No. _____

In the
Supreme Court of the United States

NG LAP SENG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner Ng Lap Seng, a foreign national, was charged with bribing two foreign ambassadors to the United Nations to obtain "formal UN support" for a proposed UN conference center in Macau that Ng planned to build and donate to the UN for free. The government initially charged Ng under 18 U.S.C. §666, which criminalizes bribery of any agent of "an organization or … a State, local or Indian tribal government" that receives federal funds. It then filed a superseding indictment that also charged Ng under the Foreign Corrupt Practices Act (FCPA).

The Second Circuit affirmed Ng's conviction under both statutes. As to §666, the Second Circuit held that the statutory term "organization" covers not only private organizations, but also quasi-sovereign public international bodies like the UN, despite the canon against construing generic terms to reach public bodies, Congress' express coverage of intergovernmental entities in other Acts, and the obvious international comity concerns. And as to both statutes, the Second Circuit held that the "official act" limitation on federal bribery prosecutions that this Court recognized in *McDonnell v. United States*, 136 S. Ct. 2355 (2016), simply does not apply to §666 and the FCPA.

The questions presented are:

1. Whether the generic term "organization" in §666 should be construed to include quasi-sovereign public international entities like the United Nations.

2. Whether *McDonnell*'s official act requirement applies to §666 and FCPA prosecutions like this one and, if so, whether it was satisfied here.

PARTIES TO THE PROCEEDING

Ng Lap Seng is the petitioner here and was the defendant-appellant below. The United States of America is the respondent here and was the appellee below.

STATEMENT OF RELATED PROCEEDINGS

United States of America v. Ng Lap Seng, No.18-1725 (2d Cir. opinion and judgment issued Aug. 9, 2019; order denying rehearing issued Oct. 16, 2019; mandate issued Oct. 24, 2019).

United States of America v. Ng Lap Seng, No.1:15-cr-706-VSB-3 (S.D.N.Y. judgment entered June 7, 2018).

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

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PETITION FOR WRIT OF CERTIORARI

This petition arises out of an unprecedented invocation of federal anti-corruption statutes to prosecute a foreign national for allegedly bribing foreign ambassadors to the United Nations (UN). The object of this alleged bribery was not to funnel UN funds to petitioner, but very nearly the opposite: Petitioner hoped to obtain "formal UN support" for a convention center in Macau that petitioner planned to build for the UN *for free*. In affirming petitioner's conviction, the Second Circuit decided two issues of exceptional importance regarding the interpretation of the federal anti-corruption laws—and on both, it reached a result that departs starkly from this Court's precedent, raises significant constitutional and comity concerns, and fosters dangerous prosecutorial overreach. That extraordinary decision from the court with jurisdiction over all comparable cases involving the UN calls for this Court's review.

First, in contravention of the statutory text and settled canons of interpretation, the Second Circuit construed the federal-funds bribery statute to reach not only domestic government entities and private organizations, but also quasi-sovereign public international bodies like the UN. On its face, that statute applies only to an "organization or … State, local or Indian tribal government." 18 U.S.C. §666(a)(2). By separately covering state, local, or tribal governments, Congress signaled that it was not using "organization" in its broadest sense. The Second Circuit's extension of "organization" to cover the UN is belied not only by the text, but also by the settled rule against construing generic terms to include public

entities (let alone public international entities) and Congress' demonstrated ability to expressly include "public international organizations" (and address immunity issues) in the rare circumstances in which it intends to reach those distinct and diplomatically sensitive bodies.

The Second Circuit's decision further contradicts the established canon that federal statutes should be interpreted to avoid unreasonable interference with the sovereign authority of other nations, as well as the context and legislative history of the statute, and the views of numerous other courts—and the Department of Justice itself—that have described §666 as applying only to "private organizations." By authorizing federal prosecutors to charge foreign nationals and foreign ambassadors to the UN for actions that Congress never intended to criminalize, the decision below—from the court of appeals where the UN is headquartered—threatens serious consequences and necessitates further review.

Second, the decision below breaks with the clear teachings of this Court in concluding that the "official acts" doctrine set forth in *McDonnell v. United States*, 136 S. Ct. 2355 (2016), has no application to prosecutions under §666 and the Foreign Corrupt Practices Act (FCPA). That conclusion raises serious constitutional concerns of fair notice, arbitrary enforcement, chilling of public discourse, and undue interference with other sovereigns. And the Second Circuit's effort to insulate that sweeping holding from review by declaring any error harmless is equally threatening to the continued viability of *McDonnell*, as the purported "official acts" on which the government

relied here, including circulating a letter on "official" UN letterhead and making a visit in an "official" capacity, plainly do not qualify under *McDonnell*.

In short, notwithstanding this Court's repeated admonishments to construe federal anti-corruption statutes narrowly to avoid constitutional concerns, the decision below went out of its way to construe each of the statutes before it as broadly as possible. Given the far-reaching consequences those holdings will have, and the significant risks they present to international comity and democratic governance, this Court should grant certiorari on both questions presented.

OPINIONS BELOW

The Second Circuit's opinion is reported at 934 F.3d 110 and reproduced at App.1-70. The district court's judgment is unreported but reproduced at App.73-85.

JURISDICTION

The Second Circuit issued its decision on August 9, 2019, and denied a timely petition for rehearing en banc on October 16, 2019. Justice Ginsburg extended the time to file a petition for writ of certiorari until February 13, 2020, and then further extended the time for filing a petition to March 14, 2020. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the appendix at App.86-108.

STATEMENT OF THE CASE

A. Legal Background

This Court has long been wary of efforts to stretch federal anti-corruption statutes to their constitutional breaking point. *See, e.g.*, *Skilling v. United States*, 561 U.S. 358, 408 (2010) (confining honest services fraud to bribery and kickbacks because "[r]eading the statute to proscribe a wider range of offensive conduct … would raise the due process concerns underlying the vagueness doctrine"); *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 412 (1999) (rejecting interpretation of bribery statute that would reach token gifts like a baseball cap or complimentary lunch); *McNally v. United States*, 483 U.S. 350, 360 (1987) (declining to construe mail fraud statute "in a manner that leaves its outer boundaries ambiguous and involves the Federal Government in setting standards of disclosure and good government for local and state officials"). As these and other cases reflect, anti-corruption statutes not only have considerable potential to create grave vagueness problems, but also implicate First Amendment concerns. Accordingly, "a statute in this field that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter." *Sun-Diamond*, 526 U.S. at 412.

