IN THE SUPREME COURT OF THE UNITED STATES

24A____

EGHBAL SAFFARINIA (A/K/A/ EDDIE SAFFARINIA),

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

EMERGENCY APPLICATION TO STAY MANDATE PENDING DISPOSITION OF CERTIORARI PETITION

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Applicant Eghbal Saffarinia was the defendant in the district court and appellant in the court of appeals.

Respondent the United States of America was the plaintiff in the district court and appellee in the court of appeals.

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the District of Columbia Circuit:

Pursuant to this Court's Rule 23, Applicant Eghbal Saffarinia respectfully moves for an emergency stay of the D.C. Circuit's mandate pending the filing and disposition of a petition for a writ of certiorari. The petition has at least "'a reasonable probability'" of being granted and "'a fair prospect'" of reversal, resulting in vacatur of Saffarinia's conviction and prison sentence. *Maryland* v. *King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers). Absent relief, Saffarinia will serve a substantial portion of his year-and-a-day prison sentence before this Court can address his petition, let alone rule on the merits.

Time and again, this Court has warned against unrestrained interpretations of "residual" phrases in obstruction statutes, lest they threaten "decades in prison"

for "a broad swath of prosaic conduct." *Fischer* v. *United States*, 144 S. Ct. 2176, 2189 (2024). In *Yates* v. *United States*, 574 U.S. 528 (2015), for example, the Court thus refused to give an expansive reading to a statute that prohibited destroying, concealing, falsifying, or making false entries into "any record, document, or *tangible object*," holding that it could not extend to discarding fish (even though fish literally are tangible objects). *Id.* at 549 (emphasis added). In *Marinello* v. *United States*, 584 U.S. 1 (2018), the Court rejected a broad reading of the phrase "obstruct or imped[e], or endeavor to obstruct or impede, the *due administration* of" the Internal Revenue Code. *Id.* at 4 (emphasis added). While the phrase "'due administration'" could be read to have a broad reach, the Court held that it does not encompass obstruction of "routine administrative procedures." *Id.* at 4, 7. Most recently, in *Fischer*, the Court held that the phrase "'otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,'" does not literally encompass any obstructive act but is instead limited to the types of conduct identified in the preceding section, *e.g.*, tampering with documentary evidence. 144 S. Ct. at 2190.

The decision below defies those precedents and this Court's repeated direction. Under 18 U.S.C. §1519, it is a crime—punishable by up to 20 years' imprisonment—to impede or obstruct "the investigation or *proper administration of* any matter within the jurisdiction of any department or agency of the United States or any case filed under" Chapter 11 of the Bankruptcy Code. 18 U.S.C. §1519 (em-

phasis added). In upholding Saffarinia's conviction, the D.C. Circuit read the phrase "*proper administration* of any [federal] matter" expansively to include routine review of forms and papers. See Ex. B, Op. at 10-11. That cannot be reconciled with *Marinello*, which held that an almost indistinguishable phrase, "due administration," *excludes* routine administrative procedures. 584 U.S. at 4. The D.C. Circuit did not support its maximalist construction with an evaluation of §1519's text or context. It did not acknowledge this Court's longstanding rule that broad penal statutes like §1519 must be interpreted narrowly. It invoked its own decision in *United States* v. *Fischer*, 64 F.4th 329 (D.C. Cir. 2023). But this Court overturned that decision in *Fischer* v. *United States*, 144 S. Ct. 2176 (2024), precisely because it was inconsistent with governing principles. Saffarinia sought rehearing on that basis, yet the D.C. Circuit below refused to reconsider its interpretation of §1519. That refusal left set in stone a precedential opinion that rests on a D.C. Circuit case this Court overturned and endorses an expansionist interpretive approach this Court has repeatedly rejected.

The impossibility of reconciling the D.C. Circuit's decision with this Court's precedents alone is sufficient to justify review. But the extensive mischief the decision promises makes review imperative. Under the opinion below, the residual phrase "proper administration" now has the broadest possible reach, stretching §1519 to reach obstruction of *any* routine administrative activity—from review of U.S. Postal Service certified mail forms to review of federal job applications. A

stay is needed to allow Saffarinia to "obtain a writ of certiorari" for this Court to review and redress that break from precedent and common sense. 28 U.S.C. §2101(f). The case presents an important issue that raises "'a reasonable probability'" of this Court's review and "'a fair prospect'" of reversal. *King*, 567 U.S. at 1302 (Roberts, C.J., in chambers). And without a stay, Saffarinia will suffer "'irreparable harm'": He will serve all or much of his prison sentence before this Court can consider his petition and address the merits. *Ibid.* Under similar circumstances, this Court has stayed court of appeals mandates before. *E.g.*, *McDonnell* v. *United States*, 576 U.S. 1091 (2015) (mem.). It should do so again here.[1]

STATEMENT

I. LEGAL FRAMEWORK

This case concerns the scope of 18 U.S.C. §1519, which criminalizes certain false statements and efforts to impede or obstruct justice. Section 1519 provides:

> Whoever knowingly * * * conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S.C. §1519.

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[1] If the mandate issues while this application is pending, Saffarinia requests that the Court order that the mandate is both recalled and stayed. Alternatively, Saffarinia requests an administrative stay of sufficient length to allow this Court to consider and rule upon this application.

Section 1519 thus criminalizes obstruction of three categories of proceedings. It targets efforts to obstruct an agency "investigation" of a matter. It addresses obstruction of "any case filed under" Chapter 11 of the Bankruptcy Code. And §1519's residual clause extends its prohibition to "proper administration of any matter" within agency jurisdiction.

Section 1519 is one of "numerous [obstruction] provisions that target specific criminal acts and settings." *Fischer*, 144 S. Ct. at 2187 (citing 18 U.S.C. ch. 73 ("Obstruction of Justice")). "Section 1505," for example, "covers anyone who corruptly obstructs congressional inquiries or investigations." *Ibid.* And the three provisions that precede §1519 in Title 18 "address obstructive acts in specific contexts, including federal audits, examinations of financial institutions, and inquiries into healthcare-related offenses." *Ibid.* (discussing 18 U.S.C. §§1516-1518). Section 1519 covers, as its title explains, "[d]estruction, alteration, or falsification of records in Federal investigations and bankruptcy." 18 U.S.C. §1519.

Section 1519 is also joined by a host of statutes criminalizing false statements in a range of governmental contexts. While violations of §1519 are punishable by up to 20 years' imprisonment, 18 U.S.C. §1519, the penalties under those other statutes range from one to five years' imprisonment. See, *e.g.*, 18 U.S.C. §288 (false claims for postal losses); 18 U.S.C. §1920 (false statements to obtain federal compensation less than $1,000); 18 U.S.C. §1922 (false statements in federal-employee compensation); 18 U.S.C. §1035 (false statements related to health care).

