No. 24-675

In the Supreme Court of the United States

JOSEPH JOHNSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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There is a clear, acknowledged, and entrenched conflict among the courts of appeals regarding the requirements for a federal exoneree to recover damages for his wrongful incarceration. Two courts of appeals have held that the third element of 28 U.S.C. 2513(a) bars relief to a movant who committed any charged act considered to constitute "misconduct or neglect." By contrast, two other courts of appeals have held that the third element bars compensation only where the movant's "misconduct or neglect" misled prosecutors into believing that the movant committed the charged crime. In the decision below, the court of appeals adopted the former view, holding that any "misconduct" that was a but-for cause of the movant's prosecution precludes relief under Section 2513.

The government does not seriously dispute that the courts of appeals are divided over the correct interpretation of Section 2513(a). Instead, the government asserts that the conflict is "shallow" and attempts to identify impediments to the Court's review. But four courts of appeals have now addressed the question, and they are evenly divided. And contrary to the government's suggestion, no preservation problems are present: the question presented was fully litigated below, and the court of appeals addressed the arguments petitioner is raising here in a lengthy opinion.

Tellingly, the government devotes most of its response to the merits. Although that is ultimately a matter for another day, the arguments the government offers do not withstand scrutiny. The government agrees with the court of appeals that the third element of Section 2513(a) incorporates only a but-for causation requirement, under which the commission of any charged act precludes relief even if the movant has been fully exonerated of the charged crime. But as this Court has expressly recognized, the federal wrongful-conviction regime creates a specially designated statutory tort. Such a tort presumptively incorporates the ordinary common-law requirement of proximate causation, as the language Congress chose confirms. Nor can the government avoid the fact that its interpretation would result in surplusage and yield absurd results.

The government's final plea is that the question presented arises infrequently. But the question, which is one of pure statutory interpretation, has arisen sufficiently to create a conflict involving multiple courts of appeals. And it is exceedingly important to individuals our justice system has failed—innocent people wrongfully consigned to federal prison. Petitioner lost 15 months of his life for conduct that did not constitute a federal crime.

This case is an ideal vehicle to provide much-needed clarity on a question of indisputable importance to our criminal justice system. The petition for a writ of certiorari should be granted.

A. The Decision Below Deepens A Conflict Among The Courts Of Appeals

The government tacitly acknowledges that there is "disagreement" among the courts of appeals on the proper interpretation of the third element of Section 2513(a). See Br. in Opp. 15. It could hardly do otherwise, because, in the decision below, the court of appeals expressly "align[ed] [itself] with the Fourth Circuit" and "decline[d] to follow" the Seventh Circuit's interpretation. Pet. App. 14a-15a & n.5. The government's attempts to avoid that acknowledged conflict are unpersuasive.

1. The government primarily asserts that "petitioner now seeks this Court's review on a different issue" from the one implicated in the conflict. Br. in Opp. 14. That is so, the government argues, because the cases on petitioner's side of the conflict have not conceptualized their holdings in terms of proximate causation. See *ibid.*

That is a disingenuous assertion, confusing the question presented with the arguments made in support of a particular answer. Petitioner is seeking review on the question that has divided the courts of appeals: namely, whether a movant's commission of a charged act that constitutes "misconduct or neglect" precludes relief under Section 2513(a), or whether relief is precluded only where the movant's "misconduct or neglect" misled prosecutors into believing that the movant had committed the charged crime. Two circuits have adopted the former interpretation; two have adopted the latter. The question presented is which interpretation is correct.

Petitioner's proposed rule, moreover, is the same one adopted by the Sixth and Seventh Circuits: namely, that a movant must show that he did not "mislead the authorities into thinking he had committed an offense" in order to satisfy the third element of Section 2513(a). *United States* v. *Grubbs*, 773 F.3d 726, 732 n.4 (6th Cir. 2014) (quoting *Betts* v. *United States*, 10 F.3d 1278, 1285 (7th Cir. 1993)). The only "difference" between those decisions and petitioner's position is that petitioner explicitly grounds the rule in the doctrine of proximate causation. In petitioner's view (Pet. 13-14), the reason why the third element is best interpreted to bar relief only where a movant's misconduct or neglect misled the authorities is that the statute incorporates a background proximate-causation requirement. Put another way, the type of behavior that might proximately cause the government to pursue a mistaken prosecution is best described as "misleading": specifically, where the movant's conduct misled the government into believing that the movant committed a crime.

