No. 25-461

In the Supreme Court of the United States

EDWARD MANGANO, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner, as County Executive of Nassau County, New York, committed honest-services fraud, in violation of 18 U.S.C. 1343 and 1346, by accepting a $100,000 per-year bribe in exchange for pressuring officials of a town within Nassau County to unlawfully guarantee $25 million in loans for the briber.

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OPINIONS BELOW

The opinions of the court of appeals (Pet. App. 1a-75a, 76a-86a) are available at 128 F.4th 442 and 2025 WL 485381. An order of the district court denying petitioner's posttrial motions is available at 2022 WL 65775. An order of the district court denying petitioner's pretrial motions (Pet. App. 87a-93a) is unreported. Another order of the district court denying petitioner's pretrial motions (Pet. App. 94a-135a) is available at 2018 WL 851860.

JURISDICTION

The judgment of the court of appeals was entered on February 13, 2025. A petition for rehearing was denied on May 16, 2025 (Pet. App. 136a). On July 14, 2025, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including October 13, 2025, 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 Eastern District of New York, petitioner was convicted on one count of conspiring to commit federal-program bribery, in violation of 18 U.S.C. 371; one count of federal-program bribery, in violation of 18 U.S.C. 666(a)(1)(B); one count of conspiring to commit honest-services wire fraud, in violation of 18 U.S.C. 1343, 1346, and 1349; one count of honest-services wire fraud, in violation of 18 U.S.C. 1343 and 1346; and one count of obstructing justice, in violation of 18 U.S.C. 1512(c)(2) and (k). Judgment 1-2. He was sentenced to 144 months of imprisonment, to be followed by three years of supervised release. Judgment 3-4. The court of appeals reversed petitioner's convictions on the federal-program bribery and related conspiracy counts, affirmed his convictions on the remaining counts, and remanded for further proceedings. Pet. App. 1a-75a.

1. Beginning in 2009, petitioner served as the County Executive of Nassau County, New York. Pet. App. 5a. As such, he was the highest-ranking elected official in the County. *Ibid.* One of the towns that lies within the County is the Town of Oyster Bay, home to more than 300,000 county residents who were petitioner's constituents. *Ibid.*

Harendra Singh, a prominent area businessman and restaurateur, held licenses to operate two concession facilities owned by the Town. Pet. App. 7a-8a. Singh's concession agreement with the Town, as amended in September 2008, obliged him to make nearly $5 million in improvements. *Id.* at 9a. Around the time of the amendment, Singh purchased a $7.5-million restaurant.

Ibid. Those transactions stretched Singh's finances, leaving his businesses at the brink of collapse. *Ibid.* Singh sought loans from numerous financial institutions, but each declined. *Ibid.*

Although he had been a friend of petitioner's for more than two decades before petitioner's election as County Executive, only after the election did "Singh beg[i]n plying his newly powerful friend with lavish gifts," worth tens of thousands of dollars. Pet. App. 6a. And in January 2010, Singh approached petitioner with a proposal whereby the Town would guarantee a loan to Singh. *Id.* at 9a. Petitioner promised to "get it done" and, in Singh's presence, called the Town Supervisor about the scheme. *Id.* at 10a. During a subsequent meeting with Singh, the Town Supervisor assured Singh that "[petitioner] is very supportive of this loan guarantee and I'm going to support it. We will do everything in our power to get it done for you." *Ibid.* (brackets and citation omitted). The Town Attorney and the Deputy Town Attorney—whom Singh also bribed—provided Singh with similar assurances. *Id.* at 8a n.6, 10a.

The Town's outside counsel, however, identified multiple infirmities with the proposal. Pet. App. 10a-11a. Specifically, New York law prohibits local governments from guaranteeing loans for individuals; the proposed guarantee did not require Singh to spend the loan money on the Town; and the arrangement subjected the Town to substantial financial risk if Singh defaulted on the loan. *Ibid.* When Singh learned of outside counsel's concerns, he was "devastated" that the loan guarantee would not happen. *Id.* at 12a (citation omitted).

"Singh turned again to [petitioner], seeking 'to bypass' [outside counsel] and [the Town Attorney] 'and go to the highest level to get this thing back on track.'"

