No. _______

In the Supreme Court
of the United States

Marilyn Mosby,
Petitioner,
v.

United States of America,
Respondent.

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

Petition for a Writ of Certiorari

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QUESTION PRESENTED

Federal law subjects millions of Americans each year to potential criminal liability for statements made on government forms containing undefined statutory and regulatory terminology. Most courts of appeals, consistent with *Bronston v. United States*, 409 U.S. 352 (1973), and the Due Process Clause, hold that a perjury conviction cannot rest on an answer to a question whose meaning reasonable persons of ordinary intellect could not ascertain at the time it was asked. The Fourth Circuit departed from that rule, concluding that ambiguity may be cured by a district court's post-hoc definition supplied years after the statement was made.

The question presented is:

Whether, in a prosecution for perjury under 18 U.S.C. § 1621, courts must determine whether the challenged question had a meaning upon which reasonable persons of ordinary intellect could agree at the time the defendant answered it, or whether a conviction may instead be sustained based on a definition first supplied by a court after the fact.

PARTIES TO THE PROCEEDINGS

Petitioner (defendant-appellant below) is Marilyn J. Mosby. Respondent (appellee below) is the United States.

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During the COVID-19 pandemic, Marilyn Mosby twice certified under penalty of perjury that the pandemic had caused her to incur "adverse financial consequences" resulting from the "closing or reduction of hours of a business" she owned and operated, thereby qualifying her for a penalty-free withdrawal from her retirement account under the CARES Act. That certification was true based upon a reasonable understanding of the statute and the unprecedented circumstances confronting business owners during the pandemic.

At the time, Ms. Mosby was preparing for life after public service and had invested substantial time, resources, and capital into launching a travel-related business under the Mahogany Elite brand. Like countless emerging businesses across the country, Mahogany Elite was in its developmental stage when COVID-19 brought the travel industry to a virtual standstill. Flights were canceled, tourism collapsed, conferences were abandoned, and travel-related commerce became nearly impossible. The pandemic did not merely reduce the hours of existing travel businesses—it prevented many startup travel companies from launching altogether.

As a result, the pandemic severely disrupted Mahogany Elite's ability to operate, grow, attract customers, establish business relationships, and generate the opportunities necessary for future revenue and capital development. In the process, it jeopardized the investments Ms. Mosby had already made and significantly impaired the business's prospects. To any reasonable entrepreneur, these were plainly adverse financial consequences stemming from the reduction of business activity caused by COVID-19.

Indeed, Congress enacted the CARES Act precisely because the pandemic created extraordinary economic hardships that did not fit neatly within traditional measures of financial loss. Recognizing the widespread uncertainty facing workers, families, and businesses, Congress intentionally employed broad eligibility language, allowing individuals who suffered "adverse financial consequences" from specified pandemic-related events to access emergency relief. Yet neither Congress, the Internal Revenue Service, nor the withdrawal form itself defined that critical phrase. The CARES Act provided no definition of "adverse financial consequences," no limitation restricting the term to realized income losses, and no guidance excluding startup businesses whose growth, operations, and investment opportunities were devastated by the pandemic.

Nevertheless, despite the ambiguity of the governing language and despite the unprecedented economic disruption caused by COVID-19, the government chose to devote its prosecutorial resources to indicting and trying Ms. Mosby for two counts of perjury based on her interpretation of an undefined statutory term.

In defending against those charges, Ms. Mosby argued that the phrase "adverse financial consequences" was fundamentally ambiguous. Because Congress, the IRS, and the withdrawal form failed to define the term, reasonable people could—and did—differ regarding its meaning. She further argued that the term was "fundamentally ambiguous" and hence insufficient to sustain a perjury prosecution. The district court rejected that argument, and a jury subsequently found Ms. Mosby guilty.

On appeal, the Fourth Circuit likewise declined to address the central question: whether reasonable persons of ordinary intellect, confronted with the undefined phrase "adverse financial consequences" during the economic uncertainty of the COVID-19 pandemic, could have understood the term differently. Rather than analyzing how an ordinary person would have interpreted the phrase at the time Ms. Mosby completed the certification, the court concluded that the phrase was not ambiguous because the district court, years later, supplied a jury instruction defining it.

