No. _____

In the
Supreme Court of the United States

Todd Sheffler,
Petitioner,

v.

United States of America,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Jeremiah R. Newhall
Counsel of Record
1630 Empire Blvd., Suite 3
Webster, NY 14580
Jeremiah@newhallfirm.com
585-865-5441
Counsel for Petitioner Todd Sheffler

QUESTIONS PRESENTED

First, in *Fowler v. United States*, 563 U.S. 668 (2011), this Court held that 18 U.S.C. § 1512(a) required the government to prove a "reasonable likelihood" that the defendant's conduct interfered with communication to a federal officer, as opposed to a state or local officer. Applying *Fowler* to 18 U.S.C. § 1512(b), the Seventh Circuit relied upon the existence of a federal investigation that began weeks *after* the offense to find a "reasonable likelihood" of a future investigation at the time of the offense. *United States v. Sheffler*, 125 F.4th 814, 824 (7th Cir. 2025). The Ninth Circuit, on very similar facts, ruled that there was not a "reasonable likelihood" of a federal investigation, instead focusing on facts that transpired at or before the time of the offense. *United States v. Johnson*, 874 F.3d 1078, 1083 (9th Cir. 2017). For what purposes may courts use facts or events that occurred *after* the offense to determine the "reasonable likelihood" of a federal investigation at the time of the offense?

Second, does the "reasonable likelihood" requirement from *Fowler v. United States*, 563 U.S. 668 (2011) also apply to offenses under 18 U.S.C. § 1519, to safeguard against the same federalism issues raised in *Fowler* that will arise from the federal prosecution of interference with purely state (or even private) investigations of matters that also happen to be within federal jurisdiction?

PARTIES TO THE PROCEEDING

All parties to the proceedings below are listed in the caption.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

PETITION FOR A WRIT OF CERTIORARI

Todd Sheffler respectfully petitions for a writ of certiorari to review the January 8, 2025 judgment of the United States Court of Appeals for the Seventh Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at *United States v. Sheffler*, 125 F.4th 814 (7th Cir. 2025) (App. 1-29.).[1]

JURISDICTION

The Seventh Circuit issued its opinion on January 8, 2025 (App. 1.). Mr. Sheffler timely moved for rehearing, which was denied on February 6, 2025, and a copy of the order denying rehearing appears at Appendix 36. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1512(b)(3)

> Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to […] hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation supervised release, parole, or release pending judicial proceedings; shall be fined under this title or imprisoned not more than 20 years, or both.

(Cont'd)

[1] Citations to "App. __" refer to documents in the appendix to this petition.

18 U.S.C. § 1519

> 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.

STATEMENT OF THE CASE

Mr. Sheffler was an Illinois state corrections officer charged with the May 17, 2018 beating of an inmate, Larry Earvin. Mr. Sheffler was charged in a five-count indictment with conspiracy to deprive civil rights in violation of 18 U.S.C. § 241 (Count 1), deprivation of civil rights, in violation of 18 U.S.C. § 242 (Count 2), conspiracy to engage in misleading conduct, in violation of 18 U.S.C. § 1512(b), (k) (Count 3), falsification of records in a federal investigation, in violation of 18 U.S.C. § 1519 (Count 4), and misleading conduct, in violation of 18 U.S.C. § 1512 (Count 5). (App. 5).

This petition concerns counts 3, 4, and 5. Mr. Sheffler was charged with making false statements about the assault in two ways: First, in a written state prison report and, second, in an interview with Illinois state police. (App. 4.) Second, Mr. Sheffler was also charged with conspiring with his co-defendants to alter their state incident reports. (App. 4.) No federal investigation was underway or contemplated at the time of the offenses.

Mr. Sheffler was tried and convicted before a jury in the United States District Court for the Central District of Illinois (Hon. Sue E. Myerscough).

