

No. 25-757

---

---

IN THE  
**Supreme Court of the United States**

—————  
MATTHEW BORGES,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

—————  
**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Sixth Circuit**

—————  
**REPLY BRIEF IN SUPPORT OF CERTIORARI**

—————

|                               |                          |
|-------------------------------|--------------------------|
| JESSICA ELLSWORTH             | J. ALEX LITTLE           |
| JO-ANN TAMILA SAGAR           | <i>Counsel of Record</i> |
| KATHERINE T. MCKAY            | JOHN R. GLOVER           |
| STEVEN HIGGINS                | LITSON PLLC              |
| HOGAN LOVELLS US LLP          | 54 Music Square East     |
| 555 Thirteenth Street, NW     | Suite 300                |
| Washington, DC 20004          | Nashville, TN 37203      |
| (202) 637-5600                | (615) 985-8205           |
| jo-ann.sagar@hoganlovells.com | alex@litson.co           |

—————  
*Counsel for Petitioner*

---

---

## TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| TABLE OF AUTHORITIES.....  | ii          |
| INTRODUCTION.....  | 1           |
| ARGUMENT .....   | 2           |
| I.    This Case Is An Excellent Vehicle .....  | 2           |
| A.    This Case Presents The Same<br>Question As <i>Sittenfeld v. United<br/>            States</i> , No. 25-49, Without<br>The Procedural Complications<br>Of That Case ..... | 3           |
| B.    There Are No Barriers To This<br>Court’s Review .....  | 4           |
| II.    The Court Should Intervene Now .....  | 8           |
| A.    Lower Courts Have<br>Repeatedly Asked For This<br>Court’s Guidance .....   | 8           |
| B.    The Question Presented Is<br>Important And Recurring.....  | 10          |
| CONCLUSION .....   | 12          |

**TABLE OF AUTHORITIES**

|   | <u>Page(s)</u> |
|---|----------------|
| <b>CASES:</b>   |                |
| <i>Allinson v. United States</i> ,<br>143 S. Ct. 427 (2022).....  | 11             |
| <i>Benjamin v. United States</i> ,<br>145 S. Ct. 982 (2024).....  | 10             |
| <i>Blagojevich v. United States</i> ,<br>584 U.S. 930 (2018).....   | 11             |
| <i>Buckley v. Valeo</i> ,<br>424 U.S. 1 (1976).....   | 7              |
| <i>Colas v. Grzegorek</i> ,<br>207 F.2d 705 (7th Cir. 1953).....  | 6              |
| <i>Davis v. United States</i> ,<br>142 S. Ct. 401 (2021).....   | 11             |
| <i>Evans v. United States</i> ,<br>504 U.S. 255 (1992).....   | 1, 4, 6        |
| <i>Federal Election Comm’n v. Colorado<br/>Republican Fed. Campaign Comm.</i> ,<br>533 U.S. 431 (2001)..... | 7              |
| <i>McCormick v. United States</i> ,<br>500 U.S. 257 (1991).....   | 1, 6           |
| <i>McCutcheon v. Federal Election Comm’n</i> ,<br>572 U.S. 185 (2014).....                                  | 10             |
| <i>McDonnell v. United States</i> ,<br>579 U.S. 550 (2016).....   | 7              |
| <i>McNally v. United States</i> ,<br>483 U.S. 350 (1987).....   | 11             |
| <i>Nelson v. Adams USA, Inc.</i> ,<br>529 U.S. 460 (2000).....  | 5              |

**TABLE OF AUTHORITIES—Continued**

|   | <u>Page(s)</u> |
|---|----------------|
| <i>Percoco v. United States</i> ,<br>598 U.S. 319 (2023) .....  | 11             |
| <i>Scrushy v. United States</i> ,<br>566 U.S. 1043 (2012) .....   | 11             |
| <i>Siegelman v. United States</i> ,<br>566 U.S. 1043 (2012) .....   | 11             |
| <i>Silver v. United States</i> ,<br>141 S. Ct. 656 (2021) .....   | 10, 11         |
| <i>Spartanburg Cnty. Sch. Dist. Seven v.</i><br><i>National Gypsum Co.</i> ,<br>805 F.2d 1148 (4th Cir. 1986) ..... | 6              |
| <i>Terry v. United States</i> ,<br>571 U.S. 1237 (2014) .....   | 11             |
| <i>United States v. Benjamin</i> ,<br>2022 WL 17417038 (S.D.N.Y.<br>Dec. 5, 2022) .....                             | 8              |
| <i>United States v. Householder</i> ,<br>137 F.4th 454 (6th Cir. 2025) .....  | 2, 3           |
| <i>United States v. Ring</i> ,<br>706 F.3d 460 (D.C. Cir. 2013) .....   | 8              |
| <i>United States v. Sittenfeld</i> ,<br>128 F.4th 752 (6th Cir. 2025) .....   | 8              |
| <i>United States v. Williams</i> ,<br>504 U.S. 36 (1992) .....  | 5              |
| <b>OTHER AUTHORITIES:</b>   |                |
| <i>Explicit</i> , Black’s Law Dictionary<br>(12th ed. 2024) .....   | 5              |
| <i>Quid Pro Quo</i> , Black’s Law Dictionary<br>(12th ed. 2024) .....   | 5              |

