No.

IN THE
Supreme Court of the United States

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

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress made it unlawful to knowingly make certain false statements or omissions with intent "to obstruct" bankruptcy cases, federal investigations, or—most important here—"proper administration" of federal "matter[s]." 18 U.S.C. § 1519. The penalty can be as high as 20 years' incarceration. *Ibid.* In *Marinello* v. *United States*, 584 U.S. 1 (2018), this Court addressed the meaning of the similar phrase, "obstruct * * * due administration," in an obstruction statute relating to the Internal Revenue Code. It held that "due administration" does not include "routine administrative procedures" like review of annual tax returns. *Id.* at 4. In the decision below, the court of appeals held that the phrase "proper administration" of "matter[s]" in § 1519 does reach "routine" processes like ordinary-course review of annually submitted forms. The question presented is:

Whether a false statement or omission allegedly intended to obstruct routine procedures, such as ordinary-course agency review of annual disclosure forms, constitutes intent to obstruct "proper administration of any matter" within the meaning of 18 U.S.C. § 1519.

PARTIES TO THE PROCEEDINGS BELOW

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

Respondent is the United States of America, appellee in the court of appeals.

STATEMENT OF RELATED PROCEEDINGS

There are no related proceedings within the meaning of Rule 14.1(b)(iii).

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Eghbal Saffarinia respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The court of appeals' opinion (App., *infra*, 1a-17a) is reported at 101 F.4th 933. The district court's decision denying Saffarinia's post-trial motions (App., *infra*, 18a-26a) is unreported, and its decision denying Saffarinia's motion to dismiss (App., *infra*, 27a-105a) is reported at 424 F. Supp. 3d 46.

STATEMENT OF JURISDICTION

The court of appeals entered judgment on May 17, 2024, App., *infra*, 110a-111a, and denied rehearing on July 23, 2024, *id.* at 106a-109a. On October 17, this Court extended

the time to file this petition to and including November 4, 2024. No. 24A357. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. § 1519 provides:

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

PRELIMINARY STATEMENT

This Court has repeatedly warned against unrestrained interpretations of "residual" phrases in obstruction statutes, lest they threaten "decades in prison" for "a broad swath of prosaic conduct." *Fischer* v. *United States*, 144 S. Ct. 2176, 2189 (2024). In *Fischer*, the Court held the phrase "otherwise obstructs * * * any official proceeding" does not reach all obstructive acts, but instead is limited to the sort of document-tampering conduct identified elsewhere in that statute. See *id.* at 2190. In *Yates* v. *United States*, 574 U.S. 528 (2015), the Court refused to give an expansive reading to another provision prohibiting obstructive acts affecting "any record, document, or *tangible object*," holding that could not extend to discarding fish (even though fish are tangible). See *id.* at 531, 549 (plurality); *id.* at 549 (Alito, J., concurring in the judgment). And in *Marinello* v. *United States*, 584 U.S. 1 (2018), the Court rejected an expansive reading of the phrase "obstruct or

impede * * * the due administration of" the Internal Revenue Code. See *id.* at 4. Although "'due administration'" could be read broadly, the Court held that it does not encompass obstruction of "routine administrative procedures" like tax-return review. *Id.* at 4, 7.

The decision below defies those precedents. Under 18 U.S.C. § 1519, it is a crime—punishable by up to 20 years' imprisonment—to obstruct "the investigation or *proper administration of* any matter within the jurisdiction of any department or agency of the United States or any case filed under" Chapter 11 of the Bankruptcy Code. 18 U.S.C. § 1519 (emphasis added). The D.C. Circuit's decision below read "proper administration of any matter" expansively to include routine review of forms and papers. App., *infra*, 9a-12a. That disregards this Court's decision in *Marinello*, which held that an almost indistinguishable phrase, "due administration," *excludes* routine procedures. See 584 U.S. at 4. The D.C. Circuit, moreover, did not support its contrary construction with an evaluation of text, statutory structure, or context. Nor did it acknowledge this Court's longstanding rule that broad penal statutes like § 1519 must be interpreted narrowly.

Instead, the court below invoked legislative history and its own decision in *United States* v. *Fischer*, 64 F.4th 329 (D.C. Cir. 2023). But this Court overturned the D.C. Circuit's *Fischer* decision precisely because it was inconsistent with cases like *Yates* and *Marinello*—and Saffarinia sought rehearing below on that basis. The D.C. Circuit denied rehearing, setting in stone a precedential opinion that rests on now-overturned precedent and solidifying an expansionist approach to obstruction catch-all phrases like "proper administration" that this Court has long since disavowed.

The impossibility of reconciling the D.C. Circuit's decision with this Court's precedents alone justifies review. But the mischief the decision promises makes review imperative. Under the opinion below, the residual phrase "proper administration" of a "matter" has its broadest possible reach. It stretches § 1519 to acts that obstruct or influence *any* federal administrative activity no matter how routine—from review of U.S. Postal Service certified-mail forms to review of federal job applications. That maximalist reading places dangerous "power in the hands of * * * prosecutor[s]" to leverage a 20-year felony in plea bargaining, pressuring defendants to plead guilty on lesser offenses. *Marinello*, 584 U.S. at 11. This Court's review, or at least a grant, vacate, and remand in light of *Fischer*, is warranted.

STATEMENT

I. STATUTORY FRAMEWORK

This case concerns 18 U.S.C. § 1519, which criminalizes the knowing falsification of a "record, document, or tangible object with the intent to impede, obstruct, or influence" three categories of proceedings: (1) "any case filed under" Chapter 11 of the Bankruptcy Code; (2) a federal agency's "investigation" of a matter; and (3) the "proper administration of any matter" within agency jurisdiction (the residual clause). Violations of § 1519 are punishable by up to 20 years' imprisonment.

Section 1519 exists within the "broader context" of "[f]ederal obstruction law," which includes "numerous provisions that target specific criminal acts and settings." *Fischer* v. *United States*, 144 S. Ct. 2176, 2187 (2024). The three provisions preceding § 1519, for example, "address obstructive acts in specific contexts, including federal audits, examinations of financial institutions, and inquiries into healthcare-related offenses." *Ibid.* The Internal Rev-

enue Code, meanwhile, has its own specialized obstruction provision: obstruction of "due administration of th[at] title" is criminalized by 26 U.S.C. § 7212. See *Marinello* v. *United States*, 584 U.S. 1, 4 (2018).

Other *non*-obstruction statutes address false statements and criminalize conduct similar to that covered by § 1519. In this case, for example, the government also charged violations of 18 U.S.C. § 1001. Section 1001 imposes up to 5 years' imprisonment for, among other things, knowingly and willfully falsifying or concealing a "material fact" by "trick, scheme, or device" in "any matter within [federal] jurisdiction." *Ibid.* Other statutes criminalizing false statements in governmental contexts abound, and impose penalties far less harsh than § 1519. See, *e.g.*, 18 U.S.C. §§ 288, 1920, 1922; 49 U.S.C. § 21311(a)(5).

