan. 17, 2023) (denying Arthur's motion to dismiss)

United States v. *Arthur*, No. 7:22-cr-00005-D-1 (E.D.N.C. May 24, 2024) (entering judgment)

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OPINIONS BELOW

The Fourth Circuit's denial of rehearing en banc (App. 70a-101a) is reported at --- F.4th ----, 2026 WL 3408815 (4th Cir. 2026). The Fourth Circuit's decision affirming Arthur's conviction (App. 1a-48a) is reported at 160 F.4th 597 (4th Cir. 2025). The District Court's denial of Arthur's motion to dismiss (App. 49a-69a) is unreported, but is available at 2023 WL 12195529 (E.D.N.C. Jan. 17, 2023).

JURISDICTION

The Fourth Circuit denied rehearing en banc on August 21, 2026. App. 70a-71a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides that "Congress shall make no law * * * abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

The United States Code provides, in relevant part:

> It shall be unlawful for any person * * * to teach or demonstrate to any person the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute to any person, by any means, information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction, knowing that such person intends to use the teaching, demonstration, or information for, or in furtherance of, an activity that constitutes a Federal crime of violence.

18 U.S.C. § 842(p)(2)(B).

INTRODUCTION

The ability to speak freely on virtually any topic—even when those topics are controversial, unsettling, or dangerous—is a cornerstone of our democracy. For that reason, this Court has

recognized precious few exceptions to the First Amendment's protection of free speech. This Court has also made clear that any such exception must be grounded in history and tradition; courts lack "freewheeling authority to declare new categories of speech outside the scope of the First Amendment." *United States* v. *Stevens*, 559 U.S. 460, 472 (2010).

But the Fourth Circuit has done just that. Federal law criminalizes sharing information about explosives whenever the speaker knows that a listener intends to use the information "in furtherance of" a federal crime of violence—even if the speaker himself does not share the listener's criminal intent. 18 U.S.C. § 842(p)(2)(B). A divided panel of the Fourth Circuit rejected Christopher Arthur's overbreadth challenge to that statute, holding that the speaker's knowledge of the listener's criminal intent makes the speech punishable. In other words, the court held that a *speaker* forfeits First Amendment protection based on his *listener's* criminal intent, not his own. The court purported to ground its analysis in the long-recognized exception to First Amendment protection for speech "integral to criminal conduct."

That exception, however, is narrow—and rightly so. Were it otherwise, the Government could penalize or silence any speaker, about any topic, by pointing to the speech's adjacency to some other criminal act. To guard against that perverse outcome, this Court has confined the exception to speech *that the speaker himself intends* to bring about a crime. Speech integral to criminal conduct

is unprotected precisely because it is "[s]peech *intended* to bring about a particular unlawful act." *United States* v. *Hansen*, 599 U.S. 762, 783 (2023) (emphasis added). Each of the canonical examples—conspiracy, solicitation, and aiding-and-abetting—requires that the speaker intend the crime that follows. *Id.* at 771, 779. There is no history or tradition that supports criminalizing speech where the speaker lacks criminal intent.

And this Court's secondary-liability decisions, civil and criminal alike, make the same point from the other direction. Merely knowing that another person will commit a wrong does not make one responsible for it; only the intent to facilitate the wrong does. *See Rosemond* v. *United States*, 572 U.S. 65, 71 (2014); *see also Twitter, Inc.* v. *Taamneh*, 598 U.S. 471, 503 (2023); *Cox Commc'ns, Inc.* v. *Sony Music Ent.*, 607 U.S. 583, 594 (2026).

The Fourth Circuit's contrary rule threatens a substantial amount of lawful speech. Because § 842(p)(2)(B) reaches any information "pertaining to * * * explosive[s]"—a term broad enough to reach gasoline and helium balloons—it sweeps in the everyday work of chemistry teachers, firearms instructors, military trainers, and others whose audiences may include someone with bad intentions. And the statute's only legitimate applications—to speakers who *themselves intend* to facilitate a crime—are already covered by a neighboring subsection of the statute, *see* 18 U.S.C. § 842(p)(2)(A), and by laws prohibiting aiding and abetting, conspiracy, and solicitation, *see id.* §§ 2 (aiding and abetting), 371 (conspiracy), 373

(solicitation). What subsection (B) adds is liability for speakers who lack that intent. The resulting overbreadth is substantial, and construction cannot cure it because Congress expressly chose knowledge over intent.

This Court should grant certiorari on the question presented now. "The continued existence of 18 U.S.C. § 842(p)(2)(B) creates an issue of exceptional importance." App. 73a (Gregory, J., dissenting from denial of rehearing). Whether and to what extent speakers may be stripped of their First Amendment protections on the basis of listeners' intentions is an important and recurring question that has implications far beyond this particular statute. The Fourth Circuit's reasoning would permit the Government to punish speakers on any subject based on what a listener independently intends. And courts are already confronting that question in contexts having nothing to do with explosives, including laws restricting speech about medical services lawfully available in other States. Moreover, this case is an ideal vehicle: the issue is purely legal, fully preserved, and outcome-determinative. And the question presented divided the panel below and drew three votes for rehearing en banc.

This Court's intervention is needed to restore the settled rule that the speaker's own criminal intent—not a listener's—is necessary to strip speech of its constitutional protection.

STATEMENT OF THE CASE

A. Legal Background

Section 842(p)(2)(B) is unusual among speech-related offenses: It criminalizes teaching and

sharing information about explosives, destructive devices, and weapons of mass destruction without requiring that the speaker intend to facilitate any crime. As Congress crafted the statutory language, the Department of Justice (DOJ) warned that a prohibition of this kind would raise serious First Amendment problems. But Congress did not heed that warning, and adopted the statute without the modifications that, in DOJ's view, would have made the statute constitutionally sound.

1. Section 842(p) Regulates Communication Regarding Explosives, Destructive Devices, And Weapons Of Mass Destruction.

Section 842(p) of Title 18, captioned "Distribution of Information Relating to Explosives, Destructive Devices, and Weapons of Mass Destruction," regulates the communication of information regarding explosives, destructive devices, and weapons of mass destruction. 18 U.S.C. § 842(p)(2). Violation of its provisions is a crime punishable by up to twenty years' imprisonment. *Id.* § 844(a)(2).

