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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 JAC DALITSO ARCHER, *et al.*,

13 Defendants.

No. 2:25-CR-00113-RLP-9

**DEFENDANT JAC DALITSO
ARCHER'S RULE 29 MOTION
FOR JUDGMENT OF ACQUITTAL**

ORAL ARGUMENT REQUESTED
November 18, 2026 at 10:00am PT

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1 Defendant Jac Dalitso Archer hereby moves for a judgment of acquittal under
2 Federal Rule of Criminal Procedure 29(c), based on the following points and
3 authorities.

4 INTRODUCTION

5 The United States has a long and proud history of civil disobedience. Henry
6 David Thoreau refused to pay taxes that might support slavery. Susan B. Anthony
7 voted when the law forbade women from doing so. Martin Luther King Jr. protested
8 segregation in defiance of official orders. All “risked arrest”—and were arrested.
9 None were violent or even threatening. Their peaceful defiance of unjust laws
10 appealed to our collective conscience, sparked debate, and led to reform.

11 The government’s efforts to prosecute Jac Archer’s nonviolent civil dis-
12 obedience as a violent conspiracy defy 18 U.S.C. § 372 and the First Amendment.
13 At most, the government proved at trial that Archer agreed with others to “risk
14 arrest” to express their opposition to the detention and relocation of Joswar
15 Rodriguez Torres and Cesar Alvarez Perez by U.S. Immigration and Customs
16 Enforcement (“ICE”). That conduct shows no conspiracy to use “force, intimidation,
17 or threat” or “injure property.” 18 U.S.C. § 372. The undisputed evidence shows
18 Archer’s repeated commitment to nonviolence. The Ninth Circuit has found that
19 locking arms with other protestors and standing one’s ground is “peaceful.”
20 *Headwaters Forest Def. v. Cnty. of Humboldt*, 276 F.3d 1125, 1127 (9th Cir. 2002).

21 Even if other protestors violated § 372, the First Amendment prohibits the
22 government from imputing their conduct to Archer. The Supreme Court has long
23 recognized that the First Amendment bars imposition of “[c]ivil liability . . . merely

1 because an individual belonged to a group, some members of which committed acts
2 of violence.” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 920 (1982). That
3 conclusion applies *a fortiori* to criminal liability. It is easy to understand why. If
4 protestors and organizers become responsible for the violent actions of anyone who
5 joins the same demonstration, no one will protest. The tradition of civil disobedience
6 that has shaped U.S. history will be irreparably chilled.

7 Finally, the government cannot prosecute Archer on a theory of conspiracy to
8 injure property. Any such theory constructively amended the Indictment, which
9 made no mention of “property” among the “Objects of the Conspiracy.” ECF 1.
10 Regardless, no evidence indicated that Archer agreed with anyone to injure property.

11 No evidence showed Archer violated § 372. The government’s contrary
12 theory defied the First Amendment. The Court should enter a judgment of acquittal.

13 **FACTUAL BACKGROUND**

14 On June 11, 2025, ICE detained Torres and Perez and sought to transport them
15 to Tacoma. Former Spokane City Council President Ben Stuckart posted on
16 Facebook that ICE had detained a young asylum seeker at a check-in and called on
17 others to join him in protesting the detention. GX76 (Ex. 10).¹ Hundreds of people,
18 including Archer, joined him.

19
20
21 ¹ Exhibits referenced herein are attached to the Declaration of Andrew Wagley in
22 Support of Defendant Archer’s Rule 29 and Rule 33 Motions, filed concurrently
23 with this motion.

Archer had prior training in how to organize protests. Vol. VI Tr. 1730:9-20 (Ex. 6). That training taught Archer that “all protests carry a risk of arrest,” even if they are nonviolent. *Id.* 1742:9-25. Planned protests thus typically involve preparation for the possibility of arrest. *Id.* 1745:25-1746:22.

The testimony at trial divided the ensuing protest into four stages: (1) the white bus, (2) the south gate, (3) the red van, and (4) the intervention by the Spokane Police Department and County Sheriff’s Office. Vol. II Tr. 437:14-438:10 (Ex. 2). Archer personally participated only in the first two. *Id.* 514:13-515:7.

Archer arrived at the ICE facility around 2:00pm PT. Vol. VI Tr. 1737:18-19. Archer initially sat with a group of protestors outside the white bus’s door. GX413 (Ex. 12). Archer believed that “sitting in front of a bus under those circumstances . . . could be an act of civil disobedience and . . . lead to arrest,” Vol. VI Tr. 1736:8-14, and had been told by an ICE officer that it was “arrestable,” *id.* 1742:22-25. Archer thus spoke with other protestors about how “to effect nonviolence,” “hold your peace, and avoid fighting.” *Id.* 1749:17-1750:12. The group collectively decided to link arms, “because when your arms are linked . . . you can’t hit anyone.” *Id.* 1750:17-19, 1658:5-11. Archer repeatedly advised other protestors, “If you can’t take a punch without throwing one, don’t join the line.” *Id.* 1751:1-8; 1662:12-20. Archer also collected the names of other protestors’ emergency contacts so that they could be informed of any arrest. *Id.* 1745:20-1746:22. The government purported to identify Archer as an organizer because Archer had a “clipboard” and was “talking to several people.” Vol. II Tr. 445:6-18. At 3:14pm, Archer posted on Facebook inviting more protestors to join because, “THERE IS A NON-ZERO CHANCE WE

1 CAN WAIT OUT ICE AND THEY MAY FREE THIS MAN.” GX77 (Ex. 12).
2 Archer’s post also noted that “[s]ome contingents are choosing to risk arrest.” *Id.*

3 While Archer was sitting near the white bus, an unidentified person in a “black
4 mask and hoodie” rode up on a bicycle, used “white spray paint” to obscure the
5 “driver’s side” of the bus’s windshield, and rode away. Vol. VI Tr. 1751:15-1752:3.
6 Archer testified that the individual was “not one of the protestors,” *id.*, and the
7 government agreed that “Archer did not know that individual that spray-painted the
8 bus,” Vol. V Tr. 1425:2-6 (Ex. 5).

