

APPENDIX A

24-2975

United States v. Bulloch

**United States Court of Appeals
For the Second Circuit**

August Term 2025

Argued: September 22, 2025

Decided: January 27, 2026

No. 24-2975

UNITED STATES OF AMERICA,

Appellee,

v.

KENT BULLOCH,

Defendant-Appellant,

WILLIAM YOUNG, SR., a/k/a Bill,

Defendant.

Appeal from the United States District Court
for the Eastern District of New York

No. 1:20CR00181,

Peggy Kuo, *Magistrate Judge*;
Eric R. Komitee, *District Judge*.

Before: ROBINSON and MERRIAM, *Circuit Judges*.*

Defendant-appellant Kent Bulloch appeals from a judgment entered in the United States District Court for the Eastern District of New York convicting him, following a jury trial, of a misdemeanor offense of conspiracy to violate a provision of the Defense Production Act of 1950, 50 U.S.C §4512, stemming from his involvement in a scheme during the COVID-19 pandemic to buy personal protective equipment (“PPE”) in bulk and resell it for a profit. *See United States v. Bulloch*, No. 1:20CR00181(EK)(PK), 2024 WL 4654134 (E.D.N.Y. Nov. 1, 2024).

On appeal, Bulloch argues that the term “accumulate” as used in Section 4512 is interchangeable with the term “hoard” and means “to gather, collect, or accrue *over a period of time*.” Bulloch contends that the evidence at trial was insufficient to prove that he acquired PPE over a period of time or intended to withhold PPE from the market for a period of time, and that his conviction therefore cannot stand. We disagree with Bulloch on this narrow question of statutory interpretation. Accordingly, we **AFFIRM**.

JEREMY GUTMAN, New York, NY, *for Defendant-Appellant*.

ROBERT POLLACK, Assistant United States Attorney (Michael W. Gibaldi, Assistant United States Attorney, *on the brief*), *for Joseph Nocella*,

* Circuit Judge Alison J. Nathan was originally a member of the panel but was unable to participate in consideration of this matter. Pursuant to this Court’s Internal Operating Procedures, the appeal was heard and decided by the remaining members of the panel, who are in agreement. *See* 2d Cir. IOP E(b).

Jr., United States Attorney for the Eastern
District of New York, Brooklyn, NY, *for Appellee.*

SARAH A. L. MERRIAM, *Circuit Judge:*

Defendant-appellant Kent Bulloch appeals from a judgment entered in the United States District Court for the Eastern District of New York (Kuo, M.J.), convicting him, following a jury trial before the Magistrate Judge, of a misdemeanor offense of conspiracy to violate Section 4512 of the Defense Production Act of 1950 (“DPA”). The conviction stems from Bulloch’s involvement in a scheme during the COVID-19 pandemic to buy, using money from investors, personal protective equipment (“PPE”) in bulk and resell it at an inflated price. Bulloch was sentenced principally to a two-year term of probation and a fine of \$1,000. Bulloch also appeals from an order of the District Judge (Komitee, D.J.), affirming the judgment entered by the Magistrate Judge. *See United States v. Bulloch*, No. 1:20CR00181(EK)(PK), 2024 WL 4654134 (E.D.N.Y. Nov. 1, 2024).

On appeal, Bulloch argues that the term “accumulate” as used in Section 4512 of the DPA is synonymous with the term “hoard,” which, according to Bulloch, means “to gather, collect, or accrue *over a period of time.*” Bulloch Br. at 6

(emphasis added). Bulloch requested a jury instruction to that effect, which was denied. In accordance with his proposed definition, Bulloch contends that the government had to prove beyond a reasonable doubt that he intended to withhold scarce materials from the market for a period of time. Bulloch avers that the evidence at trial was insufficient to prove his intent to withhold PPE – specifically, KN-95 masks – from the market *for a period of time*, and thus his conviction cannot stand. We disagree with Bulloch on this narrow question of statutory interpretation. Accordingly, we **AFFIRM**.

I. BACKGROUND

A. Defense Production Act of 1950 and COVID-19 Regulation

Congress passed the DPA, 50 U.S.C. §§4501 *et seq.*, during the Korean War in an effort “to maintain a large production of military goods while seeking also to meet the long-denied and increasing needs of the Nation’s civil economy.” *Allen v. Grand Cent. Aircraft Co.*, 347 U.S. 535, 549 (1954). To that end, the Act authorizes the President to “allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as [he or she] shall deem necessary or appropriate to promote the national defense.” 50 U.S.C. §4511(a)(2).

The President may exercise this authority “to control the general distribution of any material in the civilian market” only if:

the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

Id. §4511(b). With respect to materials that have been designated as scarce and critical to the national defense, Section 4512, titled “Hoarding of designated scarce materials,” provides:

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.

Id. §4512. A willful violation of that section is a misdemeanor punishable by up to one year in prison and a fine of up to \$10,000. *See id.* §4513.

On March 13, 2020, as the COVID-19 pandemic began to affect the United States, the President issued Proclamation No. 9994, declaring “that the COVID-19 outbreak in the United States constitutes a national emergency.” Proclamation No. 9994, 85 Fed. Reg. 15337. Then, as relevant to this appeal, the President issued two executive orders (“EOs”) pursuant to his authority under, among

other things, the DPA. First, on March 18, 2020, the President issued EO 13909, titled “Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID-19.” Exec. Order 13909, 85 Fed. Reg. 16227. EO 13909 found: “To ensure that our healthcare system is able to surge capacity and capability to respond to the spread of COVID-19, it is critical that all health and medical resources needed to respond to the spread of COVID-19 are properly distributed to the Nation’s healthcare system and others that need them most at this time.” *Id.* Accordingly, the EO concluded “that health and medical resources needed to respond to the spread of COVID-19, including personal protective equipment and ventilators, meet the criteria specified in” §4511(b) of the DPA, *id.*, as “scarce and critical material[s] essential to the national defense,” §4511(b)(1). The President delegated authority to the Secretary of Health and Human Services (“HHS”) “to determine, . . . the proper nationwide priorities and allocation of all health and medical resources, including controlling the distribution of such materials . . . in the civilian market, for responding to the spread of COVID-19 within the United States.” Exec. Order 13909, 85 Fed. Reg. 16227.