The statute sets out two parallel prohibitions in subsection (p)(2). The subsections differ only with respect to the mens rea required for a violation. Subsection (A) makes it unlawful for any person "to teach or demonstrate the making or use" or "to distribute by any means information pertaining to * * * the manufacture or use of an explosive, destructive device, or weapon of mass destruction, *with the intent that* the teaching, demonstration, or information be used for, or in furtherance of, an activity that constitutes a Federal crime of violence." *Id.* § 842(p)(2)(A) (emphasis added).

Subsection (B) prohibits the same teaching, demonstration, and distribution "to any person," if the speaker acts "*knowing that* such person intends to use the teaching, demonstration, or information for, or in furtherance of, an activity that constitutes a Federal crime of violence." *Id.* § 842(p)(2)(B) (emphasis added).

The two subsections thus proscribe identical expressive conduct—teaching, demonstrating, or distributing information regarding explosives and other destructive devices—and are "identical except for the mens rea requirement." App. 58a-59a. Subsection (A) reaches a speaker who intends that the information be used to commit a federal crime of violence. Subsection (B), by contrast, reaches a speaker who has no criminal objective of his own, so long as he knows that the recipient intends to use the information in furtherance of a criminal end.

2. Congress Ignored DOJ's First Amendment Concerns About Section 842(p).

a. Section 842(p) originated in the aftermath of the 1995 Oklahoma City bombing. Less than a month after that attack, a DOJ official testified before a Senate Judiciary subcommittee that "how to" guides for manufacturing explosives were readily available on the Internet, in bookstores, and in public libraries, while cautioning that "the First Amendment imposes significant constraints on the ability of the federal government to proscribe and penalize such activity." *See* U.S. Dep't of Just., *Report on the Availability of Bombmaking Information, the Extent to Which Its Dissemination is Controlled by Federal Law, and*

the Extent to Which Such Dissemination May Be Subject to Regulation Consistent with the First Amendment to the United States Constitution 3 (Apr. 1997), https://perma.cc/GE3T-7UBP (DOJ Report).

In response to these comments, Congress crafted Section 709 of the Antiterrorism and Effective Death Penalty Act (AEDPA), which directed the Attorney General to study the availability of bombmaking information and "the extent to which the first amendment protects such material and its private and commercial distribution." Pub. L. No. 104-132, § 709(a), 110 Stat. 1214, 1297 (1996); *see* DOJ Report 1.

b. In April 1997, DOJ submitted the required report. *See* DOJ Report.

DOJ identified two circumstances that the Senate subcommittee sought to reach: dissemination by a person who "intends that [the information] be used for unlawful ends," and dissemination by a person who has reason to know "that a particular potential recipient thereof plans to use that information to engage in unlawful activities." DOJ raised an alarm about the second category, which relied only on the speaker's *knowledge* rather than *intent*. *Id.* at 24-26.

DOJ cautioned that "a 'facilitation through speech' prohibition without an 'intent' requirement would raise serious First Amendment problems," because "the First Amendment traditionally has been understood to prohibit the use of the criminal or tort law to punish the dissemination of lawfully obtained factual information absent an

impermissible purpose for such dissemination." *Id.* at 47-48.

DOJ ultimately suggested that, "[a]lthough the matter is far from certain," such a prohibition "could be constitutional, if drafted narrowly." *Id.* at 48. To that end, it proposed a two-part provision: one subsection reaching speakers who intend that the information be used to commit a crime, and another limited to teaching or distributing information "to any *particular* person," "knowing that such *particular* person intends" to use it for a criminal purpose. *Id.* at 51 (emphasis added).

c. Congress did not take that advice. Instead, Congress enacted a statute that differed from DOJ's recommendation in two respects relevant here. Relief of Global Exploration and Development Corporation Act of 1999, Pub. L. No. 106-54, § 2(a), 113 Stat. 398, 398.

First, despite DOJ's warning that "a 'facilitation through speech' prohibition without an 'intent' requirement would raise serious First Amendment problems," DOJ Report 47-48, Congress did not require that the speaker share the recipient's criminal purpose, 18 U.S.C. § 842(p)(2)(B). Knowledge of another person's intent is the only mental state the statute requires.

Second, despite DOJ's suggestion that the aforementioned "First Amendment problems" could be mitigated through a statutory provision specifying that knowledge of criminal intent must be tied to a "particular person," "knowing that such particular person intends" to use the information for a criminal purpose, DOJ Report 51, Congress omitted the word "particular" from subsection (B),

extending that prohibition to teaching or distribution "to any person," 18 U.S.C. § 842(p)(2)(B). The speaker need not single out the listener whose intentions he knows; it is enough that someone, somewhere in the audience, harbors a criminal plan.

B. Factual Background[1]

Christopher Clark Arthur is a United States veteran. He is also a small business owner. He founded his company, Tackleberry Solutions, as a military-gear company. CA4-J.A. 540, 543.

Around 2018, believing that the federal government was headed toward collapse, he refocused the company on training ordinary people to defend themselves and their homes. CA4-J.A. 545-556. Tackleberry Solutions published manuals, including one titled *Quick Reaction Force, Modern Day Minutemen, Improvised Explosives*, which warned readers: "These are wartime tactics, not peacetime tactics. Some of these methods may be highly illegal. We do not advocate the use of this knowledge to hurt the innocent. Be sure to know the laws in your area." CA4-J.A. 324-325.

The FBI began investigating Arthur after agents searched a home in Richmond, Virginia, where they found improvised explosive devices and several Tackleberry Solutions manuals. CA4-J.A. 323-324. The FBI then directed a confidential

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[1] Because Arthur challenges § 842(p)(2)(B) only on its face, the particulars of his own conduct do not bear on the question presented. *See* Pet'r CA4 Opening Br. 7. They are summarized briefly here for context.

informant to contact Arthur for training. CA4-J.A. 334-335.

The FBI informant bought two manuals and a thumb drive of training videos and arranged a session at Arthur's home. CA4-J.A. 339-349. At the start of that session, the informant volunteered that ATF agents had been to his house and were probably coming back. CA4-J.A. 38. Arthur responded that the agents were likely to return, and he repeatedly advised the informant to move, CA4-J.A. 38, 41, 97, 118. He told the informant that the approach was the informant's choice—"[w]e can go lethal or non-lethal and that depends on you"—and that the purpose of the materials was to get readers "to start to think." CA4-J.A. 42. Over the following two-and-a-half hours, Arthur discussed home-defense topics ranging from escape vehicles and communications systems to perimeter defense and explosives. CA4-J.A. 45-96. Arthur also discussed safety, for example, rejecting landmines as an option because a neighbor might "come over for a cup of sugar" and trip one. CA4-J.A. 45.

