No. 25-1082

In the Supreme Court of the United States

JOSEPH SULLIVAN, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the jury instructions in this case adequately conveyed the nexus requirement under 18 U.S.C. 1505.

PARTIES TO THE PROCEEDING

Petitioner (defendant-appellant below) is Joseph Sullivan. Respondent (plaintiff-appellee below) is the United States of America.

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OPINIONS BELOW

The amended opinion of the court of appeals (Pet. App. 1a-23a) is reported at 159 F.4th 579. An earlier order of the court of appeals is reported at 131 F.4th 776. The order of the district court (Pet. App. 40a-66a) is available at 2023 WL 163489.

JURISDICTION

The judgment of the court of appeals was entered on March 13, 2025. A petition for rehearing was denied on November 12, 2025 (Pet. App. 1a-5a). On January 30, 2026, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including March 12, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of California, petitioner was convicted on one count of obstructing a proceeding before a federal agency, in violation of 18 U.S.C. 1505, and one count of misprision of a felony, in violation of 18 U.S.C. 4. Pet. App. 40a. Petitioner was sentenced to three years of probation. *Id.* at 26a. The court of appeals affirmed. *Id.* at 6a.

1. In 2014, using a virtual "key" available on the software-developer platform GitHub, a hacker accessed troves of sensitive information pertaining to tens of thousands of drivers for Uber Technologies, Inc. Pet. App. 6a-7a, 41a. Following that security breach, the Federal Trade Commission (FTC) began investigating Uber's data security practices, including its storage of rider and driver information, as well as its allegedly deceptive statements about how that sensitive information was kept. *Id.* at 7a, 42a. In 2015, petitioner became Uber's Chief Security Officer, and in August 2016, he also assumed the title of Deputy General Counsel. *Id.* at 7a. By that time, petitioner had become "very involved in Uber's response to the FTC's ongoing investigation," taking the lead on multiple fronts. *Ibid.*

In October 2016, hackers carried out another attack on Uber in the same manner as the 2014 breach, this time obtaining the names and driver's license numbers of near 600,000 people. Pet. App. 7a. It was "the same type of breach on the same infrastructure, at an even larger scale, as in the 2014 attack." *Id.* at 7a-8a. Notwithstanding the "similarities between the 2016 incident and the 2014 incident that the FTC was already investigating," petitioner did not tell anyone at the FTC

about what happened. *Ibid.* To the contrary, petitioner attempted to "re-characterize the hack" as just another successful instance of "Uber's Bug Bounty Program," in which it solicited and rewarded external security researchers to identify system weaknesses and bring them to Uber's attention. *Id.* at 8a. He had staffers "track down the hackers and pressure them into signing [NDAs]" that rebranded their attack as "'research' into 'vulnerabilities'" at Uber. *Ibid.* And he and others arranged for the hackers to receive $100,000 in exchange for their signatures and their agreement to delete any data they had copied. *Ibid.*

Petitioner never told Uber's General Counsel about those efforts, despite telling other employees that he had. Pet. App. 8a. Nor did he tell the FTC. *Id.* at 9a. Instead, petitioner approved statements to the FTC that falsely asserted that Uber's stored private data was encrypted, even though he knew the latest hack "had exposed the fact that some of this data was unencrypted." *Ibid.* And when Uber hired a new Chief Executive Officer in the fall of 2017, petitioner "informed [the CEO] of the hack, but he omitted and misrepresented key details: He falsely stated that no data had been downloaded; mischaracterized the timing of the payment to the hackers; and omitted the magnitude of the breach and the amount of money paid to resolve it." *Ibid.*

When the new CEO discovered the truth, he fired petitioner and publicly disclosed the 2016 data breach. Pet. App. 9a. The FTC revised its complaint against Uber to include "specific[] reference[s] [to] the 2016 data breach." *Ibid.*

2. A grand jury in the Northern District of California charged petitioner with one count of obstructing a proceeding before a federal agency, in violation of 18 U.S.C. 1505; one count of misprision of a felony, in violation of 18 U.S.C. 4; and three counts of wire fraud, in violation of 18 U.S.C. 1343. Superseding Indictment 1-7. The government dismissed the wire fraud charges, and petitioner proceeded to trial on the obstruction and misprision charges. Pet. App. 41a.

