

Conspiracy Paradigms: Response to *Conspiracy, Really?*

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ABSTRACT: Federal law codifies more than one hundred conspiracy statutes. When we critique and seek to fix conspiracy law, we must therefore first identify which type or paradigm of conspiracy we are addressing. Andrew Ingram’s excellent article tackles the application of conspiracy to street crime, and his proposed solution requiring proof of substantial planning and organization makes sense in that realm. But the same proposal may create more, rather than less, injustice when applied to other paradigms, such as the use of conspiracy law to punish social movements and protests.

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INTRODUCTION

To critique the law of conspiracy, we must first recognize its vast scope. It embraces numerous types of law in various real-world contexts. There is not a single conspiracy statute, but numerous statutes targeted for different purposes, and each can be applied to vastly different groups with varying structures and goals. If we have only a single paradigm in mind when we think of criminal conspiracy, we might have a limited understanding of the law of conspiracy and how to fix it.

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Consider conspiracy at the federal level. There are more than one hundred different conspiracy statutes under federal law.¹ Section 371 of Title 18 of the United States Code is the general federal conspiracy statute, which makes it a felony to conspire to commit a federal crime.² But federal law criminalizes, under particular statutes, drug conspiracies,³ sex trafficking conspiracies,⁴ money laundering conspiracies,⁵ support of terrorism conspiracies,⁶ and conspiracies to violate a person's civil rights.⁷

The factual context of conspiracy cases varies greatly as well. Two persons might suddenly decide to rob a store; a robbery charge suffices and any conspiracy charge seems to be an unfair add-on. State and federal authorities have increasingly charged social movements and protesters who commit misdemeanor trespass with far more serious felony conspiracy.⁸

On the other hand, consider the Ku Klux Klan ("KKK") in the nineteenth century and the mid-twentieth century. In bringing its leaders to justice for murder and other serious crimes, federal authorities often relied on conspiracy statutes as the only practical approach to target the KKK's criminal activities.⁹ Charges under RICO have been central to mob prosecutions.¹⁰ Conspiracy charges were central to many January 6 insurrection cases, both those against its now-pardoned leaders¹¹ and the case against Donald Trump himself—three of the four counts against Trump were conspiracy charges.¹²

This variety of contexts makes it challenging to propose solutions to the law of conspiracy. A fix that appears helpful in making drug conspiracy charges or assault conspiracies less unjust, for example, may backfire in another context. Indeed, we can identify at least three paradigmatic contexts that will shape our view of conspiracy: (1) street crime, (2) organized suppression (such as the mob or the KKK), and (3) social movements.¹³ Whether to charge conspiracy depends critically upon which of these paradigms we have in mind.

1. See *United States v. Pascacio-Rodriguez*, 749 F.3d 353, 360 (5th Cir. 2014).

2. 18 U.S.C. § 371.

3. 21 U.S.C. § 846.

4. 18 U.S.C. § 1594(c).

5. 18 U.S.C. § 1956(h).

6. 18 U.S.C. § 2339A.

7. 18 U.S.C. § 241.

8. *Id.* As discussed below, federal authorities have charged protesters who entered a church under a provision originally enacted to address racial violence by the Ku Klux Klan.

9. See, e.g., *United States v. Price*, 383 U.S. 787 (1966).

10. 18 U.S.C. §§ 1961–68.

11. Press Release, U.S. Dep't of Justice, *Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach* (May 4, 2023), <https://www.justice.gov/archives/opa/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach> [<https://perma.cc/6ETB-2LLG>] (including Henry "Enrique" Tarrio and Joseph Biggs).

12. See generally *Indictment, United States v. Trump*, No. 23-cr-00257 (D.D.C. Aug. 1, 2023) (charging conspiracy under 18 U.S.C. §§ 371, 1512(k), 241).

13. I would like to thank Steffen Seitz for naming these categories expressly.

With these observations in mind, we now turn to the purpose of this Response: to consider Andrew Ingram's recent article critiquing the law of conspiracy and proposing solutions.¹⁴ His article admirably surveys the drawbacks of general conspiracy statutes—particularly for street crime.¹⁵ He notes how prosecutors charge conspiracy when the agreement part of the crime plays a small role.¹⁶ He proposes that conspiracy charges should be limited to cases in which the defendants engaged in substantial planning and organization of the target crime rather than simply an impromptu and sudden agreement to commit it.¹⁷

Ingram's diagnosis of the problem and solution make sense when we limit them to the context he envisions. But as soon as we broaden the scope, his solution raises new problems, especially when we consider well-organized social movements and protests. Recent protests against Immigration and Customs Enforcement ("ICE") in Minnesota and elsewhere provide a ready example.