Pet. App. 12a (citation omitted). Singh explained to petitioner that outside counsel "is trying to come up with excuses not to get this loan done" and that Singh "really needed [petitioner's] help" to avoid "a total disaster." *Ibid.* (brackets and citation omitted) Petitioner offered to contact his former law firm to obtain a letter opining that the loan guarantee was legal. *Ibid.*

Two days later, to "make sure that [petitioner] was happy and doing whatever needs to be done to make sure this loan gets back on track," Singh arranged a payment to petitioner's wife. Pet. App. 12a (brackets, citation, ellipses, and internal quotation marks omitted). The payment was styled as a paycheck for a "no-show" job—with no duties or responsibilities—as marketing director at Singh's restaurant with a salary of approximately $100,000 per year. *Id.* at 13a. Singh later admitted that he gave petitioner's wife the no-show job at petitioner's request "because [he] needed this loan guarantee done." *Ibid.*

Four days after the payment to petitioner's wife, petitioner confirmed to Singh that his former law firm would work to persuade the Town to guarantee Singh's loans. Pet. App. 13a-14a. Petitioner also spoke to the Town Supervisor, John Venditto, to "pressur[e]" the Town "'to get this [guarantee] done.'" *Id.* at 14a (citation omitted; brackets in original). Venditto overruled outside counsel's concerns about the legality of the guarantees, stating that he was doing so based on his conversation with petitioner. *Ibid.*

Two weeks later, petitioner organized a meeting with Singh and officials from the County and the Town, including Venditto, the Town Attorney, the Deputy Town Attorney, the outside counsel, and the Chief Deputy County Executive, as well as two partners from peti-

tioner's former law firm. Pet. App. 15a. Petitioner listed the meeting on his official County Executive calendar. *Ibid.* At the meeting, he urged the attendees to "make Singh's guarantee scheme a reality," putting his hand on Singh's shoulder and saying, "'Let's see if we can find a way to help Mr. Singh.'" *Id.* at 15a-16a (citation omitted).

The following day, the Deputy Town Attorney relayed a proposal from petitioner's former law firm to amend Singh's concession agreements to effectively guarantee the loans. Pet. App. 16a. Outside counsel responded that the proposal "was completely bogus and a sham and was not legal." *Ibid.* (citation omitted). The Town Attorney also expressed reservations but stated that he had been "'overruled' by 'two of the most influential people in the County'"—petitioner and Venditto. *Id.* at 16a-17a (citation omitted).

Despite the reservations expressed by the attorneys, the Town Board subsequently approved a resolution authorizing Venditto to amend Singh's concession agreements "to facilitate [his] ability to obtain financing." Pet. App. 17a (citation omitted). Venditto and the Town Attorney executed agreements that effectively guaranteed four loans to Singh totaling $25 million. *Id.* at 17a-21a. Singh ultimately defaulted on multiple loans. See *id.* at 21a n.8.

2. A grand jury in the Eastern District of New York charged petitioner and Venditto with one count of conspiring to commit federal-program bribery, in violation of 18 U.S.C. 371; one count of federal-program bribery, in violation of 18 U.S.C. 666(a)(1)(B); one count of conspiring to commit honest-services wire fraud, in violation of 18 U.S.C. 1343, 1346, and 1349; and one count of honest-services wire fraud, in violation of 18 U.S.C.

1343 and 1346. Superseding Indictment 11-15. The grand jury charged petitioner with a second count of honest-services wire fraud, in violation of 18 U.S.C. 1343 and 1346, and extortion, in violation of 18 U.S.C. 1951(a). Superseding Indictment 15-16. The grand jury also charged petitioner and his wife with one count of conspiring to obstruct justice, in violation of 18 U.S.C. 1512(c)(2) and (k). Superseding Indictment 16.

Before trial, petitioner moved to dismiss the indictment, claiming, *inter alia*, that he could not have committed federal-program bribery or honest-services fraud in connection with the loan-guarantee scheme because he was not a Town agent and did not owe the Town a fiduciary duty. Pet. App. 99a-100a. The district court found petitioner's claim premature and denied the motion. *Id.* at 100a-102a. Petitioner, his wife, and Venditto proceeded to trial. *Id.* at 27a. The jury acquitted Venditto but failed to reach a verdict as to petitioner or his wife. *Id.* at 27a-28a. The court declared a mistrial as to those charges. *Id.* at 28a.

