

No. 22-179

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**In the Supreme Court of the United States**

UNITED STATES OF AMERICA,

*Petitioner,*

v.

HELAMAN HANSEN,

*Respondent.*

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

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**BRIEF OF ARIZONA, ALABAMA, ARKANSAS,  
CONNECTICUT, FLORIDA, GEORGIA, INDIANA,  
KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI,  
MISSOURI, MONTANA, OHIO, OKLAHOMA, SOUTH  
CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS,  
UTAH, VIRGINIA, AND WYOMING AS *AMICI  
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**INTEREST OF AMICI CURIAE**

The Ninth Circuit invalidated 8 U.S.C. § 1324(a)(1)(A)(iv), which prohibits persons from encouraging or inducing unlawful immigration, on grounds that it is unconstitutionally overbroad. Pet. App. 2a. As Petitioner argues, “[u]nless this Court intervenes now and resolves the question presented, the decision below will continue to be a substantial impediment to the nationwide administration of the immigration laws.” Pet. at 23.

Amici Curiae are the 22 States of Arizona, Alabama, Arkansas, Connecticut, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming, which submit this brief in support of Petitioner.<sup>1</sup> More than ever, illegal immigration is a serious problem imposing tremendous economic, social, and fiscal burdens on the States—including border states like Arizona. The decision below, if left undisturbed, will undoubtedly impede the enforcement of criminal immigration laws nationwide, leading to significant adverse consequences for the States.

The decision below also implicates Amici States’ well-recognized interest in enforcing their own criminal laws. *See Heath v. Alabama*, 474 U.S. 82, 90 (1985) (“Foremost among the prerogatives of sovereignty is the power to create and enforce a criminal code.”). Notably, all 50 States have enacted criminal laws that prohibit encouraging or inducing

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<sup>1</sup> Counsel of record for the parties received timely notice of Amici States’ intent to file this brief on September 14, 2022. *See* Sup. Ct. R. 37.2(a).

unlawful conduct. Appendix (“App.”) A. Here, the Ninth Circuit “failed to acknowledge the established criminal-law meanings of the terms ‘encourage’ and ‘induce.’” Pet. at 17. The States’ criminal codes are riddled with statutes employing those or similar terms. By refusing to recognize the criminal-law meaning of the terms Congress utilized in § 1324(a)(1)(A)(iv) and instead striking that statute down as facially overbroad, the Ninth Circuit created a roadmap for state and federal courts to weaponize the overbreadth doctrine to invalidate the States’ otherwise valid criminal statutes.

### **SUMMARY OF ARGUMENT**

The First Amendment overbreadth doctrine, as interpreted by this Court, is a narrow, but extraordinary, exception to the general rules of standing. When a criminal defendant successfully invokes the overbreadth doctrine to challenge a statute, a court invalidates a law if its mere existence, as opposed to its application, deters or “chills” potential speakers—regardless of whether the statute has been unconstitutionally applied to the defendant.

The Ninth Circuit’s expansive interpretation of the overbreadth doctrine in this case exemplifies why overbreadth should be applied sparingly and as a last resort. Because all of the States have enacted criminal laws that employ similar language that the Ninth Circuit decided is constitutionally suspect, the decision below now makes the States’ laws vulnerable to overbreadth challenges. But several of the States’ highest courts have already rejected such facial attacks, emphasizing that statutory terms like “encourage” and “induce” are commonplace in criminal law with well-understood meanings. Given

that the States' criminal codes are replete with laws employing language similar to § 1324(a)(1)(A)(iv), the Court's review is imperative to settle this inconsistent treatment of the overbreadth doctrine among lower courts.

This case also provides the Court with an opportunity to refine the overbreadth doctrine to ensure it does not erode Article III standing or invade the separation of powers. When, as here, a statute's threat to speech is merely hypothetical, an overbreadth claim must fail. And when a defendant, like Respondent, is charged with an aggravated crime, it is not enough for the defendant to assert that the statutory elements of a lesser crime are unconstitutionally overbroad. Instead, the defendant must show that the crime for which he was charged or convicted is facially unconstitutional.

## ARGUMENT

### **I. The Ninth Circuit's Decision Jeopardizes The Constitutionality Of Similarly-Worded Criminal Laws In All 50 States**

The First Amendment overbreadth doctrine exists to prevent the government from prohibiting “a substantial amount of protected speech” by passing facially overbroad statutes. *See United States v. Williams*, 553 U.S. 285, 292 (2008); *see also Bates v. State Bar of Ariz.*, 433 U.S. 350, 380 (1977) (“An overbroad statute might serve to chill protected speech.”). The decision below, instead of protecting speech about immigration—which the law at issue does *not* criminalize—strikes down a valid criminal law the federal government uses to “prosecute smuggling and other activities that facilitate unlawful immigration.” Pet. at 11. Not only is that a troubling

application of the overbreadth doctrine in this particular case, but the Ninth Circuit’s analysis risks even greater mischief—that federal and state courts will use the Ninth Circuit’s analysis to strike down other federal or state statutes employing the terms “encourage” or “induce” (or close variants thereof). The Court should grant certiorari to ensure that such mischief does not materialize.

The States’ concern about the ripple effect from the Ninth Circuit’s heavy-handed application of overbreadth is not academic. Indeed, all 50 states utilize the terms “encourage” or “induce” to define various crimes. *See* App. A. States have long used these terms to proscribe criminal conduct. *See, e.g.*, ALASKA STAT. ANN. § 11.41.434(a)(1) (West 2022) (1983 law punishes an offender who “aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person”); CAL. PENAL CODE § 266i (a)(2)-(5) (West 2022) (pandering crime originally enacted in 1953 prohibits “induc[ing]” or “encourag[ing] another person to become a prostitute”); COLO. REV. STAT. ANN. § 18-6-701(1)(a) (West 2022) (1987 law defining contributing to the delinquency of a minor as “induc[ing], aid[ing], or encourag[ing] a child to violate any state law”); LA. STAT. ANN. § 14:119.1 (2022) (law originally enacted in 1961 using “encourage” in crime of “[b]ribery of parents of school children”); N.C. GEN. STAT. ANN. § 14-190.16 (West 2022) (1985 law criminalizing first degree sexual exploitation of minor including “induc[ing]” or “encourag[ing]” minors to engage in unlawful sexual activity); S.C. CODE ANN. § 16-15-100(2)-(3) (2022) (1952 law making it unlawful to “induce, persuade or encourage” prostitution).

Modern-day crimes likewise use this language. *See, e.g.*, ARIZ. REV. STAT. ANN. § 13–1103(B) (2022) (2021 law defining manslaughter to include encouraging a minor to commit suicide); KY. REV. STAT. ANN. § 434.697(2) (West 2022) (“Phishing” defined, in relevant part, as “induc[ing] another person to provide identifying information by means of a Web page, electronic mail message, or otherwise using the Internet ...”); LA. STAT. ANN. § 14:81.3(A)(1) (2022) (“Computer-aided solicitation of a minor” includes “induc[ing]” a minor to “engage or participate in sexual conduct or a crime of violence”); UTAH CODE ANN. § 76-5-111.4 (West 2022) (using “induce” and “encourage” in statute defining crime of “Financial exploitation of a vulnerable adult”).

Many states even use these terms to define solicitation crimes. *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-1002(A) (2022); COLO. REV. STAT. ANN. § 18-2-301(1) (West 2022); FLA. STAT. ANN. § 777.04(2) (West 2022); HAW. REV. STAT. ANN. § 705-510(1) (West 2022); IDAHO CODE ANN. § 18-2001 (West 2022); ME. REV. STAT. ANN. 17-A, § 153 (2022); MONT. CODE ANN. § 45-4-101(1) (West 2022); N.M. STAT. ANN. § 30-28-3 (West 2022); N.D. CENT. CODE ANN. § 12.1-06-03(1) (West 2022); 18 PA. CONS. STAT. ANN. § 902(a) (West 2022); TEX. PENAL CODE ANN. § 15.03(a) (West 2022); W. VA. CODE ANN. § 61-11-8a (West 2022); WYO. STAT. ANN. § 6-1-302(a) (West 2022). As explained in the Petition and in Judge Bumatay’s dissent, the Ninth Circuit erred badly in refusing to give the terms “encourage” and “induce” their technical meaning in criminal law (rather than their meaning in common parlance). *See* Pet. at 12–15; Pet. App. at 47a.

Unlike the Ninth Circuit, state courts have correctly interpreted the verbs “encourage” and

“induce” consistent with the terms’ particular meaning in criminal law. For example, an Arizona law codifying the crime of contributing to child delinquency punishes anyone who “encourages or contributes to the dependency or delinquency of a child ....” ARIZ. REV. STAT. ANN. § 13–3613(A). Over half a century ago, the Arizona Supreme Court clarified that “all the statute requires” is “encouraging the commission of the acts in question.” *Brockmueller v. State*, 340 P.2d 992, 993 (Ariz. 1959). The crime is the act of encouragement. *See State v. Agueda*, 513 P.3d 1112, 1115, ¶¶ 17–19 (Ariz. 2022); *see also State v. Johnson*, 640 P.2d 861, 864 n.1 (Ariz. 1982) (“For the crime of solicitation to be completed, it is only necessary that the actor, with intent that another person commit a crime ... encouraged that person to commit a crime”).

