No. 24A181

IN THE SUPREME COURT OF THE UNITED STATES

EGHBAL SAFFARINIA, APPLICANT

v.

UNITED STATES OF AMERICA

RESPONSE IN OPPOSITION TO THE EMERGENCY APPLICATION TO STAY OR RECALL THE MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The Solicitor General respectfully files this response in opposition to the application for the extraordinary relief of stay or recall of the court of appeals' mandate pending further appellate proceedings. Despite its styling, the application in effect plainly seeks release pending the disposition of a forthcoming petition for a writ of certiorari. See Appl. 1. Such release is governed by 18 U.S.C. 3143(b). See Morison v. United States, 486 U.S. 1306, 1306 (1988) (Rehnquist, C.J., in chambers). Yet the application makes no effort to satisfy Section 3143(b)'s standards; indeed, it does not cite the statute at all. And no emergency relief is justified.

Applicant, a former assistant inspector general and contracting official in the Department of Housing and Urban Development (HUD), was convicted of violating 18 U.S.C. 1001 and 1519 by, among other things, omitting from his annual financial-disclosure forms $80,000 in loans that he had received from a

friend to whom he had directed a HUD subcontract. The district court sentenced him to concurrent sentences of 12 months and 1 day of imprisonment on each count, but granted him release pending appeal under 18 U.S.C. 3143(b). The court of appeals affirmed his convictions, and on August 15, 2024, denied applicant's motion to stay the issuance of the mandate.

Applicant now seeks emergency relief from this Court that would maintain the pendency of the case in the court of appeals and have the effect of automatically extending his release pending appeal without the necessary findings under Section 3143(b). And applicant could not satisfy Section 3143(b) even if he were to attempt to do so. First, applicant does not raise "a substantial question of law * * * likely to result in" reversal, 18 U.S.C. 3143(b)(1)(B). Applicant's contention that 18 U.S.C. 1519 does not encompass his obstructive conduct was correctly rejected by the district court and a unanimous D.C. Circuit panel, in accordance with the statute's plain text, and he identifies no other circuit in which his claim would have succeeded. Second, for related reasons, applicant cannot even make the necessary antecedent showing that this Court would grant his contemplated petition for a writ of certiorari in the first place. Third, applicant cannot show that further proceedings are "'likely to result in reversal' with respect to all the counts for which imprisonment was imposed." Morison, 486 U.S. at 1306 (emphasis added); see 18 U.S.C. 3143(b)(1)(B). Applicant disputes the

validity of his convictions under Section 1519 only, not his convictions under Section 1001 -- for which he received concurrent sentences of imprisonment equivalent in length to his sentences under Section 1519. The application for emergency relief should be denied.

STATEMENT

Following a jury trial in the United States District Court for the District of Columbia, applicant was convicted on one count of concealing material facts in a matter within the jurisdiction of the government, in violation of 18 U.S.C. 1001(a)(1); three counts of making false statements in such a matter, in violation of 18 U.S.C. 1001(a)(2); and three counts of falsifying a record or document with the intent to impede, obstruct, or influence the investigation or proper administration of a matter within the jurisdiction of a federal department or agency, in violation of 18 U.S.C. 1519. Judgment 1-2. He was sentenced to 12 months and 1 day of imprisonment, to be followed by 12 months of supervised release. Id. at 3-4. The district court granted applicant release pending appeal. Appl. Ex. F; see 18 U.S.C. 3143(b). The court of appeals affirmed his convictions, Appl. Ex. B, and denied his motion to stay the mandate, Appl. Ex. C.

A. Background

1. The Ethics in Government Act of 1978, 5 U.S.C. 13101 et seq., requires high-ranking government officials "to file annual disclosure statements detailing, with certain exceptions, their

income, gifts, assets, financial liabilities and securities and commercial real estate transactions." United States v. Oakar, 111 F.3d 146, 148 (D.C. Cir. 1997); see 5 U.S.C. 13103-13105.[1] The financial disclosures are made via Office of Government Ethics (OGE) Form 278, and they generally must "include a brief description of the filer's liabilities exceeding $10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed." 5 C.F.R. 2634.305(a); see 5 U.S.C. 13104(a)(4); Appl. Ex. B, at 3.