The Fourth Circuit then affirmed the convictions based on that post-hoc definition, reasoning that because the district court was able to articulate a coherent meaning for the phrase during trial, the question itself could not have been fundamentally ambiguous when Ms. Mosby answered it years earlier.

That ruling warrants this Court's review. Every court of appeals recognizes that a perjury conviction cannot rest upon an answer to a fundamentally ambiguous question. Most courts properly assess fundamental-ambiguity arguments by examining whether the question, viewed in its full context, possessed a meaning upon which reasonable persons of ordinary intellect could agree at the time it was asked. This approach faithfully applies the interpretation of the perjury statute that this Court set forth in *Bronston v. United States*, 409 U.S. 352 (1973), and adheres to basic principles of fairness and due process. It does so by placing the burden on the government to ask clear questions before imposing the severe consequences of a perjury prosecution.

The decision below abandons that principle. Instead of examining what an ordinary person would have understood, the Fourth Circuit relied upon a definition crafted years later by a trial court. In doing so, the Court transformed an undefined CARES Act term into the basis for a felony conviction and effectively allowed hindsight to substitute for fair notice.

The implications extend far beyond this case. Modern Americans routinely interact with federal agencies through forms containing broad, undefined, and often complex terminology. If courts may uphold perjury convictions based upon meanings supplied after the fact—rather than meanings reasonably understood when answers were given—then individuals navigating the federal bureaucracy will be left to speculate, at the risk of criminal prosecution, whether their good-faith interpretation of ambiguous government language will later be deemed incorrect.

The Court should grant the petition and reverse the Fourth Circuit's departure from *Bronston*'s and other circuits' approach requiring the government—not citizens—to bear the burden of clarity.

OPINIONS BELOW

The opinion of the court of appeals (App.1) is reported at *United States v. Mosby,* 143 F.4th 264 (4th Cir. 2025). The district court's opinion denying petitioner Ms. Mosby's motion to dismiss (App.49) is unpublished but available at *United States v. Mosby,* 2022 WL 4240835 (D. Md. Sept. 14, 2022).

JURISDICTION

The Fourth Circuit entered judgment on July 11, 2025 (App.1) and denied a timely rehearing petition on January 14, 2026, App.59. On April 2, 2026, the Chief Justice extended the time to file this petition until May 14, 2026. On May 5, 2026, he further extended the time to June 13, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part that "[n]o person shall … be deprived of life, liberty, or property, without due process of law."

Title 18 United States Code §1621 provides in relevant part that "[w]hoever … in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true[] is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both."

STATEMENT

A. Factual Background

After graduating law school in 2005, Marilyn Mosby moved to Baltimore, the hometown of her then-fiancé. C.A.J.A.2027-2036. She spent the first six years of her legal career as a prosecutor with the Baltimore City State's Attorney's Office, earning several promotions. C.A.J.A.2036-2041. She left the office in 2011 and became an in-house litigator. C.A.J.A.2041-2042. However, in 2013, she sought to return to public service, running for Baltimore City State's Attorney. C.A.J.A.2042-2043. She was elected in 2014, C.A.J.A.2043, and took office in January 2015 at age 34 (making her then the youngest chief prosecutor of any major American city), C.A.J.A.2046. She was re-elected in 2018. C.A.J.A.2043-2044. During her eight-year tenure, she oversaw high-profile homicide cases, attended thousands of community events, advocated for legislation both in Maryland and nationally, created a Crime Control and Prevention Division and a Conviction Integrity Unit, and more generally served as the public face of the office she led. C.A.J.A.2044-2047.

