No. 22-

IN THE

Supreme Court of the United States

JACQUELINE ANDERSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 1114 of Title 18 of the United States Code protects distinct groups of individuals from attempts to kill them "on account of" their role in federal activities: (1) "*officer[s] or employee[s]* of the United States" who are "engaged in . . . the performance of official duties," and (2) *"any person"* who "assists" federal officers or employees in that performance (emphases added).

The text of 18 U.S.C. § 115, in turn, expressly criminalizes *threatening* certain acts of violence against the *"official[s]"* who are covered by § 1114 (emphases added). Section 115 notably does not state that threatening "any person" assisting such official is also a crime.

Petitioner Jacqueline Anderson threatened a Protective Security Officer ("PSO")—a private guard contracted by the federal government to assist in protecting a local Social Security Office. It is undisputed that PSOs are not officers or employees of the United States. Nevertheless, a divided panel of the Ninth Circuit affirmed Ms. Anderson's conviction for violating § 115 by threatening a person who is *not* a federal official.

The question presented is:

Are private contractors federal "official[s]" for purposes of criminal liability under 18 U.S.C. § 115?

PARTIES TO THE PROCEEDING

Petitioner is Jacqueline Anderson, who was Defendant-Appellant below.

Respondent is the United States of America, which was Plaintiff-Appellee below.

STATEMENT OF RELATED PROCEEDINGS

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

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PETITION FOR A WRIT OF CERTIORARI

Jacqueline Anderson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's opinion (Pet. App. 1a–28a) is reported at 46 F.4th 1000. The opinion of the United States District Court for the Central District of California (Pet. App. 29a–33a) denying Petitioner's motion for a judgment of acquittal is not reported in the Federal Supplement.

STATEMENT OF JURISDICTION

The Ninth Circuit's judgment was entered on August 25, 2022. Pet. App. 1a. Petitioner filed a timely petition for rehearing, which the Ninth Circuit denied on January 6, 2023. *Id*. at 34a. Justice Kagan extended the deadline to petition for a writ of certiorari to May 10, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 115 of Title 18 of the U.S. Code provides in relevant part that it is a federal crime to:

> threaten[] to assault, kidnap, or murder, a United States Official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under [section 1114 of Title 18], with intent to impede, intimidate, or interfere with such official, judge, or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official, judge, or law enforcement officer on account

> of the performance of official duties.

18 U.S.C. § 115(a)(1)(B).

Section 1114 of Title 18 of the U.S. Code provides in relevant part that it is a federal crime to:

> kill[] or attempt[] to kill any officer or employee of the United States or of any agency in any branch of the United States Government . . . while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance.

18 U.S.C. § 1114(a).

INTRODUCTION

Since 1986, 18 U.S.C. § 115 has criminalized certain threats against federal "officials" covered by 18 U.S.C. § 1114. Pub. L. 99-646, § 60, 100 Stat. 3599, 3613 (1986) (codified as amended at 18 U.S.C. § 115(a)(1)(B)). By the terms of § 115, such threats must be intended to impact the carrying out of the official's duties or to retaliate for the official's action. The statute thus protects all federal officials carrying out their official duties from being influenced by threats of violence.

Section 115 does not provide a comprehensive definition of who counts as a federal official. Instead, as noted above, it directs readers to § 1114. Section 1114 likewise is about protecting the integrity of the work of the federal government from outside influence. Its concern is not mere *threats* of violence but *acts* of violence. And, by its terms, it protects a broader scope of individuals from attempts to kill them than § 115 protects from mere threats. Section 1114 refers expressly

to three distinct groups of individuals: federal "officers," federal "employees," and "any person assisting" a federal officer or employee. 18 U.S.C. § 1114(a).

Despite the patent difference in statutory scope, the Ninth Circuit has read § 1114 to reach as broadly as § 115. Over a vigorous dissent by Judge Fletcher, a divided panel of that court extended § 115 to encompass not only threats to federal officers and employees, but also threats to other persons assisting federal officers and employees in carrying out their official duties. Not only does the panel's ruling expansively broaden § 115's ambit by (at least) doubling the criminal statute's scope, it also reflects a veritable smorgasbord of statutory construction missteps that this Court has firmly counseled against. The ruling sets aside the plain meaning of the text, attempts to discern and then applies the supposed "purpose" of the statute without regard to its language, and treats inapposite legislative history as authority. While all of this would be reason enough to reject the Ninth Circuit's view in any circumstance, the Ninth Circuit's conclusion also violates the fundamental principle that no person may face criminal punishment without clear, unambiguous notice of what conduct is prohibited.