State courts see it as a truism that, when used in a criminal statute, “encourage” and “induce” are terms of art often used to describe solicitation or facilitation of a crime. *See, e.g., State v. Smith*, 476 P.3d 1178, 1180 (Mont. 2020) (“The solicitation charge arose from jailhouse phone calls between Smith and his sister and mother, in which the State alleged Smith encouraged his family to convince his victim, T.W., not to testify.”). In describing a Utah statute prohibiting the encouragement of prostitution, the Utah Supreme Court interpreted “encourages” to mean “to entice, induce, inveigle or persuade.” *State v. Gates*, 221 P.2d 878, 880 (Utah 1950); *see also State ex rel. V.T.*, 5 P.3d 1234, 1237, ¶ 16 (Utah Ct. App. 2000) (“There must be evidence showing that the defendant engaged in some active behavior, or at least speech or other expression, that served to assist or encourage the primary perpetrators in committing the crime.”).

State legislatures commonly utilize limitations on encouraging or inducing (i.e., soliciting or aiding and abetting) others to engage in certain acts to protect the health and safety of their citizens. In California, for example, “[a]ny person who deliberately aids, advises, or encourages another to commit suicide is guilty of a felony.” CAL. PENAL CODE § 401(a). One recognized purpose of this statute is to “discourage the actions of those who might encourage a suicide in order to advance personal motives.” *In re Joseph G.*, 667 P.2d 1176, 1181 (Cal. 1983) (internal quotation omitted). California consistently uses the terms “encourage” and “induce” to describe “conduct ... aimed at producing subsequent conduct by the target ....” *People v. Zambia*, 254 P.3d 965, 971 (Cal. 2011) (discussing application of Cal. Penal Code § 266i (a)(2)-(5), prohibiting pandering). The Ninth Circuit’s analysis could discourage state lawmakers from continuing to employ the terms “encourage” or “induce” in state statutes, despite those terms’ well-established criminal law meaning.

In addition to the split of authority identified in the Petition (Pet. at 21–23), the Ninth Circuit’s decision is at odds with several state supreme court decisions rejecting the notion that criminal statutes using the terms “induce” or “encourage” are constitutionally overbroad. *See, e.g., Ford v. State*, 262 P.3d 1123 (Nev. 2011); *State v. Washington-Davis*, 881 N.W.2d 531 (Minn. 2016). The Minnesota Supreme Court ruled that a statute barring the “encouragement” of prostitution was not overbroad because the “legitimate sweep of [the statute] is the prevention of prostitution.” *Washington-Davis*, 881 N.W.2d at 539. The court found “no evidence ... that protected speech is, in fact, being chilled, or is likely to be chilled, as a

result of the promotion and solicitation statute.” *Id.* at 540. The Nevada Supreme Court similarly held that a pandering statute was not overbroad because the “specific intent required—that the panderer's target become or remain a prostitute—narrows the statute to illegal employment proposals.” *Ford*, 262 P.3d at 1130. Accordingly, “the failure to define its operative verbs [does not] render [the statute] unconstitutionally vague.” *Id.* at 1132. The ordinary meaning of “induce” and “encourage” are “sufficiently definite that ordinary people using common sense could grasp the nature of the prohibited conduct.” *Id.* (internal quotation omitted).

The Ninth Circuit’s decision is even inconsistent with a more recent decision of that court, creating an intra-circuit split. In *Marquez-Reyes v. Garland*, 36 F.4th 1195 (9th Cir. 2022), the Ninth Circuit upheld the following provision against an overbreadth challenge: “Any alien who at any time knowingly has encouraged ... any other alien to enter or to try to enter the United States in violation of law is inadmissible.” 8 U.S.C. § 1182(a)(6)(E)(i). Realizing that the language of that statute is little different than the statute at issue in this case, the Ninth Circuit tried (unsuccessfully) to distinguish the two situations. *See Marquez-Reyes*, 36 F.4th at 1206. But try as it might to distinguish the two statutes, the Ninth Circuit’s interpretation of the term “encourage” in *Marquez-Reyes* clearly contradicts its interpretation here. *Compare Marquez-Reyes*, 36 F.4th at 1202 (recognizing “encouraged” has a specialized “meaning in criminal law, where it refers to solicitation or aiding and abetting”), *with United States v. Hansen*, 25 F.4th 1103, 1107–08 (9th Cir. 2022) (defining “encourage” as “to inspire with courage, spirit, or hope” or “helped”);



see also *Marquez-Reyes*, 36 F.4th at 1209–13 (Berzon, J., dissenting) (concluding decision was inconsistent with *Hansen*). Of course, *Marquez-Reyes* got the analysis right, but that does not mitigate the damage done in this case.

In sum, the decision below did not consider the long-established meaning of the terms “encourage” and “induce” in state or federal criminal laws and instead used a common ordinary meaning outside of the context of these laws. The decision is out of step with the well-recognized understanding of “encourage” and “induce” as used in criminal laws in all of the States. And the decision conflicts with state court decisions and at least one other decision within the Ninth Circuit. This Court should grant certiorari to ensure no state or federal court can use the Ninth Circuit’s interpretation to invalidate any state’s similarly-worded criminal laws.

## **II. Using The Overbreadth Doctrine To Invalidate Criminal Statutes Through Hypothetical Applications Hinders States’ Ability To Combat Real Criminal Threats**

The Petition correctly highlights that the Ninth Circuit’s decision wrongly focused on “hypothetical applications to protected speech,” instead of the statute’s plainly legitimate sweep encompassing “a variety of real-world conduct.” Pet. at 15. Facial challenges are “disfavored for several reasons,” one of which is that “[c]laims of facial invalidity often rest on speculation.” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008). And federalism concerns counsel against applying the overbreadth doctrine because “[i]nvalidate-the-law-now, discover-how-it-works-later judging is

particularly troublesome when reviewing state laws.” *NetChoice, LLC v. Paxton*, No. 21-51178, 2022 WL 4285917, \*5 (5th Cir. Sept. 16, 2022). If state courts follow the Ninth Circuit’s example, this approach ultimately “deprives ‘state courts [of] the opportunity to construe a law to avoid constitutional infirmities.’” *Id.* (quoting *New York v. Ferber*, 458 U.S. 747, 768 (1982)).

Of course, Congress and State legislatures must legislate within the bounds of the First Amendment. These co-equal branches of government, however, are presumed to do so. See *United States v. Morrison*, 529 U.S. 598, 607 (2000). When courts use hypotheticals instead of real-world conduct to invalidate statutes on their face, it “threaten[s] to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution.” *Wash. State Grange*, 552 U.S. at 451. And it “frustrates the intent of the elected representatives of the people.” *Id.* (internal quotation omitted).

Generally, constitutional rights are personally held and cannot be asserted for others. *Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973). For this reason, “a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others.” *Id.* “This general rule reflects two ‘cardinal principles’ of our constitutional order: the personal nature of constitutional rights and the prudential limitations on constitutional adjudication.” *Los Angeles Police Dep’t v. United Reporting Publ’g Corp.*, 528 U.S. 32, 39 (1999).

This Court has recognized a “limited exception” to these general principles when a statute is facially overbroad under the First Amendment. *Broadrick*, 413 U.S. at 611–12; *see also id.* at 615 (describing exception as a “limited one”). This exception rests upon the premise that the mere “threat of enforcement of an overbroad law deters people from engaging in constitutionally protected speech, inhibiting the free exchange of ideas.” *Williams*, 553 U.S. at 292. The Court has applied the overbreadth exception on several limited occasions. *See, e.g., id.* at 288 (reviewing whether federal statute criminalizing “pandering or solicitation of child pornography” was overbroad under the First Amendment); *United States v. Stevens*, 559 U.S. 460 (2010) (concluding federal statute criminalizing “the commercial creation, sale, or possession of certain depictions of animal cruelty” was overbroad and, thus, “invalid under the First Amendment”).

Several members of the Court, however, have questioned the doctrinal underpinnings of this exception. *See United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1583 (2020) (Thomas, J., concurring) (“It appears that the overbreadth doctrine lacks any basis in the Constitution’s text, violates the usual standard for facial challenges, and contravenes traditional standing principles.”); *cf. Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2275–76 (2022) (reexamining abortion cases because these cases, *inter alia*, “diluted the strict standard for facial constitutional challenges,” flouted “the rule that statutes should be read where possible to avoid unconstitutionality” and “distorted First Amendment doctrines”). At the very least, therefore, this case provides the Court with another opportunity to

emphasize that the facial overbreadth doctrine does not apply when the individual bringing the challenge, like Respondent here, clearly falls within the core of the statutory proscription.

