

No. \_\_\_\_\_

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IN THE  
Supreme Court of the United States

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PAUL WINFIELD,

*Petitioner,*

v.

UNITED STATES PROBATION & PRETRIAL SERVICES;  
CHRIS COUNTS,

*Respondents.*

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On Petition For A Writ Of Certiorari  
To The United States Court of Appeals  
For The Fifth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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**QUESTION PRESENTED**

Since 18 U.S.C.A. § 666 is even broader than other federal bribery statutes, does it suffer from the same constitutional infirmities of vagueness and overbreadth as this Court found in the application of another bribery statute, 18 U.S.C.A. § 201, in *McDonnell v. U.S.*, 136 S.Ct. 2355 (2016)?

### **PARTIES TO THE PROCEEDING**

The parties are named in the caption. The Petitioner, Paul Winfield, was the Petitioner-Appellant below. The Respondents are the United States Probation & Pretrial Services and Chris Counts, Respondents-Appellees below.

**STATEMENT OF RELATED PROCEEDINGS**

*Winfield v. United States Prob. & Pretrial Servs.*, No. 18-60807 (5<sup>th</sup> Cir. Opinion and Judgment issued June 24, 2020; mandate issued Aug. 17, 2020).

*Winfield v. United States Prob. & Pretrial Servs.*, No. 5:18-cv-11-KS-MTP (S.D. Miss. Judgment entered Oct. 25, 2018) (dismissal of Section 2241 Petition for Writ of Habeas Corpus in District Court).

*U.S. v. Winfield*, No. 5:13-cr-005-DCB-FKB (S.D. Miss. Judgment of Conviction entered Nov. 19, 2013) (underlying criminal case).

There are no additional proceedings in any court that are directly related to this case.

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## **PETITION FOR A WRIT OF CERTIORARI**

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Petitioner, Paul Winfield, respectfully submits this petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fifth Circuit.

### **OPINION BELOW**

The *per curiam* opinion of the Fifth Circuit is unpublished but available at *Winfield v. United States Prob. & Pretrial Servs.*, 810 Fed. Appx. 343 (5th Cir. June 24, 2020). App. at 1-4.

### **JURISDICTION**

The Fifth Circuit filed its opinion on June 24, 2020, within 150 days of the filing of this Petition. Pursuant to this Court's Order dated March 19, 2020, the deadline for submitting petitions for writs of certiorari was automatically extended from 90 days to 150 days due to the COVID-19 pandemic. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1254(1).

Further, review is proper under Supreme Court Rule 10(c), where "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fifth Amendment to the U.S. Constitution prohibits depriving a person of "life, liberty, or property, without due process of law." U.S. Const. amend. V.



18 U.S.C.A. § 666 provides, in pertinent parts that:

(a) Whoever, if the circumstance described in subsection (b) of this section exists—

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof—

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(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$5,000 or more; or

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shall be fined under this title, imprisoned not more than 10 years, or both.

The full text of the statute appears in the Appendix. App. at 18-20.

### STATEMENT OF THE CASE

The Fifth Amendment requires due process in all federal criminal prosecutions. “The prohibition of vagueness in criminal statutes ‘is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law,’ and a statute that flouts it ‘violates the first essential of due process.’” *Johnson v. United States*, 576 U.S. 591, 595-96 (2015) (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322 (1926)). Due process forbids applications of criminal statutes that are vague.

In this case, Paul Winfield was convicted of violating 18 U.S.C.A. § 666. That statute as applied in many ways in modern times and in this case is broad, expansive, and unconstitutionally vague. This Court has long wrestled with the expansive application of public corruption and bribery statutes. Most recently, this Court's unanimous opinion in *McDonnell v. U.S.*, 136 S.Ct. 2355 (2016) enacted a sea change in how federal bribery statutes are to be interpreted and applied. While that decision applied to 18 U.S.C.A. § 201, the same principles should be applied to 18 U.S.C.A. § 666. Doing so demonstrates that Paul was convicted of and still suffers under the stigma of a non-existent offense. His Petition for Writ of Habeas Corpus under 28 U.S.C.A. § 2241 seeking to vacate that conviction should have been granted. By accepting certiorari of this case, this Court can harmonize the approach of Section 666 prosecutions with its ruling in *McDonnell*.

#### **A. Factual Background.**

Paul Winfield was the mayor of Vicksburg, Mississippi. During his term as mayor, he “was indicted for theft or bribery concerning programs receiving federal funds in violation of 18 U.S.C. § 666(a)(1)(B).”