Two other courts of appeals have also read § 115 expansively, though neither has stretched it as far as the Ninth Circuit has here. See *United States* v. *Bankoff*, 613 F.3d 358 (3d Cir. 2010); *United States* v. *Wynn*, 827 F.3d 778 (8th Cir. 2016). Indeed, the Ninth Circuit justified its atextual reading of the statute based on those courts' prior rulings. This Court's review is therefore urgently needed not only to vindicate this Court's foundational principles of statutory construction, but also to prevent the further contagion of the Ninth Circuit's error to other circuits. Percolation among the courts of appeals is unlikely to yield self-

correction given the trend that has taken hold. A writ of certiorari is warranted to ensure that § 115 retains the scope that Congress prescribed.

The petition should be granted.

STATEMENT OF THE CASE

1. On the morning of December 12, 2018, Ms. Anderson visited the Long Beach, California, Social Security Office. Pet. App. 6a. Three Protective Security Officers ("PSOs"), including Justin Bacchus, were guarding the office that day. *Id.*

PSOs, including Mr. Bacchus, are not federal employees. *Id.* at 23a. Rather, a private company employed Mr. Bacchus and had contracted with the Federal Protective Service to provide security at the Social Security Office. *Id.*

Ms. Anderson repeatedly spoke angrily and disruptively to guards tasked with securing the office. Ultimately, she was ordered to leave the premises. After briefly blocking access to the office, she departed. *Id.* at 7a–8a. As she walked back to her car, Ms. Anderson verbally threatened to kill Mr. Bacchus. *Id.* at 8a. Mr. Bacchus reported the threat to the other guards on duty, who all decided to detain Ms. Anderson before she left the scene. Ms. Anderson drove away before they could detain her, but the guards noted her license plate.

2. A grand jury in the Central District of California charged Ms. Anderson with one count of violating § 115(a)(1)(B) by threatening "a person assisting" federal officers and employees. *Id.* The indictment also charged that Ms. Anderson threatened Mr. Bacchus with the intent to impede or retaliate for Mr. Bacchus carrying out Mr. Bacchus's duties.

After the government rested its case at trial, Ms. Anderson moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29. Pet. App. 9a. She argued that because Mr. Bacchus was employed by a private contractor, and not the federal government, he was not a federal "official" and thus threatening him did not violate the statute. *Id.* Though the district court reserved decision on the motion, it instructed the jury that the "federal official[s]" protected by § 115 include "any person assisting an officer or employee of the United States," and submitted the case for decision. *Id.* at 9a–10a.

The jury found Ms. Anderson guilty. After post-trial briefing, the district court denied Ms. Anderson's Rule 29 motion in a written decision, *Id.* at 10a, and sentenced her to one year of probation and a fine.

3. On appeal, Ms. Anderson asked the Ninth Circuit to vacate her conviction because she had not threatened a federal "official" as the statute required. The Ninth Circuit affirmed Ms. Anderson's conviction in a 2-1 decision.

The court of appeals observed that statutory interpretation starts with the "plain language" of the statute, *id.* at 12a, but then quickly turned away from the statutory text. Instead, the court's analysis began with decisions from two other courts of appeals that have considered the scope of the term "official" in § 115. *United States* v. *Bankoff*, 613 F.3d 358 (3d Cir. 2010); *United States* v. *Wynn*, 827 F.3d 778 (8th Cir. 2016).

Those decisions addressed a different but related question. They concerned whether the term "official" in § 115 encompasses both federal officials and federal "employees." Both the Third and Eighth Circuits determined that they did. The lesson that the Ninth Circuit drew from those rulings was that the "ordinary

meaning" of the term "official" does not control. To the Ninth Circuit, the meaning of "official" in § 115 could not be determined "without consideration of those individuals described in § 1114." Pet. App. 16a. And, in § 1114, Congress provided no way to distinguish among "officers," "employees," or "persons assisting" officers and employees. *Id.* at 17a. So, according to the Ninth Circuit, it followed that § 115 would be "unworkable and unfaithful to the intent of the statute" if the term "official" in § 115 did not encompass *all* of the officials, employees, and persons assisting officials and employees covered by § 1114. *Id.*

