No. 23-1149

In the Supreme Court of the United States

STEPHEN M. CALK, AKA SEALED DEFENDANT 1,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the phrase "anything of value" in 18 U.S.C. 215(a)(2), which criminalizes the receipt of gifts for procuring loans, excludes intangible items whose value is measured in ways other than direct market exchanges.

2. Whether the definition of acting "corruptly" under Section 215(a)(2) is limited solely to circumstances in which a bank officer breaches a legal or fiduciary duty.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-40a) is reported at 87 F.4th 164. The order of the district court (Pet. App. 41a-48a) is unreported but is available at 2022 WL 101908.

JURISDICTION

The judgment of the court of appeals was entered on November 28, 2023. A petition for rehearing was denied on February 13, 2024 (Pet. App. 49a). The petition for a writ of certiorari was filed on April 19, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner

was convicted of financial institution bribery, in violation of 18 U.S.C. 215(a)(2), and conspiring to commit financial institution bribery, in violation of 18 U.S.C. 371. Pet. App. 1a-2a. He was sentenced to 366 days of imprisonment, to be followed by two years of supervised release. *Id.* at 3a. The court of appeals affirmed. *Id.* at 1a-40a.

1. Petitioner was the chairman and chief executive officer of The Federal Savings Bank, a federally chartered savings association with offices in Illinois and New York. Pet. App. 4a; Pet. 5. Petitioner was also the principal shareholder of the bank's holding company, National Bancorp Holdings, Inc. Pet. App. 4a. In July 2016, Paul Manafort approached Federal Savings seeking a $5.7 million loan to finance a real estate development in California, secured by Manafort's property in Virginia. *Id.* at 5a. In a video meeting with Manafort and loan officer Dennis Raico, petitioner expressed interest in serving on Donald Trump's presidential campaign, for which Manafort was a consultant. *Id.* at 4a-5a. After Federal Savings conditionally approved the California loan, Manafort offered—and petitioner accepted—a position on the campaign's National Economic Advisory Committee, "a body of prominent businessmen" supporting the campaign. *Id.* at 5a-6a.

As Federal Savings officers investigated the potential loan further, however, they uncovered problems with the proposal. Pet. App. 6a. Among other things, the officers were unable to verify Manafort's reported income, and they discovered a $300,000 delinquency on one of his credit cards. *Ibid.* A loan officer accordingly recommended that the bank "increase the origination fee" (the amount that it was charging to arrange the loan) "and require additional collateral." *Ibid.* A senior

underwriter assigned to the loan testified that, based on the problems identified, he anticipated that "[a]t the very least, the loan would be restructured, if not killed." D. Ct. Doc. 264, at 171 (July 15, 2021).

But despite learning of these problems, petitioner endorsed Manafort's request for a $3.5 million increase in the proposed loan amount (from $5.7 million to $9.2 million). Pet. App. 6a. And in October 2016, with petitioner's endorsement, Federal Savings approved the increase. *Ibid.* Manafort sent petitioner an e-mail that thanked petitioner for "fixing my issue," said that petitioner was "becoming a very good friend," and made clear that Manafort "look[ed] forward to building [their] relationship into both a deeper business and personal one." *Id.* at 6a-7a (citation omitted).

Shortly before the scheduled closing on the $9.2 million loan, Manafort backed out and proposed a new loan of $9.5 million to Summerbreeze, L.L.C., an entity controlled by his wife, to be secured by two of Manafort's properties and a cash deposit. Pet. App. 7a. Federal Savings' president expressed doubts about the proposal, but petitioner nonetheless sought to move the loan forward. *Ibid.* Raico (the loan officer) proposed brokering the Summerbreeze loan to another lender, which would earn Federal Savings a commission but reduce its risk. *Ibid.* On the evening of election day (November 8), petitioner messaged Manafort to say that the loan should be "all wrapped up by tomorrow" and to ask, "Do you need me in New York? I'm ready to support in any way." *Id.* at 7a-8a (citations omitted). When the other lender did not approve the loan on the expected timeline, Federal Savings officers considered whether to issue the Summerbreeze loan directly. *Id.* at 8a. Petitioner agreed that it should do so. *Ibid.*

On the same day that the bank sent Manafort a term sheet, petitioner asked Raico to call Manafort to ask whether petitioner was being considered for Secretary of the Treasury or other roles in the new administration. Pet. App. 8a. Then, over the next few days, petitioner had an 18-minute phone call with Manafort and sent him a professional biography along with a ranking of desired positions in the new administration. *Ibid.* On November 15, after Manafort confirmed his personal involvement in the transition team, petitioner sent Manafort a document describing himself as a "Candidate for Secretary of the Army" and asking for Manafort's advice to make sure the application contained "all of the information they need to have me successfully chosen by the President-Elect." *Id.* at 9a (citation omitted). The Summerbreeze loan closed the next day. *Id.* at 10a.