II. Proceedings Below

A. Saffarinia's Annual Recordkeeping Requirements

Between 2012 and 2017, Eghbal Saffarinia was an Assistant Inspector General at the Department of Housing and Urban Development Office of the Inspector General (HUD-OIG) and a member of the federal Senior Executive Service. That role required him to meet certain annual recordkeeping requirements. App., *infra*, 4a. As relevant here, he was required to complete an annual financial disclosure form, known as Form 278, issued by the Office of Government Ethics (OGE). *Ibid.* That form requires disclosure of certain liabilities exceeding $10,000. See 5 C.F.R. § 2634.305.

Processing Form 278 is a routine administrative function. A designated ethics official at the relevant agency ensures forms are "reviewed." 5 U.S.C. app. § 106(a)(1);

5 C.F.R. §2634.605(a).[1] Reviewers may request additional information, but they cannot issue subpoenas, take interviews, compel testimony, or otherwise gather information. 5 U.S.C. app. §106(b)(2)(A); 5 C.F.R. §2634.605(b)(4); see C.A. App. 1191:16-1192:18. Reviewers do not audit or investigate the accuracy of a form's information. C.A. App. 1191:25-1192:8.

B. Proceedings in the District Court

While Saffarinia worked at HUD-OIG, he oversaw HUD-OIG's information technology services contract with a company called STG, Inc. App., *infra*, 4a-5a. In 2012, Saffarinia suggested that STG consider subcontracting with Orchid Technologies, a company owned by Saffarinia's close friend, Hadi Rezazad. *Ibid.* After performing diligence and concluding Orchid had "good quals," STG did so. C.A. App. 1271:5-10, 1282:2-1283:6. When STG's contract was later recompeted, Orchid joined a different company to bid for, and then won, what had been STG's contract. App., *infra*, 5a. STG protested, alleging Saffarinia had steered contracts to Orchid. *Ibid.*

The FBI opened an investigation into alleged contract steering. App., *infra*, 6a. The government never pursued contract-steering or corruption charges. But the investigation revealed Saffarinia had failed to report two loans on Form 278: an $80,000 loan from his friend Rezazad and a $90,000 loan from a close family friend.

The government indicted Saffarinia on seven charges. Counts 1 through 4 charged false statements in violation of 18 U.S.C. §1001 because Saffarinia had omitted the

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[1] In 2022, Congress re-codified (without substantive changes) the Ethics in Government Act. Pub. L. 117-286, §2(b)(1) (Dec. 27, 2022). This petition cites the law in effect at the time of Saffarinia's conduct, then-codified in the Appendix to Title 5, available at https://bit.ly/3NQJzV1.

loans from forms submitted in 2014, 2015, and 2016. And counts 5 through 7 alleged that Saffarinia had violated § 1519 by falsifying those same forms with intent to obstruct HUD or OGE's "investigation and proper administration of a matter." C.A. App. 56 (¶ 78).

Saffarinia moved to dismiss the § 1519 counts, invoking *Marinello*. That case read the phrase "'due administration' of the Tax Code" in another obstruction statute, 26 U.S.C. § 7212, to require a "particular administrative proceeding, such as an investigation, an audit, or other targeted administrative action." 584 U.S. at 12-13. *Marinello* rejected a broader interpretation that would encompass *all* tax-code administration because it would "risk [a] lack of fair warning" and conflict with the "interpretive 'restraint'" this Court exercises in interpreting obstruction statutes. *Id.* at 9. Saffarinia argued the phrase "proper administration of [a] matter" in § 1519—like the phrase "due administration" of the tax code in *Marinello*—does not encompass ordinary form review, like review of Form 278, but instead reaches only formal, adversarial, or adjudicative proceedings. C.A. App. 153-165, 254-262. The district court found *Marinello* "inapposite," invoking § 1519's "broad" language and legislative history. App., *infra*, 76a n.12, 79a-80a.

Saffarinia proceeded to trial, where evidence confirmed that review of Form 278 is a routine and non-investigative process. See C.A. App. 1191:25-1192:8. Saffarinia proposed a jury instruction defining "'proper administration' of a 'matter'" to mean "a formal, adversarial or adjudicative proceeding." C.A. App. 1736. The district court's final instructions, however, left "proper administration" undefined. C.A. App. 2037:3-2040:5. The government in closing urged that "proper administration of a matter" encompasses routine governmental activities like HUD's ordi-

nary-course "review" of Saffarinia's disclosure forms, or even OGE's "supervis[ion]" and "issu[ance]" of the forms. C.A. App. 1921:18-1922:9. The jury convicted on all counts.[2]

After trial, Saffarinia renewed his argument that routine review of Form 278 is not an "investigation" or "proper administration" of a "matter" under § 1519, again citing *Marinello*. C.A. App. 2170-2172. The failure to define that phrase for the jury, Saffarinia added, required at least a new trial. C.A. App. 2204-2205. The district court denied the motion, again invoking § 1519's "broad[ ]" statutory language and legislative history. App., *infra*, 18a, 24a-25a. The district court sentenced Saffarinia to one-year-and-one-day imprisonment, but it stayed that sentence pending appeal. C.A. App. 2616, 2630. Release pending appeal was appropriate, it held, because "whether agency review of Mr. Saffarinia's OGE Forms 278 constitutes an 'investigation' or 'matter'" under § 1519 was a "'substantial'" question that, if resolved in Saffarinia's favor, would likely "reverse[ ]" his obstruction convictions and eliminate or significantly reduce his sentence. C.A. App. 2629-2630; see Saffarinia Reply 13-14 & n.6, *Saffarinia* v. *United States*, No. 24A181 (Aug. 25, 2024).

C. The D.C. Circuit's Decision

The court of appeals affirmed. Saffarinia had argued that text, context, and interpretive canons establish that "'proper administration of any matter'" requires a formal, adversarial, or adjudicative proceeding. Saffarinia C.A.

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[2] The government alternatively argued Saffarinia had obstructed the FBI's separate contract-steering investigation (which the government attributed to HUD or OGE). See C.A. App. 1922:10-1923:12. The jury instructions, however, permitted conviction based on form-review, and the verdict form offered no way to ascertain the theory of conviction. C.A. App. 2037:3-2040:5, 2057-2059.

Br. 47-49. *Marinello*, Saffarinia further explained, read the phrase "due administration" in another obstruction statute to exclude "routine, day-to-day work carried out in the ordinary course by the IRS, such as the review of tax returns." 584 U.S. at 13. The phrase "proper administration" of a federal "matter," Saffarinia argued, could not be read more expansively, or with less "restraint," than the synonymous phrase "due administration" in *Marinello*. Saffarinia C.A. Br. 48; Saffarinia C.A. Reply Br. 15-16.

The D.C. Circuit disagreed. It held that interference with routine form review constitutes obstruction of the "proper administration" of a "matter" under § 1519. App., *infra*, 9a-12a. Based on that interpretation of the "scope of the statute," the court held the jury was permitted to convict Saffarinia on the theory he intended to obstruct the "proper administration of [HUD's] Forms 278 review." *Id.* at 17a.