9 Around 5:20pm, many protestors, including Archer, moved from the north
10 side of the ICE facility to a gated parking lot on the south side. Vol. II Tr. 456:9-
11 460:17. ICE officers opened the south gate so that vehicles could pass through.
12 GX425 (Ex. 13). When protestors arrived at the gate, Archer stated, “This is what
13 we talked about. If you’re willing to risk arrest, link arms.” Vol. V Tr. 1449:4-8.
14 Several protestors linked arms and stood together with their backs toward the open
15 gate. GX426 (Ex. 14). They faced their backs toward the gate to “show that we’re
16 not going to rush” ICE officers, that “we are not trying to face down people we
17 disagree with.” Vol. VI Tr. 1657:16-20. ICE officers approached the protestors from
18 both inside the parking lot and from an adjacent parking lot to the east after exiting
19 the ICE facility. GX25 (Ex. 8); DX605M (Ex. 9); Vol. VI Tr. 1677:10-14. The
20 officers “initiated physical contact because there was a crowd in front of them that
21 wasn’t moving.” Vol. II Tr. 504:10-16. As a result of ICE officers’ “pushing and
22 shoving,” several protestors, including Archer, “fell to the ground.” *Id.* 505:4-12,
23 512:6-10; GX25. ICE officers then closed the gate. *Id.* Once the gate closed, officers

1 could be heard on body camera footage laughing and joking about “these guys.” Vol.
2 III Tr. 667:22-668:3 (Ex. 3). Special Agent John LaForte can be seen flicking the
3 hat off another protester while walking back towards the building. *Id.* 668:25-669:8.

4 After the gate closed, protestors other than Archer placed Lime scooters and
5 traffic pylons in front of it. GX401 (Ex. 15). Archer, Laura Tewel, and Liz Moore
6 discussed whether to remove the objects and collectively decided to do so. Vol. VI
7 Tr. 1722:14-1723:6. The objects were in front of the gate for “[l]ess than five
8 minutes.” *Id.* 1661:14-23. No evidence showed any damage to the gate. GX401.

9 The detainees were removed from the building at 9:00pm. Vol. III Tr. 627:2-
10 6, 724:23-725:1. Archer remained at the south gate for the remainder of the evening,
11 ultimately leaving around 12:30am on June 12. Vol. VI Tr. 1760:20-21.

12 On June 12, 2025, Archer created a voice memo describing their experience
13 at the protest. GX78 (Ex. 16). Archer stated that they were “part of a group” whose
14 “job was to link arms and man [the South] gate and keep anything from going in or
15 out.” *Id.* The group “got beaten up over it.” *Id.* ICE officers “pushed us around,
16 pushed us to the ground, manhandled us.” *Id.* Archer and other protestors “got
17 bumped and scraped and bruised,” but they “held the gate.” *Id.* Ultimately, it did not
18 “turn out the way” Archer “wished” because the “two asylees” Archer was “hoping
19 to protect” were “still abducted.” *Id.* Archer stated that their group “was not planning
20 to fight in any way.” *Id.* If they “got arrested,” they “were going to accept arrest.”
21 *Id.* Archer concluded by stating that the “community” collectively “made it so that
22 [ICE] had to essentially deploy violence in order to kidnap these boys.” *Id.*

1 The government argued in closing that Archer was “organizing” protestors to
2 “stop the transport” and “block the exit.” Vol. VII Tr. 1877:10-12, 1881:15-17,
3 1890:13-18 (Ex. 7). It urged that protestors sought to “force the release” of Torres
4 and Perez, *id.* 1873:20-21, and “collectively made it so that [officers] had to
5 essentially deploy violence,” *id.* 1890:4-5. In the government’s view, “[f]ederal
6 officers don’t have to sit on their hands and do nothing.” *Id.* 1956:14-15. It
7 analogized protestors’ linked arms to “pushing back” in a “rugby scrum,” *id.*
8 1878:15, and asserted that “the fact that the officers pushed [demonstrators,] that’s
9 not a defense” because demonstrators “cannot push back,” *id.* 1892:9-11. The jury
10 then convicted Archer of conspiring “to prevent by force, intimidation, or threat, any
11 officer of the United States from discharging any of their official duties.” ECF 367
12 at 2. It also found that Archer conspired to “injure the property” of a federal officer
13 and aided and abetted a conspiracy by others. *Id.*

14 ARGUMENT

15 The Court “must enter a judgment of acquittal of any offense for which the
16 evidence is insufficient to sustain a conviction.” Fed. R. Crim. P. 29(c). The First
17 Amendment alters the ordinary Rule 29 standard of review by requiring the Court to
18 ““make an independent examination of the whole record in order to make sure that
19 the judgment does not constitute a forbidden intrusion on the field of free
20 expression.”” *United States v. Hanna*, 293 F.3d 1080, 1088 (9th Cir. 2002) (quoting
21 *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984)).
22 Such review compels Archer’s acquittal on the charge of violating 18 U.S.C. § 372.
23 The government seeks to apply § 372 to Archer’s support for, organization of, and

1 participation in nonviolent protest—activities that are “clearly protected by the First
2 Amendment.” *Collins v. Jordan*, 110 F.3d 1363, 1371 (9th Cir. 1996); *White v. Lee*,
3 227 F.3d 1214, 1228 (9th Cir. 2000) (“Peaceful speech, even speech that urges civil
4 disobedience, is fully protected by the First Amendment.”). The First Amendment
5 requires the Court to narrowly construe § 372’s prohibition and precludes its
6 application to Archer. Stretching the statute to reach Archer’s conduct would violate
7 intermediate scrutiny—or *a fortiori* strict scrutiny, because it would impose a greater
8 burden on expressive activities than any important or compelling government
9 interest would require.