After the session, the informant ordered more manuals and arranged to meet Arthur at a gun show so that agents could arrest him there. CA4-J.A. 357, 367. Agents did so, and then searched his home. CA4-J.A. 366-368.

C. Procedural History

1. A grand jury returned a nine-count superseding indictment against Arthur. Count 1, the only count at issue here, charged him with

violating 18 U.S.C. § 842(p)(2)(B) based on the May 2021 training session with the informant.[2]

Arthur moved to dismiss, arguing that § 842(p)(2)(B) is unconstitutionally overbroad under the First Amendment. CA4-J.A. 24-30. The District Court denied the motion. App. 69a. As to Count 1, the court reasoned that the statute's "knowledge requirement effectively limits the scope of the statute," and "resembles a criminal aiding and abetting statute." App. 60a.

The case proceeded to a three-day jury trial, at which Arthur testified that the informant never conveyed that he intended to kill federal agents. CA4-J.A. 555, 570. Arthur denied ever advocating the murder of federal agents or the overthrow of any government. CA4-J.A. 548, 559-560, 567-570. The jury was instructed that it could convict if Arthur "knew at the time" that the person he taught "intended to use the * * * information for, or in furtherance of, an activity that constitutes a federal crime of violence," and the jury was never asked whether Arthur himself intended that any crime be committed. CA4-J.A. 670-672. The jury convicted Arthur. CA4-J.A. 699-701.

2. Following his conviction, Arthur appealed the District Court's decision denying his motion to dismiss based on his First Amendment challenge. A divided panel affirmed. App. 1a-48a.

Judge Agee, writing for the majority, explained that the court rejected Arthur's overbreadth

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[2] Counts 2 through 8 charged possession of unregistered firearms, and Count 9 charged possession of a firearm with an obliterated serial number. *See* App. 49a.

challenge because, in its view, "Congress narrowed § 842(p)(2)(B)'s potentially broad scope by including a mens rea requirement of knowledge within it." App. 15a. According to the majority, that mens rea requirement *also* meant that "§ 842(p)(2)(B) falls within the speech integral to criminal conduct exception." App. 16a. The majority looked to aiding-and-abetting liability as an analogous circumstance in which speech can be criminalized. App. 19a. The majority acknowledged that a "real difference between aiding and abetting, on the one hand, and the conduct proscribed by § 842(p)(2)(B), on the other, is that the former requires the abettor to share the same criminal intent as the principal perpetrator." App. 19a. But the majority dismissed the differing mens rea as a "distinction without a difference." App. 20a.

Judge Gregory dissented. He would have reversed the District Court's decision and found § 842(p)(2)(B) unconstitutionally overbroad because of "the novelty of criminalizing speech when the speaker lacked specific intent to commit a crime." App. 36a. He disagreed that a mens rea of knowledge is sufficiently limiting to render the statute constitutional, because "[k]nowledge is too readily proven during prosecution to sufficiently winnow this broad statute." App. 40a. Moreover, as he explained, "the reality of the statutory language is that it applies to far more common and less threatening items" than bombs, including "gasoline" and "methane gas." App. 37a-38a. Worse, "[t]he breadth of these definitions is exacerbated by the breadth of the rest" of the statute, which "is hardly cabined to those who

communicate bombmaking instructions," and instead could extend to "simple physics topics * * * since the concepts of potential and kinetic energy easily 'pertain[] to' incendiary applications." App. 38a-39a.

3. Arthur petitioned for rehearing en banc. Three judges voted to grant rehearing, but the Fourth Circuit denied the petition. App. 70a-71a.

Judge Gregory dissented from the denial. App. 71a. In this second opinion, Judge Gregory explained that § 842(p)(2)(B) was a "'criminal prohibition of alarming breadth' that defies First Amendment principles and doctrine." App. 73a (quoting *Stevens*, 559 U.S. at 474). He first pointed out that nothing in the statute "cabin[s] the scope of the substantive prohibition on speech"—for instance, the term "explosive," as used in § 842(p)(2)(B), includes "any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units" in any form that "may cause an explosion." App. 76a (quoting 18 U.S.C. § 844(j)). "That [definition] would seem to apply to a car, a computer, or perhaps a helium balloon." App. 76a (citing *United States* v. *Hepp*, 656 F.2d 350, 352 (8th Cir. 1981) (applying statute to methane gas released into the air)). And, as he did in his initial dissent, Judge Gregory warned that because "[t]he substantive provision has left the statute on precarious ground," "the *mens rea* must be an exacting one indeed to make up for the capacious speech restriction." App. 78a. A knowledge requirement "falls far short." App. 78a.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW IS WRONG AND CONFLICTS WITH THIS COURT'S PRECEDENT.

This Court has never recognized a "freewheeling authority to declare new categories of speech outside the scope of the First Amendment." *Stevens*, 559 U.S. at 472; *accord Brown* v. *Ent. Merchs. Ass'n*, 564 U.S. 786, 791 (2011). The Fourth Circuit nonetheless treated the speech-integral-to-criminal-conduct exception as "a relatively flexible exception," App. 23a, and held that a speaker forfeits First Amendment protection whenever he knows that a listener intends to commit a crime—*even if the speaker himself intends nothing of the kind*. *Id.* That holding conflicts both with this Court's decisions defining the speech-integral-to-criminal-conduct exception and with this Court's decisions defining secondary liability.

A. Liability For Speech Integral To Criminal Conduct Rests On The Speaker's Own Intent.

1. There are few "historic and traditional categories" of speech that fall outside the First Amendment, and those proscriptions are "well-defined and narrowly limited." *Stevens*, 559 U.S. at 468-469 (citations omitted). Speech "integral to criminal conduct" is one such category. *Id.* The speech-integral exception reaches speech that is itself the means of committing a crime—the agreement in a conspiracy, the request in a solicitation, the threat in an extortion. *See Giboney*

v. *Empire Storage & Ice Co.*, 336 U.S. 490, 498, 502 (1949).

The speaker's intention that the crime should occur is what defines the category: Conspiracy requires an agreement made with "the '*specific intent* that the underlying crime be committed.'" *Ocasio* v. *United States*, 578 U.S. 282, 288 (2016) (citation omitted and emphasis altered); *see id.* at 292. Solicitation is "the *intentional* encouragement of an unlawful act," *Hansen*, 599 U.S. at 771 (emphasis added), and requires "that the defendant specifically intend that a particular act be carried out," *id.* at 778. Facilitation—"also called aiding and abetting"—is "the provision of assistance to a wrongdoer with the *intent* to further an offense's commission." *Id.* at 771 (emphasis added). "Speech *intended* to bring about a particular unlawful act has no social value; therefore, it is unprotected." *Id.* at 783 (emphasis added).