Regardless of its exact contours, the scope of the facial overbreadth doctrine, “like most exceptions to established principles, must be carefully tied to the circumstances in which facial invalidation of a statute is truly warranted.” *Ferber*, 458 U.S. at 769; *see also NetChoice*, 2022 WL 4285917 at \*6 (stating this Court “has only applied [the overbreadth doctrine] where there is a substantial risk that the challenged law will chill protected speech or association”). After all, that “[a] law should not be invalidated for overbreadth unless it reaches a substantial number of impermissible applications is hardly novel.” *Ferber*, 458 U.S. at 771. The overbreadth of a statute must be “real,” “substantial,” and “judged in relation to the statute’s plainly legitimate sweep.” *Broadrick*, 413 U.S. 615. If a statute is only potentially able to be applied too broadly in hypothetical situations, any potential overbreadth can be “cured” through as-applied challenges. *Id.* at 615–16.

Consistent with the foregoing principles, many state courts have correctly refused to invalidate laws when the threat to speech is merely hypothetical. *See, e.g., State v. Musser*, 977 P.2d 131, 132–33, ¶ 7 (Ariz. 1999) (stating that although the defendant “has conceived of some impermissible applications of the statute [to protected speech], he has provided no indication that any likelihood exists that the state would use the statute to reach such activities”); *People v. Graves*, 368 P.3d 317, 328–29, ¶ 38 (Colo. 2016) (concluding even if

criminal statute potentially chilled hypothetical protected expressive conduct, any burden was slight “compared to the easily identifiable and constitutionally proscribable conduct to which the statute applies”) (internal quotation omitted); *State v. Sanchez*, 448 P.3d 991, 997–98 (Idaho 2019) (concluding “hypothetical situations raise by [defendant] are not persuasive for finding the statute overbroad” when statute covered “a wide range of conduct that is within the state’s power to prohibit”) (cleaned up); *State v. Stubbs*, 502 S.W.3d 218, 235 (Tex. Ct. App. 2016) (“Merely imagining some possible unconstitutional applications does not suffice to demonstrate a realistic danger that in fact the statute will be overbroadly applied.”).

Here, the Ninth Circuit ignored these principles, instead striking down as overbroad an important federal statute used to enforce immigration laws. The Ninth Circuit did so based on judicially-imagined, hypothetical situations having nothing to do with Respondent. As Petitioner argues, “this Court has long recognized that speech that constitutes solicitation to commit a crime or that is intended to induce illegal activities, is speech that a legislature may permissibly proscribe.” Pet. at 16 (cleaned up); *see also Stevens*, 559 U.S. at 468–69. (“Incitement” and “speech integral to criminal conduct” are “well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.”) (internal quotations omitted). This point is particularly important to Amici States because state legislatures have long used similar language to define crimes. *See App. A.*

In a modern-day world where individuals can solicit large audiences using various online platforms, criminals can cause great harm to others by soliciting (i.e., encouraging or inducing) unlawful conduct. *See Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017) (“For centuries now, inventions heralded as advances in human progress have been exploited by the criminal mind.”). States have understandably passed laws to combat this type of criminal conduct. *See, e.g.*, ALASKA STAT. ANN. § 11.41.434(a)(1) (West 2022) (“An offender commits the crime of sexual abuse of a minor in the first degree if being 16 years of age or older, the offender ... induces ... or encourages a person who is under 13 years of age to engage in sexual penetration with another person.”); ARIZ. REV. STAT. ANN. § 13–1103(B) (West 2022) (defining one form of manslaughter as “intentionally providing advice or encouragement that a minor uses to die by suicide with the knowledge that the minor intends to die by suicide”); 720 ILL. COMP. STAT. ANN. 5/12C–45(a) (West 2022) (defining “[d]rug induced infliction of harm to a child athlete” as, *inter alia*, “encourag[ing] the ingestion of a drug by a person under the age of 18 with the intent that the [underage person] ingest the drug for the purpose of a quick weight gain or loss in connection with participation in athletics”); MD. CODE ANN., CRIM. LAW § 3–805(a)(3)(iii) & (v) (West 2022) (including within statute defining crime of misuse of electronic mail using “a computer or a computer network to ... encourage others to disseminate information concerning the sexual activity ... of a minor” or “encourage others to engage in the repeated, continuing, or sustained use of electronic

communication to contact a minor”); MONT. CODE ANN. § 45–5–602(1)(c) (West 2022) (criminalizing “encourag[ing], induc[ing] or otherwise purposely caus[ing] another to become or remain a prostitute”).

States have a vital interest in enforcing these criminal statutes to protect victims of this conduct and the Ninth Circuit’s conclusion that the terms “encourage” or “induce” are unconstitutionally overbroad based on hypothetical situations risks grave harm. If the Ninth Circuit’s decision is left to stand, it will generate “substantial social costs” when the flawed reasoning is used in future cases. *See Virginia v. Hicks*, 539 U.S. 113, 119–20 (2003) (“[T]here are substantial social costs created by the overbreadth doctrine when it blocks application of a law to constitutionally unprotected speech, or especially to constitutionally unprotected conduct.”). Therefore, the Court should intervene to reinforce that overbreadth challenges based merely on hypotheticals, rather than real-world applications, should fail.

### **III. A Successful Overbreadth Claim Should Require Showing That The Charged Crime Is Overbroad**

Although this Court reminded the Ninth Circuit that invalidation of a statute under the First Amendment overbreadth doctrine is “strong medicine that is not to be casually employed,” *Sineneng-Smith*, 140 S. Ct. at 1582 (quoting *Williams*, 553 U.S. at 293), the Ninth Circuit ignored the reminder. As discussed in Judge Bumatay’s dissent and in the Petition, the Ninth Circuit erred in its interpretation of § 1324(a)(1)(A)(iv), particularly by not using the

“established meaning” of “encourage” and “induce” in the criminal context or abiding by “the constitutional avoidance canon.” *See supra*, Section I.

But the Ninth Circuit committed another error warranting this Court’s intervention when it invalidated a statute proscribing the lesser offense although Respondent was charged with an aggravated offense. *See* Pet. App. 2a-3a (reviewing only § 1324(a)(1)(A)(iv) for overbreadth without considering the additional charged aggravated elements in (B)(i)). As Judge Collins observed, the panel failed to correctly frame the First Amendment issue, i.e., “whether the statutory language defining the aggravated version of the offense at issue—*i.e.*, the offense defined by 8 U.S.C. § 1324(a)(1)(A)(iv), (B)(i)—is facially unconstitutional.” Pet. App. 79a-80a. Had the Ninth Circuit asked that “easy” question, it should have concluded that the “additional element” of encouraging or inducing a noncitizen to illegally enter the United States for a commercial advantage or private financial gain “substantially narrows the reach of the relevant language,” leaving “little doubt” that the statute’s legitimate sweep “greatly exceeds any plausible overbreadth.” *Id.* at 80a.

The Court should grant certiorari to endorse Judge Collins’ approach. To help ensure that the overbreadth doctrine operates consistently with notions of Article III standing and the separation of powers, a reviewing court should examine for First Amendment overbreadth the entire criminal offense with which a defendant is charged (or convicted). *See Williams*, 553 U.S. at 293 (“The first step in overbreadth analysis is to construe the challenged statute; it is impossible to determine whether a statute reaches too far without first knowing what the



statute covers.”). It is not uncommon for state legislatures to codify aggravated offenses, and in a criminal prosecution for an aggravated crime, all elements of that crime must be found by a trier of fact. *See, e.g., Mathis v. United States*, 579 U.S. 500, 504 (2016) (“‘Elements’ are the ‘constituent parts’ of a crime’s legal definition—the things the ‘prosecution must prove to sustain a conviction.’” (quoting BLACK’S LAW DICTIONARY 634 (10th ed. 2014))); *see also Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”).

In that situation, the overbreadth doctrine must account for the existence of aggravating circumstances that constitute elements of the charged crime. Requiring a court to examine the entirety of the applicable statutory language, including aggravating circumstances, reinforces that facial overbreadth should be used “sparingly and only as a last resort.” *Broadrick*, 413 U.S. at 613. And this approach would help prevent “[h]ypothetical rulings,” which are “inherently treacherous and prone to lead [courts] into unforeseen errors; they are qualitatively less reliable than the products of case-by-case adjudication.” *Ferber*, 458 U.S. at 781 (Stevens, J., concurring).

Thus, if a defendant is charged with an aggravated crime, as Respondent was here, the defendant should be required to demonstrate *the aggravated crime* (as opposed to merely the lesser offense) is facially unconstitutional. Here, for example, Respondent’s conduct of encouraging or inducing noncitizens to illegally enter the United States for his personal

financial gain (each victim paying between \$550 and \$10,000, *see* Pet. App. at 2a–3a) falls squarely within the legitimate aim of the aggravated circumstances set forth in the applicable statute. *See* Pet. at 4–6; *see also* *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 799 (1984) (“In the development of the overbreadth doctrine the Court has been sensitive to the risk that the doctrine itself might sweep so broadly that the exception to ordinary standing requirements would swallow the general rule.”).