In this case, for example, the government also charged Saffarinia with making false statements in violation of 18 U.S.C. § 1001. Section 1001 imposes up to five years' imprisonment for, "in any matter within [federal] jurisdiction," "knowingly and willfully" (1) "falsif[ying], conceal[ing], or cover[ing] up" a "material fact" by "trick, scheme, or device"; (2) making a "materially false, fictitious, or fraudulent statement," or concealing a material fact; and (3) making or using "any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry." 18 U.S.C. § 1001.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Saffarinia Is Charged and Tried for Obstructing Routine Form Review Under Section 1519

Between 2012 and 2017, Saffarinia was an Assistant Inspector General at the Department of Housing and Urban Development Office of the Inspector General (HUD-OIG). Among other responsibilities, Saffarinia oversaw HUD-OIG's information technology services contract with a company called STG, Inc. Ex. B, Op. at 4. In 2012, Saffarinia suggested to STG that it consider subcontracting with Orchid Technologies, a company owned by Saffarinia's close college friend, Hadi Rezazad. *Id.* at 4-5. STG conducted its own "diligen[ce] process," concluded that Orchid had "good quals," pursued the partnership, and ultimately subcontracted to Orchid. C.A. App. 1271:5-10, 1282:2-1283:7. When STG's contract was cancelled a few years later, Orchid joined a different company to bid for, and ultimately win, what

had previously been the STG contract. Ex. B, Op. at 5. STG filed a bid protest, alleging that Saffarinia had steered the contracts to Orchid. *Ibid.*

Like other members of the Senior Executive Service, Saffarinia completed an annual financial disclosure form issued by the Office of Government Ethics (OGE) known as Form 278. That form required disclosure of certain liabilities exceeding $10,000, including loans from friends. See 5 C.F.R. §2634.305. The processing of Form 278 is a routine, administrative function. A designated ethics official within the relevant agency (for Saffarinia, HUD) ensures the forms are "reviewed" within 60 days. 5 U.S.C. app. §106(a)(1); 5 C.F.R. §2634.605(a).[2] Reviewers may request information from the employee, but they are not empowered to issue subpoenas, take interviews, compel testimony, or otherwise gather information. 5 U.S.C. app. §106(b)(2)(A); 5 C.F.R. §2634.605(b)(4); see C.A. App. 1191:16-1192:18. There is no investigation or audit into whether the information provided on the form is accurate. C.A. App. 1191:25-1192:8.

Saffarinia failed to report two loans on his disclosure forms: an $80,000 loan he received from his friend Rezazad (the head of Orchid) in 2013, and a $90,000 loan he received from a family friend who lived down the street from him in 2015.

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[2] In December 2022, Congress re-codified the Ethics in Government Act within Title 5, Pub. L. 117-286, §4 (Dec. 27, 2022), without "chang[ing] the meaning or effect of the existing law." *Id.* §2(b)(1). This application cites the law in effect at the time of Saffarinia's conduct, which was previously codified in the Appendix to Title 5, available at https://www.govinfo.gov/content/pkg/USCODE-2021-title5/pdf/USCODE-2021-title5.pdf.

After an FBI investigation into Saffarinia's alleged steering of government contracts to Orchid uncovered those loans and Saffarinia's failure to disclose them, Saffarinia was indicted on seven related charges. Counts 1 through 4 charged violations of 18 U.S.C. §1001 stemming from Saffarinia's failures to disclose the loans on his disclosure forms in 2013, 2014, and 2015. Counts 5 through 7 alleged that Saffarinia had violated §1519 by falsifying those same "forms to be filed with HUD and OGE" with intent to obstruct HUD or OGE's "investigation and proper administration of a matter." C.A. App. 56(¶78). Saffarinia was never charged with bribery or related offenses based on any allegation of contract steering.

Saffarinia moved to dismiss the §1519 counts, invoking this Court's decision in *Marinello*. That case read the phrase "'due administration [of the tax code]'" in another obstruction statute, 26 U.S.C. §7212, to require a formal "administrative *proceeding*, such as an investigation, an audit, or other targeted administrative action." 584 U.S. at 12-13 (emphasis added). Saffarinia argued the phrase "proper administration of [a] matter" in §1519 should likewise be read to require a formal, adversarial, or adjudicative proceeding. C.A. App. 153-165. And because review of Form 278 was routine, limited, and non-adversarial, obstructing review by omitting information from Form 278 could not support the §1519 counts. C.A. App. 154. The district court disagreed, deeming *Marinello* "inapposite" and relying instead on §1519's "broad" language and legislative history. Ex. H, Dist. Ct. Op. at 53-55, 63 n.12.

Trial confirmed that review of Form 278 is a routine and non-investigative process. See C.A. App. 1191:16-1192:18. Accordingly, Saffarinia renewed his objection. He proposed a jury instruction defining "'proper administration'" of a matter to mean "a formal, adversarial or adjudicative proceeding." C.A. App. 1736. The district court nonetheless issued final instructions leaving "proper administration" undefined. C.A. App. 2037:3-2040:5. And the government urged the jury to convict on the theory that "proper administration of * * * a matter" encompasses ordinary-course review of forms. C.A. App. 1921:22-1922:3. Saffarinia's false entries on annual ethics disclosure forms, it urged, had "impeded and impaired" HUD's "review functions" because HUD is "required to review the 278 forms[.]" C.A. App. 1921:22-1922:3; see also C.A. App. 1922:3-7 (arguing Saffarinia impeded OGE routine functions like "issu[ing]" forms). The jury convicted on all counts.[3]

B. The District Court Denies Post-Trial Relief but Grants Bail Pending Appeal

After trial, Saffarinia renewed his argument that ordinary-course review of Form 278 is not an "investigation" or "proper administration" of a "matter" under §1519, again citing *Marinello*. C.A. App. 2170-2172; C.A. App. 2205. The failure

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[3] The government alternatively argued that the jury could convict based on Saffarinia's obstruction of the separate FBI investigation into Saffarinia's alleged contract steering, which the government attributed to HUD and OGE. See C.A. App. 1922:10-1923:12. The jury instructions, however, permitted conviction on *either* the form-review or FBI theory and the verdict was general, leaving no way to ascertain the ground on which the jury based its convictions. C.A. App. 2037:3-2040:5, 2057-2059.

to instruct the jury accordingly, he added, at least required a new trial. C.A. App. 2205; see *McDonnell* v. *United States*, 579 U.S. 550, 579-580 (2016) (vacating conviction where jury "may have convicted * * * for conduct that is not unlawful"). The district court denied the motion, invoking § 1519's "broad[]" statutory language and legislative history. C.A. App. 2518:6-2519:20.

The district court sentenced Saffarinia to one-year-and-one-day imprisonment. C.A. App. 2616. The court explained that the § 1519 convictions were "driving" the sentence and, "if the 1519 charges weren't in the mix, [it] would be a much different situation," C.A. App. 2573:21-2574:7, 2576:19-2577:5—one where Saffarinia's guidelines range "would be zero to 6 months," C.A. App. 2585:7-12; see Ex. F, Bail Order at 2.

The district court granted bail pending appeal. Ex. F, Bail Order at 2-4. Bail was warranted, the court explained, because "whether agency review of Mr. Saffarinia's OGE Forms 278 constitutes an 'investigation' or 'matter'" under § 1519 was a "'substantial'" legal question that could significantly reduce Saffarinia's sentence if his appeal were successful. Ex. F, Bail Order at 3; see C.A. App. 2585:7-17, 2587:10-19.