10 Even without considering the First Amendment, the government’s evidence
11 fails to carry its heavy burden. Section 372 requires proof beyond a reasonable doubt
12 that conspirators knowingly agreed and intended to use “force, intimidation, or
13 threat.” The government at most proved that demonstrators knowingly agreed and
14 intended to oppose ICE’s transportation of Torres and Perez to a different facility. It
15 offered no evidence that Archer agreed or intended to use force or threats in support
16 of that opposition.

17 Nor can the government convict Archer for conspiring to “injure” the
18 “property” of a federal officer. Any conviction for conspiracy to injure property
19 constructively amends the Indictment, which never identified property injury as an
20 object of the conspiracy. Nor did the evidence support such a conviction.

21 **I. The First Amendment Prohibits Archer’s Conviction.**

22 Archer’s prosecution arose from activities protected by the First Amendment.
23 Archer protested on the public sidewalk, which has been considered a public forum

1 since “time immemorial,” and where any restrictions on speech or expression are
2 “subject to a particularly high degree of scrutiny.” *Collins*, 110 F.3d at 1371.
3 Archer’s speech and expression protested federal immigration enforcement—an
4 issue of public concern that ““occupies the highest rung of the hierarchy of First
5 Amendment values and is entitled to special protection.”” *Snyder v. Phelps*, 562 U.S.
6 443, 452 (2011) (quoting *Connick v. Myers*, 461 U.S. 138, 145 (1983) (cleaned up)).

7 Courts cannot “sustain a conviction that may have rested on a form of
8 expression . . . which the Constitution tolerates and protects.” *Street v. New York*,
9 394 U.S. 576, 594 (1969); accord *Cox v. Louisiana*, 379 U.S. 536, 545 (1965);
10 *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963). While courts considering a
11 Rule 29 motion must ordinarily view the evidence in the light most favorable to the
12 government, the First Amendment here requires “an independent examination of the
13 whole record in order to make sure that the judgment does not constitute a forbidden
14 intrusion on the field of free expression.” *Hanna*, 293 F.3d at 1088 (quoting *Bose*
15 *Corp.*, 466 U.S. at 499). “In other words, on a First Amendment issue, if the . . . court
16 disagrees with the factfinder’s assessment of the evidence, the court must overturn
17 the conviction.” *United States v. Hayner*, 371 F. Supp. 3d 700, 705 (N.D. Cal. 2018);
18 *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 285 (1964) (courts must “review the
19 evidence” to determine the “line between speech unconditionally guaranteed and
20 speech which may be legitimately regulated”). The Court must assess, without
21 deference to the jury, the “facts that determine the core issue of whether the
22 challenged speech is protected by the First Amendment.” *Hanna*, 293 F.3d at 1088.

A. The Government Failed to Prove the Intent Required by § 372.

A conviction under 18 U.S.C. § 372 requires proof of a knowing agreement and intent to use “force, intimidation, or threat.” The First Amendment requires each term to be construed narrowly in the context of protected demonstrations, because enforcement threatens to “chill, or deter, speech outside [their] boundaries.” *Counterman v. Colorado*, 600 U.S. 66, 75 (2023); see *Claiborne Hardware*, 458 U.S. at 916 (“When [violence] occurs in the context of constitutionally protected activity, . . . ‘precision of regulation’ is demanded.”). Applying such constructions, the evidence does not show that Archer specifically intended to further the use of “force, intimidation, or threat.”

1. The Government Has Not Proved Intent to Use “Force”.

Under this Court’s jury instructions, an “act involves ‘force’ if it threatens or results in violence.” ECF 361 at 21; see *Wisconsin v. Mitchell*, 508 U.S. 476, 484 (1993) (“A physical assault is not . . . expressive conduct protected by the First Amendment.”). Physical presence cannot constitute force, and as part of an assembly, presence is protected by the First Amendment. *Claiborne Hardware*, 458 U.S. at 925; *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937). Additionally, “[m]erely tensing up or merely resisting does not, by itself, constitute ‘force.’” ECF 361 at 21.

The First Amendment prohibits charging conspiracy to use force based solely on mere advocacy or encouragement of the use of force, much less nonviolent civil disobedience. The First Amendment does not permit the government “to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely

1 to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).
2 “‘Imminent lawless action,’ as used in *Brandenburg*, means violence or physical
3 disorder in the nature of a riot.” *White*, 227 F.3d at 1228. “Peaceful speech, even
4 speech that urges civil disobedience, is fully protected by the First Amendment.” *Id.*
5 “Statutes affecting the right of assembly,” on their face and as applied to specific
6 defendants, “must observe the established distinctions between mere advocacy and
7 incitement to imminent lawless action.” *Brandenburg*, 395 U.S. at 449 & n.4. Even
8 advocacy that organizes, urges, encourages, or promotes a riot receives First
9 Amendment protection if it fails *Brandenburg*’s imminence requirement. *See United*
10 *States v. Rundo*, 990 F.3d 709, 716-18 (9th Cir. 2021).

11 Archer’s advocacy of nonviolent civil disobedience fails these standards
12 several times over. Archer *never* advocated violence, much less did so when violence
13 appeared imminent. The evidence at trial proved only that Archer promoted,
14 organized, and engaged in passive, nonviolent resistance. Archer locked arms with
15 other demonstrators to express their solidarity in opposition to the transportation of
16 Torres and Perez through the ICE facility’s south gate. In the Fourth Amendment
17 context, the Ninth Circuit has held that linking arms, even through “lock-down
18 devices known as ‘black bears,’” is a form of “peaceful protest[.]” *Headwaters*, 276
19 F.3d at 1127-28; *see Williamson v. City of Nat’l City*, 23 F.4th 1146, 1152 (9th Cir.