Although the D.C. Circuit rested its decision on § 1519's "capacious" language, App., *infra*, 9a, it consulted neither dictionaries, nor statutory context, nor the statute's structure. It did not look to *ejusdem generis, noscitur a sociis*, or any other interpretive canons. It did not acknowledge the "'restraint'" necessary when construing criminal statutes and residual clauses in obstruction provisions in particular. *Marinello*, 584 U.S. at 9-10. Instead, the D.C. Circuit turned to legislative intent. It posited that "'[o]bstruction of justice is a crime that Congress . . . "has aggressively sought to deter,"'" and looked to a single Senate Report for support. App., *infra*, 10a. The court never acknowledged that other Senators (in a separate statement attached to the same report) warned against expansively construing "'proper administration of [a] matter.'" S. Rep. No. 107-146, at 27 (2002). Section 1519, those Senators said, is limited to "formal administrative proceed-

ing[s]" and does not reach every obstructive act affecting any "arm of the federal bureaucracy." *Ibid.*

In a single paragraph, the court of appeals dismissed Saffarinia's arguments based on § 1519's text, context, and interpretive canons, as well as fair-notice and lenity concerns. App., *infra*, 10a-11a. That paragraph cited only the Senate Report and the D.C. Circuit's now-overturned opinion in *United States* v. *Fischer*, 64 F.4th 329 (D.C. Cir. 2023). Quoting that opinion, the court of appeals reasoned that, "'[i]f Congress's goal were to criminalize a subset of obstructive behavior, it easily could have used words that precisely define that subset[.]'" App., *infra*, 10a.[3]

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

Soon after the decision below, this Court overturned the D.C. Circuit's *Fischer* decision.

In *Fischer*, the D.C. Circuit had adopted the broadest "literally permissible" reading of a residual clause in another obstruction statute, § 1512(c). 144 S. Ct. at 2190. The first subsection of that provision, § 1512(c)(1), criminalizes obstruction of official proceedings by document tampering and similar misconduct. The next provision, § 1512(c)(2), "extends that prohibition to anyone who 'otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so.'" *Id.* at 2181. The D.C. Circuit interpreted that "otherwise" provision broadly to cover all obstruction of official proceedings. Congress, it stated, would "have used words that precisely define" a "subset" of obstructive conduct if it had meant to limit

[3] Saffarinia had also argued routine form-review could not qualify as an "investigation" under § 1519. Saffarinia C.A. Br. 46-47, 49-50. The government did not dispute that on appeal, Gov't C.A. Br. 20-21; Saffarinia C.A. Reply Br. 14, and the D.C. Circuit did not address it.

such broad residual language. 64 F.4th at 344. The court of appeals thus refused to look past § 1512(c)(2)'s superficial breadth or consult traditional tools for interpreting penal laws. *Id.* at 345-346. It declared that "[r]estraint * * * ha[d] no place in [the court's] analysis." *Id.* at 350.

This Court reversed. Courts, it declared, must "'"exercise[ ] restraint in assessing the reach of a federal criminal statute."'" *Fischer*, 144 S. Ct. at 2189. Indeed, the Court's "usual approach in obstruction cases has been to 'resist reading' particular sub-provisions 'to create a coverall' statute." *Ibid.* That means consulting traditional tools of interpretation like the canon of *noscitur a sociis*, *id.* at 2183-2184, and casting a skeptical eye to text that, taken literally, threatens "decades in prison" for "a broad swath of prosaic conduct," *id.* at 2189. The D.C. Circuit's failure to follow that instruction in *Fischer*, and its effort to jump straight to the broadest "literally permissible" reading, was "'backwards.'" *Id.* at 2185, 2190.

E. The D.C. Circuit Denies Rehearing

Days after this Court's *Fischer* decision, Saffarinia sought rehearing. He urged that the panel had erred by shunning text, context, and precedent in favor of broad "purpose" and ambiguous legislative history. That flawed analysis repeated the errors this Court identified in *Fischer*. It also produced an unconstrained construction of "proper administration of [a] matter" irreconcilable with *Marinello*'s restrained reading of "due administration of [the tax code]." Absent rehearing, Saffarinia warned, the D.C. Circuit would leave on the books a published decision that defies this Court's precedents on an important issue. See Saffarinia C.A. Pet. for Reh'g 1-2, 16-17. The D.C. Circuit denied rehearing. App., *infra*, 106a-109a.

REASONS FOR GRANTING THE PETITION

Invoking legislative history and the D.C. Circuit's now-overturned decision in *United States* v. *Fischer*, 64 F.4th 329 (D.C. Cir. 2023), the decision below read the phrase "proper administration of [a] matter" in § 1519 as a catch-all covering any imaginable activity of a federal agency, no matter how mundane. That transforms *any* knowingly false statement or omission on *any* document intended to influence *any* aspect of the vast federal bureaucracy—from hiring to administration of U.S. Postal Service certified mail—into felonious obstruction of justice subject to 20 years' imprisonment.

That interpretation defies this Court's precedents. Time and again, this Court has applied traditional interpretative tools—text, context, and canons of construction—with "restraint" to avoid overbroad interpretations of criminal statutes that threaten fair-notice concerns. *E.g.*, *Fischer* v. *United States*, 144 S. Ct. 2176 (2024); *Marinello* v. *United States*, 584 U.S. 1 (2018); *Yates* v. *United States*, 574 U.S. 528 (2015) (plurality). But the D.C. Circuit did none of that. This Court's decision in *Marinello* invoked text and traditional interpretive principles to construe another obstruction statute's key phrase—"due administration"—as *excluding* routine document review. But the decision below ignored those principles to read § 1519's functionally indistinguishable phrase—"proper administration"—to *include* such ordinary-course review. And where *Marinello*, *Fischer*, and *Yates* require obstruction statutes to be read with restraint in light of surrounding provisions, the decision below repudiated restraint and ignored surrounding provisions.

With no support in text, interpretive tools, surrounding provisions, or this Court's decisions, the D.C. Circuit sup-

ported its maximalist interpretation with supposed statutory purpose, (ambiguous) legislative history, and its own prior decision in *Fischer*. But putative purpose and legislative history are no excuse for ignoring this Court's repeated instruction to consult text, context, and interpretive canons. They do not overcome the requirement of restraint. And the D.C. Circuit's *Fischer* decision invoked by the decision below has now been overturned by this Court *precisely because* it defied those instructions. The decision below should be reviewed and overturned for the same reason. At the very least, this Court should grant, vacate, and remand to require the D.C. Circuit to address this Court's decision in *Fischer*, rather than leave in place a published decision purporting to breathe new life into dead law.

Review is also necessary to avoid the substantial mischief that the D.C. Circuit's decision promises. The court's interpretation of § 1519 transforms *any* documentary white lie or omission related to *any* government act—like someone signing a roommate's name when receiving certified mail, or an applicant for an unpaid internship at a federal agency exaggerating credentials—into an *obstruction-of-justice offense* carrying up to *20 years* in prison. That reading § 1519 thus potentially exposes millions of otherwise law-abiding citizens to "decades in prison" for a "broad swath of conduct" as "prosaic" as making a false statement on a certified-mail form, obstructing the Postal Service's review thereof. *Fischer*, 144 S. Ct. at 2189. It empowers prosecutors to threaten serious § 1519 charges as plea-bargaining leverage when they would otherwise charge less harsh false-statement offenses. See *Marinello*, 584 U.S. at 9.