The Petition provides the Court with a vehicle to clarify that, in a First Amendment overbreadth challenge, courts are obligated to consider all—not just some—of the statutory elements of the actual crime with which a defendant has been charged or, as here, convicted.

**CONCLUSION**

This Court should grant certiorari and reverse the Ninth Circuit's decision.

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**APPENDIX A**

State Statutes Using  
“Induce” or “Encourage” Language

State	Citation	Statutory Text
Alabama	Foster parent engaging in a sex act, etc., with a foster child: ALA. CODE § 13A-6-71(c) (2022)	“A person commits the crime of soliciting a sex act or sexual contact with a foster child if he or she is a foster parent and solicits, persuades, <b>encourages</b> , harasses, or entices a foster child under the age of 19 years to engage in a sex act including, but not limited to, sexual intercourse, sodomy, or sexual contact, as defined by Section 13A-6-60.”
	Home repair fraud: ALA. CODE § 13A-9-111(1)(b) (2022)	“A person commits the offense of home repair fraud when the person intentionally and knowingly ... Enters into an agreement or contract for consideration, written or oral, with a person

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		for home repair and the offending person knowingly engages in ... [u]se or employment of any deception, false pretense, or false promises in order to <b>induce, encourage</b> , or solicit a person to enter into any contract or agreement.”
Alaska	Sexual abuse of minor in first degree: ALASKA STAT. ANN. § 11.41.434 (a)(1) (West 2022)	“An offender commits the crime of sexual abuse of a minor in the first degree if [the offender] aids, <b>induces</b> , causes, or <b>encourages</b> a person who is under 13 years of age to engage in sexual penetration with another person”
	Sexual abuse of a minor in the second degree: ALASKA STAT. ANN. § 11.41.436 (a)(1)-(2), (4) (West 2022)	“An offender commits the crime of sexual abuse of a minor in the second degree if [the offender] aids, <b>induces</b> , causes, or <b>encourages</b> a person” to sexually abuse a minor
	Cruelty to Animals: ALASKA STAT.	“A person commits cruelty to animals if the person ...

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	ANN. § 11.61.140 (a)(6)(B)(ii) (2022)	knowingly ... under circumstances not proscribed under AS 11.41.455 ... causes, <b>induces</b> , aids, or <b>encourages</b> another person to engage in sexual conduct with an animal”
Arizona	Solicitation; classifications: ARIZ. REV. STAT. ANN. § 13-1002(A) (2022)	“A person ...commits solicitation if, with the intent to promote or facilitate the commission of a felony or misdemeanor, such person commands, <b>encourages</b> , requests or solicits another person to engage in specific conduct which would constitute the felony or misdemeanor or which would establish the other’s complicity in its commission.”
	Manslaughter: ARIZ. REV. STAT. ANN. § 13-1103(B) (2022)	“A person who is at least eighteen years of age commits manslaughter by intentionally providing advice or <b>encouragement</b> that a minor uses to die by



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		suicide with the knowledge that the minor intends to die by suicide.”
	Pandering; methods; classification ARIZ. REV. STAT. ANN. § 13- 3209(3) & (4) (2022)	“A person is guilty of a class 5 felony who knowingly ... [c]ompels, <b>induces</b> or <b>encourages</b> any person to reside with that person, or with any other person, for the purpose of prostitution ... [or c]ompels, <b>induces</b> or <b>encourages</b> any person to become a prostitute or engage in an act of prostitution.”
	Contributing to delinquency: ARIZ. REV. STAT. ANN. § 13-3613 (2022)	“A person who by any act, causes, <b>encourages</b> or contributes to the dependency or delinquency of a child ... is guilty of a class 1 misdemeanor.”
	Accomplice— Definition: ARK. CODE ANN. § 5-2- 403(a) (West 2022)	“A person is an accomplice of another person in the commission of an offense if, with the purpose of promoting or facilitating the

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Arkansas		commission of an offense, the person: Solicits, advises, <b>encourages</b> , or coerces the other person to commit the offense ...”
	Encouraging the suicide of another person: ARK. CODE ANN. § 5-10-107 (West 2022)	“A person commits the offense of <b>encouraging</b> the suicide of another person if: The person uses persistent language, either spoken or written, to purposely <b>encourage</b> another person to commit suicide; and [a]s a proximate result of the person's <b>encouraging</b> the suicide of the other person, the other person commits suicide or attempts to commit suicide and the attempt results in serious physical injury.”
	Contributing to the delinquency of a minor: ARK. CODE ANN. § 5-	“A person commits the offense of contributing to the delinquency of a minor if, being an adult, the person

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	27-29 (West 2022)	knowingly aids, causes, or <b>encourages</b> a minor [to do various acts].”
	Unlawful use of encryption: ARK. CODE ANN. § 5-41-204(a)(2) (West 2022)	“A person commits unlawful use of encryption if the person knowingly uses or attempts to use encryption, directly or indirectly, to ... [a]id, assist, or <b>encourage</b> another person to commit any criminal offense[.]”
	Frivolous, groundless, or malicious prosecutions: ARK. CODE ANN. § 5-53-131 (West 2022)	“Any officer or any person who knowingly brings or aids and <b>encourages</b> another person to bring a frivolous, groundless, or malicious prosecution ...”
California	Criminal Profiteering; definitions: CAL. PENAL CODE § 186.2(a) (29) (West 2022)	“‘Criminal profiteering activity’ means an act ... made for financial gain or advantage ... in which the perpetrator <b>induces</b> , <b>encourages</b> , or persuades a person under 18 years of age to engage in a commercial sex act.”

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	<p>Pandering and pandering with a minor; punishment: CAL. PENAL CODE § 266i (a)(2)-(5) (West 2022)</p>	<p>“By promises, threats, violence, or by any device or scheme, causes, <b>induces</b>, persuades, or <b>encourages</b> another person to become a prostitute.”</p>
	<p>Suicide; aiding, advising, or encouraging: CAL. PENAL CODE § 401(a) (West 2022)</p>	<p>“Any person who deliberately aids, advises, or <b>encourages</b> another to commit suicide is guilty of a felony.”</p>
	<p>Soliciting, inducing, encouraging, or intimidating minor to commit certain felonies: CAL. PENAL CODE § 653j (a) (West 2022)</p>	<p>“Every person 18 years of age or older who ... solicits, <b>induces</b>, <b>encourages</b>, or intimidates any minor with the intent that the minor shall commit a felony ...”</p>
	<p>Lewd or lascivious acts with child under age 14: CAL. PENAL CODE § 1170.71 (West 2022)</p>	<p>“The fact that a person ... has used obscene or harmful matter to <b>induce</b>, persuade, or <b>encourage</b> the minor to engage in a lewd or lascivious act shall be considered a circumstance in aggravation of the crime ...”</p>

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	Controlled substances violations involving the use of minors as agent: CAL. PENAL CODE § 1203.07 (a)(2)	“probation shall not be granted to . . . [a] person who . . . solicits, <b>induces</b> , <b>encourages</b> , or intimidates a minor with the intent that the minor shall violate [laws pertaining to controlled substances.]”
Colorado	Criminal Solicitation: COLO. REV. STAT. ANN. § 18-2-301(1) (West 2022)	“[A] person is guilty of criminal solicitation if he or she commands, <b>induces</b> , entreats, or otherwise attempts to persuade another person ... to commit a felony.”
	Contributing to the delinquency of a minor: COLO. REV. STAT. ANN. § 18-6-701(1)(a) (West 2022)	“Any person who <b>induces</b> , aids, or <b>encourages</b> a child to violate any state law that is a felony victims rights act crime ... commits first degree contributing to the delinquency of a minor.”
	Misuse of official information: COLO. REV. STAT.	“Any public servant [who] [a]ids, advises, or <b>encourages</b> another [to do an act

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	ANN. § 18-8-402 (West 2022)	constituting misuse of official information] with intent to confer on any person a special pecuniary benefit.”
	Uniform controlled substances act; special offenders: COLO. REV. STAT. ANN. § 18-18-407(1)(e) (West 2022)	“A person ... commits a level 1 drug felony and is a special offender [if] . . . [t]he defendant solicited, <b>induced</b> , <b>encouraged</b> , intimidated, employed, hired, or procured a child ... to act as the defendant’s agent ...”
	Recruitment of juveniles for a criminal street gang: COLO. REV. STAT. ANN. § 18-23-102 (West 2022)	“A person commits recruitment of a juvenile for a criminal street gang if he or she is eighteen years of age or old and ... [k]knowingly solicits, invites, recruits, <b>encourages</b> , coerces, or otherwise causes a [juvenile] to actively participate in or become a member of a criminal street gang[.]”
Connecticut	Coercion: CONN. GEN. STAT. ANN. § 53a-192(a) (West 2022)	“A person is guilty of coercion when he compels or <b>induces</b> another person to engage in

		conduct which such other person has a legal right to abstain from engaging in ....”
	Enticing a juvenile to commit a criminal act: CONN. GEN. STAT. ANN. § 53a-225 (b) (West 2022)	“A person is guilty of enticing a juvenile to commit a criminal act if such person is twenty-three years of age or older and knowingly causes, <b>encourages</b> , solicits, recruits, intimidates or coerces a person under eighteen years of age to commit or participate in the commission of a criminal act.”
	Criminal youth gangs: DEL. CODE ANN. tit. 11, § 617(b)(1) (West 2022)	“Any person who solicits, invites, recruits, <b>encourages</b> or otherwise causes or attempts to cause a juvenile or student to participate in or become a member of a criminal street gang . . . is guilty of a class G felony.”
	Acts constituting coercion: DEL.	“A person is guilty of coercion when the