Three days later, petitioner thanked Manafort for his "assistance in supporting [petitioner's] appointment as Secretary of the Army." Pet. App. 9a (citation omitted). Also in November 2016, Manafort sought an additional $6.5 million loan from Federal Savings to refinance and renovate a Brooklyn townhouse. *Id.* at 10a. Because Federal Savings' lending limit prevented it from issuing the new loan while the Summerbreeze loan was still on the books, it attempted to sell the Summerbreeze loan to another bank. *Ibid.* While the Brooklyn loan was under consideration, petitioner e-mailed Manafort an updated document seeking appointment as Secretary of the Army. *Ibid.*

At the end of November, Manafort recommended petitioner for that position to Jared Kushner, a member of the presidential transition team, and Kushner forwarded the recommendation to other team members. Pet. App. 10a. On the same day that Manafort made the

recommendation, he e-mailed Raico and petitioner asking about the status of the Brooklyn loan, writing that "[t]he clock is ticking and we are getting pressure on a number of fronts." *Ibid.* (citation omitted). As petitioner was aware by that point, "a foreclosure proceeding on a Manafort property in Brooklyn, the proposed collateral for the [Brooklyn] Loan, had been initiated, and foreclosures were scheduled on several other Manafort properties." *Id.* at 11a.

In early December, petitioner e-mailed Manafort asking whether he was "making any progress re Sec Army" and inquiring about a potential meeting with the President-Elect. Pet. App. 11a (citation omitted). Manafort replied that the President-Elect was not taking appointment-related meetings, but that Manafort would call later with "updates." *Ibid.* (citation omitted). Manafort asked Anthony Scaramucci, a member of the presidential transition team, to interview petitioner for Secretary of the Army. *Id.* at 11a-12a. Scaramucci responded that while the Secretary position would likely go to someone else, he would "arrange for [petitioner] to be interviewed for Under Secretary of the Army." *Id.* at 12a. On December 21, Scaramucci asked Manafort whether he was "double sure" that petitioner would "take" the position of Under Secretary of the Army, because "[i]f so I think we can get it done." *Ibid.* (citation omitted). Manafort and petitioner then had an 11-minute phone call, after which Manafort told Scaramucci, "Yes he will def take it." C.A. Supp. App. 95.

The following day, petitioner directed Raico to prepare to extend Manafort the Brooklyn loan even if they could not convince another bank to take on the Summerbreeze loan. Pet. App. 12a. Petitioner planned to deal with Federal Savings' legal lending limits by having the

bank's holding company directly acquire part of the loan exposure. *Ibid.* Petitioner then sent Manafort a term sheet that he described as reflecting their discussion during the prior 11-minute phone call. *Id.* at 13a. The Brooklyn loan closed in early January 2017, and Federal Savings' holding company purchased a portion of the loan exposure. *Ibid.* Manafort used the loan proceeds to fend off the foreclosure of his Brooklyn property. *Id.* at 14a.

On January 9, 2017, petitioner flew to New York for an interview for the role of Under Secretary of the Army, which Scaramucci had helped arrange as a "favor" to Manafort. Pet. App. 13a (citation omitted). Petitioner ultimately was not selected for a position in the administration. *Id.* at 14a.

2. A grand jury in the Southern District of New York charged petitioner in a superseding indictment with financial institution bribery, in violation of 18 U.S.C. 215(a)(2) and 2, and conspiring to commit financial institution bribery, in violation of 18 U.S.C. 215(a)(2) and 371. C.A. App. 152-177.

Section 215(a)(2) prohibits an officer or director of a financial institution from "corruptly solicit[ing] or demand[ing] for the benefit of any person, or corruptly accept[ing] or agree[ing] to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution." 18 U.S.C. 215(a)(2). Violation of the statute is punishable by up to 30 years of imprisonment, "but if the value of the thing * * * demanded, accepted, or agreed to be accepted does not exceed $1,000," the violator may be "imprisoned not more than one year." 18 U.S.C. 215(a). The superseding indictment alleged that petitioner had "corruptly solicited and received from

[Manafort] assistance in obtaining a position with the Presidential Campaign and the incoming presidential administration, intending to be influenced and rewarded in connection with the extension of approximately $16 million in loans" to Manafort. C.A. App. 175.