The speech-integral exception does not reach speech merely because it relates to, discusses, or might later contribute to unlawful conduct. That line tracks the distinction this Court has long drawn between advocacy and action: "the mere abstract teaching * * * of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action." *Brandenburg* v. *Ohio*, 395 U.S. 444, 448 (1969) (per curiam) (discussing incitement) (citation omitted); *accord United States* v. *Williams*, 553 U.S. 285, 298-299 (2008) ("To be sure, there remains an important distinction between a proposal to

engage in illegal activity and the abstract advocacy of illegality.").

2. Consistent with that principle, this Court has repeatedly pointed to the speaker's specific intent that a crime should occur as the dividing line between a constitutional statute prohibiting speech and an unconstitutional one.

Hansen shows how much work the intent element does. 599 U.S. 762 (2023). The statute there prohibited "encourag[ing] or induc[ing]" unlawful immigration, *id.* at 766 (quoting 8 U.S.C. § 1324(a)(1)(A)(iv)), and, on its ordinary meaning, would have reached an "op-ed or public speech" by a speaker who merely "knows that, or recklessly disregards whether, any of her readers or listeners are undocumented." *Id.* at 774. The Court acknowledged that, so read, the statute's "applications to protected speech might swamp its lawful applications." *Id.* It sustained the statute only because "encourage" and "induce" are terms of art that carry "the traditional state of mind required for" those acts—that is, "the traditional *intent* associated with solicitation and facilitation." *Id.* at 778-779 (emphasis added). The intent element was the difference between a valid solicitation statute and an overbroad one.

Williams is to the same effect. 553 U.S. 285 (2008). The pandering statute there survived because it reached only a defendant who "must '*intend*' that the listener believe the material to be child pornography," *id.* at 296 (emphasis added), and because "promotes" referred not to abstract advocacy—such as "'I believe that child pornography should be legal' or even 'I encourage

you to obtain child pornography'"—but to "the recommendation of a particular piece of purported child pornography with the *intent* of initiating a transfer." *Id.* at 299-300 (emphasis added); *see id.* at 298 (explaining that laws against conspiracy and solicitation "criminalize speech * * * that is intended to induce or commence illegal activities").

Giboney v. *Empire Storage & Ice Co.*, the decision from which the exception derives, rests on the same foundation. 336 U.S. 490 (1949). There, a union picketed an ice distributor to compel it to stop selling to nonunion peddlers—an agreement that would have violated Missouri's antitrade-restraint law. *Id.* at 491-492. The Court upheld an injunction against the picketing, explaining that the First Amendment does not extend "its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute." *Id.* at 498. Critically, the picketers' speech was not merely related to an unlawful act; its very purpose was to bring that act about. The Court emphasized that the "sole immediate object" of the picketing was to coerce the distributor into the unlawful agreement. *Id.* It was that purpose—the speakers' own aim to accomplish the crime—that made the speech "integral" to it.

In these and other cases, this Court has pointed to the speaker's own intent to place the speech outside the First Amendment's protections. *See, e.g.*, *Pittsburgh Press Co.* v. *Pittsburgh Comm'n on Hum. Rels.*, 413 U.S. 376, 378-379, 387-388 (1973) (upholding a decision finding that Pittsburgh Press, a local newspaper, had violated a local ordinance banning sex discrimination by

publishing ads in "Male Interest" and "Female Interest" columns, because the advertisers intended to discriminate in their hiring practices).

3. Section 842(p)(2)(B) has no such intent element and no term of art from which one could be implied: Congress expressly chose knowledge of the *listener's* intent.

That choice separates it from every statute this Court has sustained under the speech-integral exception. In *Hansen*, the Court saved the encouragement statute only by reading "encourage" and "induce" as terms of art that carry "the traditional intent associated with solicitation and facilitation"—after acknowledging that, read without that intent, the statute's "applications to protected speech might swamp its lawful applications." 599 U.S. at 774, 778-779. In *Williams*, the pandering statute survived because the defendant himself "must 'intend' that the listener believe the material to be child pornography." 553 U.S. at 296. And in *Giboney*, the picketers' own object was the unlawful agreement their speech sought to compel. 336 U.S. at 491-492, 498. In each case, the speaker's purpose tied the speech to the crime.

Section 842(p)(2)(B) severs that tie. The speaker need not want the crime to occur, need not agree to it, and need not seek to bring it about; the statute requires only that he be aware of what someone else intends.

B. Secondary Liability Requires Intent To Facilitate The Principal's Actions, Not Mere Knowledge Of The Principal's Intent.

In the decision below, the Fourth Circuit acknowledged that § 842(p)(2)(B)'s lack of an intent requirement sets it apart from other statutes falling within the speech-integral-to-criminal-conduct exception. App. 19a. However, the court reasoned that the knowledge requirement was a fair substitute because a speaker who shares information knowing of a listener's plan "has *effectively* facilitated the commission of the other's crime." App. 16a (emphasis added). In so doing, the court recast a well-recognized form of liability into one the law has never recognized.

But facilitation, as this Court has defined it, is assistance rendered "with the *intent* to further an offense's commission." *Hansen*, 599 U.S. at 771 (emphasis added). Calling knowing speech "effective[]" facilitation, App. 16a, does not supply the missing intent; it simply relabels the speech the statute reaches. *See Welty* v. *Dunaway*, 192 F.4th 607, 634 (6th Cir. 2026) ("Nor can the speech that a challenged statute proscribes be integral to criminal conduct on the basis that it seems * * * *akin* to other criminal conduct."). To the contrary, this Court has consistently emphasized that intent is a requirement of secondary liability. Knowledge of another's wrongdoing does not make one responsible for it.

1. Indeed, this Court has devoted a substantial portion of its civil docket, particularly in recent years, to making that precise point.

In *Twitter, Inc.* v. *Taamneh*, 598 U.S. 471 (2023), the Court stressed the "need to cabin aiding-and-abetting liability to cases of truly culpable conduct," *id.* at 489, and held that "aids and abets," in the civil antiterrorism statute "as elsewhere, refers to a conscious, voluntary, and culpable participation in another's wrongdoing," *id.* at 493. A defendant who merely knew that "some bad actors" were "t[aking] advantage" of its services does not aid and abet. *Id.* at 503. It is "the intent of facilitating the offense's commission" that provides the critical, limiting principle in such cases. *Id.* at 490 (quoting *Rosemond*, 572 U.S. at 71).

