

No. _____
In the
SUPREME COURT of the UNITED STATES
October Term, 2025

KENT BULLOCH,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Based on his agreement to sell face masks that had been designated as scarce materials at the outset of the Covid-19 pandemic, petitioner Kent Bulloch was convicted of conspiracy to “accumulate” such materials for the purpose of resale at prices in excess of prevailing market prices, in violation of the section of the Defense Production Act of 1950 entitled “Hoarding of designated scarce materials.” Review of his conviction required the Court of Appeals, as a matter of first impression, to determine the meaning of “accumulate” in that section, which provides that:

In order to prevent hoarding, no person shall accumulate (1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices, materials which have been designated by the President as scarce materials or materials the supply of which would be threatened by such accumulation. [50 U.S.C. § 4512]

Bulloch, whose agreement contemplated delivering masks to a buyer as soon as he obtained them, contended that, when read naturally in the context of the phrase that precedes it (“In order to prevent hoarding”), it is plain that “accumulate” is used as a synonym for “hoard.” The Court of Appeals, however, concluded that, unless the meaning of the word “accumulate” standing alone was ambiguous, looking to the opening phrase to determine its meaning would contravene the holding of *District of Columbia v. Heller* that, while a prefatory clause may “resolve an ambiguity in the operative clause,” it does not otherwise “limit or expand the scope of the operative clause.”

The questions presented are:

1. Whether *Heller*’s limitation on the effect of prefatory clauses displaces the canons teaching that the meaning of a word in a statute cannot be interpreted in isolation, but must be informed by the “neighboring words” with which it is associated; and
2. Whether, viewed in the context of the words with which it is associated in 50 U.S.C. § 4512, “accumulate” either (a) signifies conduct that constitutes “hoarding” or (b) does not unambiguously signify conduct other than “hoarding” and therefore requires consideration of legislative history to determine its meaning and calls into play the rule of lenity.

PARTIES TO THE PROCEEDING

The petitioner is Kent Bulloch.

The respondent is the United States of America.

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OPINIONS AND ORDERS BELOW

The Opinion of the United States Court of Appeals for the Second Circuit, *United States v. Bulloch*, No. 22-1361, dated January 27, 2026, is reported at 165 F.4th 676 (2d Cir. 2026) and appears as Appendix A to this petition. The order of the Second Circuit on Bulloch’s petition for rehearing and rehearing *en banc*, dated April 6, 2026, is attached as Appendix B. The Memorandum and Order of the district court, dated November 1, 2024, is unofficially reported at 2024 WL 4654134 and is attached as Appendix C.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on January 27, 2026. The petition for rehearing and rehearing *en banc* was denied by that Court on April 6, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

United States Code, Title 50, Section 4512 provides that:

In order to prevent hoarding, no person shall accumulate (1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices, materials which have been designated by the President as scarce materials or materials the supply of which would be threatened by such accumulation. The President shall order published in the Federal Register, and in such other manner as he may deem appropriate, every designation of materials the accumulation of which is unlawful and any withdrawal of such designation.

In making such designations the President may prescribe such conditions with respect to the accumulation of materials in excess of the reasonable demands of business, personal, or home consumption as he deems necessary to carry out the objectives of this chapter. This section shall not be construed to limit the authority contained in sections 4511 and 4554 of this title.

United States Code, Title 50, Section 4513 provides that:

Any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this subchapter or any rule, regulation, or order thereunder, shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

STATEMENT OF THE CASE

On review of a conviction for conspiring to sell face masks that were designated as “scarce” or “threatened” materials needed to respond to the national emergency posed by the spread of Covid-19, the Court of Appeals for the Second Circuit, as a matter of first impression, held that the section of the Defense Production Act entitled “Hoarding of designated scarce materials” [50 U.S.C. § 4512] extends to conduct that does not entail hoarding. The manner in which the Circuit reached that conclusion raises significant questions about the impact of this Court’s holding in *District of Columbia v. Heller*, 554 U.S. 570, 578 (2008) – that a prefatory clause “does not limit or expand the scope of the operative clause” – on the principles of statutory construction requiring that the meaning of a word can only be determined by considering it in the context of the words that accompany it.