Petitioner proceeded to a jury trial. Pet. App. 1a, 17a. The district court instructed the jury, *inter alia*, that "[t]o act corruptly means simply to act involuntarily and intentionally with an improper motive or purpose to be influenced or rewarded." *Id.* at 53a.[1] The court explained, "This involves conscious wrongdoing, or, as it is sometimes expressed, a bad or evil state of mind." *Ibid.* Over petitioner's objection, see, *e.g.*, C.A. App. 235, the court stated that it is "not a defense that [petitioner] may have been motivated by both proper and improper motives," Pet. App. 54a. But the court clarified that "good faith on the part of [petitioner] is a complete defense." *Id.* at 53a.

The district court also instructed that the government must prove "that the thing of value accepted or agreed to be accepted, or solicited or demanded by [petitioner] had a value greater than $1,000." Pet. App. 54a. Petitioner contended that value should be measured by "market value, negotiated value, or some similarly non-speculative measure." C.A. App. 226 n.26; see *id.* at 227 ("the value, if any, agreed on by the parties"). But the court instructed that "[t]he value of the thing may be measured by its value to the parties, the value of what [it] is exchanged for[,] or its market value." Pet. App. 54a; see C.A. Supp. App. 16 (written instructions).

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[1] Although the district court misspoke when it said "*in*voluntarily and intentionally," Pet. App. 53a (emphasis added); see C.A. Supp. App. 14 (written instructions), petitioner does not raise any claim related to that isolated misstatement.

The jury found petitioner guilty on both counts, Pet. App. 18a, and the district court denied petitioner's post-verdict motion for a judgment of acquittal, *id.* at 41a-48a. The court found the evidence was sufficient to show that petitioner had acted "corruptly," pointing to the "timing" of petitioner's actions with respect to the loans to Manafort and the fact that petitioner "was personally involved in giving the two loans special, favorable treatment at the Bank despite being aware of potential problems with Manafort's creditworthiness." *Id.* at 43a-45a. The court also highlighted the government's evidence that petitioner had "breached his duties" to Federal Savings under federal regulations and the bank's own policies, which required petitioner "to recuse himself from consideration of the loans." *Id.* at 45a.

The district court similarly found sufficient evidence that "the thing of value [petitioner] solicited and accepted—namely Manafort's assistance—had a value greater than $1,000." Pet. App. 47a. The court stated that a "'thing of value' may include both tangible and intangible things," and monetary value "may be determined by 'the value that the defendant[ ] subjectively attached to the items received.'" *Ibid.* (citation omitted). And the court noted that, in this case, petitioner had spent "$1,800 to attend the interview Manafort had arranged." *Id.* at 48a.

3. The court of appeals affirmed. Pet. App. 1a-40a.

a. The court of appeals rejected petitioner's contention that the district court had misconstrued the term "corruptly." Pet. App. 20a-27a. The court of appeals explained that "'corrupt' conduct requires improper purpose." *Id.* at 21a (citation omitted; capitalization altered). In particular, citing cases construing the

prohibition on corruption in federally funded programs, 18 U.S.C. 666, the court explained that a defendant acts "corruptly" if he acts "with the bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means." Pet. App. 21a (citation omitted).

The court of appeals rejected petitioner's contentions that he acted corruptly "only if he breached a duty to" Federal Savings. Pet. App. 23a. The court noted that neither the text nor common understandings of the term "corruptly" include such a requirement. *Id.* at 24a. And the court explained that a bank officer can act corruptly "even if the financial transaction ultimately led to a profitable outcome for the bank," because even a profitable transaction that is "improperly influenced by bribery or corruption" can cause "an erosion of the public trust * * * that Congress sought to protect." *Id.* at 26a. The court rejected petitioner's contention that, so long as he was even "partially motivated by a proper or neutral purpose," he did not act corruptly. *Ibid.* (capitalization omitted).