In *Smith & Wesson Brands, Inc.* v. *Estados Unidos Mexicanos*, this Court applied the same principles to a statute barring certain civil suits against firearm manufacturers based on their secondary liability for firearm misuse. 605 U.S. 280 (2025). As the Court explained, aiding and abetting requires that a defendant "intend to facilitate [the offense's] commission," *id.* at 291 (quoting *Rosemond*, 572 U.S. at 71), and a defendant who "merely knows that 'some bad actors' are taking 'advantage' of its products for criminal purposes * * * does not aid and abet," *id.* at 293 (quoting *Twitter*, 598 U.S. at 503). Allegations that the firearm manufacturers "kn[e]w" of unlawful sales did not suffice, because the plaintiff had not alleged that the manufacturers participated in those sales "as in

something that [they] wish[ ] to bring about." *Id.* at 294 (citation omitted). And the Court cautioned that it would "stretch the bounds of [its] caselaw" to impose liability for conduct directed "to everyone, and on equivalent terms." *Id.* at 295.

Most recently, in *Cox Communications, Inc.* v. *Sony Music Entertainment*, this Court reversed the Fourth Circuit for resting secondary liability for copyright infringement on knowledge. 607 U.S. 583 (2026). The Court reiterated that it has "repeatedly made clear that mere knowledge that a service will be used to infringe is insufficient to establish the required intent," *id.* at 594, and faulted the court of appeals for disregarding "this Court's repeated admonition that contributory liability cannot rest only on a provider's knowledge of infringement," *id.* at 595-596. Justice Sotomayor likewise explained that "aiding-and-abetting liability requires proof that the defendant aided another with the intent of helping that other person succeed in committing wrongful conduct." *Id.* at 602-603 (Sotomayor, J., concurring in the judgment).

And in a related vein, in *Reno* v. *American Civil Liberties Union*, 521 U.S. 844 (1997), this Court rejected the Government's argument "that the 'knowledge' requirement of" two sections of the Communications Decency Act (CDA) "saves the CDA from overbreadth." *Id.* at 880. Criminalizing speech based on the listener rather than the speaker, as those provisions did, would "confer broad powers of censorship" upon listeners who seek to disrupt otherwise lawful speech that is aired in public spaces, like the Internet. *Id.* As

Judge Gregory explained, exactly the same concern attends this statute: "Any person can claim to be plotting a 'Federal crime of violence' by way of an anonymous comment on the Internet or an unsigned note to a would-be author or teacher, and thus exercise a 'heckler's veto' over the planned speech." App. 80a.

2. This Court's recent decisions regarding the importance of intent in secondary liability have been civil ones. But the rule is the same in the criminal context.

In *Rosemond* v. *United States*, 572 U.S. 65 (2014), for example, this Court held that, "[a]s at common law," a person aids and abets a crime under 18 U.S.C. § 2 "if (and only if) he (1) takes an affirmative act in furtherance of that offense, (2) with the *intent* of facilitating the offense's commission." 572 U.S. at 71 (emphasis added). Although contributing to any part of a crime satisfies the conduct element, the defendant's "state of mind" must extend "to the entire crime." *Id.* at 76. That is, he must "participate in [the venture] as in something that he wishes to bring about" and "seek by his action to make it succeed." *Id.* (quoting *Nye & Nissen* v. *United States*, 336 U.S. 613, 619 (1949)). Thus, even an active participant in a drug deal does not aid and abet an armed offense unless he knows of the gun in advance—"knowledge that enables him to make the relevant legal (and indeed, moral) choice" to join the scheme "in its entirety." *Id.* at 77-78. Knowledge mattered in *Rosemond*, in other words,

only as proof that the defendant chose to further the very crime charged.[3]

Similarly, in *Scales* v. *United States*, 367 U.S. 203 (1961), this Court construed a statute that made it a felony to hold "knowing membership" in an organization advocating the government's violent overthrow. *Id.* at 205. The Court held that conviction required *not only knowledge* of the group's illegal advocacy *but also a "specific intent"* to bring about that overthrow. *Id.* at 220-222, 229-230 (emphasis added). Groups that "embrace both legal and illegal aims differ from a technical conspiracy, which is defined by its criminal purpose," and a "blanket prohibition of association" with them would present "a real danger that legitimate political expression or association would be impaired." *Id.* at 229. As the Court explained, "guilt is personal," so liability premised on one's relationship to "other concededly criminal activity" requires a relationship "sufficiently substantial to satisfy the concept of personal guilt." *Id.* at 224-225.

3. In the decision below, the Fourth Circuit acknowledged the "real difference" between

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[3] The *Rosemond* Court expressly reserved whether a third party who "incidentally facilitate[s] a criminal venture rather than actively participat[ing] in it"—for example, a gun-store owner who "sells a firearm to a criminal, knowing but not caring how the gun will be used"—could ever have the requisite intent. *Id.* at 77 n.8. *Smith & Wesson* has since answered that question: such a defendant, who "merely knows" that bad actors are taking advantage of what he provides, "does not aid and abet." *Smith & Wesson*, 605 U.S. at 293 (citation omitted); *see id.* at 292 (quoting *Rosemond*, 572 U.S. at 77 n.8).

aiding-and-abetting liability and the conduct criminalized by § 842(p)(2)(B)—"the former requires the abettor to share the same criminal intent as the principal perpetrator" while the latter does not. App. 19a.

The Fourth Circuit dismissed this as a "distinction without a difference." App. 20a. This Court's cases treat that distinction as the whole difference. In *Twitter*, *Smith & Wesson*, and *Cox*, the defendants' knowledge that others were using their products or services to commit wrongs was established or assumed; what the plaintiffs could not show was intent, and liability failed for that reason alone. *See Twitter*, 598 U.S. at 503; *Smith & Wesson*, 605 U.S. at 293; *Cox*, 607 U.S. at 594. In *Rosemond*, knowledge of a confederate's gun mattered only because it showed that the defendant had chosen to join the armed venture "in its entirety." 572 U.S. at 77-78. And in *Scales*, knowing membership in an organization with unlawful aims could not be punished without proof of a "specific intent" to further those aims. 367 U.S. at 220-222, 229-230. The line the Fourth Circuit called immaterial is the line on which each of those cases turned.

