

No. 26-10312

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**In the United States Court of Appeals  
for the Fifth Circuit**

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MICHAEL LEWELLEN,

*Plaintiff–Appellant,*

v.

TODD WALLACE BLANCHE, ACTING U.S. ATTORNEY GENERAL,

*Defendant–Appellee.*

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On Appeal from the United States District Court  
for the Northern District of Texas  
No. 4:25-cv-30 (O'Connor, C.J.)

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**BRIEF OF AMICUS CURIAE  
PARADIGM OPERATIONS LP IN SUPPORT OF  
PLAINTIFF–APPELLANT MICHAEL LEWELLEN AND REVERSAL**

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**CERTIFICATE OF INTERESTED PERSONS**

**No. 26-10312**

MICHAEL LEWELLEN,

*Plaintiff–Appellant,*

v.

TODD WALLACE BLANCHE, ACTING U.S. ATTORNEY GENERAL,

*Defendant–Appellee.*

Pursuant to Fifth Circuit Rule 28.2.1, the undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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**Other Authorities**

*Accept*, Oxford English Dictionary Online .....27

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Brady Dale, *Ethereum’s Best Known Privacy Tool Falls Under U.S. Sanctions*, Axios (Aug. 8, 2022) .....8

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*Cryptocurrency Market News: Bitcoin Trips Amid Growing Regulatory Friction*, Investopedia (Apr. 29, 2024) .....10

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Indictment, *United States v. Storm*, No. 23-cr-430 (S.D.N.Y. Aug. 21, 2023), Dkt. No. 1 .....8

Jason Brett, *Roman Storm Case: Will Jailing a Coder Stifle U.S. Crypto Growth?*, Forbes (Jan. 30, 2025).....12

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Nicholas Anthony, *Samourai Charges Mark Chilling Moment for  
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*Transferring*, Oxford English Dictionary Online ..... 27

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Xiangnong Wang, *De-Coding Free Speech: A First Amendment  
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Zack Cohen, *The DOJ’s Dangerous New Legal Theory: Implications  
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### INTEREST OF AMICUS CURIAE

Paradigm Operations LP (“Paradigm”) is a U.S.-based, frontier-technology investment firm that backs entrepreneurs building in crypto, AI, robotics, and across new frontiers from the earliest stages. Among Paradigm’s investments are innovative crypto companies and protocols, including those developing non-custodial, peer-to-peer software enabling decentralized finance.

Paradigm has a significant interest in ensuring that cryptocurrency software developers, businesses, and users operate under clear rules—particularly where those rules carry potential criminal sanctions—in order to promote healthy innovation and growth in the U.S. financial system. The Department of Justice (“DOJ”) has chilled innovation by advancing an erroneous interpretation of 18 U.S.C. § 1960 in multiple prosecutions against developers of non-custodial software enabling user-controlled transactions. Legal clarity is critical to the continued growth of the cryptocurrency industry and the U.S. financial system as a whole, and Paradigm has a significant interest in a judgment reversing the decision below and

eliminating industry members' exposure to the risk of unconstitutional and anti-textual enforcement actions.<sup>1</sup>

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<sup>1</sup> This brief is submitted with a motion for leave under Federal Rule of Appellate Procedure 29(a)(3). Undersigned counsel for amicus curiae certifies that: (1) no party's counsel authored this brief in whole or in part; (2) no party or party's counsel contributed money intended to fund the preparation or submission of this brief; and (3) no person other than amicus curiae, its members, or its counsel contributed money intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

## INTRODUCTION & SUMMARY OF ARGUMENT

Michael Lewellen has standing, and this Court should reverse, because Lewellen challenges a statute that would—under DOJ’s amply demonstrated view—criminalize protected First Amendment expression. The district court erred by ignoring those concerns and rejecting standing because Lewellen did not plead an intent to engage in “money laundering.” *Lewellen v. Bondi*, 2026 WL 821053, at \*2 (N.D. Tex. Mar. 25, 2026).

DOJ has fundamentally changed the legal landscape for developers of non-custodial cryptocurrency software. For years, it was well understood that 18 U.S.C. § 1960 regulates as money transmitters only intermediaries that take *custody of* or exercise *control over* users’ funds. But DOJ’s recent § 1960 prosecutions against developers of non-custodial crypto software have rejected that settled understanding.

The financial technology industry’s reaction has been swift and uniform, and some services even announced they would “block Americans” altogether to avoid potential liability. Nicholas Anthony, *Samourai Charges Mark Chilling Moment for Financial Privacy*, *Cato at Liberty* (Apr. 30, 2024),

<https://tinyurl.com/ypmbh6kj>. The industry thus faces a “very rational[] fear” of prosecution that is chilling crypto innovation and development across the country. Letter from Coalition of Industry Participants to Sen. Tim Scott et al. at 3 (Mar. 26, 2025), <https://perma.cc/2Y45-4Y4N>.

Lewellen faces that same chill here. He plans to publish his Pharos software program to a public blockchain. Once published, Pharos will allow users to transmit cryptocurrency. Because of how Lewellen wrote the software, he will never take custody of or exercise control over those funds.