The court of appeals also found sufficient evidence that petitioner acted "corruptly." Pet. App. 27a-28a. The court pointed to evidence demonstrating that petitioner's "efforts to influence [Federal Savings'] review and eventual approval of Manafort's loan applications were motivated by [petitioner's] desire to build a political relationship with Manafort and to secure his assistance in seeking an appointment" in the incoming presidential administration. *Ibid.* And it pointed to evidence that petitioner "pushed repeatedly for Manafort's loans to be approved" despite his knowledge that Manafort had defaulted on prior loans and that some of his properties were in foreclosure. *Id.* at 28a.

b. The court of appeals separately rejected petitioner's contention that "a 'thing of value' under Section 215(a)(2) must have an 'objective market value' and cannot include intangibles or things that are subjectively valuable to the defendant." Pet. App. 28a (citation omitted). The court observed that the plain meaning of "anything" is broad. *Id.* at 28a-29a. The court further observed that the phrase "thing of value" is used repeatedly throughout the U.S. Code and "is generally construed to cover intangibles as well as tangibles." *Id.* at 29a (citations omitted). It accordingly explained that "'[a]nything of value,' as used in Section 215(a)(2), can include intangibles with a subjective value to the parties, even if they do not have an objective market value." *Ibid.* And it found sufficient evidence to support the jury's valuation in this case. *Id.* at 30a.

The court of appeals explained that, in determining whether the relevant "'thing of value'" has a value greater than $1000, a jury can consider "[t]he conduct of the parties, and in particular the value of what the bribe recipient is willing to trade or facilitate in exchange for the bribe." Pet. App. 33a. The court determined that the evidence was sufficient to show that "Manafort's assistance was worth more than $1,000 to" petitioner, because by urging approval of the loans, petitioner "was indirectly putting his own assets on the line" (as the primary shareholder of the bank's holding company) and "risked incurring significant regulatory investigations or fines." *Id.* at 33a-34a. The court of appeals made clear, however, that the district court's reliance on the $1800 in travel expenses, which reflected only "how much [petitioner] valued the *interview* and his travel preferences," had been misplaced. *Id.* at 34a.

ARGUMENT

Petitioner contends (Pet. 15-21, 26-33) that the court of appeals erred in rejecting his narrowing constructions of the statutory terms "anything of value" and "corruptly." Petitioner's contentions are incorrect, and the decision below does not conflict with any decision of this Court or any other court of appeals. The petition for a writ of certiorari should be denied.

1. The court of appeals correctly determined that Manafort's assistance in obtaining a position in the incoming presidential administration qualified as "anything of value," 18 U.S.C. 215(a)(2), and that the evidence of its value was sufficient to support petitioner's felony conviction. And petitioner's allegations of a circuit conflict are misplaced.

a. The plain meaning of the phrase "anything of value," 18 U.S.C. 215(a)(2), encompasses the services that Manafort provided in this case. This Court has "repeatedly explained that the word 'any' has an expansive meaning." *Babb* v. *Wilkie*, 589 U.S. 399, 405 n.2 (2020) (citation and internal quotation marks omitted). And "value" includes "relative worth, utility, or importance." Pet. App. 29a (quoting dictionary definition); see, *e.g.*, *Webster's Third New International Dictionary* 2530 (1986) (same); *The Oxford English Dictionary* 416 (2d ed. 1989) ("the relative status of a thing, or the estimate in which it is held, according to its real or supposed worth, usefulness, or importance").

Although the courts of appeals have had little occasion to interpret the phrase "anything of value" in Section 215(a), they have interpreted similar phrases ("anything of value" and "any thing of value") in 18 U.S.C. 666(a)(1)(B), the federal-program bribery statute, to include "intangibles." *United States* v. *Marmolejo*, 89

F.3d 1185, 1191 (5th Cir. 1996), aff'd on other grounds, 522 U.S. 52, cert. denied, 522 U.S. 1014 (1997). As the Fifth Circuit has observed, "[t]he term '*anything* of value' in § 666(a)(1)(B) is broad in scope and contains no language restricting its application to transactions involving money, goods, or services." *Ibid.*

Courts of appeals have accordingly recognized that a "thing of value" in Section 666(a)(1)(B) includes conjugal visits, *Marmolejo*, 89 F.3d at 1191-1192; prompt evictions of unwanted residents, *United States* v. *Hines*, 541 F.3d 833, 836-837 (8th Cir. 2008), cert. denied, 555 U.S. 1200 (2009); the zoning and development of a new mall, *United States* v. *Zimmermann*, 509 F.3d 920, 926-927 (8th Cir. 2007), abrogated on other grounds by *Snyder* v. *United States*, 144 S. Ct. 1947 (2024); and the expungement of convictions, *United States* v. *Fernandes*, 272 F.3d 938, 944 (7th Cir. 2001). Were it otherwise, the statute would have a major gap, allowing for rampant bribery so long as at least one side of the *quid pro quo* exchange was an intangible benefit—no matter how valuable or desirable it might be.

