No. 22-

IN THE

Supreme Court of the United States

KAREN E. RAMM,

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

MATTHEW CAMPBELL
Counsel of Record
FEDERAL PUBLIC DEFENDER,
DISTRICT OF THE VIRGIN ISLANDS
1336 Beltjen Road, Suite 202
St. Thomas, VI 00802
Tel: (340) 774-4449
Email: Matt_Campbell@fd.org

Counsel for Petitioner

QUESTION PRESENTED

Whether, in a bank fraud prosecution, the execution of a scheme to defraud is complete upon disbursal of funds, thereby starting the clock for statute of limitations purposes, or whether subsequent efforts to "cover-up" a prior execution of a scheme constitute a separate execution of that scheme that extends the statute of limitations.

PARTIES TO THE PROCEEDING

Karen Ramm, petitioner on review, was the defendant-appellant below. The United States of America, respondent on review, was the plaintiff-appellee below.

RELATED PROCEEDINGS

Decision below in the U.S. Court of Appeals for the Third Circuit:

United States v. Ramm, No. 20-3312 (3rd Cir.) (February 15, 2022) (unpublished)(panel decision holding that a 2017 loan extension constituted a separate execution of a scheme to defraud thereby extending the statute of limitations)(Pet.App. 1a-5a).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

CONSTITUTIONAL PROVISIONS

IN THE
SUPREME COURT OF THE UNITED STATES

No. 22-

KAREN E. RAMM,
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

Karen Ramm respectfully petitions for a writ of certiorari to review the judgment of the Third Circuit in this case.

INTRODUCTION

The offense charged in the indictment was completed more than ten years before the grand jury returned an indictment against Ms. Ramm. The offense was complete by March 19, 2004, when funds were disbursed by the bank. The grand jury did not return the indictment in this case until March 29, 2017—more than thirteen years after the charged offense was complete.

The only conduct cited by the government in the indictment which occurred within the ten-year limitations period was the extension of the term of a business loan. But that extension did not create any new, independent financial risk for the bank. Because it did not, the scheme to defraud was complete with the last action that that created such a financial risk—the disbursement of funds on March 19, 2004. The statute of limitations clock thus began ticking on that date.

The District Court reached an erroneous legal conclusion by applying an erroneous legal test. Rather than determine when the execution of the scheme was complete, the District Court evaluated whether the various acts were related in purpose, were in furtherance of the scheme, and benefitted and harmed the same parties. Relevant case law demonstrates that the proper inquiry is when the execution of the scheme was complete, and because the District Court largely ignored this analysis in favor of looking to other factors, the District Court employed an erroneous legal standard. That erroneous legal standard reached the wrong result.

Because the statute of limitation for bank fraud is only ten years, it expired in 2014, and therefore, the March 29, 2017 indictment was barred by the statute of limitations, and the District Court erred in denying Ms. Ramm's motion to dismiss.

OPINIONS BELOW

The Third Circuit's opinion is unpublished. Pet. App. 1a-45.

JURISDICTION

The Third Circuit judgment became final upon the entry of judgment by the Court of Appeals on February 15, 2022. This Court's jurisdiction rests on 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT

Procedural Background

Ms. Ramm was charged in a single-count indictment alleging bank fraud, and aiding and abetting, in violation of 18 U.S.C. §§ 1344 and 2. Ms. Ramm, who was employed at various times as a bank branch manager, loan officer and vice president, was accused of approving fraudulent loan transactions in the name of a customer with whom she had a personal relationship and involving a residence she lived in, by providing and approving materially false information as part of those loan applications.

Ms. Ramm filed a motion to dismiss the indictment based upon the statute of limitations, as well as a brief in support thereof. That motion challenged the indictment, which alleged that the scheme started "[f]rom as early as September 2001 through on or about May 7, 2007, in Dauphin County, within the Middle District of Pennsylvania, and elsewhere…" The motion catalogued the various loans involved in the indictment, which originated between September 13, 2001, and July 18, 2003. According to the indictment, Ms. Ramm committed bank fraud by causing Commerce Bank[1] to issue loans based on false information pertaining to, *inter alia*, the income and assets of the customer, the purpose of the loan, and the nature of the customer's business.

