No. _____

In the Supreme Court of the United States

DAVID PAITSEL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *McDonnell* v. *United States*, 579 U.S. 550 (2016), this Court set very clear prosecutorial and judicial standards in criminal proceedings involving bribery associated with an official act. The D.C. Circuit, in its precedential ruling in *United States* v. *Paitsel,* 147 F.4th 1010 (CADC 2025), ignored those standards set forth in *McDonnell* by this Court and therefore created very ambiguous boundaries in this type of matter.

Did the D.C. Circuit err and therefore set forth a dangerous precedent?

Did the D.C. Circuit, through its errors, thereby create a judicial crisis and a dangerous situation within the D.C. Circuit, in addition to a negative influence upon other United States courts of appeals?

RELATED PROCEEDINGS

United States District Court (D.D.C.):

United States v. *David Paitsel*, No. 1:19-cr-00156-2 (conviction) (Feb. 21, 2020)

United States Court of Appeals (CADC):

United States v. *David Paitsel*, No. 23-3212, (conviction affirmed) (Aug. 1, 2025)

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The District of Columbia Circuit's opinion is published, may be found at *United States* v. *David Paitsel,* 147 F.4th 1010 (CADC 2025), additionally as reproduced in the Appendix at App.1-46, the dissent at App.47-58.

JURISDICTION

The D.C. Circuit entered its judgment on August 1, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The D.C. Circuit affirmed Paitsel's conviction, even though there was no evidence he accessed a government system or that his use of a private database amounted to an "official act," raising concerns about legal overreach and Fifth Amendment due process violations. U.S.Const., Amdt. V reads:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;

> nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S.Const., Amdt. V.

STATEMENT OF THE CASE

David Paitsel, former Federal Bureau of Investigation ("FBI") Special Agent, was given at least $6,500 by his friend, Brian Bailey, after providing Bailey with information about certain residential tenants that Paitsel obtained from the FBI's lawfully authorized access to the non-public Thomson Reuters information system known as CLEAR by representing that his searches were for FBI law enforcement investigative purposes.[1] *Paitsel*, 147 F.4th at 1012–13.

On May 15, 2019, FBI Special Agent David Paitsel was indicted by a grand jury for allegedly committing various bribery offenses, including conspiracy to commit bribery, 18 U.S.C. 371 (Count 3), and bribery in violation of Paitsel's "official duty," 18 U.S.C. 201(b)(2)(C) (Count 5). *Id.* The indictment alleged that Paitsel's co-defendant, Brian Bailey, bribed Paitsel and a local government official in exchange for information that would allow Bailey to

[1] Paitsel adopts the D.C. Circuit's statement of facts, verbatim, in Paitsel, 147 F.4th 1010, while noting disagreement since Paitsel contested the government's case at trial.

identify and contact tenants whose residences were undergoing the TOPA process.[2] *Id.* Bailey was also charged with conspiracy to commit bribery under 18 U.S.C. 371, as well as bribery to induce Paitsel to violate his lawful duty, 18 U.S.C. 201(b)(1)(C). *Id.*

On September 28, 2022, Bailey and Paitsel proceeded to a jury trial. *Id.* The evidence presented demonstrated that Bailey sought to identify tenants whose properties were for sale and had initiated the TOPA process. *Id.* This strategy enabled Bailey to acquire tenants' rights and subsequently, as assignee, transfer those rights to third-party purchasers for profit. *Id.* Bailey compensated a local government employee with cash to obtain unredacted TOPA notices, thereby gaining access to tenant names. *Id.* He then requested that his associate, Paitsel, locate additional tenant information, which Bailey used to approach tenants regarding the assignment of their TOPA rights. *Id.* As compensation for his efforts, Bailey later paid Paitsel approximately $6,500. *Id.* Paitsel gathered the requested information by searching for tenants' names in the Thomson Reuters

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[2] While regulations from the D.C. Code is not the relevant issue presented here, it's understanding is important to understanding the allegations against Paitsel. The District of Columbia's Tenant Opportunity to Purchase Act of 1980 ("TOPA") grants tenants the first right to buy their housing before an owner can sell or issue a notice to vacate for demolition. This right, outlined in D.C. Code § 42-3404.02(a), means third-party purchases are subject to tenant refusal if tenants exercise this option. TOPA also allows tenants to assign or sell these rights. By accepting an owner's offer, tenants or their assignees can form a binding contract, blocking third-party sales. *See United States* v. *Paitsel*, 147 F.4th 1013 (CADC 2025).