A. Bulloch Was Convicted on the Basis of an Instruction Informing Jurors That, in Section 4512, “Accumulate” Simply Means “Gather, Collect, or Accrue”

Bulloch contended that a natural reading of section 4512 – which provides that “[in] order to prevent *hoarding*, no person shall *accumulate*” designated materials (emphasis added) – makes clear that it uses the word “accumulate” as a synonym, or near-synonym, for the word “hoard.” Consistent with that position, he asked the Magistrate Judge who presided over his trial to instruct the jury that, in this statute, “accumulate” means to gather, collect, or accrue “over a period of time” and that the accumulation must

entail withholding materials from the market for a period long enough to cause or allow their price to rise. In its opposition to that request, the government asserted that, while the statute addresses hoarding in its first numbered clause, the second clause established a crime of “price gouging” that can be committed without hoarding:

The plain language of the statute prohibits two separate and distinct crimes, delineated by the “or” between two enumerated clauses: specifically, the statute can be violated by accumulating designated scarce materials either (1) in excess of the reasonable demands of business, personal, or home consumption (the “Hoarding Clause”) or (2) for the purpose of resale at prices in excess of prevailing market prices (the “Price Gouging Clause”). [Government Memorandum, June 29, 2022]

The court, agreeing with the government, rejected Bulloch’s request and instead instructed the jury that “accumulate” is “used in the ordinary sense and simply means to gather, collect, or accrue.”

At trial, recorded conversations between Bulloch and an undercover FBI agent who posed as a potential purchaser made clear that Bulloch and his partner wanted payment in advance so they could “get in line” to obtain masks as soon as they became available and then distribute them immediately. The government did not dispute this; it emphasized during its closing argument that Bulloch “knew that time was of the essence and he wanted to speed things up, accumulate as many masks as possible, flip them, and accumulate more.” After receiving the court’s instruction that “accumulate” means “to gather, collect, or accrue,” the jury returned a guilty verdict.

Bulloch was sentenced to a fine and a two-year term of probation, and the judgment was subsequently upheld by a district court judge. Bulloch has completed his term of probation and has paid the fine.

B. Upholding the Judgment, the Court of Appeals Concluded That *Heller* Precluded Consideration of the Words in Section 4512’s Prefatory Clause To Determine the Meaning of “Accumulate”

On appeal, Bulloch maintained his position that, when “accumulate” is read in conjunction with the words that accompany it, it is clear that it is used to signify “hoarding” and he argued that, if so construed, the evidence at trial was legally insufficient to sustain his conviction. To illustrate his point, Bulloch cited opinions in which two federal judges substituted the word “hoard” for “accumulate” when describing the conduct addressed by the statute. *See United States v. Ritchey*, 604 F.Supp.3d 397, 406 (S.D.Miss. 2022) (“The Defense Production Act, 50 U.S.C. § 4501, et seq. (“DPA”), prohibits the *hoarding* of ‘materials which have been designated by the President as scarce materials or materials the supply of which would be threatened by such accumulation’ by those whose purpose is to resell them ‘at prices in excess of prevailing market prices’”) (emphasis added); and *United States v. Leal-Matos*, 2022 WL 476094, at *1 (D.P.R. February 15, 2022) (“The United States has charged [the defendant] with violating the Defense Production Act (“DPA”), 50 U.S.C. § 4512, by *hoarding* scarce materials – facemasks and disinfecting wipes – and selling them above market price”) (emphasis added).

The Court of Appeals dismissed the significance of those cases by observing that “neither of those district courts was presented with a dispute regarding the meaning of the term “accumulate” within Section 4512.” Appendix (“App.”) A, p. 25, n.9. Bulloch’s point, however, was not that the holdings of those cases addressed the issue raised on his appeal, but that they show that, when “accumulate” is read in the context of the sentence in which it appears, a person of ordinary intelligence would perceive that its meaning is interchangeable with that of “hoarding.” In urging the Court of Appeals to give it such a reading, Bulloch drew on the “fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” *Deal v. United States*, 508 U.S. 129, 132 (1993). *See also Yates v. United States*, 574 U.S. 528, 537 (2015) (plurality opinion) (the plain meaning of a statute “does not turn solely on dictionary definitions,” but requires consideration of “the specific context in which that language is used, and the broader context of the statute as a whole.” Bulloch also pointed to this Court’s teaching that “a word is given more precise content by the neighboring words with which it is associated,” *Fischer v. United States*, 603 U.S. 480, 487 (2024), and that narrowing the interpretation of a statutory term by considering “the company it keeps” assures that courts afford “proper respect to the prerogatives of Congress in carrying out the quintessentially legislative act of defining crimes and setting the penalties for them.” *Id.* at 497.