C. The D.C. Circuit Holds that § 1519 Encompasses Routine Form Review

The court of appeals affirmed, holding that interference with routine review of government forms constitutes "proper administration" of a "matter" under

§1519.[4] Saffarinia had argued that, based on statutory text, structure, and the *noscitur a sociis* canon, "'proper administration of any matter'" requires a formal, adversarial, or adjudicative proceeding. Saffarinia C.A. Br. 47-48. Section 1519 sandwiches the phrase "proper administration of any matter" between "investigation" and "any [bankruptcy] case," both more formal and adversarial than ordinary paperwork review. Saffarinia C.A. Br. 47-48. *Marinello*, Saffarinia further explained, read the phrase "due administration" in another obstruction statute to *exclude* "routine, day-to-day work carried out in the ordinary course by the IRS, such as the review of tax returns." 584 U.S. at 13. Section 1519's reference to the "proper administration" of federal matters, Saffarinia explained, could not be read more expansively than the synonymous phrase "due administration" in *Marinello*. Saffarinia C.A. Br. 48; Saffarinia C.A. Reply Br. 15.

The D.C. Circuit disagreed. It adopted a broad reading of §1519, refusing to look beyond §1519's allegedly "capacious" language. Ex. B, Op. at 9. The court consulted no dictionaries, interpretive canons, or even §1519's context or structure, even though Saffarinia's briefing relied on all of those. It did not look to *ejusdem generis* or *noscitur a sociis*, as this Court does when addressing residual clauses in other obstruction statutes. See *Fischer*, 144 S. Ct. at 2184; *Yates*, 574 U.S. at 545-

[4] Saffarinia also explained why routine Form 278 review could not qualify as an "investigation" under the statute. Saffarinia C.A. Br. 49-50. The government did not dispute that point in its response brief, narrowing the dispute to whether routine review qualified as the proper administration of a matter. Gov't C.A. Br. 20-21.

546. Nor did it acknowledge the "interpretive 'restraint'" necessary when construing criminal statutes. *Marinello*, 584 U.S. at 9-10. Instead, the D.C. Circuit supported its broad interpretation of § 1519 by positing that "'[o]bstruction of justice is a crime that Congress "has aggressively sought to deter."'" Ex. B, Op. at 10. It found support for that "aggressive[ ]" congressional intent in lines of a Senate Report. *Ibid.* The court did not acknowledge the caution urged by other Senators—expressed in a separate statement attached to the same report—against construing "'proper administration of [a] matter'" expansively. S. Rep. No. 107-146, at 27 (2002). The statute, those Senators said, is limited to "formal administrative proceeding[s]," does not reach every "arm of the federal bureaucracy," and should not be "interpreted more broadly." *Ibid.*

The court of appeals' rejection of Saffarinia's construction—his reliance on § 1519's text, structure, and history, as well as fair-notice and lenity concerns—spanned a single paragraph. It relied exclusively on the D.C. Circuit's opinion in *United States* v. *Fischer*, 64 F.4th 329 (2023). Quoting that opinion to defend its maximalist interpretation of § 1519, the court of appeals held that, "'[i]f Congress's goal were to criminalize a subset of obstructive behavior, it easily could have used words that precisely define that subset[.]'" Ex. B, Op. at 10.

D. This Court Overturns the D.C. Circuit's Decision in *Fischer*

Soon after the D.C. Circuit issued its decision below—relying on its decision in *Fischer* to support an expansive reading of § 1519—this Court overturned the

D.C. Circuit's *Fischer* decision, squarely rejecting the D.C. Circuit's interpretive approach and result. *Fischer*, 144 S. Ct. at 2190.

In *Fischer*, the D.C. Circuit had adopted the broadest "literally permissible" reading of another obstruction statute, the residual clause in § 1512(c). If Congress meant to criminalize only a subset of conduct that could arguably fall within that obstruction statute's broad language, the D.C. Circuit urged, it would "have used words that precisely define that subset." 64 F.4th at 344. The court of appeals thus refused to look past § 1512's superficial breadth or consult traditional tools for interpreting penal laws. *Id.* at 345-346. And the D.C. Circuit specifically declared that "[r]estraint * * * ha[d] no place in [the Court's] analysis." *Id.* at 350.

This Court repudiated every facet of the D.C. Circuit's *Fischer* decision. Courts, it declared, must "'exercise[ ] restraint in assessing the reach of a federal criminal statute.'" *Fischer*, 144 S. Ct. at 2189. Indeed, the Court's "usual approach in obstruction cases has been to 'resist reading' particular sub-provisions 'to create a coverall' statute." *Ibid.* That means consulting traditional tools of interpretation like the canon of *noscitur a sociis*, *id.* at 2183-2184, and casting a skeptical eye to text that, taken literally, threatens "decades in prison" for "a broad swath of prosaic conduct," *id.* at 2189. The D.C. Circuit's failure to follow that instruction in *Fischer*, and its effort to jump straight to the broadest "literally permissible" reading, was error. *Id.* at 2190.

E. The D.C. Circuit Denies Rehearing and a Stay

Days after this Court overturned the D.C. Circuit's decision in *Fischer*, Saffarinia filed a petition for rehearing and rehearing en banc. The petition urged that the panel had erred by shunning text, context, and precedent in favor of broad "purpose" and ambiguous legislative history. That flawed analysis, Saffarinia argued, rested on the same unrestrained approach that led this Court to overturn the D.C. Circuit's decision in *Fischer*. It also produced an unconstrained construction of "proper administration of [a] matter" that could not be reconciled with *Marinello*'s restrained reading of "due administration of [the tax code]." Absent rehearing, Saffarinia warned, the D.C. Circuit would be leaving on the books a published decision that defies this Court's precedents on an important issue. Saffarinia C.A. Pet. for Reh'g 16-17.

The D.C. Circuit denied the petition. Ex. E, Reh'g Order at 1. It rejected Saffarinia's motion for a stay of the mandate on August 15, 2024. Ex. C, Stay Order at 1.

REASONS FOR GRANTING THE APPLICATION

The D.C. Circuit's decision in this case gives the phrase "proper administration" of a matter in §1519 its broadest conceivable meaning, reading it to encompass any imaginable activity of a federal agency, no matter how workaday or routine. That reading transforms *any* knowingly false statement or omission on *any* document intended to influence *any* aspect of the vast federal bureaucracy—

from hiring to payroll to administration of U.S. Postal Service certified mail—into felonious obstruction of justice subject to 20 years' imprisonment. That interpretation, and the court of appeals' rationale for imposing it, cannot be reconciled with this Court's precedents. Time and again, this Court has applied traditional interpretative tools—text, context, and canons of construction like *ejusdem generis* or *noscitur a sociis*—with "restraint" to avoid overbroad interpretations of criminal statutes that threaten fair-notice concerns. *E.g.*, *Fischer* v. *United States*, 144 S. Ct. 2176 (2024); *Marinello* v. *United States*, 584 U.S. 1 (2018); *Yates* v. *United States*, 574 U.S. 528 (2015) (plurality).

The D.C. Circuit did none of that. Although this Court's decision in *Marinello* invoked traditional interpretive principles to construe the phrase "due administration" as excluding ordinary-course review of routine documents, the court of appeals read the functionally indistinguishable phrase "proper administration" to encompass precisely such workaday review without reference to those principles. Where this Court's decisions in *Marinello*, *Fischer*, and *Yates* require obstruction provisions to be read with restraint in light of the text in surrounding provisions, the decision below adopts an unconstrained construction of a criminal provision, without regard to that text or the traditional interpretive tools this Court's cases demand. The D.C. Circuit supported its maximalist approach—and reliance on non-textual sources like purpose and (ambiguous) legislative history—by invoking its own prior opinion in a decision this Court has *overturned*. The resulting conflict

makes it amply probable that this Court is not only likely to grant review, but also to reverse. And the substantial mischief threatened by the decision, which exposes any citizen who completes any federal form to 20 years in prison, underscores the need for review.