At the retrial, the district court instructed the jury, over petitioner's objection, that it could find him guilty of bribery or honest-services fraud if he, *inter alia*, "us[ed his] official position to exert pressure on or to order another to perform an official act." Pet. App. 57a (citation omitted). The court also overruled petitioner's objection to an instruction that, with respect to honest-services fraud, "the Government must prove that the goal of the scheme was to deprive Nassau County and/or the Town and their citizens of the intangible right to the honest services of [petitioner]." *Id.* at 49a (brackets and citation omitted).

The jury acquitted petitioner on the extortion count and one count of honest-services wire fraud, but found

him and his wife guilty on the remaining counts. Verdict Sheet 1-5. In a special verdict form, the jury specified that it had found petitioner guilty based on his involvement in the Town loan-guarantee scheme and not a separate scheme involving contracts that Singh had received from Nassau County. *Id.* at 1-2. The district court denied petitioner's post-verdict motions for a judgment of acquittal or a new trial. Pet. App. 30a-31a; see 2022 WL 65775. The court sentenced petitioner to 144 months of imprisonment, to be followed by three years of supervised release. Judgment 3-4.

3. The court of appeals reversed petitioner's convictions on the federal-program bribery and related conspiracy counts, affirmed his convictions on the honest-services-fraud and related conspiracy counts as well as the obstruction count, and remanded for further proceedings. Pet. App. 1a-75a. In a separate unpublished order, the court rejected petitioner's challenge to the denial of his motion for a new trial. *Id.* at 76a-86a.

In affirming petitioner's convictions for honest-services fraud and the related conspiracy, the court of appeals explained that the honest-services-fraud statute covers "offenders who, in violation of a fiduciary duty, participated in bribery or kickback schemes." Pet. App. 44a (quoting *Skilling* v. *United States*, 561 U.S. 358, 407 (2010)). The court further explained that to find a defendant guilty, a jury must find that "(1) the defendant violated a fiduciary duty to another party in agreeing to a quid pro quo; (2) the defendant understood, at the time of the quid pro quo, on which specific question or matter the briber expected him to act; and (3) the action that the defendant agreed to take in exchange for the bribe was an official act." *Id.* at 45a-46a.

Here, the court of appeals found "abundant evidence" supporting the jury's finding of a quid pro quo bribe. Pet. App. 56a. With respect to the fiduciary-duty requirement, the court of appeals explained that "public officials owe a fiduciary duty of honest services to the people they serve," not just, as petitioner urged, "the governmental entity [they] represent[]." *Id.* at 46a, 48a. The court noted that in "identifying the 'core' of honest services" fraud in *Skilling* v. *United States*, this Court approvingly cited *Shushan* v. *United States*, 117 F.2d 110 (5th Cir.), cert. denied, 313 U.S. 574 (1941), overruled on other grounds by *United States* v. *Cruz*, 478 F.2d 408 (5th Cir.), cert. denied, 414 U.S. 910 (1973), in which a local utility board member "accepted a bribe to influence an official from a distinct governmental entity —the state governor." Pet. App. 46a-47a (quoting *Skilling*, 561 U.S. at 404).

The court of appeals emphasized that here, petitioner's constituents included "the Nassau County citizens who lived within the Town." Pet. App. 49a. And the court observed that petitioner breached his duty to those citizens by "plac[ing] his own interest in receiving [his wife's] $100,000 per-year salary over [the constituents'] interest in not having their taxpayer dollars employed to illegally guarantee millions of dollars in no-strings-attached loans." *Ibid.* The court therefore found that the jury was properly instructed and that sufficient evidence supported a finding that petitioner breached a fiduciary duty to his constituents. *Id.* at 49a-50a.

With respect to the official-act requirement, the court of appeals explained that the district court correctly instructed the jury that petitioner could be found guilty if he "us[ed his] official position to exert pressure on or to order another to perform an official act." Pet.

App. 57a (citation omitted). The court of appeals observed that the instruction "accurately tracks the relevant language in *McDonnell*" v. *United States*, 579 U.S. 550, 572 (2016). Pet. App. 57a. The court also found "clear evidence" that petitioner had "'exert[ed] pressure on another official to perform an official act.'" *Id.* at 58a (quoting *McDonnell*, 579 U.S. at 572). Specifically, the court observed that petitioner "pressured Venditto and [the Town Attorney] to perform the official act of passing a vaguely worded Town resolution that supplied apparent legal cover for the illegal guarantees Singh needed." *Ibid.* Petitioner's suggestion that he "merely provided advice to Town officials" "grossly understate[d] his role." *Id.* at 58a-59a.