That principle applies with particular force when the question is whether a statute should be read to reach foreign nationals or conduct involving another sovereign, as this Court has long held that statutes should be read "to avoid unreasonable interference with the sovereign authority of other nations." *F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 542 U.S.

155, 164 (2004). Like the presumption against extraterritoriality, that rule serves to "protect against unintended clashes between our laws and those of other nations which could result in international discord," *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 115 (2013), by assuming that Congress intends to "take account of the legitimate sovereign interests of other nations" when drafting federal statutes, *Empagran*, 542 U.S. at 164.

Among the important limitations this Court has imposed on federal anti-corruption statutes is the "official acts" doctrine. In *McDonnell v. United States*, 136 S. Ct. 2355 (2016), the Court unanimously rejected the government's sweeping view that "nearly any activity by a public official" qualifies as an "official act" that can serve as the basis for federal bribery charges. *Id.* at 2367-68. That expansive understanding, the Court explained, would give federal prosecutors the power to charge elected officials and their constituents for even mundane political interactions, raising significant due process, federalism, and democratic governance problems. Given those concerns, the Court adopted a "more bounded interpretation," *id.* at 2368, holding that to prove a bribe was paid in exchange for an official act, the government must show that the payer sought to obtain a particular "decision or action" on a specific and focused "question or matter" that "is pending or may by law be brought before a public official." *Id.* at 2371-72. That narrower interpretation, the Court held, "leaves ample room for prosecuting corruption" while avoiding the substantial constitutional problems posed by the government's "boundless" approach. *Id.* at 2375.

B. Factual Background

Ng Lap Seng is a 71-year-old Chinese national who rose from abject poverty to become a successful businessman and philanthropist, and who has used his considerable wealth to support charitable efforts to promote cooperation among developing countries. Around 2010, Ng conceived of a plan to build a convention center in Macau for the UN Office for South-South Cooperation (UNOSSC) to use for its annual exposition to support mutual assistance by developing nations. C.A.App.522-23. Ng did not seek any UN funding for this massive undertaking; instead, he intended to fund the project himself, through his real estate company Sun Kian Ip Group. C.A.App.524.

To advance the project, Ng worked with Francis Lorenzo, a deputy ambassador from the Dominican Republic to the UN. Ng first met Lorenzo in 2009; later that year, Ng asked Lorenzo to serve as the president of South-South News, Inc., a media organization sponsored by Ng that provides a platform for developing countries to share knowledge and best practices. C.A.App.535, 540-42. Lorenzo was paid a $20,000 monthly salary for his work as president of South-South News, an arrangement the government has never suggested violated any UN rule. C.A.App.542-43.

In late 2010, Ng also asked Lorenzo to work on developing UN support for the proposed Macau convention center, and he provided Lorenzo with additional funds over the following years for that purpose. C.A.App.556-57, 598, 970-71, 1937-39, 1947. Lorenzo in turn sought assistance from John Ashe, an

ambassador from Antigua and Barbuda to the UN and later President of the General Assembly ("PGA"), in promoting the convention center project. C.A.App.576-77.

In April and September 2011, South-South News hosted two working sessions for UN ambassadors and personnel on issues related to cooperation among developing nations. C.A.App.577-78, 583; App.4-5. Ashe and Lorenzo subsequently drafted a letter summarizing those meetings and reporting participants' support for a permanent conference center to serve as a "global business incubator" for developing countries. That letter, which built on previous UN reports and communications on this topic, was eventually published by the UN in March 2012 as a communication from Ashe to the General Assembly. C.A.App.1449-51; App.6. In June 2013, a revised version of that letter was published identifying Sun Kian Ip Group as "the representative for the implementation of [the proposed convention center]." App.7 (emphasis omitted).

Later in 2013, Ng and Lorenzo discussed obtaining a letter of support for the conference center from Yiping Zhou, the head of UNOSSC. C.A.App.630. Ng met with Zhou in January 2014, and Zhou sent Lorenzo a letter of support for the project that same month (backdated to June 2013), followed by a letter in June 2014 discussing plans for Sun Kian Ip Group to co-host the 2015 UNOSSC Exposition, and a February 2015 letter expressing support for the development of a permanent conference center by Sun Kian Ip Group. C.A.App.671, 1525, 1641-42; App.8-10. While the letters from Ashe and Zhou were

printed on official letterhead, none committed the UN or UNOSSC to do anything; instead, they simply discussed and supported the planned conference center.

In early 2014, Ng invited Ashe (who by then was the PGA) to visit Macau and see where the proposed convention center would be located. Ashe accepted the invitation and traveled with Lorenzo to Macau, where they met with Ng and discussed the project. C.A.App.672, 678-81; App.10-11.

Ng also worked with Zhou to draft a "pro bono agreement" between UNOSSC and Sun Kian Ip Group setting guidelines for the project. App.11-12; C.A.App.1835-48. Under that agreement, which was finalized and signed in December 2014, Sun Kian Ip Group agreed to build the convention center and accompanying facilities for the UNOSSC exposition "without any charge to the UNOSSC." C.A.App.1838; App.11 n.10. The agreement did not actually commit UNOSSC to use the center; instead, it made clear that UNOSSC's cooperation with Sun Kian Ip Group was "non-exclusive," that UNOSSC could obtain the same services "from any other source at any other time," and that the agreement did not create any "expectation for further services" from Sun Kian Ip Group. C.A.App.1838, 1846-47. Despite referring to a "[p]ermanent" convention center, the agreement "ran only through December 31, 2017, and was terminable at will even earlier on either side giving proper notice." App.12.

C. Procedural History

1. In September 2015, the government arrested Ng on federal bribery charges. In a multi-party

indictment, it charged Ng, Lorenzo, and two other individuals with bribing Ashe in exchange for various vaguely defined actions taken in an "official" capacity. C.A.App.145-58. As to Ng, the indictment alleged that he had violated the federal-funds bribery statute, 18 U.S.C. §666, by bribing Ashe to circulate the letter to the General Assembly expressing support for the Macau project and bribing Ashe to visit Macau. The indictment also charged Ng with conspiracy and money-laundering offenses predicated on the alleged §666 violation. C.A.App.145-48, 151-53. Ng moved to dismiss, arguing that §666 does not apply to quasi-sovereign public international organizations like the UN, and that in any event the indictment did not identify any official acts in exchange for which any purported bribes were paid.