2022) (“die-in” that disrupted city council meeting was “nonviolent,” “minor offense” that “did not pose any physical danger to others”).²

Archer’s conduct never threatened or resulted in violence. Archer joined with demonstrators who doubly emphasized their peacefulness by immobilizing their linked arms and placing their backs to ICE officers. Unrebutted testimony showed that demonstrators’ choice to link arms *prevented* violence, because “you can’t do anything with your hands.” Vol. VI Tr. 1658:5-11; *id.* 1750:2-25 (“when your arms are linked, . . . you can’t hit anyone”). The same is true of demonstrators’ choice to face their backs to ICE officers: it “show[s] that we’re not going to rush them,” that “we are not trying to face down people we disagree with.” Vol. VI Tr. 1657:16-20. One demonstrator played a musical instrument; another repeated that Perez and Torres “just want to be safe.” GX24 (Ex. 17).

Even if the government could have proved that *some* demonstrators agreed to use “force, intimidation, or threats,” it still failed to prove that Archer knowingly joined any such agreement, let alone that they intended to do so. Unrebutted evidence showed Archer’s commitment to nonviolence. Vol. VI Tr. 1751:1-8, 1662:12-20. Archer linked arms with fellow demonstrators and turned their back to officers to *prevent* violence, precisely because they never intended violence to occur. *See pp.* 2-6, *supra*. They repeatedly told other protestors not to engage in violence. *E.g.*, Vol.

² Even where demonstrators “link[] arms to block officers’ access,” the government only has a legitimate interest in using “minimal force to maintain order.” *Felarca v. Birgeneau*, 891 F.3d 809, 818 (9th Cir. 2018).

1 VI Tr. 1751:1-8 (“If you can’t take a punch without throwing one, don’t join the
2 line.”). Even Archer’s social media posts announced only an intention to “WAIT
3 OUT ICE.” GX77. And that is exactly what Archer attempted to do, waiting at one
4 entrance to the ICE facility from “about 4:00 p.m. to midnight.” Vol. VI Tr. 1806:25-
5 1807:3.

6 The government’s theories of “force” lack merit and would transform
7 virtually *any* form of civil disobedience—physical or otherwise—into force. The
8 government repeatedly urged that Archer intended to “force the release” of Torres
9 and Perez. *E.g.*, Vol. VII Tr. 1873:20-21. But that is a play on words, describing not
10 the *conduct* in which Archer engaged but instead the *outcome* they sought to achieve.
11 Expressive conduct does not “lose its protected character . . . simply because it may
12 . . . coerce [others] into action.” *Claiborne Hardware*, 458 U.S. at 910. All protest
13 seeks to “force” action.

14 Nor can the government prove demonstrators engaged in “force” by arguing
15 that they “collectively made it so that [officers] had to essentially deploy violence.”
16 Vol. VII Tr. 1890:3-5. Such an argument, if accepted, would transform wide swaths
17 of protesting that the Ninth Circuit has found to be peaceful into criminal “force.”
18 *See pp. 9-11, supra*. Any demonstrator dragged from a peaceful sit-in that disrupted
19 federal officers could face felony charges. That is not the law.

20 In its closing, the government additionally attempted to analogize linked arms
21 to “pushing back” in a “rugby scrum.” Vol. VII Tr. 1878:15. But no rugby team lines
22 up backwards. Demonstrators’ decision to link arms and face their backs to ICE
23

1 proves that demonstrators were “merely resisting” and, under this Court’s
2 instructions, defeats any inference of force. ECF 361 at 21.

3 **2. Archer Had No Intent to Use “Intimidation” or “Threat.”**

4 Nor did Archer conspire to use intimidation or threats against federal officers.
5 The First Amendment limits any prohibition to “true threats,” *i.e.*, “‘serious
6 expression[s]’ conveying that a speaker means to ‘commit an act of unlawful
7 violence.’” *Counterman*, 600 U.S. at 74 (quoting *Virginia v. Black*, 538 U.S. 343,
8 359 (2003)). To prove a “true threat,” the government must show not just how a
9 reasonable listener would interpret the statement, but also that the speaker is “aware
10 ‘that others could regard his statements as’ threatening violence and ‘delivers them
11 anyway.’” *Counterman*, 600 U.S. at 79; *see* ECF 361 at 21. The Supreme Court
12 required proof of such awareness because doing so “reduces the prospect of chilling
13 fully protected expression,” even if it also “shield[s] some otherwise proscribable
14 (here, threatening) speech[.]” *Counterman*, 600 U.S. at 75.

15 Verbal speech directed at law enforcement officers is subject to special
16 protections. “Criticism of the police, profane or otherwise, is not a crime.” *United*
17 *States v. Poocha*, 259 F.3d 1077, 1082 (9th Cir. 2001). The First Amendment
18 protects “verbal criticism, challenges, and profanity directed at police officers”
19 unless they are true threats or fighting words. *Gulliford v. Pierce Cnty.*, 136 F.3d
20 1345, 1349 (9th Cir. 1998). And speech cannot be “stripped of its constitutional
21 protection simply because it is accompanied by the aggressive gestures involved.”
22 *Poocha*, 259 F.3d at 1082 (providing, as an example, “clenching his fists and
23 sticking out his chest”).