For those reasons, a stay of the D.C. Circuit's mandate pending the filing and disposition of a petition for certiorari is warranted. *Maryland* v. *King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers). Absent emergency relief before the mandate issues on August 22, 2024 (or a recall of the mandate shortly thereafter), Saffarinia will begin, and potentially complete, a prison sentence that this Court's review and reversal would vacate. The government, conversely, will suffer no prejudice at all from another brief delay to Saffarinia's incarceration.

I. THE D.C. CIRCUIT'S DECISION DEFIES THIS COURT'S PRECEDENTS AND DIRECTIVES REGARDING THE PROPER CONSTRUCTION OF RESIDUAL CLAUSES IN OBSTRUCTION STATUTES

This Court's precedents are not lightly ignored. Yet the D.C. Circuit's decision in this case dismissed this Court's decision in *Marinello*, addressing functionally identical language in another obstruction statute, with a wave of the hand. It disregarded this Court's longstanding statutory-interpretation principles and directive for restraint when construing residual clauses in obstruction provisions, instead looking to legislative history over text, context, structure, and criminal-law interpretive techniques. And it stubbornly endorsed the D.C. Circuit's own decision in *Fischer* as controlling despite this Court's decision overturn-

ing that decision. That not only "conflicts with relevant decisions of this Court," but does so on a vitally "important question of federal law." S. Ct. R. 10(c). Left unreviewed, the D.C. Circuit's decision threatens ordinary citizens with up to 20 years' incarceration for a shockingly "broad swath of prosaic conduct," depriving the American public of fair warning that their conduct is criminal. *Fischer*, 144 S. Ct. at 2189. That makes this Court's review at least reasonably probable, supporting the issuance of a stay.

A. The D.C. Circuit's Decision Defies *Marinello*

In *Marinello*, this Court addressed the scope of another criminal obstruction statute, 26 U.S.C. § 7212, which prohibits criminally interfering with "the due administration of" the Internal Revenue Code. The Court examined statutory text, structure, and context to determine the meaning of "administration," ultimately concluding that the phrase "due administration" in § 7212 *does not reach* "routine administrative procedures * * * such as the ordinary processing of income tax returns." *Marinello*, 584 U.S. at 4, 7, 9. The Court thus rejected an unrestrained, though "literally" permissible, reading of § 7212's "highly abstract general statutory language." *Id.* at 7, 10-11.

The D.C. Circuit reached the opposite result with the virtually indistinguishable phrase "proper administration" in the context of § 1519. Ex. B, Op. at 11. The words "proper administration," it held, encompass not just formal investigations or proceedings, but regular and everyday activities like review of routine forms. If

words in the English language are to have discernable meaning in criminal statutes—as they must to provide the notice that is every citizen's due—that cannot be right. It cannot be that the *same word*—"administration"—encompasses the routine procedure of "HUD and OGE's review of Forms 278" under § 1519 but not the IRS's review of tax forms under § 7212. Ex. B, Op. at 11. The same word should not mean two different things in two criminal obstruction statutes. Indeed, given the substantial similarities across such statutes, *Marinello* itself held that precedent interpreting § 1519 should be "follow[ed]" when interpreting § 7212. 584 U.S. at 11-12 (relying on *Yates*, 574 U.S. at 531 (plurality)). The converse is equally true.

The D.C. Circuit's rejection of *Marinello* missed the point. The D.C. Circuit proclaimed the language in § 7212 and § 1519 "distinct," without explaining why any supposed distinction made a difference. Ex. B, Op. at 11. And *Marinello* itself shows it is immaterial that the "language" in the two provisions "differ[s] somewhat." 584 U.S. at 12. Admittedly, § 1519 says "proper administration" and § 7212 says "due administration." But "proper" and "due" are synonyms. *Due*, Black's Law Dictionary 609 (10th ed. 2014) ("[j]ust, proper, regular, and reasonable"); *Due Administration of Justice*, Black's Law Dictionary 53 ("proper functioning and integrity of a * * * tribunal and the proceedings before it").

That § 7212 addresses administration of a "title" of the U.S. Code, and § 1519 refers to administration of federal "matter[s]," underscores why *Marinello* must

control. Because §7212 addressed administration of an entire amorphous area of law, the whole tax code, *Marinello* relied on the fact that §7212 was an "obstruction provision[]" to conclude it must be directed to a "particular administrative proceeding." 584 U.S. at 11-13. Obstruction, this Court explained, "suggest[s] an object—the [defendant] must hinder a particular person or thing." *Id.* at 7, 13. The text of §1519 demands, if anything, even greater particularity. It *expressly* references obstruction of a particular person or thing—a federal "matter." "'[P]roper administration'" of specific federal matters in §1519 cannot encompass "routine, day-to-day" form review when "due administration" of the tax code in §7212 does not. *Marinello*, 584 U.S. at 12-13.

The D.C. Circuit tried to distinguish *Marinello* on the theory that *Marinello* found "the 'literal language of [§7212] is neutral' as to its breadth," while the D.C. Circuit believed §1519's language was broad. Ex. B, Op. at 11 (quoting *Marinello*, 584 U.S. at 7). But *Marinello* explained that §7212 was "neutral" not in terms of linguistic breadth, but "[a]s to *Congress' intent*." 584 U.S. at 7 (emphasis added). That was because, if Congress "[h]ad * * * intended" to criminalize all the conduct that §7212 would reach under the government's "broad interpretation," Congress "would have spoken with more clarity than it did." *Id.* at 9-10 (emphasis added). Instead, *Marinello* explained, Congress used literally "wide-ranging," "highly abstract," and "general" language in §7212—the same sort of wide-ranging language it used in §1519. *Id.* at 11. Such language *could not be* "read literally" to

render obstruction of routine tax-form review a felony, including because it would result in an overbroad reading that would deprive taxpayers of "'fair warning.'" *Id.* at 7, 10-12. Yet the D.C. Circuit's decision below would subject the same taxpayers to 20 years' imprisonment under § 1519 based on synonymous statutory text. "'[F]air warning'" indeed.

B. The D.C. Circuit's Failure To Consider the Canons of Construction this Court Has Deemed Controlling Underscores the Need for Review

The D.C. Circuit did not just wave off *Marinello*'s on-point construction of functionally indistinguishable language. It disregarded this Court's repeated admonitions—in *Marinello*, *Fischer*, *Yates*, and elsewhere—to carefully apply canons of statutory interpretation when determining the scope of residual clauses in obstruction statutes. But rather than look to those canons and apply the principle of restraint this Court has endorsed, the D.C. Circuit's decision looked to ambiguous legislative history.

1. In *Fischer*, this Court addressed the meaning of a residual clause that extended a prohibition on obstruction to any person who "otherwise obstructs, influences, or impedes any official proceeding." 18 U.S.C. § 1512(c)(2); see 144 S. Ct. at 2181. That language, the Court held, could not be read to encompass "*any* conduct that delays or influences a proceeding in *any* way," but had to be read narrowly in light of surrounding language. 144 S. Ct. at 2189. In particular, the preceding clauses of the statute referred to obstructive acts that "impair" evidence

such as document destruction, concealment, and alteration. 18 U.S.C. §1512(c)(1); see 144 S. Ct. at 2183-2184, 2185-2186. Canons like *noscitur a sociis* and *ejusdem generis*, the Court explained, teach that words are given "'more precise content'" by their neighbors, and that general collective terms in a list are generally defined by "'the specific classes'" of the terms preceding them. *Id.* at 2183-2184. Consequently, the Court held, the residual clause "'otherwise obstructs * * * any official proceeding'" could not be read to encompass all obstruction, but must be limited to impairment of evidence consistent with surrounding text. *Id.* at 2185-2186. "[T]here would have been scant reason for Congress to provide any specific examples at all" otherwise. *Id.* at 2185.

