No. 24-522

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

BRIEF FOR CRIMINAL LAW SCHOLARS AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

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Amici have an interest in the proper interpretation of federal criminal statutes and the protection those interpretations afford for the separation of powers and the rights of individuals.

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[1] No counsel for any party authored this brief in any part, and no person or entity other than *amici* or *amici*'s counsel made a monetary contribution to fund its preparation or submission. Respondent received notice of *amici*'s intent to file this brief five days before its due date and did not object to the delay. *See* S. Ct. R. 37.2 (requiring ten days' notice). Petitioner received at least ten days' notice.

INTRODUCTION & SUMMARY OF ARGUMENT

"Only the people's elected representatives in the legislature are authorized to make an act a crime." *United States v. Davis*, 588 U.S. 445, 451 (2019) (quoting *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812)). By transforming 18 U.S.C. § 1519 into a 20-year catchall for any knowing misstatements on government forms, the decision below failed to make good on that constitutional promise. That the executive has here advanced (and a court has accepted) an expansive reading of an obstruction statute is nothing new. But the appropriate response to that overreach should also be familiar: this Court has not hesitated to step in where over-broad interpretations of criminal statutes threaten constitutional values, even in the absence of a circuit split. Because the decision below is especially harmful to those values, the Court should do the same thing here and grant certiorari.

A. To begin, the D.C. Circuit's decision tramples on Congress's authority to define federal crimes. That power rests with the legislature alone. The Framers' decision to allocate power that way protects individual liberty by placing the scope of the criminal law in the hands of the people's representatives. To protect those interests, federal courts have long exercised restraint when interpreting broadly worded criminal statutes. The decision below undercuts those principles. Congress did not clearly impose the heightened penalties of § 1519 on all misstatements made knowingly on routine government forms. Yet the D.C. Circuit permitted the *executive* to make that choice, on reasoning this Court has repudiated. That decision will thus harm Congress's prerogatives with respect to

both § 1519 and future statutes that are construed in the same way. The decision also hinders the purpose of the Sarbanes-Oxley Act by making it a mechanism for extracting pleas for lesser offenses instead of for securing heavy penalties for the worst obstruction offenders.

B. The panel's decision also chips away at the already-limited role of jury trials in the federal criminal system. Trial by jury is one of the most important rights in our Constitution, but jury trials are a rarity because our system rests primarily on plea bargaining. The D.C. Circuit's unbounded interpretation of § 1519 will make trials even more scarce by providing the executive with almost irresistible leverage over defendants charged with making misstatements on government forms. Few will run the risk of a 20-year sentence when the alternative is pleading to lesser offenses covering the same conduct. And that pressure will apply to the innocent just as much as the guilty. Neither will be tried by a jury of their peers.

C. In a similar vein, the panel's reading of § 1519 will diminish the role of the federal courts as a check on executive overreach. Guilty pleas often bring with them waivers of appellate rights. So again, when faced with the prospect of a 20-year sentence for lying on a government document, most defendants will forgo the protections of Article III entirely as part of a plea deal.

D. Last, the D.C. Circuit's interpretation of § 1519 runs afoul of requirements of fair notice. The rule of lenity protects the public from being punished for conduct they could not have known was proscribed. So before a court may adopt the executive's harsh reading

of a criminal statute, Congress must speak with clear and definite language. The panel below did the exact opposite, defaulting to the broadest reading of § 1519 possible because Congress had not clearly *limited* it. The panel's reading, moreover, still leaves the public in the dark about when misstatements on government forms will run afoul of § 1519.

ARGUMENT

THE D.C. CIRCUIT'S READING OF § 1519 POSES A SERIOUS THREAT TO THE SEPARATION OF POWERS AND INDIVIDUAL LIBERTY.