As her second term wound down, Ms. Mosby began preparing for life after public service. C.A.J.A.2059-2060. In 2019, she incorporated a set of travel-related businesses under the brand name "Mahogany Elite," which sought to reach underserved populations. C.A.J.A.2742, 2745-2746. Ms. Mosby saw Mahogany Elite as a "long-term venture," C.A.J.A.2742, and although it did not immediately take on clients or generate revenue, Ms. Mosby incurred expenses in establishing the companies and preparing them to become operational. C.A.J.A.2746.

Also in 2019, Ms. Mosby (a mother of two young girls) was preparing to separate from her husband, then a state legislator and former member of the Baltimore City Council.

C.A.J.A.2056-2057. Seeking to "establish … financial independence," she sought to buy her first home in her own name. C.A.J.A.2060. Around that time, she made two withdrawals from her Baltimore City 457(b) retirement account. Ordinarily, such early withdrawals are both taxable as regular income and subject to a tax penalty. *See* 26 U.S.C. §457(a)(1); IRS, *Retirement topics: Exceptions to tax on early distributions* (updated Dec. 11, 2025), https://tinyurl.com/4c4xr52k. However, early in the COVID-19 pandemic, Congress enacted a statute, known as the CARES Act, to mitigate these tax burdens. In particular, section 2202(a)(1) of the law—the 2020 Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281, 340—permitted eligible individuals to make penalty-free "coronavirus-related" withdrawals. 134 Stat. at 341, §2202(a)(4)(A)(ii). To qualify, an individual had to certify that they had experienced "adverse financial consequences" (an undefined term) from one or more of several enumerated pandemic-related sources, one of which was the "closing or reduction of hours of a business" the person owned or operated. *Id.* §2202(a)(4)(A)(ii)(III).

In 2020, as the pandemic's impact was still unfolding, Ms. Mosby had a lengthy conversation with a retirement-plan representative at Nationwide (her plan administrator), who "explained what her options were" under the CARES Act. C.A.J.A.842. Pursuant to the advice of her plan administrator, who advised that she could withdraw up to $100,000 of her retirement savings at any time within that year if she met the qualifying requirements of the statute, she then requested a $40,000 coronavirus-related withdrawal from her retirement account, which included directing that 10% be withheld for taxes. C.A.J.A.845, 2736-2738. By signing the distribution-request form, Ms. Mosby certified under penalty of perjury that she met "at least one of the qualifications for a distribution as defined under the CARES Act Section 2202(a)(4)(A) summarized below." C.A.J.A.2738. The form instructed her to "check one" of three boxes; she checked the box next to the following "qualification":

> I have experienced adverse financial consequences stemming from such virus or disease as a result of:
>
> - Being quarantined, furloughed or laid off
> - Having reduced work hours
> - Being unable to work due to lack of child care
> - The closing or reduction of hours of a business I own or operate

Id. A fuller excerpt of the form's certification appears in the following screenshot:

Participant Coronavirus Certification and Distribution Authorization

The Coronavirus Aid, Relief and Economic Security Act of 2020 ("CARES Act") was signed into law on March 27, 2020. The CARES Act permits qualifying members to receive a coronavirus-related distribution. I understand that I may receive a distribution of up to $100,000 if I am a qualified individual. By making this request, I acknowledge that the amount of coronavirus-related distribution(s) which I may obtain from The City of Baltimore Deferred Compensation Plan is limited to the amount of $100,000 and that I am not exceeding this limit. I further acknowledge that the City of Baltimore Deferred Compensation Plan is relying on my certifications in determining that I qualify for a coronavirus-related distribution and that I will not exceed the applicable limit.

By signing this form, I certify that I meet at least one of the qualifications for a distribution as defined under the CARES Act Section 2202(a)(4)(A) summarized below: (check one)

☐ I have been diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention; or

☐ I have a spouse or dependents diagnosed with such virus or disease by such a test; or

☑ I have experienced adverse financial consequences stemming from such virus or disease as a result of:

- Being quarantined, furloughed or laid off
- Having reduced work hours
- Being unable to work due to lack of child care
- The closing or reduction of hours of a business I own or operate

Additional Acknowledgments

I acknowledge that this distribution is subject to ordinary income taxes and any State or Federal income taxes withheld will be reported on a form 1099-R. As listed in the Income Tax Withholding section on page 2 of this form, I understand that 10% will be withheld for Federal Income Tax unless I elected otherwise. To the extent otherwise applicable, I understand that the CARES Act waives the 10% early withdrawal penalty for coronavirus-related distributions. The CARES Act also permits the Federal tax on the distribution to be apportioned over a three-year period. The City of Baltimore Deferred Compensation Plan has advised me to talk with my personal tax consultant about how this distribution will affect my individual taxes and what repayment rights I have under the CARES Act.