The analogy to aiding and abetting fails for a second reason as well. Aiding-and-abetting liability attaches only if the principal actually commits the crime. *Hansen*, 599 U.S. at 771. But § 842(p)(2)(B) requires no crime at all—only the speaker's knowledge that a listener *intends* one. So the statute dispenses with both features that cabin accessory liability: the abettor's own intent and the principal's completed offense. The Government

itself acknowledged below that "the differences between aiding-and-abetting and Section 842(p)(2)(B)" define "the important, if narrow, gap that this statute fills." Gov't CA4 Reh'g Resp. Br. 10. That gap is precisely the speech of a person who intends no crime, in a case where none may ever occur. Far from showing that § 842(p)(2)(B) is a species of aiding and abetting, the Government's concession confirms that the statute reaches what aiding-and-abetting law never has.

C. True Threats Are Not Secondary Liability Crimes.

The Government defended the panel's rule below by observing that this Court tolerates a mental state short of specific intent for some unprotected categories of speech—most notably true threats, for which *Counterman* v. *Colorado*, 600 U.S. 66, 69 (2023), held that recklessness suffices. Gov't CA4 Br. 29-30. But *Counterman* supports Arthur, not the Government, for three reasons.

First, *Counterman* did not announce a uniform floor; it tied the required mental state to the speech's proximity to clearly protected expression. Recklessness sufficed for threats because the speech at issue "is neither so central to the theory of the First Amendment nor so vulnerable to government prosecutions." 600 U.S. at 81. Incitement, by contrast, requires intent, because "[a] strong intent requirement * * * ensure[s] that efforts to prosecute incitement would not bleed over, either directly or through a chilling effect, to dissenting political speech at the First

Amendment's core." *Id.*[4] The speech at issue here demands the rule that applies to incitement, not the rule that applies to true threats, because the speech at issue here is factual, educational speech at the heart of the First Amendment's protection for the dissemination of information.

Second, true threats are unprotected because of what the speech itself does: "[w]hen the statement is understood as a true threat, all the harms that have long made threats unprotected naturally follow." *Id.* at 74. Speech-integral-to-criminal-conduct liability is different in kind. Instruction or information about explosives harms no one by itself; it becomes culpable only derivatively, through its connection to someone else's crime. That is precisely why the traditional speech-based offenses—solicitation, conspiracy, and aiding and abetting—have always required the speaker's intent to bring that crime about. *Hansen*, 599 U.S. at 771, 783. A mental-state rule designed for speech that is itself harmful cannot be transplanted to speech that is harmful only in another's hands.

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[4] Arthur argued below that § 842(p)(2)(B) also fails the standard for incitement under *Brandenburg*, because it requires neither intent nor imminence. Pet'r CA4 Opening Br. 11-22. The panel and the Government treated the case as turning on the speech-integral exception, and this petition does the same. But the incitement framework points in the same direction: the First Amendment "precludes punishment * * * unless the speaker's words were 'intended' (not just likely) to produce imminent disorder." *Counterman*, 600 U.S. at 76 (citation omitted). Whichever category the Government invokes, the speaker's intent is the constitutional dividing line, and § 842(p)(2)(B) does not require it.

Third, *Counterman* reinforces Arthur's chilling-effect argument. The Court required a subjective mental state even for unprotected threats because "[p]rohibitions on speech have the potential to chill, or deter, speech outside their boundaries," and "[a]n important tool to prevent that outcome—to stop people from steering 'wide[ ] of the unlawful zone'—is to condition liability on the State's showing of a culpable mental state." *Counterman*, 600 U.S. at 75 (quoting *Speiser* v. *Randall*, 357 U.S. 513, 526 (1958)). A mental-state element protects speakers *only if* it is a mental state that *the speaker himself* can control. A speaker always knows his own purpose; he cannot know, and cannot control, what his listeners intend. That is why, as Judge Gregory explained, a statute keyed to "the intent of the listener" leaves the speaker "in a far more precarious position," and "the prudent speaker who is unsure about the motivations of an audience will refrain from speech." App. 42a.

II. THE QUESTION PRESENTED IS IMPORTANT.

The error below is not an abstract doctrinal misstep. By holding that a speaker's knowledge of a listener's intent is enough to strip speech of First Amendment protection, the Fourth Circuit has sustained a federal criminal statute that punishes, with up to twenty years' imprisonment, a substantial amount of educational, technical, and commercial speech that no recognized category of unprotected expression reaches. 18 U.S.C. §§ 842(p)(2)(B), 844(a)(2). The consequences of that holding are twofold. First, it leaves in place a statute that is substantially overbroad and that

cannot be saved by a limiting construction. Second, it departs from the settled principle that criminal liability, and especially liability for another's crime, rests on the defendant's own culpable mental state.

A. The Decision Below Produces Substantial Overbreadth In 18 U.S.C. § 842(p)(2)(B) That Cannot Be Cured By Construction.

Because the speech-integral-to-criminal-conduct exception requires the speaker's intent, § 842(p)(2)(B)'s unconstitutional applications are substantial "judged in relation to the statute's plainly legitimate sweep." *Stevens*, 559 U.S. at 473 (citation omitted).

1. The Statute Targets A Staggeringly Wide Range Of Protected Speech.

"The first step in overbreadth analysis is to construe the challenged statute," because "it is impossible to determine whether a statute reaches too far without first knowing what the statute covers." *Williams*, 553 U.S. at 293. Here, the statute's substantive reach is extraordinary. It applies to any person who "teach[es] or demonstrate[s]" the making or use of an explosive, destructive device, or weapon of mass destruction, or who "distribute[s] to any person, by any means, information pertaining to, in whole or in part," those subjects. 18 U.S.C. § 842(p)(2). And each operative term is capacious.

Start with the nature of the communication. The reference to "teach[ing] or demonstrat[ing]" contains no limitation on medium, audience, or

setting: a classroom lecture, a published book, a podcast, and a tweet are all covered the same way. Indeed, the statute explicitly disavows any such limitation, emphasizing that "distribut[ion]" is covered regardless of the "person" who receives the information or the "means" by which it is received.

The statute's description of the subject of the speech is also broad. The statute's reference to "explosive[s]" includes "any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units" that "may cause an explosion," *id.* § 844(j)—a definition that, as Judge Gregory observed, "would seem to apply to a car, a computer, or perhaps a helium balloon." App. 76a.

Congress made the statute still broader by sweeping in speech that is only tangentially related to explosives. That is because the statute reaches not only bombmaking instructions but any information "pertaining to, in whole or in part," the "manufacture or use" of such items. 18 U.S.C. § 842(p)(2). As Judge Gregory explained, "[n]othing in the statute even requires a proximate link to the manufacture of explosives." App. 77a.