IN THE  
**Supreme Court of the United States**

---

No. 25-757

---

MATTHEW BORGES,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Sixth Circuit**

---

**REPLY BRIEF IN SUPPORT OF CERTIORARI**

---

**INTRODUCTION**

The government opposes certiorari because, it claims, the law in this area is straightforward. It is not. This Court’s decision in *Evans v. United States*, 504 U.S. 255 (1992), has caused confusion—and unconstitutional convictions—by eroding the core First Amendment principle that an “explicit” quid pro quo is necessary to establish criminal liability in campaign-contribution cases. *McCormick v. United States*, 500 U.S. 257, 272-273 (1991).

Borges's petition presents an excellent opportunity for the Court to revisit *Evans* and provide clarity. There are no vehicle problems. Borges's arguments are fully preserved. And the Sixth Circuit affirmed Borges's conviction based only on Householder's public-official bribery. If that foundation disappears, so does the basis for Borges's conviction.

Delaying review will cause Borges, Householder, and many other similarly situated defendants to serve prison sentences based on an unconstitutional statement of the law. The government does not suggest that the Sixth Circuit is likely to reverse itself. Nor does the government suggest that further percolation would aid this Court's review when the question presented has been fully ventilated in numerous decisions. Indeed, lower courts have expressly asked the Court to clarify *Evans*. Borges's petition presents the Court the opportunity to do so.

This Court should grant the petition.

## **ARGUMENT**

### **I. THIS CASE IS AN EXCELLENT VEHICLE.**

This case illustrates the confusion caused by *Evans*: A public official was convicted of bribery for the receipt of political contributions, even though the jury heard no evidence that the official agreed to an explicit quid pro quo with the donor. This conviction was possible because the government's theory at trial did not rely on direct evidence of an explicit quid pro quo, and the district court's jury instructions did not require the jury to find one. That was error.

As all parties agree, Borges's conviction is inextricably tied to that error. Pet. 23; Opp. 10 n.\*; *see also United States v. Householder*, 137 F.4th 454, 490 (6th

Cir. 2025) (Thapar, J., concurring) (noting that “if the Supreme Court revisits its bribery cases and undermines the foundation of Householder’s conviction, Borges’s conviction is also ripe for reconsideration”); Pet. 18-20. This case is thus an excellent vehicle for this Court to revisit *Evans* and resolve the confusion in the lower courts.

**A. This Case Presents The Same Question As *Sittenfeld v. United States*, No. 25-49, Without The Procedural Complications Of That Case.**

Three petitions recently presented this Court with the same question. *See Sittenfeld v. United States*, No. 25-49; *Householder v. United States*, No. 25-756; *Borges v. United States*, No. 25-757. Although the government filed a joint brief in opposition to certiorari in *Householder* and *Borges*, the government acquiesced to certiorari in *Sittenfeld*, recommending that this Court grant the petition, vacate the conviction, and remand. *See* Government’s Brief in Opposition at 4, *Sittenfeld v. United States*, No. 25-49 (Nov. 10, 2025). The Court has now done so. *See* Order, *Sittenfeld v. United States*, No. 25-49 (April 6, 2026). But that case-specific determination did not resolve the underlying question presented. It merely removed *Sittenfeld* as the vehicle for answering it.

That leaves this case as a clean and compelling vehicle for review. Unlike *Sittenfeld*, Borges has not been pardoned. The parties remain adverse, no mootness issue clouds the Court’s review, and the legal question is squarely presented. Indeed, the Court’s disposition in *Sittenfeld* only underscores the need to grant review in a case capable of squarely resolving

the confusion surrounding *Evans*. This case is therefore an excellent vehicle for this Court's review.