The court of appeals, however, vacated petitioner's convictions for federal-program bribery and the related conspiracy. Pet. App. 33a-42a. The court noted that the federal-program-bribery statute, unlike the honest-services statute, applies to an "agent" of a local government, which the court treated as requiring the government to prove that petitioner was specifically an agent of the Town itself. *Id.* at 33a (quoting 18 U.S.C. 666(a)(1)); see *id.* at 33a-34a. And the court noted that the government could not establish that fact because it had conceded at trial that petitioner was an agent of the County, not the Town. *Id.* at 34a-37a. The court also found insufficient evidence to convict petitioner of federal-program bribery on an aiding-and-abetting theory or of the related conspiracy charge. *Id.* at 38a-42a.

ARGUMENT

Petitioner contends (Pet. 13-37) that his convictions for honest-services fraud and the related conspiracy are invalid on the theory that exercising political influence over officials in the Town of Oyster Bay could not vio-

late his fiduciary duty or constitute an official act as the highest-ranking official of the County that contained the Town. That contention lacks merit, and the court of appeals' decision does not conflict with any decision of this Court or another court of appeals. This Court has previously denied petitions for writs of certiorari raising similar questions. *E.g.*, *Kimbrew* v. *United States*, 141 S. Ct. 400 (2020) (No. 20-5131); *Lee* v. *United States*, 589 U.S. 1142 (2020) (No. 19-6076). It should follow the same course here, particularly in the current interlocutory posture.

1. The mail and wire fraud statutes prohibit use of the mails or wires to further a "scheme or artifice to defraud." 18 U.S.C. 1341, 1343. The term "scheme or artifice to defraud" reaches any scheme to deprive others of money or property, and pursuant to 18 U.S.C. 1346, includes a scheme "to deprive another of the intangible right of honest services."

As this Court observed in *Skilling* v. *United States*, 561 U.S. 358 (2010), Section 1346 reinstates the concept of "honest services" fraud developed by the courts of appeals before this Court rejected that theory in *McNally* v. *United States*, 483 U.S. 350 (1987). See *Skilling*, 561 U.S. at 402. In *Skilling*, this Court sustained the honest-services-fraud statute against a constitutional vagueness challenge by limiting the statute to "offenders who, in violation of a fiduciary duty, participated in bribery or kickback schemes." *Id.* at 407. To identify those core applications, *Skilling* reviewed the "Courts of Appeals' decisions before *McNally*" "that Congress intended § 1346 to refer to and incorporate." *Id.* at 404.

A foundational "opinion credited with first presenting" the honest-services theory was *Shushan* v. *United*

States, 117 F.2d 110 (5th Cir.), cert. denied, 313 U.S. 574 (1941), overruled on other grounds by *United States* v. *Cruz*, 478 F.2d 408 (5th Cir.), cert. denied, 414 U.S. 910 (1973). *Skilling*, 561 U.S. at 400. In *Shushan*, the Fifth Circuit held, and this Court in *Skilling* repeated, that "[a] scheme to get a public contract on more favorable terms than would likely be got otherwise by bribing a public official would not only be a plan to commit the crime of bribery, but would also be a scheme to defraud the public." *Shushan*, 117 F.2d at 115; see *Skilling*, 561 U.S. at 400. The Fifth Circuit accordingly affirmed the mail-fraud conviction of a local utility board member who accepted a bribe to lobby the governor to approve the board's bond repayment plan. See *Shushan*, 117 F.2d at 120-121.

Skilling also observed that, "in bribe and kickback cases" before *McNally*, the "existence of a fiduciary relationship, under any definition of that term, was usually beyond dispute." 561 U.S. at 407 n.41. To illustrate the point, the Court cited specific "examples," including the "public official-public" fiduciary relationship in *United States* v. *Mandel*, 591 F.2d 1347 (4th Cir. 1979). *Skilling*, 561 U.S. at 407 n.41. In that case, the Fourth Circuit explained that a public "official owes fiduciary duties, e.g., honest, faithful and disinterested service" to "the public" and that an official breaches those duties by accepting a bribe because "the public official is not exercising his independent judgment in passing on official matters." 591 F.2d at 1362. And *Mandel* accordingly affirmed the mail-fraud conviction of a state governor who accepted financial benefits in exchange for "a strenuous lobbying effort" to persuade the legislature to enact legislation benefiting the racetrack industry. *Id.* at 1355; see *id.* at 1362.