The Indictment was a scant 2-page document. App. at 21-23. The Indictment alleged three facts: first, that Vicksburg, Mississippi, was a local government as defined in the U.S. Code. App. at 21. Second, that Paul was the mayor of that City. App. at 21. Third: “That from on or about July 2012 until on or about December 2012, in Adams County, in the Western Division of the Southern District of Mississippi, and elsewhere, the defendant, PAUL WINFIELD, did corruptly solicit, demand, accept

and agree to accept multiple things of value from a person, intending to be influenced and rewarded in connection with a transaction and series of transactions of the City of Vicksburg, Mississippi, involving a thing of value of \$5,000 or more.” App. at 22.

There were no other details in the cursory document. The Indictment did not allege any particular business or transaction to be undertaken in exchange for the alleged bribe. It did not describe what “thing of value” Paul received, nor who he received it from, or for what. The Indictment sought forfeiture of \$7,000. App. at 22-23.

Paul faced a stiff series of penalties if he was convicted—10 years of imprisonment and a fine of up to \$250,000. He ultimately pled guilty, receiving a sentence of 25 months confinement, 3 years of supervised release, a \$5,000 fine, and a special assessment of \$100.

#### **B. District Court Proceedings.**

After he was released from incarceration but while he was on supervised release, Paul filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.A. § 2241. In the Petition, Paul pointed out that this Court had recently narrowed the scope of another broad bribery law, 18 U.S.C.A. § 201, in *McDonnell v. U.S.*, 136 S.Ct. 2355 (2016). In *McDonnell*, this Court heavily constricted the scope of Section 201 due to the vagueness of what it meant to achieve bribery through an “official act.”

Paul argued in his Section 2241 Petition that the decision in *McDonnell* was interpretative and should be applied retroactively to his case. Just as in *McDonnell*, Paul argued that the Government failed

to establish a criminal offense with any particularity in his underlying criminal prosecution. As a result, he alleged his “conviction rests upon a nonexistent offense.” Paul also argued that the Government had far over-stretched the statute in its reading and application to his case, and that the boundaries of federalism were breached by the prosecution due to this overbreadth.

After Paul filed his Section 2241 Petition, the Magistrate ordered the Government to file an answer to the Petition. The crux of the Government’s argument in response was that *McDonnell* was not retroactively applicable, as it was not based upon the same statute.

The Magistrate agreed. App. at 10-17. Even though both *McDonnell* and Paul’s case involved allegations of bribery, the Magistrate focused on the fact that they were different statutes, and the one in Paul’s case did not utilize “official act” in its language. App. at 13. Ignoring the analogous import of the *McDonnell* decision to all bribery cases, the Magistrate also collected cases which had refused to extend *McDonnell* to Section 666 cases. App. at 14-15. As a result, the Magistrate recommended that the request for habeas corpus relief should be dismissed. App. at 16.

Through counsel, Paul objected to the recommendation, arguing that the Magistrate’s recommendation applied an overly restrictive standard of review, did not contain any factual detail, and failed to properly apply *McDonnell* to the case at hand. The core argument was that the Magistrate ignored “that there is little to no distinction between an official act as described in Section 201 and a transaction in Section 666.”

Despite these objections, the District Court accepted the recommendation of the Magistrate. App. at 5-9. The District Court also took a narrow reading of *McDonnell* and ruled that it “addressed an entirely different statute,” meaning that Mr. Winfield had “not established that he may have been convicted of a non-existent offense.” App. at 7. Furthermore, the District Court ruled that Paul “has cited no authority to this Court that convinces it that a Section 666 offense to which Winfield pled guilty require a [narrowing] type interpretation” as in *McDonnell*. App. at 9.

The District Court also took Paul’s prior guilty plea as conclusive evidence that there were sufficient facts to render a decision—although that plea resulted from a cursory indictment and, of course, came before this Court’s narrowing of an analogous statute in *McDonnell*. App. at 8. As a result, the District Court dismissed the Petition for Writ of Habeas Corpus with prejudice. App. at 9.

Paul timely appealed to the United States Court of Appeals for the Fifth Circuit.

### **C. Appellate Proceedings.**

On appeal to the United States Circuit Court of Appeals for the Fifth Circuit, Mr. Winfield requested reversal of the District Court’s denial of his Petition under 28 U.S.C.A. § 2241. Paul’s appeal was rejected.

