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IN THE SUPREME COURT OF IOWA
Supreme Court No. 25-1646
Des Moines County No. AGIN030048

STATE OF IOWA,
Plaintiff–Appellee,

vs.

RICHARD E. KING, III,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR DES MOINES COUNTY
THE HONORABLE MARK KRUSE, JUDGE

BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Does Iowa Code section 718.2 bar impersonating federal law enforcement officers?

II. Did the district court err by refusing to include a specific-intent instruction when the statute, unlike other impersonation offenses, does not contain that additional element? And if so, was the error harmless?

III. Is section 718.2 facially unconstitutional?

ROUTING STATEMENT

The State agrees that whether Iowa Code section 718.2 encompasses impersonating federal officers is an issue of first impression. Still, it is readily resolvable using settled principles of statutory construction, which cuts against the necessity of retention.

King's second ground for retention—questions as to the validity of a statute—is unfounded. King's constitutional issues on appeal are far afield from his generalized invocations below. He never argued before or during trial that section 718.2 is an impermissible content-based speech regulation. As for overbreadth, King's argument during the motion-to-dismiss stage—where he challenged the lack of an additional actus-reus element—was materially different than his argument while debating jury instructions—where he challenged the lack of a specific-intent element. And, compounding the problem, neither argument was ruled on below. King's only preserved constitutional issue is whether section 718.2 is facially void for vagueness, which is similarly resolvable under existing law.

Clearing that brush, this appeal involves routine applications of statutory-interpretation, harmless-error, and vagueness principles, all within the context of an uncommon offense. Retention is therefore unnecessary.

NATURE OF THE CASE

Richard King approached a group of teenage boys in a restaurant, yelled at them, told them he was a marshal, commanded them to go outside so he could fight them, and offered to show a badge. King was serious, threatening, and loud during the confrontation. He was charged with impersonating a public official and, after a jury trial, was convicted. King now appeals his conviction, couching his claims in hypotheticals that bear no resemblance to his actual conduct. Indeed, King reduces his behavior to making an innocuous offhand remark. It was not—King falsely claimed official power and invoked that power to issue a directive. And this context matters, as King's conduct is exactly what the legislature sought to proscribe and poses none of his cited constitutional perils.

On the merits, none of King's claims succeed. Federal officers fall comfortably within the text of section 718.2. The offense does not contain a specific-intent element. Alternatively, this Court may assume that an intent-to-deceive instruction should have been given and affirm anyway, as the undisputed evidence leads to no other conclusion than King intended for the boys to believe he was a marshal. And the statute suffers from no constitutional infirmities—it is concrete, targeted, and content neutral. Thus, King's conviction should be affirmed.

STATEMENT OF THE FACTS

On November 16, 2024, three teenage boys were at a Wingstop restaurant in Burlington, Iowa. D0067, Jury Trial Tr. at 95:16–96:9 (08/20/2025). While they were waiting in the lobby, defendant Richard King approached the boys and began yelling at them. D0067 at 96:16–97:18. The boys believed King was upset because he mistakenly thought they had been laughing at him. D0067 at 97:4–17, 103:16–22. During the confrontation, King claimed he was in law enforcement—one boy recalled him stating he was a "U.S. Marshal" and another boy recalled "state marshal." D0067 at 97:19–98:7, 103:14–23. And he commanded them to go outside so he could fight them. D0067 at 97:19–98:7, 100:5–7, 100:25–101:2, 104:15–23, 105:14–16. He also told one of the boys, "if you want to step outside with me, I can show you my badge." D0067 at 105:10–16. While making his claims and commands, the boys described King as "not joking," "shouting," and "threatening." D0067 at 100:3–7, 100:25–101:3, 104:7–14.

Meanwhile, a Wingstop employee overheard King accosting the boys and telling them he was a federal agent in a serious tone. D0067 at 83:4–17, 93:13–19, 94:6–9. The boys called the employee over and told her what was happening. D0067 at 85:10–16. The employee checked with her manager, who advised her to call law enforcement so King could be banned from the

store. D0067 at 86:5–10. By the time law enforcement arrived, King had left the scene. D0067 at 111:17–21. But officers later tracked him down and confirmed he was the perpetrator. D0067 at 110:8–111:16, 117:11–20.

The State charged King with falsely claiming to be "a peace officer or other public officer," in violation of Iowa Code section 718.2 (2024). D0014, Trial Inf. at 1 (12/30/2024). That statute states: "Any person who falsely claims to be or assumes to act as an elected or appointed officer, magistrate, peace officer, or person authorized to act on behalf of the state or any subdivision thereof, having no authority to do so, commits an aggravated misdemeanor." Iowa Code § 718.2.

King later moved to dismiss the charge, arguing that section 718.2 did not encompass impersonating federal agents. D0018, Mtn. to Dismiss at 1 (04/15/2025); Iowa R. Crim. P. 2.11(8). During the motion hearing, King reiterated his "quite simple" argument that "[a] plain reading of the statute clearly suggests that it criminalizes behavior of impersonating officials of the State of Iowa." D0080, Hearing Tr. at 4:13–16 (05/06/2025). In response to the State's contrary statutory argument, King urged that narrowing "peace officer" to only reaching state officers would counter the State's "broad, expansive definition," which King's counsel "could see [as] criminalizing any

source of behavior, especially that of protected speech or behavior." D0080 at 6:2–16.

The court asked for supplemental briefing on whether a federal impersonation statute exists and how that could impact whether section 718.2 criminalizes false claims of federal authority. D0080 at 7:23–8:4. In that briefing, King identified 18 U.S.C. § 912, which imposes criminal penalties upon any person who both "falsely assumes or pretends" to be a federal officer and "acts as such." He then argued that the federal statute's additional actus reus element "exists to save" the statute from "accusation[s]" like his "argument that Iowa Code § 718.2 is unconstitutionally vague and could be used to prosecute and criminalize protected conduct or speech." D0022, Brief of Def. at 1–2 (05/12/2025).

King never argued his particular statements were protected speech and never mentioned specific intent. Instead, his position during the motion-to-dismiss stage was that Iowa's statute did not reach false claims of federal authority, and that Iowa's statute lacked an additional actus reus element, unlike its federal counterpart, which made it susceptible to overbreadth and vagueness "accusation[s]." D0022 at 2. The State responded to this position, urging that the "omission of the *actus re[u]s* element that is included in 18 U.S.C. § 912 does not render § 718.2 unconstitutionally vague by sweeping so

broadly as to prohibit constitutionally protected speech." D0023, State Resist. at 2 (05/16/2025).

The district court denied King's motion to dismiss, reasoning that "peace officer" was not textually limited to state officers and that such a narrow reading would lead to absurd results. D0024, Ruling at 1–2 (06/10/2025). It declined to read the statute to permit the "inherently dangerous" behavior of falsely claiming law enforcement authority merely because the claimed origin of that authority was the federal government rather than the State of Iowa. D0024 at 2. The court never ruled on King's suggestion that the lack of an additional actus reus element could render the statute overbroad or vague, nor did King move to enlarge to request that ruling. D0024 at 2.

The case proceeded to a one-day jury trial. Two of the boys described the confrontation, including King's claim of official authority—one recalled "U.S. Marshal" while the other recalled "state marshal"[1]—his command to go

[1] King asserts this difference in recollection was caused by prosecutorial influence, but the record refutes this accusation. The first boy testified to hearing King say "U.S. Marshal" in response to the question, "Did he tell you anything to make you—to try to make you go outside?" D0067 at 97:23–98:1. The second boy later testified to hearing King say "state marshal" in response to the question, "Do you remember anything out of the ordinary happening that day?" D0067 at 103:14–23. Thus, neither boy's testimony was led or colored by the prosecutor. While the prosecutor used the term "state marshal" once during re-direct of the first boy, she also used

outside to fight, and his offer to show a badge. *See generally* D0067 at 95:14–107:22. At the close of evidence, King agreed to Instruction No. 14, which defined "Peace officer" as "an individual designated by public authority to enforce the law and preserve public safety whether it be state or federal." D0067 at 124:23–126:14; D0037, Jury Inst. at 4 (08/20/2025).