The Court of Appeals, however, did not address the holdings of the cases cited above, and its discussion of the “plain meaning” of “accumulate” focuses exclusively on dictionary definitions. *See App. A*, pp. 15-19. It not only failed to consider how the word “accumulate” might be given “more precise content by the neighboring words with which it is associated,” but concluded that, when the neighboring words appear in a prefatory clause, considering them for that purpose would run afoul of this Court’s holding in *Heller*:

[R]eading “accumulate” to mean “hoard” would impermissibly limit the scope of the operative clauses. While “a prefatory clause [may] resolve an ambiguity in the operative clause[,] . . . a prefatory clause does not *limit* or expand the scope of the operative clause.” *Heller*, 554 U.S. at 577-78 (emphasis added). As explained, the operative clause at issue lacks any temporal limitation: It prohibits accumulation of scarce materials with an intention to resell them in excess of prevailing market prices, which could change instantaneously. If we accepted Bulloch’s definition of “accumulate,” we would narrow the scope of the operative clause to cover only accumulation that occurs over an unspecified but prolonged period of time. That cannot be squared with the statute’s plain language or with principles of statutory interpretation. [*App. A*, p. 22]

In a footnote, the Court added the following:

Bulloch protests that he does “not assert that section 4512’s prefatory clause limits the *scope* of its operative clause, but that it contains a word (‘hoarding’) that informs the *meaning* of the word on which its operative clause hinges.” Bulloch Br. at 21 (emphases in original). But his argument is that the prefatory language “hoard” requires reading a temporal requirement into “accumulate,” where the word “accumulate” concededly would not otherwise contain such a requirement.

That is precisely the kind of impermissible scope-expanding described in *Heller*. [App. A, p.22, n. 7]

C. Based on Its Determination That, Standing Alone, the Meaning of “Accumulate” Is Unambiguous, the Court of Appeals Avoided Consideration of Legislative History Demonstrating That Both Clauses of Section 4512 Address Hoarding

Based on its view that *Heller* precluded consideration of the statute’s prefatory clause, the Court of Appeals failed to recognize that the juxtaposition of “hoarding” and “accumulate” at least creates ambiguity as to whether “accumulate” signifies “hoarding.” The Court also failed to recognize that the fact that two federal judges substituted “hoard” for “accumulate” when paraphrasing the statute demonstrates, at a minimum, that it is susceptible to such an interpretation. By finding, solely on the basis of dictionary definitions, that the statute unambiguously uses “accumulate” in a sense that does not signify “hoarding,” the Panel dispensed with the need to “resort to legislative history.” App.A, p. 15.

That history includes the Conference Report for the “antihoarding provision” of the DPA [[81st Congress, 2nd Session, Report No. 3042 (August 31, 1950)], which explains that the House version of the legislation that became 50 U.S.C. § 4512 was modeled on the anti-hoarding provisions of the World-War-I-era Lever Act and that the Senate version was “designed to accomplish the same purpose.” Bulloch also cited contemporaneous statements of Senator Homer Capeheart confirming his understanding that prosecutions under the “resale” clause would target manufacturers who hoarded steel

during the Korean War and held it “for so-called black-market prices.” Defense Production Act Hoarding of Scarce Materials and Restrictions upon Shipment of Strategic Materials: Hearing Before the Joint Comm. on Defense Production, 81st Cong. 6 (1950), pp. 5-7. Senator Capeheart noted that “it ought to be fairly easy to prove whether or not they are *hoarding* for the purpose of selling at prices above the prevailing market price.” Id. (emphasis added).

D. The Court of Appeals’ Determination That the Meaning of “Accumulate” is Unambiguous Also Enabled It to Avoid Application of the Rule of Lenity

By failing to recognize that, at a minimum, there is ambiguity as to whether the statute uses “accumulate” to signify hoarding, the Court of Appeals also avoided application of the rule of lenity. *See United States v. Lanier*, 520 U.S. 259, 266 (1997) (the rule of lenity “ensures fair warning by so resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered”).