**B. There Are No Barriers To This Court's Review.**

In its brief in opposition, the government advances three supposed vehicle defects: (1) that Borges has not preserved this issue (he has), (2) that the payments in this case cannot be viewed as legitimate campaign contributions (they can), and (3) that any instructional error was harmless (not so). Opp. 13-15. All three miss the mark.

*1. Borges preserved his Evans objection.*

a. Before the district court, Borges specifically called for *Evans* to "be reconsidered." Defendants' Objections to Government's Proposed Jury Instructions at 11, *United States v. Householder*, No. 1:20-cr-00077 (S.D. Ohio Mar. 6, 2023), ECF No. 193. And he did so explicitly "to preserve th[e] issue for potential appellate review." *Ibid.*

Borges's proposed jury instructions were likewise consistent with his challenge to *Evans*. He expressly requested jury instructions making clear that bribery requires an "explicit quid pro quo"—and nothing less. Compare *Householder*, No. 1:20-cr-00077, ECF No. 174 at 40-45 ("Proposed Jury Instructions") (using the phrase "explicit quid pro quo" five times and citing *McCormick* as authority for that instruction), with *Evans*, 504 U.S. at 274 (Kennedy, J., concurring in part) (suggesting that a quid pro quo may be "implied" to avoid evasion by "winks and nods").

Borges's proposed instructions also explained that "[a]bsent an explicit quid pro quo agreement, donors are free to offer, and public officials are free to accept,

donations that are motivated by a generalized hope that the donation may result in some form of favorable treatment.” Proposed Jury Instructions at 44. And they made clear that an “essential element of a bribe” is “the *agreement* between a public official and a payor to *exchange* official acts for benefits to the official.” *Id.* at 41.

b. The government nevertheless makes the baffling claim that Borges did not “adequately preserve” his objection to the jury instructions. Opp. 13.

To the extent that the government faults Borges for failing to request an instruction using the precise phrase “unambiguous this for that exchange,” the government misunderstands preservation. *Id.* Preservation “does not demand the incantation of particular words; rather, it requires that the lower court be fairly put on notice as to the substance of the issue.” *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 469 (2000). Borges gave the requisite notice that he wanted an instruction regarding an “unambiguous this for that exchange” by requesting jury instructions making clear that bribery requires an “explicit quid pro quo.” See *Quid Pro Quo*, *Black’s Law Dictionary* (12th ed. 2024) (defining “quid pro quo” as “something for something”); *Explicit*, *Black’s Law Dictionary* (12th ed. 2024) (defining “explicit” as “expressed without ambiguity or vagueness”).

And to the extent that the government faults Borges for failing to challenge the jury instructions on appeal, the government misconstrues this Court’s procedural rules. This Court may consider any issue that has been pressed or passed upon in the courts below. *United States v. Williams*, 504 U.S. 36, 41 (1992). The “pressed or passed upon” standard “operates (as it is

phrased) in the disjunctive, permitting review of an issue not pressed so long as it has been passed upon.” *Id.* Both boxes are checked here: The issue was presented to the Sixth Circuit by a co-defendant, *see* Appellant’s Opening Brief at 27-32, *United States v. Householder*, No. 23-3565 (6th Cir. Feb. 26, 2024), ECF No. 46, and the court addressed the question in a precedential decision, Pet. App. 23a n.5.

c. The government also claims that the instructions, when “[t]aken as a whole,” suggested that the jury should find an explicit quid pro quo. Opp. 9-10. But the government gets that wrong, too. While the district court did use the word “explicit” at two points in its instructions, the district court also clearly stated that “knowing winks and nods” would suffice. *Householder*, No. 1:20-cr-00077, ECF No. 260 at 30-31, 35. The district court thus used the exact *Evans* language—which Borges challenges here—in charging the jury.

“[T]he giving of a correct instruction does not cure the error of giving a contradictory instruction which is erroneous.” *Colas v. Grzegorek*, 207 F.2d 705, 710 (7th Cir. 1953); *Spartanburg Cnty. Sch. Dist. Seven v. National Gypsum Co.*, 805 F.2d 1148, 1150-51 (4th Cir. 1986) (collecting cases). And here, the district court offered a clearly erroneous instruction lifted from Justice Kennedy’s *Evans* concurrence. *See Evans*, 504 U.S. at 274 (Kennedy, J., concurring in part) (suggesting that a quid pro quo may be “implied” to avoid evasion by “winks and nods”). Those instructions fall short of requiring an explicit, unambiguous quid pro quo. And they sweep in normal, everyday political activity. Under *McCormick*, that is unconstitutional. *See* 500 U.S. at 272.