The Ninth Circuit's ruling is littered with contradictions. The majority viewed its decision as compelled by a "plain reading" of § 115, even though it disregarded the "ordinary meaning" of the term in the statute it was interpreting: "official." *Id.* at 16a. Similarly, the ruling notes at the outset that § 115 suffers a "lack of clarity" yet is not "ambiguous." *Id.* at 4a. The Ninth Circuit declared that its ruling was necessary to avoid a circuit split with the Third and Eighth Circuits, even as it acknowledged that neither of those decisions even considered whether § 115 extends to threats against persons who are neither federal officials nor federal employees. *Id.* at 12a. It observed that a different part of § 115 *expressly* protects family members of federal officials from threats of violence, and concluded, after consulting the legislative history discussing the protection of family members, that Congress had also extended § 115 to non-officials generally without saying so. *Id.* at 18a–19a. Finally, it noted that the 1996 expansion of § 1114 to cover individuals assisting federal officers and employees was inspired by the Oklahoma City bombing, and that therefore the *purpose* of § 115, which was amended in *other* respects at that time, must also have been to protect those assisting federal

officers and employees. Pet. App. 20a. In other words, the Ninth Circuit ignored many statutory construction canons in arriving at its conclusion.

Judge Fletcher, on the other hand, dissented on straightforward textual grounds. He explained that the question of whether a person assisting with a federal function is "an official whose killing would be a crime under [§ 1114]," was "really two questions"—(1) was the person an "official" and (2) would his killing be a crime under § 1114? *Id.* at 25a (Fletcher, J., dissenting).

That reading followed from the grammatical structure of § 115's text—a noun ("official") followed by a restrictive relative clause ("whose killing would be a crime under [§ 1114]"). *Id.* (quoting Chicago Manual of Style ¶ 6.27 (17th ed. 2017)). Judge Fletcher explained that the text was dispositive because "[a] person 'assisting' a federal officer or employee is not himself . . . a federal officer or employee. Rather, as § 1114 plainly states, that person is *assisting* an officer or employee. Under a reasonable reading of § 1114, [Mr.] Bacchus was assisting an officer or employee of the United States in [securing the Social Security Office]. But under no reasonable reading was he, by virtue of providing such assistance, himself an officer or employee." *Id.* at 26a.

The Ninth Circuit denied Ms. Anderson's petition for panel rehearing and rehearing en banc (though Judge Fletcher recommended en banc rehearing). Pet. App. 34a. This timely petition for a writ of certiorari followed.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit atextually expanded § 115 based on an erroneous understanding of Third and Eighth

Circuit precedents, despite acknowledging those cases addressed separate issues than the question presented here. This Court's review is urgently needed to restrain the unwarranted judicial extension of textually limited criminal liability.

The Ninth Circuit misunderstood the Third and Eighth Circuit's reading of "official" in § 115 to "incorporate[] by reference *all persons* covered by § 1114," *Bankoff*, 613 F.3d at 360; *Wynn*, 827 F.3d at 783–84, and stretched the reasoning to apply even to private contractors—something no other circuit has done. The Ninth Circuit reached that conclusion even though Congress specifically distinguished between federal officers and employees, on the one hand, and persons assisting officers and employees (such as private contractors), on the other hand, in § 1114. In doing so, the Ninth Circuit openly chose to elevate its view of Congress's intent above—and in a way that cannot be reconciled with—the statutory text. Given the Ninth Circuit's unjustified expansion of federal criminal law, only this Court can restore § 115 to the scope Congress prescribed.

This case provides an ideal vehicle to address the issue because it is squarely presented in the most stark form. The Ninth Circuit's decision stretches § 115 far beyond the Third and Eighth Circuits' holdings. There is no factual dispute that Mr. Bacchus was neither a federal officer nor a federal employee, but one of a substantial number of private contractors hired to assist federal officials in the performance of their duties. Ms. Anderson has insisted throughout these proceedings that she is being treated as a federal felon—despite being a senior citizen with no criminal history or prior run-ins with the law—based on conduct that federal law does not criminalize. The petition should be granted.

I. THE NINTH CIRCUIT'S POLICY-DRIVEN EXPANSION OF 18 U.S.C. § 115 CONFLICTS WITH FUNDAMENTAL PRINCIPLES OF STATUTORY INTERPRETATION.