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Delaware	CODE ANN. tit. 11, § 791 (West 2022)	person compels or <b>induces</b> a person to engage in conduct which the victim has a legal right to abstain from engaging in ....”
	Unlawful use of a payment card: DEL. CODE ANN. tit. 11, § 903(a) (West 2022)	“A person is guilty of unlawful use of a payment card when the person uses or knowingly permits or <b>encourages</b> another to use a payment card [in a defined unlawful manner].”
	Endangering the welfare of a child: DEL. CODE ANN. tit. 11, § 1102(a)(3) (West 2022)	“A person is guilty of endangering the welfare of a child when ... [t]he person knowingly <b>encourages</b> , aids, abets or conspires with the child to run away from the home of the child’s parents, guardian or custodian ....”
	Sexual Solicitation of a child: DEL. CODE ANN. tit. 11, § 1112A (a)(2) (West 2022)	“A person is guilty of sexual solicitation of a child if the person, being 18 years of age or older, intentionally or knowingly ... [u]ses a computer, cellular



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		telephone or other electronic device to communicate with another person, including a child, to solicit, request, command, importune, entice, <b>encourage</b> , or otherwise attempt to cause a child to engage in a prohibited sexual act.”
Florida	Attempts, solicitation, and conspiracy: FLA. STAT. ANN. § 777.04(2) (West 2022)	“A person who solicits another to commit an offense prohibited by law and in the course of such solicitation commands, <b>encourages</b> , hires, or requests another person to engage in specific conduct which would constitute such offense ... commits the offense of criminal solicitation ...”
	Causing, encouraging, soliciting, or recruiting criminal gang membership: FLA. STAT. ANN.	“[A] person who intentionally causes, <b>encourages</b> , solicits, or recruits another person to become a criminal gang member where a condition of

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	§ 874.05 (1)(a) (West 2022)	membership or continued membership is the commission of any crime commits a felony of the third degree ....”
	Identification card: FLA. STAT. ANN. § 877.18(2) (West 2022)	“the term ‘offer to sell’ includes every <b>inducement</b> , solicitation, attempt, or printed or media advertisement to <b>encourage</b> a person to purchase an identification card.”
	Parties to crime: GA. CODE ANN. § 16-2-20(b)(4) (West 2022)	“A person is concerned in the commission of a crime only if he ... [i]ntentionally advises, <b>encourages</b> , hires, counsels, or procures another to commit the crime.”
Georgia	Arson in the first degree: GA. CODE ANN. § 16- 7-60(a) (West 2022)	“A person commits the offense of arson in the first degree when, by means of fire or explosive, he or she knowingly damages or knowingly causes, aids, abets, advises, <b>encourages</b> , hires, counsels, or procures another to

		damage [anything listed in section (a).]”
	Contributing to delinquency, unruliness, or deprivation of minor: GA. CODE ANN. § 16-12-1(b)(1) (West 2022)	“A person commits the offense of contributing to the delinquency or depending a minor or causing a child to be a child in need of services when such person ... [k]nowingly and willfully <b>encourages</b> , causes, abets, connives, or aids a minor in committing a delinquent act[.]”
Hawaii	Criminal solicitation: HAW. REV. STAT. ANN. § 705-510(1) (West 2022)	“A person is guilty of criminal solicitation if, with the intent to promote or facilitate the commission of a crime, the person commands, <b>encourages</b> , or requests another person to engage in conduct or cause the result specified by the definition of an offense ....”
	Promoting minor-produced sexual images in the second degree: HAW.	“A minor commits the offense of promoting minor-produced sexual images in the second degree if the minor ...

	REV. STAT. ANN. § 712-1215.6 (West 2022)	[i]ntentionally or knowingly commands, requests, or <b>encourages</b> another minor [listed electronic device] to transmit to any person a nude photograph or video of a minor or the minor’s self.”
Idaho	Principals defined: IDAHO CODE ANN. § 18-204 (West 2022)	“All persons ... [who] aid and abet in [a crime’s] commission, or, not being present, have advised and <b>encouraged</b> its commission ... are principals in any crime so committed.”
	Hazing: IDAHO CODE ANN. § 18-917(2) (West 2022)	“‘[H]aze’ means to subject a person to bodily danger or physical harm or likelihood of bodily danger or physical harm, or to require, <b>encourage</b> , authorize or permit that person to be subjected [listed acts].”
	Definition of Solicitation: IDAHO CODE	“A person is guilty of criminal solicitation to commit a crime if with the purpose of

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	ANN. § 18-2001 (West 2022)	promoting or facilitating its commission he solicits, importunes, commands, <b>encourages</b> or requests another person to engage in specific conduct which would constitute such crime ...”
Illinois	Contributing to the dependency and neglect of a minor: 720 ILL. COMP. STAT. ANN. 5/12C-25(a) (West 2022)	“Any parent, legal guardian or person having the custody of a child under the age of 18 years commits contributing to the dependency and neglect of a minor when he or she knowingly ... causes, aids, or <b>encourages</b> such minor to be or to become a dependent and neglected minor[.]”
	Drug induced infliction of harm to a child athlete: 720 ILL. COMP. STAT. ANN. 5/12C-45(a) (West 2022)	“A person commits drug induced infliction of harm to a child athlete when he or she knowingly ... <b>encourages</b> the ingestion of a drug by a person under the age

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		of 18 with the intent that the person under the age of 18 ingest the drug for the purpose of quick weight gain or loss in connection with participation in athletics.”
	Financial exploitation of an elderly person or a person with a disability: 720 ILL. COMP. STAT. ANN. 5/17-56(c)(4) (West 2022)	“Deception’ means ... the use or employment of any misrepresentation, false pretense or false promise in order to <b>induce, encourage</b> or solicit the elderly person or person with a disability to enter into a contract or agreement.”
Indiana	Aiding, inducing or causing an offense: IND. CODE ANN. § 35-41-2-4 (West 2022)	“A person who knowingly or intentionally aids, <b>induces</b> , or causes another person to commit an offense commits that offense ....”
	Contributing to delinquency: IND. CODE ANN. § 35-46-1-8(a) (West)	“A person ... who knowingly or intentionally <b>encourages</b> , aids, <b>induces</b> , or causes a

		child to commit an act of delinquency ... commits contributing to delinquency ...”
Iowa	Contributing to delinquency: IOWA CODE ANN. § 709A.1 (1)-(4) (West 2022)	“It shall be unlawful ... [t]o knowingly <b>encourage</b> , contribute, or in any manner cause such child to violate any law of this state, or any ordinance of any city.”
	Student athlete prohibitions: IOWA CODE ANN. § 722.11 (2)(a) (West 2022)	“[A] person shall not give, offer, promise, or attempt to give any money or other thing of value to a student athlete or immediate family member of a student athlete ... [t]o <b>induce, encourage</b> , or reward the student athlete's application, enrollment, or attendance at an institution of higher education [or] <b>induce, encourage</b> , or reward the student athlete's participation in an intercollegiate sporting event ....”
	Criminal solicitation:	“Criminal solicitation is commanding,

<p>Kansas</p>	<p>KAN. STAT. ANN. § 21-5303(a) (West 2022)</p>	<p><b>encouraging</b> or requesting another person to commit a felony, attempt to commit a felony or aid and abet in the commission or attempted commission of a felony for the purpose of promoting or facilitating the felony.”</p>
	<p>Contributing to a child’s misconduct or deprivation: KAN. STAT. ANN. § 21-5603(a)(1)-(2) (West 2022)</p>	<p>“Contributing to a child’s misconduct or deprivation is ... [k]nowingly causing or <b>encouraging</b> a child” [1] “to become or remain a child in need of care”; [2] “commit a traffic infraction” or misdemeanor; [3] to commit a felony; or [4] to violate terms of probation or conditional release.</p>
	<p>Furnishing alcoholic beverages to a minor: KAN. STAT. ANN. § 21-5607(b) (West 2022)</p>	<p>“Furnishing alcoholic beverages to a minor for illicit purposes is ... to <b>encourage</b> or <b>induce</b> such child to commit or participate in, any act defined as a crime ....”</p>



Kentucky	Spreading false rumors regarding solvency of financial institutions: KY. REV. STAT. ANN. § 434.310 (West 2022)	“Any person who ... counsels, aids, procures, or <b>induces</b> another to start, transmit or circulate [any false rumor regarding solvency of a financial institution].”
	Phishing: KY. REV. STAT. ANN. § 434.697(2) (West 2022)	“A person is guilty of phishing if he or she knowingly or intentionally solicits, requests, or takes any action to <b>induce</b> another person to provide identifying information by means of a Web page, electronic mail message, or otherwise using the Internet ....”
	Criminal assistance to suicide: LA. STAT. ANN. § 14:32.12 (2022)	“Criminal assistance to suicide is ... [t]he intentional advising or <b>encouraging</b> of another person to commit suicide ....”
	Computer- aided solicitation of a minor: LA. STAT. ANN.	“Computer-aided solicitation of a minor is committed when a person ... knowingly contacts or

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Louisiana	§ 14:81.3(A) (1) (2022)	communicates [with a minor] ... for the purpose of or with the intent to persuade, <b>induce</b> , entice, or coerce the person to engage or participate in sexual conduct or a crime of violence ....”
	Pandering: LA. STAT. ANN. § 14:84(A)(1) (2022)	“Pandering” includes “[e]nticing, placing, persuading, <b>encouraging</b> , or causing the entrance of any person into the practice of prostitution, either by force, threats, promise, or by any other device or scheme.”