The Fifth Circuit’s *per curiam* opinion affirming the District Court is a scant six paragraphs. App. at 1-4; *see also Winfield*, 810 Fed Appx. at 343-44. That Court found that Paul had not satisfied the criteria for his Section 2241 Petition to meet the savings clause found in 28 U.S.C.A. § 2255(e). *Id.* at 343.

The Fifth Circuit examined only one of the criteria under the savings clause: whether Paul was convicted of a non-existent offense. Paul's argument was that the retroactive application of *McDonnell* to his case should result in that finding. Like the District Court, the Fifth Circuit focused on the fact that McDonnell concerned only 18 U.S.C.A. § 201, and not 18 U.S.C.A. § 666. *Id.* at 344. That Court went further though, reasoning that Section 666 is in fact broader than Section 201. Section 666, the Fifth Circuit found, "broadly bars corruptly soliciting or accepting a thing of value in exchange for influence or reward in connection with any business, transaction, or series of transactions." *Id.* The Court ruled that "there is no basis to conclude that the holding of *McDonnell* applies to the expansive language of § 666 that, by its plain text, covers more than official acts." *Id.*

Having found that Paul had not shown that he may have been convicted of a non-existent offense, the Fifth Circuit did not decide whether he could satisfy the other requirements of the savings clause in Section 2253(e) that would entitle him to relief. *Id.* The District Court's decision dismissing Paul's Section 2241 Petition was affirmed. *Id.*

### **REASONS FOR GRANTING THE PETITION**

Because the application of 18 U.S.C.A. § 666 suffers from the same constitutional infirmities of vagueness and overbreadth as this Court found in the application of 18 U.S.C.A. § 201 in *McDonnell*, certiorari should be granted.

Because Paul was convicted of an offense which does not exist, his conviction must be vacated. Since his guilty plea and resulting conviction, this Court has placed much higher burdens on bribery

prosecutions by narrowing the scope of an analogous statute. Because the statute under which Paul was convicted shares the same overbreadth concerns (and, indeed, may be infected by even greater concerns), he is entitled to habeas relief.

**A. *McDonnell* Announces a Sea Change in the Application of Federal Bribery Statutes**

This Court addressed the requirements of a bribery prosecution in reviewing the convictions of “former Virginia Governor Robert McDonnell and his wife, Maureen McDonnell, on bribery charges.” *McDonnell v. U.S.*, 136 S. Ct. 2355, 2361 (2016). Specifically, this Court “granted review to clarify the meaning of ‘official act’” through which the bribery was supposed to be accomplished. *Id.*

This Court explained that in light of a growing body of law “the Government was required to prove that Governor McDonnell committed or agreed to commit an ‘official act’ in exchange for the loans and gifts” he had allegedly received, since while there does not have to be a fulfillment of *quid pro quo*, there has to be an “agreement to perform specific official acts.” *Id.* at 2365 (internal quotation and citation omitted). The Government had sketched out five alleged actions. *Id.* at 2365-66.

On appeal, the Government maintained “that the term ‘official act’ therefore encompasses nearly any activity by a public official.” *Id.* at 2367. In response, the former governor pressed for a more specific, narrower reading, and raised the concern that the law was too vague. *Id.*

This Court unanimously agreed with the governor on a narrow reading of the statute. *Id.* at

2367-68. An official act was not any decision a public official made, but rather “a decision or action on a ‘question, matter, cause, suit, proceeding or controversy’” which “must involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee.” *Id.* at 2371-72. The action had to be specific, and ‘the public official must make a decision or take an action on that “question, matter, cause, suit, proceeding or controversy,’ or agree to do so.” *Id.* at 2372; *see also Id.* at 2371 (“Nor must the official in fact intend to perform the ‘official act,’ so long as he agrees to do so”).

In addition to narrowing the scope of the statute, the unanimous Court in *McDonnell* expressed great concern that the term “official act” was not defined enough to deter overbroad prosecutions. *Id.* at 2373. There was “the serious concern that the provision does not comport with the Constitution’s guarantee of due process.” *Id.* (internal quotation and citation omitted). This unanimous ruling was in accord with this Court’s earlier narrowing of all “federal statutes proscribing—and defining—similar crimes,” as acknowledged in *Skilling v. U.S.*, 561 U.S. 358, 412–13 (2010).

Under these wholly analogous cases from this Court, not only was Paul convicted of a nonexistent offense, but the reading of the Section 666 statute was fatally overbroad. The unanimous and sweeping opinion in *McDonnell* is not a narrow decision regarding jury instructions which only applies to one statute. To the contrary, the opinion represents a sea change in federal bribery prosecutions and sets forth broad principles and concerns that touch on the



“criterion of guilt” in such cases. It is time for the tide of the *McDonnell* sea change to reach Section 666 as well.