The government responded with a superseding indictment that alleged that Ng had violated not only §666 but also the FCPA. C.A.App.175-79. The superseding indictment no longer named Lorenzo as a defendant; instead, it accused Ng of paying bribes to both Lorenzo and Ashe. C.A.App.163-64. As for the purported official acts, the superseding indictment alleged that Ng paid the alleged bribes in exchange for "formal UN support" for the proposed convention center, "including establishing the Macau Conference Center as the permanent site of the annual UNOSSC Expo and as a location for other meetings, forums, and events associated with the UN (collectively, 'Formal UN Support')." C.A.App.164-65. As the sole examples of this "formal UN support," it identified the revised letter from Ashe to the General Assembly, which it called an "official UN document," and the trip by Ashe

and Lorenzo to Macau, which it called an "official visit." C.A.App.166-67.

2. The only person to testify at trial to the existence of the alleged bribery scheme was Lorenzo, who claimed that the payments he received from Ng for working at South-South News and for assisting with the Macau project were really bribes intended by Ng to purchase UN support for his proposal to build UNOSSC a convention center for free. App.4-5. Lorenzo further claimed that Ng approved Lorenzo's own self-professed efforts to bribe Ashe, which purportedly consisted of arranging for South-South News to (1) employ Ashe's wife, a climate change specialist, as a paid consultant; (2) pay for an April 2011 vacation by Ashe's family; and (3) contribute $200,000 to the Office of the PGA to help pay for a UN concert. App.5, 11. Lorenzo's credibility, however, was thoroughly undermined on cross-examination; as the district court put it, it was clear that "Lorenzo had lied repeatedly throughout his life," and even the government conceded that the jury should not "trust everything [Lorenzo] says" and should be "sickened" by his myriad lies and other misdeeds. C.A.App.1401, 2020-21.

The government's amorphous theory of the official acts Lorenzo and Ashe allegedly were paid to undertake continued to shift at trial. Although the superseding indictment identified only two instances of alleged "formal UN support"—the "official" letter from Ashe to the General Assembly and the "official" trip to Macau—the government added two new purported official acts at trial: the letters of support from Zhou, and the "pro bono agreement" between

UNOSSC and Sun Kian Ip Group setting out guidelines for the convention center project. C.A.App.375. While the government did not contend that Zhou himself had been bribed, it contended that Lorenzo had been bribed to get Zhou to provide the letter, and that Lorenzo and Ashe had been bribed to help get the pro bono agreement. The government repeatedly invoked these four things as the purported official acts Ng had obtained, singling them out in its opening statement, its evidentiary presentations, and its closing statement. *See, e.g.*, C.A.App.1344 ("So what has [Ng] gotten for his bribes? … The UN document, the [Zhou] letters, Ashe's visit to Macau, and a pro bono agreement.").

Ng vigorously contested the government's allegations, arguing (among other things) that §666 does not apply to the UN, that none of the payments identified by the government constituted bribes, that the conference center was a philanthropic project, and that the government had not identified anything that would qualify as an official act. *See, e.g.*, C.A.App.1350, 1358, 1383-86. But his arguments were largely undermined by the district court's instructions to the jury, which (over Ng's objection) misstated the definition of an official act under §666, and required no official act at all under the FCPA. C.A.App.1308, 1315. Based on those skewed instructions, the jury convicted Ng on all counts. C.A.App.1975-77.

3. The Second Circuit affirmed. The court rejected Ng's argument that §666 does not apply to interactions with UN officials, holding that the statutory term "organization" covers "all non-

government legal persons," including quasi-sovereign public international bodies. App.13-30, 68. The court also rejected Ng's argument that his conviction contravened *McDonnell*'s "official act" requirement, holding that this requirement does not apply to §666 or the FCPA, and alternatively that the prosecution would have complied with *McDonnell*. App.30-59, 68.

REASONS FOR GRANTING THE PETITION

This novel prosecution of a foreign national for purportedly bribing foreign ambassadors to the UN stretched two federal anti-corruption statutes beyond their breaking points. Rather than rein the government in, however, the Second Circuit chose to unbridle it, endorsing sweeping readings of §666 and the FCPA that contravene settled principles of statutory construction and constitutional avoidance and threaten severe consequences for international comity and protected political activity.

First, the Second Circuit erred by interpreting §666 to reach the UN. As the text, context, and settled canons of construction make clear, in prohibiting bribery relating to any federally funded "organization or … State, local or Indian tribal government," Congress did not use "organization" in its broadest sense. Congress' specific inclusion of state, local and tribal governments indicates Congress' intent to use "organization" in a narrow sense to capture *private* organizations. Indeed, when Congress intends a statute to extend to foreign governments and international organizations, it does so expressly, and addresses issues of immunity as necessary to soften the inevitable diplomatic friction caused by projecting U.S. criminal statutes into such sensitive areas. Both

the text and settled canons, including the rule that statutes should be read to avoid unreasonable interference with foreign sovereigns, thus compel the conclusion that §666 does not apply to the UN. The statutory history and context confirm as much, especially given that Congress had already passed a separate and much narrower statute (the FCPA) to cover international corruption—and then, years after enacting §666, specifically expanded the FCPA to apply to public international organizations in specified circumstances, a chronology that would be inexplicable if §666 already applied more broadly to such organizations.

Second, the decision below eviscerates the official act requirement that this Court established in *McDonnell*, holding that the requirement simply does not apply under *either* §666 or the FCPA (or, apparently, any other federal anti-corruption statute beyond those specifically considered in *McDonnell* itself). As far as the Second Circuit is concerned, the only mistake the government made in *McDonnell* was asserting bribery under 18 U.S.C. §201 rather than 18 U.S.C. §666. That is untenable. *McDonnell*'s narrow definition of the permissible *quo* in a bribery case is the product of constitutional concerns that apply *a fortiori* to §666 and the FCPA—especially in a prosecution involving foreign nationals and foreign ambassadors to the UN. The Second Circuit's holding that *McDonnell* does not constrain the government at all under either §666 or the FCPA, and its determination that the prosecution here complied with *McDonnell* in any event, threaten systemic consequences for future federal anti-corruption prosecutions.