	<p>Bribery of parents of school children: LA. STAT. ANN. § 14:119.1 (A)(1) (2022)</p>	<p>“Bribery of parents of school children is the giving or offering to give, directly or indirectly, any money [to a legal guardian] as an <b>inducement</b> to <b>encourage</b>, influence, prompt, reward, or compensate any such person to permit, prompt, force, or cause any such child to attend any such school in violation of any law of this state”</p>
<p>Maine</p>	<p>Criminal solicitation: ME. REV. STAT. ANN. tit. 17-A, § 153(1) (2022)</p>	<p>“A person is guilty of criminal solicitation if the person, with the intent to cause the commission of the crime, and under circumstances that the person believes make it probable that the crime will take place, commands or attempts to <b>induce</b> another person [to commit a crime].”</p>
	<p>Sexual misconduct with a child under 14 years of age: ME.</p>	<p>“A person is guilty of sexual misconduct with a child under 14 years of age, if that</p>

	<p>REV. STAT. ANN. tit. 17-A, § 258(1) (2022)</p>	<p>[adult] knowingly displays any sexually explicit materials to another person ... with the intent to <b>encourage</b> the other person to engage in a sexual act or sexual contact.”</p>
	<p>Tampering with a witness, informant, juror or victim: ME. REV. STAT. ANN. tit. 17-A, § 454(1)(A) (2022)</p>	<p>A person is guilty of tampering with a witness or informant if, believing that an official proceeding .... or an official criminal investigation is pending or will be instituted, the actor ... <b>[i]nduces</b> or otherwise causes, or attempts to cause, a witness or informant ... to testify or inform in a manner the actor knows to be false; or withhold testimony, information or evidence.”</p>
	<p>Use of personal identifying information to invite, encourage, or solicit another to</p>	<p>“A person may not use the personal identifying information or identity of an individual without consent to</p>

<p>Maryland</p>	<p>commit sexual crime: MD. CODE ANN., CRIM. LAW § 3-325(b)</p>	<p>invite, <b>encourage</b>, or solicit another to commit a sexual crime against the individual.”</p>
	<p>Misuse of electronic mail: MD. CODE ANN., CRIM. LAW § 3-805(a)(3)(iii) &amp; (v) (West 2022)</p>	<p>Including within statute defining crime of misuse of electronic mail using “a computer or a computer network to ... <b>encourage</b> others to disseminate information concerning the sexual activity ... of a minor” or “<b>encourage</b> others to engage in the repeated, continuing, or sustained use of electronic communication to contact a minor”</p>
	<p>Sex trafficking: MD. CODE ANN., CRIM. LAW § 3-1102(a)(1)(iii) (West 2022)</p>	<p>“ A person may not knowingly ... persuade, <b>induce</b>, entice, or <b>encourage</b> another to be taken to or placed in any place for prostitution”</p>

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	Blank or incorrect identification card: MD. CODE ANN., CRIM. LAW § 8-302 (West 2022)	“In this section, ‘offer for sale’ includes to induce, solicit, attempt, or advertise in a manner intended to encourage a person to purchase an identification card.”
Massachusetts	Encitement of child under age 18 to engage in prostitution, human trafficking or commercial sexual activity: MASS. GEN. LAWS ch. 265, § 26D(c) (West 2022)	“As used in this section, the term “entice” shall mean to lure, <b>induce</b> , persuade, tempt, incite, solicit, coax or invite ... Whoever, by electronic communication, knowingly entices a child under the age of 18 years, to engage in prostitution [,] human trafficking[,] or commercial sexual activity ... shall be punished ....”
	Compulsion or coercion to refuse appointment or promotion: MASS. GEN. LAWS ch. 268, § 8B (West 2022)	“Any appointing authority or appointing officer ... who ... compels, or <b>induces</b> by the use of threats or other form of coercion, any person on an eligible list ... to refuse an

		appointment or promotion by such authority or officer to any position in the classified civil service shall be punished ...”
	Posing or exhibiting child in state of nudity or sexual conduct: MASS. GEN. LAWS ch. 272, § 29A(a) (West 2022)	“Whoever, ... with a lascivious intent, hires, coerces, solicits or entices, employs, procures, uses, causes, <b>encourages</b> , or knowingly permits such child to pose or to be exhibited in a statute of nudity, for the purpose of representation or reproduction in any visual material, shall be punished ....”
Michigan	Presence of minor where alcohol is sold: MICH. COMP. LAWS ANN. § 750.141 (West 2022)	“[A] person who <b>encourages</b> or <b>induces</b> in any way the minor child to enter [a bar without parental supervision] or to remain therein shall be deemed guilty of a misdemeanor.”
	Contributing to neglect or delinquency of children: MICH.	“Any person who shall by an act, or by any word, <b>encourage</b> , contribute toward,

	COMP. LAWS ANN. § 750.145 (West 2022)	cause or tend to cause any minor child ... to become neglected or delinquent ....”
	Procuring or inducing persons to engage in prostitution: MICH. COMP. LAWS ANN. § 750.455(b) (West 2022)	“A person who . . . <b>[i]nduces</b> , persuades, <b>encourages</b> , inveigles, or entices a person to become a prostitute [is guilty of a felony.]”
Minnesota	Solicitation, inducement, and promotion of prostitution: MINN. STAT. ANN. § 609.322(1)(a) (1) (West 2022)	“[Whoever intentionally] solicits or <b>induces</b> an individual to practice prostitution [will be sentenced to imprisonment].”
	Cellular telephone counterfeiting: MINN. STAT. ANN. § 609.894(4) (West 2022)	“A person commits the crime of cellular counterfeiting in the first degree if the person knowingly possess or distributes [a counterfeiting device] and agrees with, <b>encourages</b> , solicits, or permits one or more other persons to engage in or cause, or obtain cellular telephone service



		through, cellular counterfeiting.”
Mississippi	Assisting Suicide: MISS. CODE ANN. § 97-3-49 (West 2022)	“A person who willfully, or in any manner, advices, <b>encourages</b> , abets, or assists another person to take, or in taking, the latter’s life, or in attempting to take the latter’s life, is guilty of a felony ....”
	Procuring prostitutes: MISS. CODE ANN. § 97-29-51(2)(a) (West 2022)	“A person commits the felony of promoting prostitution if the person ... [k]nowingly or intentionally entices, compels, causes, <b>induces</b> , persuades, or <b>encourages</b> by promise, threat, violence, or by scheme or device, another person to become a prostitute ....”
	Endangering the welfare of a child in the first degree: MO. ANN. STAT. § 568.045	“A person commits the offense of endangering the welfare of a child in the first degree if he or she ... [k]nowingly <b>encourages</b> , aids or causes a child ...

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Missouri	(1)(3) (West 2022)	engage in conduct which [is a controlled substances offense].”
	Misuse of official information: MO. ANN. STAT. § 576.050(1)(3) (West 2022)	“A public servant commits the offense of misuse of official information if [the public servant] [a]ids, advises, or <b>encourages</b> another [to do an act constituting misuse of official information] with purpose of conferring a pecuniary benefit on any person.”
Montana	Solicitation: MONT. CODE ANN. § 45-4-101(1) (West 2022)	“A person commits the offense of solicitation when, with the purpose that an offense be committed, the person commands, <b>encourages</b> , or facilitates the commission of that offense.”
	Promoting prostitution: MONT. CODE ANN. § 45-5-602(1)(c) (West 2022)	“A person commits the offense of promoting prostitution if the person purposely or knowingly ... <b>encourages</b> , <b>induces</b> , or otherwise purposely causes

		another to become or remain a prostitute[.]”
	Sexual abuse of children: MONT. CODE ANN. § 45-5-625(1)(c) (West 2022)	“A person commits the offense of sexual abuse of children if the person knowingly ... persuades, entices, counsels, coerces, <b>encourages</b> , directs, or procures a child ... to engage in sexual conduct, actual or simulated, or to view sexually explicit material or acts for the purpose of <b>inducing</b> or persuading a child to participate in any sexual activity that is illegal[.]”
Nebraska	Contributing to the delinquency of a child: NEB. REV. STAT. ANN. § 28-709(1) (West 2022)	“Any person who, by an act, <b>encourages</b> , causes, or contributes to the delinquency or need for special supervision of a child ... so that such child becomes, or will tend to become, a delinquent child, or a child in need of special supervision, commits contributing to the delinquency of a child.”