This Court's decision in *Yates* is to the same effect. The provision there proscribed destroying, concealing, falsifying, and making false entries into "any record, document, or *tangible object*." 18 U.S.C. §1519 (emphasis added). Even though the "tangible object" language literally extended to any physical thing—even *fish*—*Yates* rejected such an unrestrained reading. 574 U.S. at 543-549 (plurality); *id.* at 549-552 (Alito, J., concurring in the judgment). The canon of *noscitur a sociis*, *Yates* explained, makes clear that "a word is known by the company it keeps" and should be used to "to 'avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.'" *Id.* at 543 (plurality). The relevant sort of "tangible objects" thus had to be limited to those objects that are "used to

record or preserve information," like records and documents. *Id.* at 549; accord *id.* at 549-550 (Alito, J., concurring in the judgment).

The D.C. Circuit's decision departs from this Court's directives in *Fischer* and *Yates*. Section 1519 lists three categories of government activities that fall within its scope. It applies to "any case filed under" Chapter 11 of the Bankruptcy Code. 18 U.S.C. §1519. It applies to government "investigations." *Ibid.* And it applies to the "proper administration of any matter" within agency jurisdiction. *Ibid.* The first two, any "case" under Chapter 11 and any agency "investigation," are identifiable proceedings of some formality. Both investigations and cases are discrete, targeted, and adversarial proceedings. See generally *Investigation*, Black's Law Dictionary 953; *Case*, *id.* at 258. Under the doctrines of *noscitur a sociis* and *ejusdem generis*, the third category must be similar and must similarly be an identifiable proceeding of some formality. It cannot be mere review of a form. Yet the D.C. Circuit never bothered to address Saffarinia's argument that *noscitur a sociis* required it to read the "proper administration" language in light of the other sorts of federal activities listed in §1519. Ex. B, Op. at 9-12. It ignored the canon entirely.

Other contextual clues—which the D.C. Circuit likewise ignored—lead to the same conclusion. Section 1519 is titled: "Destruction, alteration, or falsification of records in Federal *investigations* and *bankruptcy*." 18 U.S.C. §1519 (emphasis added). Just as in *Yates*, that "title is especially valuable here because it reinforces

what the text's nouns and verbs independently suggest—that no matter how other statutes might be read, this particular one does not cover every noun in the universe [of any matter]" but only those of a kind with "'Federal investigations and bankruptcy'" cases. 574 U.S. at 552 (Alito, J., concurring in the judgment). That is yet another "cue[] that Congress did not intend [any matter] in §1519 to sweep within its reach" every informal review of paperwork an agency performs. *Id.* at 540 (plurality).

2. *Fischer* and *Marinello* also direct courts to consider whether a broad construction would render other criminal prohibitions superfluous or create such overlap as to cast doubt on whether an expansive construction is appropriate. In *Fischer*, this Court held that the "superior" reading of the residual clause in §1512(c) was the "narrower" one, because the broader reading the D.C. Circuit had endorsed would "largely obviate the need" for a "broad array of other obstruction statutes" that carefully "address obstructive acts in specific contexts." 144 S. Ct. at 2187. In *Marinello*, this Court similarly rejected the broad, amorphous reading of "administration" proposed by the government because it would "potentially transform many, if not all," of a wide range of "misdemeanor provisions into felonies, making the specific provisions redundant, or perhaps the subject matter of plea bargaining." 584 U.S. at 9. The D.C. Circuit considered that not at all.

Instead, it unselfconsciously adopted a construction that creates overlap with other false-statement and obstruction statutes—often crimes for which Con-

gress has prescribed far less severe penalties. For example, 18 U.S.C. §1001 imposes up to five years' imprisonment for various "knowing[] and willful[]" acts of falsifying or concealing material facts "in any matter within [federal] jurisdiction." But the D.C. Circuit's reading of §1519 subsumes §1001 almost entirely. Section 1519 would punish, with sentences up to 20 years, an even *broader* set of falsification than §1001 if committed with intent to influence at least the "proper administration of [a] matter." Under the D.C. Circuit's reading, it is a "struggle to imagine a scenario where [someone] would 'willfully' violate" §1001—*i.e.*, make a false statement material to a federal "matter"—and *not* also intend to influence that matter in violation of §1519 (or, at least, be close enough that a prosecutor could justifiably charge §1519). *Marinello*, 584 U.S. at 10. But "[j]ust because" a citizen "knows that [an agency] will review" a form "does not transform every" false statement on a government form "into an obstruction charge" punishable by up to 20 years in prison. *Id.* at 13.

The D.C. Circuit's reading would also render "unnecessary" a host of other "particularized legislation" punishing false statements made to governmental entities—usually misdemeanors[5] or less-severe felonies.[6] *Fischer*, 144 S. Ct. at

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[5] *E.g.*, 18 U.S.C. §§288 (false claims for postal losses), 1722 (false evidence to secure second-class postal rate), 1922 (false statements in federal-employee compensation reports); 8 U.S.C. §1306(c) (false statements related to immigration registration); 13 U.S.C. §§221(b), 224 (false answers to census questions); 42 U.S.C. §1713 (false statements related to application for compensation for harm to employees of government contractor).

2187. Such a result shows that a "narrower interpretation * * * is the superior one," but the D.C. Circuit failed to consider it at all. *Ibid.*

3. Rather than apply a proper approach carefully examining text, context, and structure, the D.C. Circuit jumped straight to the broadest reading based on supposed "purpose" and ambiguous legislative history. It focused on how some Senators (on whom the D.C. Circuit relied) appeared to endorse a sweeping interpretation of §1519's residual clause. Ex. B, Op. at 10-11 (quoting S. Rep. No. 107-146, at 7, 15 (2002)). Even if one ignores the lack of clarity in that history for the moment, the court of appeals' reliance on it defies this Court's precedents too. This Court has made clear that "'[v]ague notions'" of purpose, *Montanile* v. *Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 577 U.S. 136, 150 (2016), and "murky" legislative history, *Azar* v. *Allina Health Servs.*, 587 U.S. 566, 579-580 (2019), can neither overcome nor supplant the sort of textual analysis this Court endorsed in *Fischer*, *Marinello*, and *Yates*.

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[6] *E.g.*, 18 U.S.C. §§289 (false statements in any "matter within the jurisdiction of the Secretary of Veterans Affairs"), 1002 (possession of false papers to defraud the United States), 1010 (false statements to HUD or Federal Housing Administration), 1011 (false statements to "Federal land bank"), 1012 (HUD development fraud), 1015(a) (false statements in "matter relating to * * * naturalization, citizenship, or registry of aliens"), 1016 (false sworn statements on matters involving agencies), 1020 (false statements regarding highway projects), 1022 (false statements regarding receipt of military property), 1026 (false statements to influence "Secretary of Agriculture"), 1031 (false statements to obtain contract, loan, or "other form of Federal assistance"); 38 U.S.C. §1987(b) (false statements in veterans' insurance applications); 49 U.S.C. §21311(a)(5) (false statements to Secretary of Transportation regarding railroads).