I consent to a distribution as elected above and affirm under the penalties for perjury the statements and acknowledgments made in this request. I understand that the terms of the plan document will control the amount and timing of any payment from the plan.

Id.

Several months later, Ms. Mosby requested a $50,000 coronavirus-related withdrawal from her retirement savings, again directing the withholding of 10% for taxes. C.A.J.A.2739-

2741. Again, she checked a box certifying that she had "experienced adverse financial consequences." C.A.J.A.2741. The relevant language on the first and second forms was identical. *Compare id. with* C.A.J.A.2738.

At the time of these withdrawals, Ms. Mosby's new travel business had not yet generated revenue; however, she adversely suffered an inability to operate, market services, secure clients, establish vendor relationships, and/or attract investment due to a global pandemic where travel was not only restricted, but undesirable. The pandemic did not merely reduce Mahogany Elite's revenues; it prevented the business from reaching the point where revenues could be generated at all. C.A.J.A.2746.

After each withdrawal from her retirement account (for which she paid the required taxes), Ms. Mosby purchased a home in Florida. *See* C.A.J.A.2064-2065; C.A.J.A.2068-2069; C.A.J.A.2072-2073.

B. Procedural History

1. Ms. Mosby was indicted in January 2022. C.A.J.A.1. The superseding indictment included two perjury counts, premised on her certifications on the withdrawal forms that she had experienced "adverse financial consequences." C.A.J.A.42-46; C.A.J.A.52-55. (To Ms. Mosby's knowledge, no one else in the United States has ever been prosecuted on this theory.) The indictment also included mortgage-fraud counts, premised on representations made in Ms. Mosby's applications for mortgages to finance the home purchases. C.A.J.A.47-51; C.A.J.A.56-60.

Ms. Mosby successfully moved to sever the perjury and mortgage-fraud counts, based on the potential prejudice of trying the charges together. C.A.J.A.183. Before the perjury trial (which occurred first), Ms. Mosby moved to dismiss those charges, arguing that the term "adverse financial consequences" on the retirement-withdrawal form (which was left undefined by Congress and the IRS) was "fundamentally ambiguous"—i.e., "not a phrase with a meaning about which men of ordinary intellect could agree," *United States* v. *Sarwari*, 669 F.3d 401, 408 (4th Cir. 2012)—and "thus insufficient to support a perjury charge." C.A.J.A.74-75. The district court denied the motion. C.A.J.A.159.

At trial, Ms. Mosby's counsel argued that Ms. Mosby had believed when she made the certifications that she qualified for penalty-free withdrawals under the CARES Act because the pandemic had derailed her nascent travel business. C.A.J.A.431-436. Although Ms. Mosby elected not to testify at trial, the jury found Ms. Mosby guilty on both counts. C.A.J.A.187. At her separate mortgage-fraud trial, where she elected to testify, she was acquitted of all but one count. C.A.J.A.290-291.