King's only objection was the lack of a separate instruction requiring the jury to find that "[t]o have intended to impersonate a police officer, the offender must have falsely claimed to be or assumed to act with the purpose to make someone believe he or she is a peace officer." D0032, Def. Proposed Inst. at 1 (08/20/2025); D0067 at 126:5–128:10. In support of this instruction, King urged "this criminal statute is unduly vague or unduly broad and impermissibly burdens free speech by the way it's currently written. So the purpose of this proposed instruction" was to "arguably save the statute from that broadness, from that vagueness, by requiring [the] State to prove that, you know, it's more than just the utterance of a phrase." D0067 at 127:8–16. The State resisted, arguing the extra element "has no

"U.S. marshal" and "marshal" while questioning him on direct, disproving any notion of steering. D0067 at 98:4–21. Moreover, there is nothing in the record showing that the second boy was in the courtroom during the first boy's testimony. So there is no proof he heard the prosecutor once say "state marshal" during the first boy's re-direct. And this Court will not presume irregularities in the absence of a record affirmatively disclosing them. *In re F.W.S.*, 698 N.W.2d 134, 135 (Iowa 2005).

basis in Iowa case law. It's not how the Code is written." D0067 at 128:14–21. The State also understood King to be renewing his prior overbreadth and vagueness arguments, which while not "directly address[ed]" by the earlier dismissal-denial ruling, were not granted either. D0067 at 128:14–21.

The district court declined to add the instruction, reasoning it would "add an element to the statute." D0067 at 129:4–5. Nor did the court find the marshaling instruction "vague," as it "[p]retty much says you cannot do this, or you shouldn't do this, and it gives you pretty precise instruction what that means, so I don't think that's vague at all." D0067 at 129:8–11. And the court found the general-intent instruction covered King's argument to the jury that his claim was just "an offhand comment" rather than a voluntary and intentional invocation of law enforcement power. D0067 at 81:7–16, 129:16–130:2. The court never addressed overbreadth, nor did King request a ruling.

After closing statements, the jury convicted King of impersonating a public official. D0036, Verdict at 1 (08/20/2025). King did not file any posttrial motions disputing his conviction on statutory or constitutional grounds. The court entered a suspended sentence and placed King on probation for two years. D0041, Verdict at 1 (09/22/2025); D0044, Order Amend. Judg. at 1 (09/29/2025).

King now appeals.

ARGUMENT

I. Impersonating a public official under section 718.2 includes falsely claiming to be a federal law enforcement officer.

Error preservation.

The State agrees that, despite acquiescing to the State's reading of the statute at trial, King nevertheless raised and obtained a ruling on this issue through his motion to dismiss, which preserves error.

Standard of review.

Motions to dismiss criminal charges and questions of statutory interpretation are reviewed for legal error. *State v. Wells*, 629 N.W.2d 346, 351 (Iowa 2001).

Merits.

Beginning with the text, "[a]ny person who falsely claims to be or assumes to act as an elected or appointed officer, magistrate, peace officer, or person authorized to act on behalf of the state or any subdivision thereof, having no authority to do so, commits an aggravated misdemeanor." Iowa Code § 718.2. The district court correctly held that this statute criminalizes impersonating both state and federal law enforcement officers.

The trial information alleged King "falsely claimed to be or assumed to act as a peace officer or other public officer." D0014 at 1. The statute's final category prohibits impersonating any "person authorized to act on behalf of

the state." Iowa Code § 718.2. To that end, our legislature authorized federal law enforcement officers to arrest Iowans for nonfederal, Iowa crimes. *Id.* § 804.7A(2). Specifically, federal law enforcement officers are bestowed with "the same authority" and "the same immunity" as state peace officers to make "an arrest in this state for a nonfederal crime" when those officers have "reasonable grounds for believing that an indictable public offense has been committed and has reasonable grounds for believing that the person to be arrested has committed it." *Id.* § 804.7A(2), (2)(*a*). Thus, federal law enforcement officers fall squarely within the statute—they are persons authorized to act on behalf of the State by making arrests in Iowa for Iowa crimes.

Alternatively, federal law enforcement officers also fall within the "peace officer" portion of the statute. While "peace officer" is not defined within chapter 718, it is defined within the Criminal Law and Procedure Title's umbrella definitions. *See id.* § 801.4. That definition of "peace officers"—which are "sometimes designated 'law enforcement officers'"—lists various state and local officers and employees, and concludes by broadly sweeping in "such persons as may be otherwise so designated by law." *Id.* § 801.4(11)(*j*). Satisfying that catch-all here, the legislature has expressly

vested non-state officers—including federal law enforcement officers and out-of-state law enforcement officers—with peace officer authority.

Again, federal law enforcement officers have "the same authority" and "the same immunity" as state peace officers to arrest Iowans for Iowa crimes. *Id.* § 804.7A. Moreover, the legislature also recognizes "out-of-state peace officers," which are similarly defined to include law enforcement officers of other states and any "person employed full time by the United States government who is empowered to effect an arrest with or without a warrant for a violation of the United States Code and who is authorized to carry a firearm in the performance of the person's duties as a federal law enforcement officer." *Id.* § 804.7B(1). Those peace officers are similarly authorized to "make arrests and conduct other law enforcement activities in this state" under 28E agreements and enjoy the "same immunity from suit in this state as a peace officer." *Id.*

King acknowledges these provisions but asserts the contrasting use of "peace officer" and "federal law enforcement officer" within them is evidence that federal officers fall outside the catch-all. But that reasoning misses the work of these provisions. When designating another actor as a peace officer—as the catch-all requires—one would expect the legislature to reference the actor separately from a peace officer. And the function of these provisions is

to place these officers on equal footing—enjoying the same authority and the same immunity. *Id.* §§ 804.7A, 804.7B. It would defeat, rather than further, the work of these statutes to exclude federal officers from the very category the legislature sought to put them in. Indeed, imbuing federal officers with peace officer power should carry special significance when interpreting an offense that turns on false invocations of peace officer power. Thus, by conferring peace officer power to conduct law enforcement activities and make arrests for state crimes, the legislature sufficiently designated federal law enforcement officers as "peace officers" for purposes of the Criminal Law and Procedure Title. *Id.* § 801.4(11)(*j*).

Finally, even if federal law enforcement officers do not fall within the catch-all, that is not the end of the inquiry. Critically, the umbrella definitions within section 801.4 apply throughout the criminal title "unless the context otherwise requires." *See id.* § 801.4. Context clauses like this one are not superfluous—they set "an important qualification limiting the application of the definitions." *Sioux City Truck Sales, Inc. v. Iowa Dep't of Transp.*, 975 N.W.2d 333, 340 (Iowa 2022). The "context" of a context clause "does not refer to the peculiar factual circumstances presented by a case, but the context in which a defined term is used within the statute's substantive provision." *Id.* They are a legislative acknowledgment that a statute "may

require the application of a modified definition of the pertinent statutory terms to carry out the legislature's intent regarding the statutory scheme." *Id.* (citation omitted); *see also Iowa Right to Life Comm., Inc. v. Tooker*, 808 N.W.2d 417, 429 (Iowa 2011). And here, context requires that "peace officer" for purposes of the crime of impersonating a public official includes federal law enforcement officers.

This crime is about power. When Iowans are confronted with a false claim of power, the public dangers and harms are the same regardless of the feigned source of that power. *See People v. Ellis*, 696 N.E.2d 1, 3 (Ill. Ct. App. 1998) (holding state impersonation statute applied to defendant who held himself out as a peace officer of a fictitious jurisdiction, as the "color of authority" is the crux of the offense); *State v. Ramos-Arenas*, 290 P.3d 733, 736 (N.M. Ct. App. 2012) (holding state impersonation statute applied to defendant who posed as a federal border patrol agent, agreeing the statute was intended "to protect New Mexicans from the misuse of *any* appearance of authority to maintain order or make arrests").