Even clear legislative history, moreover, cannot provide the "'fair warning'" this Court demands of criminal statutes. *Marinello*, 584 U.S. at 7; see *Snyder* v. *United States*, 144 S. Ct. 1947, 1960 (2024) (Gorsuch, J., concurring) (collecting cases enforcing "'[f]air notice'" and "'fair warning'" requirements). While legislative history may sometimes "'clear up ambiguity,'" *Bostock* v. *Clayton County*, 590 U.S. 644, 674 (2020), ambiguities in *criminal* statutes may not be resolved "against [defendants] on the basis of general declarations of policy in the statute and legislative history," *Hughey* v. *United States*, 495 U.S. 411, 422 (1990). Legislative history thus may "limit, never expand, punishment." *Wooden* v. *United States*, 595 U.S. 360, 394-395 (2022) (Gorsuch, J., concurring in the judgment); see *U.S. ex rel. Martin* v. *Hathaway*, 63 F.4th 1043, 1054 (6th Cir. 2023) (Sutton, C.J.) ("no one should be imprisoned based on a document or statement" never passed into law).

Even a "veritable Rosetta Stone of legislative archaeology" offers only "speculation" about statutory meaning—Americans should not "'languish[] in prison'" based on "the views of a majority of a single committee of congressmen." *United States* v. *R.L.C.*, 503 U.S. 291, 309-310 (1992) (Scalia, J., concurring). The interpretation of a criminal statute carrying up to 20 years in prison is no time, in other words, to "look[] over the heads of the [crowd] for one's friends." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 377 (2012). But that is exactly what the D.C. Circuit did below.

Here, moreover, the legislative history is at best ambiguous. As explained above (p. 12), *some* legislators may have endorsed an expansive view, but many expressly cautioned that the statute applies only to "formal administrative proceeding[s]" and does not reach every "arm of the federal bureaucracy." S. Rep. No. 107-146, at 27. Contradictory statements from different legislators are just that—contradictory statements from legislators—not law. The D.C. Circuit's reliance on them makes the conflict between its decision and this Court's precedents more pressing still.

C. The D.C. Circuit's Decision Is Inconsistent with the Principle of Interpretive Restraint That This Court's Cases Require

This Court's decisions rejecting overbroad readings of criminal obstruction statutes—and studious adherence to text and the canons of statutory construction—reflect and reinforce larger principles. First, courts must "exercise[] restraint in assessing the reach of a federal criminal statute." *Fischer*, 144 S. Ct. at 2189; see also *Arthur Andersen LLP* v. *United States*, 544 U.S. 696, 703 (2005) ("restraint is particularly appropriate" in reading § 1512); *Aguilar* v. *United States*, 515 U.S. 593, 600 (1995) ("restraint" appropriate in reading § 1503). Particularly in "obstruction cases," courts should "'resist reading' particular sub-provisions 'to create a coverall' statute." *Fischer*, 144 S. Ct. at 2189. That means consulting traditional tools of interpretation like the canon of *noscitur a sociis*, *id.* at 2183-

2184, and casting a skeptical eye to text that, taken literally, threatens "decades in prison" for "a broad swath of prosaic conduct," *id.* at 2189.

"[A]ny doubt" remaining *after* exercising that restrained approach, moreover, must "'be resolved in favor of lenity.'" *Yates*, 574 U.S. at 547-548. To read criminal statutes otherwise risks "arbitrary prosecution" and raises concerns about "fair warning and related kinds of unfairness." *Marinello*, 584 U.S. at 9-11. Thus, when "Congress intend[s]" to adopt language as extraordinarily broad as the D.C. Circuit's reading of § 1519, it must speak with "clarity." *Id.* at 10.

Those principles reflect structural separation-of-powers and individual due process concerns. For centuries, this Court has followed the "ancient maxim" that "penal laws are to be construed strictly." *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95-96 (1820); see 1 W. Blackstone, Commentaries on the Laws of England 88-90 (1765). Crimes must be clearly "'defined by the legislature, not by clever prosecutors riffing on equivocal language.'" *Dubin* v. *United States*, 599 U.S. 110, 129-130 (2023). Only Congress can pass "laws restricting liberty" with the requisite "assent of the people's representatives and * * * input from the country's 'many parts, interests and classes.'" *Wooden*, 595 U.S. at 391-92 (Gorsuch, J., concurring) (quoting The Federalist No. 51, at 324 (J. Madison)). Vesting prosecutors with such "great" power, by contrast, merely empowers them to "'pursue their personal predilections.'" *Marinello*, 584 U.S. at 9, 11.

As this Court explained in *Fischer*, "defining crimes and setting the penalties" is a "quintessentially legislative act." *Fischer*, 144 S. Ct. at 2189. The D.C. Circuit's maximalist interpretation of §1519's residual clause undermines that separation of powers by transferring that "quintessentially legislative act" to the executive. It cannot be reconciled with this Court's practice of rejecting one overbroad interpretation of criminal law after another. See J. Johnson, *Ad Hoc Constructions of Penal Statutes*, 100 Notre Dame L. Rev. ___ (forthcoming 2024) (analyzing examples from past ten Terms).[7]

Such unduly expansive constructions also deprive ordinary citizens of fair notice. "[B]road interpretation[s]" of residual clauses risk a dangerous "lack of fair warning" about what is criminal, undermine traditional concepts of due process, and erode "necessary confidence in the criminal justice system." *Marinello*, 584 U.S. at 9, 11. "Vague laws invite arbitrary power." *Sessions* v. *Dimaya*, 584 U.S. 148, 175 (2018) (Gorsuch, J., concurring in part and concurring in the judgment). Such laws "leav[e] the people in the dark about what the law demands and allow[]

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[7] See, *e.g.*, *Fischer*, 144 S. Ct. at 2189 (18 U.S.C. §1512); *Marinello*, 584 U.S. at 12 (26 U.S.C. §7212); *Snyder* v. *United States*, 144 S. Ct. 1947 (2024) (18 U.S.C. §666); *Ciminelli* v. *United States*, 598 U.S. 306, 313 (2023) (18 U.S.C. §1343); *Percoco* v. *United States*, 598 U.S. 319 (2023) (18 U.S.C. §1346); *Dubin*, 599 U.S. at 114 (18 U.S.C. §1028A(a)(1)); *United States* v. *Hansen*, 599 U.S. 762 (2023) (8 U.S.C. §1324); *Ruan* v. *United States*, 597 U.S. 450 (2022) (21 U.S.C. §841); *Van Buren* v. *United States*, 593 U.S. 374 (2021) (18 U.S.C. §1030); *Kelly* v. *United States*, 590 U.S. 391 (2020) (18 U.S.C. §1343); *McDonnell*, 579 U.S. at 576 (18 U.S.C. §201); *Yates*, 574 U.S. at 548 (18 U.S.C. §1519); *Bond* v. *United States*, 572 U.S. 844 (2014) (18 U.S.C. §229).

prosecutors and courts to make it up." *Ibid.* Because "'[i]nvoking so shapeless a provision to condemn someone to prison * * * does not comport with the Constitution's guarantee of due process,'" this Court requires "constrained interpretation[s]" that avoid such vagueness and provide the constitutionally mandated fair notice. *McDonnell*, 579 U.S. at 576.