A Form 278 must be reviewed by a reviewing official -- e.g., a designated ethics official or relevant department head -- within 60 days of its filing. 5 U.S.C. 13108(a)(1). During that process, the reviewing official may require the filer to provide additional information or may notify the filer of his opinion that the filer "is not in compliance with applicable laws and regulations." 5 U.S.C. 13108(b)(2)(B); see 5 C.F.R. 2634.605(b)(2)(ii) (listing relevant laws and regulations, including the Ethics in Government Act and Chapter 11 of Title 18). If the reviewing official adheres to that opinion after "afford[ing] a reasonable opportunity for a written or oral response," 5 U.S.C. 13108(b)(2)(B), the reviewing official must "notify the individual * * * and, after an opportunity for personal consultation (if practicable), determine

[1] Citations of the Act herein refer to it as currently codified in the U.S. Code (Supp. IV 2022). None of the cited provisions has materially changed since the time of applicant's conduct.

and notify the individual of which steps" -- such as divestiture or restitution -- should be taken to assure compliance. 5 U.S.C. 13108(b)(3). If remedial steps are not taken, the matter generally must be referred to an appropriate authority for further action. 5 U.S.C. 13108(b)(4) and (6).

2. Between 2012 and 2017, applicant served as an assistant inspector general in HUD's Office of the Inspector General (HUD-OIG). "He was among 'the top five to ten people' at HUD-OIG, an organization with over 600 employees," and he "had near-complete power over HUD-OIG's IT contracts." Gov't C.A. Br. 2 (citation omitted). And in that capacity, he was required to file an annual Form 278. Appl. Ex. B, at 2, 4.

In late 2012, applicant canceled HUD-OIG's pending contract award to its then-current provider of IT services, STG Incorporated. Appl. Ex. B, at 4. When an STG executive asked applicant "how STG could best serve" HUD-OIG "moving forward," applicant suggested that STG consider subcontracting with Orchid Technologies -- a firm that, unbeknownst to STG, was owned by applicant's friend Hadi Rezazad. Id. at 4-5. Even though "STG officers had never previously heard of the company," "STG arranged for Orchid to become one of its subcontractors." Id. at 5. Then, "STG, partnering with Orchid, * * * won the HUD-OIG IT contract." Ibid.

When STG's contract with HUD-OIG was canceled the following year, Orchid partnered with a different company and won the

contract for HUD-OIG's IT services -- a contract worth $17 million. Appl. Ex. B, at 5. STG filed a bid protest, "ultimately alleg[ing] that [applicant] had steered contracts to Orchid because of his relationship with Rezazad." Ibid. Those allegations were eventually referred to the Federal Bureau of Investigation, which learned, "[t]hrough a yearslong inquiry conducted with assistance from HUD-OIG staff, * * * that Rezazad had loaned [applicant] $80,000 in 2013." Id. at 5-6.

Applicant had not disclosed that loan on his 2014, 2015, or 2016 Form 278 filings, nor had he disclosed on his 2016 form another $90,000 loan he received from a neighbor. Appl. Ex. B, at 6; see Gov't C.A. Br. 12 (noting that applicant "knew about the conflict-of-interest investigation" before he filed his 2016 form).

B. Prior Proceedings

1. A federal grand jury in the District of Columbia returned a superseding indictment charging applicant with four counts of concealing material facts or making false statements, in violation of 18 U.S.C. 1001(a), and three counts of falsifying a record or document with the intent to impede, obstruct, or influence the investigation or proper administration of a matter within the jurisdiction of a federal department or agency, in violation of 18 U.S.C. 1519. Superseding Indictment 5-16.

Section 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.

18 U.S.C. 1519. The Section 1519 counts in the indictment concerned applicant's repeated nondisclosure on Form 278 of the loan he had received from Rezazad, and one also concerned the loan from his neighbor. Superseding Indictment 16.