I. THE D.C. CIRCUIT'S DECISION DEFIES TEXT AND PRECEDENT

A. The D.C. Circuit's Decision Defies *Marinello*'s Interpretation of Indistinguishable Text

The D.C. Circuit should have started—and could have ended—its analysis with the text of § 1519 and *Marinello*. That decision addressed functionally identical language in a similar obstruction statute and *rejected* the interpretation the D.C. Circuit embraced.

1. In *Marinello*, this Court addressed the scope of 26 U.S.C. § 7212, which prohibits corruptly interfering with "the due administration of" the Internal Revenue Code. The Court examined statutory text, structure, and context to determine the meaning of "due administration," ultimately concluding that the phrase *does not reach* "routine administrative procedures * * * such as the ordinary processing of income tax returns." *Marinello*, 584 U.S. at 4, 7, 9. The Court thus rejected an unrestrained, though "literally" permissible, reading of § 7212's "highly abstract general statutory language." *Id.* at 7, 11. Instead, the Court held, "due administration" was limited to an "administrative *proceeding*, such as an investigation, an audit, or other *targeted administrative action*." *Id.* at 12-13 (emphasis added).

The D.C. Circuit below reached the opposite result when interpreting § 1519's functionally indistinguishable phrase "proper administration of any matter." The court did not deny that "proper" administration (in § 1519) and "due" administration (in § 7212) are synonymous. See *Due*, Black's Law Dictionary 609 (10th ed. 2014) ("[j]ust, proper, regular, and reasonable"); *Due Administration of Justice*, *id.* at 53 ("proper functioning and integrity of a * * * tribunal and the proceedings before it"). But it found that § 1519, unlike § 7212, reaches regular activities like

review of routine forms. App., *infra*, 11a. The court thus made "administration" a linguistic chameleon. That single word, in the D.C. Circuit's view, simultaneously *excludes* the "ordinary processing of income tax returns" for purposes of obstruction under § 7212, *Marinello*, 584 U.S. at 4, and *includes* such routine tax-return processing for purposes of obstruction under § 1519.

That cannot be right. If words are to have discernable meaning in criminal statutes—as they must to provide the "fair warning" citizens are due—the *same* word should not mean two *different* things in two obstruction statutes. *Marinello*, 584 U.S. at 9-10.

2. Reading § 1519's key language as a "whole" makes it clearer still that "due" or "proper" "administration" cannot mean one thing in *Marinello* and something else here. As *Marinello* explained, "the verbs 'obstruct' and 'impede'"—which appear in both § 7212 and § 1519—suggest the defendant "must hinder a particular person or thing." 584 U.S. at 7. In *Marinello*, that indicated that obstruction of "'due administration of this title'" referred to obstruction of "specific, targeted acts of administration," rather than everything an agency does. *Ibid.* So too for § 1519.

That is, if anything, clearer here than in *Marinello*. Section 7212 criminalizes obstruction of an entire area of law—the tax code—with "administration" that is "'continuous.'" 584 U.S. at 8. Section 1519, however, criminalizes obstruction of the proper administration of a "matter within the jurisdiction of any department or agency of the United States." Reference to a "matter"—and, even more so, a "matter" in an agency's "jurisdiction"—suggests a *definable proceeding* before a governmental body. See *Matter*, Black's Law Dictionary, *supra*, at 1126 (defining matter as a "subject under consideration, esp[ecially] in-

volving a dispute or litigation"); see *McDonnell* v. *United States*, 579 U.S. 550, 568 (2016) (matter is "'a topic under active and usually serious or practical consideration,' such as a matter that 'will come before [a] committee'"). It makes little sense to find, as the D.C. Circuit did, that proper administration of specific "matter[s]" includes "routine, day-to-day" form-review when "due administration" of the *entire tax code* does not. *Marinello*, 584 U.S. at 12-13.

3. The D.C. Circuit disregarded *Marinello* on the theory that "the 'literal language of [§ 7212] is neutral' as to its breadth" while § 1519 is "unmistakably broad." App., *infra*, 11a. But *Marinello* itself recognized the dangerous breadth of § 7212's language, calling it "wide-ranging," "highly abstract," and "general." 584 U.S. at 11. "The word 'administration,'" the Court explained, "can be read literally to refer to every '[a]ct or process of administering' including every act of 'managing' or 'conduct[ing]' any 'office,' or 'perform[ing] the executive duties of' any 'institution, business, or the like.'" *Id.* at 7.

The same word, with the same dangerous breadth, appears in § 1519. But in *Marinello* as here, reading "administration" as broadly as possible comports neither with the clause's text, pp. 14-16, *supra*, nor with statutory structure and context, pp. 16-23, *infra*, nor with the "interpretive restraint" this Court's precedents command, pp. 23-27, *infra*.

B. The D.C. Circuit's Decision Defies this Court's Directives To Avoid Overbroad Constructions

The D.C. Circuit did not merely disregard *Marinello*'s on-point construction of functionally indistinguishable language. It entirely ignored this Court's repeated admonitions—in *Marinello*, *Fischer*, *Yates*, and elsewhere—to carefully apply canons of statutory interpretation and consult statutory context when interpreting obstruction stat-

utes. But the D.C. Circuit skipped past not only text, but structure and context too, relying instead on ambiguous legislative history to adopt an overbroad reading untethered from the statute. That "approach is a relic from a 'bygone era of statutory construction,'" reflecting a "casual disregard of the rules of statutory interpretation" this Court has prescribed and underscoring the need for review. *Food Mktg. Inst.* v. *Argus Leader Media*, 588 U.S. 427, 436-437 (2019).

1. This Court's decisions in *Fischer* and *Yates* establish a clear rule: Residual clauses in obstruction statutes must be given "'more precise content'" by neighboring provisions, as the interpretive canons of *noscitur a sociis* and *ejusdem generis* teach. *Fischer*, 144 S. Ct. at 2183-2184; see *Yates*, 574 U.S. at 543-546 (plurality); see *id.* at 549-552 (Alito, J., concurring in the judgment).

In *Fischer*, this Court addressed a residual clause that extended a prohibition on obstruction to any person who "otherwise obstructs, influences, or impedes any official proceeding." 18 U.S.C. § 1512(c)(2); see 144 S. Ct. at 2181. Although that language, read literally, could encompass "*any* conduct that delays or influences a proceeding in *any* way," the Court did not note the language's potential literal breadth and stop there. 144 S. Ct. at 2189. The Court explained it was "*require[d]* * * * to determine how the residual clause is linked to its 'surrounding words.'" *Id.* at 2183 (emphasis added). Those surrounding words—the preceding clauses of § 1512(c)—referred to obstructive acts that "impair" evidence such as document destruction, concealment, and alteration. See *id.* at 2183-2184, 2185-2186. Applying canons like *noscitur a sociis* and *ejusdem generis*, the Court held such "specific examples" defined the "'classes'" to which § 1512(c)(2)'s otherwise "broad" residual clause applied, narrowing it to similar instances

of impairing evidence. *Id.* at 2183-2186. "[T]here would have been scant reason for Congress to provide any specific examples at all" otherwise. *Id.* at 2185.