CLEAR system, a risk and fraud database that aggregates public record and proprietary data on individuals, businesses, phones, and assets. *Id.* CLEAR compiles information from numerous sources, including financial institutions such as credit bureaus, and may contain personally-identifying information (PII) such as birthdates, driver's license numbers, and Social Security numbers. *Id.*

The primary issue is whether Paitsel's conduct constituted bribery under 18 U.S.C. 201(b)(2)(C), which prohibits public officials from agreeing to accept valuable compensation in exchange for performing an "official duty." *Id.* at 1013. The D.C. Circuit held that "the Government proved beyond a reasonable doubt that Paitsel's conduct fell within his official duties because he performed an act made possible only by both (i) his official position in the FBI that gave him access to a specialized FBI database, and (ii) his affirmative representation while using that database, as required by law." *Id.* The D.C. Circuit held that the "government satisfied the "official duty" prong even though Paitsel's conduct was technically outside the realm of his day-to-day tasks or functions." *Id.* As a result, the D.C. Circuit affirmed Paitsel's convictions and sentence. *Id.*

However, the majority's factual description of the Thomson Reuters database was not an accurate description wrote Senior Circuit Judge Randolph. *Paitsel*, *United States* v. *Paitsel*, 147 F.4th 1010, 1034–36 (D.C. Cir. 2025) (Randolph, SJ dissenting). In his dissenting opinion, Senior Judge Randolph wrote that "[a]t the center of the case is CLEAR, an online platform owned and maintained by a

Canadian company, Thomson Reuters Corporation. *Id*. at 1035. According to Senior Judge Randolph, "[t]he company sells CLEAR to private users such as financial institutions, collection agencies and law firms, and to governmental entities like the FBI and the Department of Homeland Security." *Id*. Basically, the FBI pays a predetermined fee for access to information about individuals in the CLEAR database; a database of collected data compiled by Thomson Reuters from various public and private sources. *Id*. In sum, according to Senior Judge Randolph, CLEAR is an online platform, owned and maintained by private company and sells access to private users such as financial institutions, collection agencies and law firms, and to governmental entities like the FBI. *Id.* So if the database is not FBI exclusive, then anyone can access the information provided and Paitsel was acting in any official capacity when he accessed the database, even on company time. While this may be an HR problem, it is not a crime. Therefore, to convict Paitsel of committing an official act, the government and the majority must make accessing the database FBI exclusive, meaning only the FBI can access the database. Ironically, that would then make the FBI one of the biggest warrantless collectors of personal data belonging to United State citizens second only to the 2013 NSA extensive collect data on global citizens programs, which included telephone metadata and internet communications.[3]

[3] In fact, this was a major issue for Judge Wilkins during oral argument when she inquired b

In fact, this was a major issue for Judge Millett during oral arguments when she asked the government's attorney, where is the line here?

> "JUDGE: People can access Westlaw without being part of the FBI?
> GOV: Yes, but no matter where you're working, though, you are given by your employer, an access, username, an account is set up for you by virtue of the fact that you are working.
> JUDGE: An account is set up for me to sign into my computer every day. I'm trying to figure out what the line here is.
> GOV: Well, the line is that...
> JUDGE: If I'm using the computer for March Madness, you say that's hunky-dory. But if I'm using it to help Mr. Bailey get phone numbers, that's not.
> GOV: Right, because I'm assuming this about the court is that by virtue of you being a judge, the court has set up and contracted with the company to give you an account for Westlaw because of your job, which is just different than going on to Google because it's available just in general.
> JUDGE: You don't have to have an account.
> GOV: Because you're using a government resource to do that.
> JUDGE: It is a government resource, but it's...If your position is that

> everyone else can get the information anyhow, that seems to hurt you in this case because, generally, the other people could get phone numbers.

Court Listener, Oral Arguments, *US* v. *David Paitsel*, 23-3212, February 27th, 2025. https://www.courtlistener.com/audio/97458/united-states-v-david-paitsel/ 01:22:20 to 01:23:24

On October 7, 2022, a jury unanimously found Paitsel guilty of both conspiracies to commit bribery and bribery. *Id*. at 1013–15. The District Court denied Paitsel's motion for a judgment of acquittal on February 21, 2023. *Id*. On October 18, 2023, he was sentenced to two years' incarceration. *Id*. Paitsel timely appealed to the D.C. Circuit. *Id*. On August 1, 2025, the D.C. Circuit affirmed Paitsel's conviction.

REASONS FOR GRANTING THE PETITION

I. The D.C. Circuit erred in affirming Paitsel's conviction by expanding the types of conduct that constitute an 'official act' and its relationship to "a quid pro quo," and by doing so creates a conflict among the circuit courts.