1 The government never proved that Archer threatened or intimidated officers,
2 condoned other protestors' threats or intimidation, or subjectively understood any
3 protestors' statements to threaten violence. Nor could it. When discussing the
4 protestors' verbal speech as "intimidation" or "threats," the government proved only
5 that demonstrators engaged in profane and harassing speech against law
6 enforcement, Vol. VII Tr. 1879:4-15—speech the First Amendment unequivocally
7 protects, *see* p. 13, *supra*. Nor can the fact that a large group assembled transform
8 protected speech into intimidation, even if it caused officers "apprehension."
9 *Claiborne Hardware*, 458 U.S. at 925; *Cox*, 379 U.S. at 546-50 (rejecting assertion
10 that it was "inherently dangerous and a breach of the peace to bring 1,500 people"
11 to a courthouse protest).

12 Moreover, Archer's statements repeatedly emphasized the need for
13 nonviolence. Archer repeatedly stated that "If you can't take a punch without
14 throwing one, don't join the line." Vol. VI Tr. 1751:1-8; *id.* 1662:12-20 ("I
15 repeatedly heard Jac ask the same question to anyone who wanted to join our group,
16 'Can you take a punch without throwing one,' repeatedly."). That is the opposite of
17 a true threat. It underscores Archer's intent that, even if officers engaged in violence
18 *against* protestors, protestors should not respond in kind.

19 **B. Other Demonstrators' Conduct Cannot Be Imputed to Archer.**

20 While a conspiracy charge ordinarily permits conviction of one defendant
21 based on actions taken by co-conspirators, the First Amendment limits such
22 convictions in the context of protected demonstrations. Archer cannot be convicted
23 for other demonstrators' actions under § 372 absent proof of "specific intent to

1 further” the use of force, intimidation, or threat. *Claiborne Hardware*, 458 U.S. at
2 920; *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 834 (9th Cir.
3 2020) (“The many peaceful protesters, journalists, and members of the general
4 public cannot be punished for the violent acts of others.”). Such proof does not exist,
5 because Archer repeatedly disclaimed any intention to engage in force or threats.

6 Large demonstrations require precise distinctions, because the “term
7 ‘concerted action’ encompasses unlawful conspiracies and constitutionally protected
8 assemblies.” *Claiborne Hardware*, 458 U.S. at 888. The same demonstration can
9 have a “‘chameleon-like’ character,” including both “elements of criminality and
10 elements of majesty.” *Id.* (quoting *Krulewitch v. United States*, 336 U.S. 440, 447-
11 49 (1949) (Jackson, J., concurring)). But the First Amendment guarantees the “right
12 of individuals to combine with other persons in pursuit of a common goal by lawful
13 means.” *Id.* at 933. It thus prohibits imposition of liability “merely because an
14 individual belonged to a group, some members of which committed acts of
15 violence.” *Id.* at 920. Instead, the government must “establish that the group itself
16 possessed unlawful goals and that the individual held a specific intent to further
17 those illegal aims.” *Id.* It must not “employ ‘means that broadly stifle fundamental
18 personal liberties when the end can be more narrowly achieved.’” *Id.*

19 *Claiborne Hardware* involved an NAACP boycott of white merchants in
20 Claiborne County, Mississippi. *Id.* at 888-89. Sixteen individuals allegedly engaged
21 in “violent acts or threats of violence.” *Id.* at 897-98. A Mississippi court held the
22 NAACP and its leaders jointly and severally liable for the resulting damage on a
23 theory of conspiracy, concluding that the First Amendment does not protect “use of

1 illegal force, violence, and threats against the peace to achieve a goal.” *Id.* at 890-
2 95. But the Supreme Court reversed. Although it agreed that the First Amendment
3 does not protect violence, *id.* at 916-17, it held that the boycott could not be
4 “characterized as a violent conspiracy simply by reference to the ephemeral
5 consequences of relatively few violent acts,” even if such acts “contributed to the
6 success of the boycott,” *id.* at 933. Instead, the plaintiffs had the “heavy” burden of
7 demonstrating that “specific parties agreed to use unlawful means” such as violence
8 and threats. *Id.* at 933-34. The Supreme Court required such proof to avoid the
9 “imposition of punishment for constitutionally protected activity.” *Id.*

10 Following *Claiborne Hardware*, the Ninth Circuit has required proof that a
11 “‘group itself possessed unlawful goals and that the individual held a specific intent
12 to further those illegal aims.’” *Santopietro v. Howell*, 73 F.4th 1016, 1026 (9th Cir.
13 2023) (quoting *Claiborne Hardware*, 458 U.S. at 920). In *Santopietro*, two artists
14 were jointly performing in public when one allegedly demanded an improper
15 payment. *Id.* at 1020-21. Police officers could not use “evidence of expressive
16 association to engage in a street performance” to infer that both performers had
17 agreed to request improper payments, because such an inference “impermissibly
18 burdens the right to engage in purely expressive activity and association.” *Id.* at
19 1026-28.

20 These requirements map directly onto § 372. For the first clause of § 372,
21 “‘the crucial element separating legal innocence from wrongful conduct[,]’ is that
22 the defendant conspires to prevent an employee from discharging his or her duties
23 ‘by force, intimidation, or threat.’” *United States v. Ehmer*, 87 F.4th 1073, 1120 (9th

1 Cir. 2023) (first quoting *Elonis v. United States*, 575 U.S. 723, 737 (2015) (citation
2 omitted), then quoting 18 U.S.C. § 372). The “culpable mental state” must therefore
3 “be shown with respect to that element.” *Id.* Marrying *Ehmer*’s requirements with
4 *Claiborne Hardware* and *Santopietro* requires “specific intent to further” force,
5 intimidation, or threat. *Claiborne Hardware*, 458 U.S. at 920; *Santopietro*, 73 F.4th
6 at 1026. Conspiracy liability extends only to “specific parties” who “agreed to use
7 unlawful means.” *Claiborne Hardware*, 458 U.S. at 933.