Yates is to the same effect. The provision there proscribed destroying, concealing, falsifying, etc., "any record, document, or tangible object." 18 U.S.C. § 1519. A "tangible object" literally includes any physical thing, even *fish*. And lower courts had uniformly read § 1519 broadly. But *Yates* rejected that unrestrained reading. 574 U.S. at 543-549 (plurality); *id.* at 549-552 (Alito, J., concurring in the judgment). Applying *noscitur a sociis* and *ejusdem generis*, the Court refused to "'ascrib[e]'" to the phrase "tangible objects" a "'meaning so broad that it is inconsistent with its accompanying words.'" *Id.* at 543 (plurality). Because the nouns preceding "tangible object" are all "used to record or preserve information," any "aggressive interpretation" going beyond similar objects "must be rejected." *Id.* at 546; accord *id.* at 549-552 (Alito, J., concurring in the judgment).

The D.C. Circuit ignored the command to consider the impact of the words that surround a putatively broad residual clause. Here, § 1519 covers three categories of government activities: bankruptcy "case[s]"; agency "investigations"; and the "proper administration" of agency "matter[s]." The first two categories ("case[s]" and "investigation[s]") are identifiable, targeted, adversarial proceedings. See generally *Investigation*, Black's Law Dictionary, *supra*, at 953; *Case*, *id.* at 258. Under the canons of *noscitur a sociis* and *ejusdem generis*, as applied by *Yates* and *Fischer*, those characteristics must constrain the scope of the third category—the proper administration of agency matters.

The D.C. Circuit, however, refused to consider such canons—holding instead that an agency's review of rou-

tine paperwork qualifies as the "proper administration" of a "matter." See App., *infra*, 10a-12a. But such "routine administrative procedures" bear no resemblance to bankruptcy cases or agency investigations. *Marinello*, 584 U.S. at 4. Undifferentiated paperwork processing is not a discrete proceeding; it is not adversarial; it has no target in the way cases and investigations do. Indeed, for that reason, *Marinello* distinguished tax-return review from an "administrative proceeding, such as an investigation, an audit, or other targeted administrative action." *Id.* at 13.

Reading the residual phrase broadly, moreover, would render the specific example of agency "investigation[s]" meaningless. Congress does not "provide * * * specific examples" to have them "eliminat[ed] * * * because of broad language that follows them"—it "limit[s] the broad language in light of narrower terms that precede it." *Fischer*, 144 S. Ct. at 2185. The best reading of the word "investigation" in § 1519 is thus that it imposes such a limit on "proper administration of [a] matter." But the court of appeals got that "'familiar' analysis * * * 'exactly backwards.'" *Ibid.*

Other contextual clues—which the D.C. Circuit likewise ignored—lead to the same conclusion. Section 1519 is titled: "Destruction, alteration, or falsification of records in Federal *investigations* and *bankruptcy*." 18 U.S.C. § 1519 (emphasis added). Just as in *Yates*, that "title is especially valuable here because it reinforces what the text's nouns and verbs independently suggest—that no matter how other statutes might be read, this particular one does not cover every noun in the universe [of any matter]" but only those of a kind with "'Federal investigations and bankruptcy'" cases. 574 U.S. at 552 (Alito, J., concurring in the judgment).

2. *Fischer* and *Marinello* also direct courts to consider how an obstruction provision fits within the "broader context" of "the criminal code," and to reject broad readings that would "largely obviate the need" for a "broad array" of other "particularized" provisions. *Fischer*, 144 S. Ct. at 2187. In *Fischer*, for example, the Court explained that an overbroad reading of § 1512(c)'s residual clause would swallow up a host of "other obstruction statutes" addressing "specific contexts" and "reach * * * conduct already covered" elsewhere "with far lower maximum sentences." *Id.* at 2187-2188 & n.2. That was "improper" because it would "substitute * * * the charging discretion of prosecutors and the sentencing discretion of district courts" for Congress's "fine-grained statutory distinctions." *Ibid.* The "superior" reading of the residual clause thus was the "narrower" one that created "'substantially less'" overlap. *Id.* at 2187, 2189. In *Marinello*, this Court similarly rejected a broad, amorphous reading of "administration" because it would "potentially transform many, if not all," of a wide range of "misdemeanor provisions into felonies, making the specific provisions redundant, or perhaps the subject matter of plea bargaining." 584 U.S. at 9.

The D.C. Circuit never addressed whether its interpretation of § 1519 would create such "improper" overlap. *Fischer*, 144 S. Ct. at 2187-2188 n.2. But overlap there is, and in spades. For example, the D.C. Circuit's reading of § 1519 "largely obviate[s]" 18 U.S.C. § 1001—a false-statement felony "with [a] far lower maximum sentence[ ]" (5 years) than § 1519. See *id.* at 2187-2188 & n.2. Section 1001 criminalizes various "knowing[ ] and willful[ ]" acts of falsifying material facts "in any matter within [federal] jurisdiction." Although § 1001 does not require intent to influence the "proper administration of [a] matter," the

D.C. Circuit's broad interpretation of § 1519 makes that a distinction without a difference. If a person violates § 1001 by "knowingly and willfully" making a "material" false statement "in [a] matter within [federal] jurisdiction," 18 U.S.C. § 1001, it is a "struggle to imagine" how she would not also intend to influence *at least* the federal reviewer of any document reflecting that false statement, *Marinello*, 584 U.S. at 10.

Section 1001 is far from alone. The criminal code is replete with "particularized legislation" penalizing false statements related to governmental activities, whether as misdemeanors[4] or felonies with maximum penalties far less harsh than § 1519's 20-year maximum.[5] *Fischer*, 144 S. Ct. at 2187; see *Marinello*, 584 U.S. at 9. The D.C. Circuit's interpretation of § 1519's intent requirement would "transform" every false statement on a government form subject to those provisions "into an obstruction charge" punishable by up to 20 years in prison. *Marinello*, 584 U.S. at 13. That would not only erase Congress's "fine-grained statutory distinctions," it would displace those distinctions with "the charging discretion of prosecutors"

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

[5] *E.g.*, 18 U.S.C. §§ 289 ("matter[s] within the jurisdiction of the Secretary of Veterans Affairs"), 1002 (possession of false papers to defraud the United States), 1010 (HUD or Federal Housing Administration), 1011 ("Federal land bank"), 1012 (HUD development fraud), 1015(a) ("matter[s] relating to * * * naturalization"), 1016 (certifications regarding government matters), 1020 (highway projects), 1022 (receipt of military property), 1026 ("Secretary of Agriculture"), 1031 ("Federal assistance"); 38 U.S.C. § 1987(b) (veterans' insurance applications); 49 U.S.C. § 21311(a)(5) (Secretary of Transportation regarding railroads).

looking for leverage in "plea bargaining." *Fischer*, 144 S. Ct. at 2187-2188 n.2; *Marinello*, 584 U.S. at 9. Such a result shows that a "narrower interpretation * * * is the superior one." *Fischer*, 144 S. Ct. at 2187.