Following a jury trial, applicant was convicted on all counts. Judgment 1-2. The district court sentenced him to concurrent sentences of 12 months and 1 day of imprisonment on each count. Id. at 3.

2. Following his convictions, applicant filed a motion for release pending appeal under the Bail Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. I, 98 Stat. 1976. See 18 U.S.C. 3143(b). Under 18 U.S.C. 3143(b), "a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, [shall] be detained, unless a judicial officer finds" that the person has satisfied certain criteria. 18 U.S.C. 3143(b)(1). In particular, the person must establish (A) "by clear and convincing evidence that [he] is not likely to flee or pose a danger to the safety of any other person or the community if released" and (B) that the appeal "raises a substantial question of law or fact likely to

result in" either "reversal," "a new trial," "a sentence that does not include a term of imprisonment," or "a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process." Ibid.

The district court granted applicant's motion. Appl. Ex. F. It agreed with the parties that applicant "does not present a risk of flight or a danger to the community," satisfying Section 3143(b)(1)(A). Id. at 3. As for Section 3143(b)(1)(B), the court found that applicant's appeal would present substantial questions, noting the lack of "clear precedent" in the D.C. Circuit resolving "whether agency review of [applicant's] OGE Forms 278 constitutes an 'investigation' or 'matter' within the meaning of 18 U.S.C. § 1519." Ibid. The court suggested that if the Section 1519 convictions were reversed, it "would likely impose a different (and shorter) sentence" on remand. Id. at 4.

3. The court of appeals affirmed applicant's convictions. Appl. Ex. B. In particular, the court rejected applicant's theory that Section 1519's reference to "'the investigation or proper administration of any matter,'" id. at 9 (quoting 18 U.S.C. 1519), is limited to "'existing or contemplated'" investigations and matters, or to "to formal, adversarial, or adjudicative proceedings," that would not include proceedings for review of his annual ethics submissions, id. at 9-10 (citation omitted).

The court of appeals explained that applicant's conduct "fit Section 1519's bill" because he "was charged with lying on his

Forms 278 -- or, to use Section 1519's words, 'falsif[ying] document[s]' -- which are administered, reviewed, and subject to further investigation by HUD and OGE." Appl. Ex. B, at 9-10 (ellipsis omitted). Among other things, the court rejected applicant's reliance on Marinello v. United States, 584 U.S. 1 (2018), in which this Court construed the term "'due administration'" in a provision of the Internal Revenue Code "with [a] text and purpose quite distinct from" Section 1519's. Appl. Ex. B, at 11-12 (citation omitted); see id. at 10 (noting Congress's apparent intent in Section 1519 "to close loopholes in the existing framework of liability for obstruction of justice").

For the same basic reasons, the court of appeals also rejected applicant's challenge to the sufficiency of the evidence for his Section 1519 convictions. Appl. Ex. B, at 16-17. The court explained that the government's "investigations of potential conflicts of interest depend on accurate information in employees' Forms 278," and found "no question that a jury could reasonably have found [applicant] intended to obstruct HUD's investigation into conflicts of interest or proper administration of its Forms 278 review based on the evidence presented at trial." Ibid.

4. After the court of appeals denied applicant's petition for panel rehearing or rehearing en banc, Appl. Exs. D and E, applicant moved the court to stay "the issuance of its mandate pending the filing and disposition of a petition for a writ of certiorari or, in the alternative, pending the filing and

disposition of an application for emergency relief to the Supreme Court," Stay Mot. 1 (July 29, 2024). Applicant contended that the affirmance of his Section 1519 convictions raised "a substantial question," and he sought a stay to avoid serving his sentence of imprisonment before this Court "would resolve his case." Id. at 2. The court of appeals denied the motion on August 15, 2024, and issued the mandate on August 23, 2024. Applicant currently remains on release, however, and the district court has not yet set any date for him to report to prison to begin serving his sentence.