The First Amendment protects Lewellen’s plans. Pharos, as “computer code[,] . . . is a means of expressing ideas,” so “the First Amendment must be considered before its dissemination may be prohibited.” *Universal City Studios, Inc. v. Reimerdes*, 111 F. Supp. 2d 294, 327 (S.D.N.Y. 2000), *aff’d* sub nom. *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 445-46 (2d Cir. 2001). Of course, nothing in that well-established caselaw casts doubt upon the Government’s lawful authority to punish unlawful conduct that may be carried out through Pharos or any other software. But that is not what

Lewellen seeks to do—he seeks only to publish Pharos. Because the code comprising that software is expression, the First Amendment protects it.

The district court ignored that point by reducing standing to the question of whether Lewellen’s plans match the activity that motivated DOJ to prosecute defendants in recent cases involving allegations of “money laundering.” 2026 WL 821053, at \*2. This Court’s pre-enforcement standing precedent asks a different question: whether Lewellen’s “core conduct” is “substantially similar” to conduct DOJ has already prosecuted. *Umphress v. Hall*, 133 F.4th 455, 466 (5th Cir. 2025). By focusing on the activities that motivated prior prosecutions instead of the legal theory that allegedly made the conduct in those cases criminal, the district court focused on the wrong “core conduct.” *Id.* Because DOJ has already prosecuted—indeed, is *currently* prosecuting—the “core conduct” Lewellen plans to undertake, he fears prosecution and faces a chill that burdens his protected First Amendment expression. That chill is a present injury in fact that gives him standing.

Nothing in § 1960’s text permits such a misguided result. The statute’s plain text hinges on accepting, transmitting, or transferring currency on behalf of others. Those words have no application to developers like Lewellen who merely publish software and take no custody of or control over users’ funds. At a minimum, any broader reading would raise grave First Amendment concerns by criminalizing protected publication of software. DOJ’s overbroad reading of § 1960 would also undermine the national policy of “promot[ing] United States leadership in digital assets and financial technology . . . including the ability to develop and deploy *software*, . . . to transact with other persons.” Exec. Order No. 14178, *Strengthening American Leadership in Digital Financial Technology*, 90 Fed. Reg. 8647 (Jan. 23, 2025) (emphasis added), <https://perma.cc/E42A-L2L6>.

The Court need not finally resolve § 1960’s meaning to recognize Lewellen’s standing. It need only hold that DOJ’s asserted interpretation, and its prosecutions of other non-custodial developers based on that erroneous interpretation, have plausibly chilled Lewellen’s protected expression. The judgment should be reversed.

## ARGUMENT

- I. **DOJ's interpretation of 18 U.S.C. § 1960 has created a pervasive chilling effect across the cryptocurrency industry.**
  - A. **DOJ's recent prosecutions upended the longstanding view that § 1960 liability requires custody or control.**

The cryptocurrency industry has long understood that 18 U.S.C. § 1960 (as relevant here) regulates only those who take *custody of* or exercise *control over* users' funds. Under that understanding, § 1960 does not regulate developers who create and publish non-custodial software like Lewellen's Pharos. *See* Br.7 (citations in this format refer to Lewellen's opening brief).

Thus, on one hand, § 1960 has been understood to regulate a business that "*accept[s]* value from a customer and *transmit[s]* the same or another type of value to the recipient." *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies* 19-20, FIN-2019-G001 (May 9, 2019), <https://perma.cc/P2SM-GMGA> (emphases added). But on the other hand, § 1960 has not been understood to regulate "suppliers of tools (communications, hardware, or *software*) that may be utilized in money transmission," because those who publish such software "are engaged in trade and *not money transmission*." *Id.* (emphases added); *see* Br.7-8.

DOJ abruptly rejected that view when it began prosecuting creators of non-custodial software for conspiracy to violate § 1960 a few years ago.

First, in *Storm*, DOJ alleged that the creators of “Tornado Cash” conspired to operate an unlicensed money transmitting business under § 1960. See Indictment, *United States v. Storm*, No. 23-cr-430 (S.D.N.Y. Aug. 21, 2023), Dkt. No. 1, <https://perma.cc/9FXW-CLUT>. DOJ brought the case even though Tornado Cash was widely understood as non-custodial:

- “We use Tornado Cash as an example to show how *non-custodial* crypto asset mixers work.” Matthias Nadler & Fabian Schär, *Tornado Cash and Blockchain Privacy: A Primer for Economists and Policymakers*, 105 Fed. Rsrv. Bank St. Louis Rev. 133, 133 (2023) (emphasis added), <https://perma.cc/2HF6-KKXS>.
- “Tornado Cash *does not gain custody* over its users’ funds at any point during the mixing process.” *Understanding Tornado Cash, Its Sanctions Implications, and Key Compliance Challenges*, Chainalysis (Aug. 2022) (emphasis added), <https://perma.cc/724X-3Z2M>.
- “Tornado Cash is a *non-custodial* mixer that runs on the Ethereum blockchain.” Brady Dale, *Ethereum’s Best Known Privacy Tool Falls Under U.S. Sanctions*, Axios (Aug. 8, 2022) (emphasis added), <https://tinyurl.com/e7fjtb9p>.