Below, this Response will first summarize Ingram's analysis of the problem and his solution. It will then pull back to consider other contexts, particularly the social movement paradigm, and show why a solution in one context may fail in another—focusing on ICE protests such as the Cities Church protest made prominent by the presence of Don Lemon, formerly of CNN. It will use this example to further explore another important conspiracy statute, the crime of conspiracy to deprive people of their civil rights.¹⁸ Law enforcement has used the civil rights conspiracy statute to escalate charges against ICE protesters—and we can thus view it under the social movement paradigm. But of course, the same statute originated in 1870 under what we have called the organized suppression paradigm to confront the KKK.

I. INGRAM'S PROPOSAL

Ingram begins by making a point similar to mine above: We must first determine what we think of when we think of conspiracy.¹⁹ He suggests many envision mob conspiracies, or those of the KKK during Reconstruction, but he urges the reader to consider instead, or in addition, the regular application of conspiracy law to "simple crime."²⁰

Ingram provides as an example the New Jersey case of *State v. Bridges*.²¹ The defendant, Bennie Bridges, left a party and returned with two armed

14. See generally Andrew Ingram, *Conspiracy, Really?*, 110 IOWA L. REV. 1203 (2025).

15. *Id.*

16. *Id.* at 1207.

17. *Id.* at 1233–34.

18. 18 U.S.C. § 241.

19. Ingram, *supra* note 14, at 1204.

20. *Id.*

21. See generally *State v. Bridges*, 628 A.2d 270 (N.J. 1993) (providing an example of criminal liability for co-conspirators under New Jersey law and illustrating the application of the *Pinkerton* doctrine).

friends to continue a fight.²² Upon his return, Bridges engaged in a fistfight in front of many of the party guests, including his two friends.²³ The fight escalated, and one of his friends shot and killed another boy.²⁴ Prosecutors charged Bridges with conspiracy and, based on *Pinkerton* liability, with several substantive crimes including murder; a jury found him guilty and the judge sentenced him to thirty years to life.²⁵

Ingram critiques this result.²⁶ He argues that Bridges' only plan was to "get even by beating up the other young man he was feuding with."²⁷ But conspiracy law, plus New Jersey's version of the *Pinkerton* doctrine, elevated Bridges' conviction to murder.²⁸ Ingram blames the law of conspiracy for this disproportionate sentence.²⁹ We could quibble by noting that the real culprit in this example is *Pinkerton* liability, not conspiracy; after all, the lower appellate court had reversed the murder conviction and other substantive convictions while affirming the conspiracy conviction—a ruling that eliminated much of the injustice of the case.³⁰ But Ingram's larger point remains: Even absent *Pinkerton* liability, a conspiracy charge can elevate punishment far beyond the defendant's genuine culpability.³¹

Ingram argues that Bridges agreed with his two friends to commit a crime—presumably assault—and that he was therefore guilty of conspiracy as currently formulated.³² But Ingram also argues that the conspiracy charge adds little to the substantive crime of assault that Bridges apparently committed.³³ He and his friends engaged in little planning or organization; they acted on impulse. Ingram argues that the law of conspiracy should not include such impulsive and sudden agreements—"petty conspiracies"—that include little planning.³⁴ Ingram envisions that either legislatures should amend conspiracy law or judges should reinterpret it to require a greater showing of planning.³⁵

22. *Id.* at 271.

23. *Id.*

24. *Id.*

25. *Id.* at 272 (sentencing Bridges to "a term of life imprisonment with a thirty-year period of parole ineligibility").

26. Ingram, *supra* note 14, at 1206.

27. *Id.*

28. *Id.* As Ingram explains, the *Pinkerton* doctrine and its state analogues make conspirators guilty of substantive crimes their co-conspirators commit if those crimes are foreseeable and in furtherance of the conspiracy. *Pinkerton v. United States*, 328 U.S. 640, 647–48 (1946).

29. Ingram, *supra* note 14, at 1206.

30. See *Pinkerton*, 328 U.S. at 641.

31. Ingram, *supra* note 14, at 1206.

32. *Id.*

33. *Id.*

34. *Id.* at 1207. "Petty," as Ingram uses it, does not mean that the target crime is petty but rather that the conspiracy portion is petty because it is barely formed, planned, or organized.

35. *Id.* at 1207–08.