ARGUMENT

Although applicant styles his filing as an emergency application to stay (or recall) the court of appeals' mandate, what he actually seeks is to "be allowed to remain free * * * pending the consideration of his yet-to-be-filed petition for writ of certiorari." Morison v. United States, 486 U.S. 1306, 1306 (1988) (Rehnquist, C.J., in chambers); see Appl. 1. "The statutory standard for determining whether a convicted defendant is entitled to be released pending a certiorari petition is clearly set out" in 18 U.S.C. 3143(b), Morison, 486 U.S. at 1306, which details the findings that a judicial officer must make when someone "who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari," seeks to avoid the default course of immediate detention, 18 U.S.C. 3143(b)(1). Applicant does not even cite the statute, let alone show that he meets its demanding standards.

The application does not satisfy Section 3143(b) and should therefore be denied.

I. THE APPLICATION IS SUBJECT TO THE BAIL REFORM ACT OF 1984

Section 3143(b), which was enacted in the Bail Reform Act of 1984, imposes stringent restrictions on the availability of release pending appellate review. See Stephen M. Shapiro et al., Supreme Court Practice §§ 17.15-17.17, at 17-47 to 17-54 (11th ed. 2019). Congress passed the Act to "make[] it considerably more difficult for a defendant to be released on bail pending appeal." United States v. Handy, 761 F.2d 1279, 1283 (9th Cir. 1985). And even before the Bail Reform Act, "[a]pplications for bail to this Court [were] granted only in extraordinary circumstances, especially where, as here, 'the lower court refused to stay its order pending appeal.'" Julian v. United States, 463 U.S. 1308, 1309 (1983) (Rehnquist, J., in chambers) (quoting Graves v. Barnes, 405 U.S. 1201, 1203 (1972) (Powell, J., in chambers)); accord McGee v. Alaska, 463 U.S. 1339, 1340 (1983) (Rehnquist, J., in chambers).

As relevant here, Section 3143(b) sets a default presumption that "a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari," will "be detained." 18 U.S.C. 3143(b). The statute authorizes release pending certiorari only if the applicant carries his burden of establishing, inter alia, that his claim "raises a substantial question of law or fact likely to result in" reversal, a new trial, "a sentence that does

not include a term of imprisonment," or "a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process." 18 U.S.C. 3143(b)(1)(B).[2]

Moreover, because applicant seeks relief from this Court, demonstrating a "likel[ihood]" of a favorable outcome, 18 U.S.C. 3143(b)(1)(B), necessarily requires showing a likelihood both that this Court would grant certiorari and that it would reverse the judgment below affirming applicant's convictions. Cf. Does 1-3 v. Mills, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of application for injunctive relief); cf. also Supreme Court Practice § 19.4, at 19-28 n.34 (when a case becomes moot, this Court will vacate the judgment below only if the case otherwise would have warranted certiorari). Congress has thus "plac[ed] on the defendant the burden of showing * * * that he or she is likely to prevail * * * on the petition to the Supreme Court for a writ of certiorari." Supreme Court Practice § 17.15, at 17-49.

Applicant accordingly errs at the threshold in suggesting (Appl. 1) that the question is whether his forthcoming petition for a writ of certiorari has a "reasonable probability" of being

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[2] The government does not contend that applicant is "likely to flee or pose a danger to the safety of any other person or the community if released" pending the disposition of a petition for certiorari, 18 U.S.C. 3143(b)(1)(A), and those separate requirements thus are not at issue here.

granted and a "fair prospect" of reversal. Maryland v. King, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers) (citation omitted). That general standard for staying a court of appeals' mandate is displaced by the standards of the Bail Reform Act in cases where, as here, a criminal defendant seeks such a stay in order to remain on release pending certiorari. See Morison, 486 U.S. at 1306 (applying Section 3143(b) to a defendant whose "conviction was affirmed on appeal" and who "ask[ed] that he be allowed to remain free on bond pending the consideration of his yet-to-be-filed petition for writ of certiorari").[3] The application would fall short, however, even if applicant's preferred standard applied. See Teva Pharms. USA, Inc. v. Sandoz, Inc., 572 U.S. 1301, 1302 (2014) (Roberts, C.J., in chambers) (even in the normal course, recalling and staying a mandate is "extraordinary relief").