Those dangers and harms are easy to locate. "Pretending to be a law enforcement officer could, without more, help someone improperly gain entrance to a home, school, or any other secured location." *United States v. Bonin*, 932 F.3d 523, 535 (7th Cir. 2019) (noting that by claiming to be a U.S.

Marshal, the defendant was given "cover to bring a gun and loaded magazine clip into a dark and crowded theater"). It could "assist an individual" in "abducting a child." *United States v. Chappell*, 691 F.3d 388, 392 (4th Cir. 2012). It provides clearance to ransack homes and steal items under the pretense of an official investigation. *See, e.g.*, *State v. Collins*, No. COA17-849, 2018 WL 3978007, at *1 (N.C. Ct. App. Aug. 21, 2018) (defendant appeared at victim's door wearing a badge and bulletproof vest, displayed a purported warrant, brandished a gun, entered the home, ordered the victim to his knees, bound his hands and feet with zip ties, and held him at gunpoint while another man wearing a "DEA" shirt searched the home and took valuables). And, fundamentally, the facade of authority may coerce those who would otherwise withhold information or refuse to obey. *State v. Reinier*, 628 N.W.2d 460, 468 (Iowa 2001) (citing *United States v. Griffin*, 530 F.2d 739, 742 (7th Cir. 1976) ("Subtle coercion, in the form of an assertion of authority or color of office by the law enforcement officers may make what appears to be a voluntary act an involuntary one.")).

Reading our impersonation statute to include those who wield false DCI credentials, but exclude those who wield false FBI credentials, when the nature of the misconduct and resulting harm is the same, severs the statute from its fundamental context. *Ramos-Arenas*, 290 P.3d at 735. That is why

the legislature includes context clauses—they are textual lane markers preventing courts from veering too far off course when applying umbrella definitions.

King's contrary context arguments are unavailing. First, labeling Chapter 718 as "Offenses Against the Government" is not instructive, as headings drafted by the code editor are "not a part of the law as enacted." *State v. Webb*, 156 N.W.2d 299, 301 (Iowa 1968); *State v. Kehoe*, 804 N.W.2d 302, 312 (Iowa Ct. App. 2011). But even treating the title as substantive, the language does not cut in King's favor. Instead, within chapter 718, the legislature clarifies when a crime is limited to "the government *of the state or any subdivision thereof*." *See* Iowa Code § 718.1 (insurrection). If King were correct that using "the Government" in the title necessarily limited all offenses to just the State and its subdivisions, then that clarifying language within section 718.1 is superfluous. *See State v. Lind*, 37 N.W.3d 23, 34 (Iowa 2026) (applying the surplusage canon).

Further, King's reliance on the article "the" within the title is similarly unsuccessful. Appellant Brief at 31. If "the government" only meant "one, specific government—the Government *of Iowa*," as King urges, then none of the offenses could apply to municipalities, which are distinct government units apart from state government. *See generally* Iowa Const. art. III, § 38A.

But the plain language of the offenses proves otherwise. So Chapter 718's label does nothing to exclude federal law enforcement officers from the class of persons who may not be impersonated under section 718.2.

Second, King's legislative history supports the State. When "peace officer" was added to the impersonation statute, the criminal-procedure title's definition of "peace officer" included—like it does today—a catch-all sweeping in "[s]uch persons as may be otherwise so designated by law." Iowa Code § 13405(5) (1927). But Iowa had not yet vested federal law enforcement officers with peace officer authority. *See generally id.* ch. 621. That did not happen until 1990. *See* 1990 Iowa Acts ch. 1014, § 1 (creating section 804.7A). And when it did, the Act was entitled, "Peace Officer Status for Federal Law Enforcement Officers." *Id.* So King's legislative-history approach confirms the legislature intended federal law enforcement officers to be peace officers.

Finally, King misuses *State v. Sullins,* 509 N.W.2d 483 (Iowa 1993). There, a juvenile court officer tried to take protective custody of a child at a hospital without a court order, but the parents, with the help of their attorney, took the child home with them. *Id.* at 484. The attorney was charged with interfering with official acts, and the fighting issue was "whether a juvenile court officer has the power and authority of a peace

officer to take custody of a child without a court order." *Id.* at 485. The court found that then-chapter 232 allocated duties to both peace officers and juvenile court officers, but only vested peace officers with the power to take custody of a child without a court order. *Id.* at 484–85. And it rejected the State's attempt to collapse the distinction between the two officers within chapter 232, given their disparate roles and powers within our child-welfare scheme. *Id.* at 485. As a result, the juvenile court officer lacked peace officer authority to take custody of the child, so the attorney had not interfered with any official act. *Id.* at 484–86.

Sullins did not turn on a superficial difference in terminology between juvenile court officers and peace officers. Instead, the lesson of *Sullins* is that when a statutory scheme assigns different authority to different actors, courts will not erode the legislature's clearly drawn boundaries. Unlike the judicial court officers in *Sullins*, however, federal officers have been vested with peace officer authority to enforce Iowa's laws and conduct law enforcement activities in Iowa, placing them on equal footing within our criminal scheme. So King's position is the inverse of *Sullins*—urging this Court to erect boundaries where the legislature has chosen to remove them.

Indeed, if a third party interfered with a federal officer's arrest or other law enforcement activity, there is no question under *Sullins* whether that

federal officer was acting as a peace officer. *See* Iowa Code §§ 804.7A, 804.7B. It therefore follows that if that same federal officer turned out to be a fraud, then the offender has unlawfully impersonated a peace officer.

In sum, section 718.2 criminalizes those who falsely impersonate a federal law enforcement officer. The statute encompasses those who are authorized to act on behalf of the State and those who are designated as peace officers, both of which include federal officers. And even focusing only on "peace officer," and even assuming the umbrella definition's catch-all does not apply, that definition's context clause requires this Court to interpret terms in light of the statute's context, which is protecting Iowans from the misuse of any appearance of authority. Because King's conduct falls at the heart of this offense—wielding false law enforcement credentials to command and threaten minors—the matters stated in the trial information constituted the offense charged. Thus, the district court correctly refused to dismiss this case.

II. Impersonation is a general-intent crime in Iowa, but even if the specific-intent instruction should have been given, the error was harmless.

Error preservation.

The State agrees King preserved error by requesting the additional instruction and obtaining a ruling below.

Standard of review.

Challenges to jury instructions are reviewed for legal error. *State v. Cooley*, 21 N.W.3d 137, 141 (Iowa 2025).

Merits.

A. Impersonating a public official is a general-intent crime in Iowa.

King next argues that the district court erred by refusing to include a separate instruction requiring the State to prove King falsely claimed to be a peace officer "with the purpose to make someone believe he or she is a peace officer." D0032. Though phrased differently, the State agrees this is functionally an intent-to-deceive instruction. The district court correctly declined to provide this extra instruction.

Again starting with the text, "[a]ny person who falsely claims to be or assumes to act as" a public official, "having no authority to do so, commits an aggravated misdemeanor." Iowa Code § 718.2. As King acknowledges, "intent to deceive" appears nowhere in the statute. *State v. Buchanan*, 549

N.W.2d 291, 294 (Iowa 1996) ("By its terms, the statute criminalizing interference with official acts does not require an intent to do a further act or achieve some additional consequence."); *see also State v. Messer*, 91 P.3d 1191, 1193 (Kan. 2004) (finding state impersonation statute's "plain language does not require proof of an overt act beyond the false representation itself, and it does not require proof of a specific intent to deceive").