2. Petitioner's conduct mirrors the circumstances in *Shushan* and *Mandel* and thus falls squarely within "the bribe-and-kickback core of the pre-*McNally* case law" that the honest-services-fraud statute reinstates. *Skilling*, 561 U.S. at 409.

a. The court of appeals correctly recognized that, as the elected Nassau County Executive, petitioner owed a fiduciary duty to all "County residents" "to have their best interest form the basis of their County Executive's decisions." Pet. App. 49a. For his constituents that lived in the Town, petitioner breached that duty by soliciting and accepting his wife's $100,000 per-year salary for a "no-show" job in exchange for "leveraging his County Executive position to pressure the Town to guarantee the loans" to Singh. *Id.* at 13a, 49a-50a.

The fact that not *all* of petitioner's constituents lived in the Town does not absolve him of breaching that duty. A bribe to take an action that will harm certain County citizens is no less a breach of fiduciary duty simply because the action will not affect, or may even advantage, other County citizens. The governor in *Mandel* committed "plain and simple" honest-services fraud even though he lobbied legislators whose districts would have encompassed only a fraction of the State, with other legislators—on behalf of the constituents who lived in their districts—presumably already prepared to support the legislation. 591 F.2d at 1362; see *id.* at 1355. And the utility board member in *Shushan* committed fraud by pressing the governor to approve a bond repayment plan even though the governor and the utility board's constituencies were not coextensive. See 117 F.2d at 120.

The pre-*McNally* core of honest-services fraud thus does not support petitioner's proposal (Pet. 21-24) to ar-

tificially limit an official's fiduciary duty to the specific government body in which he serves rather than his constituents. Indeed, petitioner makes no effort to square his position with *Shushan* or *Mandel*, even though the court of appeals discussed *Shushan* in detail. See Pet. App. 46a-47a. Petitioner instead invokes (Pet. 21-24) this Court's decision in *Percoco* v. *United States*, 598 U.S. 319 (2023), but as the court of appeals observed, *Percoco* refutes petitioner's position by "noting" (11 times) "that a fiduciary duty to the government necessarily entails a duty 'to the public it serves.'" Pet. App. 47a (quoting 598 U.S. at 330); see *Percoco*, 598 U.S. at 322, 324, 326, 329-331 (11 times describing the relevant fiduciary duty as running to "the public").

Percoco addressed the distinct question of whether a *private* citizen, who had influence over government decision-making but did not hold public office, owed a fiduciary duty to the public. See 598 U.S. at 322. *Percoco* rejected the defendant's view that a private citizen could *never* owe a fiduciary duty to the public. *Id.* at 329-330. But the Court classified as "too vague" an instruction permitting a jury to find a fiduciary duty whenever the defendant "'dominated and controlled any governmental business'" and individuals in government "'actually relied on him because of a special relationship he had with the government.'" *Id.* at 330 (citation omitted). That holding does not undermine the existence of a fiduciary duty here. The "public official-public" relationship is a prototypical situation where "[t]he existence of a fiduciary relationship" is "usually beyond dispute." *Skilling*, 561 U.S. at 407 n.41.

b. The court of appeals also correctly recognized that petitioner took an "official act." Pet. App. 56a (citation omitted); see *id.* at 56a-59a. In that respect as

well, petitioner's actions closely align with the pre-*McNally* decisions in *Shushan* and *Mandel* that *Skilling* cited with approval. Like those defendants, petitioner took a bribe as a public official to pressure officials in a distinct governmental body, with distinct constituencies and lines of accountability, to take official action. See pp. 10-11, *supra*. Those pre-*McNally* decisions represent the "core" of honest-services fraud that Congress intended to reinstate, *Skilling*, 561 U.S. at 409, and petitioner makes no attempt to distinguish them.

Petitioner instead relies (Pet. 15-21) on *McDonnell* v. *United States*, 579 U.S. 550 (2016). *McDonnell* held that an "'official act'" under the federal-official bribery statute, 18 U.S.C. 201, requires "a decision or action on a 'question, matter, cause, suit, proceeding or controversy'" that "involve[s] a formal exercise of governmental power." 579 U.S. at 574. But *McDonnell* recognized that an "'official act' * * * may include using [one's] official position to exert pressure on another official to perform an 'official act,' or to advise another official, knowing or intending that such advice will form the basis for an 'official act' by another official." *Ibid.*

The court of appeals correctly discerned no defect under *McDonnell* in either the district court's jury instructions or the trial evidence. As to the former, the court of appeals explained that the district court's "instruction accurately track[ed] relevant language in *McDonnell*." Pet. App. 57a. Indeed, the district court quoted almost verbatim from *McDonnell*, telling the jury that an official act "may include using one's official position to exert pressure on or to order another to perform an official act." *Ibid.* (citation omitted).