In particular, he proposes that conspiracy should cover only agreements that involve “substantial planning and organization.”³⁶ This proposal would make conspiracy charges morally just: Under a theory of retribution, Ingram argues, the added charge would capture genuinely culpable conduct and not, again, a mere impulsive agreement almost implicit in the target crime already charged.³⁷ In addition, he shows how his proposal would also prevent prosecutors from charging conspiracy simply to enjoy its many procedural advantages at trial, including the admission of statements by co-defendants who do not testify and are therefore unavailable for cross-examination.³⁸

He asserts that the formula of “substantial planning and organization” will provide jurors and appellate courts sufficient guidance in properly charging conspiracy.³⁹ He points to the well-accepted use of the term “substantial” in the definition of criminal recklessness.⁴⁰ He might also have pointed to the law of attempt as an even readier example of a well-accepted use of the term “substantial” in criminal law.⁴¹ Many jurisdictions, following the Model Penal Code (“MPC”), define the *actus reus* of criminal attempt as a “substantial step” toward commission of the crime, and provide factors such as reconnaissance as evidence that this substantial step is “strongly corroborative” of the actor’s criminal purpose.⁴² Ingram’s test, “substantial planning and organization,” could easily piggyback onto what the MPC already requires for attempt law. After all, he too lists factors to corroborate or demonstrate that the conspiracy planning is substantial.⁴³

Ingram suggests factors to help establish that the “substantial planning and organization” requirement is met, and they are straightforward.⁴⁴ I repeat them here for two reasons. First, his factors support the common sense usefulness of his proposal to the extent that the proposal rules out impulsive crimes from conspiracy. Second, these same factors prove damaging in the context of criminalizing social and protest movements—as this Response will later show.⁴⁵

Ingram’s first proposed factor is a “[p]attern of [c]riminal [a]ctivity.”⁴⁶ This category includes two different types. One is that the participants commit numerous crimes leading up to the single conspiracy charged, such as stealing a car for a robbery or stealing a gun.⁴⁷ The other type is proof that the group

36. *Id.* at 1233.

37. *Id.* at 1228.

38. *Id.* at 1243–45.

39. *Id.* at 1236.

40. *Id.* at 1234.

41. See *United States v. Jackson*, 560 F.2d 112, 116 (2d Cir. 1977).

42. *Id.* at 119 (citing the MODEL PENAL CODE § 5.01).

43. Ingram, *supra* note 14, at 1234–40.

44. *Id.*

45. See *infra* Part II.

46. Ingram, *supra* note 14, at 1236–37.

47. *Id.*

has previously engaged in a number of crimes and conspiracies that are similar to this one—almost like an ongoing criminal enterprise.⁴⁸ His second factor to establish substantial planning and organization is “[h]ierarchy and [d]ivision of [l]abor”—leaders and followers, with different tasks assigned to different conspirators: one drives the getaway car, the other robs the bank.⁴⁹ Third is “[i]nstitutionalization,” requiring proof the group acts as an entity, by “mirroring legitimate businesses,” such as having accountants or bank accounts.⁵⁰ Fourth is “[o]vert [p]lanning and [p]reparation,” such as by meeting beforehand to plan the steps, including a timetable.⁵¹ Fifth is the time lapse between this planning and the envisioned or actual commission of the target crime: The greater this time period, the more likely the conspiracy involved planning rather than mere impulse.⁵² He speaks in terms of “hours, days, or even weeks.”⁵³ Last is the complexity of the target crime.⁵⁴ Does the crime require advanced planning or can one do it impulsively and without planning, such as shoplifting a “six-pack”?⁵⁵

Ingram’s proposal is excellent within the realm of street crime, a vast territory. His proposal also addresses a related problem by setting up a heightened evidentiary standard—a point he does not emphasize but that bears mention.

An additional problem that Ingram discusses runs as follows. Jurors often convict defendants for conspiracy when defendants are not truly guilty of conspiracy under current law, irrespective of the degree of planning or organization. This follows because, as I have written elsewhere, jury instructions often tell juries that they may find the agreement central to the conspiracy based upon a mere “mutual understanding” or “slight connection” between the parties.⁵⁶ Juries end up convicting for mere association, or even presence.⁵⁷ The common problematic paradigm is the girlfriend of the drug dealer convicted of drug conspiracy simply because she knew he dealt and possessed drugs and continued to live with him. Juries sometimes improperly infer she agreed to commit a crime from these facts alone.

I have argued that these unjust convictions result from poor jury instructions that water down the agreement requirement so that juries believe mere association is sufficient for a conspiracy conviction.⁵⁸ I argued that courts should instead define “agreement” to mean an actual exchange of

48. *Id.*

49. *Id.* at 1237–38.

50. *Id.* at 1238.

51. *Id.* at 1238–39.

52. *Id.* at 1239–40.

53. *Id.* at 1239.