Instead, King locates his additional mens rea element within the term "falsely," relying on *State v. Hoyman*, 863 N.W.2d 1, 7–16 (Iowa 2015). There, our supreme court considered whether the fraudulent-practices statute—which criminalizes making an entry in a public record "knowing the same to be false"—required the State to prove that the errant entries were made with an intent to deceive. *Id.* (quoting Iowa Code § 714.8(4)). A survey of caselaw interpreting "false" yielded mixed results—some courts interpreted "false" to encompass an intent to deceive, while others did not. *Id.* at 10–13. The "divergence of interpretations of the word 'false'" meant the term was ambiguous, so the court turned to canons of construction. *Id.* at 13. And considering the nature of the offense, overbreadth concerns, and legislative history, the court held that "false" for purposes of the errant-entry crime required proof of an intent to deceive. *Id.* at 13–16. But the

impersonation statute is materially distinguishable, and our familiar canons of construction lead to a different result here.

First, when the legislature wants impersonation coupled with an intent to deceive, it knows how to do so. Wearing "a uniform likely to be confused with the official uniform of [a department of public safety] officer or employee, with intent to deceive anyone," is "a simple misdemeanor." Iowa Code § 80.16. Similarly, impersonating "a decorated military veteran with the intent to deceive another person for the purpose of gaining any real or anticipated monetary gain" is a "serious misdemeanor." *Id.* § 718B.1; *see also id.* § 68A.506(1)(*b*) (posing as another person while making campaign calls "without that person's consent and with intent to deceive the recipient of a call about the identity of the caller" is a serious misdemeanor). Under the *expressio unius est exclusio alterius* canon, including an intent-to-deceive element in other impersonation statutes but not in section 718.2 is strong evidence that the omission is intentional. *Buchanan*, 549 N.W.2d at 294; *Lind*, 37 N.W.3d at 33.

Second, *Hoyman*'s legislative-history analysis confirms impersonation is a general-intent crime. *See* 863 N.W.2d at 15. When the statute was incorporated in the new comprehensive criminal code in the 1970s, contemporary commentary noted that the offense "represents an expansion

of the prior law," sweeping in more protected offices. Kermit L. Dunahoo, *The New Iowa Criminal Code: Part II*, 29 Drake L. Rev. 491, 591 (1980). To commit the crime, one must have "knowledge of the falsity or at least the lack of any reasonable belief that one has the authority which he assumes to exercise." *Id.* (internal quotations omitted). And, relevant here, "[t]he gravamen of this offense is the act of impersonation or mere pretense, and thus another person need not be defrauded, nor need there even be such a purpose." *Id.* Another leading treatise similarly noted the lack of specific intent, explaining "[t]he mere pretense that one is an officer, magistrate, peace officer, or person authorized to act on behalf of the state is sufficiently damaging to the state, and to those who would deal with the state, to justify the penalty." John J. Yeager & Ronald L. Carlson, *Iowa Criminal Law and Procedure* § 403 (1979).

Taking King's Code-structure argument further, reading the errant-entry offense to require a specific intent to deceive another is consistent with its placement within the "Theft, fraud, and related offenses" chapter—a collection of crimes that target victims for financial gain. *Hoyman*, 863 N.W.2d at 15; Kermit L. Dunahoo, *The New Iowa Criminal Code*, 29 Drake L. Rev. 237, 383 (1980) (opining the errant-entry offense is best understood as "attempted Theft," and thus requires some greater intent, given its

placement among other financial-gain offenses). Impersonation, conversely, is placed within the "Offenses Against the Government" chapter—crimes that may not target a specific person and instead undermine the integrity of government operations and public trust. *Compare* Iowa Code § 714.8 (criminalizing making or altering public records "knowing the same to be false"), *with id.* § 718.5 (criminalizing making or altering public documents without the "right or authority to do so").

The uniform criminal jury instructions also reflect this general-intent understanding. *See* Iowa Crim. Jury Instruction 1800.2 (setting forth the elements as: (1) "On or about [a date], the defendant falsely [claimed to be] [assumed to act as] (describe public office)" and (2) "The defendant had no authority to do so"); *see also State v. Booth-Harri*s, 942 N.W.2d 562, 580 (Iowa 2020) (noting this Court is "slow to disapprove of the uniform jury instructions" (citation omitted)).

Contrary to King's assertion, these sources also align with an early understanding of the crime. *See McCue v. Wapello Cnty.*, 10 N.W. 248, 252 (Iowa 1881). Liability attaches when there is no "claim of right"—the impersonator is not an officer—and acts in bad faith—claiming to be an officer anyway, knowing the claim is false. *Id.*

Finally, for the "statutory language" of the errant-entry offense to "make sense," and to forestall overbreadth and absurd-result concerns, *Hoyman* read the crime to exclude immaterial misstatements within an otherwise valid public record. 863 N.W.2d at 13–14. But a false claim of power is different—it is a complete wrong in itself that triggers consequences regardless of the impersonator's subjective intentions.

"Statutes that prohibit falsely representing that one is speaking on behalf of the Government, or that prohibit impersonating a Government officer, also protect the integrity of Government processes, quite apart from merely restricting false speech." *United States v. Alvarez*, 567 U.S. 709, 721 (2012). This crime "maintain[s] the general good repute and dignity of government service itself." *Id.* (cleaned up). "Because police officers' unusual power means that members of the public generally consider all interactions with law enforcement as potentially high-stakes in nature, such lies threaten not only significant second-party harms to their individual listeners but also third-party harms to the public's trust in, and thus the effectiveness of, law enforcement." Helen Norton, *Lies and the Constitution*, 2012 Sup. Ct. Rev. 161, 198 (2012). Indeed, "[m]embers of the public who cannot be confident that police officers are who they claim to be will be less likely to cooperate with the police." *Id.*

The mere presence—or more aptly here, perceived presence—of law enforcement incites responsive behavior regardless of the officer's or imposter's specific intent. Caselaw is brimming with examples of persons altering their behavior in response to mere law enforcement presence—conduct that is often used against them. *See State v. Corbett*, 758 N.W.2d 237, 241–42 (Iowa Ct. App. 2008) (explaining "a defendant's reaction to police presence is a factor in a *Terry* analysis"). In this way, section 718.2 can be understood as a corollary to our caselaw incentivizing certain behavior in the presence of law enforcement—ensuring that presence is always legitimate.

Further, King's overbreadth concern misses the distinction between knowledge and specific intent. "[G]eneral criminal intent refers to whether the defendant intended deliberate or knowing action, as opposed to causing the prohibited result through accident, mistake, carelessness, or absent-mindedness." *Buchanan*, 549 N.W.2d at 294 (citation omitted). Specific intent denotes "a special mental element which is required above and beyond any mental state required with respect to the actus reus of the crime." *Id.* (citation omitted). So the lack of specific intent does not transform the offense into an overbroad, magic-words crime—merely uttering a phrase is not enough. To the contrary, the speaker must claim to be a public official

while knowing that he is not. And the harm to the State flows from that knowing misuse of power no matter the impersonator's further subjective intent. Yeager & Carlson, § 403.

So too does King's overbreadth argument overlook the requirement that the impersonator make a "claim." Iowa Code § 718.2. Giving "claim" its ordinary meaning, a person must be making a factual assertion to fall within the offense. *See Claim, Webster's New World Dictionary, Second College Edition* (defining "claim" to mean "to state as a fact or as one's belief (something that may be called into question); assert"); *Claim*, *Black's Law Dictionary* (12th Ed. 2024) ("A statement that something yet to be proved is true."); *see also Alvarez*, 567 U.S. at 722 (plurality op.), 740 (Alito, J., dissenting). As discussed below, this disposes with of all of King's hypothetical overbreadth concerns—trick-or-treaters, actors, and satirists are not in fact "claiming" to be a police officer.