As to the evidence, the court of appeals observed that petitioner "pressured Venditto and [the Town Attorney] to perform the official act of passing a vaguely worded Town resolution that supplied apparent legal cover for the illegal guarantees Singh needed." Pet. App. 58a. And petitioner's official position with the County is what enabled him to do so. For example, petitioner implored Town officials to "find a way to help Mr. Singh" obtain illicit loan guarantees at a meeting attended by other County officials including the Chief Deputy County Executive and listed on petitioner's official County Executive schedule. *Id.* at 16a (citation omitted); see *id.* at 15a, 50a.

Accordingly, while petitioner sought to "grossly understate his role in orchestrating the loans scheme," the court of appeals—and, evidently, the jury—found "clear evidence" that petitioner "'exert[ed] pressure on another official to perform an official act'" as contemplated by *McDonnell*. Pet. App. 58a-59a. Petitioner does not dispute (Pet. 9, 19) that the jury did so pursuant to instructions that accurately paraphrased *McDonnell*. But he insists that *McDonnell*'s language is "'inapplicable'" because he did not exert "formal pressure" on "officials bound by mutual duties to the same government." Pet. 17-19 (citation omitted). *McDonnell*, however, contains no such same-government limitation. Indeed, the Court suggested that the defendant there (a state governor) could be found guilty if he "agreed to exert pressure" on state-university "officials to initiate [certain] research studies," even though he claimed "limited decision-making power" over such a decision. 579 U.S. at 560, 579 (citation omitted).

Petitioner accordingly errs in interpreting (Pet. 15-16, 18) *McDonnell*'s citation of *United States* v. *Bird-*

sall, 233 U.S. 223 (1914), as setting forth the *only* circumstances in which "advis[ing] another official" can constitute an official act. *McDonnell*, 579 U.S. at 574. In *Birdsall*, this Court affirmed the convictions of subordinates who, in exchange for bribes, provided recommendations to the Commissioner of Indian Affairs on whether individuals convicted of unlawful liquor sales to Indians deserved leniency. 233 U.S. at 227-230. As petitioner notes (Pet. 18), the officials in *Birdsall* all "serv[ed] the same government." But *McDonnell*'s invocation of *Birdsall* as an example of when advice constitutes an official act does not suggest that official acts are exclusive to that particular fact pattern.

c. Petitioner's discussion (Pet. 24-27) of vagueness, lenity, and federalism principles likewise cannot justify his position. As explained, petitioner's conduct falls within "the bribe-and-kickback core of the pre-*McNally* case law." *Skilling*, 561 U.S. at 409. And this Court has already upheld the honest-services statute against a vagueness challenge in those circumstances. *Id.* at 408; see also *McDonnell*, 579 U.S. at 580 (rejecting a vagueness challenge to the definition of "official act"). But *Skilling* already took account of the rule of lenity by limiting honest-services fraud to "paradigmatic cases of bribes and kickbacks." 561 U.S. at 411. And public-corruption statutes may raise federalism concerns only when their "outer boundaries" are "ambiguous." *McDonnell*, 579 U.S. at 577 (citation omitted).

Similarly, petitioner's hypotheticals about officials engaged in "routine" "intergovernmental relationships and cooperation," Pet. 31, 34, have little resemblance to petitioner's acceptance of a $100,000 per-year cash bribe to "pressure" officials at a municipality within his jurisdiction to approve illegal loan guarantees, Pet.

App. 59a, 62a. And while petitioner repeatedly offers (Pet. 2-3, 20, 23-24, 33-34) hypotheticals involving officials who receive a "gift," he has not challenged the court of appeals' determination that the government established by "overwhelming evidence" that the $100,000 per-year payment was a quid pro quo bribe, not a gift. Pet. App. 55a (citation omitted).