A bribe, the D.C. Circuit held, requires "a *quid pro quo*." *Paitsel*, 147 F.4th at 1032–33, quoting *United States* v. *Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404 (1999). A *quid pro quo* means "a specific intent to give or receive something of value in exchange for an official act." *Id*. at 404-05. The Court held the same in *McDonnell* v. *United States*, 579 U.S. 550, 574 (2016) that "[s]ection 201 prohibits *quid pro quo* corruption—the exchange of a thing of value for an 'official act.'" *Id*. at 1033. And again, in *Snyder* v. *United States*, 603 U.S. 1, 19 (2024), "§ 201(b), the bribery provision for federal officials" is violated when the official "accepts an up-front payment for a future official act ...." In affirming Paitsel's conviction, the D.C. Circuit broadened the definition of "quo" by extending the scope of what is considered an "official act."

In 2016, the Supreme Court of the United States narrowed the scope of federal bribery prosecutions, ruling against adopting broad definitions of "official acts" for illegal *quid pro quo* cases. *McDonnell*, 579 U.S. at 574 (2016). The *McDonnell* Court's decision arose out of the prosecution of a former governor and his wife. *Id.*

The government alleged that a Virginia businessman gave gifts and loans to the McDonnells in return for the governor's support of his business. *Id.* The government pinpointed five specific acts performed by the governor in return for the businessman's generosity, but the McDonnells argued that none qualified as official acts. *Id.* This Court agreed with the McDonnells in a unanimous decision holding that an "official act" is a decision or action on a "question, matter, cause, suit, proceeding or controversy." *Id.* The Court held that a "question, matter, cause, suit, proceeding or controversy" must involve 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.*

Unfortunately, the lower courts have faced ongoing challenges with this interpretation. Despite this Court's guidance in *McDonnell*, lower courts around the country have struggled to interpret the full scope of this Court's opinion. Two examples illustrative of this split is the Seventh Circuit's opinion in *Weiss*[4] and the D.C. Circuit's decision in this case. Both circuits struggle to resolve what *McDonnell* means for federal bribery prosecutions.

[4] *United States* v. *Weiss*, 153 F.4th 574 (CA7 2025).

a. The Seventh Circuit and *United States* v. *Weiss*

In *Weiss*, the Seventh Circuit appeared to adopt a new framework for analyzing when a district court may instruct a jury on what conduct qualifies as an "official act" under 18 U.S.C. 201. *United States* v. *Weiss*, 153 F.4th 574 (CA7 2025).

James Weiss owned a company that manufactured machines used in sweepstakes games. *Id*. at 578. The sweepstakes machines had an interest in ensuring that sweepstakes machines were clearly legal under Illinois law. *Id.* To accomplish this goal, Weiss hired then-Rep. Luis Arroyo as a consultant to advocate for a state bill to amend Illinois state gaming law. Id. In exchange for a monthly fee, Arroyo became a vocal advocate for the sweepstakes legislation, speaking at gaming committee hearings, meeting with leadership of the Illinois General Assembly and approaching other legislators. "Beginning in fall 2018, Weiss's company began making monthly payments to Arroyo's registered lobbying firm, Spartacus 3, LLC." *Id.* Arroyo actively supported sweepstakes legislation by speaking at gaming hearings, lobbying Assembly leaders, and urging other legislators to pass it. *Id.* In fact, Arroyo approached State Representative Robert Rita about sweepstakes legislation so frequently that State Representative Rita began avoiding Arroyo. *Id*. at 579. Unfortunately for Weiss, these efforts failed and gaming legislation passed without any sweepstakes-related provisions. *Id*.

Unfazed, Weiss and Arroyo attempted to have the gaming legislation amended through a "trailer

bill," which is used to alter existing legislation. *Id.* This action would require approval from State Senator Terrance Link, who sponsored the original gaming bill. *Id.* The idea was for Senator Link to assist in passing legislation favorable to sweepstakes machines. *Id.* At a meeting with Link, the Senator "asked Arroyo 'what's in it for me?" *Id.* Arroyo responded "that Link could be paid the '[s]ame way' [Arroyo] was 'getting paid.'" *Id.* However, unfortunately for Weiss, Link was cooperating with federal agents. *Id.* The FBI's instructions to Link was for Weiss and Arroyo to make out multiple checks to Katherine Hunter, a fake persona, in exchange for Link's support for the amendment. *Id.* Ultimately, Link's "assistance" led to Weiss's conviction for wire fraud, mail fraud, and bribery after a jury trial. *Id.*