8 The government offered no evidence—*none*—that Archer knowingly entered
9 an agreement with intent to use force, intimidation, or threats. The evidence
10 repeatedly showed Archer’s commitment to nonviolence. *See* pp. 9-13, *supra*; Vol.
11 VI Tr. 1751:2-8; *id.* 1662:12-20. That is fatal to a § 372 charge. Conspiracy liability
12 extends only to the “specific parties” who “agreed” to use the “unlawful means” of
13 force, intimidation, or threat. *Claiborne Hardware*, 458 U.S. at 933.

14 Instead of proving specific intent, the government advanced the exact theory
15 *Claiborne Hardware* rejected. As in *Claiborne Hardware*, the government seeks to
16 characterize the demonstration as a “violent conspiracy simply by reference to the
17 ephemeral consequences of relatively few violent acts.” 458 U.S. at 933. It treats the
18 “entire collective effort” as unlawful rather than holding specific individuals “liable
19 for the consequences” of their unlawful acts. *Id.* For example, the government
20 attempts to hold Archer liable for activities that they *did not know about*, much less
21 plan or participate in. *See* Vol. VI Tr. 1760:1-7 (Archer not aware of the events
22 around the red van). The government admitted in closing that “Archer, no doubt
23 about it, was not at the red van.” Vol. VII Tr. 1955:3-10. But it inexplicably treated

1 their absence as “evidence of the conspiracy.” *Id.* It urged that Archer was “not at
2 the red van” because they “didn’t need to be.” *Id.* *Claiborne Hardware* specifically
3 prohibits attribution to Archer of conduct they never condoned, much less
4 specifically intended. The government’s theory would have held the NAACP and its
5 leaders liable for violence committed in support of the boycott they had organized,
6 simply because the “violence contributed to the success of the boycott.” *Claiborne*
7 *Hardware*, 458 U.S. at 933. *Claiborne Hardware* foreclosed that theory.

8 The government’s sweeping understanding of conspiracy violates the very
9 core of the First Amendment. In its closing, the government argued that “people
10 showing up” is a conspiracy. Vol. VII Tr. 1955:21-22. “[L]inking arms” is
11 conspiracy. *Id.* 1956:3-4. It stated that the jury could convict Archer for “organizing”
12 in support of a general plan to “stop the transport” and “block the exit.” *Id.* 1877:10-
13 12, 1881:15-17, 1890:13-18. But a general plan to “stop the transport” or “block the
14 exit” does not require or even condone the use of force or threats. Agreement to link
15 arms in front of a gate is not agreement to use violence. Indeed, as in *Santopietro*,
16 the government impermissibly relies on proof of engagement in expressive conduct,
17 such as linking arms, to infer a separate agreement to use force, intimidation, or
18 threats. 73 F.4th at 1026-28.

19 The government made no effort to hide the breadth of its theory in closing:
20 “This is not a one-person thing. This is not a two-person thing. This isn’t even a
21 hundred-person thing.” Vol. VII Tr. 1955:8-9. A theory that could convict more than
22 a hundred protestors who demonstrated on June 11, 2025, for the violence of a few
23 does not show the “precision of regulation” required by the First Amendment.

1 *Claiborne Hardware*, 458 U.S. at 916. It “impermissibly burdens the right to engage
2 in purely expressive activity and association.” *Santopietro*, 73 F.4th at 1028.

3 The government’s scattershot conspiracy theory does not just violate the First
4 Amendment; it threatens to chill protesting throughout the country. Under the
5 government’s view, any protestor who joins a demonstration seeking to “block”
6 government action faces felony conviction if any other protestor engages in an act
7 of violence.

8 Likewise, Archer’s conviction for others’ conduct on a theory of aiding and
9 abetting cannot stand. An aiding-and-abetting conviction requires proof of “specific
10 intent to facilitate the commission of a crime” and the “requisite intent of the
11 underlying substantive offense.” *United States v. Shorty*, 741 F.3d 961, 970 (9th Cir.
12 2013); ECF 361 at 23. Those elements would again require proof of Archer’s
13 “specific intent to further” the object of the conspiracy through force, intimidation,
14 or threats. *Claiborne Hardware*, 458 U.S. at 920; *Santopietro*, 73 F.4th at 1026. No
15 such proof exists.

16 **C. Application of § 372 to Archer Fails Intermediate Scrutiny.**

17 Any interpretation that stretched § 372 to cover the conduct proved at trial
18 would render the statute unconstitutional as applied to Archer. While the Court
19 previously held § 372 “content-neutral,” ECF 276 at 7-8, the charges here targeted
20 core protected speech based on its opposition to government actions, triggering strict
21 scrutiny, *Chiles v. Salazar*, 146 S. Ct. 1010, 1021 (2026). Regardless, even a
22 “content-neutral” law “must be ‘narrowly tailored to serve a significant
23 governmental interest,’” such that it does not “‘burden substantially more speech

1 than is necessary to further the government’s legitimate interest,’” *McCullen v.*
2 *Coakley*, 573 U.S. 464, 486 (2014) (quoting *Ward v. Rock Against Racism*, 491 U.S.
3 781, 796-99 (1989)); *United States v. O’Brien*, 391 U.S. 367, 376-77 (1968)
4 (reviewing conviction under 50 U.S.C. App. § 462(b) (now 50 U.S.C. § 3811(b))).
5 Because the government failed to satisfy even intermediate scrutiny, it cannot satisfy
6 strict scrutiny *a fortiori*.