Mr. Sheffler timely moved for a judgment of acquittal, arguing the government had presented insufficient evidence of a "reasonable likelihood" that his acts would interfere with a federal investigation, as opposed to a state, local, or private investigation. (App. 30-32). The motion was denied. (App. 35.) Mr. Sheffler was sentenced to 20 years in prison, including 5 years on Counts 3, 4, and 5 (at issue in this appeal), which are concurrent to one another but consecutive to his other counts. He is currently incarcerated pursuant to that judgment of conviction (entered March 22, 2023).

On direct appeal, Mr. Sheffler argued that the government's evidence was insufficient to support his conviction on counts 3, 4, and 5 of the indictment. In affirming Mr. Sheffler's conviction, the Court of Appeals held, first, that there was sufficient evidence for a jury to find a "reasonable likelihood" that Mr. Sheffler's acts under Counts 3 and 5 would interfere with a federal investigation; and second, that the "reasonable likelihood" requirement did not apply to Count 4 of the indictment, which charged Mr. Sheffler with violating 18 U.S.C. § 1519. (App. 11-21).

(Cont'd)

REASONS FOR GRANTING THE WRIT

FIRST, THE SEVENTH CIRCUIT AFFIRMED MR. SHEFFLER'S CONVICTION BY ERRONEOUSLY RELYING UPON EVIDENCE OF EVENTS *AFTER* THE CHARGED CONDUCT TO FIND A "REASONABLE LIKELIHOOD" OF A FEDERAL INVESTIGATION AT THE TIME OF THE CONDUCT IN A DECISION THAT CONFLICTS WITH THE NINTH CIRCUIT AND THIS COURT SHOULD GRANT THE PETITION FOR A WRIT OF CERTIORARI TO RESOLVE WHETHER *POST HOC* EVENTS CAN PROVE A "REASONABLE LIKELIHOOD" AT THE TIME OF THE OFFENSE.

Introduction to First Question

In *Fowler*, this Court held that "the Government must show a *reasonable likelihood* that […] at least one relevant communication would have been made to a federal law enforcement officer." *Fowler*, 563 U.S. at 677 (italics in original). The When the Seventh Circuit applied *Fowler* to 18 U.S.C. § 1512(b)(3), the court relied upon the existence of a federal investigation that began weeks *after* the offense to find a "reasonable likelihood" of a future investigation at the time of the offense. *United States v. Sheffler*, 125 F.4th 814, 824 (7th Cir. 2025). Petitioner Todd Sheffler's convictions under 18 U.S.C. § 1512 and 18 U.S.C. § 1519 should be vacated because they were improperly based on evidence of events that happened *after* the charged conduct to determine whether there was a "reasonable likelihood" of a federal investigation *at the time* of the charged conduct.

This was an investigation by state police of an assault on a state prisoner by state prison guards. Mr. Sheffler's charges were based upon writing a state prison report and speaking to state police officers. To find a "reasonable likelihood" of a federal, as opposed to a state, investigation, the Seventh Circuit relied in part upon the fact that a federal investigation later happened, and that it happened within

weeks of the assault. (App. 16-17.) In so doing, the court committed a logical fallacy; the subsequent outcome of an event cannot alter the odds of that event before it happened. In relying upon this *post hoc* evidence to distinguish this case from others involving state prison reports without federal involvement, the Seventh Circuit fundamentally altered this Court's rule.

Decisions Of The Seventh And Ninth Circuit Apply *Fowler*'s Standard Differently To Substantively Identical Facts, Including How To Apply *Post Hoc* Evidence

The Seventh Circuit's reasoning conflicts with the Ninth Circuit's decision in *United States v. Johnson*, 874 F.3d 1078 (9th Cir. 2017), which found virtually identical evidence was insufficient. In that case, Mr. Johnson was a correctional deputy working in a county jail. *Johnson*, 874 F.3d at 1079. He was convicted under 18 U.S.C. § 1512(b)(3) for lying in his incident report about his assault on an inmate. *Johnson*, 874 F.3d at 1079-80. The Ninth Circuit reversed his conviction because there was insufficient evidence for any jury to find a reasonable likelihood of a federal investigation. *Johnson*, 874 F.3d at 1083.