At trial, the jury was instructed that in order to find petitioner guilty on the obstruction count, it had to find (1) "there was a proceeding pending before a department or agency of the United States"; (2) "the defendant was aware of the proceeding"; and (3) "the defendant intentionally endeavored corruptly to influence, obstruct, or impede the pending proceeding." C.A. E.R. 51. The jury was further instructed that acting "corruptly" included "making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information." *Id.* at 52.

The jury found petitioner guilty on both the obstruction count and the misprision count. Pet. App. 10a. Petitioner moved for a judgment of acquittal or a new trial. *Ibid.* Among other things, he argued that Section 1505 required a "nexus" between his conduct and the FTC's pending investigation. *Id.* at 46a-47a. And he asserted both that the evidence was insufficient to show such a nexus and that the jury instructions were defective for failing to include an express nexus requirement. See *ibid.* The district court rejected those arguments, and denied petitioner's motion. *Id.* at 48a-53a, 66a (relying on *United States* v. *Bhagat*, 436 F.3d 1140 (9th Cir. 2006)).

3. The court of appeals affirmed. Pet. App. 1a-23a.

During the course of the appeal, the government revised its prior position and agreed with petitioner that Section 1505 requires a "nexus between the allegedly obstructive conduct and the pending proceeding." Pet. App. 10a n.2; see Gov't 28(j) Letter 1-2 (May 31, 2024). But although "the parties * * * agreed that a Section 1505 conviction necessitates a *finding* of a nexus," they "disagree[d] as to whether an additional *instruction* as to a nexus finding was required" in this particular case. Pet. App. 10a n.2. Instead, the government maintained that "the instructions as a whole communicated a nexus requirement." Gov't 28(j) Letter 2. The government also argued any instructional error was harmless. *Ibid.*

The court of appeals agreed with the government that no additional instruction was required. Pet. App. 12a. It observed that the facts of this case "involved only one proceeding, of which [petitioner] was undisputably aware." *Id.* at 14a. And it further observed that while its precedent "require[d] a nexus by implication," nothing in the instruction—which tracked the statutory elements—"undermined or contradicted that implication," and petitioner "was not entitled to an additional instruction that merely duplicated what the jury had already been told." *Ibid.* (citation and internal quotation marks omitted).

In light of its determination that no instructional error occurred, the court of appeals "decline[d] to reach the question of harmlessness." Pet. App. 14a n.3. The court did, however, reject petitioner's "challenge to the sufficiency of the evidence as to obstruction, based on a lack of nexus." *Ibid.* The court observed that "a 'rational trier of fact' could have found that there was a

nexus between [petitioner's] choices and the FTC proceeding * * * whether 'nexus' is defined as a 'natural or probable effect' or as a 'relationship in time, causation, or logic.'" *Ibid.* (citations omitted).

ARGUMENT

Petitioner contends (Pet. 10-22) that the court of appeals wrongly adhered to circuit precedent in "rejecting a nexus requirement" for his obstruction count under 18 U.S.C. 1505. Although petitioner is correct that Section 1505 requires a nexus between a defendant's obstructive conduct and a governmental proceeding, he is incorrect in contending that the issue is presented in this case. Before the court of appeals, the government agreed that Section 1505 requires a nexus. Pet. App. 10a n.2; Gov't 28(j) Letter 2. And the court of appeals accepted that common ground in resolving this appeal—focusing exclusively on whether the particular jury instructions in this case adequately conveyed that requirement. Pet. App. 10a-14a & n.2. That case-specific determination does not warrant this Court's review, particularly because it was correct and because any instructional error would be harmless in any event.