Then, on March 23, 2020, the President issued EO 13910, titled “Preventing Hoarding of Health and Medical Resources To Respond to the Spread of COVID-19.” That Order stated: “To ensure that our Nation’s healthcare systems are able to surge capacity and capability to respond to the spread of COVID-19, it is the policy of the United States that health and medical resources needed to respond to the spread of COVID-19, such as personal protective equipment and sanitizing and disinfecting products, are not hoarded.” 85 Fed. Reg. 17001. The President further delegated authority to the Secretary of HHS “to prevent hoarding of health and medical resources necessary to respond to the spread of COVID-19 within the United States.” *Id.*

Pursuant to these EOs, on March 25, 2020, the Secretary of HHS published a “Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures” which “designat[ed] health and medical resources necessary to respond to the spread of Coronavirus Disease 2019 (COVID-19) that are scarce or the supply of which would be threatened by excessive accumulation,” and that were to be “subject to the hoarding prevention measures authorized under the Executive order and the [DPA].” 85 Fed. Reg. 17592-01. The notice designated several materials as “scarce” or “threatened,”

including, as relevant here, certain PPE such as “N-95 Filtering Facepiece Respirators,” “Other Filtering Facepiece Respirators,” “PPE face masks,” and “PPE surgical masks.” *Id.*

B. Offense Conduct¹

In March and April 2020, recognizing the anticipated “real shortage of masks” and the “real profit to be made,” Gov’t App’x at 81 (Gov’t Ex. 102T), Bulloch engaged in a scheme to solicit investors to buy large quantities of PPE masks and resell them at a markup. Bulloch personally solicited potential investors. He also handled the money; investors would send funds to be held in Bulloch’s attorney trust account, which he would then use to purchase masks. When the masks were resold at a higher price, the proceeds would be held in Bulloch’s trust account.

As alleged in the Information, “[o]n or about April 22, 2020, Bulloch and [William] Young,” his co-conspirator, “participated in a telephone call with” an undercover FBI agent, who “indicated that he intended to re-sell the PPE he was seeking to purchase from Bulloch and Young and that he intended to increase the

¹ These facts are drawn from the evidence presented at trial; they are “taken in the light most favorable to the jury’s verdict.” *United States v. Capers*, 20 F.4th 105, 112 n.2 (2d Cir. 2021).

resale price of the PPE by 50 percent.” App’x at 19 (capitalization altered). Specifically, Bulloch and the undercover agent discussed a plan to purchase 1 million masks at a cost of \$3.80 per mask; the undercover agent would then send the “total purchase price” to Bulloch to be held in Bulloch’s attorney trust account. Gov’t App’x at 67 (Gov’t Ex. 4). Bulloch would then use the funds to purchase masks and ship the masks to the undercover agent, who in turn would sell the masks for \$5.70 per mask – a 50% markup. The undercover agent proposed that he would keep 80% of the profit, Bulloch would get 10%, and Young would get 10%.

After that call, on April 22, 2020, Bulloch sent the undercover agent an escrow agreement and wiring information. The escrow agreement provided, among other things: “Client shall not charge more than 10% above costs to secondary buyer. For example if masks cost \$5.50 client will not resale masks above \$6.05.” Gov’t App’x at 69 (Gov’t Ex. 13A). The agreement further provided that “[a]ll funds received into escrow shall be deposited with other escrow funds in a general trust account of Law Offices of Kent Bulloch unless otherwise instructed,” and “[e]scrow agent shall be paid as a paymaster and process facilitator .1 of net profit.” Gov’t App’x at 70. The wiring information

provided that the trust account was held in the name of “Law Offices of Kent Bulloch.” Gov’t App’x at 67.

II. PROCEDURAL HISTORY

Bulloch was arrested pursuant to a warrant and criminal complaint and made his initial appearance on May 4, 2020. He was charged by way of an Information dated May 18, 2020, with a single count of conspiracy to violate Sections 4512 and 4513 of the DPA by

knowingly and willfully conspir[ing] to accumulate, 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, to wit: certain personal protective equipment (‘PPE’), including KN95 Filtering Facepiece Respirators (the ‘KN95 Masks’) and 3-Ply surgical masks (the ‘3-Ply Masks’).

App’x at 18.

Prior to trial, the parties submitted proposed jury instructions. Bulloch objected to the government’s proposed jury instruction that defined the word “accumulate,” as used in Section 4512, as “to gather, collect, or accrue.” App’x at 30. He instead sought a jury instruction that defined “accumulate” as “to gather, collect, or accrue *over a period of time*.” *Id.* (emphasis added). Bulloch’s proposed instruction then stated: “To establish this element in a prosecution under the statute that prohibits hoarding scarce materials, the government must

establish that the defendant's accumulation of materials caused them to be withheld from the market for a period of time long enough to cause or allow their price to rise." *Id.* The Magistrate Judge indicated at the pretrial conference that she would reject Bulloch's proposed instruction.

Bulloch then moved to dismiss the Information on the basis that Section 4512 of the DPA is unconstitutionally vague. As relevant to this appeal, Bulloch argued that "the word 'accumulate' in the context of 50 U.S.C. §4512 unambiguously refers to conduct that entails hoarding." Letter Motion to Dismiss the Information at 3, *United States v. Bulloch*, No. 1:20CR00181(PMK)(EK) (E.D.N.Y. July 15, 2022), Doc. #55.² The Magistrate Judge denied Bulloch's motion, holding: "The plain language of 50 U.S.C. §4512 is unambiguous and contains no temporal element." Opinion and Order at 8, *United States v. Bulloch*, No. 1:20CR00181(PMK)(EK) (E.D.N.Y. July 19, 2022), Doc. #64.

² Bulloch also argued that the language "prevailing market price" rendered the statute unconstitutionally vague. Letter Motion to Dismiss the Information at 3-4, *United States v. Bulloch*, No. 1:20CR00181(PMK)(EK) (E.D.N.Y. July 15, 2022), Doc. #55. Bulloch does not press this argument on appeal; he has therefore abandoned it. *See United States v. Prawl*, 149 F.4th 176, 187 (2d Cir. 2025) ("An argument not raised on appeal is generally deemed abandoned." (citation modified)).

The matter proceeded to trial. At the close of evidence, the Magistrate Judge instructed the jury: “The first element is that the Defendant accumulated or conspired [to] accumulate certain materials specified in the information; namely, PPE, including KN95 masks and 3-ply masks. ‘Accumulate’ is used in the ordinary sense and simply means to gather, collect, or accrue.” App’x at 23. The jury returned a verdict convicting Bulloch. The Magistrate Judge sentenced Bulloch principally to two years of probation and imposed a \$1,000 fine.

Bulloch appealed to the District Judge pursuant to 18 U.S.C. §3402 and Federal Rule of Criminal Procedure 58(g)(2)(B), raising, among others, the same argument about the term “accumulate.” The District Judge affirmed the conviction, concluding that Section 4512 is unambiguous and that the plain meaning of the term “accumulate” as used in the statute “contains no temporal limitation.” *United States v. Bulloch*, No. 1:20CR00181(PMK)(EK), 2024 WL 4654134, at *4 (E.D.N.Y. Nov. 1, 2024). The District Judge further held that the statutory context supported interpreting “accumulate” in accordance with its plain meaning. *See id.* Finally, the District Judge concluded that, even assuming the text was ambiguous, the legislative history confirmed that the drafters did not intend for the statute to target only accumulation that occurs over some

indefinite but prolonged period of time. *See id.* at *6. In light of the statutory analysis, the District Judge rejected Bulloch’s vagueness challenge. Bulloch appealed.