3. The D.C. Circuit chose the broadest reading of "administration of a matter" based on supposed statutory "purpose" and legislative history. It focused on how some Senators appeared to endorse a sweeping interpretation of §1519's residual clause. App., *infra*, 10a-11a (quoting S. Rep. No. 107-146, at 7, 15 (2002)). But that defies this Court's precedents too. The court of appeals' "resort to legislative history before consulting" (and indeed *without* consulting) "the statute's text and structure" was "inappropriate[]." *Food Mktg.*, 588 U.S. at 437. Only in a "'bygone era of statutory interpretation,'" *ibid.*, could "'[v]ague notions'" of purpose, *Montanile* v. *Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 577 U.S. 136, 150 (2016), and "murky" legislative history, *Azar* v. *Allina Health Servs.*, 587 U.S. 566, 581 (2019), supplant the textual analysis this Court required in *Fischer*, *Marinello*, and *Yates*.

Even a "veritable Rosetta Stone of legislative archaeology," moreover, cannot provide the "'fair warning'" this Court demands of *criminal* statutes. *United States* v. *R.L.C.*, 503 U.S. 291, 309-310 (1992) (Scalia, J., concurring); see *Snyder* v. *United States*, 144 S. Ct. 1947, 1960 (2024) (Gorsuch, J., concurring) (collecting "'[f]air notice'" and "'fair warning'" authorities). "[G]eneral declarations of policy in the statute and legislative history" cannot make conduct criminal—only words *passed into law* can do that. *Hughey* v. *United States*, 495 U.S. 411, 422 (1990); see *Wooden* v. *United States*, 595 U.S. 360, 394-395 (2022) (Gorsuch, J., concurring in the judgment); *U.S. ex rel. Martin* v. *Hathaway*, 63 F.4th 1043, 1054 (6th Cir.

2023) (Sutton, C.J.). Certainly, construction of a criminal statute that carries a penalty of up to 20 years of prison time is not an appropriate context for an interpretive tool that has been likened to "looking over the heads of the [crowd] for one's friends." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 377 (2012).

But that is exactly what the D.C. Circuit did. It selected aspects of legislative history it preferred and ignored parts pointing the other way. Although *some* legislators may have endorsed an expansive view of § 1519's "proper administration" clause, others cautioned that the statute applies only to "formal administrative proceeding[s]" and does not reach every "arm of the federal bureaucracy." S. Rep. No. 107-146, at 27. Contradictory statements from different legislators are just that—contradictory. They are not the law. And the D.C. Circuit's reliance on them makes the need to review the conflict between its decision and this Court's precedents more pressing still.

C. The D.C. Circuit's Decision Defies this Court's Longstanding—and Recently Repeated—Command To Exercise Interpretive Restraint

This Court has made clear why it holds, time and again, that even seemingly "capacious" language in criminal obstruction statutes must be carefully construed. App., *infra*, 9a. Larger principles—whether labeled "interpretive 'restraint,'" the need for "fair warning," the rule of lenity, or something else—ensure Congress speaks with special "clarity" when imposing sweeping criminal liability on the American public. *Marinello*, 584 U.S. at 9-10; see *Snyder*, 144 S. Ct. at 1960 (Gorsuch, J., concurring). But the D.C. Circuit below turned those principles on their head, relying on its incorrect and now-overturned decision in *Fischer*,

and then refusing to correct that reliance *even after* this Court overturned *Fischer*.

1. Courts must "'exercise[ ] restraint in assessing the reach of a federal criminal statute.'" *Fischer*, 144 S. Ct. at 2189. In recent years, this Court has rejected one overbroad interpretation of criminal law after another. See Joel S. Johnson, *Ad Hoc Constructions of Penal Statutes*, 100 Notre Dame L. Rev. ___ (forthcoming 2024) (analyzing examples from past ten Terms).[6] It has repeatedly done so in "obstruction cases," where courts must even more carefully "'resist reading' particular sub-provisions 'to create a coverall' statute." *Fischer*, 144 S. Ct. at 2189 (18 U.S.C. § 1512); see, *e.g.*, *Marinello*, 584 U.S. at 9 ("'restraint'" in interpreting 26 U.S.C. § 7212); *Arthur Andersen LLP* v. *United States*, 544 U.S. 696, 703 (2005) ("restraint" in interpreting 18 U.S.C. § 1512); *Aguilar* v. *United States*, 515 U.S. 593, 600 (1995) ("restraint" in interpreting 18 U.S.C. § 1503).

Such restraint requires consulting traditional tools of interpretation like the canon of *noscitur a sociis*, *Fischer*, 144 S. Ct. at 2183-2184, and casting a skeptical eye to text that would otherwise threaten "decades in prison" for "a broad swath of prosaic conduct," *id.* at 2189. "[A]ny doubt" remaining *after* exercising that restrained approach, moreover, must "'be resolved in favor of lenity,'"

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[6] See, *e.g.*, *Snyder*, 144 S. Ct. at 1951 (18 U.S.C. § 666); *United States* v. *Hansen*, 599 U.S. 762 (2023) (8 U.S.C. § 1324); *Dubin* v. *United States*, 599 U.S. 110 (2023) (18 U.S.C. § 1028A(a)(1)); *Ciminelli* v. *United States*, 598 U.S. 306 (2023) (18 U.S.C. § 1343); *Percoco* v. *United States*, 598 U.S. 319 (2023) (18 U.S.C. § 1346); *Ruan* v. *United States*, 597 U.S. 450 (2022) (21 U.S.C. § 841); *Van Buren* v. *United States*, 593 U.S. 374 (2021) (18 U.S.C. § 1030); *Kelly* v. *United States*, 590 U.S. 391 (2020) (18 U.S.C. § 1343); *McDonnell*, 579 U.S. at 576 (18 U.S.C. § 201); *Bond* v. *United States*, 572 U.S. 844 (2014) (18 U.S.C. § 229).

Yates, 574 U.S. at 547-548 (plurality), following the "ancient maxim" that "penal laws are to be construed strictly," *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95-96 (1820); see 1 William Blackstone, Commentaries on the Laws of England 88-90 (1765).

This Court thus has held that Congress must speak with "clarity" if it "intend[s]" to adopt language as extraordinarily broad as the D.C. Circuit's reading of § 1519. *Marinello*, 584 U.S. at 10; see *Fischer*, 144 S. Ct. at 2189. The use of "'shapeless'" provisions "'to condemn someone to prison * * * does not comport with the Constitution's guarantee of due process.'" *McDonnell*, 579 U.S. at 576. Clarity protects against "unfairness" and preserves "necessary confidence in the criminal justice system." *Marinello*, 584 U.S. at 9, 11. It avoids "leaving the people in the dark about what the law demands" and inviting "arbitrary power" by "allowing prosecutors and courts to make it up." *Sessions* v. *Dimaya*, 584 U.S. 148, 175 (2018) (Gorsuch, J., concurring in part and concurring in the judgment).

2. The D.C. Circuit's failure to follow this Court's decisions in *Fischer*, *Marinello* and *Yates* makes a mockery of the principles they safeguard. The court of appeals declared § 1519 to have "capacious" reach based on Congress's purpose to "'aggressively'" deter obstruction of justice, reinforced by the say-so of a handful of Senators in a divisive Senate Report. App., *infra*, 9a-10a. In the D.C. Circuit's view, there is apparently no "limitation" to what can qualify as an agency's "proper administration" of a "matter"—certainly, "mere[] 'form review'" suffices. *Id.* at 10a; see *id.* at 17a.