---

[1] According to the indictment, Ms. Ramm was employed at Commerce Bank, which later became Metro Bank (which is now known as First National Bank of Pennsylvania), in Harrisburg, Pennsylvania from February 2000 through June 2010.

It was undisputed that all of the loans originated and closed more than ten years before the date of the indictment. The last act charged in the indictment which created a new, independent financial risk for the bank occurred on February 20, 2004, when one of the business loans was increased from $25,000 to $75,000. The funds stemming from that increase were deposited into an account over which Ms. Ramm had control on March 19, 2004.

The only act charged in the indictment which allegedly occurred within the ten-year statute of limitations period prior to the indictment was the allegation that Ms. Ramm "caused business loan No. 3059095 to be extended based on the false representation that the borrower requested an extension of the loan to complete a business project, when the defendant well knew that to be false." The indictment alleged that the extension of the loan occurred on or about May 5, 2007. The indictment was dated March 29, 2017.

The applicable statute of limitations for bank fraud is ten years from the date of the commission of the offense. *See* 18 U.S.C. §3293. Ms. Ramm argued that statutes of limitation "'normally begins to run when the crime is complete' which occurs when the last element of the offense has been satisfied. *Toussie v. United States*, 397 U.S. 112, 115 (1970) (*quoting Pendergast v. United States*, 317 U.S. 412, 418 (1943))." She argued that the execution is completed by the movement of money, funds, or other assets from the financial institution. *United States v. Mancuso*, 42 F.3d 836, 847 (4th Cir. 1994). Ms. Ramm argued that any alleged bank fraud scheme was completed on or about March 19, 2004, when she allegedly deposited a Commerce Bank loan proceeds check into an account over which she had control. Based on this date, Ms. Ramm argued that the indictment was barred by the ten-year statute of limitations. Assuming, *arguendo*, that Ms. Ramm caused a business loan to be extended on or about May 5, 2007, she argued that the indictment was nonetheless barred by the statute of limitations because that extension did not result in a separate financial risk for Commerce Bank.

The government opposed that motion to dismiss and outlined a series of loan transactions it alleged formed the basis of the single count of bank fraud. Those transactions occurred between September 13, 2001 and March 19, 2004, at which time the $31,000 check referenced above was deposited. The only other event cited by the government occurring later in time was the extension of a business loan, which it alleged occurred on or about May 5, 2007. The government argued that because the business loan was extended on May 5, 2007, that act constituted an execution of the scheme occurring within the applicable ten-year statute of limitations.

The District Court issued an order denying the motion to dismiss without conducting oral argument on the motion. The District Court held that the acts alleged in the indictment constituted one execution of a unified scheme to defraud the bank. The District Court reasoned that the 2007 loan extension misled the bank and deprived it of a scheduled review of the business loan, and thus the unified scheme continued into the ten-year statute of limitations period.

Ms. Ramm ultimately pled guilty pursuant to a conditional plea agreement allowing her to appeal the denial of her motion to dismiss based on the statute of limitations. A timely appeal followed. The United States Court of Appeals for the Third Circuit denied the appeal after finding that the 2017 loan extension constituted a separate execution of the scheme to defraud. (App. 1a-5a).

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CREATES A SPLIT AMONGST THE CIRCUITS

The Third Circuit's decision in this case has created a circuit split over whether a scheme to defraud is complete upon disbursal of funds, thereby preventing efforts to "cover-up" a prior execution of a scheme from constituting a separate execution that extends the statute of limitations. The Third Circuit here answered that question in the negative. The Second, Fourth, Seventh and Tenth Circuits have answered that question in the affirmative.