54. *Id.* at 1240.

55. *Id.*

56. Laurent Sacharoff, *Conspiracy as Contract*, 50 U.C. DAVIS L. REV. 405, 437–42 (2016).

57. *Id.* at 442–45.

58. *Id.* at 409–10.

promises to further the crime—not simply acknowledgment or acquiescence.⁵⁹ Further, I argued that juries could, of course, infer such an agreement or exchange of promises from circumstantial evidence; they would not need an express agreement recorded by video or audio, for example.⁶⁰ But juries would still have to draw the inference of a real agreement, not simply knowing association with the crime.

Ingram tackles the same problem in a slightly different way. His requirement to prove “substantial planning and organization” doubles as a heightened evidentiary standard to prove there really was an agreement. Suppose, as Ingram requires, there is proof of a division of labor, or hierarchy, with one conspirator obtaining the tools; another the car; a third, the surveillance. These same factors provide strong proof of a real agreement—a promise and undertaking by each conspirator to further the crime.

II. WHERE INGRAM’S PROPOSAL COULD BACKFIRE

Ingram’s proposal and factors operate admirably within the type of conspiracy that he envisions: sudden and impulsive street crime that happens to involve a group—a common charge. He uses his test and factors to rule *out* these agreements from counting as a criminal conspiracy. But he also uses his test and factors to rule *in* those conspiracies that do “deserve[] to be charged as [a] conspiracy”—those that involve highly organized conspiracies with leaders and followers, division of labor, and institutionalization.⁶¹ Treating such a criminal organization as a conspiracy will deprive its members of group identity and the benefits of a structure. Ingram almost certainly has in mind the mob, but unfortunately these same factors and principles apply equally to social movements and protests. His factors would attack them at the organizational level.

Indeed, federal authorities have done precisely that, increasingly charging serious conspiracies against protesters and social movements organizing against aggressive policing, ICE, and environmental destruction.⁶² These protests have followed in particular from deployment of federal officers to major cities including Los Angeles and Minneapolis as part of Operation Metro Surge at the close of 2025.⁶³ Many residents organized to protest these deployments, including watch groups with whistles.⁶⁴ In January 2026, the

59. *Id.* at 410–11.

60. *Id.* at 411–12.

61. Ingram, *supra* note 14, at 1245.

62. See *infra* Part III; Steffen Seitz, *Conspiracy and Social Movements*, 124 MICH. L. REV. 609 *passim* (2026) (noting that the protests against Atlanta’s Cop City included efforts to protect the environment where the installation was being built).

63. See *infra* Part III.

64. Vivian Yee, *The People of Minneapolis vs. ICE: A Street-Level View*, N.Y. TIMES (Jan. 17, 2026), <https://www.nytimes.com/2026/01/17/us/minneapolis-protests-ice.html> [<https://perma.cc/T8BM-GQ2D>].

shooting deaths of Renée Good and Alex Pretti garnered even more attention.⁶⁵

In charging those protesting ICE with conspiracy, federal authorities increasingly portray protest movements in precisely the same light as the mob—as organized criminal enterprises.⁶⁶ In Georgia, for example, authorities even charged the protesters against Cop City as a vast, sixty-one-defendant RICO case.⁶⁷ These protests have often resulted, at most, in harm that would lead to misdemeanor state charges, such as trespass. But instead, federal authorities elevated them to serious federal felonies carrying up to ten years in prison—simply by adding conspiracy charges. One could possibly argue that these conspiracies should not be brought because the target crimes are minor misdemeanors. But Ingram purports to be agnostic as to the gravity of the target crime, focusing his test instead on the nature of the conspiracy.⁶⁸ In other words, his test would tend to bless punishing protesters for more serious conspiracy charges precisely because they are organized, even if the target crimes were misdemeanors.

The Cities Church protest in mid-January 2026 serves as a recent and prominent example, an anti-ICE protest involving a large group of protesters entering and disrupting a Sunday service at Cities Church in St. Paul—a community church focused on the text of the Bible and Jesus Christ.⁶⁹ The protest involved not only traditional civil rights and Black Lives Matter activists, but also, more notably, Don Lemon.⁷⁰

Events started the day before the protest, when organizers learned that one of the church’s pastors was serving as an ICE official.⁷¹ According to the superseding indictment, organizers went to the church and videotaped it in order to plan the intrusion.⁷² Organizers then prepared a flyer and used their social media accounts to invite participants to gather in a parking lot to plan.⁷³ Organizers discussed how the operation, known as “Operation Pullup,” would work.⁷⁴ They were to drive from the parking lot to the church, bumper-to-bumper, to avoid getting separated.⁷⁵ Two waves would enter the church. In

65. Kurt Streeter, *How Alex Pretti’s Death Became a National Tipping Point*, N.Y. TIMES (Feb. 1, 2026), <https://www.nytimes.com/2026/02/01/us/alex-pretti-minneapolis.html> [https://perma.cc/C9QU-A8WW].

