NO. 20-

IN THE

SUPREME COURT
OF THE UNITED STATES

CLARENCE HOFFERT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented is whether the interpretation of the federal false lien statute, 18 U.S.C. § 1521, adopted by the court of appeals in this case – as permitting conviction whenever an individual "had reason to know" that the lien he or she filed was false, even if the individual lacked actual knowledge of the lien's falsity and acted without any culpable criminal intent – is unconstitutionally vague.

PARTIES TO THE PROCEEDINGS

The petitioner herein, who was the defendant-appellant below, is Clarence Hoffert.

The respondent herein, which was the appellee below, is the United States of America.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Clarence Hoffert, hereby petitions this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 949 F.3d 782, and is reproduced in the appendix to this petition, Petition Appendix ("Pet. App.") 1a. The opinion of the district court is unpublished, but is reproduced in the appendix, Pet. App. 20a, and available at 2018 WL 4829032.

JURISDICTION

The judgment sought to be reviewed was entered by the court of appeals on February 11, 2020. Pet. App. 1a. The deadline for a petition for a writ of certiorari was originally May 11, 2020, but was extended by general order of this Court, dated March 19, 2020, by 60 days, to and including July 10, 2020. This Court has jurisdiction over this petition pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

The relevant statutory provision, 18 U.S.C. § 1521, provides in pertinent part as follows:

> Whoever files, attempts to file, or conspires to file, in any public record or in any private record which is generally available to the public, any false lien or encumbrance against the real or personal property of [any officer or employee of the United States], on account of the performance of official duties by that individual, knowing or having reason to know that such lien or encumbrance is false or contains any materially false, fictitious, or fraudulent statement or representation, shall be fined under this title or imprisoned for not more than 10 years, or both.

18 U.S.C. § 1521.

STATEMENT OF THE CASE

The defendant, Clarence Hoffert, was charged by indictment in March 2018 with five counts of filing a false lien against the property of officers or employees of the United States, in violation 18 U.S.C. § 1521. Pet. App. 3-8. The charges resulted from a document sent by Mr. Hoffert in August 2017, while he was incarcerated in a Pennsylvania correctional facility based on a prior state conviction, to a local recorder's office in Pennsylvania. *Id.* The document, titled "Claim of Commercial Lien Affidavit Notice of Non-Judicial Proceeding," alleged that seven public officials – three federal judges, two employees of the torts division of the U.S. Department of Justice, and two officials of the Pennsylvania Department of Corrections – had violated Mr. Hoffert's civil rights by denying his petitions for release or damages, and claimed that as a result each official was liable to him for $8 million under federal law and the Uniform Commercial Code. *Id.* The document was rejected by the recorder's office, but was eventually referred to law enforcement for investigation, giving rise to the charges against Mr. Hoffert. *Id.*

Prior to trial, counsel for Mr. Hoffert moved to dismiss the indictment on grounds that the statute on which the charges were based, 18 U.S.C. § 1521, is unconstitutional insofar as it could be interpreted to permit conviction based on evidence that the defendant "ha[d] reason to know" that the lien at issue was false, without proof of a criminally culpable state of mind. Pet. App. 3-8. The district court denied the motion, holding that the "having reason to know" language of the statute could and should be interpreted as requiring proof not merely that some hypothetical person would have known of the falsity of the lien but that a "reasonable person"

sharing the defendant's own characteristics – *i.e.*, with the same "knowledge and sophistication of the particular defendant on trial" – would have known that the lien was false. *Id.* That construction, the district court concluded, would ensure that the statute would be applied only when the defendant himself or herself had "constructive knowledge" of the falsity of the lien at the time of filing, and thus would have adequate notice of the criminality of his or her conduct. *Id.*

Trial on the charges commenced in October 2018. Pet. App. 3-8. Mr. Hoffert took the stand in his own defense. *Id.* He explained the process through which he had researched the circumstances of his conviction and incarceration, and had come to the conclusion that they were unlawful and in violation of his civil rights, and he further explained that he had believed that the judicial and administrative decisions denying him relief were not only incorrect but illegal. *Id.* He said that, following those denials, he believed (based in large part on advice of others) that he had a right under federal law and the Uniform Commercial Code to file commercial lien claims against those involved in the decisions, and did so through the "Claim of Commercial Lien Affidavit Notice of Non-Judicial Proceeding." *Id.*

Following Mr. Hoffert's testimony, the case was submitted to the jury, which was instructed that it should find Mr. Hoffert guilty if a "reasonable person" in his situation would have had "reason to know" that the lien was materially false. Pet. App. 3-8. The jury returned a verdict of guilty on all counts the next day. *Id.* Mr. Hoffert was later sentenced to a term of imprisonment of 4 years. *Id.*

On appeal, Mr. Hoffert renewed his objection to the constitutionality of the statute, as interpreted to permit conviction based on what a "reasonable person" could or should know. Pet. App. 9-13. The court of appeals affirmed, holding that a person may be convicted under the statute if a "person of ordinary intelligence" would recognize the falsity of the lien. *Id.* A conviction may be had, in the circuit court's view, "even if [the defendant] honestly believed that he [or she] filed a proper lien[,] so long as the belief was not a reasonable one." *Id.* (quoting *United States v. Williamson*, 746 F.3d 987, 994 (10th Cir. 2014)).