In *United States v. Reitmeyer*, 356 F.3d 1313 (10th Cir. 2004), the defendants were charged with violating the Major Fraud Act by submitting a fraudulent equitable adjustment claim in 1994 to a fixed-price construction contract entered into with the United States Army Corps of Engineers. By the time charges were contemplated, the 1994 claim was time-barred. However, charges based upon a meeting held in 1995 to "promote and support" the claim would not have been time-barred if that meeting constituted a separate execution. The *Reitmeyer* Court concluded that the defendants executed their scheme when they submitted their claim for equitable adjustment in 1994. *Id.* at 1318.

The Court noted that "[o]nce the Companies filed their claim, they did not need to engage in any additional conduct to realize the ultimate goal of their scheme." *Id. Reitmeyer* rejected the government's claim that all actions subsequent to the submission of a fraudulent claim necessarily were part of a single attempt to violate the Act, and thus revived the statute of limitations. *Id.* at 1321. The Court further rejected the government's argument that the fraud constituted a continuing offense such that the statute of limitations did not begin to run until the objective of the fraud was accomplished or the fraud was discovered. *Id.* at 1321-1325. The Court noted that each execution of the scheme is criminalized, and the offense is complete once an execution is complete. Additional acts do not violate the statute unless they constitute an independent execution of a scheme. *Id.* at 1323.

More importantly, the *Reitmeyer* Court rejected the precise claim that the government raises here—that subsequent actions to 'cover-up' a prior execution of a fraud constitute a new and distinct execution of fraud. The *Reitmeyer* Court rejected the government's claim that the 1995 meeting constituted a separate execution of the scheme to defraud. The Court based its rejection on the fact that the meeting did not concern any independent matters, and thus it did not create a new and independent financial risk *viz-a-viz* the original claim for equitable adjustment. At most, the meeting "was merely an act in furtherance of the … scheme to defraud." *Id.* at 1325. If the government were correct in this case, then *Reitmeyer* would have come out the other way. But *Reitmeyer* did not come out the other way, and demonstrates the fallacy of the government's position—it ignores the fact that the

execution was complete at the time funds were disbursed. Efforts to cover up that execution do not create a separate and distinct execution.

United States v. Anderson, 188 F.3d 886 (7th Cir. 1999), held that Anderson's scheme "was completed upon receipt of the funds." *Id.* at 891. That means that under *Anderson*, this scheme was completed in 2004 when funds were disbursed. Taking efforts to prevent discovery, or making it harder to recover funds, did not create an independent execution. "Once Anderson had control of the money, the scheme ended. Otherwise, under the government's theory, the scheme could continue as long as Anderson maintained control of the money, thus defeating the purpose of criminal statutes of limitations." *Id.* The same is true here. At most, the 2007 loan extension made it more difficult for the prior execution to be uncovered—but it did not create a new risk which did not already exist.

United States v. Hare, 618 F.2d 1085 (4th Cir. 1980) and *United States v. Kilkenny*, 493 F.3d 122 (2d Cir. 2007) both stand for the proposition that a bank fraud offense is complete upon the submission of fraudulent information and the receipt of loan funds. Efforts to pay—or not pay—the loans (thereby preventing discovery of the initial fraud) according to their payment terms do not constitute a separate execution. In *Hare*, for example, each time the defendant made a payment, that lessened the likelihood of review of the loan—but that diminished likelihood of discovery did not constitute an execution.

In *Kilkenny*, the government argued that the failure to repay on a fraudulent loan, which led to foreclosure, constituted a new execution that was independent from the original loan itself. The Second Circuit rejected that argument and held that the loss occurred with the disbursal of funds, and thus the failure to repay did not create a new execution. Here, the government argues that had the 2007 loan extension not occurred, it might have reviewed the loan, found it fraudulent, and thus sought to recover its funds. If failure to pay a loan that leads to a loan review and foreclosure (as occurred in *Kilkenny*) is not a new execution, then clearly the 2007 loan extension which made a loan review less likely could not constitute a new execution.