66. Seitz, *supra* note 62, at 616.

67. *Id.* at 616.

68. *Id.*

69. See generally *Home Page*, CITIES CHURCH, <https://www.citieschurch.com> [https://perma.cc/MV3P-82ZU].

70. Whether Don Lemon was an observer, journalist, activist, or co-conspirator will be, of course, one of the central questions of the case. I will include him in the term “activist” for convenience without assessing his actual role.

71. Superseding Indictment at 6, *United States v. Armstrong*, No. 26-cr-25 (D. Minn. Feb. 26, 2026).

72. *Id.* at 7.

73. *Id.*

74. *Id.*

75. *Id.* at 10.

the first wave, protesters would enter incognito, without signs, singly, and take seats alone as if they were regular parishioners. Wave two would enter as protesters, at which point wave one protesters would join them.⁷⁶

The following day, January 18, 2026, according to the indictment, the protesters carried out the plan; they met at the parking lot, drove to the church, and entered in two waves.⁷⁷ Once both waves of protesters were in the church, the raucous protest began. Video from that morning shows that the protesters disrupted and ended the service.⁷⁸

The Department of Justice (“DOJ”) eventually charged all thirty-nine defendants with felonies, carrying the potential of ten years’ imprisonment.⁷⁹ In particular, prosecutors charged conspiracy to deprive the parishioners of their right to worship—a charge codified at 18 U.S.C. § 241.⁸⁰ DOJ also charged them with a misdemeanor more particularly crafted for this type of disruption: the federal misdemeanor of interfering with church worship under the Freedom of Access to Clinic Entrances (“FACE”) Act.⁸¹ Though the FACE Act protects abortion clinics from protesters in subsection (a)(1), it protects worshipers in houses of worship from interference and disruption in subsection (a)(2)—an odd, but perhaps symmetrical, pairing.⁸²

The indictment names four of the defendants as the protest leaders, veteran organizers, and participants of past protests, including the protests following the murder of George Floyd in Minneapolis. Nekima Levy Armstrong, for example, is a former law professor at the University of St. Thomas School of Law in Minneapolis, a former head of the Minnesota NAACP, and currently a full-time activist.⁸³ After her arrest, the White House released a digitally altered photo portraying her crying.⁸⁴ Other organizers included Chauntyll Allen, a civil rights activist, and Ian Austin, an Army

76. *Id.*

77. *Id.* at 11.

78. Samuel Oakford, *Don Lemon Indictment: Video Appears to Contradict Key Claims*, WASH. POST (Feb. 13, 2026), <https://www.washingtonpost.com/investigations/2026/02/13/don-lemon-minnesota-church-protest> [<https://perma.cc/8CWX-ZL2U>]; Jarrett Ley & Samuel Oakford, *What Video Shows About Don Lemon’s Activities at the Church Protest*, WASH. POST (Jan. 30, 2026), <https://www.washingtonpost.com/investigations/2026/01/23/don-lemon-minneapolis> [<https://perma.cc/KZCg-Q9BQ>].

79. *See Armstrong*, No. 26-cr-25 (Count 1). The government misidentified one defendant, who was dropped from the case. *See United States v. Levy Armstrong*, No. 26-cr-25 (D. Minn. Mar. 23, 2026).

80. *Id.* at 3.

81. *Id.* at 17.

82. Subsection (a)(2) protecting worship was added on the Senate floor and in joint committee.

83. *See generally* *Nekima Levy Armstrong*, WIKIPEDIA, https://en.wikipedia.org/wiki/Nekima_Levy_Armstrong [<https://perma.cc/CY74-GVWZ>].

84. Tiffany Hsu, Alan Feuer & Stuart A. Thompson, *White House Posts Photo Altered to Show Arrested Minnesota Protester Crying*, N.Y. TIMES (Jan. 22, 2026), <https://www.nytimes.com/2026/01/22/us/politics/nekima-armstrong-photo-white-house.html> [<https://perma.cc/T3W6-ALNV>].

veteran, who said he wanted to protest the church because of the pastor.⁸⁵ The indictment describes others as having followed their lead.⁸⁶

These charges, and defendants, perfectly illustrate the problem with conspiracy law. After all, the FACE misdemeanor charge captures, in a tailored way, the nature and gravity of the harm—taking the government’s allegations as true. Though the video and the indictment present a scene of real disruption and chaos, this conduct would normally be charged, if at all, as a state misdemeanor trespass; the incursion was brief, though it did end the service.⁸⁷ Indeed, civil disobedience and its practitioners envision arrests for trespass or disturbing the peace—such arrests on minor state charges are often one of the goals. Thus, federal misdemeanor charges alone should suffice.