It is entirely unclear how an ordinary citizen could have fair warning that the phrase "proper administration" encompasses ordinary-course review of workaday disclosure forms when, in another statute, the phrase "due administration" excludes ordinary-course review of standard tax returns. See *Marinello*, 584 U.S. at 8-9; pp. 17-18, *supra*. Expecting citizens to guess that such otherwise indistinguishable phrases have entirely opposite meanings is neither notice nor fair. Rather than honoring that requirement, the D.C. Circuit adopted a "'shapeless'" reading of § 1519 that leaves individuals "subject to prosecution, without fair notice, for the most prosaic interactions." *McDonnell*, 579 U.S. at 576; see pp. 26-27, *supra*.

The D.C. Circuit's decision ultimately rests not on statutory construction, not on the principles of restraint, but on its own prior decision in *Fischer*, which this Court has overturned. In *Fischer* and in this case, the D.C. Circuit demanded statutory clarity to support a *narrow* construction of a criminal obstruction provision, imposing a presumption that expansive interpretations are correct. "'If Congress's goal were to criminalize a subset of obstructive behavior,'" the court of

appeals said, "'it easily could have used words that precisely define that subset[.]'" Ex. B, Op. at 10 (quoting *Fischer*, 64 F.4th at 344). But this Court explained why that reasoning got the "analysis * * * 'exactly backwards.'" *Fischer*, 144 S. Ct. at 2185. And this Court once again demanded "clarity" for the sort of broad interpretation the D.C. Circuit endorsed, *Marinello*, 584 U.S. at 10: "If Congress had wanted to authorize such penalties for *any* conduct that delays or influences a proceeding in *any* way, it would have said so." *Fischer*, 144 S. Ct. at 2189. Yet, even after this Court's decision in *Fischer*, the D.C. Circuit below refused to relent from its expansionist interpretation of §1519. The court of appeals left on the books its precedential decision, relying on an overruled D.C. Circuit case, re-espousing that "'backwards'" interpretive approach. *Id.* at 2185.

D. The Breadth and Scope of the D.C. Circuit's Decision Underscores the Need for This Court's Review

Residual obstruction clauses like §1519's are particularly vulnerable to over-broad readings that "criminalize a broad swath of prosaic conduct." *Fischer*, 144 S. Ct. at 2189. If the D.C. Circuit's "capacious" interpretation stands, Ex. B, Op. at 9, §1519 would transform *any* false statement designed to influence *any* activity "within the jurisdiction of *any* department or agency of the United States" into an up-to-20-year felony, 18 U.S.C. §1519 (emphasis added). The end result: Conduct as innocuous as signing a roommate's name when receiving certified mail would qualify as felonious obstruction of the U.S. Postal Service. Leaving work at 4:55

p.m. but submitting "5:00 p.m." on a single day's timecard would become felony obstruction of a federal employer's payroll punishable by up to 20 years in prison.

Even setting aside such innocuous conduct, crimes with far lesser penalties—misdemeanors and felonies alike—would be swept within §1519's ambit. See pp. 24-25 & nn.5-6, *supra*. The D.C. Circuit's interpretation of §1519 thus "intrude[s] on th[e] deliberate arrangement of constitutional authority over federal crimes, giving prosecutors broad discretion to seek a 20-year maximum sentence for acts Congress saw fit to punish only with far shorter terms of imprisonment." *Fischer*, 144 S. Ct. at 2189-2190. Courts should not interpret criminal statutes in ways that enhance executive power at the legislature's expense by allowing prosecutors to "pick[] the man and then search[] the law books * * * to pin some offense on him." R. Jackson, *The Federal Prosecutor*, 31 J. Crim. L. & Criminology 3, 5 (1940).

The D.C. Circuit's expansive construction of §1519 thus threatens inordinate mischief. "[C]riminal justice today is for the most part a system of pleas, not a system of trials." *Lafler* v. *Cooper*, 566 U.S. 156, 169-170 (2012). Indeed, last year, 97.2% of all sentenced individuals pleaded guilty. U.S. Sentencing Comm'n, 2023 Annual Report 16 (2024). Broad, amorphous statutory interpretations empower the government to charge serious crimes carrying significant penalties—like §1519's 20-year felony—alongside lesser offenses. Such serious charges apply "inordinate pressure[] [on defendants] to enter into plea bargains" even for "crimes

they never actually committed." J. Rakoff, Why the Innocent Plead Guilty and the Guilty Go Free 28 (2021). Indeed, for that reason, *Marinello* rejected an expansive interpretation of the tax-obstruction statute that would render lesser offenses merely the "subject matter of plea bargaining." 584 U.S. at 9.

This case illustrates the enormous impact of the D.C. Circuit's construction. If Saffarinia had pleaded to § 1001 in exchange for avoiding § 1519 charges—as the government offered—no court could have addressed his arguments challenging the scope of § 1519. And now that the D.C. Circuit has agreed with the government's "capacious" interpretation, it will be all the harder for other defendants to risk exercising their constitutional trial rights, further insulating the issue from future judicial review.[8]

This Court thus has recently and repeatedly granted certiorari in similar cases. This Court granted the petition in *Fischer* to address the breadth of § 1512(c)'s residual clause even though it did not present a clean circuit conflict. See Pet. for Certiorari 16-18, *Fischer* v. *United States*, No. 23-5572 (U.S.) (filed

[8] The risk of proceeding to trial is all the greater because defendants who "'take their case to trial'" instead of pleading guilty generally "'receive longer sentences'" if they ultimately lose. *Missouri* v. *Frye*, 566 U.S. 134, 144 (2012). Indeed, even though the government told Saffarinia that this case was "'never about jail time'" during plea discussions, C.A. App. 2382, the government advocated after trial for "27 months, at the high end" of the § 1519-driven Guidelines range, and the district court imposed a-year-and-a-day—acknowledging that the § 1519 convictions motivated that sentence. C.A. App. 2349, 2617. If Saffarinia had pleaded guilty to § 1001 and the government had dropped the § 1519 charges, Saffarinia's guidelines range would have been "zero to 6 months" instead. C.A. App. 2585:7-12.

Sept. 11, 2023) (identifying inconsistency in general interpretation of § 1512 but no conflict on the question presented); Brief in Opp. 18-20, *Fischer* v. *United States*, No. 23-5572 (U.S.) (filed Oct. 30, 2023) (arguing there is no circuit split and that "no other court of appeals has ever endorsed the construction that petitioners advocate"). This Court in *Yates* similarly granted review to interpret "the term 'tangible object'" in § 1519, 574 U.S. at 532, even though the petition "did not purport to identify a circuit split," Pratik A. Shah, *The Chief Justice and Statutory Construction: Holding the Government's Feet to the Fire*, 38 Cardozo L. Rev. 573, 578 (2016). And in *Bond* v. *United States*, 572 U.S. 844 (2014), this Court addressed the "improbably broad reach of" a criminal statute, *id.* at 859-860, even though the petition had "not present[ed] a circuit split," Harlan G. Cohen, *Formalism and Distrust: Foreign Affairs Law in the Roberts Court*, 83 Geo. Wash. L. Rev. 380, 428 (2015).[9]

This case, moreover, presents an ideal vehicle to decide the scope of § 1519's residual clause. The court of appeals, in a precedential decision, squarely "'passed upon'" that clause's scope, *Kaisha* v. *U.S. Philips Corp.*, 510 U.S. 27, 33 n.7 (1993), rejecting Saffarinia's arguments that the statute could not, and should not, extend