This prosecution was a dramatic departure from the crypto industry’s understanding that creating and publishing non-custodial software does not require registration as a “money transmitter” under § 1960. Although DOJ

later abandoned its theory that Storm violated § 1960 by failing to register Tornado Cash as a money transmitter, it continued to prosecute Storm on the premise that Tornado Cash was a money transmitting business. And the jury ultimately convicted Storm of “conspiracy to operate an unlicensed money transmitting business” under § 1960. *See* Press Release, U.S. Att’y’s Off. for the S. Dist. of N.Y., *Founder of Tornado Cash Crypto Mixing Service Convicted of Knowingly Transmitting Criminal Proceeds* (Aug. 6, 2025), <https://perma.cc/5FZF-MTGE>.

Even post-conviction, DOJ adamantly presses its theory that “custody” of funds is not a “requirement . . . of a money transmitting charge” under § 1960. *Opp. to Mot. for Judgment of Acquittal at 76, Storm*, No. 23-cr-430 (Nov. 12, 2025), Dkt. No. 241; *see id.* at 77 (arguing that, in the alternative, Storm had custody because he “retain[ed] control over Tornado Cash . . . *writ large*” even if he had no control over funds (emphasis added)).

Second, DOJ doubled down on its erroneous interpretation of § 1960 (*see infra* p.25) in a separate case involving “Samourai Wallet.” *See* Indictment, *United States v. Rodriguez*, No. 24-cr-82 (S.D.N.Y. Feb. 14, 2024),

Dkt. No. 1, <https://perma.cc/4FDB-CLY8>. DOJ proceeded even though Samurai Wallet, like Tornado Cash, was unquestionably non-custodial:

- “DOJ’s indictment seeks to broaden the definition of ‘money transmitters . . . .’” Zack Cohen, *The DOJ’s Dangerous New Legal Theory: Implications for Samurai Wallet and Bitcoin Self-Custody*, Bitcoin Policy Institute (Apr. 2024), <https://perma.cc/HL85-TN5H>.
- “Samurai Wallet was non-custodial: it didn’t hold user funds.” *When Crypto Privacy Backfires: The Samurai Wallet Crime Case*, Nominis Insights (Aug. 10, 2025), <https://perma.cc/3PLC-S4HD>.
- “The friction between regulators and the cryptocurrency industry was heightened last week after [DOJ] charged founders of a non-custodial bitcoin wallet . . . .” *Cryptocurrency Market News: Bitcoin Trips Amid Growing Regulatory Friction*, Investopedia (Apr. 29, 2024) (emphasis added), <https://perma.cc/8G4L-G4DC>.

The defendants in *Rodriguez* ultimately pleaded guilty to “conspiracy to operate a money transmitting business” under § 1960. Press Release, U.S. Att’y’s Off. for the S. Dist. of N.Y., *Founders of Samurai Wallet Cryptocurrency Mixing Service Plead Guilty* (Aug. 6, 2025), <https://perma.cc/R84D-LYVR>.

By presenting the same theory – and obtaining convictions and guilty pleas – in successive prosecutions against non-custodial crypto software developers, DOJ unequivocally announced that it no longer views custody or control as dividing software developers from money transmitters.

**B. The resulting industry-wide chill confirms that developers fear prosecution under DOJ's new theory.**

The crypto industry's reactions to *Storm* and *Rodriguez* confirm that DOJ's new interpretation of § 1960 has created an immediate and pervasive chill. Almost overnight, developers, investors, trade associations, and other stakeholders began warning that DOJ's prosecutions of non-custodial software developers had fundamentally shifted the legal landscape:

- "DOJ's departure . . . would expose every technology developer of non-custodial software within the reach of the U.S. to criminal liability. The resulting, *and very rational, fear among developers* would effectively end the development of these technologies in the United States . . . ." Letter from Coalition of Industry, *supra* p.4 (emphasis added).
- "DOJ's approach raises concerns about the rule of law, and *chills innovation.*" Letter from Crypto Industry Leaders to David Sacks, White House AI & Crypto Czar, at 2 (Apr. 7, 2025) (emphasis added), <https://perma.cc/RK5F-UZZY>.
- "[I]t has come as quite a surprise that [DOJ] is suddenly intent on charging wallet developers criminally for unlicensed money transmission even if they exercise no actual control over the assets their users choose to secure with their software." Peter Van Valkenburgh, *DOJ's New Stance on Crypto Wallets is a Threat to Liberty and the Rule of Law*, Coin Center (Apr. 29, 2024), <https://perma.cc/C3P6-HGPF>.
- "The net result of the current legal landscape for digital assets and DeFi has driven American developers and businesses to relocate to friendlier jurisdictions." Written Testimony of Amanda Tuminelli Before the H. Fin. Servs. Subcomm. on Digital Assets, Fin. Tech. &

Inclusion, *Decoding DeFi: Breaking Down the Future of Decentralized Finance* at 2 (Sept. 10, 2024), <https://perma.cc/XM56-WFPM>.