III. DISCUSSION

This appeal presents a single, narrow issue: the meaning of the term “accumulate” as used in Section 4512 of the DPA. On appeal, as before the District Court, Bulloch argues that the term “accumulate” as used in Section 4512 means “hoard,” and “[i]f that is correct, Bulloch’s conviction cannot stand, because the evidence at trial did not establish that he conspired to hoard scarce materials.” Bulloch Br. at 13. In other words, according to Bulloch, “the only ‘accumulation’ [Section 4512] prohibits is accumulation that comprises hoarding. . . . If so defined, the statute would not apply to Bulloch because the trial evidence established that he did not contemplate maintaining an inventory of masks; rather, his intent was to secure a purchaser’s payment in advance and to distribute masks as soon as he acquired them.” *Id.* at 6.³ We disagree with Bulloch’s interpretation.

³ Bulloch styles his argument as a challenge to the sufficiency of the evidence. But he argues only that the evidence was insufficient to sustain his conviction *if* this Court agrees with his interpretation of the term “accumulate” – he does not

A. The statutory text is unambiguous.

We review the interpretation of a federal statute *de novo*. See *United States v. Aleynikov*, 676 F.3d 71, 76 (2d Cir. 2012).

The principles of statutory interpretation are familiar. We begin with the statute’s “plain meaning, if it has one.” *United States v. Dauray*, 215 F.3d 257, 260 (2d Cir. 2000). “In looking at a statute’s plain meaning, we also must consider the context in which the statutory terms are used, as we do not . . . construe statutory phrases in isolation; we read statutes as a whole.” *Springfield Hosp., Inc. v. Guzman*, 28 F.4th 403, 418 (2d Cir. 2022) (citation modified); *United States v. Gayle*, 342 F.3d 89, 93 (2d Cir. 2003), *as amended* (Jan. 7, 2004) (“The text’s plain meaning can best be understood by looking to the statutory scheme as a whole and placing the particular provision within the context of that statute.” (citation modified)). “Due respect for the prerogatives of Congress in defining federal crimes prompts restraint in this area, where we typically find a narrow interpretation appropriate.” *Aleynikov*, 676 F.3d at 76 (citation modified).

If the statutory language is unambiguous, the inquiry ends there. See *Gayle*, 342 F.3d at 92. But “[i]f we find the statutory provision ambiguous, . . . we

contend that the evidence was insufficient to convict him under the definition of accumulate adopted by the District Court.

then turn to canons of statutory construction for assistance in interpreting the statute.” *United States v. Rowland*, 826 F.3d 100, 108 (2d Cir. 2016) (citation modified). Finally, “[w]e resort to legislative history only if, after consulting canons of statutory instruction, the meaning remains ambiguous.” *Id.* (citation modified).

1. Plain meaning

Section 4512 states:

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 (emphases added). Where Congress did not define certain terms

– here, the word “accumulate,” *see* 50 U.S.C. §4552 (definitions) – we

“presumptively give those terms their ordinary meaning.” *EPA v. Calumet*

Shreveport Refin., L.L.C., 145 S. Ct. 1735, 1747 (2025); *accord Dauray*, 215 F.3d at 260

(where “Congress provided no definition of the term[],” we “consider the

ordinary, common-sense meaning of the word[.]”); *see also Aleynikov*, 676 F.3d

at 76 (“Statutory construction must begin with the language employed by

Congress and the assumption that the ordinary meaning of that language

accurately expresses the legislative purpose.” (citation modified)).

Dictionary definitions generally agree that the ordinary meaning of the term “accumulate” contains no temporal requirement. For example, Webster’s Third New International Dictionary defines “accumulate” to mean “to heap up in a mass; pile up,” “amass,” and “collect, gather.” *Accumulate*, Webster’s Third New International Dictionary (unabridged ed. 2002); *accord Accumulate*, Oxford English Dictionary (2d ed. 1989) (defining “accumulate” to mean “[t]o heap up in a mass, to pile up” or “to amass or collect”). Webster’s New International Dictionary, Second Edition, published just ten years after the DPA was enacted, similarly defined “accumulate” as “[t]o heap up in a mass; to pile up; hence, to collect or bring together; to amass.” *Accumulate*, Webster’s Second New International Dictionary (unabridged ed. 1960). And The American Heritage Dictionary of the English Language defines “accumulate” as “[t]o gather or cause to increase; amass.” *Accumulate*, The American Heritage Dictionary of the English Language (5th ed. 2011). As these definitions illustrate, the plain meaning of the term “accumulate” – both now and as it was used close in time to when the statute was adopted – includes no requirement that accumulation occur only over a specific or lengthy period of time.

The dictionary definitions accord with ordinary usage. While a person may certainly “accumulate,” “gather,” or “collect” items over a period of time, one may also accumulate, gather, or collect items within a day, or even within minutes or seconds. For example, a person who drives to the supermarket and buys 100 rolls of toilet paper in one trip has “accumulated” 100 rolls of toilet paper, just as she would if she went to the supermarket once a day for 100 days, each time buying one roll of toilet paper until she had 100 rolls. Put simply, the plain meaning of the term “accumulate” does not mandate that the accumulation occur only over some unspecified, prolonged period of time, as Bulloch urges.⁴

Bulloch cites two dictionary definitions, neither of which undermines our conclusion. Bulloch relies on the Dictionary.com definition of “accumulate,” which, like the others we have cited, contains no temporal requirement; it defines “accumulate” as “to gather or collect, often in gradual degrees; heap up.” *Accumulate*, Dictionary.com.⁵ That definition *permits* a temporal element, but

⁴ We note that Bulloch does not provide any explanation of just how long, under his interpretation, one would need to withhold materials with the intent to resell them at above-market prices.

⁵ *Accumulate*, Dictionary.com, <https://www.dictionary.com/browse/accumulate> (last visited Jan. 22, 2026). [<https://perma.cc/25VC-6PP7>]

certainly does not *require* it. Bulloch further contends that The Cambridge Dictionary of American English defines accumulate to mean: “to collect a large number of things over a long period of time.” Bulloch Br. at 19. That definition – an outlier – actually appears in the *general* Cambridge Dictionary, and in fact, the website providing the definition indicates it is taken from the “Cambridge Advanced Learner’s Dictionary & Thesaurus.” The Cambridge Dictionary website indicates that the “American Dictionary” defines the term as “to collect or increase something gradually, esp. [but not necessarily] over a period of time.” *Accumulate*, Cambridge Dictionary.⁶ Bulloch’s own definitions confirm that the plain meaning of “accumulate” can – but need not – include accumulation over a period of time. And the mere fact that one dictionary defines accumulation as occurring “over a long period of time” does not otherwise force an ambiguity in the term’s plain meaning. *See MCI Telecommunications Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 227 (1994) (“But what petitioners demand that we accept as creating an ambiguity here is a rarity even rarer than that: a meaning set forth in a single dictionary (and, as we say, its

⁶ *Accumulate*, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/accumulate> (last visited Jan. 22, 2026) [<https://perma.cc/49NP-GFL5>].

progeny) which not only *supplements* the meaning contained in all other dictionaries, but *contradicts* one of the meanings contained in virtually all other dictionaries.”).