Left standing, the decision below will authorize substantial prosecutorial overreach in the jurisdiction where the UN is headquartered and the threat of diplomatic friction is greatest. Now that the Second Circuit has deemed the UN a qualifying organization under the broad and generic provisions of §666, without any express provision for immunity or prohibiting prosecutions of UN officials, there is little prospect that a UN-related prosecution will ever be brought elsewhere. Moreover, the threat of diplomatically sensitive prosecutions of foreign nationals with imperfect understandings of the UN rules or this Nation's criminal laws will be exacerbated by the elimination of the "official act" requirement in the Second Circuit. The resulting double blow to liberty fully justifies this Court's review.

I. The Second Circuit's Holding That §666 Reaches Quasi-Sovereign Public International Entities Like The UN Flouts Settled Canons Of Construction And Raises Grave Comity Concerns.

A. The Statutory Text and Settled Canons of Construction Make Clear that §666 Does Not Apply to the UN.

Section 666 prohibits bribery of an agent of "an organization or of a State, local or Indian tribal government" that receives more than $10,000 in federal funds in a one-year period. 18 U.S.C. §666(a)(2). According to the Second Circuit, that statute covers alleged bribes paid to and received by foreign ambassadors to the UN—and hence allows federal prosecutors to charge either the person who

pays the bribe or the foreign ambassador who receives it (or both)—because the UN is an "organization." App.30. That sweeping interpretation cannot be sustained. As the statutory text and traditional tools of interpretation demonstrate, the term "organization" in §666 cannot be read to include a quasi-sovereign public international body.

Although §666 does not expressly define "organization," the text makes clear that Congress did not use that term in its broadest sense, but intended it to cover only *private* organizations, not public organizations like foreign governments or the UN. While "organization" in its broadest sense might encompass such public bodies, *see, e.g.*, *Ankenbrandt v. Richards*, 504 U.S. 689, 704 (1992) (referring to "state and local government organizations"), it is well established that such generic terms normally should not be presumed to cover public entities. *Nixon v. Mo. Mun. League*, 541 U.S. 125, 132-33 (2004). In this context, "there is no convention of omitting the modifiers 'public and private' when both are meant to be covered." *Id.* Instead, when Congress intends to cover public as well as private organizations, it says so explicitly. *See, e.g.*, 12 U.S.C. §1701y ("public and private organizations"); 20 U.S.C. §9546(a)(1) (same); 33 U.S.C. §1254(*l*) (same).

The text of §666 reflects that convention by not simply relying on the term organization to capture governmental entities, but instead separately identifying explicitly the public organizations it intended to reach. The statute reaches bribery of an agent of "an organization, *or* of a State, local, or Indian tribal government." §666(a)(2) (emphasis added).

Given the disjunctive "or," followed by the express list of public entities Congress intended to cover, it is clear that Congress did not intend the generic term "organization" to reach any entity under the sun. Instead, Congress intended "organization" to refer only to *private* organizations. *See Nixon*, 541 U.S. at 132-33.

The Second Circuit recognized that this textual argument was unanswerable when it comes to foreign governments, which it found outside the reach of §666. App.18-19. But there is no basis for reaching a different conclusion as to quasi-sovereign public international entities like the UN—particularly given the dual roles that foreign ambassadors to the UN play. Officials like Ashe and Lorenzo are agents of the UN and agents of the foreign nations they represent. Treating them as covered by §666 in one capacity but not the other makes little sense, especially when the potential for diplomatic friction is equally present in both forms.

That result is powerfully reinforced by the reality that on the rare occasions when Congress wants to reach intergovernmental entities like the UN it has both done so expressly and expressly addressed immunity issues to help lessen diplomatic friction. *See, e.g.*, 22 U.S.C. §§288, 288a(b) (providing immunity for defined international organizations); 15 U.S.C. §§78dd-2(h)(B), 78dd-3(f)(B) (defining "public international organization" under the FCPA as the organizations designated under 22 U.S.C. §288 or specially designated by the President). The Second Circuit's decision to make §666 fully applicable to the UN and UN officials without any express provision for

immunity cannot help engender diplomatic friction in ways Congress did not anticipate or intend.

That conclusion is heavily reinforced by the rule that federal statutes should be construed "to avoid unreasonable interference with the sovereign authority of other nations." *Empagran*, 542 U.S. at 164. The Second Circuit's view would create exactly that potential for conflict—especially since §666 (unlike the FCPA) reaches both the payer *and the recipient* of the bribe. If the decision below stands, federal prosecutors may not only charge foreign nationals under §666 for their interactions with foreign ambassadors to the UN, but may also attempt to prosecute the foreign ambassadors themselves (or threaten them with such prosecution to secure cooperation), subjecting them to American standards and norms that may differ substantially from those of their home countries. Indeed, given that an effect on federal funds is not an element of a §666 prosecution, *see Salinas v. United States*, 522 U.S. 52, 56-61 (1997), the Second Circuit's view would allow federal prosecutors to charge any foreign ambassador to the UN for taking any purported bribe just because the United States (like every other member nation) contributes to the UN budget.

This is a case in point: A Chinese businessman is accused of bribing an Antiguan ambassador and a Dominican ambassador to the UN, to obtain their support to build the UN a convention center in Macau, at no cost to the UN (let alone to the United States). The threat to international comity from allowing a federal prosecutor to convert those interactions among foreign nationals and diplomats into a federal crime is

obvious—and obviously not what Congress intended the generic term "organization" to permit.

B. Statutory Context and History Confirm That §666 Does Not Apply to the UN.

The statutory context and history surrounding §666 confirm that Congress did not intend that statute to apply to public international organizations. In reporting favorably on the bill that proposed §666, the Senate Judiciary Committee explained in unambiguous terms that this provision was intended to protect "federal monies that are disbursed to *private organizations* or state and local governments." S. Rep. No. 98-225, at 369 (1983), *as reprinted in* 1984 U.S.C.C.A.N. 3182, 3510 (emphasis added). The Committee also cited several cases that §666 was intended to cover; unsurprisingly, each involved private organizations or state or local government agencies, none involved public international organizations like the UN. *Id.* at 370.