Taking the statute as a whole, the general-intent component protects those whose erroneous claim of authority was the product of good faith or an honest mistake. For instance, an official who earnestly but erroneously believed he remained in hold-over status or an officer who had been terminated but had not yet been informed of the termination would not be liable. But bad-faith actors like King, who hold themselves out as law

enforcement officers despite knowing they hold no such power, would incur criminal liability, as their behavior jeopardizes not only the safety of the immediate listeners, but also the broader reliability and repute of law enforcement. *Bonin*, 932 F.3d at 538 (noting impersonator's conduct "undermin[ed] the integrity and professionalism of the U.S. Marshals Service").

At bottom, *Hoyman* holds that "false" is ambiguous, not that it always implies a specific-intent element. 863 N.W.2d at 13. Disambiguating "false" here—contrasting it with other impersonation statutes that contain express intent-to-deceive elements, considering its legislative history and structure, and centering the nature of the offense—leads to a different result. Impersonation is a general-intent crime by its text, nature, and history. Thus, King's proposed instruction was a misstatement of the law and the district court did not err by omitting it.

B. Even assuming a specific-intent instruction should have been given, the error was harmless.

Alternatively, this Court may presume the district court should have given the intent-to-deceive instruction and still affirm King's conviction, as the error was harmless. *State v. Thompson*, 35 N.W.3d 569, 574–82 (Iowa 2026) (holding harmless-error analysis applies to jury instructions that erroneously omit an element of the offense); *see also Bonin*, 932 F.3d at 538–

39 (finding failure to submit a mens rea element for impersonation was harmless error because "no jury could reasonably find that Bonin's continual falsehoods were not knowing and intentional"). The inescapable result from the uncontested trial evidence is that King intended to make the boys believe he was a law enforcement officer.

King told the boys he was a marshal. D0067 at 97:19–98:7, 103:14–23. Under that authority, he commanded them to go outside and fight. D0067 at 100:5–7, 104:15–105:16. That evidence alone—a verbal claim of authority coupled with a directive—is enough to prove that he wanted the boys to believe he was a marshal. *See Murray v. State*, 505 S.E.2d 746, 747–49 (Ga. 1998) (affirming verdict that defendant falsely claimed to be a peace officer with the intent to mislead based solely on defendant "represent[ing] to the victims that he [and his accomplice] were police officers").

And to remove any doubt, he also told one of the boys, "if you want to step outside with me, I can show you my badge." D0067 at 105:12–16. There is no purpose for offering to show a fake badge other than to convince the boy that he was in fact in law enforcement. *See United States v. Diamond*, 102 F.4th 1347, 1354 (11th Cir. 2024) ("[W]hen asked for his ID, Diamond presented a fake badge—an overt act to deceive the deputies further.").

Given that undisputed evidence, King's defense at trial focused on the fact that no one believed him. His motion for acquittal was limited to this point, arguing "[a]ll the testimony so far is that no one believed Mr. King to have been law enforcement or that he acted consistent with law enforcement, so we believe because" of "that insufficiency," the court "should grant our motion for judgment of acquittal." D0067 at 119:18–120:7. The State resisted, correctly noting the law "does not require that the witnesses believed [King's] claim, just simply that he claimed it." D0067 at 120:9–17. The State reaffirmed this position during closing—reminding the jury that just because King was not successful at convincing the boys does not mean he was "any less guilty of this crime." D0067 at 133:11–20; *see also* D0067 at 137:10–14 ("I'd like you to remember that the law doesn't care what the witnesses believed. It doesn't care if they believed his claim, it cares that he made that claim . . . .").

King points to these portions of the record to argue the State ran away from intent at trial. Appellant Brief at 52. But King conflates intent and success. The State's evidence proves beyond any reasonable doubt that King tried to convince these boys he was a marshal so they would obey him—he claimed he was a marshal, he issued a command, and then offered to cement his bona fides with a badge. And King countered none of this evidence at

trial, leaving these dispositive facts uncontested. *See Thompson*, 35 N.W.3d at 576 (relying on "overwhelming evidence" that the defendant "didn't contest" to find a defective instruction harmless beyond a reasonable doubt).

What the parties did contest was whether the State had to prove King *convincingly* impersonated an officer. But like a burglar who ultimately never steals anything from a home, it's the intent that matters, not the execution. *State v. Redmon*, 244 N.W.2d 792, 798 (Iowa 1976); *see also Self v. State*, 537 S.E.2d 723, 726 (Ga. Ct. App. 2000) (explaining defendant "identified himself as a police officer and an undercover officer to six individuals. He carried a gun, flashed a badge, and said he was looking for drugs. There can be no doubt that Self intended to mislead his victims into believing he was a police officer, and it is irrelevant whether his deception was effective"). So it does not matter whether the boys were in fact fooled.

The State's evidence is not grounded in conjecture or speculation, as King urges. True, King did not announce to the boys that he was lying to them in an effort to deceive them. So the boys generally, and credibly, declined to speculate about what King was thinking during their testimony. Notably, however, the first boy surmised that King made his claims to "make us think that he had authority." D0067 at 98:4–7. In any event, "[i]t is the rare case in which a criminal defendant openly proclaims his further intent while

committing his crime," and so specific intent is shown by the totality of the circumstantial evidence. *State v. Hawkins*, 27 N.W.3d 562, 569 (Iowa 2025).

Here, that evidence is conclusive. *See State v. Seiler*, 342 N.W.2d 264, 268 (Iowa 1983) (holding erroneous instruction not prejudicial because the evidence "conclusively" proved the missing element). King verbally claimed to be a marshal, commanded the boys under that feigned law enforcement authority, and then took the additional step of corroborating his claim by offering to show a badge. No reasonable jury could find that King did not intend to deceive the boys into believing he was a marshal. Thus, even assuming the court should have included an intent-to-deceive instruction, the error was harmless beyond a reasonable doubt and King's conviction should be affirmed.[2]

Finally, King's constitutional claims on appeal are all premised on the lack of a specific-intent requirement in section 718.2. *See* Appellant Brief at 60, 72. Because the State proved he acted with the intent to deceive the boys, that not only resolves King's statutory instructional issue, but also obviates his constitutional claims. Under the doctrine of constitutional avoidance, *see State v. Williams*, 695 N.W.2d 23, 30 (Iowa 2005), this Court can find the

[2] If this Court disagrees that any error was harmless, then the correct remedy is remand for a new trial, not acquittal. *See Cooley*, 21 N.W.3d at 145.

State proved King intended to deceive the boys and then stop there, because with that finding in hand, King's conviction comports with all of his statutory and constitutional demands of the statute.

III. Section 718.2 is facially constitutional.

Error preservation.

Except for a facial vagueness challenge, King's constitutional claims are unpreserved.

Starting with his content-based claim, this issue was never mentioned below. King never argued the statute was improperly content based and never articulated any tier of scrutiny. The most King cites in support of preserving this issue is his unparticularized statement while debating jury instructions that the statute "impermissibly burdens free speech." Appellant Brief at 53; D0067 at 127:5–11. But other than pointing to vagueness and overbreadth, King never said how. D0067 at 127:5–11. Of course, there are many ways a statute could "burden" free speech—a law could unreasonably curb a public forum, induce too much self-censorship, or be too viewpoint-biased, to name a few. And King's failure to argue the issue is mirrored by the lack of a ruling. The district court never decided whether section 718.2 was content based, what tier of scrutiny should apply, or whether that tier was satisfied. As a result, the issue was neither raised nor ruled on below,

and so King cannot litigate it for the first time on appeal. *Halbur v. Larson*, 14 N.W.3d 363, 373 (Iowa 2024) ("Error preservation requires a final ruling on a specific motion or request.").

As for overbreadth, King raised one version of the argument during the dismissal stage—challenging the lack of an additional actus-reus element—and a different version of the argument during trial—challenging the lack of a specific-intent element. Neither was ever adjudicated. *Cf. id.* (refusing to allow parties "to cherry-pick the best way to attack the jury's verdict and district court judgment without ever finalizing a legal theory and presenting it to the district court during trial"). At trial, the prosecutor acknowledged King's actus-reus overbreadth argument was never ruled on, let alone in his favor. D0067 at 128:19–21. But this acknowledgment is not helpful to King's cause, as parties cannot stipulate to error preservation. *Halbur*, 14 N.W.3d at 371. Without a ruling on either theory of overbreadth, this court has nothing to review, and error is not preserved. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

Standard of review.