II. THE APPLICATION DOES NOT RAISE A SUBSTANTIAL QUESTION LIKELY TO RESULT IN REVERSAL

Applicant's challenge to his Section 1519 convictions does not raise a "substantial question of law" likely to result in any form of relief. Applicant violated 18 U.S.C. 1519's plain terms by falsifying records to conceal his receipt of tens of thousands

[3] Applicant cites (Appl. 39) the stay of the mandate granted in McDonnell v. United States, 576 U.S. 1091 (2015) (mem.), as precedent. But the applicant in that case addressed the Section 3143(b) standard as well. See Emergency Appl. to Stay Mandate, or in the Alternative for Release on Bail, Pending Disposition of Cert. Pet. at 1-2, 14-15, McDonnell (No. 15A218).

of dollars in loans from a friend whom he installed as an agency subcontractor. Appl. Ex. B, at 9-12, 16-17.

A. Section 1519 prohibits knowingly "falsif[ying]" or "mak[ing] 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 in relation to or contemplation of any such matter or case." 18 U.S.C. 1519. Here, applicant plainly "falsif[ied] * * * [a] record" or "document," ibid., by omitting the loans from his Form 278 filings. And because those filings inform proceedings, administered by the employing agency, to investigate and ensure government officials' compliance with ethics laws and regulations -- including provisions governing conflict of interest -- and the relevant agency's administration of those requirements, see pp. 3-5, supra, it follows that applicant's deception was intended to (and did) "impede, obstruct, or influence the investigation or proper administration" of a "matter" falling within the agency's jurisdiction. 18 U.S.C. 1519; see Appl. Ex. B, at 9-10, 16-17.

That understanding of Section 1519 is supported by this Court's analysis of the same statute in Yates v. United States, 574 U.S. 528 (2015). There, the Court held that an undersized fish that a commercial fisherman had disposed of to throw off federal investigators did not constitute a "tangible object" within the meaning of Section 1519. See id. at 536 (plurality

opinion) (reading the statute "to cover only objects one can use to record or preserve information, not all objects in the physical world"); id. at 549-552 (Alito, J., concurring in the judgment). But the decision indicates that Section 1519's scope encompasses cases like this one.

The Yates plurality recognized, for example, that Section 1519 "covers conduct intended to impede any federal investigation or proceeding, including one not even on the verge of commencement." 574 U.S. at 547. The plurality also emphasized the statute's "financial-fraud mooring," and its having been enacted in the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745. 574 U.S. at 532. And Justice Alito noted that the statute's language is "closely associated with filekeeping." Id. at 551. Particularly in a case involving conflicts of interest, applying Section 1519 to falsified financial-disclosure forms -- and the investigatory review that they inform -- is conduct at or near the statute's core.

The court of appeals' decision is also in full accord with the views of its sister circuits, which have consistently applied Section 1519 to similar obstructive acts. See, e.g., United States v. Cisneros, 825 Fed. Appx. 429, 434 (9th Cir. 2020) (per curiam) (falsified background-investigation form), cert. denied, 141 S. Ct. 1723 (2021); United States v. Benton, 890 F.3d 697, 711-712 (8th Cir. 2018) (falsified campaign-expenditure reports), cert. denied, 139 S. Ct. 1318 (2019), and 139 S. Ct. 1322 (2019);

United States v. Taohim, 817 F.3d 1215, 1221-1222 (11th Cir. 2013) (per curiam) (falsified maritime waste-disposal records); United States v. Yielding, 657 F.3d 688, 715-716 (8th Cir. 2011) (falsified hospital records), cert. denied, 565 U.S. 1262 (2012). The court of appeals thus correctly recognized that Section 1519 covered applicant's conduct. That the court had "little reason * * * to linger over" the interpretive issue here, Appl. Ex. B, at 9-10, confirms that applicant does not raise a "substantial question of law" within the meaning of 18 U.S.C. 3143(b)(1)(B).