Amici agree with petitioner that the decision below runs afoul of this Court's precedents in multiple ways. By reading "proper administration of any matter" in § 1519 to apply to review of routine forms, the D.C. Circuit contravened this Court's interpretation of functionally identical language in *Marinello v. United States*, 584 U.S. 1 (2018). Pet.Br. 14–16; Pet.App. 11a–12a. And the panel's rationale that Congress could have expressly *excluded* routine form review from § 1519's catch-all had it wanted to cannot be reconciled with this Court's instructions for interpreting residual clauses in obstruction statutes in *Fischer v. United States*, 603 U.S. 480 (2024), and *Yates v. United States*, 574 U.S. 528 (2015). Pet. Br. 14–27; Pet.App. 10a (relying on *United States v. Fischer*, 64 F.4th 329, 344 (D.C. Cir. 2023), *vacated and remanded,* 603 U.S. 480 (2024)).

Those errors on their own warrant intervention. But review is also needed here because an overbroad reading of § 1519 will have significant consequences for the separation of powers and individual liberty. Every overreading of a criminal statute threatens

those interests to some extent. But the stakes for § 1519, in particular, are massive: The D.C. Circuit's interpretation makes any knowing misstatement on a document intended to influence any bureaucratic decision a felony subject to 20 years' imprisonment. And it causes § 1519 to swallow up a host of lesser offenses. Taken together, those effects will allow the executive branch to invade Congress's domain, reduce the roles of both juries and courts as checks on executive power, and deny individuals fair notice.

The Court should stop those evils now rather than later. Awaiting percolation and circuit splits imposes serious costs. Michael Coenen & Seth Davis, *Percolation's Value*, 73 STAN. L. REV. 363, 423–28 (2021). And here, those costs include harms of constitutional magnitude. The benefits of waiting are not "presumptively worthwhile," especially where other courts do not "enjoy a uniquely special perspective or expertise" on interpretation of federal criminal statutes. *Id.* at 423. This Court should grant review and return both the scope of § 1519 and the powers of the executive branch to their proper place.

A. The Decision Below Threatens Congress's Prerogative To Define Criminal Offenses.

Under our constitutional system, "Congress, rather than the executive or judicial branch, define[s] what conduct is sanctionable and what is not." *Sessions v. Dimaya*, 584 U.S. 148, 156 (2018) (plurality opinion). The "quintessentially legislative act of defining crimes and setting the penalties for them" is one of "the prerogatives of Congress." *Fischer*, 603 U.S. at 497; *see Davis*, 588 U.S. at 451 ("Only the people's elected representatives in the legislature are authorized to

make an act a crime." (quoting *Hudson*, 11 U.S. (7 Cranch) at 34)).

That allocation of the power to punish protects individual liberty. As our nation's founders recognized, the separation of powers is the "the first principle of a good government." *See* Gordon S. Wood, THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787, at 604 (1998). It secures "the protection of individual rights against all governmental encroachments," *id.* at 609, in part by demanding deliberation. Because "new national laws restricting liberty require the assent of the people's representatives," they receive "input from the country's 'many parts, interests and classes.'" *Wooden v. United States*, 595 U.S. 360, 391 (2022) (Gorsuch, J., concurring in the judgment) (quoting THE FEDERALIST NO. 51, at 324 (J. Madison)). Though the framers feared legislative dominance, *e.g.,* Wood, *supra*, at 604–05, 610, today, the executive branch's assertions of broad authority often threaten to upset the constitutional balance, *see, e.g.*, *Fischer,* 603 U.S. at 497; *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2257–63 (2024); *id.* at 2273–74 (Thomas, J., concurring); *id.* at 2286 (Gorsuch, J., concurring)*, West Virginia v. Env't Prot. Agency*, 597 U.S. 697, 723 (2016); *id.* at 736–40 (Gorsuch, J., concurring).