Constitutional rulings are reviewed de novo. *State v. Rhodes*, 6 N.W.3d 741, 744 (Iowa 2024). While King cites both the United States and Iowa Constitutions, he does not advance any separate analysis or standard under

our state constitution. *State v. Hidlebaugh*, 32 N.W.3d 783, 791 n.2 (Iowa 2026). And so the federal standards control. *Id.*

Merits.

A. The statute is not unconstitutionally vague.

First considering King's only preserved constitutional issue, King mounts a facial vagueness challenge to section 718.2, focusing on the hypothetical rights of trick-or-treaters and actors rather than argue his conduct fell outside the bounds of fair notice and reasonable enforcement.

The heights to which King must climb to prevail in a facial challenge are well established—these challenges are "disfavored,"[3] "strong medicine,"[4] "wrecking balls,"[5] "best when infrequent,"[6] and, most directly, "hard to win."[7] Motivating these admonitions is the understanding that facial challenges "run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader

[3] *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008).

[4] *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973).

[5] *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 493 (2018) (Ginsburg, J., dissenting).

[6] *Sabri v. United States*, 541 U.S. 600, 608–09 (2004).

[7] *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024).

than is required by the precise facts to which it is to be applied." *Wash. State Grange*, 552 U.S. at 450 (cleaned up).

King carries the exceptional burden of proving Iowa's impersonation statute "is impermissibly vague in all of its applications." *Village of Hoffman Ests. v. Hoffman Ests.*, 455 U.S. 489, 497 (1982). When weighing his challenge, this Court "presumes the statute is constitutional and gives any reasonable construction to uphold it." *State v. Nail*, 743 N.W.2d 538, 539 (Iowa 2007) (cleaned up).

Due process forbids enforcing vague prohibitions within criminal statutes. *State v. Showens*, 845 N.W.2d 436, 441 (Iowa 2014). "The void-for-vagueness doctrine centers on the concept of fair notice." *State v. Geddes*, 998 N.W.2d 166, 179 (Iowa 2023). Only when a statute "is couched in language so vague, indefinite and uncertain that courts are unable to determine, with any reasonable degree of certainty, what the legislature intends, or so incomplete or so conflicting or inconsistent in its provisions that it cannot be executed it will be declared to be inoperative and void." *State v. Coppes*, 78 N.W.2d 10, 14 (Iowa 1956) (cleaned up). Indeed, "statutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language." *United States v. Nat'l Dairy Prods. Corp.*, 372 U.S. 29, 32 (1963). And the

vagueness doctrine recognizes that "a degree of indefiniteness is necessary to avoid unduly restricting the applicability of" a penal statute. *Pottawattamie Cnty. v. Iowa Dep't of Envtl. Quality Comm'n*, 272 N.W.2d 448, 453 (Iowa 1978).

Reducing these principles to discrete elements, a statute must (1) give "persons of ordinary understanding fair notice that certain conduct is prohibited," and (2) "provide those clothed with authority sufficient guidance to prevent the exercise of power in an arbitrary or discriminatory fashion." *Geddes*, 998 N.W.2d at 179 (citation omitted).

King makes no argument under the first prong, nor could he. Section 718.2's standard of conduct is readily ascertainable and provides clear notice of what conduct is disallowed. One need only look to King's actions for an illustration—he claimed to the boys that he was a marshal, he was not in fact a marshal, and he knew he was not when he made the claim.

King instead leans on the second prong, urging the law "gives law enforcement no standard by which to gauge whether a person has violated the statute" and questioning how officers are to "distinguish the 'acceptable' impersonations from 'unacceptable' ones." Appellant Brief at 69, 71. In support, King identifies three situations where he believes the law's application is unclear—a mere "offhand remark," children or adults wearing

costumes on Halloween, and actors performing on stage. But throughout his discussion, King misses the actual inquiry before this Court—whether the law is sufficiently concrete to enable consistent enforcement.

Contrasting section 718.2 with the too-vague loitering ordinance in *City of Chicago v. Morales* is instructive. 527 U.S. 41, 53 (1999). There, Chicago criminalized "criminal street gang members" from "loitering" in public places, and "loitering" was defined to mean "remaining in any one place with no apparent purpose." *Id.* at 46–47 (cleaned up). The United States Supreme Court found the no-apparent-purpose standard was "inherently subjective because its application depends on whether some purpose is 'apparent' to the officer on the scene." *Id.* at 62. The Court could not locate "any standard by which they can judge whether an individual has an '*apparent* purpose.'" *Id.* at 66 (O'Connor, J., concurring).

Here, conversely, no part of section 718.2 invites subjectivity. A person either is or is not the official he claims to be. A person's employment by a law enforcement agency, or election or appointment to office, is objective and verifiable. The standard by which an officer can judge whether a person violates the statute is consistent across contexts and clear from the text.

As for King's three examples of vagueness, none withstand scrutiny. First is King's belief that the statute could reach "a mere offhand remark."

Appellant Brief at 68. But this does not show the statute is too vague to enforce. To the contrary, the statute provides objective benchmarks for measuring that remark—whether it was a claim of official status, whether the speaker in fact holds that official status, and if not, whether claim was made knowingly.

King's true argument here is that discretion would likely leave minor impersonations untouched while more glaring or dangerous impersonations would face consequences. But "[m]any laws can be discriminatorily enforced, traffic laws for example." *Geddes*, 998 N.W.2d at 181. That a person driving five miles-per-hour over the speed limit is unlikely to be pulled over because law enforcement will likely target more dangerous drivers does not render our speed-limit laws unconstitutionally vague. Instead, vagueness asks whether the statute gives "sufficient guidance" to those who enforce it. *Id.* (citation omitted); *see also Grayned v. City of Rockford*, 408 U.S. 104, 110, 114 (1972) (holding anti-noise ordinance that was "marked by flexibility and reasonable breadth, rather than meticulous specificity" was sufficiently clear, and cautioning that enforcement "always" involves "the exercise of some degree of police judgment" (citation omitted)); *State v. McLamb*, 932 P.2d 266, 270–71 (Ariz. Ct. App. 1996) (finding ordinance barring unauthorized wearing of police department insignia was not unconstitutionally vague

because it "is not dependent on the judgment of police officers" and cautioning a "statute is not rendered unconstitutionally vague because there is a theoretical potential for arbitrary enforcement or the exercise of discretion by a law enforcement officer or prosecutor, or even if the conduct is prevalent and ignored").

Second, King's Halloween hypothetical is similarly unavailing. A trick-or-treater who excitedly shouts "police officer" in response to the question "who are you?" on Halloween is not actually claiming to be vested with the power of arrest—she is describing her costume. And the lack of criminality does not turn on the effect on the listener, as King presumes, but on the nature of making a "claim." Neither a child "playing cops and robbers" nor an adult "donning a police officer costume at a Halloween party" can "reasonably be interpreted as stating that they are actually police officers." *Chappell*, 691 F.3d at 399 (cleaned up); *see also People v. Rathert*, 6 P.3d 700, 785 (Cal. 2008) (rejecting argument that California's impersonation statute "must be read to contain a specific intent element in order to avoid criminalizing innocent behavior," as "[t]he ancient customs of masquerade and trick-or-treating" have "survived" the statute and it "clearly was not designed to eliminate these innocuous practices").