2. *This case involves campaign contributions.*

The government's contention that the payments here were not "legitimate campaign contributions" fares no better. Opp. 15. The government appears to believe that because the payments were made to an issue advocacy organization, rather than "Householder or his campaign," they are not campaign contributions and so do not constitute protected political speech. *Ibid.* Not so.

The government's cramped view cannot be squared with this Court's campaign-finance jurisprudence. This Court repeatedly has held that "[s]pending for political ends *and* contributing to political candidates both fall within the First Amendment's protection of speech and political association." *Federal Election Comm'n v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 440 (2001) (emphasis added) (citation omitted). Political donations do not lose First Amendment protection simply because they are given to an issue advocacy organization and not a candidate. *See Buckley v. Valeo*, 424 U.S. 1, 14-23 (1976).

3. *The error was not harmless.*

The government is likewise wrong to claim that any instructional error was harmless. Opp. 15. When jury instructions may have permitted the jury to convict for "conduct that is not unlawful," that error cannot be "harmless beyond a reasonable doubt." *McDonnell v. United States*, 579 U.S. 550, 579-580 (2016). The district court's jury instructions allowed the conviction of an official who simply "knew" a contribution was given "in return for" an act, without requiring proof that the payment controlled the act or that the official would not have taken that act absent the payment. *See* Pet. 11. That error goes to the heart of the

case and directly bears on the convictions of both Borges and Householder. *See* Pet. 17-20.

## II. THE COURT SHOULD INTERVENE NOW.

### A. Lower Courts Have Repeatedly Asked For This Court’s Guidance.

The government insists that *Evans* has not caused confusion. Opp. 13. Lower courts disagree.

Many have expressly acknowledged “‘confusion among the courts’ as to the [quid pro quo] standard in campaign contribution cases.” *United States v. Benjamin*, 95 F.4th 60, 66 (2d Cir. 2024) (quoting *United States v. Benjamin*, 2022 WL 17417038, at \*13 (S.D.N.Y. Dec. 5, 2022)); *United States v. Ring*, 706 F.3d 460, 466 (D.C. Cir. 2013) (“[C]ourts have struggled to pin down the definition of an explicit quid pro quo in various contexts.”); *cf. United States v. Sittenfeld*, 128 F.4th 752, 791 (6th Cir. 2025) (Murphy, J., concurring) (noting that *Evans* could be read to “bar campaign contributions paid to public officials whenever the officials took an official act with which a contributor agreed”). Judge Bush has suggested that “it would be helpful for the Supreme Court to provide guidance” about “the sufficiency line of bribery and extortion cases” in the campaign-contribution context. *Id.* at 806 (Bush, J., dissenting). Judge Nalbandian noted that “it may be time for the Court to revisit or refine the doctrine.” *Id.* at 772 n.8 (Nalbandian, J.) (majority op.). Judge Murphy has stated that “existing precedent \* \* \* maximizes (rather than minimizes) the constitutional concerns.” *Id.* at 787 (Murphy, J., concurring). And Judge Thapar recently “join[ed] the chorus of judges encouraging the Supreme Court to revisit *Evans*.” Pet. App. 67a (Thapar, J., concurring).

The government attempts to downplay the confusion by noting that the courts of appeals agree that *McCormick* does not require an express statement for juries to find a qualifying quid pro quo. Opp. 11. But that agreement does not resolve this case, or any of the others in which the courts of appeals have conveyed confusion. Borges does not dispute that an express statement is unnecessary under this Court's precedent. *See, e.g.*, Pet. at i. The question raised here is instead what constitutes a sufficiently unambiguous quid pro quo in the campaign-contribution context. *Id.* at 13-15. Because that question remains unsettled, justices of this Court also have called for reconsideration of *Evans*. *See* Opp. 12-13. Their criticisms could and should be addressed by the Court granting Borges's petition.