The government's evidence of "reasonable likelihood" of a federal investigation was virtually identical in *Johnson* and *Sheffler*. In both cases, the government relied upon evidence (1) Defendant used an official state incident report form, (2) Defendant was trained and sworn to obey state and federal laws; (3) Defendant knew about beating of a state prisoner by state government corrections officers; (4) Defendant made a report that came to FBI during subsequent

investigation; and (5) A federal investigation eventually took place. *Compare Sheffler*, App. 19-22 *with Johnson*, 874 F.3d at 1083.

Unlike the Seventh Circuit, the Ninth Circuit rejected as largely irrelevant that "a federal investigation did, in fact, occur." *Johnson*, 874 F.3d at 1083. Nor was the Ninth Circuit persuaded by other *post hoc* evidence, such as the federal government later receiving a copy of the report through an expert witness. *Id.*

Whether and how courts consider such *post hoc* events in determining the likelihood of an event *proctor hoc* has not previously been explained by this Court. A decision on this matter will have implications that extend far beyond this case. Given the significance of the issue, Mr. Sheffler respectfully requests that this Court grant his petition for a writ of certiorari to resolve this question.

SECOND, THE SEVENTH CIRCUIT CONCLUDED THAT 18 U.S.C. § 1519 DOES NOT CONTAIN THE SAME "REASONABLE LIKELIHOOD" REQUIREMENT AS 18 U.S.C. § 1512, WHICH CREATES THE SAME FEDERALISM ISSUES RECOGNIZED IN *FOWLER* AND THIS COURT SHOULD GRANT THE PETITION FOR A WRIT OF CERTIORARI TO RESOLVE THIS ISSUE

Introduction to Second Question

In a series of decisions, this Court has interpreted federal obstruction of justice statutes as applying to obstruction of federal, rather than state or private, investigations. *See, e.g.*, *United States v. Aguilar*, 515 U.S. 593, 595 (1995) (Holding the "nexus requirement developed in recent court of appeals decisions […] is a correct construction of § 1503's very broad language."); *Arthur Andersen LLP v. United States*, 544 U.S. 696, 708 (2005) (Holding that offense under prior version of § 1512(b) must have some nexus to a foreseeable proceeding). Some federal district courts have concluded that a federal nexus requirement applies to § 1519 as well.

See, e.g., United States v. Moyer, 726 F. Supp. 2d 498, 505 (M.D. Pa. 2010); *United States v. Russell*, 639 F. Supp. 2d 226, 234 (D. Conn. 2007). Section 1519, "when read alongside §§ 1503 and § 1512(b)(2), contains similar language to that which led the Court to read a nexus requirement into those statutes." *Moyer*, 726 F. Supp. 2d at 505.

Mr. Sheffler argued on direct appeal that § 1519 required the same "reasonable likelihood" of a federal, as opposed to state or private, investigation, but the Seventh Circuit rejected that interpretation. (App. 19-20.) In doing so, the Seventh Circuit and other courts of appeals have departed from this Court's federalism precedents limiting the reach of obstruction of justice statutes to those investigations reasonably linked to federal investigations or proceedings.

The Federalization Of Obstruction Of State And Private Investigations Is A Matter Of Exceptional Importance That Should Be Decided By This Court

In this case, the Seventh Circuit held § 1519 requires only proof of (a) intent to hinder any investigation of a matter and (b) separately, that the matter was within the jurisdiction of the United States. (App. 20.) "It is enough for the defendant to intend to obstruct an investigation, and on an unrelated note, for the investigation to be within federal jurisdiction." *Id.* Every circuit court of appeals to address this question has agreed with the Seventh Circuit. *See, e.g., United States v. Hassler*, 992 F.3d 243, 247 (4th Cir. 2021); *United States v. Gonzalez*, 906 F.3d 784, 795 (9th Cir. 2018); *United States v. Gray*, 692 F.3d 514, 519 (6th Cir.

2012); *United States v. Moyer*, 674 F.3d 192, 208-09 (3d Cir. 2012). Those decisions were incorrect, and this Court should correct them.