But even for those skeptical of congressional reports, a different kind of legislative history—the chronology of Congress' limited and express efforts to address efforts to corrupt public international organizations—strongly reinforces that Congress never intended §666 to be an implicit and far broader response to the same problem. As originally enacted in 1977, the FCPA covered bribery only of officials of foreign governments, not of public international organizations; and then as now, it criminalized only paying bribes, not receiving them. Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, sec. 104, §78dd-2(a), (d)(2), 91 Stat. 1494, 1496-97. Congress enacted §666 seven years later, without any indication

that it overlapped with the FCPA or that Congress meant to broaden the federal anti-corruption laws regarding foreign and international public bodies. It is exceedingly unlikely that Congress *sub silentio* intended §666 to go far beyond the FCPA and for the first time impose domestic anti-corruption norms on public international organizations. And it is even less likely that, after deciding the FCPA should penalize only bribe-payers, not foreign officials who received bribes—thereby alleviating international comity concerns—Congress silently decided that §666 should impose criminal penalties on both bribe-payers and UN officials who received bribes, regardless of any potential international consequences.

Nor is that all. Fourteen years after enacting §666, Congress amended the FCPA to expand it to cover "public international organizations." In doing so, it continued to punish only bribe-givers, not bribe-takers, and chose to cover not all such organizations, but only those designated by the President under the International Organizations Immunities Act (22 U.S.C. §288) or the FCPA itself. International Anti-Bribery and Fair Competition Act of 1998, Pub. L. No. 105-366, §3(c), 112 Stat. 3302, 3305 (codified at 15 U.S.C. §78dd-2(h)(2)(A)-(B)). That carefully designed amendment to the FCPA, with its prudent decision to involve the Executive Branch in this delicate foreign relations area, would be pointless if §666 already criminalized bribery of all such organizations (and penalized the bribe-taking officials to boot).

Given that history, it is unsurprising that numerous courts have described §666 as applying to "private organizations," not public international ones.

See, e.g., *United States v. Newell*, 658 F.3d 1, 24 (1st Cir. 2011) (section 666 addresses bribery involving "*private organizations* or State and local governments" (emphasis added)); *United States v. Sussman*, 709 F.3d 155, 167 (3d Cir. 2013) (same); *United States v. Jennings*, 160 F.3d 1006, 1013 (4th Cir. 1998) (same); *United States v. Moeller*, 987 F.2d 1134, 1136 (5th Cir. 1993); *United States v. McLean*, 802 F.3d 1228, 1237 (11th Cir. 2015) (same); *see also United States v. Pinson*, 860 F.3d 152, 164 (4th Cir. 2017) (§666 applies to a covered "governmental entity or *private organization*" (emphasis added)). In fact, even the Department of Justice has suggested a more modest mission for §666 than the Southern District asserted and the Second Circuit adopted here. The Justice Manual (formerly known as the U.S. Attorney's Manual) states that §666 is "designed to facilitate the prosecution of persons who … divert property or services from state and local governments *or private organizations*." Justice Manual §9-46.100, *available at* https://bit.ly/32nOFQg (last visited Mar. 13, 2020) (emphasis added). That is exactly correct.

C. The Second Circuit's Contrary Reasoning Is Wholly Unpersuasive.

The Second Circuit's reasons for rejecting the more modest understanding of §666 are unpersuasive. The panel began not with text, but with its own decision in *United States v. Bahel*, 662 F.3d 610 (2d Cir. 2011), which affirmed the conviction of a UN official under §666 for accepting bribes to influence the award of UN contracts. App.15. But *Bahel* did not even consider the issue presented here, as the defendant there "did not ask the court to decide

whether the U.N. was an 'organization' under §666." App.16. As such, *Bahel* was a dubious edifice and certainly no substitute for a close analysis of text and context.

When it eventually turned to the statutory text, the court conceded that "organization" in §666 cannot be read in its broadest sense, since that would make the separate enumeration of "State, local or Indian tribal government[s]" superfluous. App.18. But rather than draw the natural conclusion—that organization was used more narrowly to mean private organizations, and the statute thus extended to only private organizations and the enumerated public entities—the panel instead adopted the implausible theory that "organization" captures all non-governmental organizations, including public international bodies like the UN. App.18-19.

That awkward definition makes little sense, has little pedigree, and engenders the same basic problems as sweeping in foreign governments, which even the Second Circuit deemed a bridge too far. The public/private organization dichotomy is the one recognized by Congress in numerous provisions of the U.S. Code, *see supra* p.15 & n.1; by this Court in its decisions, *see Nixon*, 541 U.S. at 132-33; by the Senate Committee reporting on the bill that became §666, *see* S. Rep. No. 98-225, at 369; and by numerous other courts and the Department of Justice itself, *see* Justice Manual §9-46.100; *supra* p.20. When Congress intends to go beyond private organizations and reach public ones, it says so explicitly, *see supra* p.15 & n.1; and when it intends to reach public international organizations in particular, it says that explicitly too

(and provides for executive-branch involvement or immunities or both to cushion the potential consequences to international comity), *see supra* pp.16-17, 19-20. By contrast, when Congress just says "organization," the best reading is that it means only private organizations, not private organizations plus some public organizations (international bodies) but not others (foreign and domestic governments)—especially when many public international officials (including those at issue here) are simultaneously foreign government officials.

The Second Circuit refused to apply the canon that generic terms should not be presumed to include public entities, *see Nixon*, 541 U.S. at 132-33, finding it inapposite because this case does not implicate "the federalism concern informing the *Nixon* decision." App.24-26. But *Nixon* was not based solely on federalism concerns; instead, it applied the straightforward interpretive canon that Congress does not normally use ambiguous or generic language to regulate public entities, so "there is no convention of omitting the modifiers 'public and private' when both are meant to be covered." 541 U.S. at 132. Moreover, the federalism concerns discussed by *Nixon* are just a domestic version of the broader canon against raising unnecessary friction among different sovereigns, which plainly weighs against interpreting the bare term "organization" to reach the UN. *See Empagran*, 542 U.S. at 164.