[9] Indeed, obstruction statutes and residual clauses have been frequent fliers on the Court's docket in recent years. See, *e.g.*, *Johnson* v. *United States*, 576 U.S. 591 (2015) (§ 924(e)(2)(B)'s residual clause); *Marinello*, 584 U.S. at 4 (26 U.S.C. § 7212 obstruction); *Arthur Andersen LLP* v. *United States*, 544 U.S. 696, 703 (2005) (§ 1512 obstruction); *United States* v. *Aguilar*, 515 U.S. 593 (1995) (§ 1503 obstruction); cf. *Kousisis* v. *United States*, No. 23-909 (U.S. June 17, 2024) (granting certiorari to consider scope of wire-fraud statutes).

to routine form review like "HUD and OGE's review of Forms 278," Ex. B, Op. at 10-11. If this Court overturns that interpretation, it is undisputable that Saffarinia "may have [been] convicted * * * for conduct that is not unlawful" (obstructing form review), requiring vacatur of his obstruction convictions. *McDonnell*, 579 U.S. at 579-580; see pp. 9-10, n.3, *supra*.[10] And such a vacatur could have a dramatic effect on Saffarinia's ultimate sentence. The district court observed that the §1519 counts and the 20 years of incarceration they threaten were the "driving" force of his sentence; without them, his remaining §1001 counts might not result in any prison time at all. See p. 10, *supra*.[11]

This case presents, in short, an important federal issue, squarely pressed and passed upon below, that will have a major effect not only on Saffarinia's case but on potentially countless others. Review is reasonably probable for those reasons alone. S. Ct. R. 10(c).

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[10] Such vacatur is required even though the government also urged the jury to find Saffarinia influenced an FBI investigation. See p. 9, n.3, *supra*. An alternative factual theory cannot save a conviction when there is no way to know which theory a jury relied on and, as was true in *McDonnell*, "the jury was not correctly instructed on the meaning" of a critical statutory term such that it "may have" convicted based on lawful conduct. 579 U.S. at 579-580.

[11] That the §1001 counts would survive thus is no barrier to this Court's review. See, *e.g.*, *Fischer*, 144 S. Ct. at 2182 (other charges carrying up to "eight years' imprisonment" remained live); *Yates*, 574 U.S. at 532 (petitioner did "not contest his conviction" for violating another statute punishable by up to five years' imprisonment).

* * *

If the D.C. Circuit's interpretation stands, every person writing to, for, or related to government functions would do so at tremendous peril. Every error or omission on an employment application, disclosure form, or U.S. Postal Service certified mail receipt would be grist for charges under §1519. Armed with the whiff of any such false statement, prosecutors could leverage §1519's 20-year threat to extract guilty pleas for any number of lesser offenses. The D.C. Circuit is apparently comfortable exposing otherwise law-abiding Americans to two decades' imprisonment for relatively innocuous conduct—a fib on a job application for an unpaid internship with the Department of Agriculture; signing a roommate's name on certified mail; fudging a federal timecard; and countless other mundane activities.

The D.C. Circuit's decision reflects no qualms about those consequences—or ignoring *Fischer*, *Marinello*, and *Yates* to sweep aside text, context, and restraint in favor of a "capacious" reading that rests on ambiguous legislative history and now-overturned precedent. But there is more than "'a fair prospect'" that this Court will review that decision and disagree. *King*, 567 U.S. at 1302 (Roberts, C.J., in chambers). Under any fair reading of this Court's precedents, Congress did not "criminalize a broad swath of prosaic conduct" and expose "millions of otherwise law-abiding citizens" to "decades in prison" when it passed §1519. *Fischer*, 144 S.

Ct. at 2189; *Van Buren* v. *United States*, 593 U.S. 374, 393-394 (2021). A stay of the mandate is warranted.

II. WITHOUT A STAY, SAFFARINIA WILL SUFFER IMPRISONMENT FOR CONDUCT THAT IS NOT CRIMINAL

The "'irreparable harm [that will] result from the denial of a stay'" here is self-evident. *King*, 567 U.S. at 1302 (Roberts, C.J., in chambers). If the Court grants certiorari without a stay, Saffarinia will serve most—if not all—of his year-and-a-day sentence before the Court can resolve his case on the merits. That is the epitome of irreparable harm. See *Corsetti* v. *Massachusetts*, 458 U.S. 1306, 1307 (1982) (Brennan, J., in chambers) (90 days in prison is irreparable harm).[12]

If Saffarinia prevails on the merits in this Court, his §1519 charges—and his entire prison sentence—would be vacated and remanded for a new trial and resentencing. See *Fischer*, 144 S. Ct. at 2190 (vacating and remanding where other convictions remained). On remand, the likely result with no §1519 convictions is "a sentence not including a term of imprisonment[] or a reduced sentence." Ex. F, Bail Order at 4. Saffarinia's convictions for violating §1001 would remain, but the district court itself recognized that the §1519 convictions were "driving" the custodial sentence. C.A. App. 2573:21-2574:4, 2576:19-2577:5. A sentence on just the §1001 charges would look different—starting with a "0 to 6 month[]" Guide-

[12] With good-time credit, Saffarinia may serve only nine or ten months.

lines range. Ex. F, Bail Order at 2.[13] Serving a sentence for a conviction that might soon be vacated is a harm that cannot be undone. The district understood that, given Saffarinia's arguments about the scope of § 1519, bail pending appeal was warranted. A stay is warranted here as well.

In the court of appeals, the government argued a stay was inappropriate because it had been "more than a decade" since the underlying conduct occurred. Gov't C.A. Resp. Opp'n Stay 4. The government never explained how a modest stay, to allow this Court to consider Saffarinia's petition, would materially harm the government when any additional delay would be comparatively minor. But the impact of any delay could be minimized through expeditious handling of Mr. Saffarinia's petition—Saffarinia would file it within 30 days—and any proceedings that ensue. And this Court could also minimize any delay by treating this application as a petition for a writ of certiorari, granting it, and ordering expedited briefing—a practice this Court has followed in the past. See *Nken* v. *Mukasey*, 555 U.S. 1042 (2008) (mem.). Saffarinia would welcome the chance to proceed swiftly to the merits.

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[13] Courts regularly sentence first-time offenders to probation when convicted of § 1001 violations arising from financial disclosure forms. See, *e.g.*, *United States* v. *Lieb*, No. 1:10-cr-144 (D.D.C. 2010), Dkts. 8, 9, 18 (two-year probation sentence); *United States* v. *Stadd*, No. 1:09-cr-65 (D.D.C. 2009), Dkts. 1, 18, 36 (three-year probation sentence); *United States* v. *Helman*, No. 2:16-cr-245 (D. Ariz. 2016), Dkts. 36, 38 (two-year probation sentence).

CONCLUSION

Given the irreparable harm and the prospects that Saffarinia's petition will be granted and that his position will prevail on the merits, a stay is appropriate under §2101(f). See *McDonnell* v. *United States*, 576 U.S. 1091 (2015) (mem.) (staying mandate). Saffarinia thus respectfully requests that this Court stay the mandate pending disposition of his certiorari petition. He also requests a brief administrative stay pending resolution of this application to prevent the mandate from issuing on August 22, 2024, or, in the event the mandate issues on that day, that this application be treated as one to recall the mandate.

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Respectfully submitted,

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