At trial, the Northern District of Illinois instructed the jury that "promoting the enactment of legislation related to the sweepstakes industry by the Illinois General Assembly is an official act" within the meaning of the federal bribery laws. *Id.* at 585. Weiss objected arguing that the instruction improperly directed the verdict on a factual element of the crime; that "the jury should have to determine, not just whether Weiss induced a public official to perform an official act in exchange for something of value, but also to determine whether the requested action constituted an official act at all." *Id.* The district court overruled Weiss's objection. On appeal, the Seventh Circuit considered Weiss's argument that the jury instruction improperly directed a verdict on whether promoting legislation was an "official act." *Id.* The key issue was whether a district court can instruct a jury that certain conduct

definitively meets the definition of "official act" under *McDonnell*. *Id.*

The Seventh Circuit concluded that *McDonnell* did not preclude courts from defining specific, indisputable conduct as "official acts." *Id.* The Seventh Circuit reasoned that, by providing examples of specific acts that could constitute official acts, the Supreme Court implicitly recognized that what constitutes an "official act" is not always a question for the fact-finder. *Id*. Interestingly, the Seventh Circuit also cited decisions from the United States Courts of Appeals for the Second and Eleventh Circuits. *Id*. The Eleventh Circuit held "[N]o one disputes (or could) that casting or abstaining from a vote on a covered matter, or agreeing to do either, would constitute the sort of act that triggers [the federal bribery statute's] prohibition." *Weiss*, 153 F.4th at 585–86 (quoting *United States* v. *Burnette*, 65 F.4th 591, 598 (CA11 2023)); *see also United States* v. *Roberson*, 998 F.3d 1237, 1251 n.19, 1251–52 (CA11 2021) ("Representative Robinson's [...] vote on SJR-97 is undeniably an official act.") The Second Circuit held that they is "no plain error despite jury instruction being erroneous after *McDonnell* when official acts include administrative decisions necessary to secure grant money, award demolition contracts, and enact zoning changes. *Weiss*, 153 F.4th at 586 (quoting *United States* v. *Boyland*, 862 F.3d 279, 291–92 (CA2 2017)).

Interestingly, the *Weiss* court acknowledged that the Fourth Circuit vacated a conviction in a 2022 decision with similar circumstances to Weiss in that the district court erred in interpreting the

"official act" inquiry to be a pure question of law. *United States* v. *Lindberg*, 39 F.4th 151, 160 (CA4 2022). First, the *Lindberg* court held that the district court misinterpreted *McDonnell* as supporting the conclusion that "a typical meeting, call, or event arranged by a public official ... does not qualify as a 'question' or 'matter'" and that "a decision or action to initiate a research study—or a decision or action on a qualifying step, such as narrowing down the list of potential research topics—would qualify as an 'official act,'" *Lindberg*, 39 F.4th at 160 (quoting *McDonnell*, 579 U.S. at 569, 572). The *Lindberg* court found that "[t]his discussion makes clear that, as a matter of statutory interpretation, some actions categorically qualify as official acts, while other actions categorically do not qualify as official acts," *Id*. Simply put, "it was the role of the jury to determine whether conduct constitutes an official act." *Id.* However, the *Weiss* court distinguished *Lindberg* by noting that: (1) removing a senior deputy commissioner isn't central to official duties like promoting legislation is; (2) promoting legislation is broader than simply firing someone; and (3) unlike Weiss, the defendant in *Lindberg* couldn't argue that his actions weren't official.

b. The D.C. Circuit and *United States* v. *Paitsel*

Here, Paitsel, an FBI special agent, was offered payment by a friend to search a restricted FBI database for nonpublic contact information on certain individuals. *Paitsel*, 147 F.4th at 1012–13. Trial evidence showed FBI agents could access the database solely for law enforcement, and each time Paitsel logged in, he had to confirm his search was legally authorized. *Id*. Paitsel made approximately 30 searches for his friend, falsely affirming each time that he had a law enforcement purpose. *Id.* His friend paid him roughly $6,500 over a few years. *Id.* In 2022, a jury convicted Paitsel of bribery under 18 U.S.C. 201(b)(2)(C) for accepting something of value in exchange for violating official duties.

The D.C. Circuit upheld Paitsel's conviction by a 2-1 vote, finding his database searches fell within his official duties. *Id.* The majority considered the definition of official duty a new statutory interpretation issue. *Id*. First, the majority concluded that Paitsel acted within his official duties because he used his FBI position to access a specialized database and represented that his actions were part of official law enforcement investigations. *Id*. Then, surprisingly, the majority acknowledged that Paitsel couldn't be convicted for an "official act" offense but dismissed this as irrelevant since the case wasn't about "official acts." Thus, the *Paitsel* court seems to dismiss this Court's *McDonnell* ruling that narrowed "official acts" in bribery cases.

On a side note, the government's closing argument to the jury was that Paitsel's violation of

an ethical duty—or a "lawful duty"—automatically qualified as a duty violation that fell within the confines of the bribery statute. The government argued further that other conduct unrelated to Paitsel's job responsibilities automatically qualified too, saying, "And you also know he had a lawful duty because the CLEAR database told David Paitsel every time, he logged in that he needed to comply with the law, state a legitimate reason for using that database." The government never referred to Paitsel's "official duties" as an FBI Special Agent, did not explain that one of the questions for the jury's consideration was what qualified as such an "official duty," and failed to point the jury to the evidence it should consider when answering that question. The government assumed that an "official duty" and a "lawful duty" were one and the same, and that once it had proven that Paitsel had violated an ethical obligation, it had met its burden of proof. Thus, ethical obligation equals "official act."

c. Where along the "official acts" continuum does the alleged conduct fall?