The fact that the Sixth and Seventh Circuits did not explicitly frame the rule they adopted in terms of proximate causation is of no significance to the certiorari decision. Indeed, the government itself contends that "proximate cause" is simply a "shorthand" for the principle that "not all factual causes contributing to an injury should be legally cognizable causes." Br. in Opp. 9 (quoting *CSX Transportation, Inc.* v. *McBride*, 564 U.S. 685, 701 (2011)). The Sixth and Seventh Circuits squarely adopted the rule petitioner is espousing, and the Third Circuit (in the decision below) and the Fourth Circuit (over a dissent) squarely rejected it. See Pet. 9-13. This case thus perfectly tees up the circuit conflict acknowledged in the decision below for the Court to resolve.

2. The government quickly retreats to the argument that the conflict is "shallow." See Br. in Opp. 15. Yet the government itself recognizes that there are now four circuits evenly divided on the question presented. It concedes that the Sixth Circuit in *Grubbs* "accepted the standard articulated" by the Seventh Circuit in *Betts*. *Ibid.* And it recognizes that the Fourth Circuit, and now the Third Circuit in the decision below, have rejected *Betts*. See *ibid.* This Court routinely grants certiorari to resolve shallower conflicts. See, *e.g.*, *Perttu* v. *Richards*, No. 22-1298 (argued Feb. 25, 2025) (2-1 conflict); *Gutierrez* v. *Saenz*, No. 23-7809 (argued Feb. 24, 2025) (2-1 conflict); *City & County of San Francisco* v. *EPA*, 145 S. Ct. 704 (2025) (1-1 conflict). The government's suggestion that an en banc court of appeals needs to have addressed the question before it warrants certiorari (Br. in Opp. 13) does not pass the straight-face test. This case presents a perfectly ripe conflict for the Court's review.[*]

B. The Decision Below Is Incorrect

The government devotes the lion's share of its opposition to the merits (Br. in Opp. 7-13), arguing that the court of appeals correctly held that a movant fails the third element of Section 2513(a) whenever his misconduct or neglect constituted a but-for cause of his prosecution. Although the merits are ultimately a matter for a later stage, the government's arguments are invalid.

1. The government's position does not comport with the text and structure of the wrongful-conviction statutes.

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[*] The government suggests in passing that "this Court has denied similar petitions." Br. in Opp. 7. But in one of those petitions, the questions presented were entirely distinct; in the other, the petitioner had lost on multiple elements of Section 2513(a). See *Davis* v. *United States*, 142 S. Ct. 1211 (2022) (No. 21-1063); *Graham* v. *United States*, 562 U.S. 1178 (2011) (No. 10-366).

As this Court has recognized, 28 U.S.C. 1495 and 2513 create a "specially designated tort[]" against the federal government for unjust conviction and incarceration. *Glidden Co.* v. *Zdanok*, 370 U.S. 530, 574 & n.42 (1962). Congress is presumed to have "adopt[ed] the background of general tort law" when it "creates a federal tort." *Staub* v. *Proctor Hospital*, 562 U.S. 411, 417 (2011) (citation omitted). In creating the tort of wrongful conviction and incarceration, therefore, Congress presumptively incorporated background tort principles. And in tort, the ordinary causation standard is proximate causation. See *id.* at 419.