7 Section 372 “‘was enacted by a Congress acutely aware of the massive and
8 frequently violent resistance in the southern states to federal Reconstruction after the
9 Civil War.’” *United States v. Rhodes*, 610 F. Supp. 3d 29, 51 (D.D.C. 2022) (quoting
10 *Stern v. U.S. Gypsum, Inc.*, 547 F.2d 1329, 1334 (7th Cir. 1977)). The need resulted
11 from the “inability or unwillingness of state governments to deal effectively with”
12 such violence. *Stern*, 547 F.2d at 1334. But Congress also created narrower means
13 for addressing interference with officers’ duties. When it enacted § 372, it also
14 authorized private civil actions against any conspiracy to use “force, intimidation, or
15 threat” against federal officers. 42 U.S.C. § 1985(1). It later authorized the Secretary
16 of Homeland Security to “prescribe regulations necessary for the protection and
17 administration of property owned or occupied by the Federal Government and
18 persons on the property,” 40 U.S.C. § 1315(c), authority the Secretary did not
19 exercise until she promulgated rules on June 9, 2025, that did not take effect until
20 November 5, 2025, *see* Protection of Federal Property, 90 Fed. Reg. 24,217 (June 9,
21 2025); Protection of Federal Property; Changed Effective Date, 90 Fed. Reg. 49,247
22 (Nov. 5, 2025).

1 While the government has a “significant” interest in protecting officers, it
2 never even attempted to show that it “seriously undertook to address the problem
3 with less intrusive tools readily available to it.” *McCullen*, 573 U.S. at 492. It never
4 argued that state and local authorities could not have protected officers (as they
5 indisputably did), that officers could not redress injuries civilly under § 1985 (they
6 suffered none), or that the Secretary could not have promulgated targeted regulations
7 (as she later did).³ Absent any showing that it attempted to use such less intrusive
8 means, the government cannot show that its application of § 372 to Archer is
9 “narrowly tailored” to burden no ““more speech than is necessary.”” *Id.* In fact, DOJ
10 specifically directed United States Attorneys to use the most restrictive means—and
11 to “[p]ush out press releases whenever [they] file charges in these matters.”⁴ The
12 government cannot jump to felony prosecution as a matter of convenience,

13 _____
14 ³ Under 6 C.F.R. §§ 139.35, 139.85, obstructing “access to Federal property” and
15 impeding the “performance of official duties by Federal employees” is a
16 misdemeanor punishable by imprisonment “for not more than 30 days.” Such a
17 charge necessarily imposes a lesser burden on protected speech than felony
18 prosecution under § 372. The government’s failure to promulgate that regulation by
19 June 11, 2025, is no basis to permit felony prosecution here.

20 ⁴ Sarah N. Lynch, *Prosecutors told to prioritize, publicize cases tied to Trump*
21 *immigration protests*, Reuters (Jun. 12, 2025), [https://www.reuters.com/world/us/](https://www.reuters.com/world/us/prosecutors-told-prioritize-publicize-cases-tied-trump-immigration-protests-2025-06-12)
22 [prosecutors-told-prioritize-publicize-cases-tied-trump-immigration-protests-2025-](https://www.reuters.com/world/us/prosecutors-told-prioritize-publicize-cases-tied-trump-immigration-protests-2025-06-12)
23 [06-12.](https://www.reuters.com/world/us/prosecutors-told-prioritize-publicize-cases-tied-trump-immigration-protests-2025-06-12)

1 especially where its publicization of charges reflects an intent to encourage “‘self-
2 censorship’ of speech that could not be proscribed.” *Counterman*, 600 U.S. at 75.

3 The government’s application of § 372 to Archer is particularly troubling
4 because it criminalizes simply withstanding “force” *used by ICE officers*. The
5 government argued in closing that “the fact that the officers pushed [demonstrators,]
6 that’s not a defense” because demonstrators “cannot push back.” Vol. VII Tr.
7 1892:9-11. It urged that “Federal officers don’t have to sit on their hands and do
8 nothing.” *Id.* 1956:14-15. That turns the First Amendment on its head. The
9 government cannot prosecute demonstrators for withstanding pushing that ICE
10 initiated. Such prosecution relieves ICE officers of their constitutional obligation to
11 burden no more speech than necessary and replaces it with a requirement that
12 demonstrators ensure that they burden no more of ICE’s conduct than is necessary
13 to express their views. The First Amendment prohibits that result. It is never “the
14 speaker’s burden to prove that his [conduct] should be protected from criminal
15 prosecution.” *United States v. Alvarez*, 617 F.3d 1198, 1204 (9th Cir. 2010) *aff’d*,
16 567 U.S. 709 (2012). The government never even considered less restrictive
17 alternatives. That is fatal to the conviction.

18 **II. The Government Failed to Prove § 372 Conspiracy.**

19 Setting aside the First Amendment, the government’s evidence at trial was
20 insufficient to prove a § 372 conspiracy. It instead proved only that Archer agreed
21 to oppose ICE’s detention and transportation of Torres and Perez, which cannot be
22 the basis of a § 372 conviction.

1 When reviewing the sufficiency of the evidence for questions other than the
2 First Amendment’s application, the Court must construe the evidence “in the light
3 most favorable to the Government” and ask whether “‘any rational trier of fact could
4 have found the essential elements of the crime beyond a reasonable doubt.’” *United*
5 *States v. Amintobia*, 57 F.4th 687, 697 (9th Cir. 2023) (quoting *United States v.*
6 *Nevils*, 598 F.3d 1158, 1163-64 (9th Cir. 2010)) (emphasis in *Nevils*). Sufficiency
7 “does not rest on how the jury was instructed.” *Musacchio v. United States*, 577 U.S.
8 237, 243 (2016).

9 The Ninth Circuit has held that the “crucial element separating legal
10 innocence from wrongful conduct” under § 372 is “that the defendant conspires to
11 prevent an employee from discharging his or her duties ‘by force, intimidation, or
12 threat.’” *Ehmer*, 87 F.4th at 1120-21. The “‘culpable mental state’ must . . . be
13 shown with respect to that element.” *Id.*; see ECF 361 at 17-20. No “‘rational trier
14 of fact’” could find that a demonstrator who expressed a commitment to
15 nonviolence, actively sought to prevent violence, and then simply waited for hours
16 had knowingly and intentionally joined a conspiracy to use threats or violence.
17 *Amintobia*, 57 F.4th at 697; see *United States v. Mendoza*, 25 F.4th 730, 738-40 (9th
18 Cir. 2022) (vacating conspiracy conviction where “multiple items of evidence . . .
19 affirmatively contradict the government’s theory”).