The court dismissed foreign friction concerns on the ground that other laws provide for diplomatic immunity in appropriate cases. App.23. But the *Empagran* canon has long co-existed with doctrines of

diplomatic and sovereign immunity. If this Court had viewed those other immunities as sufficient, it presumably would have decided *Empagran* itself differently, and unleashed broader private antitrust liability while allowing sovereign immunity to avoid the most serious diplomatic consequences. The Second Circuit not only gave short shrift to this Court's judgment in *Empagran*, but gave equally short shrift to Congress' careful approach in the FCPA. That statute demonstrates how Congress proceeds when it expressly legislates with international public bodies in mind. It does not just criminalize broadly while allowing diplomatic immunity to minimize the damage. Instead, it carefully avoids making foreign diplomats themselves liable, and cross-references the International Organization Immunity Act and its provision for an executive branch role.

In short, the Second Circuit's decision to extend §666 to public international organizations like the UN defies the text and traditional tools of statutory construction and threatens serious harm to international comity. That indefensible holding warrants this Court's immediate attention.

II. The Decision Below Eviscerates *McDonnell*'s Official Act Requirement.

The decision below not only vastly expands the reach of §666, but also limits the official act requirement to a subset of the federal anti-corruption statutes for which it is constitutionally necessary. Despite this Court's recurring warning that those federal statutes must be carefully cabined to avoid serious constitutional and practical concerns, the decision below takes the exact opposite approach,

artificially limiting *McDonnell* and threatening both state and foreign officials with potential federal prosecution for routine political acts. The Second Circuit's holding that *McDonnell* does not apply *at all* to either §666 or the FCPA is profoundly wrong, and its determination that this conviction complied with *McDonnell* in any event is mistaken and provides no excuse to allow *McDonnell* to be eviscerated in the Second Circuit.

A. *McDonnell* Requires the Government to Prove That Purported Bribes Were Paid to Obtain an Official Act.

McDonnell exemplifies the careful interpretive approach that this Court has taken to the federal anti-corruption laws. There, the Court unanimously vacated the conviction of former Virginia Governor Robert McDonnell, rejecting the government's aggressive claim that "nearly any activity by a public official" qualifies as the kind of "official act" that can serve as the *quo* in an alleged *quid pro quo* bribery prosecution. 136 S. Ct. at 2367-68. Instead, an official act must involve a definite "decision or action" by a public official on a specific "question, matter, cause, suit, proceeding or controversy." *Id.* at 2371. That standard, the Court held, requires the government to satisfy a carefully cabined two-part test.

First, the government must identify a "specific and focused" question or matter of the type that can be "pending" before a public official—something involving a "formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee." *Id.* at 2372. That question or matter

must fall "within the specific duties of an official's position" as part of "the function conferred by the authority of his office." *Id.* at 2369. A generic issue like "economic development" is insufficient; instead, the matter must be "relatively circumscribed—the kind of thing that can be put on an agenda, tracked for progress, and then checked off as complete." *Id.*

Second, the government must show that the official took or agreed to take a definite "decision or action" on that matter. *Id.* at 2372. Although the Court recognized that those terms "could be read expansively" to cover almost any activity by a public official, it firmly rejected that expansive reading. *Id.* at 2370. Instead, the Court held, mundane activities such as "[s]etting up a meeting, talking to another official, or organizing an event," or "[s]imply expressing support" for something, do not qualify as official acts. *Id.* at 2371-72. Otherwise, "the requirement that the public official make a decision or take an action … would be meaningless," and practically every daily activity by every public official acting in an "official capacity" would qualify as an "official act." *Id.* at 2371.

The Court found support for that conclusion in its previous decision in *Sun-Diamond*, which rejected a sweeping interpretation of "official act" that would have made it a crime for a championship sports team to give the President a replica jersey during a ceremonial visit to the White House, for the principal of a high school to give a visiting Secretary of Education a school baseball cap, or for farmers to provide the Secretary of Agriculture with a complimentary lunch after giving a speech about

agriculture policy. *Sun-Diamond*, 526 U.S. at 407. Even if inviting a team to the White House, visiting a high school, or giving a speech may be official acts "in some sense," they "are not 'official acts' within the meaning of the statute." *Id.* Indeed, it would be "absurd[]" to "convict[] individuals on corruption charges for engaging in such conduct." *McDonnell*, 136 S. Ct. at 2370.

Any broader interpretation of official acts, the *McDonnell* Court explained, also "would raise significant constitutional concerns." *Id.* at 2372. After all, "conscientious public officials arrange meetings for constituents, contact other officials on their behalf, and include them in events all the time." *Id.* Indeed, "[t]he basic compact underlying representative government *assumes* that public officials will hear from their constituents and act appropriately on their concerns." *Id.* Without some limit on what constitutes an official act, public officials "might wonder whether they could respond to even the most commonplace requests for assistance, and citizens with legitimate concerns might shrink from participating in democratic discourse." *Id.* A broad interpretation of official acts would likewise raise serious due process concerns, as treating even "the most prosaic interactions" as potential *quos* would deprive people of fair notice and encourage "arbitrary and discriminatory enforcement." *Id.* at 2373. Accordingly, if bribery statutes are to pass constitutional muster, they cannot be interpreted such that "nearly anything a public official accepts—from a campaign contribution to lunch—counts as a *quid*; and nearly anything a public official does—from arranging

a meeting to inviting a guest to an event—counts as a *quo*." *Id.* at 2372.

B. *McDonnell* Applies With Full Force to §666 and the FCPA.

1. Although *McDonnell* involved honest services fraud and Hobbs Act extortion charges, its reasoning applies equally to §666 and the FCPA, and indeed to all federal anti-corruption prosecutions premised on a theory of bribery of a public official. The Second Circuit's sweeping contrary holding—that *McDonnell* places no limitation whatsoever on charges under §666 and the FCPA—is untenable.

To be sure, neither §666 nor the FCPA specifically refers to bribery in exchange for an "official act." 15 U.S.C. §§78dd-2(a)(1)(A), 78dd-3(a)(1)(A); 18 U.S.C. §666. But neither do the statutes prohibiting honest services fraud and Hobbs Act extortion, under which McDonnell was charged and convicted. 18 U.S.C. §§1343, 1951(a). The Court interpreted those statutes (with the government's agreement) to incorporate the "official act" provision of 18 U.S.C. §201(a)(3) because that was the only way to cabin them to the kinds of bribery claims that the federal government may constitutionally prosecute. Here too, the official act requirement applies because that is the only way to ensure that the public bribery theory under which the government proceeded comports with the Constitution. Given the constitutional concerns that arise whenever the government seeks to criminalize an interaction between the public and a public official, the official act requirement must be met in all public official bribery cases, regardless of the specific

statutes under which the government chooses to charge.