B. Applicant focuses almost entirely on Section 1519's reference to "proper administration" of a federal matter, claiming that the court of appeals upheld his convictions based on an implausibly broad reading of that phrase. Appl. 3, 10-11, 14-15, 17-18, 30. But he misunderstands the court's decision, which did not isolate the "proper administration" term; instead, it construed the statutory text as a whole and emphasized applicant's falsification of records that "are administered, reviewed, and subject to further investigation by" government agencies. Appl. Ex. B, at 9 (emphasis added); see id. at 16-17.[4]

[4] Applicant likewise errs in asserting that the government below "narrow[ed] the dispute to whether routine review [of Form 278 filings] qualified as the proper administration of a matter." Appl. 11 n.4. Instead, the government resisted applicant's effort to "divide[] the statute between 'investigation' and the 'proper administration of [a] matter,'" Gov't C.A. Br. 19 (quoting 18 U.S.C. 1519), and relied on both terms, see id. at 20-21.

The general premise of the application -- that the court of appeals' decision turned solely on an erroneously broad definition of "proper administration" -- is therefore inconsistent with the court's opinion. And because the court of appeals construed the statute as a whole to find that it "capture[s] the sorts of activity with which [applicant] was charged," Appl. Ex. B, at 9, applicant's contention that the court of appeals' construction of "proper administration" conflicts with Marinello v. United States, 584 U.S. 1 (2018), is misplaced. In any event, applicant's reliance on Marinello as controlling the interpretation of the distinct terms in Section 1519 lacks merit.

Marinello construed 26 U.S.C. 7212(a), which prohibits (among other things) "corruptly or by force or threats of force (including any threatening letter or communication) obstruct[ing] or imped[ing], or endeavor[ing] to obstruct or impede, the due administration of" the Internal Revenue Code. Ibid. The Court held in Marinello that "'due administration of [the Tax Code]' does not cover routine administrative procedures that are near-universally applied to all taxpayers, such as the ordinary processing of income tax returns," but instead requires "specific interference with targeted governmental tax-related proceedings, such as a particular investigation or audit." 584 U.S. at 4. The Court reasoned that "the whole phrase -- the due administration of the Tax Code -- is best viewed * * * as referring to only some of those acts or to some separable parts of an institution or

business." Id. at 7. And the Court found "confirmation" of its construction of that phrase in the language that preceded it, which was limited to "corrupt or forceful actions taken against individual identifiable persons or property." Id. at 8; see id. at 7-8. But those specific textual and contextual features are absent here.

Instead, the reference to "investigation[s]" suggests that a reviewing official's inspection of a high-ranking employee's ethics compliance would at least qualify as "administration" of an agency "matter." 18 U.S.C. 1519; see, e.g., Fischer v. United States, 144 S. Ct. 2176, 2186 (2024) (construing catchall clause in criminal obstruction statute to capture conduct similar to, but not necessarily encompassed by, more specific provision). And in any event, even if Marinello applied here, it would not undermine applicant's convictions. Marinello limited Section 7212(a) to situations involving a "'nexus'" to "a particular administrative proceeding, such as an investigation, an audit, or other targeted administrative action," where the proceeding is either "pending" or "foreseeable by the defendant." 584 U.S. at 13. Given that all Form 278 filings (unlike the many millions of tax returns filed each year) must be reviewed, see 5 U.S.C. 13108, and that applicant was directing high-value contracts to a friend who had given him a substantial loan, it would have been reasonably foreseeable to applicant that some type of scrutiny similar in formality to an audit or investigation would ensue.