II. THE DECISION BELOW IS WRONG

A. The elements of bank fraud were completed beyond the ten-year statute of limitations

The statute of limitations for bank fraud, in violation of 18 U.S.C. §1344, is ten years from the date of the commission of the offense. 18 U.S.C. § 3293. Statutes of limitation "normally begin to run when the crime is complete," which occurs when the last element of the offense has been satisfied. *Toussie v. United States*, 397 U.S. 112, 115 (1970) (*quoting Pendergast v. United States*, 317 U.S. 412, 418 (1943)).

The elements of bank fraud are "the defendant knowingly (1) engaged in a scheme to defraud a federally insured financial institution, or (2) participated in a scheme to obtain money under custody or control of the financial institution by means of false statements or representations." *United States v. Goldblatt*, 813 F.2d 619, 624 (3d Cir. 1987). The bank fraud statute is meant to punish each "execution" of the scheme to defraud, and not each act in furtherance of the scheme to defraud. *United States v. Longfellow*, 43 F.3d 318, 323 (7th Cir. 1994)(quoting *United States v. Molinaro*, 11 F.3d 853, 859 (9th Cir. 1993). A bank fraud offense is complete upon an "execution" of the scheme to defraud. *United States v. Lemons*, 941 F.2d 309, 318 (5th Cir.1991); *United States v. Sirang*, 70 F.3d 588, 595-96 (11th Cir.1995). The execution is completed by the movement of money, funds, or other assets from the financial institution. *United States v. Mancuso*, 42 F.3d 836, 847 (4th Cir.1994); *United States v. Lilly*, 983 F.2d 300, 304-05 (1st Cir. 1992). Each part of the scheme that creates a separate financial risk for the financial institution constitutes a separate "execution" of the scheme to defraud. *United States v. Anderson*, 188 F.3d 886, 888 (7th Cir. 1999); *Longfellow*, 43 F.3d at 324. However, not every act in furtherance of a fraudulent scheme is a separate "execution" of the scheme. *United States v. Sain*, 141 F.3d 463, 473 (3d Cir. 1998).[2]

Here, the indictment pertained to seven different loans that were each originated and processed between September 13, 2001 and July 18, 2003. Ms. Ramm served as a loan originator and

[2] In *United States v. Sain*, theCourt explained that an action constituted a separate execution of a fraudulent scheme when the action is "substantively and chronologically independent from the overall scheme." *Id.* at 473 (*citing United States v. Harris*, 79 F.3d 223, 232 (2d Cir. 1996)). The extension of a pre-existing loan's term cannot be said to be "substantively" independent, since it simply continues a loan which already existed, and does not create a new financial risk.

closer for each loan. Ms. Ramm also had a personal relationship with the customer who received the proceeds of the loans. The indictment alleged that Ms. Ramm committed bank fraud by causing the bank to issue loans based on false information, concerning, *inter alia*, the income and assets of the customer, the purpose of the loan, and the nature of the customer's business. The government also claimed that the loan applications contained forged signatures and that Ms. Ramm personally derived a benefit from the issuance of the loans.

Charges are barred by the statute of limitations if the execution of the alleged bank fraud scheme was completed outside of the statute of limitations. *Anderson*, 188 F.3d at 888-91. The execution of a bank fraud scheme is completed by the movement of money, funds, or other assets from the financial institution. *Mancuso*, 42 F.3d at 847; *Lilly*, 983 F.2d at 304-05.