To protect both Congress's prerogatives and individual liberty, this Court has "traditionally exercised restraint" when assessing "the reach of a federal criminal statute." *Fischer*, 603 U.S. at 497 (quoting *Marinello*, 584 U.S. at 11). The "maxim" that "penal laws are to be construed strictly" was already "ancient" two hundred years ago when the Great Chief Justice described it in *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95–96 (1820). As he put it,

"probability is not a guide which a court, in construing a penal statute, can safely take." *Id.* at 105. Courts may not "depart[] from the plain meaning of words, especially in a penal act, in search of an intention [of Congress] which the words themselves d[o] not suggest." *Id.* at 96. And where the reach of a criminal statute is unclear, "to enlarge the meaning of words, would be to extend the law to cases to which the legislature had not extended it, and to punish, not by the authority of the legislature, but of the judge." *The Adventure*, 1 F. Cas. 202, 204 (No. 93) (C.C.D. Va. 1812) (Marshall, C.J.), *rev'd*, 12 U.S. 221 (1814). So just like statutes that are vague on their face, criminal statutes that are interpreted boundlessly "threaten to hand responsibility for defining crimes to relatively unaccountable police, prosecutors, and judges, eroding the people's ability to oversee the creation of the laws they are expected to abide." *Davis*, 588 U.S. at 451.

The D.C. Circuit's reading of § 1519 runs roughshod over Congress's prerogatives and the interpretive rules that protect them. Does Congress want a "coverall," *Yates*, 574 U.S. at 549, or "one-size-fits-all," *Fischer*, 603 U.S. at 497, 20-year felony for all intentional misrepresentations on federal forms? Section 1519 does not say so with clarity, so "that important decision" should be "le[ft] . . . to Congress." *Yates*, 574 U.S. at 549. Yet the panel below allowed the executive branch to make that decision itself. It enabled that aggrandizement by taking the broadest possible construction of "proper administration of any matter" and reasoning that Congress could have expressly *excluded* routine form review had it wanted to. Pet.App. 10a. But that gets matters backwards. The D.C. Circuit's decision thus promises to spawn

additional encroachments on the legislative power even beyond the massive intrusion it permitted in § 1519.

Failure to police the boundaries of § 1519 also undercuts Congress's legislative goals. No one disagrees with the Sarbanes-Oxley Act's commendable mission of punishing those who "hide evidence of financial wrongdoing" from investigators. *Yates*, 574 U.S. at 536. Just five years after its passage, however, "prosecutors [were already] using their new tools to encourage defendants to accept plea agreements that include[d] sentences *similar* to those offered before [the Act], while simultaneously threatening to use these same [new] powers to secure astounding sentences if defendants force[d] a trial." Lucian E. Dervan, *Plea Barganing's Survival: Financial Crimes Plea Bargaining, a Continued Triumph in a Post-Enron World*, 60 OKLA. L. REV. 451, 453 (2007) (emphasis added). The D.C. Circuit's interpretation of § 1519 will continue the trend of using the Act as a method of extracting plea agreements out of lower-level offenders rather than as a tool to punish the worst actors.

B. The Decision Below Further Erodes The Role Of Juries In Criminal Cases.

The panel's expansive re-write of § 1519 does more than just permit the executive to invade Congress's domain; it also adds yet one more tool in the executive's belt for avoiding jury trials. "The right to trial by jury" was "'the glory of the English law,' and . . . prized by the American colonists." *SEC v. Jarkesy*, 144 S. Ct. 2117, 2128 (2024) (quoting 3 W. Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 379 (8th ed.

1778)). "[T]he Stamp Act Congress," one of the first cross-colony efforts, "achieve[d] near-perfect unanimity" when it explained that "the bedrock American position, the colonies' common denominator," included the "'inherent and invaluable Right'" to trial by jury. Akhil Reed Amar, THE WORDS THAT MADE US: AMERICA'S CONSTITUTIONAL CONVERSATION, 1760–1840, at 60–61 (2021) (citation omitted). Later, in the Declaration of Independence, Jefferson cited "depriv[ation] . . . of the benefits of Trial by Jury" as a reason for seeking colonial autonomy. Para. 20 (U.S. 1776).