The statutory text does not deviate from that background principle; instead, it confirms it. The dictionary definitions cited by the government to demonstrate the meaning of the phrase "cause or bring about" do not show that the phrase is limited to "actual causation"; that leap of logic is supported by nothing more than the government's say-so. Br. in Opp. 8. Contrary to the government's unsupported assertion, that phrase is commonly used to indicate an equitable bar akin to common-law doctrines requiring proximate causation. See Pet. 13-14. And while Congress may have used explicit proximate-causation language in other statutes (Br. in Opp. 9), this Court has applied the requirement of proximate causation in a number of statutes that do not contain such language. See, *e.g.*, *Medical Marijuana, Inc.* v. *Horn*, No. 23-365, slip. op. 17 (Apr. 2, 2025) (quoting *Holmes* v. *Securities Investor Protection Corporation*, 503 U.S. 258, 268 (1992)); *Dura Pharmaceuticals, Inc.* v. *Broudo*, 544 U.S. 336, 342-346 (2005); *Associated General Contractors of California, Inc.* v. *Carpenters*, 459 U.S. 519, 529-535 (1983).

It is also unsurprising that Congress chose to deviate from the common law in one respect: namely, by shifting the burden to prove the absence of misconduct or neglect

to the movant. See Br. in Opp. 7. After all, as the government notes, "a suit for damages against the United States for unjust imprisonment * * * is a waiver of the sovereign immunity of the United States." *Ibid.* But that deviation from the common law cuts against the government, not for it, on the question presented here: Congress's choice to depart from background principles in that one specific respect supports the inference that Congress intended not to disturb other background principles, including the principle of proximate causation.

Nor does it "atextually redefine" the phrase "misconduct or neglect" to require the conduct at issue to have misled the government into believing that the movant had committed the charged crime. Br. in Opp. 10. The requirement that the conduct be misleading is merely a description of the *type* of "misconduct or neglect" that might proximately cause the government to prosecute an individual that did not commit a crime—for example, making a false confession or withholding exculpatory evidence. See *Betts*, 10 F.3d at 1285; p. 4, *supra*.

2. As petitioner has explained (Pet. 16-18), the court of appeals' interpretation of Section 2513(a) creates a surplusage problem by including the charged conduct within "misconduct or neglect" covered by the third element. The government's attempts to diminish that problem do not withstand scrutiny.

The government first argues that a movant can "satisfy the second and third requirements for a certificate without satisfying the first" if the movant did not commit an "offense" and committed no "misconduct or neglect" causing his prosecution, but had not had his conviction "reversed or set aside." Br. in Opp. 11 (quoting 28 U.S.C. 2513(a)). That argument makes no sense. If an individual's conviction has not been reversed or set aside, then he has necessarily been adjudicated to have committed an

"offense" and could not satisfy the second element. And because, under the government's interpretation, the individual's commission of the charged conduct would have led to his prosecution, he would fail the third element too.

The government's other responses suffer from similar problems. The government raises the court of appeals' hypothetical involving a corrupt prosecutor, see Br. in Opp. 11 (citing Pet. App. 22a), but petitioner has already explained why that hypothetical does not solve the surplusage problem. See Pet. 17. The government also contends that a movant who "committed a charged act that also constituted misconduct" could nevertheless "satisfy Section 2513(a)(2)'s final requirement by proving that he did *not* engage in misconduct or neglect." Br. in Opp. 11 (internal quotation marks and citations omitted). But that could be true only if the relevant "misconduct or neglect" for purposes of the third element excluded charged conduct—a position that the court below and the government have conspicuously declined to take. See Pet. 17-18 (citing Pet. App. 20a-21a). The government's examples thus do not eliminate the flaws in its interpretation of Section 2513.

3. As petitioner has explained (Pet. 18-19), the government's interpretation would also produce absurd results. In response to the case of Andrew Toth's wrongful conviction for committing a murder during a labor riot (Pet. 18-19), the government contends that "[s]omeone who was merely 'presen[t]' during a riot" would satisfy the third element of Section 2513(a). Br. in Opp. 12. But the government fails to explain why, under its interpretation, a court could not reach the contrary conclusion that presence at a riot—whether by an affirmative intent to participate in the rioting or merely negligent failure to stay away—constitutes "misconduct or neglect." See Pet. 18-

19. The government's interpretation would thus seemingly bar relief in the precise circumstance that inspired the statute.