And because the statute turns on what information "pertain[s] to" rather than on what the speaker is trying to accomplish by sharing the information, the statute's coverage extends to the core of ordinary educational, scientific, and commercial speech. Judge Gregory gave examples drawn directly from the text: a discussion of how methane is produced, and a university lecture on potential and kinetic energy, concepts that "easily

'pertain[] to' incendiary applications." App. 38a-39a.

Countless chemistry teachers, mining and demolition instructors, fireworks hobbyists, military historians, novelists, and auto mechanics routinely convey information that falls within those terms. And none of that speech falls within any recognized category of unprotected expression. *See Stevens*, 559 U.S. at 468-469. Yet each instance becomes a twenty-year felony, *see* 18 U.S.C. § 844(a)(2), if the speaker is deemed to know that some listener harbors a criminal plan.

2. The Statute Criminalizes A Substantial Amount Of Protected Speech Relative To Its Legitimate Sweep.

Those protected applications are substantial "not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *Williams*, 553 U.S. at 292. Here, the statute's legitimate core is narrow, and it is *already occupied*. A speaker who teaches bombmaking *intending* to facilitate a crime is punishable under the immediately preceding subsection, 18 U.S.C. § 842(p)(2)(A), and under the general laws of aiding and abetting, conspiracy, and solicitation, *id.* §§ 2, 371, 373.

What § 842(p)(2)(B) *adds* is liability for the speaker who lacks that intent—precisely the speech the First Amendment protects. *See infra* pp. 34-36. On the other side of the ledger lies the full range of educational and technical speech described above. The resulting imbalance is

"substantially disproportionate to the statute's lawful sweep." *Hansen*, 599 U.S. at 770.[5]

Consider a few ordinary applications of this statute's prohibition on "teach[ing]," "demonstrat[ing]," or "distribut[ing]" information related to explosive materials, each involving a specific recipient whose intent the speaker knows—precisely the "particularized knowledge" the Government says the statute requires. Gov't CA4 Br. 23.

- A contractor uses a controlled explosion to clear a roadway, knowing that the protestors across the street will destroy government property to prevent further development, *cf., e.g.*, *Adderley* v. *Florida*, 385 U.S. 39, 46-47 (1966) (finding that the jury properly inferred malicious intent to trespass based on protestors' mere presence on jail grounds).
- A drill sergeant provides military training to new recruits at bootcamp, knowing that one of his trainees is an "Oath Keeper" who

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[5] For this same reason, the statute cannot be saved by reading an intent requirement into it. A limiting construction is available only if the statute is "readily susceptible" to one. *Stevens*, 559 U.S. at 481 (citation omitted). This statute is not. Because the immediately preceding subsection prohibits the same speech when made with intent, reading intent into subsection (B) would make it a duplicate of subsection (A). *See Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 16-17 (2010) (declining to read a specific-intent requirement into the material-support statute's "knowingly" standard because that reading was "untenable in light of the sections immediately surrounding" it, "both of which do refer to intent").

intends to travel to the Capitol on January 6, *cf., e.g.*, *United States* v. *Huff*, 630 F. App'x 471, 479-480 (6th Cir. 2015) (finding a police officer had reasonable suspicion for a traffic stop based on an Oath Keepers car decal and information that an uprising might occur at a nearby courthouse).

- A physics professor teaches a class on thermodynamics, knowing that one of her students wears a shirt that says "by any means necessary" and intends to join a protest at a federal building after class, *cf., e.g.*, *United States* v. *Dellinger*, 472 F.2d 340, 400 (7th Cir. 1972) (finding that a jury could infer "intent to cause violence" by a demonstrator's statement that a march should make its way to the final destination "by any means necessary").
- A veteran talks about her traumatic combat experiences in group therapy, knowing that one of the other patients is struggling with violent thoughts, *cf., e.g.*, *Beaty* v. *Schriro*, 509 F.3d 994, 997-998 (9th Cir. 2007) (finding that a therapist had knowledge of defendant's intent to commit murder after he voluntarily revealed violent conduct during therapy session).
- A mechanic explains engine combustion on a DIY car repair podcast, knowing that one of his listeners posted social media messages threatening to mow down a police officer once his car was fixed, *cf., e.g.*, *United States* v. *Khan*, 937 F.3d 1042, 1053 (7th Cir. 2019) (finding that FBI agents had knowledge to "suspect [defendant] intended

to commit a violent crime while driving" based on threatening Facebook messages).

In none of these cases does the speaker intend to facilitate a crime; in each, the person conveys lawful, factual information to someone he knows harbors a criminal plan; in each, that information is relevant to the carrying out of that plan.[6] Each falls within the statute's text, and none falls within any historically unprotected category. These are not "fanciful" hypotheticals, *Hansen*, 599 U.S. at 770, and they illustrate why the statute is hopelessly overbroad.

B. The Decision Below Will Chill A Substantial Amount Of Protected Speech.

The Fourth Circuit's rule will chill far more speech than it punishes. "[P]rohibitions on speech have the potential to chill, or deter, speech outside their boundaries," and that danger is greatest where, as here, the prohibition is criminal and the penalty severe. *Counterman*, 600 U.S. at 75; *see Reno*, 521 U.S. at 872 ("The severity of criminal sanctions may well cause speakers to remain silent

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[6] The Government dismissed these hypotheticals in its rehearing response because the information conveyed by the speaker is "unnecessary to commit the crime." Gov't CA4 Reh'g Resp. Br. 5. But nothing in § 842(p)(2)(B) suggests the information must be *essential* to the listener's intended crime of violence—the statute contemplates only that the listener use the information "in furtherance of" that crime. In any event, the Government's position underscores the fundamental problem with the statute—proof of some other person's intent to use information cannot be the sole, dispositive fact separating constitutional speech from unconstitutional speech.

rather than communicate even arguably unlawful words, ideas, and images."). Section 842(p)(2)(B) exposes speakers to twenty years' imprisonment, 18 U.S.C. § 844(a)(2), on the basis of something they cannot control or verify: what a listener intends. A speaker always knows his own purpose; he cannot have the same certainty about his audience's purpose. As Judge Gregory explained, a statute keyed to "the intent of the listener" leaves the speaker "in a far more precarious position," and "the prudent speaker who is unsure about the motivations of an audience will refrain from speech." App. 42a.