Finally, the statute does not imperil our state's many playhouses for the same reason. Even the most talented Officer Krupke is not claiming to in fact have peace officer authority to haul unruly Jets down to the station—he is reciting dialogue in character. *See Alvarez*, 567 U.S. at 722 (treating as a given that the Stolen Valor Act, despite its far-reaching text, "would not apply to, say, a theatrical performance"); *Chappell*, 691 F.3d at 393 (rejecting "ludicrous" argument that state impersonation statute could criminalize theater performers).

Far from proving that section 718.2 is "impermissibly vague in all of its applications," King has not shown it is vague in any application. *State v. Duncan*, 414 N.W.2d 91, 96 (Iowa 1987). Nor was King charged for making an offhand remark, trick-or-treating, or soliloquizing—he stood trial for seriously and threateningly trying to force the boys outside of a restaurant under the false pretense of official power. His conduct proves a constitutionally valid application of the statute. *See id.* (rejecting facial vagueness claim when the defendants' actions presented a reasonable and foreseeable application of the statute); *State v. Hepburn*, 270 N.W.2d 629, 631 (Iowa 1978) (holding if a statute "is constitutional as applied, the litigant cannot 'borrow' the claim of unconstitutionality of another"). As a result, the district court's ruling that section 718.2 is not vague should be affirmed.

B. The statute is not overbroad and *Alvarez* supports the State.

King's overbreadth challenge—even if there were a ruling below to review, which there is not—fares no better. The "overbreadth doctrine is not casually employed." *Los Angeles Police Dept. v. United Reporting Pub. Corp.*, 528 U.S. 32, 39 (1999). Given "the wide-reaching effects of striking down a statute on its face at the request of one whose own conduct may be punished despite the First Amendment," courts "have recognized that the overbreadth doctrine is strong medicine and have employed it with hesitation, and then only as a last resort." *Id.* (cleaned up).

Overbreadth claims are a type of facial challenge where the movant must prove the statute "prohibits a substantial amount of protected speech relative to its plainly legitimate sweep." *Iowa Sup. Ct. Atty. Disc. Bd. v. Neff*, 5 N.W.3d 296, 311 (Iowa 2024) (cleaned up).

"The doctrine seeks to strike a balance between competing social costs." *United States v. Williams*, 553 U.S. 285, 292 (2008). On one side of the scale, "the threat of enforcement of an overbroad law deters people from engaging in constitutionally protected speech, inhibiting the free exchange of ideas." *Id.* But on the other, "invalidating a law that in some of its applications is perfectly constitutional—particularly a law directed at conduct so antisocial that it has been made criminal—has obvious harmful

effects." *Id.* To maintain this balance, "the requirement that a statute's overbreadth be *substantial*, not only in an absolute sense, but also relative to the statute's plainly legitimate sweep" is "vigorously enforced." *Id.*

Relevant here, defendants must do more than "summon forth an endless stream of fanciful hypotheticals." *Id.* at 301. There must be "a *realistic danger* that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds." *Members of City of Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984) (emphasis added). Thus, King must show "from the text of the law *and from actual fact*" that section 718.2 is substantially overbroad. *Virginia v. Hicks*, 539 U.S. 113, 122 (2003) (emphasis added) (cleaned up). Against this backdrop, King has not shown that keeping section 718.2 on the books presents a realistic danger of significantly compromising First Amendment protections.

"The first step in overbreadth analysis is to construe the challenged statute." *Williams*, 553 U.S. at 293. Again, "claim" requires a factual assertion. *See Claim, Webster's New World Dictionary, Second College Edition* (defining "claim" to mean "to state as a fact or as one's belief (something that may be called into question); assert"); *Claim*, *Black's Law*

Dictionary (12th Ed. 2024) ("A statement that something yet to be proved is true."); *see also Alvarez*, 567 U.S. at 722 (plurality op.), 740 (Alito, J., dissenting). This ordinary meaning comports with nature of "claiming" official status—it is an objective fact that can be proved with near certainty and is within the speaker's personal knowledge. And the general-intent requirement shields those whose erroneous claim was nevertheless founded on a good-faith or reasonable belief in office.

So the text immediately disposes with King's examples of overbreadth—a trick-or-treater, partygoer, actor, or Saturday Night Live satirist is not "claiming" to in fact be a police officer or the President. *See Williams*, 553 U.S. at 301 (declining to find statute overbroad when the proffered hypothetical did "not implicate the statute"). What's more, King's examples are self-defeating. Despite this version of the law being in effect for decades, none of this conduct has been chilled—presidents have been endlessly satirized, children and adults still dress up as cops on Halloween, and *Law and Order: Special Victims Unit* remains on the air. Thus, both "the text of the law" and "actual fact" show section 718.2 poses no realistic danger of chilling protected speech. *Hicks*, 539 U.S. at 122; *Neff*, 5 N.W.3d at 313.

King's heavy reliance on the rights of satirists and parody impersonators—a class of which he never claims to be a member—

underscores the judiciary's aversion to facial challenges. "[T]he mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge." *Vincent*, 466 U.S. at 800. That some defendants who engaged in plainly protected expression would have a First Amendment defense to prosecution does not render a statute overbroad. *Neff*, 5 N.W.3d at 313. Instead, the question is whether section 718.2, as properly understood, "criminalizes a substantial amount of protected expressive activity" in relation "to the statute's plainly legitimate sweep." *Williams*, 553 U.S. at 292, 297. It does not.

Section 718.2 "is not a targeted restriction on First Amendment activity." *Geddes*, 998 N.W.2d at 181. Indeed, King greatly overstates the constitutional protections afforded to those who falsely claim to be public officials. If the First Amendment protects false assertions of government power, *Alvarez* certainly does not require it. To the contrary, *Alvarez* was explicit that "[t]his opinion does not imply" that offenses like "impersonating a government officer" are "somehow vulnerable." 567 U.S. at 721.

Alvarez contrasted prior cases affording no First Amendment protection to lies that cause "cognizable harm" with the largely benign lies barred by the Stolen Valor Act. *Id.* at 719. Unlike criminalizing lying about being a Medal of Honor recipient—an offense that "targets falsity and

nothing more"—statutes "that prohibit impersonating a Government officer" prevent cognizable harm. *Id.* at 719, 721. They "protect the integrity of Government processes, quite apart from merely restricting false speech." *Id.* at 721. "Even if that statute may not require proving an actual financial or property loss resulting from the deception, the statute is itself confined to maintaining the general good repute and dignity of government service itself." *Id.* (cleaned up); *see also id.* at 748–49 (Alito, J., dissenting).

Importantly, *Alvarez* is a plurality case, with no reasoning commanding a majority of the Court. The four-justice plurality (Roberts, C.J., Kennedy, Ginsburg, Sotomayor, JJ.) took care to stress that their opinion did not render impersonation offenses "vulnerable." *Id.* at 721. And the three-justice dissent (Alito, Scalia, Thomas, JJ.) found the kind of lying involved in impersonation crimes "merit[s] no First Amendment protection." *Id.* at 748. Only Justice Breyer's concurring opinion, joined by Justice Kagan, suggested impersonation statutes may need a limiting principle. *See id.* at 735. King heavily relies on Justice Breyer's concurrence to argue that impersonation offenses like Iowa's cannot stand after *Alvarez*. But seven of the nine Justices disagreed.

Again, claiming to be an officer gives cover to enter secure areas, carry weapons, restrict others' liberty, and deprive others of property. The

appearance of authority alone can coerce compliance from those who would otherwise choose to leave or not obey. Lying about receiving the Medal of Freedom—an honor that, while singular, does not give license to arrest, detain, search, or seize—is materially distinct from claiming active police power.