The final execution of the alleged bank fraud scheme would have necessarily been completed on or before March 19, 2004, when Ms. Ramm purportedly deposited a Commerce Bank check for $31,000 into an account over which she had control. Accordingly, for statute of limitations purposes, the final execution of any bank fraud scheme that may have occurred would be on or before March 19, 2004—more than ten years before the indictment was returned. It was at that time that the scope of the alleged scheme to cause the bank to issue loans based on false information, concerning, *inter alia*, the income and assets of the customer, the purpose of the loan, and the nature of the customer's business, would have been completed. The financial risk to the bank was fully realized with the disbursal of the funds.

B. The disbursal of funds was complete in 2004, rendering the scheme complete outside the statute of limitations

The bank fraud statute is meant to punish each "execution" of the scheme to defraud, and not each act in furtherance of the scheme to defraud. *United States v. Longfellow*, 43 F.3d 318, 323 (7th Cir. 1994)(quoting *United States v. Molinaro*, 11 F.3d 853, 859 (9th Cir. 1993)). A bank fraud offense is complete upon an "execution" of the scheme to defraud. *United States v. Lemons*, 941 F.2d 309, 318 (5th Cir.1991); *United States v. Sirang*, 70 F.3d 588, 595-96 (11th Cir.1995). The execution is completed by the movement of money, funds, or other assets from the financial institution. *United States v. Mancuso*, 42 F.3d 836, 847 (4th Cir.1994); *United States v. Lilly*, 983 F.2d 300, 304-05 (1st Cir. 1992). The last disbursement of funds occurred in 2004. The only act charged in the indictment which allegedly occurred within ten years of the indictment was a 2007 loan extension.

The elements of bank fraud are "the defendant knowingly (1) engaged in a scheme to defraud a federally insured financial institution, or (2) participated in a scheme to obtain money under custody or control of the financial institution by means of false statements or representations." ***United States v. Goldblatt*, 813 F.2d 619, 624 (3d Cir. 1987).** The last money disbursal in this case occurred in 2004. Thus, the executions of bank fraud as related to those transactions were complete (and Ms. Ramm was subject to bank fraud charges) at the latest by 2004.

Where an indictment for bank fraud is returned more than ten years after the scheme has been completed, the charges are barred by the statute of limitations. *Anderson*, 188 F.3d at 891. In that case, Anderson was charged with bank fraud for taking funds from a bank, to which she owed a fiduciary duty, and purchasing zero coupon bonds. *Id.* at 888. The indictment accused Anderson of failing to maintain bonds for the bank. *Id.* It also alleged that Anderson took money from the bank and used it for her own purposes. *Id.* All of this conduct was alleged to have occurred more than ten years before the indictment. *Id.* The only act that was alleged to have occurred within ten years of the indictment was when the defendant transferred funds from one account to another. *Id.*

Anderson argued that the charges were barred by the statute of limitations because any fraud that may have occurred happened when she obtained the money from the bank, and not when she later transferred the money from one account to another. *Id.* at 889. In ruling that the charges were barred by the statute of limitations, the Seventh Circuit found that the bank fraud scheme was complete when the defendant obtained the money from the bank to purchase the zero coupon bonds. *Id.* at 890-91. The *Anderson* Court reasoned that transferring funds from one bank to another did not constitute an execution of the bank fraud scheme because the conduct did not place the bank at any separate, distinguishable risk of financial loss. *Id.* at 891.

In determining whether an act constitutes a separate execution of the scheme to defraud, courts must consider whether the act created a new, independent risk of loss for the bank. *Longfellow*, 43 F.3d at 324. Just as in *Anderson, ante*, any bank fraud scheme committed by Ms. Ramm was completed when the bank issued loans and distributed the proceeds to a personal acquaintance. *See Anderson*, 188 F.3d at 890-91. It was at that point that she purportedly personally benefitted from the distribution of the loan proceeds, which represented the scope of any alleged bank fraud scheme she may have committed. Ms. Ramm's alleged bank fraud scheme was completed when she deposited the Commerce Bank check into her account. *See Mancuso, supra*, 42 F.3d at 847.