- “The government’s abrupt contradiction of its own longstanding position has disturbing implications for software developers . . . and, unsurprisingly, has profoundly chilled innovation.” Proposed Brief of Amici Curiae DeFi Education Fund and Blockchain Ass’n in Support of Defendants’ Motion to Dismiss at 14, *United States v. Rodriguez*, No. 24-cr-82 (S.D.N.Y. June 5, 2025), <https://perma.cc/TBW5-LTZR>.
- “The chilling effect on crypto developers based on the outcome of Storm’s case could set a dangerous precedent, particularly for those working on decentralized applications, privacy tools, and DeFi. The crypto industry has long relied on the principle that code is speech, protected under the First Amendment.” Jason Brett, *Roman Storm Case: Will Jailing a Coder Stifle U.S. Crypto Growth?*, *Forbes* (Jan. 30, 2025), <https://perma.cc/D6YU-6AT5>.
- “Wasabi Wallet, for instance, announced it would block Americans from using its service, and Phoenix Wallet is set to be removed from US app stores on May 3 despite no publicly known issues.” Nicholas Anthony, *Samurai Charges Mark Chilling Moment*, *supra* p.3.

These reactions flowed from DOJ’s repeated public position that creating and publishing non-custodial software could expose developers to criminal liability under § 1960. Specifically, DOJ has repeatedly asserted that “‘control’ of the funds being transferred” is “not require[d]” to be a “money transmitter” under § 1960. Opp. to Mot. to Suppress at 24, *Storm*, No. 23-cr-430 (Apr. 26, 2024), Dkt. No. 53; *see also* Opp. to Mot. to Dismiss at 26,

*Rodriguez*, No. 24-cr-82 (June 26, 2025), Dkt. No. 118 (“Custody of the funds . . . is not a requirement to being a money transmitter under Section 1960.”).

The widespread and remarkably consistent response across the crypto industry confirms that non-custodial developers like Lewellen reasonably—and for the first time—now fear prosecution under § 1960.

The chill is also evident well beyond *Storm* and *Rodriguez*. For example, in a § 1960 case involving “Bitcoin Fog,” DOJ used circumstantial “blockchain tracing” evidence to link some clustered crypto addresses to the defendant–developer’s own accounts and to link unlawful funds to the defendant–developer’s service. *United States v. Sterlingov*, 719 F. Supp. 3d 65, 76 (D.D.C. 2024). This kind of evidence again expands developers’ potential liability risk under § 1960, because *any* open payment system (crypto or otherwise) may eventually attract unlawful users. In other words, if DOJ can allege “transmission of funds” even where the defendant lacks custody or control *and* can rely on circumstantial evidence to allege that the defendant had “know[ledge]” of the funds’ unlawful origin, then potential liability under § 1960(b)(1)(C) is magnified even further. As a result, DOJ’s strategy

in *Sterlingov* reinforces developers' fear that publishing widely used software can expose them to criminal enforcement risk merely because of how unknown and independent third parties later use that software.

There are other clear examples of governmental hostility to decentralized crypto software well beyond the § 1960 context. For example, the SEC's investigation of "Uniswap Labs" again signaled that creating and publishing decentralized software can, in the Government's view, create liability for developers (even though the agency later elected not to pursue charges). See Cheyenne Ligon, *SEC Drops Investigation Into Uniswap, Will Not File Enforcement Action*, CoinDesk (Feb. 25, 2025), <https://perma.cc/C2XZ-Y9J9>. Likewise, incumbent exchanges recently began urging federal regulators to require "Hyperliquid" (a decentralized crypto trading protocol) to register with the Commodity Futures Trading Commission because of how third parties use it. Helene Braun, *CME, ICE Push U.S. Regulators to Scrutinize Hyperliquid Over Manipulation Risks*, CoinDesk (May 15, 2026), <https://perma.cc/J968-PE8V>. DOJ's interpretation of § 1960 thus sits

within the backdrop of expanding efforts to federally regulate the creation and publication of crypto software.

**II. Chilling effects on creating and publishing software are a First Amendment injury that supports pre-enforcement standing.**

The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I. A law implicates the Free Speech Clause where it “regulates . . . protected speech.” *United States v. Williams*, 553 U.S. 285, 304 (2008); see *McCutcheon v. FEC*, 572 U.S. 185, 197 (2014) (similar). That standard is satisfied here. In the pre-enforcement context, this Court has “repeatedly held” that “[c]hilling a plaintiff’s speech is a constitutional harm adequate to satisfy the injury-in-fact requirement.” *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330-31 (5th Cir. 2020) (quoting *Houston Chronicle v. City of League City*, 488 F.3d 613, 618 (5th Cir. 2007)). All “First Amendment challenge[s]” therefore have “unique standing issues because of the” risk of “chilling effect[s]” and “self-censorship.” *Id.* (quoting *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 660 (5th Cir. 2006)).