Relying on *Alvarez*, the United States Court of Appeals for the Fourth Circuit found Virginia's impersonation statute "prohibits a species of identity theft in which there is little or no communicative value. This class of identity theft plays 'no essential part of any exposition of ideas.'" *Chappell*, 691 F.3d at 395 (quoting *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942)). Scholars agree. *See* Alan K. Chen & Justin Marceau, *Developing a Taxonomy of Lies Under the First Amendment*, 89 U. Colo. L. Rev. 655, 703 (2018) (noting "universal agreement" that a statute barring impersonating public officials "does not trigger constitutional concerns because" such impersonations "unambiguously have no or little social value—that is, they fall at the very end of the continuum of social value—and also cause cognizable harms (as well as sometimes yielding undeserved benefits for the liar)" and that "[t]he state may regulate or even ban [these] lies because the harms here are presumptive"); Norton, 2012 Sup. Ct. Rev. at 195–98.

In all, section 718.2 does not criminalize a substantial amount of protected expressive activity either in isolation or in relation to its legitimate sweep. Interpreting the provision correctly, protected artistic performances, Halloween costumes, and satire fall outside its reach. And what's left are knowingly false claims of official power, which cause cognizable harm and enjoy no constitutional protection. Thus, "the ratio of unlawful-to-lawful applications is" not "lopsided enough to justify the strong medicine of facial invalidation for overbreadth." *Neff*, 5 N.W.3d at 313 (cleaned up). Because constitutional applications of section 718.2 abound and King's proffered impermissible applications conflict with the text, exist only at the margins, and have no basis in fact, his overbreadth challenge fails.

C. The statute is content neutral and satisfies intermediate scrutiny.

Finally, King's argument that section 718.2 is an improper content-based restriction on speech is wholly unpreserved, so the Court must stop here. But even addressing the issue in abundance of caution, it fails on the merits.

"The principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). "As a general rule, laws that by their terms distinguish favored

speech from disfavored speech on the basis of the ideas or views expressed are content based." *Turner Broad. Sys. v. F.C.C.*, 512 U.S. 622, 643 (1994). Conversely, "laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content neutral." *Id.*

Here, the State's interest in barring impersonation is "unrelated to the suppression of free expression" and the statute "does not prevent the expression of any particular message or viewpoint." *United States v. Tomsha-Miguel*, 766 F.3d 1041, 1048–49 (9th Cir. 2014) (citation omitted). Under the statute, an impersonation that was intended to praise law enforcement is just as criminal as an impersonation that was intended to insult law enforcement. It's the fact of impersonation, not the specific content or viewpoint of the impersonator, that triggers the statute. *See Chappell*, 691 F.3d at 397. And the statute is readily justified without identifying any particular message, content, or viewpoint of the impersonator—promoting trust in law enforcement and other public offices, preventing unauthorized intrusions into homes or other secure areas, and ensuring all deprivations of liberty and property are lawful. *See Ward*, 491 U.S. at 791 (finding regulation content neutral when it is "*justified* without reference to the content of the regulated speech" (citation omitted)).

True, the actual words spoken by the impersonator are relevant to establishing the crime (though not always, as the statute also contains an "assume to act" alternative). But just because some words "may need to be examined does not render the law content based." *State v. Stubbs*, 502 S.W.3d 218, 229–32 (Tex. Ct. App. 2016) (holding statute criminalizing creating a webpage or social media profile impersonating another person, with the intent to harm, defraud, intimidate, or threaten, was content neutral). Indeed, "[w]hether a particular statement constitutes a threat, blackmail, an agreement to fix prices, a copyright violation, a public offering of securities, or an offer to sell goods often depends on the precise content of the statement." *Id.* at 231 (citation omitted). What matters is whether the statute is a "subtle means of exercising a content preference." *Turner*, 512 U.S. at 645. And here, the impersonation offense contains no such content preference and instead furthers the content-neutral interests of promoting the legitimacy of government operations. *See McLamb*, 932 P.2d at 272 (holding statute barring unauthorized wearing of police department insignia "is, on its face, content-neutral" because "[i]t prohibits the unauthorized wearing of an official insignia without regard to a particular expressive activity or the political viewpoint communicated by the wearer").

Because the statute is content neutral, intermediate scrutiny applies. *TikTok Inc. v. Garland*, 604 U.S. 56, 67 (2025). Under this analysis, a law will be upheld "if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests." *Id.* at 70 (citation omitted). Through this lens, "a regulation need not be the least speech-restrictive means of advancing the Government's interests." *Id.* at 76. (citation omitted). Instead, the statute must promote "a substantial government interest that would be achieved less effectively absent the regulation," and must do so in a "direct and effective way" that does not jeopardize "substantially more speech than is necessary." *Id.* at 76–77 (citations omitted).

Iowa's impersonation statute clears this bar. The offense furthers important government interests. It does so directly and effectively. The "claim" requirement excludes all of King's examples of protected speech, and the general-intent requirement excludes those whose misstatement stemmed from good faith or reasonable mistake. What's left is a statute that punishes only those who knowingly undermine law enforcement or other government operations by claiming unauthorized power, which jeopardizes no protected speech.

While King is correct that the statute could, but does not, contain a specific-intent requirement, intermediate scrutiny affords "latitude" to "the Government to design regulatory solutions to address content-neutral interest." *Id.* at 77. Because the statute is not "substantially broader than necessary to achieve" the State's important interests, it is not invalid "simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative." *Id.* (citation omitted). Thus, section 718.2 satisfies intermediate scrutiny.

Finally, if this Court believes the impersonation statute is content-based and strict scrutiny applies, King's failure to preserve error hamstrings the State's ability to meet that burden. Had King proved the statute was content based below, the State would have carried the burden at the district court to satisfy strict scrutiny, and thus would have had the opportunity to introduce additional evidence, call experts, etc. *See State v. Schadl*, 37 N.W.3d 337, 344 (Iowa 2026) ("The State failed to recognize its burden in the district court, and thus likewise failed to present any facts to meet its burden."). But King never argued this issue before or during trial, so the State was deprived of its right to respond, which in turn limits the State's argument avenues on appeal.

Still, even on this limited record, the statute withstands strict scrutiny. First, King does not contest the State's interests are compelling. So turning to narrow tailoring, *Alvarez* again provides a helpful contrast point. There, the Stolen Valor Act did not survive strict scrutiny because "counterspeech" would have sufficed to meet the federal government's interest in protecting the integrity of its military awards system. 567 U.S. 726–27. The Court was confident that those who lie about receiving the Medal of Honor would be swiftly mocked and ridiculed, and thus "[t]he remedy for speech that is false is speech that is true." *Id.* at 727. To that end, a less restrictive means of promoting its interest would be creating a database of award recipients, where "it would be easy to verify and expose false claims." 567 U.S. at 729.

Here, conversely, counterspeech cannot satisfy the State's compelling interests. *Chappell*, 691 F.3d at 396–97. "An individual who is approached by a stranger pretending to be a police officer may not have the ability, much less the time, to consult a database of actual police officers." *Id.* at 397. Further, even if "databases of the untold numbers of local, state, and federal peace officers could be accurately maintained and productively utilized, the addition of this search may impair both the government's legitimate desire to limit the length of detentions and the statute's legitimate aim of deterring false representations that could lead to danger if taken as true." *Id.*

As well, the statute is not "seriously overinclusive or seriously underinclusive." *Schadl*, 37 N.W.3d at 345 (cleaned up). Only those who knowingly make an untrue claim of public office fall within the reach of the statute. While the statute does not contain a discrete specific-intent element, that does not result in *serious* overinclusivity in practice. Indeed, it's not "braggadocio" or "puffery" unless you hope the listener views you differently. As this case proves, those who falsely claim official power largely want to be believed—King wanted those boys to follow his command and believe "he had authority." D0067 at 98:4–7. And having a statute on the books that prevents Iowans from being pressured to follow the commands of a fraud is not "Orwellian" in any sense of the word. Appellant Brief at 57. Because section 718.2 is narrowly tailored to achieve its compelling ends, King's conviction should be affirmed.

CONCLUSION

For all these reasons, King's conviction should be affirmed.

REQUEST FOR ORAL SUBMISSION

In light of the number of issues briefed, oral argument would likely assist this Court in resolving this appeal.

Respectfully submitted,

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