The ruling began "a brand-new day for bribery prosecutions." [5] In the article *Courts Are Still Grappling With McDonnell, 9 Years Later*, published in the October 2025 journal, Law360, attorneys Daniel Koffmann and Michael Bloom wrote:

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[5] Koffmann and Bloom, *Courts Are Still Grappling With McDonnell, 9 Years Later*, Law360 (October 8, 2025). https://www.law360.com/articles/2396052/courts-are-still-grappling-with-mcdonnell-9-years-later

> "Paitsel effectively creates a work-around for the limitations imposed by the Supreme Court in *McDonnell*. Now, instead of having to identify particular conduct that meets *McDonnell's* bounded interpretation of 'official act,' prosecutors simply can identify some action that a public official could not perform but for their official position." [6] Thus, "the ruling creates a new line of thought that the closer the conduct is to the epicenter of an official's duties, the more leeway courts have in their instructions."[7]

So now, in "official acts" cases, reconciling the *Weiss* and *Lindberg* rulings suggest that district courts should consider where along the "official acts" continuum the alleged conduct falls.[8] If on one end of the continuum, a legislator's vote on a bill indisputably constitutes an official act.[9] As Koffmann and Bloom wrote, it "is difficult to imagine a court of appeals finding error with a jury instruction to that effect. On the other end, however, appointing people to review an application is not clearly an official act, rendering the instruction in *Lindberg* improper judicial fact-finding."

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[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*

d. *Paitsel* creates a public policy nightmare

Koffmann and Bloom also point out that "corporations must now police employees' interactions with public officials." [10] The D.C. Circuit's *Paitsel* opinion places a new emphasis on the importance of robust compliance protocols for companies that interact with government employees.[11] Koffmann and Bloom's recommendation is that corporate in-house counsel and its compliance officers should immediately review and update their programs to reflect this expanded definition of bribery. Most importantly, they add, "companies should review and reassess their policies governing employee communications with public officials." [12] Because, according to the pair, *Paitsel* expands the universe of potential *quo*, previously innocent *quid* unconnected to official acts may now be fodder for investigators and prosecutors to build official duty cases.[13] "The only remedy left is for companies to consider implementing systems and processes that will (1) ensure adequate legal review prior to employees' communications with public officials, especially where core official acts are concerned; and (2) document or otherwise create a record of the content of the discussions with officials.[14]

The pair also advises companies that they may want to tighten policies regarding gifts and

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[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*

entertainment; and, at a minimum, "ensure that employees who interact with federal officials receive updated training on the definition of official duty."[15]

e. "Public officials should beware"

By the same token, public officials must be vigilant in their interactions with constituents, donors and even common acquaintances. Chief Justice Roberts wrote in *McDonnell*, discussing at length the danger of bribery laws that sweep too broadly:

> The Government's expansive interpretation of 'official act' would raise significant constitutional concerns. Conscientious public officials arrange meetings for constituents, contact other officials on their behalf, and include them in events all the time. Representative government assumes that public officials will hear from their constituents and act appropriately on their concerns. The Government's position could cast a pall of potential prosecution over these relationships. This concern is substantial, as recognized by White House counsel from every administration from that of President Reagan to President Obama, as well as two bipartisan groups of former state attorneys general. The

[15] *Id.*

> Government's interpretation also raises due process and federalism concerns.

McDonnell, 579 U.S. at 553 (2016)

Chief Justice Roberts further writes, "an 'official act' is a decision or action on a "question, matter, cause, suit, proceeding or controversy. The 'question, matter, cause, suit, proceeding or controversy' must involve 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. It must also be something specific and focused that is 'pending' or 'may by law be brought' before a public official. To qualify as an 'official act,' the public official must make a decision or take an action on that "question, matter, cause, suit, proceeding or controversy," or agree to do so. That decision or action may include using his 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. Setting up a meeting, talking to another official, or organizing an event (or agreeing to do so)—without more—does not fit that definition of 'official act.'" *McDonnell*, 579 U.S. at 574. As Chief Justice Roberts warned, "the jury may have convicted Governor McDonnell for conduct that is not unlawful." *Id. Paitsel's* broad definition of official duty would seem to implicate precisely these concerns.

II. Instead of following this Court decisions, the majority devised some other theory—exactly what theory is unclear—to affirm Paitsel's convictions.