1. Section 1505 makes it a crime to "corruptly" "influence[], obstruct[], or impede[] or endeavor[] to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States." 18 U.S.C. 1505. As the government acknowledged below, under this Court's precedents, that prohibition includes a nexus requirement that links the obstructive conduct and the governmental proceeding. Gov't 28(j) Letter 1-2; see, *e.g.*, *Marinello* v. *United States*, 584 U.S. 1, 11-13 (2018); *Arthur*

Andersen LLP v. *United States*, 544 U.S. 696, 707-708 (2005); *United States* v. *Aguilar*, 515 U.S. 593, 599-600 (1995).

The court of appeals accepted the parties' consensus on that issue. The court observed that "the parties ultimately agreed that a Section 1505 conviction necessitates a finding of a nexus between the allegedly obstructive conduct and the pending proceeding." Pet. App. 10a n.2 (emphasis omitted). It therefore took that point as a given, and focused exclusively on "whether an additional instruction as to a nexus finding was required" in this case. *Id.* at 10a-14a (emphasis omitted). This case therefore does not implicate the question presented, which concerns whether Section 1505 "carr[ies] the requirement, on which a jury must be instructed, that the defendant's conduct have a nexus to an agency proceeding," Pet. i, or petitioner's argument (Pet. 10-20) that it does. Instead, the decision below addresses the factbound issue of whether the instructions here adequately conveyed a nexus requirement. See Pet. App. 10a-14a. Its factbound resolution of that issue does not warrant this Court's review. See Sup. Ct. R. 10; see also, *e.g.*, *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) (explaining that this Court "do[es] not grant a certiorari to review evidence and discuss specific facts").

That is particularly so because the decision below is correct. As the court of appeals explained, "this case involved only one proceeding, of which the defendant was undisputably aware." Pet. App. 14a. The direct object of any obstruction was thus plain from context. In addition, the jury instructions themselves made clear that to find petitioner guilty, the jury had to find that

petitioner "intentionally endeavored to corruptly influence, obstruct, or impede" that FTC proceeding. C.A. E.R. 51. And it defined "[c]orruptly" to "include" "withholding * * * information" "with an improper purpose." *Id.* at 52. Put together, on these facts, Section 1505's nexus requirement was apparent by "implication." Pet. App. 14a. The district court accordingly did not err in declining to add an express instruction to the same effect. *Ibid.*

2. To the extent that petitioner addresses the actual jury instructions in this case, see Pet. 20-22, he appears to suggest that a nexus can never be conveyed in jury instructions through anything other than an express instruction. But petitioner does not cite any court of appeals adopting that categorical rule, nor is the government aware of one. Cf. *United States* v. *White Horse*, 35 F.4th 1119, 1122-1123 (8th Cir.) (finding that nexus requirement was "implicit in § 1512(c)(1)'s *mens rea* requirement, which the challenged instruction covered"), cert. denied, 143 S. Ct. 283 (2022). And the relief that this Court has granted in decisions in which it has corrected a court of appeals' mistaken view that a particular statute did not require a nexus, see Pet. 21, do not call into question the court of appeals' analysis of the specific Section 1505 instructions in this case.

The Court's decision in *Aguilar* affirmed the reversal of a Section 1503 conviction without addressing a specific jury-instruction challenge. See 515 U.S. at 597, 606. *Arthur Andersen* addressed the specific jury instructions for the charged violation of 18 U.S.C. 1512(b), which were not the same as the instructions here. See 544 U.S. at 706-708. *Fowler* v. *United States*, 563 U.S. 668 (2011), did not directly address the adequacy of jury

instructions for a charge of violating 18 U.S.C. 1512(a)(1)(C), and it remanded for the "lower courts to determine whether, and how, the standard" that it announced "applies in this particular case." 563 U.S. at 678. And *Marinello* involved instructions that omitted any requirement to "find that Marinello knew he was under investigation and intended corruptly to interfere with that investigation," 584 U.S. at 5, infirmities that were not present here.