But DOJ charged felony conspiracy, exposing the defendants to ten-year sentences as well as affording prosecutors all the procedural and rhetorical advantages of charging a conspiracy. These charges expose the defendants to severe punishment, of course, but they also act to deter others from protesting, including legitimate and lawful protest. Would-be protesters, prepared to face misdemeanor trespass charges, must now worry that the authorities will charge them with some manner of felony conspiracy out of the more than one hundred available on the books.

As for Don Lemon, the indictment singled him out, alleging that he was not merely an observer or journalist but rather a co-conspirator who gathered at the pre-protest planning meeting in the parking lot, traveled with them to the church, and entered it.⁸⁸ The indictment highlighted two key alleged facts: When Lemon live streamed the protest’s preparations, he noted that he was being careful not to reveal the destination of the protest, and he thanked the organizers for what they were doing.⁸⁹ Later, while Lemon was live streaming the protest, he interviewed the pastor, in a gentle interview, according to video.⁹⁰ The indictment, by contrast, portrayed the interview as harassment.

The indictment likewise charged Lemon with the ten-year conspiracy charge, in addition to the FACE Act charge. And here too, the government is using the powerful tool of conspiracy in an effort to punish and deter not only protest but even journalistic coverage of that protest. Lemon recently filed a motion to dismiss based on the First Amendment as well as on the superseding

85. *Staff Profile: Chauntyll Allen*, SAINT PAUL PUB. SCHS., <https://www.spps.org/profile/~const-id/2867> [https://perma.cc/3WMA-7ARU]; Julia Lurie, *Federal Agents Just Arrested an Army Veteran—After He Protested ICE Outside a Church*, MOTHER JONES (Jan. 30, 2026) <https://www.motherjones.com/politics/2026/01/minneapolis-st-paul-army-veteran-protester-church-don-lemon> [https://perma.cc/67GU-ZLV9].

86. *Armstrong*, No. 26-cr-25 at 7.

87. *Id.* at 3.

88. *Id.* at 9.

89. *Id.*

90. *See generally* Oakford, *supra* note 78.

indictment's failure to plead that Lemon physically obstructed or threatened anyone as required by the FACE Act.⁹¹

Cities Church is one of many such examples of federal authorities charging minor protests as serious federal conspiracies. A man hands out face shields to ICE protesters in Los Angeles: federal conspiracy.⁹² A former city council president accused of blocking a bus transporting immigrants to hearings: federal conspiracy.⁹³

Let us now apply Ingram's proposal to the Cities Church case; we find that it tends to approve conspiracy charges rather than rule them out. The indictment alleges numerous facts to establish substantial planning and organization, including reconnaissance of the church the day before, videotaping it, preparing a flyer, inviting people to gather to "mobilize" the next day, and, of course, meeting in the parking lot to coordinate the operation.⁹⁴

The allegations in the indictment also meet several of Ingram's more particular factors. The protest had a "hierarchy" with organizers and followers.⁹⁵ The organizers videotaped the church the day before, assessed its accessibility, and prepared and distributed flyers and invitations.⁹⁶ The protest had a division of labor, with two waves to arrive at different times with different purposes.⁹⁷ Though the indictment does not allege the protest was planned by an ongoing entity, the operation did have a name, "Operation Pullup."⁹⁸ The operation also meets Ingram's time lapse factor. Ingram distinguishes impulsive conspiracies, agreed upon minutes before execution, from agreements that come hours, days, or weeks before execution.⁹⁹ Here, the leaders began organizing the day before—and perhaps the indictment can be read as alleging the conspiracy started then—and even the gathering at the parking lot came more than minutes before execution.¹⁰⁰ This factor asks whether the nature of the crime requires the coordination of multiple people.¹⁰¹ Here, the goal of the protest, to disrupt the service, required some

91. See generally Don Lemon's Motion to Dismiss the Superseding Indictment, United States v. Lemon, No. 26-cr-25(4) (D. Minn. Aug. 7, 2026).

92. See generally Indictment, United States v. Orellana, No. 2:25-cr-548 (C.D. Cal. July 2, 2025) (dismissed).

93. See generally Indictment, United States v. Stuckart, No. 2:25-cr-00113 (E.D. Wash. July 9, 2025) (pleaded guilty).

94. *Armstrong*, No. 26-cr-25 at 7.