Federalism was the cornerstone in this Court's statutory construction analysis of § 1512 in *Fowler*. "We have adopted a federalism principle that applies when a statute would render traditionally local criminal conduct a matter for federal enforcement. Unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance in the prosecution of crimes." *Fowler*, 563 U.S. at 684-85 (internal citations and quotation omitted). This Court warned that reading the statute broadly would impact "purely state investigations and proceedings" and thus "extend[] the scope of this federal statute well beyond the primarily federal area that Congress had in mind." *See Fowler*, 563 U.S. at 672. That logic applies equally to § 1519, because the Seventh Circuit's interpretation would allow federal prosecution for intending to hinder a purely state investigation of any matter that fell into an overlapping federal jurisdiction. *See Sheffler*, 125 F.4th at 826, (App. 20.).

Not only would this reading of § 1519 federalize the crime of hindering purely state investigations of a "matter" that also fall within federal jurisdiction, it would reach even non-governmental investigations of any "matter" within the broad sweep of federal jurisdiction. Thus, hindering a newspaper reporter from investigating federal wage law violations would also violate the statute, because no *federal* investigation is required; only that the "matter" is within the jurisdiction of the United States. Without some requirement of a federal nexus, the Seventh Circuit's

approach criminalizes interfering with even investigations by *other governments*, so long as those governments investigate matters within federal jurisdiction, because the Seventh Circuit concluded that the nature of the investigation has no role to play. "To sustain a conviction under § 1519, it is enough for the government to prove that the defendant intended to obstruct the investigation of any matter as long as **that matter** falls within the jurisdiction of a federal department or agency." *Sheffler*, 125 F.4th at 826; (App. 21) quoting *Gonzalez*, 906 F.3d at 795. Because only the *matter* under the investigation must be federal, even private or foreign investigations of matters within federal jurisdiction would be covered by the statute. *Id.*

That interpretation matches neither the plain text nor the purpose of § 1519. The phrase "the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States" makes logical sense only if it means an investigation or administration by the United States. The Ninth Circuit, despite not applying "reasonable likelihood" to § 1519, previously described the statute as prohibiting "intent to obstruct an actual or contemplated investigation **by the United States** of a matter within its jurisdiction." *United States v. Katakis*, 800 F.3d 1017, 1023 (9th Cir. 2015) (bold added); *but see Gonzalez*, 906 F.3d at 795 (holding no requirement to show federal nexus). Without at least a reasonable likelihood of a federal investigation, how can the defendant have intended to obstruct an investigation "by the United States"? *Id.*

The Court of Appeals' interpretation makes even less sense when applied to the other verb accompanying investigation, "administration." If the proper administration need not be by the federal government or its agents, then it becomes difficult to understand what the law criminalizes. Unlike "investigation," the word "administration" is modified by "proper," but there's no other differentiation. Congress could not reasonably intended to have federalized the criminal law of interfering with purely state or private administration of matters that also fall within the broad jurisdiction of the United States.

Petitioner Todd Sheffler's convictions under 18 U.S.C. § 1519 should be vacated because the same federalism concerns require proof of a "reasonable likelihood" that his conduct would impede a federal, as opposed to a state or private, investigation.

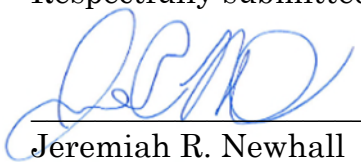
Mr. Sheffler's Petition for a Writ of Certiorari Should Be Granted

Given the importance and broad reach of a decision addressing the use of *post hoc* events to determine their likelihood at the time of an offense and given the federalism concerns of allowing federal law to criminalize interference with purely state or private investigations of matters within federal jurisdiction, Mr. Sheffler's petition for a writ of certiorari should be granted to allow this Court to resolve this issue.

CONCLUSION

For the reasons above, Mr. Sheffler respectfully requests that this Court grant his petition for a writ of certiorari.

Respectfully submitted,



Jeremiah R. Newhall
Counsel of Record
1630 Empire Blvd., Suite 3
Webster, NY 14580
Jeremiah@newhallfirm.com
585-865-5441
Counsel for Petitioner Todd Sheffler

May 6, 2025