The Ninth Circuit's ruling disregards the plain meaning of § 115's operative statutory term, ignores key contextual clues from the statute that its reading is wrong, elevates ambiguous statements plucked from legislative history over what the text and drafting history of the statute indicate, and divines so-called congressional intent and policy from sources far afield from the statute's terms. It imposes criminal punishment for conduct that the statute admittedly does not *clearly* proscribe. The Ninth Circuit's decision is wrong and warrants immediate review.

1. This Court has repeatedly explained that when a statute's words have an unambiguous ordinary meaning, the work of interpretation begins and ends with applying it. *Bostock* v. *Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020) (collecting cases). Whatever role legislative history and other "extratextual consideration[s]" may play in other interpretive contexts, this Court has made clear that they have none when the statutory text is clear. *Id.*

"Judges are not free to overlook plain statutory commands on the strength of nothing more than suppositions about [Congress's] intentions or guesswork about [its] expectations." *Id.* at 1754. If the law were otherwise—if courts could "add to, remodel, [or] update . . . old statutory terms inspired only by extratextual sources and [their] own imaginations"—then courts would find themselves in the business of "amending statutes outside the legislative process reserved for the people's representatives." *Id.* at 1738.

The court of appeals emphatically departed from these settled principles here. The linchpin of the Ninth Circuit's decision is its explicit choice to disregard the "ordinary meaning of 'official.'" Pet. App. 16a . The most natural reading of "official"—in a statute that (per its enacted title) specifically addresses threats meant to intimidate "*[f]ederal* official[s]," *id.* at 35a (emphasis added)—is a person who "holds or is invested with a *public office*." Official, Black's Law Dictionary (11th ed. 2019) (emphasis added).

Put another way, even if it is linguistically conceivable (as the government argued below based on other dictionary definitions, see *id.* at 57a) for the word "official" to denote essentially anyone assisting the government pursuant to a contract, there is no doubt that, in ordinary parlance, federal *officials* and federal *contractors* are distinct categories. See *Bond* v. *United States*, 572 U.S. 844, 862 (2014) ("The Government would have us brush aside . . . ordinary meaning and adopt a reading of [the Chemical Weapons Convention] that would sweep in everything from the detergent under the kitchen sink to the stain remover in the laundry room. Yet no one would ordinarily describe those substances as 'chemical weapons.'"). Judicial usage confirms as much. See, *e.g.*, *United States* v. *Bundy*, 968 F.3d 1019, 1024 (9th Cir. 2020) (distinguishing between "federal officials and private contractors" involved in roundup of cattle grazing illegally on federal land); *United States* v. *Ottati & Goss, Inc.*, 900 F.2d 429, 441 (1st Cir. 1990) (distinguishing between "EPA employees, contractors [and] officials" that supervised environmental cleanup); *Burroughs* v. *Hills*, 741 F.2d 1525, 1529–30 (7th Cir. 1984) (distinguishing between "HUD officials . . . [and] their contractors" with responsibility for maintaining derelict federally owned real estate).

The Ninth Circuit readily acknowledged that private contractors fall outside the ordinary meaning of "official." See Pet. App. 19a (arguing that contractors are protected under § 115 because "Congress' intent in passing [it] was to afford protections to non-officials"). That acknowledgment should have been "the end of the analysis." See, *e.g.*, *Bostock*, 140 S. Ct. at 1743. Congress wrote a statute that on its face applies only to federal "officials," in a context where the ordinary meaning of that word includes federal officers and employees, but not private contractors who assist them. This Court has "stated time and again that [judges] must presume that [Congress] says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous . . . this first canon is also the last: 'judicial inquiry is complete.'" *E.g.*, *Barnhart* v. *Sigmon Coal Co., Inc.*, 534 U.S. 438, 460–62 (2002) (citation omitted).