Courts of appeals have similarly recognized that "anything of value" and related phrases in various federal criminal laws are not limited, either textually or contextually, to items that have "objective value." Pet. i. Such phrases are instead understood "broadly to include the value which the defendant subjectively attaches to the items received." *United States* v. *Renzi*, 769 F.3d 731, 744 (9th Cir. 2014) (citation and internal quotation marks omitted), cert. denied, 576 U.S. 1054 (2015); see *United States* v. *Petrovic*, 701 F.3d 849, 858 (8th Cir. 2012) (interpreting "thing of value" in 18 U.S.C. 875(d) to include "subjective" value).

Even if something is "difficult to value," *Marmolejo*, 89 F.3d at 1191, a dollar price in the open market "is not the sole measure of value," *United States* v. *Nilsen*, 967 F.2d 539, 542-543 (11th Cir. 1992) (per curiam) (interpreting "thing of value" in 18 U.S.C. 876), cert. denied, 507 U.S. 1034 (1993). The only existing photograph of someone's relative may be a thing of extreme value to that person, even if no market for the photograph exists and nobody else would pay even a penny for it.

The court of appeals' decision here was consistent with these widely recognized principles. Regardless of whether it would or could be directly sold on the open market, Manafort's assistance in securing a position in the Trump administration plainly had significant value to petitioner. As the court explained, a "recommendation for a job" can "be highly valuable to the job seeker" even if it "may not be typically given a specific market value." Pet. App. 29a-30a.

b. Petitioner contends (Pet. 16) that Section 215(a)(2) is limited to things "susceptible to objective *economic* calculation," relying principally on the $1000 felony threshold. But although petitioner criticizes (Pet. 17) the court of appeals for purportedly ignoring the statute's text, he offers no response to the plain-language interpretation discussed above. Nor is it entirely clear what petitioner means. The mere fact that a particular service is not typically bought or sold on the open market does not mean it is incapable of economic valuation. The picture of the relative, for example, might well be worth a high amount to a particular family member, even though she is the only person who wants it.

Here, the court of appeals properly determined that the evidence permitted the jury to find that Manafort's

assistance had a monetarily translatable value (at least) to petitioner, and that the $1000 threshold was satisfied based on the substantial personal and financial risk that petitioner undertook to secure it by approving the loans to Manafort. See Pet. App. 34a. Petitioner does not challenge that factbound determination, but even if he did, it would not warrant this Court's review. See Sup. Ct. R. 10; *United States* v. *Johnson*, 268 U.S. 220, 227 (1925) ("We do not grant * * * certiorari to review evidence and discuss specific facts.").

Petitioner's approach not only lacks a foothold in the text, but would undermine the statute's ability to combat financial corruption. Countless things of value, such as admission to a highly selective school or a decision not to pursue criminal charges, may lack a public market value. On petitioner's atextual construction, Section 215 would pose no bar to a bank administrator soliciting a child's admission into a top-tier college or the dismissal of an investigation in exchange for a loan to a college administrator or a prosecutor. Petitioner offers no defense of such results.

Petitioner errs in suggesting (Pet. 18-21) that the court of appeals' interpretation raises due process concerns. A criminal statute is impermissibly vague only if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited" or "is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States* v. *Williams*, 553 U.S. 285, 304 (2008). Petitioner cannot show that here, where the plain meaning of the statutory phrase "anything of value," 18 U.S.C. 215(a)(2), naturally encompasses valuable services like those provided by Manafort in this case, even if not offered on the open market.

Nor could "the mere fact that close cases can be envisioned render[] [the] statute vague." *Williams*, 553 U.S. at 305. If the government cannot prove that a benefit in a particular case is worth $1000, then that problem "is addressed, not by the doctrine of vagueness, but by the requirement of proof beyond a reasonable doubt." *Id.* at 306; see *ibid.* (observing that a statute is not rendered vague by "the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved").

c. Contrary to petitioner's contention (Pet. 21-24), the court of appeals' interpretation of "anything of value," 18 U.S.C. 215(a)(2), does not conflict with decisions from other circuits. At the outset, all of the decisions that petitioner cites involved different statutes—even though petitioner criticizes (Pet. 17) the court below for relying on "*other* bribery statutes" that "lack[] § 215's particular structural characteristics." In any event, all of the cited decisions differ in key respects.