C. Applicant's remaining arguments are likewise unsound. Invoking canons of construction and this Court's decisions in Yates and Fischer, applicant asserts that Section 1519's references to "investigation[s]" and bankruptcy "case[s]," 18 U.S.C. 1519, mean the statute must be limited to efforts to obstruct "an identifiable proceeding of some formality." Appl. 22; see Appl. 20-23. As a threshold matter, the term "investigation" does not suggest formality; there is nothing anomalous about an informal agency "investigation." See, e.g., Arthur Andersen LLP v. United States, 544 U.S. 696, 699 (2005) (describing an "informal investigation" by the SEC); Federal Mar. Comm'n v. South Carolina State Ports Auth., 535 U.S. 743, 785 (2002) (Breyer, J., dissenting) (describing an agency's reliance on "informal staff investigations"); see also Appl. Ex. H, at 53-54 (defining "investigation" as "[t]he activity of trying to find out the truth about something") (quoting Black's Law Dictionary 989 (11th ed. 2019)).[5] Moreover, as just discussed, the proceedings that follow a high-ranking official's annual financial disclosure, under the

[5] Applicant faults the D.C. Circuit for consulting the Senate report on the proposed Section 1519, Appl. 25-27, but the report simply reinforces that Congress did not enact petitioner's artificially narrow definition of agency "investigation[s]." See Appl. Ex. B, at 10; S. Rep. No. 146, 107th Cong., 2d Sess. 15 (2002) (Section 1519 was "meant to do away with [judicially imposed] distinctions * * * between court proceedings, investigations, regulatory or administrative proceedings (whether formal or not), and less formal government inquiries, regardless of their title").

Ethics in Government Act, do not lack whatever degree of formality might be required.

Applicant also errs in contending that the court of appeals' "reading of § 1519 subsumes § 1001" and similar false-statement statutes "almost entirely." Appl. 24; see Appl. 23-25 & nn. 5-6. In contrast with Section 1519, most of those laws, including Section 1001, are not limited to falsifying "record[s], document[s]," and the like, and do not require obstructive intent. 18 U.S.C. 1519; cf., e.g., 18 U.S.C. 1001. To the degree that some may overlap, such overlap is commonplace in the Criminal Code. See, e.g., Loughrin v. United States, 573 U.S. 351, 358 n.4 (2014). Indeed, it is unclear how -- and unlikely that -- applicant's own reading of the statute would avoid substantial overlap with other provisions. And concerns about possible overlap are especially misplaced in the context of a statute that, like Section 1519, was enacted for the purpose of closing loopholes in preexisting provisions. See Yates, 574 U.S. at 536 (plurality opinion); id. at 557-558 (Kagan, J., dissenting).

Finally, the court of appeals' decision also does not raise the prospect of criminalizing everyday conduct by, for example, subjecting "[e]very error or omission" on a government form to "charges under § 1519." Appl. 36; see Appl. 31-37. Among other things, applicant does not explain how innocuous mistakes could reasonably be deemed to constitute knowing falsification of records under Section 1519. And because this case involves an

effort to "impede, obstruct, or influence" an agency's investigation and review of applicant's compliance with ethics laws and regulations, it by no means tests the statute's outer limits. 18 U.S.C. 1519. Cases involving misrepresentations on forms that are not normally subject to such review will not necessarily satisfy the statutory elements.

III. THIS COURT WOULD NOT LIKELY GRANT CERTIORARI

Applicant's request for release fails for the additional reason that he cannot show a likelihood that this Court would grant a petition for certiorari in the first place. See p. 12, supra. Applicant appears to acknowledge (Appl. 33-34) that his claim does not implicate any conflict in the courts of appeals, see Sup. Ct. R. 10(a), even though several circuits have addressed the applicability of Section 1519 to obstructive conduct like his, see pp. 15-16, supra.