This timely petition for a writ of certiorari followed.

REASONS FOR GRANTING THE PETITION

The opinion of the panel holds that an individual may be convicted of the federal offense of filing a false lien if a hypothetical "reasonable person" could or should have recognized that the lien at issue was materially false, even if the individual did not himself or herself realize that the lien was false and acted in good faith. *See* Pet. App. 9-13. That holding is flatly contrary to governing caselaw, and to core principles of constitutional due process.

Opinions of this Court dating back decades have consistently held that criminal statutes must generally be interpreted and applied to require proof of a criminally culpable state of mind. *E.g.*, *United States v. Williams*, 553 U.S. 285, 304-06 (2008); *Staples v. United States*, 511 U.S. 600, 603-06 (1994); *Morissette v. United States*, 342 U.S. 246, 250-51 (1952). The reason for this rule is twofold: to provide adequate notice of the bounds between permissible and impermissible conduct, and to avoid punishing those who act in good faith. *Staples*, 511 U.S. at 603-06. A statute

that fails to define with requisite certainty the nature of the prohibited conduct, and as a result allows for the conviction of individuals whose actions could reasonably be viewed as innocent or whose behavior is otherwise protected, will be deemed unconstitutionally vague. *E.g., Hill v. Colorado*, 530 U.S. 703, 732 (2000).

The interpretation of the federal false lien statute, 18 U.S.C. § 1521, adopted by the court of appeals in this case fails this imperative. The court held that conviction is permitted under the statute whenever any person files a lien that is false in any material respect if there was "reason to know" of the falsity. Pet. App. 9-13. It does not matter under this interpretation whether the person himself or herself knew that the lien was false, or even whether he or she could have recognized the problem. *See id.* So long as there was "reason to know" of the issue, the statute is violated, and the person may be convicted and imprisoned. *Id.*

There is simply no way to square this standard with constitutional requirements of fair notice and due process. Individuals would have and often could have no advance warning or opportunity to discern whether a hypothetical person might have "reason to know" that a document is false, and they may lack even the basic facts to guess that a lien is invalid or impermissible, much less that its filing might subject them to criminal liability. *See, e.g., City of Chicago v. Morales*, 527 U.S. 41, 58 (1999) (holding loitering ordinance unconstitutionally vague for failing to distinguish between innocent and criminal conduct). Individuals could then be convicted notwithstanding that they lacked any culpable state of mind, and proceeded wholly in good faith. *See, e.g., id.* The result would be the conviction of entirely

innocent persons, including those attempting to exercise their constitutional rights. *See, e.g., id.*.

The court of appeals held that requiring proof that a "reasonable person" would recognize the lien's falsity answered these constitutional concerns, and provides a sufficiently clear *mens rea* requirement. Pet. App. 9-13. Not so. An individual who does not understand the false nature of a lien would be no better able to discern that his or her conduct constitutes a criminal violation merely because a "reasonable person" in his or her circumstances might recognize it, and that individual would be no less innocent in filing the lien without knowledge of the falsehoods.

Prior opinions that have upheld statutory language such as "reason to believe" against vagueness challenges, including *Gorin v. United States*, 312 U.S. 19 (1941), concerned materially different statutes. Those provisions criminalized inherently unlawful or harmful conduct, such as the dissemination of classified information to hostile foreign powers, meaning that conviction based solely on what a "reasonable person" would have known did not pose any real risk of penalizing entirely innocent or unknowing behavior. *See, e.g.*, *id.* at 27-28; *see also, e.g.*, *United States v. Wuliger*, 981 F.2d 1497, 1504 (6th Cir. 1992) (intentional electronic interception of private information); *United States v. Featherston*, 461 F.2d 1119, 1121-1122 (5th Cir. 1972) (engaging in violent civil disorder). By contrast, the filing of a lien is not itself inherently unlawful in any way, and is in fact a common and entirely appropriate part of litigation. There is no reason to assume that persons engaged in that activity should presumptively recognize any potential for criminal liability, or that their lien

will be deemed impermissibly "false," such that a lessened "reason to know" standard might be constitutionally acceptable.

The interpretation adopted by the court of appeals, for this reason, presents a clear and direct threat of chilling and punishing clearly protected speech. Individuals (like Mr. Hoffert) who in good faith believe that they are entitled to file a lien against another person – and in fact have a legal right to do so – will be limited or outright precluded from doing so by the fear of prosecution, if there exists any chance whatsoever (as is invariably the case) that the lien might be deemed invalid in some way.

That result cannot be squared with this Court's jurisprudence, or basic principles of due process. To address this conflict, and protect the constitutional rights of Mr. Hoffert and others across the Nation, a writ of certiorari should issue, and the decision of the court of appeals should be reversed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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