Petitioner first points (Pet. 21-23) to two decisions interpreting 29 U.S.C. 186(a), which prohibits employers from paying "any money or other thing of value" to labor organizations. In *Adcock* v. *Freightliner LLC*, 550 F.3d 369 (2008), cert. denied, 558 U.S. 932 (2009), the Fourth Circuit deemed certain "concessions" by an employer to a union—namely, requiring employee attendance at particular union presentations, allowing union representatives access to particular areas for meetings with employees, and refraining from making negative comments about the union during an organizing campaign—to be "mutually acceptable ground rules" for the organizing campaign, rather than "'thing[s] of value.'" *Id.* at 374. But the decision was case- and statute-specific, with the court making clear that it "need not

decide the extent to which intangible items may have value under [Section 186(a)] or any other criminal statute prohibiting the delivery, conveyance, or acceptance of a 'thing of value.'" *Id.* at 375 n.3.

Adcock thus would not apply to a Section 215 case like this, were one to arise in the Fourth Circuit. The same is true of the Third Circuit's Section 186(a) decision in *Hotel Employees & Restaurant Employees Union, Local 57* v. *Sage Hospitality Resources, LLC*, 390 F.3d 206 (2004), cert. denied, 544 U.S. 1010 (2005). There, the court found that the complaining party failed "to provide any legal support for the remarkable assertion that entering into a valid labor agreement governing recognition of a labor union amounts to illegal labor bribery." *Id.* at 219. As with *Adcock*, both the statute and the facts of this case are wholly distinct.

Petitioner also points (Pet. 23) to a Seventh Circuit decision in a case involving 18 U.S.C. 201(c)(2), which prohibits providing "anything of value" to a person for or because of the person's testimony at certain types of proceedings. See *United States* v. *Condon*, 170 F.3d 687, cert. denied, 526 U.S. 1126 (1999). The Seventh Circuit there simply recognized that a prosecutor's promise of immunity or sentence reduction "is not a 'thing of value' within the meaning of § 201(c)(2)," observing that "treating immunity from prosecution (or a prosecutorial promise that would lead to a lower sentence) as a 'thing of value' would put § 201(c)(2) at war with a long history of lawful inducements to testify—inducements that have been codified." *Id.* at 689 (citation omitted). This case does not involve the same statute, witness testimony, or other materially similar circumstance.

Finally, petitioner notes (Pet. 24) the Ninth Circuit's view that the federal conversion statute, 18 U.S.C. 641, does not apply to "intangible goods" such as classified information. *United States* v. *Tobias*, 836 F.2d 449, 451, cert. denied, 485 U.S. 911 (1988). The Ninth Circuit, however, arrived at that view based on "an extensive discussion of the legislative history." *Ibid.* In any event, Section 641's text—which refers to "any record, voucher, money, or thing of value of the United States," 18 U.S.C. 641—is distinct from Section 215(a)(2)'s. Petitioner thus fails to show that his case would have turned out differently in the Ninth Circuit, either.

2. As to petitioner's second claim, the court of appeals correctly declined to adopt petitioner's limiting construction of the term "corruptly," 18 U.S.C. 215(a)(2), instead interpreting it to include acting with an improper purpose. And again, petitioner's assertion of a circuit conflict is mistaken.

a. The court of appeals' definition of "corruptly" under Section 215(a)(2) in the decision below—"voluntarily and intentionally with an improper motive or purpose to be influenced or rewarded," Pet. App. 21a (citation omitted)—comports with this Court's precedent and historical understandings. This Court has explained that the term "'corruptly'" is "normally associated with wrongful, immoral, depraved, or evil" conduct. *Arthur Andersen LLP* v. *United States*, 544 U.S. 696, 705 (2005). Similarly, Congress has defined the term "corruptly" in 18 U.S.C. 1505 (prohibiting obstruction of congressional and agency proceedings) to mean "acting with an improper purpose." 18 U.S.C. 1515(b). Definitions from other sources are to the same effect. See, *e.g.*, *Black's Law Dictionary* 348 (7th ed. 1999) (defining "corruptly" to mean "[i]n a corrupt or depraved

manner") (emphasis omitted); *Merriam-Webster's Dictionary of Law* 109 (1996) (defining "corrupt" to mean "having an unlawful or evil motive") (emphasis omitted).