3. Petitioner does not identify any conflict in the circuits or other traditional basis for this Court's review. Petitioner instead posits (Pet. 27) that the decision below is in "tension" with other circuits' decisions. Even that limited contention is mistaken.

With respect to the fiduciary-duty requirement, petitioner cites (Pet. 30) the Third Circuit's pre-*Percoco* decision in *United States* v. *Murphy*, 323 F.3d 102 (2003). *Murphy* reversed the honest-services-fraud conviction of a county party chairman who solicited kickbacks in exchange for using his influence over county officials to procure contracts. *Id.* at 104, 107-108. The court reaffirmed circuit precedent permitting the prosecution of "state and local officials * * * for depriving the citizens they serve of their right to honest services." *Id.* at 111 (quoting *United States* v. *Antico*, 275 F.3d 245, 262 (3d Cir. 2001), cert. denied, 537 U.S. 821 (2002)). But the court declined to "treat[] *private* party officials in the same manner as public officials," *id.* at 118 (emphasis added)—much as this Court later held that an influential private citizen did not necessarily owe fiduciary duties in *Percoco*. Given that petitioner was a public official, not a private citizen, *Murphy* is fully consistent with the decision below.

With respect to the official-act requirement, petitioner asserts (Pet. 27-28) tension with a different Third Circuit case, *United States* v. *DeFreitas*, 29 F.4th 135

(2022). The defendant there, an officer of the Virgin Islands Department of Licensing and Consumer Affairs, was convicted of violating the Virgin Islands' bribery statute by requesting sexual favors in exchange for not reporting a manicurist's immigration violation. *Id.* at 139. The Third Circuit vacated the defendant's conviction, finding insufficient evidence that his failure to report the manicurist constituted an "official act" under Virgin Islands law, given that his duties involved enforcing the Virgin Islands' licensing requirements, not federal immigration law. *Id.* at 144-148. But the absence of any duty for the defendant there "to report any conceivable or possible violation of federal law, no matter its connection to consumer rights," *id.* at 146, does not suggest that petitioner was a mere private actor when he used his County's highest office to pressure officials of the Town, which lay within his jurisdiction, to pass a formal Town resolution.

Petitioner also cites (Pet. 29) the Eighth Circuit's nearly four-decade-old decision in *United States* v. *Rabbitt*, 583 F.2d 1014 (1978), cert. denied, 439 U.S. 1116 (1979). There, the court reversed a state legislator's mail-fraud conviction for accepting a commission from an architectural firm to introduce the firm to people who might help it obtain state contracts because the legislator "did not, in his official capacity, control the awarding of state contracts." *Id.* at 1026; see *id.* at 1020. But merely making an introduction does not amount to an official act under *McDonnell*, whatever the legislator's duties. See 579 U.S. at 557. And as petitioner acknowledges (Pet. 29-30), the Eighth Circuit has since affirmed an extortion conviction for an official who used his office to pressure officials in an overlapping jurisdiction—namely, a county sheriff's deputy who pressured state

police not to arrest confidential informants who gave him stolen goods. See *United States* v. *Chastain*, 979 F.3d 586, 590-592 (2020).

The Eighth Circuit has also affirmed an extortion conviction and distinguished *Rabbitt* in a case where a city alderman took a bribe to influence his colleagues' votes, even though the alderman presumably lacked formal authority to control his colleagues' votes. See *United States* v. *Foster*, 443 F.3d 978, 985, cert. denied, 549 U.S. 935 (2006). To the extent the earlier decision in *Rabbitt*—which predates this Court's articulation of the contours of honest-services fraud in *Skilling*—could be viewed as inconsistent with those decisions, that would at most evidence an intra-circuit conflict not warranting this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

4. At all events, this case would be a poor vehicle to address the question presented because it is in an interlocutory posture. The court of appeals vacated petitioner's convictions for federal-program bribery and the related conspiracy and remanded for further proceedings. Pet. App. 74a-75a. That interlocutory posture "alone furnishe[s] sufficient ground for the denial" of certiorari. *Hamilton-Brown Shoe Co.* v. *Wolf Bros.*, 240 U.S. 251, 258 (1916); see *Abbott* v. *Veasey*, 580 U.S. 1104, 1105 (2017) (statement of Roberts, C.J., respecting the denial of certiorari). That practice promotes judicial efficiency because, among other things, it enables issues raised at different stages of lower court proceedings to be consolidated into a single petition. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam). Petitioner identifies no reason to deviate from that practice here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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