2. Ms. Mosby appealed her convictions, renewing her argument that the term "adverse financial consequences" was fundamentally ambiguous and could not sustain a perjury charge. The Fourth Circuit vacated the mortgage-fraud conviction and the accompanying order that Ms. Mosby forfeit her home in Longboat Key, Florida. App.3. But the panel affirmed the perjury convictions. *Id.* It acknowledged that an answer to a fundamentally ambiguous question cannot form the basis of a perjury conviction, but it concluded that the term "adverse financial consequences," as used on the withdrawal forms, was not fundamentally ambiguous. App.19-20. Specifically, the panel concluded that "the term is adequately clear because the specific parameters of an 'adverse financial consequence' are set out in the Distribution Request Form itself." App.20. The panel also credited the district court's definition of the term "adverse financial consequence" as "an unfavorable or negative outcome related to money, stemming

from [COVID-19], and resulting from one of the four examples identified" on the CARES Act withdrawal form. *Id.*

Ms. Mosby petitioned for rehearing of the panel's affirmance of the perjury convictions; the government petitioned for rehearing as to the panel's vacatur of the mortgage-fraud conviction and forfeiture order. The Fourth Circuit denied both petitions.

REASONS FOR GRANTING THE PETITION

I. THE COURTS OF APPEALS ARE DIVIDED ON THE QUESTION PRESENTED

This Court made clear in *Bronston* that "[p]recise questioning is imperative as a predicate for the offense of perjury." 409 U.S. at 362. The Court thus explained—in addressing the same perjury statute at issue here—that no jury should "be permitted to engage in conjecture whether an unresponsive answer, true and complete on its face, was intended to mislead or divert the examiner." *Id.* at 359. Instead, "[t]he burden is on the questioner to pin the witness down to the specific object of the questioner's inquiry." *Id.* at 359-360. That interpretation of the statute is rooted in traditional notions of fairness, protecting defendants from the "oppression" of unfair questioning. *Id.*

Over a half-century after *Bronston*, the courts of appeals are divided about how to apply it to cases where the defendant answered a question that itself invites conjecture. The Court should grant this petition to resolve that division.

A. As every court of appeals has recognized, *Bronston*'s holding and reasoning bar not only perjury convictions predicated on an ambiguous answer to a question, 409 U.S. at 359, but also perjury convictions predicated on an answer to a fundamentally ambiguous question, i.e., a question so ambiguous that the defendant could not have reliably understood what was asked. In each circuit, answers to such questions may not serve as the basis for a perjury charge.

See App.19; *United States* v. *Marston*, 694 F.3d 131, 136 (1st Cir. 2012); *United States* v. *Lighte*, 782 F.2d 367, 375-376 (2d Cir. 1986); *United States* v. *Harra*, 985 F.3d 196, 209 (3d Cir. 2021); *United States* v. *Posada Carriles*, 541 F.3d 344, 362-363 (5th Cir. 2008); *United States* v. *Eddy*, 737 F.2d 564, 565-571 (6th Cir. 1984); *United States* v. *Xiao*, 77 F.4th 466, 473 (7th Cir. 2023); *United States* v. *Turner*, 500 F.3d 685, 689 (8th Cir. 2007); *United States* v. *Boone*, 951 F.2d 1526, 1534-1535 (9th Cir. 1991); *United States* v. *Farmer*, 137 F.3d 1265, 1268 (10th Cir. 1998); *United States* v. *Manapat*, 928 F.2d 1097, 1099-1101 (11th Cir. 1991); *United States* v. *Doost*, 3 F.4th 432, 443 (D.C. Cir. 2021). The courts of appeals also agree that a "question is fundamentally ambiguous" (and so cannot support a perjury conviction) "when it is not a phrase with a meaning about which [people] of ordinary intellect could agree." App.19 (quotation marks omitted); *accord, e.g.*, *Farmer*, 137 F.3d at 1269; *Lighte*, 782 F.2d at 375; *United States* v. *Culliton*, 328 F.3d 1074, 1078 (9th Cir. 2003) (per curiam).

That consensus understanding is rooted not only in *Bronston*'s interpretation of the perjury statute, but also in the Constitution's guarantee of due process—which "'protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime.'" *Harra*, 985 F.3d at 211 (quoting *In re Winship*, 397 U.S. 358, 364 (1970)). A central precept of due process is that "potential defendants" must "be given 'fair warning' of what conduct could give rise to criminal liability." *Id.* at 212.

B. The circuits are divided, by contrast, over the proper analysis for assessing whether a question is fundamentally ambiguous.