But the public lacks fair warning that § 1519 sweeps so broadly. How could anyone know that the "proper administration" of a particular "matter" encompasses, for ex-

ample, ordinary-course review of workaday disclosure forms when this Court has held that the phrase "due administration" of the tax code *excludes* ordinary-course review of standard tax returns? See *Marinello*, 584 U.S. at 8-9; pp. 14-15, *supra*. Expecting citizens to guess that otherwise indistinguishable phrases have opposite meanings is neither notice nor fair. But rather than honoring that requirement, the D.C. Circuit adopted a "'shapeless'" reading of §1519 that leaves individuals "subject to prosecution, without fair notice, for the most prosaic interactions." *McDonnell*, 579 U.S. at 576.

If that were not enough, the D.C. Circuit based its interpretation on its own decision in *Fischer*, which this Court overturned. In *Fischer* and in this case, the D.C. Circuit held that, "'[i]f Congress's goal were to criminalize a subset of obstructive behavior, it easily could have used words that precisely define that subset[.]'" App., *infra*, 10a (quoting *Fischer*, 64 F.4th at 344). But this Court has condemned that analysis as upside down. The court of appeals demanded statutory clarity to support a *narrow* construction of a criminal obstruction provision, imposing a presumption that *expansive* interpretations are correct. This Court, however, requires the opposite presumption: It requires "clarity" to support a *broad* interpretation. *Marinello*, 584 U.S. at 10; see pp. 24-25, *supra*. That is exactly why this Court reversed the D.C. Circuit in *Fischer*. "If Congress had wanted to authorize such penalties for *any* conduct that delays or influences a proceeding in *any* way," this Court held, "it would have said so." *Fischer*, 144 S. Ct. at 2189.

So too here: If Congress had intended "proper administration of any matter" to encompass *any* agency activity at all, it would have spoken with more "clarity." *Marinello*, 584 U.S. at 10. Yet, even after this Court's decision

in *Fischer*, the D.C. Circuit below refused to relent from its expansionist interpretation of §1519. See p. 11, *supra*. Such a conflict with this Court, in a published decision of the same court of appeals this Court just reversed for the same reason, cannot stand.

II. THE ISSUE IS EXCEPTIONALLY IMPORTANT

This Court frequently grants review to clarify the scope of criminal statutes like (and including) § 1519. See p. 24 & n.6, *supra*. The same course is warranted here.

A. Any interpretation of criminal law threatening "decades in prison" for "a broad swath of prosaic conduct" raises significant constitutional concerns worthy of this Court's review. *Fischer*, 144 S. Ct. at 2189; see pp. 23-27, *supra*. Crimes must be "'defined by the legislature, not by clever prosecutors riffing on equivocal language.'" *Dubin* v. *United States*, 599 U.S. 110, 129-130 (2023). Overbroad interpretations thus upset the "deliberate arrangement of constitutional authority over federal crimes" by shifting power from Congress to "the charging discretion of prosecutors and the sentencing discretion of district courts." *Fischer*, 144 S. Ct. at 2187-2188 n.2, 2189. Such a shift risks "nonuniform" and "arbitrary" enforcement by "'policemen, prosecutors, and juries'"; raises concerns about "fair warning and related kinds of unfairness"; and could even undermine "necessary confidence in the criminal justice system." *Marinello*, 584 U.S. at 9-11.

The D.C. Circuit's "capacious" interpretation of § 1519, App., *infra*, 9a, threatens precisely those results. It transforms *any* documented false statement, to influence *any* activity "within the jurisdiction of *any* department or agency of the United States," into an up-to-20-year felony. 18 U.S.C. § 1519 (emphasis added). And it creates such overlap between § 1519 and other lesser offenses, see pp. 20-22, *supra*, that prosecutors gain too-broad "discretion

to seek a 20-year maximum sentence for acts Congress saw fit to punish only with far shorter terms of imprisonment," *Fischer*, 144 S. Ct. at 2189-2190. The end result: Every error or omission on a federal employment application, disclosure form, or U.S. Postal Service certified-mail receipt could be grist for charges under § 1519. Review of anything submitted is now an "administration of a matter" enough to threaten 20 years' incarceration. Every person writing to, for, or related to government functions would do so at their peril, with little guidance as to what was criminal, let alone what conduct might arbitrarily catch a prosecutor's attention.

B. The D.C. Circuit's decision also endangers critical jury-trial rights. "[C]riminal justice today is for the most part a system of pleas, not a system of trials." *Lafler* v. *Cooper*, 566 U.S. 156, 170 (2012). Almost invariably, "guilt is negotiated behind closed doors by officials who enjoy tremendous leverage and largely unreviewable discretion." Neil Gorsuch & Janie Nitze, Over Ruled: The Human Toll of Too Much Law 130 (2024). Indeed, last year, 97.2% of all sentenced individuals pleaded guilty. U.S. Sentencing Comm'n, 2023 Annual Report 16 (2024).

Charging offenses with draconian penalties, like § 1519's 20-year maximum, allows prosecutors to apply "inordinate pressure[ ] [on defendants] to enter into plea bargains"—accepting the certainty of a shorter prison term rather than risking decades in prison—even if it means pleading to "crimes they never actually committed." Jed S. Rakoff, Why the Innocent Plead Guilty and the Guilty Go Free 28 (2021). Prosecutors, armed with the D.C. Circuit's broad interpretation and a whiff of false statements, can leverage § 1519's 20-year threat to make lesser, but related penalties "the subject matter of plea bargaining." *Marinello*, 584 U.S. at 9.

That happened here. Saffarinia was charged with violating both § 1001 and § 1519 based on the same underlying conduct—omissions on Form 278. And the § 1519 charges were used for plea-bargaining leverage: The government offered to forgo them in exchange for a § 1001 plea, with a 0-6 month Guidelines range. When Saffarinia refused that deal—and even after the government told Saffarinia that this case was "'never about jail time,'" C.A. App. 2382—the government urged the district court to sentence Saffarinia to "27 months, at the high end" of the § 1519-driven Guidelines range. C.A. App. 2349. The district court ultimately sentenced Saffarinia to a year-and-a-day in prison. C.A. App. 2617. Saffarinia's decision to resist the government's leverage and "'take [his] case to trial'" thus meant he "'receive[d a] longer sentence[ ]'" than if he had pleaded guilty. *Missouri* v. *Frye*, 566 U.S. 134, 144 (2012). That result is sufficiently common that defendants rarely go to trial at all.

The D.C. Circuit's overbroad interpretation of § 1519 will make it significantly harder—if not impossible—for defendants charged with § 1519 to resist the pressure to plead guilty. And once a defendant pleads guilty to a lesser offense, no court will be able to address any arguments challenging prosecutors' threatened use of § 1519. An overbroad interpretation thus begets plea bargains that insulate the overbroad interpretation from judicial review. And that insulation allows prosecutors to continue exerting leverage Congress never expressly granted them. The cycle must end.