DOJ foresaw exactly this result. Before the statute was enacted, it warned that "[i]f people become aware that they can be treated as criminal for providing information they believe will aid a crime, they may hesitate to give information when they think there is some modest chance of criminal use, not trusting that prosecutors and jurors will always be discerning about perceptions of relevant probabilities." DOJ Report 47 (quoting Kent Greenawalt, *Speech, Crime, and the Uses of Language* 86-87 (1989)). It specifically observed that a teacher who "sense[s] that a particular student seems suspicious" might "cease instruction" altogether. *Id.* at 50 n.78. That chill falls hardest on those whose work is conveying technical information to audiences they cannot vet—chemistry teachers, firearms and demolition instructors, military trainers, and publishers. And because knowledge may be inferred from willful blindness, *see Global-Tech Appliances, Inc.* v. *SEB S.A.*, 563 U.S. 754, 769-770 (2011), a careful speaker cannot avoid liability simply by declining

to ask questions. The predictable response is silence.

III. THE QUESTION PRESENTED IS RECURRING.

1. Whether a speaker may be punished because of what a listener intends is not a question confined to § 842(p)(2)(B). Federal law contains other speech-related prohibitions keyed to knowledge of another's unlawful purpose. *See, e.g.*, 18 U.S.C. § 231(a)(1) (teaching or demonstrating the use or making of firearms or explosives "knowing or having reason to know or intending that" they will be unlawfully employed in a civil disorder); *id.* § 2339A(a) (providing material support, including training and expert advice, "knowing or intending" that it will be used to prepare for or carry out specified offenses). Under the Fourth Circuit's reasoning, each of those provisions—and any future prohibition on sharing information with a known wrongdoer—falls within the speech-integral exception without any showing of the speaker's purpose.

2. Lower courts are confronting the question presented with increasing frequency, in contexts having nothing to do with explosives. Several recent cases have asked whether speech about abortion services lawfully available in other States is "integral to criminal conduct," and the courts have answered by reference to the speaker's intent.

In one such case, the Seventh Circuit reiterated that "aiding-and-abetting liability requires intentional participation intended to bring about the commission of the underlying offense."

Planned Parenthood Great Nw., Hawai'i, Alaska, Indiana, Kentucky, Inc. v. *Comm'r of the Ind. State Dep't of Health*, 187 F.4th 939, 953 (7th Cir. 2026).

A district court in South Dakota similarly declined to apply the exception because the State had not shown that the speaker acted "with the specific intent that another person engage in specific criminal conduct." *Mayday Health* v. *Rhoden*, No. 4:26-cv-04096-CCT, 2026 WL 2070966, at *16 (D.S.D. July 17, 2026).

A district court in Alabama warned that allowing the government to "regulate conduct that [it] lacks authority to prosecute directly by burdening speech" "would have dangerous consequences for the freedom of expression." *Yellowhammer Fund* v. *Marshall*, 776 F. Supp. 3d 1071, 1107-08 (M.D. Ala. 2025).

And in sustaining a different State's aiding-and-abetting provision, the Seventh Circuit emphasized that it reached only "[s]peech intended to bring about a particular unlawful act." *K.C.* v. *Individual Members of Med. Licensing Bd. of Ind.*, 121 F.4th 604, 629-631 (7th Cir. 2024) (citation omitted).

As these cases illustrate, the question whether knowledge of a listener's unlawful aims can substitute for the speaker's own intent—is a recurring one. The Fourth Circuit's answer would give every legislature a template for regulating disfavored conduct by punishing those who speak about it.

3. Within the Fourth Circuit alone, the question has produced two irreconcilable published decisions. Shortly after the panel decision in

Arthur was issued, a different panel of the same court vacated convictions resting on the defendant's speech, holding that solicitation and facilitation each require that the speaker "intend 'to bring about a particular unlawful act.'" *United States* v. *Al-Timimi*, 164 F.4th 292, 309 (4th Cir. 2026) (emphasis omitted) (quoting *Hansen*, 599 U.S. at 771). Because Al-Timimi's statements "urged no concrete criminal plan and did not provide operational assistance for the commission of any particular offense"—that is, they did not constitute facilitation or solicitation—they remained protected. *Id.* at 297. *Al-Timimi* thus required exactly what the panel here held unnecessary: the speaker's own intent to bring about the crime. Arthur brought the conflict to the en banc court's attention, CA4 Doc. 62 (Jan. 12, 2026), but the court declined to resolve it.

IV. THIS CASE IS AN IDEAL VEHICLE.

First, the issue is fully preserved. Arthur moved to dismiss the indictment on First Amendment grounds before trial, pressed the argument on appeal, and renewed it in a petition for rehearing en banc. Each court below decided it on the merits. App. 53a-61a, 14a-29a.

Second, the question is purely legal and was reviewed de novo. *See United States* v. *Miselis*, 972 F.3d 518, 525 (4th Cir. 2020). No factual dispute bears on it. And the Government agrees that the jury instructions "accurately reflected the statute's elements." Gov't CA4 Br. 21 n.4.

Third, the question received full consideration below. The panel divided, with Judge Gregory dissenting. App. 2a. Three judges voted to rehear

the case en banc, App. 70a-71a, and Judge Gregory wrote again to explain why the statute "defies First Amendment principles and doctrine." App. 73a.

Fourth, the question is outcome-determinative. Count 1 rests solely on § 842(p)(2)(B). If the statute is facially overbroad, Count 1 must be vacated, and Arthur—who is serving an aggregate sentence of 300 months, App. 9a—would be entitled at a minimum to resentencing on the remaining counts. Nor does petitioner's posture present any obstacle: the overbreadth doctrine permits a defendant to challenge a statute that "prohibits a substantial amount of protected speech" whether or not his own speech is protected. *Williams*, 553 U.S. at 292; *see Hansen*, 599 U.S. at 769-770. The mental-state question is antecedent to, and dispositive of, that challenge.

CONCLUSION

The petition should be granted.

Respectfully submitted,

ANDREW DESIMONE
OFFICE OF THE FEDERAL
PUBLIC DEFENDER,
EASTERN DISTRICT OF
NORTH CAROLINA
150 Fayetteville Street,
Suite 450
Raleigh, N.C. 27601
Andrew_DeSimone@fd.org

JO-ANN TAMILA SAGAR
Counsel of Record
HOGAN LOVELLS
CADWALADER US LLP
555 Thirteenth St. N.W.
Washington, D.C. 20004
(202) 637-5600
jo-ann.sagar@hlc.com

DELIA SCOVILLE
HOGAN LOVELLS
CADWALADER US LLP
125 High St., Suite 2010
Boston, M.A. 02110

Counsel for Petitioner

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