The Framers then enshrined the jury trial right in no fewer than three places in the Constitution. *See* U.S. Const., art. III, § 2 ("The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury . . . ."); *id.* amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ."); *id.* amend. VII ("In suits at common law, . . . the right of trial by jury shall be preserved . . . ."). The first Congress, too, implemented Article III by requiring the justices of this Court to spend "most of the year . . . scatter[ed] across the country" as trial judges, "facilitat[ing] vigorous participation by local juries." Amar, *supra*, at 333 (discussing Judiciary Act of 1789). The jury was not an *afterthought* of the constitutional design for adjudication of rights; it was the *focal point*.

Jury trials do not, however, characterize our criminal law system today. Nearly all federal criminal cases now end with a plea bargain. Neil Gorsuch & Janie Nitze, OVER RULED: THE HUMAN TOLL OF TOO MUCH LAW 126 (2024) ("In recent years, about 97 percent of felony convictions at the federal level . . .

have come by way of plea agreements."). Plea bargaining "is not some adjunct to the criminal justice system; it *is* the criminal justice system." *Missouri v. Frye*, 566 U.S. 134, 144 (2012). And that system depends in large part on the leverage created by overlapping statutes with increasingly severe penalties.

As now-Judge Bibas explained twenty years ago, the prosecutor's toolbox is the universe of plausible charges. *See generally*, Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463 (2004). Prosecutors use "anchors"—the most punitive sentences available—to limit defendants' world of options. *Id.* at 2518. "[E]ven if a defendant thinks he is innocent and deserves zero punishment, the prosecutor's opening offer may serve as an anchor and influence the defendant." *Id.* Anchors can come from laws that *arguably* proscribe the same conduct as, while carrying much heavier sentences than, other, more specific statutes.

The D.C. Circuit's construction of § 1519 hands the executive branch a massive new anchor with which to drown potentially innocent defendants. As petitioner points out, a host of other statutes already criminalize particular false statements, but as misdemeanors or felonies with smaller maximum penalties than § 1519. Pet.Br. 20–21 & n.4–5. A defendant facing a twenty-year maximum under a dubious theory of § 1519 will be hard-pressed not to plead guilty to a lesser charge. In fact, "prosecutors give the largest discounts to those defendants who face the weakest cases." Bibas, *supra*, at 2536. And sometimes "weak" means innocent; pleas can "cover up faulty investigations that mistakenly

target innocent suspects." *Id.* at 2473. [2] Those suspects are then never vindicated because they are never tried before a jury. The D.C. Circuit's construction of § 1519 thus invites the further erosion of the jury trial right at the possible expense of the innocent.

C. The Decision Below Erodes The Role Of Federal Courts In Criminal Cases.

It is the responsibility of the federal courts to "say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). But faced with an executive asserting an aggressive view about what the law might mean, many rational defendants will sign away their rights rather than try their luck with Article III. Nancy J. King & Michael E. O'Neill, *Appeal Waivers and the Future of Sentencing Policy*, 33 DUKE L.J. 209, 212 (2005) ("In nearly two-thirds of the cases settled by plea agreement in our sample, the defendant waived his right to review.").

The panel's construction of § 1519 thus will almost certainly cause even fewer misstatement cases to see the light of the federal courts' independent review. In our constitutional system, that is not a welcome development. This Court "ha[s] never held that the Government's reading of a criminal statute is entitled

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[2] *See also* Innocence Project, *DNA Exonerations in the United States (1989–2020)*, https://innocenceproject.org/dna-exonerations-in-the-united-states/ (last visited Dec. 2, 2024) (reporting that 11.7% of the first 375 DNA exonerees tracked by the Innocence Project had pled guilty); Nat'l Registry of Exonerations, *Innocents Who Plead Guilty* (Nov. 24, 2015), http://www.law.umich.edu/special/exoneration/Documents/NRE.Guilty.Plea.Article1.pdf (15.4% of first 1,700 exonerees tracked had pled guilty).

to any deference." *United States v. Apel*, 571 U.S. 359, 369 (2014) (citing *Crandon v. United States*, 494 U.S. 152, 177 (1990) (Scalia, J., concurring in judgment)). But when the executive is free to turn serious criminal statutes into catch-alls for conduct their texts do not reach, and thereby induce guilty pleas at the front end, it gets the highest form of deference: *no review at all*. Petitioner is an outlier for putting the executive branch through its paces. Because chances to rein in § 1519 will be few and far between, this Court should intervene now.