2. Context compounds the Ninth Circuit's plain-text error. Section 115(a)(1)(B) criminalizes a threat made "with intent to impede, intimidate, or interfere with *such* official, judge, or law enforcement officer while engaged in the performance of official duties. . . ." Pet. App. 35a. The use of "such" signals both that the defendant must have intended to disrupt the duties of a government official *and* that the threat must be aimed at "such" government official whose duties were being targeted. Yet the government's position is that even if no government official's duties were intended to be disrupted (*i.e.*, if only a private contractor's duties were) a defendant has still violated the statute. The government's and the Ninth Circuit's view reads the word "such" out of the statute. To the extent that the government contends that the statute covers indirect disruption of *official duties* (and not just the duties *of an official*), it misapprehends the statutory language

because it disregards the status-based meaning of the noun "official" and instead focuses on the function-based meaning of the adjective "official."

The Ninth Circuit reasoned that Congress could not have meant "official" to exclude persons assisting federal officers and employees, because when that word was first written into § 115 in 1984, § 1114 included only federal officers and employees who fell within its ordinary meaning. The panel majority's theory was that since § 115 originally incorporated the entirety of § 1114, Congress must have intended such complete overlap to persist even as § 1114 was expanded to include persons giving assistance and § 115 was not. Pet. App. 15a.

The central premise of that analysis, however, is false—when § 115 was enacted in 1984, § 1114 *did* include persons assisting federal officers and employees. See 18 U.S.C. § 1114 (1982) (covering "any person assisting" customs or internal revenue agents, and any "person employed to assist" federal marshals). Pet. App. 68a. The subsequent drafting history of § 115 likewise shows that, both before and after the Antiterrorism and Effective Death Penalty Act's (AEDPA) expansion of § 1114, "official" was only ever meant to refer to federal officers and employees. In 1996—when Congress expanded § 1114 and simultaneously amended § 115(a)(2) to cover former officials—the enacted title of the section amending § 115 referred only to "officers and employees." See Pub. L. 104-132, Title VII, Subtitle B, § 727(b), 110 Stat. 1214 (1996) ("Threats Against Former Officers and Employees").

The Ninth Circuit also found that it was "implausible that Congress simultaneously edited both statutes but missed their interaction." Pet. App. 20a . Yet what is more implausible is that Congress noticed the interaction, and then failed to amend § 115's specific intent

requirement to correspond with the expanded scope of Congress's supposed intended definition of "officials" listed in § 1114.

3. Rather than apply the plain and contextually sensible meaning of § 115, the Ninth Circuit rejected a straightforward limitation to federal "officials" as "unworkable and unfaithful to [Congress's] intent." Pet. App. 17a. Its reasons for doing so are facially inconsistent with both this Court's decisions and the relevant statutory text.

To begin, the Ninth Circuit deemed an ordinary-meaning interpretation of "official" to be "unworkable" because Congress did not—as it did for the other categories of person covered by § 115—give that word an express definition. *Id.* Congress often leaves terms undefined. This Court's precedents do not then allow lowers courts to determine the "workability" of a term's ordinary meaning. Rather, this Court's precedents make clear that Congress's decision to leave a statutory term undefined is an invitation to apply—not ignore—its ordinary meaning. See, *e.g.*, *Asgrow Seed Co.* v. *Winterboer*, 513 U.S. 179, 187 (1995).

"Additionally, and most impermissibly," the court of appeals also "relied on its understanding of the broad purposes of [§ 115]" to justify judicial expansion of the statute beyond its enacted text. *Rodriguez* v. *United States*, 480 U.S. 522, 525–26 (1987). To be sure, §§ 115 and 1114 are meant at a high level to protect persons carrying out important federal functions—certainly "a matter of federal concern." See Pet. App. 21a (quoting S. Rep. No. 98-225, at 320) (alteration omitted). But that generalized policy goal provides no reason to set aside the text and extend those protections to cover threats to private contractors. This Court has repeatedly rejected calls to distort or disregard Congress's words to serve judicial divinations about those words'

purpose. See, *e.g.*, *Bittner* v. *United States*, 143 S. Ct. 713, 723 n.7 (2023); *Encino Motorcars, LLC* v. *Navarro*, 138 S. Ct. 1134, 1142 (2018); *Rodriguez*, 480 U.S. at 525–26. "[N]o legislation pursues its purposes at all costs," and deciding where to draw that line "is the very essence of legislative choice." *Rodriguez*, 480 U.S. at 524–26. Not every "result consistent with . . . [a] statute's overarching goal must be the law," *Henson* v. *Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017), and the Ninth Circuit "frustrate[d] rather than effectuate[d] legislative intent" when it "simplistically . . . assume[d]" otherwise," *Rodriguez*, 480 U.S. at 526. "[E]ven the most formidable argument concerning [a] statute's purposes could not overcome the clarity . . . in the statute's text." *Kloeckner* v. *Solis*, 568 U.S. 41, 55 n.4 (2012).