Similar to *Anderson*, Ms. Ramm's alleged actions on May 5, 2007 did not result in a separate, distinguishable risk of financial loss for the bank. Instead, any possible risk of loss to Commerce Bank remained the same as when she supposedly deposited a check for $31,000 into a bank account over which she had control on March 19, 2004. The act of extending the loan is the equivalent of Anderson's act of transferring funds—at most it made recovery of funds more difficult. In *Anderson*, recovery was more difficult because the funds were transferred to a different account; here, recovery was more difficult because the term of the loan was extending, thus forestalling any review of the loan or demand for repayment. But neither action created an independent financial risk to the bank. Accordingly, the indictment is time-barred by the ten-year statute of limitations because the indictment was returned more than ten-years after Ms. Ramm's alleged bank fraud scheme had been completed.

Ms. Ramm's case is readily distinguishable from those where an act within the statute of limitations was sufficient to constitute an execution of the scheme to defraud and bring the entirety of the scheme within the statute of limitations. *See Longfellow*, 43 F.3d at 324 (holding that refinancing a loan—and thereby granting a new loan for a greater amount due to capitalization of interest—was sufficient to bring the entire scheme within the period of limitations); *see also United States v. Duncan*, 42 F.3d 97, 104-05 (2nd Cir. 1994)(holding that a defendant's scheme to secretly purchase properties and then sell them back to the bank at a premium could be prosecuted in its entirety even though the properties were purchased before the bank fraud statute was enacted because the sale of the properties occurred after the statute was enacted). In both *Longfellow* and *Duncan*, the financial institution victims suffered an independent financial risk during the limitations period—either by refinancing a loan for a greater amount or by fraudulently buying property at a premium. Extending the term of a loan for the same loan amount did not create an independent financial risk.

***United States v. Harris*, 79 F.3d 223 (2nd Cir. 1996) dealt with a series of six extensions of a credit line. This case deals with the extension of a previously-disbursed loan. By definition, each time a credit line is extended, there is a potential risk of loss—since an extension of credit presupposes that after it is extended, the consumer may use that line of credit. In**

other words, In *Harris*, the bank did not disburse the funds when it offered a credit line. Thus, each extension created a potential risk of loss. Here, the loan was disbursed in 2004. Once it was disbursed, there was no potential loss—just an actual loss which occurred in 2004. The 2007 loan extension did not create any potential, since any loss was actualized in 2004. The extension of a credit line in *Harris* created a potential loss each time the line was extended, since the loan would only be actualized if funds were disbursed as the line was actually used. By ignoring the distinction between a disbursed loan and credit lines, the government misconstrues and misapplies *Harris*.

C. The extension of the term of a business loan did not revive a completed scheme for statute of limitations purposes

Any request for an extension of the business loan would not have resulted in a new, independent risk for the bank because the terms of the loan remained the same. The amount of the loan was not increased, thus distinguishing this case from *Longfellow, ante*. The outstanding balance was due and payable at any time upon the bank's request. Merely altering the internal review date did not infringe upon or alter the bank's ability to demand the borrower to pay the outstanding balance at any moment. Such an extension would not expose the bank to any additional risk of loss because the borrower's obligation to pay interest on the loan persisted until the bank exercised its right to demand payment of the outstanding balance.

Any financial risk faced by the bank after the memorandum requesting an extension was submitted in 2007 was the same as it was in 2004, when the bank distributed loan proceeds for the final time. According to the indictment, the Memorandum pertained to Business Loan No. 3059095 in the amount of $25,000, which was originated on July 18, 2003. That amount was subsequently increased to $75,000 on February 20, 2004. Thus, the financial risk for the bank from these transactions was $75,000, which ripened and was complete on February 20, 2004. That risk was unaltered by the 2007 memorandum.