Petitioner nonetheless asserts (Pet. 27) that the term "corruptly" in Section 215(a)(2) refers solely to "an intentional breach of some independent, clearly defined legal duty." The text does not support that limitation. The "natural meaning" of the term contains no such requirement. *Arthur Andersen*, 544 U.S. at 705. And nothing in the statutory context or structure supports petitioner's position.

Had Congress meant to limit Section 215(a)(2) in the manner that petitioner suggests, it would have said so through language adopting that limitation. Compare, *e.g.*, 18 U.S.C. 201(b)(2)(C) (imposing penalties on a public official who "corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value * * * in return for * * * being induced to do or omit to do any act in violation of the official duty of such official or person"). It did not do so. Instead, when Congress added the "corruptly" mens rea to Section 215(a), it excluded "'innocent persons who are not engaged in culpable or wrongful conduct'" but "stopped there, without further suggesting that a bank officer must breach a fiduciary duty." Pet. App. 24a (citation omitted). Of course, a defendant's breach of his fiduciary duty may be evidence of wrongful purpose. And in many cases, a bank officer who accepts a bribe with an improper purpose will breach his fiduciary duties or violate some "independent legal duty," Pet. 27, like a banking regulation. But the application of the statute is not limited solely to such a circumstance.

Contrary to petitioner's contention (Pet. 26-27), the well-established understanding of "corruptly" applied

below does not raise vagueness concerns. Petitioner cites *United States* v. *Poindexter*, 951 F.2d 369 (D.C. Cir. 1991), cert. denied, 506 U.S. 1021 (1992), which took the view that the word "corruptly" in 18 U.S.C. 1505 (1988) was unconstitutionally vague as applied to a defendant who lied to Congress. 951 F.2d at 386. But Congress responded to *Poindexter* by defining "corruptly" for purposes of Section 1505 to include "*acting with an improper purpose*, personally or by influencing another, including making a false or misleading statement." 18 U.S.C. 1515(b) (emphasis added); see 142 Cong. Rec. S8940 (daily ed. July 25, 1996) (Statement of Sen. Specter) (explaining that the amendment would "overturn" *Poindexter*). And as noted, this Court subsequently observed, in *Arthur Andersen* v. *United States*, that "corruptly" has a "natural meaning" that is "normally associated with wrongful, immoral, depraved, or evil" conduct, without suggesting that the term is vague. 544 U.S. at 705. Petitioner identifies no court of appeals decision since *Poindexter* that has deemed "corruptly" unconstitutionally vague in any other context. See, *e.g.*, *United States* v. *Edwards*, 869 F.3d 490, 501-502 (7th Cir. 2017) (distinguishing *Poindexter* and citing similar cases).

b. Petitioner errs in contending (Pet. 31-32) that the court of appeals' interpretation of "corruptly" conflicts with decisions from other circuits. Again, petitioner fails to cite any cases interpreting the statute at issue in this case, 18 U.S.C. 215(a). Indeed, the decision below is entirely consistent with the Ninth Circuit's recent decision defining "corruptly" in a Section 215(a)(2) case as "a wrongful desire for pecuniary gain or other advantage." *United States* v. *Lonich*, 23 F.4th 881, 902-903 (2022) (citation omitted). In any event, all of the

decisions that petitioner cites differ in other critical respects as well.

Petitioner first cites (Pet. 31) *United States* v. *Ogle*, 613 F.2d 233 (10th Cir. 1979), cert. denied, 449 U.S. 825 (1980), which interpreted the term "corruptly" in the general obstruction-of-justice statute, 18 U.S.C. 1503. But if anything, *Ogle* hurts, rather than helps, petitioner's cause, because it sets a lower bar than the definition used in this case. The Tenth Circuit there upheld a district court's case-specific instruction to the jury to the effect that "an endeavor to influence a juror in the performance of his or her duty or to influence, obstruct or impede the due administration of justice is per se unlawful and is tantamount to doing the act corruptly." 613 F.2d at 238. The Tenth Circuit rejected the defendant's contention that the jury instructions should have additionally "included reference to an evil motive, something bad, wicked, or having an evil purpose," *ibid.*, because it viewed any necessary "evil" intent to be satisfied by "the endeavor to accomplish that which the statute was designed to protect," and not to require "evil purpose in the sense of a fiendish motive," *id.* at 242. *Ogle* thus provides no support to petitioner's limiting construction here.