Nor do any of the court of appeals decisions cited by petitioner (Pet. 10-13) suggest any error in this case. In *United States* v. *Quattrone*, 441 F.3d 153 (2d Cir. 2006), the jury instructions involved an affirmatively wrong "formulation of the law" by allowing a finding of guilt even without the defendant's knowledge of the pending proceeding, *id.* at 178, an error not present here. In *United States* v. *Callipari*, 368 F.3d 22 (1st Cir. 2004), cert. granted, judgment vacated on other grounds, 543 U.S. 1098 (2005), the court of appeals *upheld* an instruction that did not include petitioner's proposed nexus formulation. See 368 F.3d at 43. In the nonprecedential decision in *United States* v. *Durham*, 432 Fed. Appx. 88 (3d Cir. 2011), the court "assume[d] without deciding" that Section 1505 has a nexus requirement and simply took the government-requested nexus instruction as correct. See *id.* at 91 n.5. And as petitioner acknowledges (Pet. 12), in *United States* v. *Senffner*, 280 F.3d 755 (7th Cir.), cert. denied, 536 U.S. 934 (2002), the court did not address the jury instructions at all.

3. Further review is also unwarranted because any instructional error would be harmless in light of the overwhelming evidence of a nexus to the FTC's investigation of Uber. Petitioner's conduct here was akin to

the type of cover-up that even he describes (Pet. 1) as "obvious" obstructive conduct. When petitioner learned of the 2016 breach, he stated that "we can't let this get out." Govt C.A. Br. 36. He worked to "bribe the hackers into silence" and "launder the ransom payment through the bug bounty program." *Id.* at 36-37. Petitioner then "authorized Uber to submit to the FTC a categorically false statement about the security of private data maintained by Uber," and "time and time again" later "caused Uber to make false and misleading representations to the FTC, all of which prevented the FTC from learning the truth." *Id.* at 37.

The sole purpose of the conduct was to obstruct, and petitioner's actions were tailored toward that end. Accordingly, even assuming that a nexus requirement was not already conveyed to the jury in the instructions that it received, the additional instruction that petitioner seeks would have made no difference. Had the jury received another instruction "that the defendant's conduct had the natural and probable effect of obstructing a proceeding and that the defendant knew that his actions are likely to have that effect," Pet. 1 (brackets, citation, and internal quotation marks omitted), it still would have found guilt based on petitioner's sustained effort to directly cover up an incriminating episode that is under active agency investigation.

Petitioner's efforts to recast (Pet. 1) his conduct as just "doing his job" are unsound. The jury necessarily determined that petitioner "intentionally endeavored corruptly to influence, obstruct, or impede" the FTC investigation, C.A. E.R. 51; whether or not that was his job, it was illegal; and it evidently was not his job, because his employer fired him after the truth came out.

Pet. App. 9a. Nor is petitioner correct in asserting (Pet. 8) that the district court "rejected the [g]overnment's central theory of the case" at sentencing. That is wrong. In the passage quoted by petitioner, the court simply observed that petitioner's obstructive conduct had in fact proven "very successful" at "bottl[ing] up" the breach. C.A. E.R. 263. But that says nothing about whether his conduct had a nexus to an FTC investigation.

Far from condoning petitioner's conduct, the district court made clear that whether or not "misguided loyalty to an employer, or gambling that concealment is a better choice than being honest, than letting the government know when you know they need to know about something, it just can't be excused, even with people who are extremely important, who have high pressure jobs. Nobody is above the law." C.A. E.R. 274. And while the court ultimately sentenced petitioner to probation, it emphasized that "to the extent that anybody thinks" this was not "a very serious offense," or merely "ha[d] to do with judgment calls," "they do not understand what happened in this case." *Id.* at 272. "[I]f I have a similar case tomorrow, even if the defendant had the character of Pope Francis, they would be going to prison, and I want that to be known." *Id.* at 273.

4. Finally, the question presented has limited import. Given the government's revised position on the nexus requirement of Section 1505, courts may well provide more specific nexus instructions, when appropriate, in future cases.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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