1. Most circuits (including, before this case, the Fourth Circuit) apply the same inquiry: Whether, given the "context" in which a defendant answered the relevant question, all persons of ordinary intellect would "agree" on what the question meant. *United States* v.

Sarwari, 669 F.3d at 407-408; *see also United States* v. *Ryan*, 828 F.2d 1010, 1015-1016 (3d Cir. 1987); *Farmer*, 137 F.3d at 1270. Under this majority view, what matters is "what the question meant to defendant when she answered it." *Farmer*, 137 F.3d at 1270. That is because "the context of the question and answer" are "critically important" to understanding not only whether a statement was objectively false, but also whether the defendant so understood the answer she gave. *Id.* at 1269; *accord Harra*, 985 F.3d at 214.

Accordingly, most circuits consider de novo how a question would have been "commonly understood," with close attention to the ordinary meaning of the question's individual terms. *Marston*, 694 F.3d at 136; *accord Lighte*, 782 F.2d at 376; *Turner*, 500 F.3d at 690. That analysis considers the circumstances in which the question was posed, including any then-existing "regulations" or "agency guidance" that may have informed the question's meaning, *Xiao*, 77 F.4th at 474, and "other extrinsic evidence relevant to" the defendant's own "understanding of the question[],"*Culliton*, 328 F.3d at 1079.

2. Until the decision below, only one court of appeals—the Fifth Circuit—limited the fundamental-ambiguity inquiry to the text of the question asked, isolated from the question's surrounding context. Specifically, in *Posada Carriles*, the Fifth Circuit rejected the argument that a question can be fundamentally ambiguous if a person in the defendant's position would have been confused by what the question meant (there, in the context of a lengthy exchange riddled with translation errors), holding instead that "translation errors apart from the critical question and answer" of conviction, "even if occurring in close proximity thereto, do not infect the crucial question and answer with ambiguity." 541 F.3d at 364.

The decision below aligns the Fourth Circuit with the Fifth, in that it rejects a fundamental-ambiguity argument without considering the context in which the question arose.

But it also goes further. The panel ignored Ms. Mosby's argument that pandemic-related loss of potential capital investments or other business opportunities—i.e., opportunities to grow and lay groundwork for the Mahogany Elite business, as she prepared to begin operating it upon leaving public service—qualified as an "adverse financial condition." The panel even held that Ms. Mosby must have understood what that undefined term meant because the *district court* instructed the jury to adopt some "understand[able]" reading of the ambiguous question—years after Ms. Mosby had answered it. App.19.

The panel thus skipped any inquiry into whether persons of ordinary intellect could agree as to the meaning of the question Ms. Mosby answered. Without any analysis of how ordinary persons would understand the term "adverse financial consequences" in the relevant context, the panel stated that "just because words 'have different meanings in different situations does not make them fundamentally ambiguous.'" App.19 (quoting *Sarwari*, 669 F.3d at 407). Then, instead of assessing as a matter of law how an ordinary person would have understood the question that Ms. Mosby answered at the time she answered it, the panel concluded that "adverse financial consequences" is not fundamentally ambiguous because the district court devised a definition of the phrase that the panel deemed reasonable years after the fact. *Id.* And then the court stated that certain "enumerated examples" that accompanied the question on the form made the undefined term "adequately clear," without assessing Ms. Mosby's argument that one of the exemplified scenarios (closing or reduction of hours of a business she owned) *did* apply to her. App.20. No other circuit has so thoroughly wrenched a question from its context in rejecting a fundamental-ambiguity argument based on whether an ordinary person would understand a gloss on the undefined term the district court adopted at trial, years after the statement was made.

Absent this Court's intervention, criminal defendants in the Fourth Circuit (but not most other circuits) may be prosecuted for answering fundamentally ambiguous questions based on a court's post-hoc interpretation of the question—an interpretation of which the defendant obviously has no prior notice. And courts in both the Fourth and Fifth Circuits can (unlike in other circuits) ignore any consideration of how the *defendant* would have understood the question asked, when it was asked. This conflict deserves resolution and warrants the Court's review.