The Fifth Circuit's decision in *United States* v. *Reeves*, 752 F.2d 995, cert. denied, 474 U.S. 834 (1985) (cited at Pet. 31), likewise does not support petitioner. There, the Fifth Circuit construed "corruptly" in the tax-obstruction statute, 26 U.S.C. 7212(a), as "the intention of securing improper benefits or advantages for one's self or for others." *Reeves*, 752 F.2d at 1001-1002. That is a different definition from the one petitioner proposes. And although *Reeves* rejected an improper-motive definition, it predated *Arthur Anderson*.

Petitioner next cites (Pet. 31-32) *United States* v. *Buendia*, 907 F.3d 399 (6th Cir.), cert. denied, 139 S. Ct. 441 (2018), which interpreted "corruptly" in 18 U.S.C. 666(a)(1)(B). The defendant, a school principal, was charged with taking kickbacks on orders of school supplies. *Buendia*, 907 F.3d at 401. The principal "argue[d] that she lacked the requisite corruptness because * * * she spent the kickbacks to benefit the school." *Id.* at 402. The court rejected that argument on the ground that the principal had "subverted the normal bidding process in a manner inconsistent with her duty to obtain goods and services for her school at the best value." *Ibid.* The rejection of the principal's argument—and affirmance of her conviction—do not show that the Sixth Circuit would have set aside petitioner's conviction here.

Finally, the Third Circuit's decision in *United States* v. *Davis*, 183 F.3d 231, amended, 197 F.3d 662 (1999), again predates *Arthur Anderson* and rests on statute-specific reasoning. Interpreting 18 U.S.C. 1512(b), a witness-tampering statute, the court reasoned that the defendant had acted "corruptly" by urging another individual "to violate his legal duty not to kill [a witness] or aid in [the witness's] death." *Davis*, 183 F.3d at 250. In the court's view, "'corrupt persuasion'" under Section 1512(b) "involves more than an improper motive" because "anyone with the intent to interfere with an investigation has 'improper' motives." *Id.* at 250 n.6. Section 215 does not include the phrase "corruptly persuades," 18 U.S.C. 1512(b); see 18 U.S.C. 215, and nothing in *Davis* would require that the Third Circuit

reverse petitioner's Section 215 conviction in the circumstances here.[2]

c. At all events, even assuming that the issue might otherwise warrant this Court's review, this case would be a poor vehicle for addressing the interpretation of "corruptly," because petitioner would be unlikely to prevail even under his own narrowing construction.

Petitioner contends (Pet. 14) that the government was required to show a "conscious breach of a fiduciary duty to the bank" or other "clearly defined legal duty." Here, the government "presented evidence showing that [petitioner] breached his duties under Office of the Comptroller of the Currency * * * regulations and the Bank's own policies, which required [petitioner] to recuse himself from consideration of the loans." Pet. App. 45a; see, *e.g.*, D. Ct. Doc. 258, at 66-67, 71-75 (July 15, 2021); D. Ct. Doc. 270, at 92 (July 15, 2021).

The fact that Federal Savings ultimately made a profit on the loans to Manafort, or that the terms of the loans were purportedly favorable to the bank, see Pet. 34, "is legally insignificant," *United States* v. *Denny*, 939 F.2d 1449, 1452 (10th Cir. 1991) (affirming Section 215(a)(2) conviction). Just as a judge cannot accept bribes so long as his rulings are "legally sound," *United States* v. *Manton*, 107 F.2d 834, 846 (2d Cir. 1939), cert. denied, 309 U.S. 664 (1940), so too a bank official cannot accept bribes simply because the corrupt transactions

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[2] Petitioner also contends (Pet. 31) that the government adopted an inconsistent interpretation of "corruptly" under Section 215 in a prior court of appeals brief. But the cited brief addressed the distinct question of whether 18 U.S.C. 666 covers gratuities as well as bribes. See Gov't Br. at 101-106, *United States* v. *Bahel*, No. 08-cr-3327 (2d Cir. Apr. 27, 2009).

turn out to be profitable for the bank, *Denny*, 939 F.2d at 1452.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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