If anything, those constitutional concerns have even greater force (and the official act requirement is even more pressing) in the international context of this case, where federal anti-corruption statutes were invoked to prosecute a foreign national based on interactions with foreign ambassadors to the UN. It is not at all clear what actions by the UN or its ambassadors qualify as "official acts," and permissible practices in this context may be far different from what is considered acceptable in the United States. H.R. Rep. No. 95-640, at 8 (1977) (payments that "may be reprehensible in the United States … are not necessarily so viewed elsewhere in the world"). The risk of chilling appropriate public discourse, and the due process problems of lack of fair notice and arbitrary enforcement, are thus even more substantial. And it is at least as important for the United States to avoid setting imprecise standards for interactions with foreign or UN officials that may conflict with foreign norms or UN rules as it is for the federal government to avoid "setting standards of good government for local and state officials." *McDonnell*, 136 S. Ct. at 2373.

Indeed, unconstrained by an official acts requirement, §666 and the FCPA (like other federal anti-corruption statutes) would risk becoming void for vagueness. *See id.* Section 666 criminalizes payments made "with intent to influence or reward" a covered agent "in connection with any business [or] transaction" valued above the statutory threshold. 18 U.S.C. §666(a)(2). The FCPA is, if anything, even

broader; it criminalizes not only payments made to "influenc[e] any act or decision of [a] foreign official in his official capacity" or "induc[e] such foreign official to do or omit to do any act in violation of [his] lawful duty," but also payments made to "secur[e] any improper advantage." 15 U.S.C. §§78dd-2(a)(1)(A), 78dd-3(a)(1)(A). Like the expansive definition of "official act" that the government advocated in *McDonnell*, 136 S. Ct. at 2373, each of those standards is nebulous enough to raise significant vagueness concerns—especially in the UN context, where foreign norms on what conduct constitutes public corruption may be far different from American standards, and where the proper official duties of a foreign ambassador to the UN may be far from clear. *Cf.* App.39-42 (discussing the expansive language of §666 and the FCPA).

That problem reaches its zenith under the third prong of the FCPA. Criminalizing any payment for "any improper advantage," without any further limitation, would create a wholly indeterminate (and therefore unconstitutionally vague) standard. It cannot be criminal to seek an advantage, and yet no one can know what sort of "advantage" the government will deem "improper" in any given case. *See McDonnell*, 136 S. Ct. at 2373; *Coates v. Cincinnati*, 402 U.S. 611, 613-14 (1971) (law prohibiting "annoying" conduct is unconstitutionally vague). The official act requirement is thus especially critical to limit the otherwise "standardless sweep" of §666 and the FCPA. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

2. The Second Circuit cast those concerns aside, holding that *McDonnell* imposes no limitation unless the government happens to charge a defendant under one of the specific statutes at issue in that case (or perhaps under another statute that expressly mentions "official acts"). App.36-39. Indeed, given that Virginia receives substantial federal funding, in the Second Circuit's view, the government made only one mistake in *McDonnell*: choosing to define bribery under §201 rather than under §666. That view would eviscerate *McDonnell*.

According to the Second Circuit, because the language of §666 and the FCPA is "more expansive" than the language of §201, the careful limitations that this Court adopted in *McDonnell* should not apply. App.39; *see* App.37-39 (concluding that the "textual differences" among the various federal anti-corruption statutes warrant limiting *McDonnell* to §201). That turns *McDonnell* on its head. If §666 and the FCPA are "more expansive" than the statutes in *McDonnell*, then they are in greater need of a limiting construction. And if §666 and the FCPA are not amenable to a limiting construction, they are unconstitutional. But under no circumstances does the "more expansive" nature of §666 and the FCPA make *McDonnell* and its narrowing instruction simply inapplicable.

The Second Circuit found the due process concerns identified in *McDonnell* inapplicable here because, according to the panel, the language of §666 and the FCPA gave Ng adequate notice that his conduct was unlawful. App.43-46. That conclusion is dubious at best, given the international context of this

prosecution and the different norms that foreign nationals may expect. *See* H.R. Rep. No. 95-640, at 8 (payments that "may be reprehensible in the United States … are not necessarily so viewed elsewhere in the world"). But making clear in advance that anything the government deems unlawful is unlawful does not cure constitutional notice and vagueness problems. *McDonnell* proves that very point. This Court did not view the breadth of the government's view of the statute as a virtue, nor did it ask whether McDonnell himself might have had adequate notice that his conduct was unlawful—a test he might well have failed. Rather, this Court asked whether the statutes there required a limiting construction in light of the due process concerns raised by the *other* cases that could be brought under the government's "boundless interpretation." 136 S. Ct. at 2372-73, 2375. The Second Circuit plainly erred by refusing to confront those concerns.

The Second Circuit's reasons for ignoring the federalism and democratic governance concerns identified in *McDonnell* are equally unpersuasive. As the court recognized, §666 expressly applies to state and local governments, and so must be construed to be "respectful of federalism and principles of representative government." App.48. Given that fact, the court's conclusion that "*McDonnell*'s constitutional concerns simply do not arise in the context of [§666]" is inexplicable. App.48.

The Second Circuit's suggestion that Congress expressly intended §666 to exclude any official act requirement and alter the normal federal-state balance in order to "keep[] watch on recipients of

federal funding," App.49-51, fails at every level. Nothing in the language of §666 rules out the kind of official act limitation recognized in *McDonnell*, or provides the kind of "unmistakably clear" textual statement this Court has required to infer that Congress intended to "alter the usual constitutional balance between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991) (quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989)). Nor does the concern for the federal fisc trump the concern for eliminating corruption in state government that underlies the statutes at issue in *McDonnell*. The government's interest in ensuring federal money is properly spent hardly justifies disregarding bedrock principles of federalism or criminalizing "prosaic interactions" between the citizenry and state and local officials. *See* 136 S. Ct. at 2373.