2. Context

While conceding that the “ordinary sense” of the term “accumulate” “simply means to gather, collect, or accrue,” Bulloch contends that the broader statutory context “unmistakably” requires reading the term “accumulate” as occurring “over a period of time.” Bulloch Br. at 19. We disagree. To the contrary, we conclude that the broader context of the statutory provision *confirms* that Congress intended the term “accumulate” as used in Section 4512 to be interpreted in accordance with its ordinary meaning, which lacks any temporal requirement. *See Springfield Hosp., Inc.*, 28 F.4th at 418.

Section 4512 contains a prefatory clause – “[i]n order to prevent hoarding” – that announces the statute’s purpose. *See District of Columbia v. Heller*, 554 U.S. 570, 577 (2008) (A “prefatory clause . . . announces a purpose.”). The prefatory clause is followed by two alternative operative clauses, *i.e.*, two alternative means, separated by the disjunctive “or,” by which the statutory purpose of preventing hoarding is achieved. First, “no person shall accumulate . . . in excess

of the reasonable demands of business, personal, or home consumption . . . materials which have been designated by the President as scarce.” 50 U.S.C. §4512. Second, and independently, “no person shall accumulate . . . for the purpose of resale at prices in excess of prevailing market prices[] materials which have been designated by the President as scarce.” *Id.* The latter operative clause, at issue in this case, is devoid of any temporal limitation. There is no durational requirement for a person’s accumulation of scarce materials for the purpose of reselling in excess of prevailing market rates. This provision criminalizes accumulation with the intention of reselling scarce materials in excess of prevailing market prices, without defining or restricting the period of time over which a person must withhold those materials while intending to sell them for a profit. And the absence of any temporal guideline makes sense; market prices can change in an instant, and therefore one may need only accumulate scarce materials for a short time when intending to resell them in excess of prevailing market prices. To be sure, the accumulation of scarce materials over a long period of time with an intent to resell them in excess of prevailing market prices certainly falls within the scope of Section 4512, but it does not follow that the statute criminalizes *only* such prolonged accumulation. *See Stanley v. City of*

Sanford, Fla., 606 U.S. 46, 55-56 (2025) (“[E]ven supposing [petitioner’s] conditional-mandate theory were a textually permissible way to understand the statute, we do not usually pick a conceivable-but-convoluted interpretation over the ordinary one.”).

Bulloch counters that the provision’s prefatory clause makes it “plain that ‘accumulate’ is used as a synonym, or a virtual synonym, for ‘hoarding.’”

Bulloch Br. at 16. For several reasons, we are not persuaded.

First, Bulloch’s “preferred definition of [accumulate] would overlap with other verbs in the statute”: namely, hoard. *Rowland*, 826 F.3d at 108. Accepting Bulloch’s construction would require a conclusion that Congress meant “hoard” when it said “hoard,” but also meant “hoard” when it said “accumulate” – a conclusion that runs headlong into the longstanding principle that we must “give effect, where possible, to every word of a statute.” *Duncan v. Walker*, 533 U.S. 167, 167 (2001); *Pulsifer v. United States*, 601 U.S. 124, 149 (2024) (“In a given statute, the same term usually has the same meaning and different terms usually have different meanings.”); accord *United States v. Kozeny*, 541 F.3d 166, 174 (2d Cir. 2008) (“When interpreting a statute, we are required to give effect, if possible, to every clause and word of a statute.” (citation modified)).

Second, reading “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.⁷

Third, even if we were to read “accumulate” as interchangeable with “hoard,” the plain meaning of “hoard” itself does not necessarily require that the hoarding occur over some prolonged period of time. *See, e.g., Hoard*, Oxford

⁷ 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*.

English Dictionary (2d ed. 1989) (“To amass and put away (anything valuable) for preservation, security, or future use.”); *Hoard* (verb), Webster’s Third New International Dictionary (unabridged ed. 2002) (“to collect or accumulate or amass into a hoard: lay up a hoard of”); *Hoard* (noun), Webster’s Third New International Dictionary (unabridged ed. 2002) (defining a “hoard” as “a collection or accumulation or amassment of something . . . put aside for preservation or safekeeping or future use often in a greedy or miserly or otherwise unreasonable manner . . .”). Even assuming that the definition implies some temporal element – which we do not here hold – even that definition does not dictate a *specific* period of time over which hoarding must occur. Thus, even if we agreed with Bulloch that “accumulate” means “hoard,” it does not necessarily follow that the statute criminalizes hoarding only for a prolonged period of time.

Beyond the prefatory clause, Bulloch’s other efforts to draw support from the statutory context do not support an abandonment of the ordinary meaning of “accumulate.” For example, Bulloch contends that Section 4512’s “subsequent reference to ‘materials the supply of which would be threatened by *such accumulation*’” requires reading “accumulate” to mean “hoard” because the

Secretary of HHS stated that “scarce materials” are those “likely to be[] in short supply or the supply of which would be threatened by *hoarding*.” Bulloch Br. at 18-19 (emphasis in original). Bulloch posits that the Secretary’s “substitution of ‘hoarding’ for ‘such accumulation’” proves that “accumulation” is “interchangeable with ‘hoarding.’” *Id.* at 19. Not so. The statutory text and the notice issued by the Secretary of HHS concern *both* “scarce materials” *and* “materials the supply of which would be threatened by such accumulation.” Compare 50 U.S.C. §4512 (proscribing the accumulation of “materials which have been designated by the President as scarce materials *or* materials the supply of which would be threatened by such accumulation” (emphasis added)), with 85 Fed. Reg. 17592-01 (designating “[h]ealth or medical resources . . . which are, or are likely to be, in short supply (scarce materials) *or* the supply of which would be threatened by hoarding (threatened materials)” (emphasis added)). The Secretary’s use of the word “hoarding” instead of “accumulation” with respect to threatened materials does not rewrite the *statute’s* use of the term “accumulate.”⁸

⁸ As explained above, even if we agreed that the terms were interchangeable, it would not follow that the statute would then prohibit only accumulation or hoarding that occurred over a prolonged period of time.

And in any event, the statute independently regulates the accumulation of materials that are deemed scarce.⁹

Finally, Bulloch points to the DPA's "Declaration of Policy," 50 U.S.C. §4502, focusing on one of eight congressional findings: "[T]he security of the United States is dependent on the ability of the domestic industrial base to supply materials and services for the national defense and to prepare for and respond to military conflicts, natural or man-caused disasters, or acts of terrorism within the United States." *Id.* §4502(a)(1). From there, while acknowledging that "this policy declaration does not provide direct guidance regarding the meaning of section 4512," Bulloch contends that "the statute is directed toward conduct that removes designated materials from the market and thereby reduces their available supply," and thus does not target "price-gouging" or "profiteering." Bulloch Br. at 24-25.