II. THE DECISION BELOW IS WRONG

A. The Fourth Circuit erred in upholding Ms. Mosby's perjury convictions. At the time she was asked whether she had suffered "adverse financial consequences" from one of the four categories of sources enumerated on the withdrawal form, Ms. Mosby reasonably interpreted that question and then correctly answered (based on her interpretation) that she had—because her fledgling travel business was, unsurprisingly, struggling badly during the COVID-19 pandemic.

That certification could not have supported a perjury conviction under most circuits' fundamental-ambiguity test, because "adverse financial consequences" is not a phrase "with a meaning about which men of ordinary intellect could agree," *Sarwari*, 669 F.3d at 407. The word "finance" has multiple meanings, including "the obtaining of funds or capital." Merriam-Webster, *Finance*, https://tinyurl.com/4836mjxr (visited June 10, 2026). And the term was defined nowhere on the withdrawal forms, C.A.J.A.2741, or in the CARES Act, 134 Stat. 281, or IRS guidance. Indeed, it does not appear to have been defined *anywhere*. And it is "open to numerous interpretations," *Ryan*, 828 F.2d at 1017—as tax professionals and lawyers recognized soon after the CARES Act's enactment. One leading commentary, for example, advised in the year Ms. Mosby made her withdrawals that determining whether adverse financial consequences existed was "highly dependent upon a subjective interpretation of the facts … of each situation," adding that taxpayers requesting withdrawals on that basis "could be at risk of a different interpretation by the IRS until clear guidance is issued." Goldman Sachs, *CARES Act: Penalty-free withdrawals* (Sept. 9, 2020), https://tinyurl.com/4ra7k5zv (as archived by the Internet Archive on February 25, 2021).

Ms. Mosby thus could have reasonably understood "financial consequences" to encompass not only pandemic-related losses of extant assets or future revenue from Mahogany Elite, but also a pandemic-related loss of future capital investments or other business opportunities, i.e., opportunities to grow and lay groundwork for the business as she prepared to begin operating it upon leaving public service. The latter interpretation encompasses business-related "consequences" that are not easily quantifiable or necessarily directly "related to money"—to quote the district court's definition—but that readers of the form could reasonably deem "financial."

Without acknowledging the above, the panel concluded that "the term is adequately clear because the specific parameters of an 'adverse financial consequence' are set out in the Distribution Request Form itself." App.19. But the forms listed "the closing or reduction of hours of a business" as an "example[]" of an event that an adverse financial consequence could "[be] the result of." *id.* And at trial, the defense argued that the source of Ms. Mosby's adverse financial consequences was the "closing or reduction of hours" of Ms. Mosby's business, Mahogany Elite, C.A.J.A.850-851. That the forms stated that a plan participant's "adverse financial consequences" had to stem from one of four enumerated categories of sources does not resolve the fundamental ambiguity about whether the resulting "adverse financial consequences" include the loss of future business opportunities. By enumerating specific examples, the forms limited the permissible *sources* of qualifying "adverse financial consequences," but did nothing to clarify the meaning of that vital term in the question Ms. Mosby answered. The Fourth Circuit's reasoning simply ignores that critical point. It likewise ignores the equally critical point that a jury instruction drafted years later cannot retroactively supply clarity about what an ordinary person would have understood at the time a sworn certification was made.

B. The Fourth Circuit's error also infringes upon Ms. Mosby's due process rights—and those of future defendants indicted for perjury for their response to a fundamentally ambiguous question.

It is a "fundamental principle in our legal system ... that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC* v. *Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). As this Court has often reiterated, due process "mandate[s] that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited." *Dunn* v. *United States*, 442 U.S. 100, 112 (1979) (collecting cases). Consistent with that principle, the Court has "traditionally exercised restraint in assessing the reach of a federal criminal statute." *Dubin* v. *United States*, 599 U.S. 110, 129 (2023) (collecting cases). The perjury statute, in particular, "is not to be loosely construed." *Bronston*, 409 U.S. at 360.