	<p>Visual depiction of sexually explicit conduct: NEB. REV. STAT. ANN. § 28-1463.03(3) (West 2022)</p>	<p>“It shall be unlawful for a person to knowingly employ, force, authorize, <b>induce</b>, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.”</p>
<p>Nevada</p>	<p>Principals: NEV. REV. STAT. ANN. § 195.020 (West 2022)</p>	<p>“Every person [who] directly or indirectly, counsels, <b>encourages</b>, hires, commands, <b>induces</b> or otherwise procures another to commit a felony, gross misdemeanor or misdemeanor is a principal, and shall be proceeded against and punished as such.”</p>
	<p>Pandering and sex trafficking: NEV. REV. STAT. ANN. § 201.300(2) (West 2022)</p>	<p>“A person ... is guilty of sex trafficking if the person ... <b>[i]nduces</b>, causes, recruits, harbors, transports, provides, obtains or maintains a child to engage in prostitution ....”</p>

New Hampshire	Criminal street gang; solicitation: N.H. REV. STAT. ANN. § 644:20 (2022)	“Any person who solicits, invites, recruits, <b>encourages</b> , or otherwise causes or attempts to cause another individual to become a member of ... a criminal street gang ... shall be guilty of a class A felony.”
	Computer Pornography Prohibited: N.H. REV. STAT. ANN. § 649-B:3(I) (2022)	“No person shall knowing [do enumerated acts] for purposes of facilitating, <b>encouraging</b> , offering, or soliciting sexual conduct of or with any child, or the visual depiction of such conduct.”
New Jersey	Prohibited activities related to pyramid promotional schemes: N.J. STAT. ANN. § 2C:20-39(a)(2) (West 2022)	“A person is a recruiter for a pyramid promotional scheme if he solicits or <b>induces</b> any other person to participate in a [pyramid scheme] .... Recruiter for a pyramid promotional scheme is a crime of the fourth degree.”
	Prostitution and related offense:	“Promoting prostitution’ is ...

	N.J. STAT. ANN. § 2C:34-1(a)(4)(c) (West 2022)	<b>[e]ncouraging, inducing,</b> or otherwise purposely causing another to become or remain a prostitute[.]”
New Mexico	Promoting prostitution: N.M. STAT. ANN. § 30-9-4(D) (West 2022)	“Promoting prostitution consists of any person ... knowingly <b>inducing</b> another to become a prostitute[.]”
	Criminal solicitation: N.M. STAT. ANN. § 30-28-3(A) (West 2022)	“[A] person is guilty of criminal solicitation if, with the intent that another person engage in conduct constituting a felony, he solicits, commands, requests, <b>induces</b> , employs or otherwise attempts to promote or facilitate another person to engage in conduct constituting a felony within or without the state.”
	Coercion in the third degree: N.Y. PENAL LAW § 136.60 (McKinney 2022)	“A person is guilty of coercion in the third degree when he or she compels or <b>induces</b> a person to [do various conduct].”

<p>New York</p>	<p>Tampering with a witness in the fourth degree: N.Y. PENAL LAW § 215.10 (McKinney 2022)</p>	<p>“A person is guilty of tampering with a witness when, knowing that person is or is about to be called as a witness in an action or proceeding ... he wrongfully <b>induces</b> or attempts to <b>induce</b> such a person to absent himself from, or otherwise to avoid or seek to avoid appearing or testifying at, such action or proceeding[.]”</p>
	<p>Sex trafficking: N.Y. PENAL LAW § 230.34(2) (McKinney 2022)</p>	<p>“A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by ... making material false statements, misstatements, or omissions to <b>induce</b> or maintain the person being patronized to engage in or to continue to engage in prostitution activity[.]”</p>
	<p>Soliciting; encouraging participation: N.C. GEN. STAT.</p>	<p>“It is unlawful for any person to cause, <b>encourage</b>, solicit, or coerce a person 16</p>

<p>North Carolina</p>	<p>ANN. § 14-50.17(a) (West 2022)</p>	<p>years of age or older to participate in criminal gang activity.”</p>
	<p>First degree sexual exploitation of a minor: N.C. GEN. STAT. ANN. § 14-190.16 (West 2022)</p>	<p>“A person commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he ... [u]ses, employs, <b>induces</b>, coerces, <b>encourages</b>, or facilitates a minor to engage in ... sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity[.]”</p>
	<p>Child abuse a felony: N.C. GEN. STAT. ANN. § 14-318.4(a1) (West 2022)</p>	<p>“Any parent or [guardian of a] child, who commits, permits, or <b>encourages</b> any act of prostitution with or by the child is guilty of child abuse ....”</p>
<p>North Dakota</p>	<p>Criminal solicitation: N.D. CENT. CODE ANN. § 12.1-06-</p>	<p>“A person is guilty of criminal solicitation if he commands, <b>induces</b>, entreats, or otherwise attempts to</p>



	03(1) (West 2022)	persuade another person to commit a particular felony ....”
	Encouraging minors to participate in a criminal street gang: N.D. CENT. CODE ANN. § 12.1-06.2-03(1) (West 2022)	Any [adult] who knowingly or willfully causes, aids, abets, <b>encourages</b> , solicits, or recruits a [minor] to participate in a criminal street gang is upon conviction guilty of a class C felony.”
Ohio	Compelling prostitution: OHIO REV. CODE ANN. § 2907.21 (West 2022)	“No person shall knowingly ... <b>[i]nduce</b> , procure, <b>encourage</b> , solicit, request, or otherwise facilitate ... [a] minor to engage in sexual activity for hire ....”
	Personating an officer: OHIO REV. CODE ANN. § 2913.44 (West 2022)	“No person, with purpose to defraud or knowing that he is facilitating a fraud, or with purpose to <b>induce</b> another to purchase property or services, shall personate a law enforcement officer, or an inspector, investigator, or agent of any governmental agency.”

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	Contributing to unruliness or delinquency: OHIO REV. CODE ANN. § 2919.24(B)(1) (West 2022)	“No person ... shall ... “[a]id, abet, <b>induce</b> , cause, <b>encourage</b> , or contribute to a child or a ward of the juvenile court becoming an unruly child or a delinquent child.”
Oklahoma	Aiding Suicide: OKLA. STAT. ANN. tit. 21, § 813 (West 2022)	“Every person who willfully, in any manner, advises, <b>encourages</b> , abets, or assists another in taking his own life, is guilty of aiding suicide.”
	Child under 18 years of age— inducing, keeping, detaining or restraining from prostitution: OKLA. STAT. ANN. tit. 21, § 1088(A)(1) (West 2022)	“No person shall ... [b]y promise, threats, violence, or by any device or scheme ... cause, <b>induce</b> , persuade, or <b>encourage</b> a child under eighteen (18) years of age to engage or continue to engage in prostitution ....”
Oregon	Tampering with a witness: OR. REV. STAT. ANN. § 162.285 (1) (West 2022)	“A person commits the crime with a witness if ... [t]he person knowing <b>induces</b> or attempts to <b>induce</b> a witness ...to offer false testimony or

		unlawfully withhold any testimony; or ... to be absent from any official proceeding to which the person has been legally summoned.”
	Hazing: OR. REV. STAT. ANN. § 163.197(4)(a) (D) (West 2022)	“Haze’ means ... [t]o <b>induce</b> , cause or require an individual to perform a duty or task that involves the commission of a crime or an act of hazing.”
	Endangering the welfare of a minor: OR. REV. STAT. ANN. § 163.575(1)(a) (West 2022)	“A person commits the offense of endangering the welfare of a minor if the person knowingly ... <b>[i]nduces</b> , causes or permits an unmarried [child] to witness an act of sexual conduct or sadomasochistic abuse ...”
Pennsylvania	Criminal Solicitation: 18 PA. STAT. & CONS. STAT. ANN. § 902(a) (West 2022)	“A person is guilty of solicitation to commit a crime if with the intent of promoting or facilitating its commission he commands, <b>encourages</b> or requests another

		person to engage in specific conduct which would constitute such crime ....”
	Promoting Prostitution: 18 PA. STAT. & CONS. STAT. ANN. § 5902(b)(3) (West 2022)	“[P]romoting prostitution [includes] <b>encouraging</b> , <b>inducing</b> , or otherwise intentionally causing another to become or remain a prostitute.”
Rhode Island	Pandering or permitting prostitution— Not allowed: R.I. GEN. LAWS ANN. § 11-34.1-7(a) (West 2022)	“It shall be unlawful for any person, by any promise or threat, by abuse of person, or by any other device or scheme, to cause, <b>induce</b> , persuade, or <b>encourage</b> a person to become a prostitute ....”
	Exploitation of elders; Definitions: R.I. GEN. LAWS § 11-68-1 (West 2022)	““Deception” means ... [u]sing any misrepresentation, false pretense, or false promise in order to <b>induce</b> , <b>encourage</b> , or solicit an elder person to enter into a contract or agreement.”