He therefore characterizes the court of appeals here as having "decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c); see Appl. 17, 35. But as explained above, the court of appeals' decision does not conflict with relevant decisions of this Court. And although the Court does occasionally grant certiorari in the absence of a conflict, applicant fails to show that the question presented here is sufficiently weighty or important that the Court would make such an exception to its typical practice. Indeed, applicant overstates the importance of his statutory-

interpretation claim to his own case, as he would remain convicted on four felony counts -- and almost assuredly serve time in prison -- even if his Section 1519 convictions were set aside. See pp. 22-24, infra.[6]

IV. APPLICANT HAS NOT SHOWN THAT REVERSAL OF HIS SECTION 1519 CONVICTIONS WOULD RESULT IN THE NECESSARY RELIEF

Finally, even supposing that applicant's challenge to his convictions under 18 U.S.C. 1519 raised a substantial question of law and that this Court were likely to grant certiorari, it would not likely result in relief justifying his release pending certiorari: i.e., reversal, a new trial, a sentence not including imprisonment, or a sentence of imprisonment shorter than "the expected duration of the appeal [or here, certiorari] process." 18 U.S.C. 3143(b)(1)(B)(i)-(iv). Applicant has been found guilty of seven different "offense[s]," with a "term of imprisonment" imposed for each, 18 U.S.C. 3143(b); see Judgment 1-3. He accordingly must make a showing applicable to "all the counts for which imprisonment was imposed." Morison, 486 U.S. at 1306.

Applicant does not dispute the validity of his four convictions under 18 U.S.C. 1001, Appl. 36, for which the district court sentenced him to concurrent sentences of 12 months and 1 day (to run concurrently with his parallel sentences for violating

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[6] For the same reasons, the Court should also reject applicant's alternative request (Appl. 38) that the Court treat his application as a petition for certiorari, grant it, and order expedited briefing on the merits.

Section 1519), Judgment 3. Therefore, this Court's review of his Section 1519 claim could not result in reversal or a new trial within the meaning of 18 U.S.C. 3143(b)(1)(B)(i) and (ii). See Morison, 486 U.S. at 1306 (applicant must show "that his appeal is 'likely to result in reversal' with respect to all the counts for which imprisonment was imposed"). Nor has he shown (or could he show) that this Court's review would likely result in a sentence that would include no term of imprisonment or a term shorter than the expected duration of the certiorari process. 18 U.S.C. 3143(b)(1)(B)(iii) and (iv).

Petitioner does not directly challenge his convictions or sentences for his four violations of Section 1001. And even assuming that the possibility of resentencing on those counts could satisfy Section 3143(b)(1)(B), he cannot show that it is "likely," 18 U.S.C. 3143(b)(1)(B), that he would receive either no term of imprisonment at all on those four counts, see 18 U.S.C. 3143(b)(1)(B)(iii), or a sentence so short that it would be complete before the resolution of further appellate proceedings, see 18 U.S.C. 3143(b)(1)(B)(iv).

As to the possibility of no imprisonment at all, the district court -- consistent with its imposition of the 12-month-and-1-day sentences on the Section 1001 counts -- made clear both at sentencing and in its release-pending-appeal order that it would have imposed at least some prison time for the Section 1001 counts alone. See D. Ct. Doc. 205, at 79 (May 22, 2023) (district court

observing at sentencing that "for defendants convicted of charges related to [Section 1001], the overwhelming majority received some sort of prison sentence"); Appl. Ex. F, at 4 (order stating that it would likely impose a "shorter" sentence if the Section 1519 counts were reversed).

As for a potential reduced sentence, applicant does not make, much less substantiate, a claim that he would likely receive a sentence shorter than the expected duration of the certiorari process. See Appl. 37 (claiming only that "[a] sentence on just the § 1001 charges would look different"). Applicant does not yet have a date at which he is required to report to prison, and he expresses a willingness to file a petition for certiorari expeditiously, Appl. 38.[7] There is therefore no basis for a finding that reversal of his Section 1519 convictions by this Court would "likely" result in a sentence of imprisonment shorter than "the expected duration of the [certiorari] process." 18 U.S.C. 3143(b)(1)(B)(iv). His application can be denied on those grounds alone.

[7] There is accordingly no need at this time, contra Appl. 39, to enter an administrative stay of the court of appeals' mandate pending resolution of the application for release, or to recall the mandate.

CONCLUSION

The application should be denied.

Respectfully submitted.

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