The same principles of democratic governance and respect for other sovereigns apply with equal force under the FCPA. The Second Circuit concluded otherwise, casually asserting that any potential interference with the interactions of foreign or international officials and their constituents was "no part of our constitutional concern." App.47. That blithe conclusion ignores the established canon against interpreting federal statutes to produce unnecessary interference in the affairs of foreign sovereigns, *see Empagran*, 542 U.S. at 164, and the special due process concerns raised by potential prosecutions of foreign nationals (or worse, foreign ambassadors) in this international context. It strains credulity to suggest that Congress intended to impose a stricter anti-corruption standard for interactions

between foreign nationals and foreign governments under the FCPA than it imposed for interactions with federal officials under §201.

The incoherence of the Second Circuit's position is perfectly illustrated by the facts of *McDonnell* itself. As Governor of Virginia, McDonnell was unquestionably an "agent … of a State" that receives more than $10,000 in federal funding; and according to the government, he "agree[d] to accept" money and gifts "intending to be influenced or rewarded in connection with [some] business of such [State]." 18 U.S.C. §666(a)(1)(B). If the Second Circuit is right that *McDonnell* places no limit on the *quo* necessary to sustain a federal bribery prosecution under §666 (not to mention the FCPA and numerous other federal anti-corruption statutes), then the government could have convicted McDonnell on the very theory that this Court rejected by bringing its charges under §666. That result would implicate the very same federalism problems and constitutional concerns that this Court recognized in *McDonnell*, and that the official act requirement is necessary to avoid. The government cannot evade that critical limitation on its prosecutorial powers just by citing a different statute in the indictment.

C. The Jury Instructions and Trial Record Fall Well Short of Satisfying *McDonnell*.

The panel's determination that this prosecution complied with *McDonnell* in any event is equally wrong and provides no basis for insulating the Second Circuit's evisceration of *McDonnell* from this Court's review. By allowing the government to rely on its generic idea of "formal UN support" to satisfy the

official act requirement, the decision below offers a roadmap for future prosecutions to evade *McDonnell*'s strictures.

At trial, the government relied on four purported "official acts" that it claimed as the "formal UN support" that Ng acquired by bribery: (1) the March 2012 and June 2013 letters from Ashe to the General Assembly; (2) the letters of support from Zhou; (3) Ashe's trip to Macau; and (4) the "pro bono agreement." *See, e.g.*, C.A.App.375. On appeal, however, the government abandoned three of those four actions, making no attempt to argue that the letters or the visit qualified as an official act (presumably because they clearly do not). *See McDonnell*, 136 S. Ct. at 2371-72 ("[s]imply expressing support" and "[s]etting up a meeting … or organizing an event" are not official acts); *United States v. Silver*, 864 F.3d 102, 120 (2d Cir. 2017) ("using government letterhead" is not an official act). That alone should have warranted vacatur, since the government repeatedly urged the jury to convict based on legally insufficient acts, and the jury instructions permitted as much. *See infra* p.35.

Instead, the Second Circuit affirmed on the theory that whether to provide "formal UN support" for the conference center qualified as a "question or matter" under *McDonnell*, and that at least the pro bono agreement qualified as an official act on that question. App.54-59 & n.30. But even on the dubious assumption that whether to provide "formal UN support" constitutes a "specific and focused" question or matter, the pro bono agreement did not qualify as a "decision or action" on that matter, as it neither

required Sun Kian Ip Group to build the envisioned conference center nor required UNOSSC to use it, making it at most a framework for further discussion and nothing like the kind of concrete "decision or action" *McDonnell* contemplates. 136 S. Ct. at 2371-72. It is little surprise that the jury convicted nonetheless; the district court gave no official act instruction whatsoever with respect to the FCPA charges, and its flawed instruction on the §666 charge invited the jury to convict even on the theory that mere letters or visits can qualify as official acts if they are undertaken in an "official capacity." *See* C.A.App.1422. The Second Circuit's effort to wish these errors away as harmless cannot insulate from review its sweeping holding that the official acts requirement does not apply to §666 or the FCPA at all.

In short, the decision below gives prosecutors in the Second Circuit broad leeway to circumvent *McDonnell*, authorizing the government to charge politicians and their donors with bribery in exchange for "formal support" and to rely on purported "official acts" as generic as circulating an "official letter" or making an "official visit." This Court should not allow that result to stand.

III. The Questions Presented Are Critically Important And Warrant Immediate Review.

Both of the questions presented are enormously consequential and warrant this Court's immediate attention. Absent further review, the decision below will empower federal prosecutors to bring anti-corruption charges that threaten significant harm to international comity, the federal-state balance, and democratic governance.

The serious concerns posed by the Second Circuit's decision to extend §666 to the United Nations are obvious. Given that the UN has its global headquarters in New York City, the Second Circuit's decision on this issue carries outsized importance, as the decision below eliminates any incentive for the government to ever bring a prosecution involving the UN outside the Second Circuit. By holding that §666 applies to foreign nationals in their interactions with foreign ambassadors to the UN, the Second Circuit has declared open season for federal prosecutors in the Southern District of New York to bring charges based on interactions that "may be reprehensible in the United States," but "are not necessarily so viewed elsewhere in the world." H.R. Rep. No. 95-640, at 8. And because §666 applies to both the payer *and the recipient*—unlike the FCPA, which Congress carefully tailored to the unique concerns of its international context—the decision below opens the gates to prosecutions not only against foreign nationals like petitioner, but also against high-ranking foreign ambassadors within the UN.

The threats posed by the Second Circuit's *McDonnell* holding are, if anything, more troubling. By construing *McDonnell* as inapplicable to both §666 and the FCPA (and apparently any federal statute other than the ones *McDonnell* specifically considered), the decision below effectively overturns the result of *McDonnell* itself, renders the opinion a dead letter for a broad swath of federal anti-corruption prosecutions, and raises all the same federalism and due process concerns that *McDonnell* sought to prevent. The same grounds that warranted certiorari in *McDonnell* itself equally warrant certiorari here.

A decision empowering prosecutorial overreach along either one of these two axes would present a strong argument for immediate review. By allowing overreach in both respects at once, the decision below only doubles the threat to liberty and the case for immediate review. This Court should grant certiorari on both questions presented, and restore both of these federal anti-corruption statutes to their constitutionally permissible bounds.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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