**A. Lewellen’s creation and publication of Pharos is protected expression.**

Creating software is protected speech, and Lewellen’s plan to publish his software to a public blockchain is protected publication. DOJ’s contrary interpretation of § 1960 regulates Lewellen’s protected expression by criminalizing the publication of the Pharos software he created. The Government’s erroneous arguments below confused Lewellen’s plan to *publish* code with the independent conduct of separate individuals who may later *use* that code absent Lewellen’s involvement.

For decades, courts across the Nation have held that computer code, software, and programs are expressive mediums—and thus fully protected speech under the First Amendment—because they communicate ideas:

- “Code *is speech* precisely because, like a recipe or a musical score, it has the capacity to convey information.” *Green v. U.S. Dep’t of Just.*, 392 F. Supp. 3d 68, 86 (D.D.C. 2019) (emphasis added).
- “Communication does not lose constitutional protection as ‘speech’ simply because it is expressed in . . . computer code. . . . If someone chose to write a novel entirely in computer object code . . . , the resulting work would be no different for constitutional purposes than if it had been written in English.” *Corley*, 273 F.3d at 445-46.
- “Because computer source code *is an expressive means* for the exchange of information and ideas about computer programming,

we hold that it is protected by the First Amendment.” *Junger v. Daley*, 209 F.3d 481, 484-85 (6th Cir. 2000) (emphasis added).

- “For the purposes of First Amendment analysis, this court finds that source code is speech.” *Bernstein v. U.S. Dep’t of State*, 922 F. Supp. 1426, 1436 (N.D. Cal. 1996).

Thus, “[t]he principle that code is ‘speech’ has enjoyed nearly unanimous approval in the lower federal courts.” Xiangnong Wang, *Decoding Free Speech: A First Amendment Theory for the Digital Age*, 2021 Wis. L. Rev. 1373, 1380 (2021); see Emily Arterbury, *Coin Center v. Yellen Prompts Reconsideration of the Vast Deference Afforded to the Department of the Treasury*, 73 Cath. U. L. Rev. 473, 485 (2024) (“[C]ourts have come to recognize computer code as a form of constitutionally protected speech under the First Amendment.”). Kyle Langvardt, *The Doctrinal Toll of “Information as Speech,”* 47 Loy. U. Chi. L.J. 761, 775 (2016) (“[I]n the lower courts, it is well-settled law” that “the First Amendment is implicated somehow whenever the government attempts to regulate the flow of computer code.”).

Publishing this protected speech constitutes protected First Amendment expression. The leading software-as-speech cases arose because the Government was attempting to restrict the publication of computer code.

For example, in *Bernstein*, the court agreed that the plaintiff had a First Amendment right to “publish” his code “online.” 922 F. Supp. at 1430. That’s because “computer code . . . is a means of expressing ideas,” so “the First Amendment must be considered before its *dissemination* may be *prohibited*.” *Reimerdes*, 111 F. Supp. 2d at 327, *aff’d* sub nom. *Corley*, 273 F.3d 429.

That makes sense, because “[s]peech” includes expression “conveyed over the Internet.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 587 (2023). Any contrary rule would violate longstanding precedent, which holds that “[w]hether government regulation applies to creating, *distributing*, or consuming speech makes no difference.” *Brown v. Entm’t Merchants Ass’n*, 564 U.S. 786, 792 n.1 (2011) (emphasis added); see *Citizens United v. FEC*, 558 U.S. 310, 336 (2010) (“Laws enacted to control or suppress speech may operate at different points in the speech process.”). Lewellen’s plan to publish his software to a public blockchain is thus protected under the First Amendment, no less than if he wished to post it to a website, “disclose it at academic conferences,” or put it in a book. *Bernstein*, 922 F. Supp. at 1430.

DOJ's interpretation of § 1960—as further revealed in its recent § 1960 prosecutions—“regulates” Lewellen's protected speech by treating as criminal the very publication the First Amendment protects. *Williams*, 553 U.S. at 304. Under that erroneous interpretation (*see infra* p.25), Lewellen commits a federal crime by publishing Pharos to a blockchain. This burden on publication is a quintessential regulation implicating the First Amendment's protections. *See, e.g., Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 171 (2015) (“restrictions on speech” implicate the First Amendment); *United States v. Stevens*, 559 U.S. 460, 468 (2010) (same for “ban[s]” on speech).

None of the theories that the Government asserted in the district court are sufficient to remove Lewellen's planned publication from the First Amendment's protections. *See* MTD at 20 (Dkt.26); MTD Reply at 7 (Dkt.37).

First, according to the complaint, “Lewellen intends to write and publish Pharos.” Complaint at 8 (Dkt.1). The Government argued this plan amounts to the conduct of “transmitting money on behalf of others.” MTD Reply at 7 (Dkt.37). But the Government cannot so easily sidestep the First Amendment implications of its theory by relabeling Lewellen's creation and

publication of Pharos as conduct, because “there is no fixed First Amendment line between the act of creating speech and the speech itself.” *Turner v. Lieutenant Driver*, 848 F.3d 678, 689 (5th Cir. 2017) (quoting *Am. Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 596 (7th Cir. 2012)).