**B. The Application of Section 666  
in Paul Winfield’s Case Violates  
the Principles in *McDonnell***

Paul was convicted upon a guilty plea of violating the following law that makes it a criminal offense if any person: “corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$5,000 or more . . . .” 18 U.S.C.A. § 666 (a)(1)(B).

When the statute is seen through the magnifying lens of *McDonnell*, it is apparent that the indictment did not specifically charge Paul Winfield with a crime. His plea was to allegations of a nonexistent crime, as the transaction was not sufficiently alleged by the Government.

This Court unanimously narrowed its interpretation of what an “official act” was in the *McDonnell* decision, and narrowed it because that vague phrase was overbroad in its application. Those same concerns are present in the undefined “transactions” phrase in Section 666. For the same reasons Section 201 was narrowly interpreted, this Court should narrowly interpret Section 666. Once the statute is narrowly read, it is clear that Paul’s indictment does not charge him with any forbidden transaction.

Indeed, in contrast to the detailed indictment in *McDonnell*, the one in Paul's underlying criminal case has barely any content at all. App. at 21-23. The allegations against Mr. Winfield in the indictment were mere boilerplate tracking the statute. The Government vaguely alleged that in exchange for things of value he was "intending to be influenced and rewarded in connection with a transaction and series of transactions of the City of Vicksburg, Mississippi . . . ." App. at 22.

That was the extent of the indictment on that major point—there was no description or allegations of what this "transaction and series of transactions" might have been. The Government just alleged there was a transaction, with no specificity or details at all.

In contrast, in the indictment in *McDonnell* the Government alleged . . . "at least five 'official acts,'" and did so with startlingly specificity. 136 S. Ct. at 2365–66. This included allegations the governor arranged meetings "with Virginia government officials, who were subordinates of the Governor, to discuss and promote Anatabloc," a nutritional supplement; that he both hosted and attended "events at the Governor's Mansion designed to encourage Virginia university researchers to initiate studies of [the ingredient in the supplement] and to promote Star Scientific's products to doctors for referral to their patients," also contacted other government officials to encourage college-based research into the ingredient; set up "exclusive events at the Governor's Mansion" for the company making the supplement; and tried to open doors in the government for the company's "executives to discuss ways that the company's products could lower healthcare costs." *Id.*

Yet even with that specificity, the Government overreached, since it was trying to jam all of these things into the simple phrase “official act.” *Id.* at 2367. “The Government concludes that the term ‘official act’ therefore encompasses nearly any activity by a public official.” *Id.* “In the Government’s view, ‘official act’ specifically includes arranging a meeting, contacting another public official, or hosting an event—without more—concerning any subject, including a broad policy issue such as Virginia economic development.” *Id.*

This Court unanimously rejected the Government’s broad position. *Id.* at 2368. In doing so, it turned to “the familiar interpretive canon *noscitur a sociis*,” a canon of statutory construction “often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress.” *Id.* (internal quotation and citation omitted). By applying the canon, this Court narrowed what the phrase “official act” could mean, giving it “a more confined interpretation . . . .” *Id.* at 2369.

*McDonnell* was, then, a deep and insightful review of what Section 201 actually means, and how it is to be applied. *Id.* As this Court explained, narrowing the interpretation of the statute was also necessary to avoid “significant constitutional concerns” from the Government’s broad reading. *Id.* at 2372.

Somewhat disdainfully, this Court noted that “[i]n the Government’s view, nearly anything a public official accepts—from a campaign contribution to lunch—counts as a *quid* and nearly anything a public official does—from arranging a meeting to inviting a guest to an event—counts as a *quo*.” *Id.*

Yet such a breathtakingly broad interpretation of the statute meant that “the term ‘official act’ is not defined with sufficient definiteness that ordinary people can understand what conduct is prohibited, or in a manner that does not encourage arbitrary and discriminatory enforcement.” *Id.* at 2373 (internal quotation and citation omitted).

The exact same concerns with the overbreadth of Section 201 are present in the application of Section 666 in this case. Indeed, Section 201 at least defines what “official act” meant; the issue was that the Government was trying to cram in too much within the relatively vague and bland words of the statute. Yet Section 666 is even broader and more vague than Section 201. While Section 201 prohibits bribery connected to certain “official acts,” Section 666 casts an even wider net—it purports to capture conduct related to “any business, transaction, or series of transactions . . . .”