United States v. Sain, 141 F.3d 463 (3d Cir. 1998), which interpreted what acts constitute the "execution" of a fraudulent scheme, supports Ms. Ramm's position. In *Sain*, the Court found that each of the forty-six false claims for payment made by the defendants constituted a separate execution of the scheme to defraud. *Id.* at 473. Each of these forty-six false claims sought separate payment for costs, and thus created a new, independent financial risk to the victim of the fraud. *Id.* at 468-69. In reaching its holding, the Court concluded that each false claim was substantively independent from the overall scheme because each sought to obtain a separate amount of money from the government and caused the government a distinct loss. *Id.* at 473. The Court further noted that there was no evidence that the defendants had determined a specific amount of money they wanted to obtain and took several steps to get that amount. *Id.* Rather, the Court found that the defendants intended to obtain as much money as possible. *Id.*

Here, the 2007 memorandum did not, unlike the separate claims in *Sain*, contribute to a "distinct loss." *Id.* at 473. Nor did that memorandum seek "to obtain as much money as possible." *Id.* At most, it extended the term of the loan regarding money—and thus a potential loss—already disbursed (and thus already put at risk) by the bank. Under *Sain*, it does not constitute a separate execution of the scheme sufficient to place the scheme within the ten-year statute of limitations.

Ms. Ramm's case is similar to *United States v. Reitmeyer*, 356 F.3d 1313 (10th Cir. 2004). In *Reitmeyer*, the defendants were charged with violating the Major Fraud Act[3] by submitting a fraudulent equitable adjustment claim in 1994 to a fixed-price construction contract entered into with the United States Army Corps of Engineers. A meeting was held in 1995 to "promote and support" the claim. *Id.* at 1316. The grand jury returned an indictment charging a violation of the Major Fraud Act in 2002—outside the seven-year statute of limitations based upon the submission of the claim in 1994, but within the statute of limitations if the 1995 meeting date was used. The District Court granted a motion to dismiss for violation of the statute of limitations after concluding that the scheme to defraud was executed when the defendants filed their claim for equitable adjustment in 1994.

The *Reitmeyer* Court concluded that the defendants executed their scheme when they submitted their claim for equitable adjustment in 1994. *Id.* at 1318. The Court noted that "[o]nce the Companies

---

[3] Many cases cited herein, including *Reitmeyer,* cite Major Fraud Act and Bank Fraud cases interchangeably, based upon "the nearly identical language" contained in these two statutes. *See United States v. Reitmeyer*, 356 F.3d 1313, 1317-18 (10th Cir. 2004).

filed their claim, they did not need to engage in any additional conduct to realize the ultimate goal of their scheme." *Id. Reitmeyer* rejected the government's claim that all actions subsequent to the submission of a fraudulent claim necessarily were part of a single attempt to violate the Act, and thus revived the statute of limitations. *Id.* at 1321. The Court further rejected the government's argument that the fraud constituted a continuing offense such that the statute of limitations did not begin to run until the objective of the fraud was accomplished or the fraud was discovered. *Id.* at 1321-1325. The Court noted that each execution of the scheme is criminalized, and the offense is complete once an execution is complete. Additional acts do not violate the statute unless they constitute an independent execution of a scheme. *Id.* at 1323.

The *Reitmeyer* Court also rejected the government's claim that the 1995 meeting constituted a separate execution of the scheme to defraud. The Court based its rejection on the fact that the meeting did not concern any independent matters, and thus it did not create a new and independent financial risk *viz-a-viz* the original claim for equitable adjustment. At most, the meeting "was merely an act in furtherance of the … scheme to defraud." *Id.* at 1325. The 2007 extension of the loan term in this case would at most be an act in furtherance of the prior scheme to defraud. It created no new risk, and is thus akin to the 1995 meeting in *Reitmeyer*.