Of course, recognizing the First Amendment interests at stake does not mean that software creation and publication is immune from regulation. Conduct carried out through software remains conduct, and the Government may punish unlawful acts committed through or using software—potentially including, where the statutory elements are satisfied, via liability for aiding and abetting. *See* 18 U.S.C. § 2. Instead, the point is only that publishing code *implicates* the First Amendment. So, the Government must justify its restrictions under the First Amendment rather than avoid constitutional scrutiny by treating the publication itself as mere conduct. That proposition is all the Court need recognize to reverse here.

Second, the Government was also wrong to argue that Pharos’s functionality and Lewellen’s plans to “monetiz[e]” it remove Pharos’s creation and publication from the First Amendment’s purview. *E.g.*, MTD

Reply at 8 (Dkt.37). To begin, many software programs support *action* in the real world. Lewellen's can do the same. *See* Complaint ¶¶ 41-51 (Dkt.1) (explaining potential use-cases for Pharos). But whatever the Government's authority to regulate those later actions, Lewellen's mere publication of Pharos precedes them and implicates the First Amendment. *See supra* p.16. The Government's arguments about monetization are even further afield. *E.g.*, MTD Reply at 8 (Dkt.37) ("Lewellen is monetizing Pharos" so "his conduct is not intended to be expressive"). The Supreme Court has emphatically rejected the idea that "those who seek profit" from their speech enjoy lesser First Amendment protections. *303 Creative LLC*, 600 U.S. at 600.

Third, the Government's hypotheticals in the district court confirmed that this case involves expression. For example, the Government argued that Lewellen could "publish" his software on "Wikipedia" but not on a blockchain. MTD at 21 (Dkt.26). That just confirms that the Government claims authority to regulate where and how Lewellen publishes Pharos.

The Government also argued that Lewellen's expressive interests are not at issue because people who may later *use* Pharos are not thereby

engaged in expression. MTD at 21-22 (Dkt.26). That argument just repeats the same error: the issue here is the First Amendment rights of Lewellen as creator and publisher of his own expression, not the rights of anyone else to use his creation. If someone uses the Sunday newspaper to kill an animal that is protected under the federal Endangered Species Act, that does not turn the newspaper itself into unprotected expression. Likewise, others' later, non-expressive use of Lewellen's code cannot transmogrify his prior, expressive publication of Pharos into unprotected conduct.

**B. Lewellen has standing to challenge government action that chills his expression.**

For standing in this pre-enforcement challenge, "all" Lewellen needs to show is: "(1) [he] intends to engage in a course of conduct arguably affected with a constitutional interest; (2) that the course of action is arguably proscribed by statute; and (3) that there exists a credible threat of prosecution under the statute." *Turtle Island Foods, S.P.C. v. Strain*, 65 F.4th 211, 215-16 (5th Cir. 2023) (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)).

The first two elements are satisfied here. *See* Br.16-19. As set forth above (p.16), Lewellen’s planned publication of Pharos is more than “arguably affected with a constitutional interest” because publishing software to a public blockchain is unquestionably protected expression. *Turtle Island*, 65 F.4th at 215. His plans are also more than “arguably proscribed” by DOJ’s interpretation of § 1960. *Id.* at 216. DOJ has asserted in multiple ongoing prosecutions (*see supra* p.8) that § 1960 reaches non-custodial software even when the developer has no custody and no control over users’ funds. *See* Br.18 (further explaining the arguable proscription).

So is the third, and the district court’s contrary conclusion erred by focusing on the wrong “core conduct.” 2026 WL 821053, at \*2. This Court’s decision in *Umphress v. Hall* drove the district court’s analysis. *See id.* (quoting 133 F.4th at 466). There, this Court held that a prior “proceeding” established a credible threat where it involved “core conduct” “substantially similar” to the plaintiff’s “intend[ed]” activity. 133 F.4th at 466. The relevant “core conduct” is that which triggered enforcement under the challenged legal rule, not every aggravating fact that motivated earlier prosecutions.

Accordingly, the *relevant* conduct in *Storm* and *Rodriguez* consisted of the alleged § 1960 violations: publishing non-custodial crypto software even without custody or control of users' funds.

The district court instead focused on separate allegations of “money laundering” in the earlier prosecutions it cited. 2026 WL 821053, at \*2. Those extraneous facts may (or may not) explain why DOJ chose to prosecute, but they have no bearing on whether DOJ’s interpretation of § 1960 chills developers like Lewellen. As *Umphress* itself recognized, every case involves “undoubtedly context-specific” facts. 133 F.4th at 466. But *Umphress* rejected those variances as irrelevant: courts should identify the “core conduct” that supported the Government’s theory of liability and then ask whether that conduct is “substantially similar” to the plaintiff’s intended activities. *Id.*

Here, the “core conduct” is the alleged violation of § 1960 under DOJ’s interpretation of that statute, not the extraneous facts and separate criminal allegations that played a role in earlier prosecutions. The result in *Storm* confirms as much. Although the jury was unable to reach a unanimous verdict on the separate money-laundering conspiracy charge, it nevertheless

convicted Storm of conspiring to operate an unlicensed money transmitting business. See Cheyenne Ligon, *Roman Storm Guilty of Unlicensed Money Transmitting Conspiracy in Partial Verdict*, CoinDesk (Aug. 6, 2025), <https://perma.cc/86DR-DV5G>. The verdict confirms that—whatever role money-laundering allegations played in DOJ’s charging decisions—they were not what made Storm a money transmitter under DOJ’s view of § 1960.