D. The Decision Below Fails To Provide Adequate Notice.

Looking beyond the separation of powers, the panel's decision imposes direct harms on individual liberty. "[W]hen Congress exercises [its] power" "to write new federal criminal laws[,] . . . it has to write statutes that give ordinary people fair warning about what the law demands of them." *Davis*, 588 U.S. at 448. Chief Justice Marshall called fair notice "'the tenderness of the law for the rights of individuals'—and, more specifically, the right of every person to suffer only those punishments dictated by 'the plain meaning of words.'" *Wooden*, 595 U.S. at 390 (Gorsuch, J., concurring in the judgment) (quoting *Wiltberger*, 18 U.S. (5 Wheat.) at 95–96); *see* Intisar A. Rabb, *The Appellate Rule of Lenity*, 131 HARV. L. REV. 179, 193–95 (2018) (explaining how *Wiltberger* grounded rule of lenity in individual constitutional liberty interests in addition to separation of powers).

Fair notice of prohibited conduct is required even where a criminal law is not hopelessly vague on its face. "If vagueness doctrine aims to protect

individuals against laws that *do not* fairly define prohibited conduct, the rule of lenity applies to laws that *do* define prohibited conduct but are susceptible to different interpretations." Gorsuch & Nitze, *supra*, at 1240. Text and context, not clairvoyance, provide notice. *See United States v. Santos*, 553 U.S. 507, 515 (2008) (plurality opinion) (stating that requiring fair notice prevents a court from "play[ing] the part of a mindreader" with criminal laws). And "all individuals, even unsavory ones, are entitled to fair notice of the law's demands." Gorsuch & Nitze, *supra*, at 121. So, "where uncertainty exists, the law gives way to liberty." *Id.* That principle has deep roots in this Court's precedent.[3]

The D.C. Circuit's decision flunks those requirements. As petitioner explains, the plain meaning of "proper administration of any matter" and the terms surrounding it naturally limit that phrase's meaning to definable proceedings, not routine review of forms. Pet.Br. 15–16, 18–19. So before choosing the government's "harsher alternative" view of § 1519, the panel should have required statutory language that is "clear and definite." *Yates*, 574 U.S. at 548 (quoting *Cleveland v. United States*, 531 U.S. 12, 25 (2000)). It did not do so. The panel's decision instead leaves the public with uncertainty about when government processes qualify as "matter[s]" whose "proper administration" could be impeded by false statements. That uncertainty is only heightened by the fact that

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[3] *E.g.*, *McBoyle v. United States*, 283 U.S. 25, 27 (1931); *Bell v. United States*, 349 U.S. 81, 83 (1955); *United States v. Bass*, 404 U.S. 336, 347–349 (1971); *Leocal v. Ashcroft*, 543 U.S. 1, 12 n.8 (2004); *United States v. Santos*, 553 U.S. 507, 513–14 (2008).

this Court in *Marinello* held that functionally identical language in the tax code *excludes* misstatements on routine government forms. *See* Pet.Br. 25–26. That confusing state of affairs—and its implications for the core constitutional principle of fair notice—is one more reason this Court should step in now.

* * *

The harms of the decision below to the separation of powers and individual liberty are many; the reasons for this Court not to intervene now are few. Little will be gained by awaiting further percolation and a circuit split. *See* Coenen & Davis, *supra*, at 423 (noting percolation is likely valuable only "on a sporadic and infrequent basis"). This Court has shown time and again that it is up to the task of cabining overbroad readings of criminal statutes and keeping the executive in its own domain. It should do the same again here.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari and reverse the decision below.

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