REASONS FOR GRANTING THE WRIT

Faced with a question of statutory interpretation that has never been addressed by any other court, the court below, in connection with a criminal prosecution, held that the reach of the anti-hoarding provision of the DPA extends to conduct that does not entail hoarding. That result is inconsistent with a reading of the statute’s operative term –

“accumulate” – in conjunction with the words that accompany it.¹ It is also at odds with the intention of Congress as indicated in the statute’s legislative history. Review of the Second Circuit’s decision will not only permit this Court to review the validity of this precedent-setting ruling, but, more importantly, will allow it to provide guidance regarding important questions of statutory interpretation.

It will allow the Court to address the apparent tension between its ruling in *Heller* – that the Second Amendment’s prefatory clause “does not limit or expand the scope” of its operative clause – and the principle that “the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” *Deal*, 508 U.S. at 132. As the Second Circuit’s decision demonstrates, *Heller* may be understood – or misunderstood – to prohibit consideration of the context in which a word is used if the relevant context appears in a prefatory clause. *See* App.A, p. 22, n.7 (“But [Bulloch’s] argument is that the prefatory language “hoard” requires reading a temporal requirement into “accumulate,” where the word “accumulate” concededly would not otherwise contain such a requirement. That is precisely the kind of impermissible scope-expanding described in *Heller*”).

¹The concluding words of section 4512, which refer to materials “the *supply* of which would be threatened by *such accumulation*” (emphasis added) also indicate that the “accumulation” addressed by the statute is the kind that removes materials from circulation.

If certiorari is granted, the Court will have an opportunity to clarify whether *Heller* displaces the ordinary principles of statutory construction. In this regard, we would ask the Court to note that *Heller* did not involve a text, like that of the statute at issue here, in which a word in the prefatory clause suggests a particular meaning for the key word in the operative clause. While none of the words in the Second Amendment’s prefatory clause (“A well regulated Militia, being necessary to the security of a free State”) illuminates the meaning of “right” or “people” or “keep and bear Arms,” the word “hoarding” has a meaning that intersects with certain usages of “accumulate.” Granting certiorari would allow the Court to offer critical guidance as to whether *Heller* curtails a court’s obligation to begin its examination of a statute by determining the meaning of its words, and to recognize that their meaning cannot be understood in isolation. It will give the Court a platform for explaining that, notwithstanding *Heller*, the “neighboring words” of a statute should be considered together in order to avoid ascribing to one of them “a meaning so broad that it is inconsistent with the company it keeps.” *Fischer*, 603 U.S. at 487.

In providing that explanation, the Court will also be able to clarify *Heller*’s impact on the sequence of statutory interpretation. The Court of Appeals apparently understood *Heller*’s declaration that a prefatory clause may resolve an ambiguity in the operative clause to mean that, before a court can consult a prefatory clause, it must determine that a word in the operative clause *standing alone* is ambiguous. *See App.A.*, p. 22, n.7 (“reading a temporal requirement into ‘accumulate,’ where the word ‘accumulate’ . . .

would not *otherwise* contain such a requirement” is “precisely the kind of impermissible scope-expanding described in *Heller*”) (emphasis added). But suggesting that a court must find an ambiguity in a statutory term before it can take its context into account loses sight of the requirement that the first step of statutory construction is to determine the “ordinary meaning” of the words when read with reference to their context. *See, e.g. Southwest Airlines Co. v Saxon*, 596 US 450, 455 (2022) (“To discern that ordinary meaning, those words ““must be read”” and interpreted ““in their context,”” not in isolation”), quoting *Parker Drilling Management Services, Ltd. v. Newton*, 587 U. S. 601, 608 (2019)).

For Kent Bulloch, who has completed his sentence, the stakes of receiving further review may seem relatively low; a favorable resolution will serve only to remove the stigma of an unwarranted conviction. For courts and litigants throughout the nation, however, the stakes are much higher. Review by this Court will give it an opportunity to reverse a precedential opinion that effectively expands the reach of an anti-hoarding statute by turning it into a vehicle for penalizing freestanding acts of price-gouging despite the absence of any indication that the legislature sought to authorize prosecution of individuals for conduct that does not entail withholding scarce materials from the market. Still more significantly, it will permit the Court to disabuse courts of the notion that the rule announced in *Heller* – a case in which the words of the prefatory clause had no bearing on the *meaning* of any word in the operative clause – displaces the essential

rules of statutory construction that require courts to ascertain the meaning of statutory terms by viewing them in the context of the words with which they are associated.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 2025

APPENDIX A

APPENDIX B

APPENDIX C