The majority summarizes CLEAR's procedures, as well as Thomson Reuters' business sign-on requirements below. *Paitsel*, 147 F.4th at 1014-15. According to Senior Judge Randolph, this is the majority's attempt to "codify" a private company's log-in policies into federal law. *Id*. at 1034-35. Senior Judge Randolph wrote that "[o]ne thing we can discern is that the majority thinks its theory rests on the notion that Paitsel's "access" to CLEAR violated the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 *et seq*. *Paitsel*, 147 F.4th at 1034 (*citing* the Majority Op. 1027-28.) Senior Judge Randolph asserts "[the majority's] notion comes out of the blue and is mistaken … the Indictment did not charge Paitsel with any such violation and the district court, in its extensive jury instructions, did not instruct the jury to determine whether Paitsel violated the Gramm-Leach-Bliley Act. *Id*. at 1035. "Indeed," Senior Judge Randolph wrote, "the court's jury instructions never even mentioned that Act."

The majority wrote "[f]ederal laws, including the Gramm-Leach-Bliley Act (GLBA), restrict the disclosure of such information by financial institutions, including PII." *Paitsel*, 147 F.4th 1014-1015. "These statutory requirements," wrote the Judge Wilkins for the majority, "codified at 15 U.S.C. § 6801 and related regulations, extend not only to financial institutions but also to third parties that receive and aggregate this data, such as Thomson

Reuters." *Id.* According to the majority, under 15 U.S.C. 6802(c), "nonaffiliated third parties who receive nonpublic personal information from financial institutions are subject to the same limitations on disclosure as the originating institution." *Id.* Thomson Reuters is one such example. *Id.* According to the majority, because information contained in CLEAR is derived in part from financial institutions, Thomson Reuters may only grant access to the database for reasons permitted under federal law. *Id.*; *see Kidd* v. *Thomson Reuters Corp.*, 925 F.3d 99, 102 n.2 (CA2 2019) ("Thomson Reuters ... acknowledges that it is regulated by the Gramm-Leach-Bliley Act ...."). As such, majority found that the FBI's subscription to CLEAR only permits access to the database for law enforcement investigations, which is one of the authorized purposes under the GLBA for disclosure of the information to the FBI. *Id.*; *see* 15 U.S.C. 6802(e)(5). "Because the Department of Justice has law enforcement and investigatory functions," the majority wrote, "its contract with CLEAR supplies it with automatic access to sensitive information beyond what might be available to corporate or other authorized users." *Id.*

The majority then took it step further when they wrote to "ensure compliance with federal law, Thomson Reuters requires by contract that every user who logs into CLEAR, including FBI agents, first affirm that they have a statutorily authorized purpose for accessing sensitive data." *Paitsel*, 147 F.4th at 1015. Judge Wilkins found that after the user selects a permissible use, CLEAR shows a warning screen, which reads:

> To maintain compliance with the privacy provisions of the federal Gramm-Leach-Bliley Act and the subsequent regulations adopted by the Federal Trade Commission (GLB), a user must select only a single purpose from the presented list. Misrepresenting your access purpose is a violation of our subscriber 1015 agreement and certain federal and state laws. Any use of information maintained by West, a Thomson Reuters business, other than for the selected permissible purpose is grounds for account termination and may be referred to the appropriate governmental agency. Designated permissible purpose changes can be made at any time after logging in by clicking the refresh option on your browser.

Id.

The majority found that each "user must acknowledge receipt of this message before they may search for information. If a user states that they have no permitted use, their access to information is restricted." *Id.* Even though the FBI "automatically get[s] a certain level of data" due to the agency's law enforcement functions, agents still must select a permissible use each time they search CLEAR. *Id.* The majority wrote that the "FBI agents are trained and instructed that they may use CLEAR for official business only." *Id.* The majority found that "upon

Bailey's request, Paitsel searched CLEAR for tenants' information on Bailey's behalf around 30 times." *Id*. For nearly every search, Judge Wilkins wrote, "Paitsel averred that he had a law enforcement purpose for accessing the data." *Id*. "After Paitsel conducted the searches," Judge Wilkins wrote, "he shared the tenants' information with Bailey." *Id.*

a. The "[i]ndictment did not charge Paitsel with any such a violation and the district court did not instruct the jury to determine whether Paitsel violated the Gramm-Leach-Bliley Act

Senior Judge Randolph asserts that "instead of following these Supreme Court decisions, the majority has devised some other theory—exactly what theory is unclear—in order to affirm Paitsel's convictions." *Id*. at 1034. According to Senior Judge Randolph, the "[o]ne thing we can discern is that the majority thinks its theory rests on the notion that Paitsel's 'access' to CLEAR violated the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq." *Id.* (*citing* Majority Op. 1027-28.) Senior Judge Randolph asserts that the majority's "notion comes out of the blue and is mistaken." *Id.* Senior Judge Randolph points out that the "[i]ndictment did not charge Paitsel with any such violation and the district court, in its extensive jury instructions, did not instruct the jury to determine whether Paitsel violated the Gramm-Leach-Bliley Act. *Id*. at 1035. "Indeed,"