⁹ Bulloch relies on two out-of-Circuit district court decisions, both of which used the terms "hoarding" and "accumulate" interchangeably, as evidence that "accumulate" in Section 4512 is not intended to be used in "the 'ordinary sense.'" Bulloch Br. at 19; *id.* at 16-17 (first citing *United States v. Ritchey*, 604 F. Supp. 3d 397 (S.D. Miss. 2022) and then citing *United States v. Leal-Matos*, No. 3:21CR00150 (SCC), 2022 WL 476094, at *1 (D.P.R. Feb. 15, 2022)). But neither of those district courts was presented with a dispute regarding the meaning of the term "accumulate" within Section 4512.

However, as explained, the text of Section 4512 criminalizes two distinct methods of accumulation, one of which is “accumulat[ing] . . . for the purpose of resale at prices in excess of prevailing market prices, materials which have been designated . . . as scarce materials or materials the supply of which would be threatened by such accumulation.” 50 U.S.C. §4512. We decline to ignore or erase the plain text of Section 4512 in light of one general policy goal, which itself does not actually conflict with Section 4512. As we have explained, “[a]ppeals to broad remedial goals and congressional purpose are not a substitute for the actual text of the statute when it is clear.” *Mei Xing Yu v. Hasaki Rest., Inc.*, 944 F.3d 395, 412 (2d Cir. 2019); *accord Stanley*, 606 U.S. at 58 (“Nobody disputes the ADA’s stated ambition to root out ‘discrimination against individuals with disabilities.’ §12101(b)(1). But it is quite mistaken to assume . . . that any interpretation of a law that does more to advance a statute’s putative goal must be the law.” (citation modified)).

Accordingly, we conclude that the statutory context reinforces, rather than undermines, the text’s plain meaning.

In sum, the word “accumulate” in Section 4512 is unambiguous and must be interpreted in accordance with its ordinary meaning, which does not require

that accumulation occur over an undefined but prolonged period of time.

Nothing in the statutory context persuades us to depart from the plain meaning of the term. In light of that conclusion, we need not consult interpretive aids such as canons of construction or legislative history. *See Rowland*, 826 F.3d at 108.

B. Because the statutory text is unambiguous, the rule of lenity does not apply.

Bulloch contends that if this Court finds ambiguity in Section 4512, then the rule of lenity requires reading the statute in a manner consistent with Bulloch's interpretation. "The touchstone of the rule of lenity is statutory ambiguity." *United States v. Gonzalez*, 407 F.3d 118, 124 (2d Cir. 2005) (citation modified). Because we conclude that "the plain language of [Section 4512] unambiguously indicates that" the term "accumulate" does not require that Bulloch possessed masks for some unspecified period of time, "there is no need to turn to a rule of construction to further divine the meaning of the statute, and the rule of lenity does not apply." *United States v. DiCristina*, 726 F.3d 92, 105 (2d Cir. 2013).

IV. CONCLUSION

For the foregoing reasons, we **AFFIRM** the judgment of District Court.

APPENDIX B

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of April, two thousand twenty-six.

United States of America,

Appellee,

v.

Kent Bulloch,

Defendant - Appellant,

William Young Sr., AKA Bill,

Defendant.

ORDER

Docket No: 24-2975

Appellant, Kent Bulloch, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe



APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

-against-

KENT BULLOCH,

Defendant.

MEMORANDUM & ORDER
20-CR-181 (EK) (PK)

-----x
ERIC KOMITEE, United States District Judge:

In March 2020, during the Covid-19 pandemic, the Secretary of Health and Human Services designated protective face masks "scarce materials" under the Defense Production Act of 1950. This made it a misdemeanor to "accumulate" those masks "for the purpose of resale at prices in excess of prevailing market prices." 50 U.S.C. § 4512.

Shortly thereafter, appellant Kent Bulloch communicated with an undercover federal agent. Bulloch proposed that the agent purchase one million KN-95 masks, which the agent could then resell at above-market prices (while kicking profits back to Bulloch). For this conduct, Bulloch was arrested, prosecuted and – after a three-day jury trial before Magistrate Judge Kuo – convicted of conspiring to violate Section 4512.

He now appeals his conviction. He argues that Judge Kuo improperly instructed the jury on the correct interpretation of Section 4512. He further argues that if Judge Kuo's

interpretation of Section 4512 prevails, the provision is unconstitutionally vague. For the reasons outlined below, these arguments lack merit. The conviction is therefore affirmed.

I. Background

A. The Offense Conduct

On March 18, 2020, the President issued Executive Order 13909. 85 Fed. Reg. 16227 (Mar. 23, 2020). The Order invoked a provision of the Defense Production Act of 1950 ("DPA"), which permits the President to designate items as "scarce . . . material[s] essential to the national defense" during a national emergency. 50 U.S.C. § 4511(b). The Order also authorized the Secretary of Health and Human Services to identify "health and medical resources" that qualified as scarce materials. 85 Fed. Reg. at 16227. On March 25, the Secretary concluded that N-95 and similar protective face masks so qualified. See 85 Fed. Reg. 17592, 17592 (Mar. 30, 2020).

The following month, Bulloch contacted an undercover FBI agent.¹ Bulloch proposed that the agent purchase one million KN-95 masks – at \$3.80 per mask – from a facility in California. Trial Tr. 49:23-51:4, 87:1-2; GX 4. The undercover agent would first forward the "total purchase price" to an escrow account that Bulloch controlled. Trial Tr. 51:8-22; 71:1-13. Bulloch

¹ Because Bulloch appeals a jury conviction, the Court recounts the facts in the light most favorable to the government. *United States v. Ferguson*, 676 F.3d 260, 268 (2d Cir. 2011).

would purchase the masks, and then ship them to the undercover agent. See GX 102T at 19. The agent would resell them at \$5.70 per mask (a fifty percent markup). Trial Tr. 84:23-25. The resale revenues would flow back into Bulloch's escrow account, with Bulloch and his co-conspirator taking ten percent of the profits. *Id.* at 81:8-10, 83:20-24.²

B. Procedural History

Predictably, this scheme was never consummated. Federal agents arrested Bulloch in California on April 27. A few weeks later, prosecutors charged him via information with misdemeanor price-gouging conspiracy in violation of Section 4512.

In their proposed jury instructions, the parties disputed the meaning of the word "accumulate" in Section 4512. The government took the position that "accumulate" simply means to "gather, collect, or accrue." Gov. Req. to Charge 15, ECF No. 15. Bulloch argued that one could only "accumulate" scarce materials by gathering them "over a period of time" and "with[olding] [them] from the market for . . . long enough to

² The record is not perfectly clear as to the mechanics of the contemplated transaction. At times, Bulloch seems to portray himself as a broker or agent, such as when he "highly recommend[s]" that the undercover agent place "the total purchase price into [Bulloch's] escrow [account]." Trial Tr. 51:9. Elsewhere, Bulloch speaks of "tak[ing] possession" of the masks himself, perhaps suggesting that he would be the initial purchaser. GX 102T at 19. No party argues that the evidence of "accumulation" was insufficient on this basis, and Bulloch's conviction for conspiracy renders this question largely academic.

cause or allow their price to rise.” Def.’s Req. to Charge 13, ECF No. 44.