C. This Court has recently and repeatedly granted review to address overbroad interpretations of criminal laws even in the absence of a circuit conflict. For example, this Court granted the petition in *Fischer* to address the breadth of §1512(c)'s residual clause even absent a clean

circuit conflict.[7] This Court in *Yates* similarly granted review to consider—and reject—a reading of § 1519's term "tangible object" that the courts of appeals had "uniformly applied." 574 U.S. at 555 (Kagan, J., dissenting); see Pratik A. Shah, *The Chief Justice and Statutory Construction: Holding the Government's Feet to the Fire*, 38 Cardozo L. Rev. 573, 578 (2016) (petition in *Yates* "did not purport to identify a circuit split"). In *Bond* v. *United States*, 572 U.S. 844 (2014), this Court addressed the "improbably broad reach of" a criminal statute, *id.* at 859-860, even though the petition had "not present[ed] a circuit split," Harlan G. Cohen, *Formalism and Distrust: Foreign Affairs Law in the Roberts Court*, 83 Geo. Wash. L. Rev. 380, 428 (2015).

The government's theory that the D.C. Circuit's decision below is in "full accord" with the Eighth, Ninth, and Eleventh Circuits thus gets it nowhere. Gov't Opp. 15-16, *Saffarinia* v. *United States*, No. 24A181 (Aug. 23, 2024). Even if the government were correct about the decisions it cites from those circuits (and it is not, see Saffarinia Reply in No. 24A181 at 10-11 & n.5 (Aug. 25, 2024)), it would just make this Court's review more urgent. The government apparently believes that the D.C. Circuit's incorrect interpretation authorizes it to prosecute obstruction of routine administrative procedures, threatening 20-year prison terms, across at least *21 other States and Territories*.

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[7] See Pet. for Certiorari 16-18, *Fischer* v. *United States*, No. 23-5572 (U.S.) (filed Sept. 11, 2023) (identifying inconsistency in general interpretation of § 1512 but no conflict on the question presented); Brief in Opp. 18-20, *Fischer* v. *United States*, No. 23-5572 (U.S.) (filed Oct. 30, 2023) (arguing there is no circuit split and that "no other court of appeals has ever endorsed the construction that petitioners advocate").

This Court need not wait for one court to get the interpretation of a criminal statute *right* when the court below has gotten it plainly *wrong*. Waiting has costs. Countless defendants could plead guilty—even to offenses for which they are legally innocent—to avoid § 1519 charges before a split arises. And in the meantime, other courts might adopt the D.C. Circuit's reading of § 1519, encouraging prosecutors to be yet more aggressive. At least one court already has done so. See, *e.g.*, *United States* v. *Gilbert*, No. 21-cr-79, 2024 WL 2816554, at *15 (W.D. Pa. June 3, 2024) (relying on decisions below). This Court has not shied from granting review to reverse uniformly incorrect decisions in similar contexts. See *Yates*, 574 U.S. at 555 (Kagan, J., dissenting); *Rehaif* v. *United States*, 588 U.S. 225, 238-239 (2019) (Alito, J., dissenting) ("every single" court of appeals in agreement). This case warrants similar treatment.

III. This Case Is An Ideal Vehicle

This case is an excellent vehicle for review. Saffarinia preserved his challenge to the scope of § 1519's "proper administration" clause from the start of his case. See pp. 7-9, 11, *supra*. The trial record is fully developed as to the scope and nature of HUD's review of Form 278. And the court of appeals, in a precedential decision, squarely "'passed upon'" whether that review qualifies as the "proper administration of [a] matter." *Kaisha* v. *U.S. Philips Corp.*, 510 U.S. 27, 33-34 n.7 (1993); 18 U.S.C. § 1519.

The interpretation was also necessary to the D.C. Circuit's decision below. The D.C. Circuit had to, and did, resolve whether Saffarinia's § 1519 convictions could be sustained on the theory that Saffarinia possessed intent to obstruct the "proper administration of [HUD's] Forms 278 review." App., *infra*, 17a. The government never disputed

that the verdict could have been "predicated" on obstruction of ordinary-course form review alone. *Id.* at 14a. If that basis for Saffarinia's conviction is invalid, then the jury "may have convicted * * * for conduct that is not unlawful." *McDonnell*, 579 U.S. at 579-580. Such a conviction cannot stand when, as here, "the jury was not correctly instructed on the meaning of" the critical statutory element. *Ibid.*

Reversal would matter. Saffarinia would obtain a new trial on all § 1519 counts, see *McDonnell*, 579 U.S. at 579-580, and his year-and-a-day sentence would be vacated entirely because the district court "consider[ed the] sentences imposed on [all] counts" together. *Dean* v. *United States*, 581 U.S. 62, 67-68 (2017); see 18 U.S.C. § 3553(a) (sentencing courts must consider circumstances of the offense). Indeed, the district court conceded that § 1519 convictions were "driving" the sentence and, without them, the situation would have been "much different." C.A. App. 2573:21-2574:7, 2576:19-2577:5. If all that remained were Saffarinia's § 1001 counts, his first-time-offender Guidelines range would have been just 0-6 months, and the court probably would have sentenced him to no prison time at all. See C.A. App. 2585:7-12.

IV. At a Minimum, GVR Is Warranted

At the very least, the D.C. Circuit's reliance on its now-overturned *Fischer* decision warrants the exercise of this Court's discretion to grant, vacate, and remand (GVR) the decision below in light of *Fischer*.

A GVR may be appropriate when there is "reason to believe the court below did not fully consider" "intervening" or "recent developments" such that there is a "reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration," and redetermination

"may determine" the case's outcome. *Lawrence ex rel. Lawrence* v. *Chater*, 516 U.S. 163, 167 (1996) (per curiam); see *Wellons* v. *Hall*, 558 U.S. 220, 225 (2010) (per curiam).

That is precisely the case here. After the decision below issued, this Court overruled a major "premise" of that decision—the legal principle the court below had quoted from the D.C. Circuit in *Fischer*. *Lawrence*, 516 U.S. at 167; see p. 26, *supra*. That intervening precedent makes it more than "reasonabl[y] probab[le]" that the D.C. Circuit would "reject" the now-overturned premises of its decision were this Court to issue a GVR. *Lawrence*, 516 U.S. at 167. Indeed, *Fischer* requires no less. See pp. 26-27, *supra*.

The D.C. Circuit's refusal to amend its decision on rehearing to account for *Fischer* makes GVR imperative. GVRs may be appropriate even where "recent" precedent was briefed below if "the lower court's order shows no sign of having applied the precedents that were briefed." *Lawrence*, 516 U.S. at 170; cf. *Webster* v. *Cooper*, 558 U.S. 1039, 1039-1040 (2009) (mem.) (GVR based on precedent decided before lower court's decision). The D.C. Circuit's rehearing denial shows no sign of considering *Fischer*. And *Fischer* undeniably "cast[s] substantial doubt on the correctness" of *both* the D.C. Circuit's opinion and its denial of rehearing. *Lawrence*, 516 U.S. at 170. Vacatur would thus "improve the fairness and the accuracy of judicial outcomes" by "flagging a particular issue that [the D.C. Circuit] does not appear to have fully considered." *Id.* at 167-168. In the meantime, a GVR would ensure lower courts and litigants do not treat the D.C. Circuit's opinion as binding, or necessarily precedent, without first comparing it to this Court's directives in similar cases.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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