Senior Judge Randolph wrote, "the court's jury instructions never even mentioned that Act." *Id.*

Senior Judge Randolph argues that his "colleagues have thus taken upon themselves the role of a grand jury, charging an offense that was never alleged, and the role of a trial judge who never gave an instruction dealing with this statute, and the role of a jury who was not required to, and did not, make any findings about Paitsel's compliance with the Gramm-Leach-Bliley Act." *Id.* Additionally, the Senior Judge wrote, the majority's decision converts ethical constraints into federal criminal offenses and authorizes private companies to define the offense through contractual restrictions on those using their products. *Id.* at 1032; *see Van Buren* v. *United States*, 593 U.S. 374, 393-94 (2021); *United States* v. *Safavian*, 528 F.3d 957, 964 (CADC 2008). As the Supreme Court observed in a related context, Senior Judge Randolph states, "the Government's interpretation of the statute would attach criminal penalties to a breathtaking amount of commonplace computer activity." *Id.* (quoting *Van Buren*, 593 U.S. at 393.

"Many websites, services, and databases ... authorize a user's access only upon his agreement to follow specified terms of service Senior Judge Randolph pens." *Id.* "Title 18 U.S.C. §1030(a)(2) requires unauthorized access to a protected computer. And if the 'exceeds authorized access' clause in 18 U.S.C. § 1030(a)(2) encompass violations of circumstance-based access restrictions on employers' computers," the Senior Judge asserts, "it is not difficult to see why it would not also encompass violations of such restrictions on website providers'

computers. *Id*. And indeed, the Senior Judge wrote, "the Government's reading of subsection (a)(2) would do just that—criminalize everything from embellishing an online-dating profile to using a pseudonym on Facebook." *Id*. at 394.

b. An online platform owned and maintained by a Canadian company

These considerations, Senior Judge Randolph wrote, in addition to those in part I, of his dissent, were more than enough to condemn the majority opinion. *Id*. But Senior Judge Randolph would not let slide the majority's many other errors. *Id*. At the center of the case is CLEAR, an online platform owned and maintained by a Canadian company, Thomson Reuters Corporation. *Id*. [16] Senior Judge Randolph notes that the company provides CLEAR to private sector clients—including financial institutions, collection agencies, and law firms—as well as to government organizations such as the FBI and the Department of Homeland Security. *Id*. The FBI pays a set fee to access individual data on CLEAR, just like all other users and Thomson Reuters compiles this information from many sources, public and private. *Id*. The government misrepresented Thomson Reuters CLEAR as an official law enforcement database in court when in fact CLEAR is a proprietary, subscription-based

[16] The alleged "law enforcement database" is a commercial subscription service outside of government control. The government had to serve a subpoena to obtain Paitsel's search results from Thomson Reuters, not the FBI.

investigative software by Thomson Reuters, not a government database.

Many agencies, like ICE, contract with Thomson Reuters for CLEAR access. In *Brooks v. Thomson Reuters Corp.*, Thomson Reuters argued that their information is public and the dossiers on the CLEAR platform are not "third-party content," they are created by Thomson Reuters, albeit from third-party sources. *Brooks* v. *Thomson Reuters Corp.*, No. 2021 WL 3621837, at *3 (N.D. Cal. Aug. 16, 2021). A Federal Grand Jury Subpoena was required for access to CLEAR, which indicates that the Thomson Reuters database is privately owned rather than controlled by the government. Paitsel accessed the FBI CLEAR account from personal devices during off-duty hours. He retained access nearly two years post-arrest. And Paitsel's access to the database for personal reasons; not so he could use the information for nefarious purposes against the FBI or violate his duties to and skirt the laws of the United States.

In *Van Buren* v. *United States*, Van Buren, a former police sergeant, ran a license-plate search in a law enforcement computer database in exchange for money. *Van Buren* v. *United States*, 593 U.S. 374, 378 (2021). This Court found that Van Buren's conduct plainly flouted his department's policy, which authorized him to obtain database information only for law enforcement purposes. *Id.*) The Van Buren court had to decide whether Van Buren violated the Computer Fraud and Abuse Act of 1986 (CFAA), which made it illegal "to access a computer with authorization and to use such access to obtain or alter information in the computer that the

accessor is not entitled so to obtain or alter." *Van Buren*, 593 U.S. at 378.) In this case, Paitsel did not access to obtain or alter information in the computer "that the accessor was not entitled so to obtain." *Id*. Also, as the Senior Judge observes, the evidence must show that the public official received a thing of value knowing that it was given with the expectation that the official would perform an "official act" in return. *McDonnell*, 579 U.S. at 572. In this case, while Paitsel did receive renumeration, he did not receive it to perform an official act. Paitsel accessed telephone numbers of persons in the real estate market; persons that had nothing to do with the FBI or any other law enforcement agency.