Judge Kuo adopted the government’s formulation. Final Jury Instr. 24, ECF No. 55-1. Bulloch then moved to dismiss the information on the ground that, as interpreted by Judge Kuo and the government, Section 4512 was unconstitutionally vague. Def.’s Mot. to Dismiss Information 1, ECF No. 55. Judge Kuo denied the motion. Order Den. Dismissal, ECF No. 64.

After a three-day trial, the jury convicted Bulloch. Judge Kuo sentenced Bulloch to two years of probation and a \$1,000 fine. This appeal followed.

II. Discussion

A. The Meaning of “Accumulate” in Section 4512

Bulloch’s first claim on appeal is that Judge Kuo improperly instructed the jury as to the definition of “accumulate” in Section 4512.³ When a defendant objects to a jury instruction that was based on an interpretation of a federal statute, the Court’s review is *de novo*. See *United*

³ Bulloch styles his appeal as a challenge to the sufficiency of the trial evidence. Def. Br. 11, ECF No. 91. He argues that Judge Kuo improperly defined the word “accumulate” for the jury, and that under the correct interpretation of that word, the evidence at trial was not enough to convict him. But this argument hinges on whether Judge Kuo’s reading of Section 4512 was correct. Indeed, Bulloch never argues that the evidence against him was insufficient even under Judge Kuo’s reading of the statute. So, the predicate issue is whether Judge Kuo properly interpreted Section 4512 for purposes of jury instruction. The Court therefore frames Bulloch’s appeal as a jury-instruction challenge.

States v. Coplan, 703 F.3d 46, 87 (2d Cir. 2012) (preserved challenges to jury instructions reviewed *de novo*); *United States v. Aleynikov*, 676 F.3d 71, 76 (2d Cir. 2012) (interpretation of a federal statute reviewed *de novo*).⁴

Here, Bulloch asserts that a person only “accumulates” scarce materials by gathering and withholding them from the market for “a period of time.”⁵ Def. Br. 15. On this view, Bulloch could not have violated Section 4512, because the evidence did not show that he (or a co-conspirator) contemplated keeping the masks out of circulation. Rather, the government proved only that he arranged bulk purchases of masks, which he planned to deliver “immediately” to his investors for resale to the public. Trial Tr. 32:12-33:2; *see also* Def. Br. 11.

Because Judge Kuo’s reading of “accumulate” is consistent with the text and statutory history of Section 4512, the Court finds no error in the jury instructions.

1. The Text of Section 4512

Statutory interpretation begins with the text. See *Chai v. Comm’r of Internal Revenue*, 851 F.3d 190, 217 (2d Cir.

⁴ Unless otherwise noted, when quoting judicial decisions this order accepts all alterations and omits all citations, footnotes, and internal quotation marks.

⁵ Bulloch’s briefing never specifies how long this “period of time” must be. In the proceedings below, his proposed jury instruction stated (rather unhelpfully) that a person must hold scarce materials off the market for “long enough to cause or allow” the price of those materials to rise. Def.’s Req. to Charge 13. But of course, prices can change day-to-day, hour-to-hour, or even faster, so this “long enough” qualifier hardly sheds more light on the issue.

2017). If the statutory language is clear, the analysis "ends there." *Id.* The clarity of the language is "determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 423 (2d Cir. 2005).

In relevant part, Section 4512 reads as follows:

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 designed by the President as scarce materials or materials the supply of which would be threatened by such accumulation.

50 U.S.C. § 4512.

a. The Word "Accumulate"

The plain meaning of the word "accumulate" supports Judge Kuo's interpretation of Section 4512.

When a statutory term is undefined, a court may consult dictionaries to determine its plain meaning. See *Cont. Terminals, Inc. v. Waterfront Comm'n of N.Y. Harbor*, 782 F.3d 102, 109 (2d Cir. 2015). Here, authoritative dictionaries from the relevant period define "accumulate" to mean "collect" or "gather." See, e.g., *Webster's New Int. Dictionary* 16 (2d ed. 1945) ("[T]o collect or bring together"); *Webster's Third New Int. Dictionary* 13 (1961) ("[T]o heap up into a mass; pile up;

amass; collect; gather"); *The Am. Heritage Dictionary of the English Language* 12 (3d ed. 1992) ("[T]o gather or pile up"); see also *Accumulate*, *Oxford English Dictionary* (last accessed online Oct. 9, 2024) ("To heap up in a mass, to pile up . . . to amass, collect, or accrue").⁶ None of these dictionaries states that one can only "accumulate" something over a given time period. And this aligns with ordinary usage. For instance, it would make equal sense to describe a reservoir as accumulating raindrops over five years, and an awning as accumulating them over five seconds.

Bulloch's preferred sources do not undermine this consensus view. An online dictionary he cites does not *require* that accumulation occur over a given timeframe. See *Accumulate*, *Dictionary.com* (last accessed Oct. 9, 2024) ("To gather or collect, *often* in gradual degrees") (emphasis added).⁷ Another says accumulation happens "over a period of time," but provides no indication of how long the period must be. *Accumulate*, *Collins Dictionary* (last accessed Oct. 9, 2024).⁸ Bulloch identifies only one source – the *Cambridge Advanced Learner's Dictionary & Thesaurus* – that says "accumulate" means "to collect a large number of things over a *long period of time*."

⁶ https://www.oed.com/dictionary/accumulate_v.

⁷ <https://www.dictionary.com/browse/accumulate>.

⁸ <https://www.collinsdictionary.com/us/dictionary/english/accumulate>.

Accumulate, *Cambridge Dictionary* (last accessed Oct. 9, 2024) (emphasis added).⁹

The fact that one dictionary supports Bulloch's view does not render Section 4512's use of "accumulate" ambiguous. "Most cases of verbal ambiguity in statutes involve . . . a selection between accepted alternative meanings shown as such by many dictionaries." *MCI Telecommunications Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 227 (1994) (emphasis added). Here, Bulloch produces only one dictionary to counter the weight of authority behind Judge Kuo's reading. Moreover, other Cambridge dictionaries do not mention a lengthy holding period in their definitions of "accumulate." See *Accumulate, Cambridge Dictionary* (last accessed Oct. 9, 2024) (collecting definitions from different Cambridge dictionaries).¹⁰ The fact that even Bulloch's preferred publisher has not consistently endorsed the primacy of his proposed definition makes his position even more precarious. See *Guardsmark, LLC v. Nat'l Labor Relations Bd.*, 475 F.3d 369, 379 (D.C. Cir. 2007) (rejecting appellee's reliance on a narrow definition of "fraternize" in the *Compact Oxford English Dictionary*, and noting that a more capacious definition appeared in the full version of that dictionary).