95. *Id.* at 5.

96. *Id.* at 7.

97. *Id.* at 10.

98. *Id.* at 5.

99. Ingram, *supra* note 14, at 1239.

100. *Armstrong*, No. 26-cr-25 at 7.

101. Ingram, *supra* note 14, at 1240.

number of persons to work together.¹⁰² The alleged use of staggered waves of participants satisfies this factor.

My goal, of course, is not to argue that the federal authorities should have charged this protest as felony conspiracy—quite the opposite. A Section 241 charge strikes me as disproportionate, especially since there is a statute targeted to precisely this type of conduct. My point, rather, is to show that the Cities Church indictment is an example of the problem with conspiracy law in general. The defendants here, while perhaps guilty of conspiracy, certainly do not deserve to face a ten-year prison sentence. Whether its means were misguided or not, it was a protest on an issue of critical public concern.

My main objective is also to show that Ingram's proposal, admirable in one arena, proves devastating in another. Social movements and protests, by their nature, involve substantial planning and organization—often to violate the law to make a point. Many of us would view the planning and organization of at least some social and protest movements as admirable, necessary, and the whole point. Ingram himself likely would.

After all, Ingram spends considerable time critiquing conspiracy law and surveying scholars who propose abolishing conspiracy entirely.¹⁰³ He appears to view his proposal as a feasible middle-ground reform short of abolition. His view that organized conspiracies “deserve” to be treated as conspiracy can even be seen as a rhetorical move to gain support, rather than a studied conviction on his part. Even though a straightforward application of Ingram's test appears to endorse treating protests like Cities Church as a conspiracy, he might well argue that prosecutors should use their discretion to charge the misdemeanor only, and not the more serious conspiracy charge in similar social movement or protest cases.

III. SEITZ AND SOCIAL MOVEMENTS

In any event, whether to treat a social movement or protest as a conspiracy matters because prosecutors are increasingly layering conspiracy charges on top of whatever misdemeanor charges they might otherwise press, such as trespass or disorderly conduct. Steffen Seitz has recently catalogued this phenomenon, identifying two problems.¹⁰⁴ Often, the conspiracy charges capture persons not guilty of conspiracy at all—persons who did not agree to further a crime—but rather who simply are associated with others or helped them in non-criminal ways, such as supporting the movement's goals on social media, or providing protesters with water or information.¹⁰⁵ Further, Seitz shows that even for those who have agreed to further the efforts, they do not

102. See generally *Indictment, United States v. Stuckart*, No. 2:25-cr-00113 (E.D. Wash. July 9, 2025) (pleaded guilty).

103. See Ingram, *supra* note 14, at 1207–08, 1222–27.

104. See Seitz, *supra* note 62, at 634–38.

105. *Id.*

deserve a serious felony conspiracy charge for simply coordinating to occupy a space, for example; they deserve at most a simple trespass charge.¹⁰⁶

The protests against Cop City in Atlanta are a central example of his points.¹⁰⁷ There, local district attorneys brought misdemeanor trespass charges. But those charges apparently did not satisfy Georgia's Attorney General, who brought a vast, sixty-one-defendant RICO conspiracy charge, thus bringing the possibility of decades in prison.¹⁰⁸ Pointing to this and other examples, Seitz proposes eliminating trespass, disorderly conduct, and other similar misdemeanors as target offenses for conspiracy charges.¹⁰⁹ Ruling out conspiracy based upon these misdemeanors would preclude the authorities from over-chilling protests and free speech—as well as the social ties and coordination needed to create and sustain important social movements.

Seitz's principles uncover another problem: Applying conspiracy to the social movement context brings harms beyond any eventual conviction and sentence. Conspiracy could make relevant at trial every discussion the defendants had about the protest and potentially beyond—every text, group chat, and social media post—yet these are precisely the tools of legitimate organization and, notably, ordinary social life. Even the threat of a conspiracy charge renders such vital communications potential evidence in a criminal trial against the speaker, the listener, and anyone vaguely connected to the goals of the movement or message. In the social movement context, the threat of conspiracy will deter or drive underground legitimate protest and organization—much as it once did with the mob.