The government goes so far as to embrace the view that "ignor[ing] a stop sign" constitutes misconduct that bars relief under Section 2513(a). *United States* v. *Moon*, 31 F.4th 259, 266 (4th Cir. 2022); see Br. in Opp. 12-13. That is an astonishingly broad view of the third element. If it were to prevail, a person who rolls through a stop sign and, as a result of being pulled over, is subsequently misidentified by the police as the perpetrator of a federal crime could spend decades in federal prison without being entitled to any compensation. There is no reason to believe that Congress intended its remedial scheme to be so self-defeating.

C. The Question Presented Is Important And Warrants Review In This Case

The government does not dispute that the question presented has life-altering ramifications for individuals seeking to rebuild their future after a false conviction and wrongful imprisonment. Instead, the government opposes certiorari on the grounds (Br. in Opp. 15-16) that the question arises with insufficient frequency to warrant this Court's review and that this case is not an appropriate vehicle for resolving the question. The government is wrong on both scores.

1. The government contends that review should be denied because the Court's decision "will affect very few cases." Br. in Opp. 15. But even if that were true, it entirely ignores the significance of the statutory wrongful-conviction regime. There are few wrongs more egregious in our society than imprisoning someone for a crime he did not commit. Sections 1495 and 2513 play a crucial role in

ensuring that exonerees receive at least some compensation for the losses they suffer as a result of their wrongful convictions. See Jeffrey S. Gutman, *Are Federal Exonerees Paid? Lessons for the Drafting and Interpretation of Wrongful Conviction Compensation Statutes*, 69 Clev. St. L. Rev. 221, 224-236 (2021).

While it may be true that the wrongful-conviction statutes are not invoked as frequently as some others (and thankfully so), the proper interpretation of those statutes is nevertheless a recurring issue, as evidenced by the entrenched circuit conflict on the question presented. As long as federal prisoners continue to be exonerated, there will be a persistent need for compensation for those victims of wrongful prosecutions. See National Registry of Exonerations, *2023 Annual Report* 15 (Mar. 18, 2024) <tinyurl.com/exonerations2023>.

2. The government separately asserts that this case is an imperfect vehicle for resolving the question presented because petitioner "did not previously brief" the arguments now at issue; "made no effort" to introduce evidence that his misconduct did not cause or bring about his prosecution; and is "not entitled to relief under the standard he proposes." Br. in Opp. 15-16. None of those assertions has merit.

As to preservation: the question of how properly to interpret the third element of Section 2513(a) was fully briefed below, and both the district court and the court of appeals decided whether petitioner's conduct constituted misconduct that caused or brought about his prosecution. See Pet. App. 8a-20a, 32a-33a. To the extent the government is arguing that the role of proximate causation was not specifically discussed until oral argument below (Br. in Opp. 6, 9), that is of no moment, because the court of appeals proceeded to address proximate causation at

length in its decision. See Pet. App. 8a-18a; *United States* v. *Williams*, 504 U.S. 36, 41 (1992).

As to the evidence: petitioner need not contest the facts of his conduct in order to assert that it did not, *as a matter of law*, proximately cause his prosecution. If anything, the absence of any factual dispute cleanly tees up the legal question of whether the commission of a charged act precludes relief, as the but-for cause of the prosecution, even if the movant has been fully exonerated of the charged crime.

Finally, as to whether petitioner would prevail even under his proposed standard: the fact that petitioner deleted an e-mail account and denied certain allegations (Br. in Opp. 14-15) may be consistent with the behavior of someone who believes he has done something wrong, but it could not have provided the government with probable cause to believe that petitioner had committed a federal crime. In that respect, petitioner stands in stark contrast to a movant who makes a false confession or withholds exculpatory evidence. If this Court were to adopt petitioner's interpretation of Section 2513(a), therefore, it would plainly be outcome-determinative. And to the extent there were any doubt about that, the application of the correct legal standard could be left to the lower courts in the first instance, as is the Court's ordinary practice.

* * * * *

There is a clear, acknowledged, and entrenched circuit conflict concerning the proper interpretation of Section 2513(a), and resolution of that conflict is exceedingly important to the individuals who have suffered wrongful convictions and to the administration of justice as a whole. This case is the paradigmatic candidate for further review. The petition for a writ of certiorari should be granted.

Respectfully submitted.

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