**III. DOJ’s interpretation of § 1960 exceeds the limits Congress enacted and frustrates the Nation’s economic and strategic interests.**

Properly construed, § 1960 reaches only those developers who take custody or exercise control over users’ funds. DOJ’s broader interpretation raises serious First Amendment concerns, *see supra* p.16, which courts should shun under the constitutional avoidance canon even if § 1960’s text were unclear. The chilling effect that DOJ’s broader interpretation of § 1960 creates also undermines key American economic and strategic interests.

**A. Section 1960’s plain text regulates only those developers who take custody of or exercise control over users’ funds.**

As Congress wrote it, § 1960’s plain text does not criminalize every software program that users may employ to move crypto or other value.

Instead, as relevant here, it criminalizes knowing operation of an unlicensed “money transmitting business.” 18 U.S.C. § 1960(a); *see* Br.6. Three limits follow. First, the defendant must engage in “money transmission,” such as by “transferring funds on behalf of” others. 18 U.S.C. § 1960(b)(1), (2). Second, the defendant must engage in “the transmission of currency” or in “accepting currency.” 31 U.S.C. § 5330(d)(1)(A), (2); *see* 18 U.S.C. § 1960(b)(1)(B). Third, the defendant must engage in the “acceptance of currency . . . and the transmission of currency.” 31 C.F.R. § 1010.100(ff)(5) (incorporated by § 1960(b)(1)(B) via 31 U.S.C. §§ 5330(d)(1)(B) and 5313) (emphasis in original). DOJ’s § 1960 theory is out of step with each of these overlapping textual limits.

“*Transmission*” means “[t]he action of transmitting . . . ; conveyance from one person or place to another.” *Transmission*, Oxford English Dictionary Online (“OED”) (last modified Dec. 2025). That definition requires the defendant to convey the thing transmitted from one person or place to another. It does not describe developers (like Lewellen) who merely wish to publish software (like Pharos) that *others* later use to move their own

assets. A developer who never receives, holds, directs, or controls users' funds has not engaged in the "conveyance" of those funds—the users have. So too for "transferring." See *Transferring*, OED (last modified Mar. 2026).

"Accept" means "[t]o take or receive (something offered) willingly." *Accept*, OED (revised Dec. 2011). Thus, "accepting" under 31 U.S.C. § 5330(d)(2) entails receipt. A person does not "accept" currency merely by creating a tool that allows *someone else* to place property somewhere outside the creator's own control. Just as a safe manufacturer does not "accept" cash when someone who purchases a safe later stores cash inside it, a non-custodial software developer like Lewellen does not "accept" cryptocurrency when users transfer their own assets through the Pharos software that he created. This ordinary meaning of "accept" confirms that § 1960's relevant prohibitions apply only to those who themselves receive currency, not to developers whose software leaves users in total control.

*On "behalf of"* means "[i]n the name of a person, organization, etc.; as the agent or representative of; for." *Behalf*, OED (revised Dec. 2022). Western Union thus transfers funds "on behalf of" a customer because the customer

entrusts funds *to* Western Union and authorizes *it* to send those funds to a recipient. Lewellen would play no similar role. *See* Br.4. It is true that § 1960 says “money transmitting” “*includes* transferring funds on behalf of the public.” 18 U.S.C. § 1960(b)(2) (emphasis added). But “includes” does not eliminate the core requirement of “money transmitting.” *See id.* Although § 1960 can reach new methods (*e.g.*, those beyond “wire, check, draft, facsimile, or courier,” *id.*), it does not expand liability beyond the core act of “transmitting”: “the term ‘including’ is not one of all-embracing definition, but connotes simply an illustrative application of the general principle.” *Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941).

Although these textual requirements overlap, they point in a single direction. A business is not “money transmitting” unless it accepts funds, exercises authority over those funds, and then transfers those funds on behalf of another person. 18 U.S.C. § 1960(a). As alleged, Pharos creates no such intermediary relationship between Lewellen and users. Lewellen will neither accept nor receive users’ crypto, will exercise no custody or control over users’ assets, and will not transfer anything at all on their behalf. *See*

Br.4 (“Pharos removes the intermediary . . . .”). DOJ’s contrary interpretation cannot be reconciled with § 1960’s plain statutory text.