⁹ <https://dictionary.cambridge.org/us/dictionary/english/accumulate>.

¹⁰ <https://dictionary.cambridge.org/us/dictionary/english/accumulate>.

So, Bulloch's interpretation of "accumulate" in Section 4512 is not the best reading of that term. A person can accumulate items over any timeframe, not just the amorphous timeframe urged by Bulloch.¹¹

b. Section 4512 As a Whole

The statutory context in which the word "accumulate" appears does not justify deviating from the plain meaning of that word.

Most importantly, the text of Section 4512 contains no temporal limitation on the word "accumulate." The section does not say – to use the language from Bulloch's proposed jury instruction – that a person shall not "accumulate *for long enough to influence market prices*" Def.'s Req. to Charge 13. It simply bars "accumulation" – over however long a period – for the purpose of selling at a price higher than the prevailing market price. In his attempt to graft a holding period onto the statute, Bulloch would "insert convenient language to yield [his] preferred meaning." *Borden v. United States*, 593 U.S. 420, 436 (2021). But "statutory construction does not work that way." *Id.*

¹¹ To illustrate the imprecision of Bulloch's proposed "period of time" standard, consider that Bulloch told his co-conspirator that he would "take possession" of the masks and then personally load them onto a truck in California. GX 102T at 16, 19. It would certainly have taken a noticeable "period of time" to load one million KN-95 masks. Would that "period of time" be long enough to trigger Section 4512 under Bulloch's reading? What about the "period of time" during which the masks were being transported across the country? Bulloch never says.

To justify his proposed reading of the word "accumulate," Bulloch turns to Section 4512's preface: "In order to prevent hoarding." In his view, this prefatory language indicates that "accumulating" should be read as a synonym for "hoarding," which (according to Bulloch) means gathering items and keeping them off the market for some period of time. Def. Br. 13-14.

Bulloch's reading clashes with the canon of meaningful variation. "In a given statute, the same term usually has the same meaning and different terms usually have different meanings." *Pulsifer v. United States*, 601 U.S. 124, 149 (2024). To be sure, this canon is a "defeasible" one. *Id.* But here, Bulloch argues that Congress used two different words – in the very same sentence – to effectively mean the same thing. He never explains why Congress would have made that strange semantic choice.

Furthermore, Bulloch's reading puts more weight on Section 4512's prefatory language than it can bear. A prefatory clause "does not limit or expand the scope of the operative clause." *District of Columbia v. Heller*, 554 U.S. 570, 578 (2008). It just "announces a purpose," which the remedy prescribed by the statute's operative language may exceed.¹² *Id.*

¹² Consider the traditional example: "For the purpose of stamping out rabies, dogs must be muzzled." Readers are taught not to consider this

at 577-78. So, the fact that Section 4512's prefatory clause targets "hoarding" does not mean the provision *only* prohibits "hoarding," however defined.¹³ Bulloch insists that a court may still consider a prefatory clause to resolve an ambiguity in the operative clause. Def. Reply Br. 9-11, ECF No. 94. This is correct. See *Heller*, 554 U.S. at 578. But as already discussed, the plain meaning of "accumulate" in Section 4512's operative clause is not particularly ambiguous. Bulloch's invocation of the preface would therefore create more ambiguity than it would resolve.

In addition to the prefatory clause, Bulloch focuses on the fact that Section 4512 bans accumulation of materials "the supply of which would be threatened by such accumulation." 50 U.S.C. § 4512. This language, he argues, means that Section 4512 only prohibits *some* accumulation — namely, accumulation that threatens the "supply" of scarce materials. And he claims that such "supply" is only threatened by

provision void once the government declares that rabies has been extirpated. Rather, the statute would properly be read to mean that dogs "must continue to be muzzled so long as the statute is in force, even though rabies has been stamped out." W. Nembhard Hibbert, *Jurisprudence* 95 (1932); see also A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 220 (2012) (same example).

¹³ Indeed, Section 4512 would still prohibit Bulloch's price-gouging conduct even if Bulloch's interpretation of the prefatory clause were correct. As Judge Kuo pointed out below, widespread resale of scarce materials at above-market prices would push consumers to panic-buy for fear of ever-rising prices. See Ord. Den. Dismissal 9. This would encourage the same "hoarding" that Bulloch — citing the prefatory clause — says is the principal target of Section 4512.

withholding scarce materials from the market for some period.
Def. Br. 16-17.

This argument fails too. The language Bulloch cites describes a distinct category of materials that fall within the purview of Section 4512. To trigger the Section, the President must designate items "as scarce materials or materials the supply of which would be threatened by such accumulation." 50 U.S.C. § 4512 (emphasis added.). So, the cited language does not say that Section 4512 only applies to materials "the supply of which would be threatened by such accumulation." Rather, it describes the designations required to trigger the Section. And there is no dispute here that the President's designation put Section 4512 into operation.

Moreover, as Judge Kuo pointed out, Bulloch's actions (as established by the trial evidence) *did* foreseeably threaten supply, at least as that term is used in Section 4512. Congress did not use "supply" in the ordinary economic sense of the "quantity of a commodity that producers wish to sell" at a given price. See Supply and Demand, *Encyc. Britannica Online* (last accessed Oct. 17, 2024).¹⁴ It is (at best) unclear why downstream hoarding would impair upstream production or sales by producers. Instead, as used in Section 4512, "supply" appears to refer to the quantity of a commodity that consumers can

¹⁴ <https://www.britannica.com/money/supply-and-demand>.

reliably purchase. And price-gouging, even without a holding period, can reduce the reliably available quantum of a commodity. If speculators are buying up scarce materials to resell them at higher prices, then those materials could become unaffordable to many citizens.

Thus, the statutory context does not justify Bulloch's reading of "accumulate" in Section 4512.

c. The DPA's Stated Findings and Purpose

A court does not read a statutory provision in isolation, but rather "look[s] to the provisions of the whole law, and to its object and policy." *United States v. Pacheco*, 225 F.3d 148, 154 (2d Cir. 2000). Invoking this rule, Bulloch highlights the DPA's "[d]eclaration of policy," which begins with Congress's "finding" that "the security of the United States is dependent on the ability of the domestic industrial base to supply materials and services . . . to prepare for . . . natural or man-caused disasters." 50 U.S.C. § 4502(a)(1). In his view, this policy declaration supports interpreting Section 4512 as only penalizing conduct that "removes scarce materials from the market and thereby reduces the available supply of those materials." Def Br. 19.