South Carolina	Unlawful issuance, sale, or offer to sell identification card or document purporting to contain age or date of birth: S.C. CODE ANN. § 16-13-450 (2022)	“the term ‘offer to sell’ includes every <b>inducement</b> , solicitation, attempt, printed or media advertisement to <b>encourage</b> a person to purchase an identification card.”
	Prostitution; further unlawful acts: S.C. CODE ANN. § 16-15-100(2)-(3) (2022)	“It shall further be unlawful to ... [c]ause, <b>induce</b> , persuade or <b>encourage</b> by promise, threat, violence or by any scheme or device a female to become a prostitute ....”
	First degree sexual exploitation of a minor: S.C. CODE ANN. § 16-15-395(A) (2022)	“An individual commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he . . . uses, employs, <b>induces</b> , coerces, <b>encourages</b> , or facilitates a minor to engage in or assist

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		others to engage in sexual activity ...”
South Dakota	Aiding and abetting suicide: S.D. CODIFIED LAWS § 22-16-37 (2022)	“Any person who intentionally in any manner advises, <b>encourages</b> , abets, or assists another person in taking or in attempting to take his or her own life is guilty of a Class 6 felony.”
	Promoting prostitution: S.D. CODIFIED LAWS § 22-23-2 (2022)	“Any person who ... <b>[e]ncourages, induces</b> , procures, or otherwise purposely causes another to become or remain a prostitute ... is guilty of promoting prostitution.”
Tennessee	Prostitution: TENN. CODE ANN. § 39-13-512(4)(A) (West 2022)	“Promoting prostitution’ means ... <b>[e]ncouraging, inducing</b> , or otherwise purposely causing another to become a prostitute[.]”
	Offenses by supervisors and employees: TENN. CODE ANN. § 39-16-410(a)(1) (West 2022)	“It is an offense for a supervisor to intentionally ... [i]nstruct, direct, or <b>encourage</b> an employee to make a false statement, entry,

		notation, or report during or in relation to an audit.”
Texas	Criminal Responsibility for Conduct of Another: TEX. PENAL CODE ANN. § 7.02(a)(2) (West 2022)	“A person is criminally responsible for an offense committed by the conduct of another if ... acting with intent to promote or assist the commission of the offense, he solicits, <b>encourages</b> , directs, aids, or attempts to aid the other person to commit the offense[.]”
	Criminal Solicitation: TEX. PENAL CODE ANN. § 15.03(a) (West 2022)	“A person commits an offense if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to <b>induce</b> another to engage in specific conduct that ... would constitute the felony ....”
	Smuggling of Persons: TEX. PENAL CODE ANN. § 20.05(a)(2) (West 2022)	“A person commits an offense if the person knowingly ... <b>encourages</b> or <b>induces</b> a person to enter or remain in this country in violation of

		federal law by concealing, harboring, or shielding that person from detection ....”
Utah	Criminal responsibility for direct commission of offense or for conduct of another: UTAH CODE ANN. § 76-2-202 (West 2022)	“Every person, acting with the mental state required for the commission of an offense who directly commits the offense, who solicits, requests, commands, <b>encourages</b> , or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct.”
	Financial exploitation of a vulnerable adult— Penalties: UTAH CODE ANN. § 76-5-111.4 (West 2022)	“‘Deception’ means ... the use or employment of any misrepresentation, false pretense, or false promise in order to <b>induce, encourage</b> , or solicit a vulnerable adult to enter into a contract or agreement.”



	Exploiting prostitution: UTAH CODE ANN. § 76-10-1305(1)(b) (West 2022)	“An individual is guilty of exploiting prostitution if the individual ... <b>encourages, induces,</b> or otherwise purposely causes another to become or remain a prostitute[.]”
Vermont	Contributing to juvenile delinquency: VT. STAT. ANN. tit. 13, § 1301 (West 2022)	“A person who causes, <b>encourages,</b> or contributes to the delinquency of a minor shall be imprisoned ...”
	Home improvement fraud: VT. STAT. ANN. tit. 13, § 2029(b)(3) (West 2022)	“A person commits the offense of home improvement fraud when he or she enters into a contract or agreement ... and he or she knowingly ... uses or employs any unfair or deceptive act or practice in order to <b>induce, encourage,</b> or solicit such person to enter into any contract or agreement or to modify the terms of the original contract or agreement[.]”
	Recruitment of persons for	“Any person who solicits, invites,

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Virginia	criminal street gang: VA. CODE ANN. § 18.2-46.3(A) (West 2022)	recruits, <b>encourages</b> , or otherwise causes or attempts to cause another [or juvenile] to actively participate in or become a member of what he knows to be a criminal street gang.”
	Causing or encouraging acts rendering children delinquent, abused: VA. CODE ANN. § 18.2-371 (West 2022)	“Any person 18 years of age or older, including the parent of any child, who ... willfully contributes to, <b>encourages</b> , or causes any act, omission, or condition that renders a child delinquent, in need of services, in need of supervision, or abused or neglected ... is guilty of a Class 1 misdemeanor.”
	Inducing another to give false testimony: VA. CODE ANN. § 18.2-436 (West 2022)	“In any person procure or <b>induce</b> another to commit perjury or to give false testimony under oath in violation of any provision of this article, he shall be punished ....”

Washington	<p>False advertising: WASH. REV. CODE ANN. § 9.04.010 (West 2022)</p>	<p>“Any person, firm, corporation or association who with intent to sell or in any wise dispose of merchandise ... <b>induce[s]</b> the public in any manner to enter into any obligation relating thereto, ... makes, publishes, disseminates, circulates, or places before the public ... [a false advertisement] ... shall be guilty of a misdemeanor ....”</p>
	<p>Barratry: WASH. REV. CODE ANN. § 9.12.010 (West 2022)</p>	<p>“Every person who brings on his or her own behalf, or instigates, incites, or <b>encourages</b> another to bring, any false suit at law or in equity in any court of this state, with the intent thereby to distress or harass a defendant in the suit ... is guilty of a misdemeanor ....”</p>
West Virginia	<p>Procuring for house of prostitution: W. VA. CODE ANN.</p>	<p>“Any person who shall procure an inmate for a house of prostitution, or who, by promises,</p>

	<p>§ 61-8-7 (West 2022)</p>	<p>threats, violence, or by any device or scheme, shall cause, <b>induce</b>, persuade or <b>encourage</b> a person to become an inmate of a house of prostitution ... shall be punished ...”</p>
	<p>Solicitation to commit certain felonies: W. VA. CODE ANN. § 61-11-8a (West 2022)</p>	<p>“‘solicitation’ means the willful and knowing instigation or <b>inducement</b> of another to commit a felony crime of violence against the person of a third person[.]”</p>
<p>Wisconsin</p>	<p>Sexual exploitation of a child: WIS. STAT. ANN. § 948.05(1)(a), (2) (West 2022)</p>	<p>“Whoever ... [e]mploys, uses, persuades, <b>induces</b>, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct [with knowledge of the character and content of the sexually explicit conduct may be penalized.]”</p>

	Contributing to truancy: WIS. STAT. ANN. § 948.45 (West 2022)	“[A]ny person 17 years of age or older who, by any act or omission, knowingly <b>encourages</b> or contributes to the truancy ... of a person 17 years of age or under is guilty of a Class C misdemeanor.”
Wyoming	Solicitation to commit felony: WYO. STAT. ANN. § 6-1-302(a) (West 2022)	“A person is guilty of solicitation to commit a felony if, with intent that a felony be committed, he commands, <b>encourages</b> or facilitates the commission of that crime under circumstances strongly corroborative of the intention that the crime be committed but the solicited crime is not attempted or committed.”
	Sports bribery: WYO. STAT. ANN. § 6-3-609(b)(i)(A) (West 2022)	“A person is guilty of sports bribery if ... [h]e bribes or offers to bribe a participant or official in an athletic contest with the intent to ... <b>[i]nduce</b> a participant to lose or limit the

		margin of victory or defeat[.]”
	Abandoning or endangering children: WYO. STAT. ANN. § 6-45-403(b)(i)-(ii) (West 2022)	“No person shall knowingly ... [c]ause, <b>encourage</b> , aid or contribute to a child’s violation of any law of this state [or] [c]ause, <b>encourage</b> , aid or permit a child to enter, remain or be employed in any place or premises used for prostitution or for professional gambling[.]”