Even though the purported extension may have caused a continuation of the business loan's terms, it does not justify an extension of the statute of limitations period. In *United States v. Hare*, 618

F.2d 1085, 1086-87 (4th Cir. 1980), the government argued that the statute of limitations was renewed each time that the defendant made payments on a loan because he continued to receive favorable terms, including a favorable interest rate, liberal payment provisions, and an absence of late payment penalties. *Id.* at 1086. However, the Fourth Circuit rejected the government's argument and held that the statute of limitations began to run when the loan was issued to the defendant. *Id.* at 1087. The Court further explained that the period of limitations did not renew each time the defendant made a payment subject to a favorable interest rate or missed a payment without suffering a late payment penalty. *Id.* Accordingly, any alleged request for an extension would not cause the statute of limitations to renew.

The Second Circuit's decision in *United States v. Kilkenny*, 493 F.3d 122 (2d Cir. 2007) supports Ms. Ramm's arguments. In *Kilkenny*, the defendant submitted a fraudulent loan application in 2000 and received the funds that same year. The bank foreclosed in 2002 based on failure to repay. *Id.* at 124.[4] The *Kilkenny* Court addressed whether the failure to repay the loan constituted bank fraud so as to extend the period of the commission of the offense into 2002. The Second Circuit rejected that argument and held that the bank fraud offense was complete upon the submission of the fraudulent loan application and receipt of loan funds. *Id.* at 129. "The information [about lack of repayment]

[4] Admittedly, the issue in *Kilkenny* was which version of the Sentencing Guidelines should apply. Nevertheless, the Court was called upon to interpret when a bank fraud offense is complete, and thus the analysis is relevant here.

alleges no further conduct on Kilkenny's part that created a new or additional risk of loss." *Id.* The Court rejected the notion that failing to repay (or enjoying the fruits of the fraud) should extend the life of the illegal scheme, because doing so would extend the scheme "indefinitely." *Id.* at 129-30.

In *Kilkenny*, the Second Circuit explained that "[t]here are of course situations where conduct for the offense of bank fraud occurs after the point at which the bank is first put at risk of financial loss." The Court cited to *United States v. Duncan*, 42 F.3d 92 (2d Cir. 1994) as such an example. In *Duncan*, several directors of a savings and loan association conspired to purchase two parcels of real estate in order to lease or sell the property back to the bank at a profit. *Id.* at 99–100. The transactions were orchestrated so as to hide the conspirators' interest in the real estate from the other bank directors. *Id.* After his conviction for bank fraud, Duncan raised an *ex post facto* challenge on appeal. He contended the bank fraud was complete once the conspirators agreed to secretly purchase the property. *Id.* at 103–04. The Court rejected that characterization, holding instead that the offensive conduct was not complete until the real estate was sold back to the bank. *Id.* at 104. Key to the result in *Duncan* was the fact that the sale of these properties to the bank was the "*central object* of the charged criminal conduct." *Id.* (emphasis added). Notably, the resale of the properties to the bank in *Duncan* posed a risk of financial loss that was separate and independent from the defendant's initial usurpation of the corporate opportunity. *See id.* (stating that conspirators intended to both "seize for themselves two pieces of property at a bargain" and "sell the properties to the bank at a premium").

Ms. Ramm's case is akin to *Kilkenny* and distinguishable from *Duncan*. If failing to repay funds in *Kilkenny* did not constitute the execution of a scheme to defraud, the extension of the term of a loan cannot be considered the execution of a scheme to defraud either. Unlike *Duncan*, the extension of the term of a loan was not the "central object of the charged criminal conduct," as selling properties at a premium was. Instead, the central object of obtaining loan funds was realized in 2004—three years before the term of the loan was extended.

CONCLUSION

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

Respectfully submitted,

MATTHEW CAMPBELL
Counsel of Record
FEDERAL PUBLIC DEFENDER
DISTRICT OF THE VIRGIN ISLANDS
1336 Beltjen Road,
Suite 202
St. Thomas, VI 00802
Tel: (340) 774-4449
Email: Matt_Campbell@fd.org
Counsel for Petitioner

July 7, 2022