In any event, the government's position on the state of the law is cold comfort to lobbyists, elected officials, and their constituents, all of whom look to the courts for guidance on what is and is not permissible. No one surveying the many decisions across the country purporting to apply *Evans* could discern a clear, consistent standard establishing when campaign contributions cross the line into bribes. *See* Br. of Former Federal Officials as *Amici Curiae* at 4, *Sittenfeld v. United States*, No. 25-49 (Aug. 14, 2025) ("The lower courts' contrived attempts to square *McCormick* and *Evans* have resulted in a vague and unworkable standard."); *see also* Br. of *Amici Curiae* Former Federal Public Corruption Prosecutors at 12, *Sittenfeld v. United States*, No. 25-49 (Aug. 14, 2025) ("[I]t is clear that lower courts require further guidance."). As amici point out, "only clear rulings and guardrails from this Court will protect donors, candidates, public officials,

lobbyists, and political consultants from being targeted by federal prosecutors for interactions that are commonplace—indeed, unavoidable—in our political system.” Br. of Robert McDonnell, Bridget Kelly & Joseph Percoco as *Amici Curiae* at 4-5.

**B. The Question Presented Is Important And Recurring.**

This case implicates the core of the First Amendment, which “has its fullest and most urgent application precisely to the conduct of campaigns for political office.” *McCutcheon v. Federal Election Comm’n*, 572 U.S. 185, 191-192 (2014) (quotation omitted). American democracy is based on the principle that candidates garner support *because of* the positions they take and the actions they pledge to pursue if elected. *See, e.g., ibid.* (campaign donations “embody a central feature of democracy—that constituents support candidates who share their beliefs and interests, and candidates who are elected can be expected to be responsive to those concerns”). Federal law cannot constitutionally criminalize the same speech that forms an essential part of our democracy. *See generally* Br. of *Amici* Law Professors, *Sittenfeld v. United States*, No. 25-49 (Aug. 14, 2025) (detailing constitutional concerns).

The government suggests that petitions presenting this question are often denied. Opp. 7. But the government’s list only serves to underscore how frequently this issue recurs. And this case shows how far the government is willing to stretch *Evans*. The defendants in those cases were all either public officials or private individuals seeking personal advantages for their businesses. *See Benjamin v. United States*, 145 S. Ct. 982 (2024) (No. 24-142) (politician defendant); *Silver*

v. *United States*, 141 S. Ct. 656 (2021) (No. 20-60) (same); *Blagojevich v. United States*, 584 U.S. 930 (2018) (No. 17-658) (same); *Terry v. United States*, 571 U.S. 1237 (2014) (No. 13-392) (same); *Siegelman v. United States*, 566 U.S. 1043 (2012) (No. 11-955) (same); see also *Allinson v. United States*, 143 S. Ct. 427 (2022) (No. 22-328) (defendant sought government contracts for his law firm); *Davis v. United States*, 142 S. Ct. 401 (2021) (No. 21-5081) (defendant sought government contracts for his title search firm); *Scrushy v. United States*, 566 U.S. 1043 (2012) (No. 11-972) (defendant CEO sought appointment to state regulatory board). The Court has never considered a case like this one, which represents how corporations, unions, and other interest groups have used lobbyists to talk with politicians “[f]rom time immemorial.” See *Percoco v. United States*, 598 U.S. 319, 330-331 (2023).

Borges and Householder were convicted for engaging in political speech to which many Americans can relate. And unlike the archetypal bribery defendant, Borges is not a politician whose personal avarice overrode his obligation to his constituents. Unions, business leaders, and many other groups and individuals make campaign contributions, take meetings with public officials, and employ lobbyists like Borges to encourage elected officials to adopt their preferred positions. The district court’s jury instructions “swept in everyday political activity.” Pet. App. 66a. Because the Sixth Circuit’s decision leaves federal bribery law’s “outer boundaries ambiguous,” it chills First Amendment-protected speech. See *McNally v. United States*, 483 U.S. 350, 360 (1987). This Court should correct that grievous error.

**CONCLUSION**

For the foregoing reasons, and those in the petition, the petition should be granted.

Respectfully submitted,

JESSICA ELLSWORTH  
JO-ANN TAMILA SAGAR  
KATHERINE T. MCKAY  
STEVEN HIGGINS  
HOGAN LOVELLS US LLP  
555 Thirteenth Street, NW  
Washington, DC 20004  
(202) 637-5600  
jo-ann.sagar@hoganlovells.com

J. ALEX LITTLE  
*Counsel of Record*  
JOHN R. GLOVER  
LITSON PLLC  
54 Music Square East  
Suite 300  
Nashville, TN 37203  
(615) 985-8205  
alex@litson.co

*Counsel for Petitioner*

APRIL 2026