There is much value to Seitz's argument, especially as applied to the Cities Church case. He would argue, no doubt, that the FACE Act misdemeanor charge provides law enforcement with tools adequate to capture the culpability of the Cities Church defendants (if guilty), whereas the Section 241 conspiracy charge overdeters such social movements and protests with its ten-year prison term, especially if the elevated charges arise because of the nature of the protesters' message.¹¹⁰

Seitz's proposal would presumably leave untouched the arguably appropriate use of Section 241 conspiracy charges involving target crimes such as murder and serious assaults. He only rules out, as predicate crimes, trespass and disorderly conduct. We could easily extend Seitz's view, however, to exclude from a Section 241 conspiracy target conduct such as that in the Cities Church case, which was akin to simple trespass. Section 241, as

106. *Id.*

107. Seitz, *supra* note 62, at 615–16.

108. Order Granting Motion to Dismiss and Quash Indictment/Plea in Abatement of Indictment for Lack of Prosecutorial Authority, *State v. Carroll*, Indictment No. 23SC189192 (Fulton Cty. Sup. Ct. Dec. 30, 2025). A Georgia judge recently dismissed the case, noting that Georgia law did not authorize the Attorney General, as opposed to a local district attorney, to bring such charges.

109. See Seitz, *supra* note 62, at 654.

110. Attorney General Pam Bondi has publicly emphasized the effect on Christians and any worshiper rather than on the protesters' anti-ICE message.

originally drafted, had in mind conspiracies to violate civil rights that involved far more serious target crimes, such as murder and assault, as well as efforts to hinder voting.¹¹¹

IV. SECTION 241 IN ITS BEST LIGHT

This Response will therefore end with a short discussion of Section 241 and how it is designed to operate. Ingram, in proposing his test of “substantial planning and organization,” appears to have in mind that very conspiracy statute—not as applied in *Cities Church* to protests involving no injuries, but rather, to the KKK—as the paradigmatic example of when conspiracy should apply. That is, his proposal seeks to capture the organized suppression model.

Section 241 remains almost unchanged from its enactment in 1870; it was created after the Civil War as part of a group of laws targeting the KKK conspiring to deprive Black people of their civil rights.¹¹² States failed to enforce tort law or criminal law against these bad actors for their crimes.¹¹³ Section 241 afforded the federal government jurisdiction to prosecute these criminal conspiracies and, even when originally enacted, it brought a possible ten-year sentence.

Consider, as an example, the 1964 conspiracy and murder of civil rights activists Michael Henry Schwerner, James Earl Chaney, and Andrew Goodman in Philadelphia, Mississippi.¹¹⁴ State officials and private men carefully organized a plot to find, detain, kill, and bury these three young men at a dam—events portrayed, in somewhat altered form, in the film *Mississippi Burning*.¹¹⁵ State authorities failed for decades to bring murder charges;¹¹⁶ the federal authorities had no applicable federal murder statute to charge and therefore relied upon the federal civil rights statute.¹¹⁷

A chief charge in this case, *United States v. Price*, was Section 241.¹¹⁸ This case shows the best application of Ingram’s proposal. Here, the planning and organization was substantial, hierarchical, and involved an important division of labor. It was secret. It was insidious. The conspiracy charge, in Ingram’s conception, *adds* something to a murder charge—even were a murder charge feasible.

111. See Enforcement Act of 1870, sess. II, ch. 114, § 6, 16 Stat. 140, 141 (1870) (codified as amended at 18 U.S.C. § 241 (2018)).

112. Compare 18 U.S.C. § 241 (text of the current statute), with Enforcement Act of 1870, § 6 (text of the original act).

113. *United States v. Price*, 383 U.S. 787, 803 (1966) (describing the act’s history).

114. *Id.* at 790–91.

115. *Id.* at 795; see *MISSISSIPPI BURNING*, DVD (Orion Pictures 1988).

116. *Michael Schwerner–James Chaney–Andrew Goodman*, U.S. DEP’T OF JUST., C.R. DIV. (May 10, 2018), <https://www.justice.gov/crt/case/michael-schwerner-james-chaney-andrew-goodman> [<https://perma.cc/L6DH-VPDS>].

117. *Price*, 383 U.S. at 791.

118. See *Price*, 383 U.S. at 796–807.

CONCLUSION

Where does this leave a conspiracy critique? As for Ingram, his proposal might fare better when limited to ruling *out* impulsive street crime as a candidate for conspiracy. Planning and organization should thus be necessary elements of any conspiracy. But we should not see planning and organization, when present, as a justification to punish any conspiracy. We need more; we need, likely, to add a proposal such as Seitz's to abolish conspiracy, essentially, as applied to social movements and protests by removing trespass, disorderly conduct, and similar minor crimes as eligible targets for any conspiracy charge. That peeling off would leave conspiracy to tackle organized criminal activity that has as its goal serious crimes such as murder, financial fraud, serious assault, drug or gun sales, terrorism, or trafficking—crimes that truly require concerted activity.