The risk of a due-process violation is particularly great with perjury charges, where individuals testifying (or filling out a form) under penalty of perjury may not "understand the question, or may in an excess of caution or apprehension read too much or too little into it." *Bronston*, 409 U.S. at 358. Congress, this Court has recognized, did not "intend the drastic sanction of a perjury prosecution to cure a testimonial mishap that could readily have been reached with a single additional question." *Id.* Indeed, "one consideration of policy overshadowed all others during the years when perjury first emerged as a common-law offense: that the measures taken against the offense must not be so severe as to discourage witnesses from appearing or testifying." *Id.* at 359 (quotation marks omitted). English law therefore "'thr[ew] every fence round a person accused of perjury.'" *Id.* One such "'fence'" this Court has adopted is holding that "[t]he burden is on the questioner to pin the witness down to the specific object of" the question. *Id.* at 359-360.

The panel opinion flouted those principles and threatened defendants' constitutional due-process rights, essentially rendering *Bronston* inapplicable to perjury prosecutions for answers to fundamentally ambiguous questions. In contrast, the approach most circuits follow (i.e., a more rigorous fundamental-ambiguity rule) is faithful to *Bronston*. It works "to (1) preclude convictions grounded on surmise or conjecture, (2) prevent witnesses from unfairly bearing the risks of inadequate [questioning], and (3) encourage witnesses to testify (or at least not discourage them from doing so)." *Farmer*, 137 F.3d at 1269. Put simply, the government "may not provide someone with a confusing and ambiguous form and then prosecute when the answers are inaccurate." *Manapat*, 928 F.2d at 1102. That is what happened here. And absent correction, the panel opinion leaves district courts free to disregard claims of fundamental ambiguity so long as a court can craft a jury instruction that gives *some* comprehensible meaning to the term in question.

III. THE QUESTION PRESENTED IS IMPORTANT AND THIS CASE IS A GOOD VEHICLE TO ADDRESS IT

The issue here is important in light of the expanding number of forms associated with a federal bureaucracy that has grown significantly over time. "Anyone who has applied for a passport, filed for Social Security benefits, or sought a license understands the government's affinity for forms." *Niz-Chavez* v. *Garland*, 593 U.S. 155, 157 (2021). And although "[t]he world is awash in forms," *id.* at 169, many forms associated with complicated government policies contain language not defined by Congress or any federal agency, *see, e.g.*, *United States* v. *Naegele*, 341 B.R. 349, 357 (D.D.C. 2006) (dismissing claims premised on undefined and fundamentally ambiguous term on form filed in chapter 7 bankruptcy); *United States* v. *Minnesota Orchestral Association*, 2025 WL 1953120, at *1-2 (D. Minn. July 16, 2025) (dismissing claims premised on undefined term on form associated with congressional Paycheck Protection Program). Resolving the question presented will ensure that individuals acting in good faith to navigate the ever-expanding federal bureaucracy are not swept up in federal criminal perjury prosecutions.

This case is a clean vehicle for resolving the circuit conflict over the questions presented. The panel expressly relied, in rejecting Ms. Mosby's ambiguity argument, on the district court's post-hoc jury instruction. App.19. And no jurisdictional or procedural complications would prevent this Court from reaching the question.

CONCLUSION

At its core, this case concerns whether the government may criminally prosecute an individual for answering an undefined and fundamentally ambiguous question based on a reasonable interpretation at the time the answer was given, or whether courts may later supply their own interpretation and retroactively transform that answer into a felony. The Fourth Circuit's decision departs from *Bronston*, deepens a circuit split, and threatens fundamental principles of due process by replacing fair notice with hindsight. Its rule reaches far beyond this case, exposing millions of Americans who complete federal forms containing undefined statutory and regulatory terms to potential criminal liability based on meanings supplied only after the fact. Because the Constitution requires the government—not citizens—to bear the burden of clarity before imposing criminal sanctions, and because the question presented has significant national implications for the administration of federal law, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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