Certiorari is warranted because, at every step, the Ninth Circuit disregarded this Court's clear instructions on statutory interpretation. The panel majority ascertained § 115's straightforward ordinary meaning only to ignore it. *Cf. Bostock*, 140 S. Ct. at 1738, 1749–50. It justified doing so by appealing to the "last redoubt of losing causes, the proposition that the statute at hand should be liberally construed to achieve its purposes." *Dir., Off. of Workers Comp. Programs* v. *Newport News Shipbldg. & Dry Dock Co.*, 514 U.S. 122, 135–36 (1995). Words withheld by the legislature "cannot be supplied" by the courts, *Rotkiske* v. *Klemm*, 140 S. Ct. 355, 360–61 (2019), which have no license to "add to, remodel, [or] update" the statutes Congress actually enacts, *Bostock*, 140 S. Ct. at 1738. The end result here was to affirm Ms. Anderson's conviction by effectively substituting words Congress never wrote—"any person performing a service for the government"—for the one that it did—"officials."

4. Finally, the Ninth Circuit's departure from the clear ordinary meaning of § 115's text to uphold Ms. Anderson's federal felony conviction based on legislative history flouts this Court's due process precedents. "Engrained in our concept of due process is the requirement of notice." *Lambert* v. *California*, 355 U.S. 225, 228 (1957). "Notice is sometimes essential so that the citizen has the chance to defend charges." *Id.* "It may well be true that in most cases the proposition that the words of the United States Code or the Statutes at Large give adequate notice to the citizen is something of a fiction . . . albeit one required in any system of law; but necessary fiction descends to needless farce when the public is charged even with knowledge of Committee Reports." *United States* v. *R.L.C.*, 503 U.S. 291, 309 (1992) (Scalia, J., dissenting). Here, the Ninth Circuit's opinion would saddle citizens with the responsibility of piecing together legislative committee reports to divine the meaning of statutory terms—all while shelving the plain and ordinary meaning of those same terms. That is not notice, and that is not the law.

II. THE QUESTION PRESENTED IS IMPORTANT AND RIPE FOR THIS COURT'S IMMEDIATE REVIEW.

A. The Ninth Circuit's Purported Effort to Avoid a Circuit Split Will Crystallize an Erroneous Rule.

Review is also warranted because further percolation among the courts of appeals is likely only to entrench the erroneous position the Ninth Circuit adopted here. The court of appeals left no doubt that its opinion was motivated by fear of a circuit split. See Pet. App. 18a. As explained *supra*, at 8, that fear was unfounded—neither the Third Circuit in *Bankoff* nor the Eighth Circuit in *Wynn* had addressed whether

§ 115 covers threats to private contractors. *Bankoff* considered whether § 115 applied to a supervisor employed by the Social Security Administration, 613 F.3d at 360, and *Wynn* dealt with a foreman employed by the Department of Veterans Affairs, 827 F.3d at 783. Further, *United States* v. *Martin*, 163 F.3d 1212 (10th Cir. 1998), does not support the government's position for one major reason: *Martin's* central holding is reasoned based on an examination of § 111, which uses much broader language ("*any person* designated in section 1114" (emphasis added)) to incorporate § 1114 than § 115's language.

But the Ninth Circuit still gave its imprimatur by going beyond even the broadest reading of those holdings. There is every reason to expect that other courts will do the same, and this Court should intervene now to review and reverse that error.

Like the Ninth Circuit, a substantial majority of the courts of appeals give significant weight to the avoidance of circuit splits. See, *e.g.*, *Alt. Sys. Concepts, Inc.* v. *Synopsys, Inc.*, 374 F.3d 23, 31 (1st Cir. 2004) (court should create circuit split only for "compelling reason[s]"); *Janese* v. *Fay*, 692 F.3d 221, 227 (2d Cir. 2012) (same); *Wagner* v. *PennWest Farm Credit, ACA*, 109 F.3d 909, 912 (3d. Cir. 1997) (same); *United States* v. *Nesmith*, 866 F.3d 677, 680 (5th Cir. 2017) (same); *Mayer* v. *Spanel Int'l. Ltd.*, 51 F.3d 670, 675 (7th Cir. 1995) (same); *United States* v. *Thomas*, 939 F.3d 1121, 1130–31 (10th Cir. 2019) (no circuit split without a "sound reason" to create one); *United States* v. *Philip Morris USA, Inc.*, 396 F.3d 1190, 1201 (D.C. Cir. 2005).