20 Most demonstrators concededly did not engage in “force, intimidation, or
21 threats” under this Court’s definitions. This case differs markedly from prior § 372
22 cases, where the defendants were “armed,” seized federal land, and had a
23 “confrontation” in which one member of the group was “fatally shot.” *Ehmer*, 87

1 F.4th at 1087; *see Finn v. United States*, 219 F.2d 894, 897 (9th Cir. 1955)
2 (defendants “did forcibly and unlawfully arrest” U.S. attorney).

3 The government offered no evidence of an agreement or plan to use “force,
4 intimidation, or threat,” much less knowing participation in such an agreement by
5 Archer. It repeatedly framed the agreement in broader terms: “Block the gate,” Vol.
6 VII Tr. 1954:13-14; “stop the transport,” *id.* 1877:10-12; “keep the detainees inside,”
7 *id.* 1881:15-17; “thoughtfully risk arrest,” *id.* 1891:16; “a plan to block the exits, to
8 cover the exits,” *id.* 1875:14-15. But each of those goals can be accomplished
9 without “force, intimidation, or threat.” *See, e.g., Williamson*, 23 F.4th at 1150, 1152
10 (“nonviolent” “die-in” that “did not pose any physical danger to others” caused city
11 council meeting to be “adjourned”). Even agreement to “risk arrest” would not
12 satisfy § 372, because “all protests,” even nonviolent ones, “carry a risk of arrest.”
13 Vol. VI Tr. 1742:9-25. The government framed the alleged agreement broadly
14 because it had no proof that demonstrators agreed to use “force, intimidation, or
15 threats.”

16 **III. Archer Cannot Be Convicted of § 372 Conspiracy to Injure Property.**

17 The jury found that Archer “conspired to injure the property of any officer of
18 the United States” to “impede them in the discharge of their official duties.” ECF
19 367 at 2. For all of the reasons set forth above, pp. 7-22, the First Amendment
20 prohibits this charge. But the Indictment also did not charge Archer with conspiring
21 to injure property. The verdict sheet thus constructively amended the Indictment,
22 permitting the jury to find an uncharged conspiracy. *See* ECF 367. Even if the
23 government had charged Archer with this crime, the evidence disproved it.

D. The Government Constructively Amended the Indictment.

The Fifth Amendment bars the government from prosecuting crimes except “on a presentment or indictment of a Grand Jury.” U.S. Const. amend. V. That language guarantees the “right to be tried only on charges presented in an indictment.” *United States v. Ward*, 747 F.3d 1184, 1191 (9th Cir. 2014) (quoting *Stirone v. United States*, 361 U.S. 212, 217 (1960)). “A constructive amendment occurs when the charging terms of the indictment are altered, either literally or in effect, by the prosecutor or a court after the grand jury has last passed upon them.” *Id.* (quotation marks omitted).

The Indictment did not charge Archer with conspiring to injure property. The “Objects of the Conspiracy” charged in the Indictment “included the use of force and threats against, and intimidation of federal agents . . . in order to impede and thwart the processing and transport of federal detainees to their immigration hearings.” ECF 1 at 2. The alleged objects make no mention of “property”—none—much less injury to property. The verdict sheet thus “constructively amended the indictment by permitting the jury to convict” Archer on “conduct not alleged in the indictment,” *i.e.*, conspiracy to injure property. *Ward*, 747 F.3d at 1191-92. The Court must vacate Archer’s conviction for such conspiracy. *Id.*

E. Archer Did Not Conspire to Injure Property.

The evidence at trial refuted any allegation that Archer conspired to injure property. Archer specifically testified that they did not “have any agreement to engage in vandalism.” Vol. VI Tr. 1761:5-9. The few instances of property damage the government identified had no connection to Archer. First, the individual who

1 spray-painted the windshield of the white bus was not a protestor but a “rando.”
2 GX78; Vol. VI Tr. 1751:21-1752:3. The government never identified that individual,
3 Vol. V Tr. 1425:2-6, much less proved he had any agreement with other protestors.
4 Second, the evidence showing demonstrators stacked items against the ICE facility’s
5 south gate also proved that no property injury occurred as a result, let alone any
6 property of an officer of the United States. *E.g.*, GX401. Regardless, Archer *removed*
7 those items after less than five minutes, Vol. VI Tr. 1804:8-11; *id.* 1660:10-1661:23,
8 defeating any inference that they agreed to that conduct, *United States v. Melchor-*
9 *Lopez*, 627 F.2d 886, 891 (9th Cir. 1980). Finally, Archer never went near the red
10 van. Vol. VI Tr. 1760:1-3; Vol. II Tr. 514:13-16. The record is simply devoid of
11 evidence that Archer agreed with anyone to injure property. No reasonable trier of
12 fact could so find. *Amintobia*, 57 F.4th at 697.

13 CONCLUSION

14 Archer committed to nonviolence and passively resisted government action
15 they regarded as unjust. The First Amendment does not permit their conviction under
16 § 372. If Archer can be prosecuted for “force, intimidation, or threats,” then no
17 demonstrator is safe from felony liability. Such charges threaten not just Archer’s
18 liberty, but the tradition of protest that has moved our laws toward justice for a
19 century. The Court should enter a judgment of acquittal.

1 RESPECTFULLY SUBMITTED this 21st day of August, 2026.

2
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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all of the attorneys that have appeared in this case and have registered with the CM/ECF System.

EXECUTED this 21st day of August, 2026 in Washington, D.C.

By: /s/ Caleb Hayes-Deats
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