**C. The Fifth Circuit Agrees that  
Section 666 is Broader than  
Section 201, But Denied Relief**

In its Opinion, the Fifth Circuit agrees that Section 666 is broader than Section 201. *Winfield*, 810 Fed. Appx. at 344 (describing the “expansive language” of Section 666 and the conduct it “broadly bars”). But the Fifth Circuit does not explain how the saving grace of a criminal bribery statute is that it is *more expansive* than that which this Court condemned in *McDonnell*. If anything, courts should look at Section 666 with a more jaundiced eye than this Court did Section 201 in *McDonnell*. That Section 201 was vague, broad, and expansive—to the point of violating due process and encouraging prosecutorial overreach—was the problem this Court

addressed in *McDonnell*. The decision should not be read in a way that saves other bribery statutes from applications that more plainly violate these fundamental principles. Fidelity to precedent and fundamental due process demands better.

*McDonnell* is directly applicable to Paul's case, as the canon of *noscitur a sociis* must be used here as well to describe exactly what transaction or business is prohibited. As it stands now, Section 666 could theoretically prohibit a constituent from buying a city councilperson a meal when discussing anything that might constitute city "business". There is simply no guidance as to what business or transaction constitutes—the same core flaw in *McDonnell*, with the same concerns of overbreadth and violations of federalism.

Nor is that concern of overbreadth eased in any way by the vague allegations in the indictment in this case. Nowhere in this charging document was it specified what "business" or "transaction" Paul Winfield was supposed to do—the same exact problem with the Government's view in *McDonnell*, where "nearly anything a public official does—from arranging a meeting to inviting a guest to an event—counts as a *quo*." *Id.* at 2372.

This means the indictment is fatally flawed, and the crime to which Mr. Winfield plead was not sufficiently described or alleged to pass muster in the wake of *McDonnell*. The case was a sea change of interpretation of Section 201, and that wave should likewise crash into Section 666.

**D. The Application of Section 666  
in Paul Winfield's Case Raises  
Federalism Concerns**

A third concern by the unanimous Court in *McDonnell* was that “[t]he Government’s position also raises significant federalism concerns.” *Id.* at 2373. “Here, where a more limited interpretation of ‘official act’ is supported by both text and precedent, we decline to construe the statute in a manner that leaves its outer boundaries ambiguous and involves the Federal Government in setting standards” of “good government for local and state officials.” *Id.* (internal quotation and citation omitted). In adopting this limited position, this Court explicitly rejected a broad reading of the statute in order to avoid intruding into the criminal jurisdictions of States. *Id.* Those same federalism concerns apply with equal force to Section 666 (or, perhaps with greater force, since the Fifth Circuit has described Section 666 as being broader and more expansive than even Section 201).

For the reasons set forth above, this Court should take the opportunity to recognize the sea change that *McDonnell* represents in interpreting and applying all federal bribery statutes, and not just Section 201. As set forth herein, the concerns that led this Court in *McDonnell* to narrow Section 201 apply with equal force to Section 666. This shifts the “criterion of guilt” that applies to Section 666 in such a way that Winfield’s conviction should be vacated by retroactive application of *McDonnell* to Section 666.

In the underlying criminal case, the Government prosecuted the former mayor for an alleged violation of 18 U.S.C.A. § 666. Just as in *McDonnell*, where

the Government failed to establish that there was any “official act” which accomplished the alleged violation of Section 201, in this case the Government failed to establish that there was a sufficiently defined “transaction” which accomplished the violation of Section 666. Applying and extending *McDonnell* to this case, Paul Winfield’s conviction rests upon a nonexistent offense.

The Court should grant certiorari based on the well documented history of unjust and diverse interpretations of the Section 666 bribery statute. The overly broad and ambiguous applications of Section 666 have led to overzealous prosecutorial misuse and unjust applications of the statute in courts nationwide. By accepting certiorari, this Court can provide proper interpretation, application, and enforcement of this federal bribery statute in a manner that comports with due process and this Court’s precedent construing other bribery statutes.

Accordingly, this Court should grant certiorari and reverse and render this matter by granting his Petition for Writ of Habeas Corpus and vacating the conviction at issue. Alternatively, this Court should grant certiorari and remand this matter for further proceedings after addressing the application of Section 666 following *McDonnell*.

**CONCLUSION**

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

Respectfully submitted,

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