Senior Judge Randolph goes further by stating that "[a]n opening screen on CLEAR states that for Thomson Reuters—for the company—to comply with the Gramm-Leach-Bliley Act, the user must identify a 'permissible purpose' before using the company's database." *Id*. And while Senior Judge Randolph agrees that Gramm-Leach-Bliley Act regulates financial institutions and their disclosure of information about their customers, but one would hardly know this from the majority's opinion that the Gramm-Leach-Bliley Act is not a criminal statute. *Id*. It is a civil statute, Senior Judge Randolph asserts, "and it is enforced through civil regulatory measures." *See* 15 U.S.C. 1605.

And even though the majority opinion states that "Federal law require[d]" Paitsel, in order to use CLEAR, to identify his "permissible purpose, the majority's assertion, even if it mattered, is mistaken and misleading. *Id*. The screen purporting to limit Paitsel's use of CLEAR is not a "federal law," as the

majority asserts. *Id*. It is a notice from Thomson Reuters Senior Judge Randolph asserts. *Id.* And contrary to the majority's contention, Senior Judge Randolph writes, the notice is not a mere "implementation of Congress's requirements" regarding nonpublic information. *Id.* The CLEAR warning screen, Senior Judge Randolph asserts, is overbroad and covers information that Thomson Reuters obtained from sources other than financial institutions. Id. The majority opinion, Senior Judge Randolph argues, renders application of a federal criminal statute dependent on terms dictated by a private entity, in this case, a foreign corporation. *Id*. at 1036.

The majority makes a related error in describing the information Paitsel retrieved from CLEAR and turned over to Bailey. *Id*. Again, Senior Judge Randolph writes, "it is not clear why the majority thinks the nature of the information matters." *Id.* The "information," as charged in the Indictment, Senior Judge Randolph contends, consists of "personal contact information" or "contact information" from CLEAR. *Id.* In each of the instances set forth in the Indictment, Senior Judge Randolph points out, the relayed "information" were telephone numbers. *Id*. And, CLEAR contains information from many sources other than regulated financial institutions. *Id*. Senior Judge Randolph points out that "no one knows whether the 'contact information' Paitsel obtained and gave to Bailey—telephone numbers of apartment tenants—came from financial institutions." *Id.* A senior manager from Thomson Reuters testified at trial that telephone numbers are not "personal identifying

information," contrary to what the majority opinion now asserts. *Id*. That testimony is the only evidence on this subject the jury had before it. *Id.*

Senior Judge Randolph also asserts that the majority came up with another idea, that Paitsel disclosed to Bailey "at least one tenant's Social Security number." *Id*. (citing Majority Op. 1027). But, as Senior Judge Randolph points out:

> [T]he Indictment charged Paitsel only with disclosing "personal contact information," that is, telephone numbers. The Indictment did not mention Social Security numbers. To state the obvious, having a person's Social Security number would not enable anyone to contact that person. And the trial judge's jury instructions never mentioned anything about Paitsel disclosing Social Security numbers.

Id.

Basically, the Senior Judge emphasizes the majority's reasoning circumvents the *McDonnell*'s limits and effectively expands federal bribery back to what *McDonnell* rejected — a broad, amorphous standard that criminalizes "misuse of position." *Id*. at 1034. By focusing on "access" or "privilege" rather than a concrete governmental "question or matter," the majority revives the vagueness problem that *McDonnell* tried to fix. *Id*. The Senior Judge warned that this holding invites arbitrary enforcement, chills legitimate conduct, and reintroduces an issue that already was "put out to rest."

CONCLUSION

The D.C. Circuit seems to be charting a new path by using the broader "violation of an official duty" prong of the bribery statute to prosecute cases where the "official act" prong may fall short. The D.C. Circuit's ruling on Paitsel's "official duty" seems to provide a workaround to the Supreme Court's narrower definition of "official act" established in *McDonnell*. The Court should address this distinction and clarify the bounds of public corruption law. As stated in his dissent, Senior Judge Randolph argued that the majority's distinction between "official duty" and "official act" is form over substance, both phrases deal with the scope of official authority, and both should be limited by *McDonnell's* reasoning. The Court should grant Paitsel's Writ request.

If the Court upholds the D.C. Circuit's broad reading of "official duty," the Court restores some of the prosecutorial power that was arguably diminished by the narrow definition of "official act" in *McDonnell*. Therefore, the Court should find the D.C. Circuit's interpretation overly broad and rule in favor of a narrower interpretation of "official duty," holding that the D.C. Circuit's broad application will lead to the chilling of normal government activities, similar to the concerns raised in *McDonnell*.

This Court should grant certiorari.

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Dated: October 29, 2025 *Attorney for Petitioner*