**B. Reading § 1960 to reach creation and publication of non-custodial software would raise serious First Amendment concerns.**

If DOJ’s interpretation of § 1960 were correct, it would create a “substantial issue of [§ 1960’s] validity under the First Amendment.” *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 576 (1988). As explained above, creating and publishing software and computer code is protected expression. *Supra* p.16. To treat Lewellen’s creation and publication of Pharos as criminal “money transmitting” under § 1960 would therefore raise grave First Amendment concerns.

Courts can and should avoid those concerns by rejecting DOJ’s interpretation “[u]nder the doctrine of constitutional avoidance.” *Hersh v. U.S. ex rel. Mukasey*, 553 F.3d 743, 753 (5th Cir. 2008). That doctrine applies when a statutory interpretation “would raise serious constitutional problems . . . [by] restrict[ing] some speech that is protected by the First Amendment.” *Id.* at 754. The doctrine operates by directing that “a federal

statute should be construed narrowly” to avoid an unlawful “restraint on speech” that “may chill protected expression.” *United States v. Wallington*, 889 F.2d 573, 576 (5th Cir. 1989); see *Hersh*, 553 F.3d at 756 (“To avoid potential constitutional questions regarding [a federal statute’s] restrictions on speech, this court construes the statute” to reach only “unprotected speech”); *Pub. Citizen v. DOJ*, 491 U.S. 440, 466 (1989) (“[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.” (internal quotation marks and citation omitted)).

The constitutional avoidance doctrine is a natural fit for this case, even if § 1960’s meaning were susceptible to multiple plausible interpretations. DOJ’s interpretation would criminalize and thus chill protected publication. Lewellen’s interpretation avoids those constitutional concerns, accords with the text Congress wrote, and would eliminate the pervasive and detrimental chills discussed above. *Supra* p.11.

At a minimum, these serious constitutional questions confirm that the district court erred in dismissing Lewellen's suit at the threshold for lack of standing. Lewellen has plausibly alleged that DOJ's erroneous interpretation of § 1960 chills his intended publication of the Pharos software, which is itself protected First Amendment expression. *Supra* p.16. This Court's precedent entitles Lewellen to present his objections to the courts before choosing between abandoning that speech and risking criminal prosecution.

**C. DOJ's reading of § 1960 undermines America's economic and strategic interests.**

The chilling effect from DOJ's interpretation of § 1960 hampers the political branches' emphatic goal of making the United States the global leader in crypto, digital assets, and software innovation.

President Trump has declared it national policy to "promote United States leadership in digital assets and financial technology . . . including the ability to *develop and deploy software*, . . . to transact with other persons . . . , and to maintain self-custody of digital assets." Exec. Order No. 14178, *supra* p.6. Congress has pursued the same policy through the GENIUS Act. *See* Guiding and Establishing National Innovation for U.S. Stablecoins Act, Pub.

L. No. 119-27, § 1, 139 Stat. 419 (2025). There, Congress expressly concluded that the term “digital asset service provider” *does not* include “developing, operating, or engaging in the business of developing” “publicly available and accessible executable software deployed to a distributed ledger, including smart contracts.” 12 U.S.C. § 5901(7), (9). Both the President’s and Congress’s actions reflect a political judgment that crypto and digital financial infrastructure advance America’s economic and security interests.

DOJ’s new interpretation of § 1960 chills creation and publication of non-custodial crypto software like Pharos and thus frustrates all these goals by pushing crypto developers to create and publish their services outside the United States. Indeed, developers have already responded to DOJ’s prosecutions by relocating abroad and “block[ing] Americans from using [their] service[s].” *E.g., Anthony, Samurai Charges Mark Chilling Moment for Financial Privacy, supra* p.3. This exodus threatens far more than individual developers. Open-source developers build the software on which dollar-denominated stablecoins, decentralized financial infrastructure, and emerging payment systems depend. As the political branches have

recognized, that software is increasingly central to preserving the dollar's global role and maintaining American leadership in financial innovation.

These economic harms also carry important national-security consequences, because crypto software “plays a crucial role in . . . our Nation’s international leadership.” Exec. Order No. 14178, *supra* p.6. If American developers “very rational[ly]” conclude that DOJ’s interpretation of § 1960 exposes them to criminal enforcement risk for creating and publishing software, they will build abroad. Letter from Coalition of Industry, *supra* p.4. This exodus would mean the next generation of cryptocurrency infrastructure develops under foreign legal regimes instead of American law, and in foreign-denominated currencies instead of the U.S. dollar. That result would undermine America’s long-term strategic interests in supporting the crypto technologies that play an ever-increasing role in the global financial system.

### CONCLUSION

For these reasons, this Court should reverse the district court’s judgment.

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**CERTIFICATE OF SERVICE**

I certify that on July 8, 2026, I caused the foregoing amicus brief to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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### CERTIFICATES OF COMPLIANCE

I certify that this brief: (1) complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6,096 words, excluding those parts of the brief exempted by Rule 32(f); and (2) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Palatino Linotype) using Microsoft Word version 16.104 (the program that calculated the word count).

I further certify that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; and (2) the document has been scanned with the most recent version of a commercial virus scanning program and is free of viruses.

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