When courts confront the question presented here, the landscape will be clear—one circuit will have unambiguously held that § 115 covers private contractors because it read two other circuits as concluding that § 115 covers the full scope of persons protected in

§ 1114. Those courts policies favoring avoidance of circuit splits will weigh heavily against creating one. This Court should not delay corrective action waiting for a circuit conflict to emerge that circumstances strongly suggest may never arrive.

Immediate intervention is also appropriate because, even without a circuit split, the question presented is clearly defined and crystallized for this Court's review. The panel majority adopted the purposive analysis of two other circuit courts to conclude that the word "official" in § 115 does not mean what it plainly says. Judge Fletcher's dissent, in turn, explained why a straightforward textual approach is superior. Further consideration by the lower courts will not reframe or clarify the issues, and this Court should grant review on this important question today.

B. Including Contractors Within § 115's Scope Would Vastly Expand The Reach of an Important Federal Felony Offense.

The sheer scale of the private contractor workforce demands review of the question presented. Millions of people work under federal contracts—roughly the same number as work for the government directly. See Paul C. Light, *The True Size of Government*: *Tracking Washington's Blended Workforce, 1984–2015* 3 (2017), https://www.volckeralliance.org/sites/default/files/attachments/Issue%20Paper_True%20Size%20of%20Government.pdf (estimating about 3.7 million federal contractors against 3.8 million combined federal workers, postal employees, and active-duty military personnel in 2015). In other words, if the Ninth Circuit is correct that threats to private contractors are punishable under § 115, it would *double* that statute's reach.

This Court has repeatedly recognized that the breadth of a question's impact, as well as its practical importance to both the basic functions of federal administration and the management of risk to individual federal personnel, are both reasons to grant certiorari. See, *e.g.*, *Bond*, 572 U.S. at 854 (granting certiorari to determine whether Chemical Weapons Convention was broad enough to encompass "every 'kitchen cupboard and cleaning cabinet in America'" (citation omitted)); *Texaco Inc.* v. *Dagher*, 547 U.S. 1, 5 (2006) (granting certiorari to determine applicability of antitrust laws "to an important and increasingly popular form of business organization"); *Christopher* v. *Harbury*, 536 U.S. 403, 412 (2002) (granting certiorari because scope of *Bivens* claim available against individual State Department officials was "importan[t] . . . to the Government in its conduct of the Nation's foreign affairs"); *Livadas* v. *Bradshaw*, 512 U.S. 107, 116 (1994) (granting certiorari to review law applicable to all California workers employed under collective bargaining agreements providing for arbitration); *City of Cincinnati* v. *Discovery Netwk., Inc.*, 507 U.S. 410, 415–16 (1993) (certiorari to review statute regulating placement of newsracks on public property warranted given "the dramatic growth in the[ir] use . . . throughout the country); *Butz* v. *Economou*, 438 U.S. 478, 480–81 (1978) (granting certiorari "[b]ecause of the importance of immunity doctrine to . . . the effective functioning of government"); *United States* v. *Utah Const. & Mining Co.*, 384 U.S. 394, 400 (1966) (granting certiorari because rules of dispute resolution between government and federal contractors were "importan[t] . . . in the administration of government contracts"); *Cole* v. *Young*, 351 U.S. 536, 541 (1956) (granting certiorari because meaning of statute defining permitted grounds for termination of federal employment was an "importan[t] . . . question[] . . . in the

field of Government employment"). The same considerations favor review in this case.

C. This Case Provides an Ideal Vehicle for Resolving These Important Issues.

This case provides an ideal vehicle to address the question underlying the Ninth Circuit's departure from this Court's statutory interpretation precedents. The factual record is straightforward, and no collateral issues cloud the statutory interpretation questions presented. Further, the Ninth Circuit's mistake expansively broadened § 115's ambit to federal contractors, effectively doubling the criminal statute's scope. Thus, this case presents the Court with a perfect vehicle through which to address the question posed.

CONCLUSION

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

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