Bulloch misinterprets Section 4502(a)(1)'s use of "supply." The Congressional finding he invokes is one of eight findings set out in Section 4502(a). It speaks to the nation's

industrial ability to produce scarce materials. That need is addressed in, for example, Section 4517, which empowers the President to "provide appropriate incentives to develop, maintain, modernize, restore, and expand" certain "productive capacities." 50 U.S.C. § 4517. But the finding that Bulloch invokes does not inform the proper reading of Section 4512, which is about the ease with which citizens can access scarce materials, not the ease with which producers can manufacture them.

And even if Bulloch's reading of the policy statement were correct, his argument would still fail. Bulloch basically proposes a narrowed reading of Section 4512 based on a vague declaration of legislative policy. But a court may not elevate general statements of purpose over clear statutory text. See *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 303-04 (2006) ("general" statutory goals of the Individuals with Disabilities Education Act insufficient to override "unambiguous" text); *Penn. Dep't of Corrections v. Yeskey*, 524 U.S. 206, 211-12 (1998) (making a similar point in the context of the Americans with Disabilities Act). Thus, the DPA's policy declaration cannot trump the text of Section 4512, which by its plain terms prohibits the behavior for which Bulloch was convicted.

2. The Statutory History of Section 4512

Because the text of Section 4512 is clear, there is no need to delve into statutory history. See *Chai*, 851 F.3d at 217; see also *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (“The starting point in discerning congressional intent is the existing statutory text, and not the predecessor statutes.”). However, for the sake of completeness, the Court briefly addresses Bulloch’s statutory history arguments.

Bulloch correctly notes that Section 4512 evolved from the anti-hoarding provisions of the Lever Act of 1917. See H.R. Rep. No. 3042, as reprinted in 96 Cong. Rec. H14120, H14129 (Sept. 1, 1950) (conference report on the DPA). The Lever Act defined “hoarding necessities” to include situations in which necessities were “withheld, whether by possession or under any contract or arrangement, from the market by any person for the purpose of unreasonably increasing or diminishing the price.” 40 Stat. 276, 278 (1917). Drawing on this history, Bulloch argues that the Lever Act only punished defendants who “withheld” materials from the market for some period. In his view, Section 4512 should be equally limited.

But Bulloch’s approach ignores yet another canon of construction. “[I]f Congress amends or reenacts a provision, a significant change in language is presumed to entail a change in meaning.” *Arangure v. Whitaker*, 911 F.3d 333, 343 (6th Cir.

2018) (citing A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* § 40 (2012)). To illustrate the point, consider *United States v. Wells*, 519 U.S. 482 (1997). There, the Supreme Court interpreted a federal statute that prohibited making false statements to a federally insured bank. 519 U.S. at 484. The statute consolidated thirteen older provisions banning false statements. *Id.* at 492. The Court found that the consolidated statute did not require that a challenged statement be materially false. *Id.* at 484. As part of its reasoning, the Court emphasized that three of the statute's predecessor provisions "had contained express materiality requirements and lost them in the course of consolidation." *Id.* at 492-93. The "most likely inference" from this omission was that Congress did not "intend[] materiality to be an element of [the consolidated statute]." *Id.* at 493. That is, the Court presumed that a significant omission necessarily "entail[ed] a change in meaning."

Here, the drafters of Section 4512 did not carry over the Lever Act's "withheld . . . from the market" language. Nor did they carry over the word "hoarding" into Section 4512's operative language. Instead, they used a different word: "accumulate." And as already discussed, the plain meaning of that term does not require that a defendant withhold scarce materials from the market for any given period. Because

Congress dropped the "withheld" language when it drafted Section 4512, the presumption is that Congress did not intend for that Section to require a holding period to trigger criminal liability. So, Bulloch's references to statutory history are unavailing.

* * *

To summarize, none of the plain language of Section 4512, the broader context in which it appears, or the DPA's statutory history supports Bulloch's reading of "accumulate." On the contrary, they buttress the government's argument that Section 4512 prohibits "gathering" (that is, "accumulating") scarce materials (1) to an unreasonable extent, or (2) for an impermissible purpose. In Bulloch's case, that means that Section 4512 bans collecting masks for purposes of resale at above-market prices, even if Bulloch did not withhold those masks from the market for any given period.¹⁵ Accordingly, Judge Kuo's jury instructions were not erroneous.

¹⁵ Although the parties do not raise the issue, it bears noting that Judge Kuo's interpretation of Section 4512 does not transform the provision into a price control. Congress made clear that, absent express legislative authorization, nothing in the DPA should be read to impose such a control. See 50 U.S.C. § 4514(a) ("No provision of this chapter shall be interpreted as providing for the imposition of wage or price controls without the prior authorization of such action by a joint resolution of Congress."). Section 4512 comports with this interpretive requirement because it bars accumulation of masks only for the *purpose* of resale at above-market prices. *Id.* § 4512. It does not prevent market prices from rising in the ordinary course of commerce. Thus, for example, wholesalers and retailers with existing inventories can charge above-market prices without violating Section 4512, so long as they did not have the illicit price-gouging purpose in mind when they originally obtained (or accumulated) that inventory. In

B. The Vagueness Challenge

"The void for vagueness doctrine provides that a conviction is invalid under the Due Process Clause if the statute . . . fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Vasquez v. Garland*, 80 F.4th 422, 435 (2d Cir. 2023). Unless the statute governs conduct protected by the First Amendment, courts "assess vagueness challenges to a statute as applied, rather than facially." *Id.*; see also *United States v. Rybicki*, 354 F.3d 124, 131 (2d Cir. 2003) (en banc) (acknowledging dispute among Justices as to nature of review for facial vagueness, and reaffirming that "outside the First Amendment context, vagueness challenges will be considered only as applied").

Vagueness challenges are subject to *de novo* review. See *Arriaga v. Mukasey*, 521 F.3d 219, 221 (2d Cir. 2008) (constitutional challenges to a statutory provision reviewed *de novo*); *Aleynikov*, 676 F.3d at 76 (challenges to sufficiency of charging instrument reviewed *de novo*).

this way, the price of scarce goods can rise even after the President designates a given item as scarce. Likewise, a retailer who enters a long-term contract to buy a given number of masks every month can decide later to raise prices. The retailer presumably will not have consummated the contract for the illicit purpose that Section 4512 prohibits.

Bulloch's vagueness arguments are ultimately unpersuasive.

1. The Clarity of "Accumulate"

Bulloch alleges that - as interpreted by Judge Kuo - the term "accumulate" in Section 4512 does not give a "person of ordinary intelligence fair notice of what is prohibited." Def. Br. 25-26. The thrust of Bulloch's claim is that an ordinary reader would not understand Section 4512 to ban activities that merely involve "gathering" scarce materials without "hoarding" them (i.e., holding them for a given period).

The preceding textual analysis, *supra* Part II.A, forecloses Bulloch's argument. As already discussed, both the plain meaning of "accumulate" and the broader context of Section 4512 indicate that no holding period is required to violate the law. Moreover, neither the operative nor prefatory language of Section 4512 mentions a holding period of any kind. Thus, Bulloch is effectively arguing that a reader of ordinary intelligence would read Section 4512 as incorporating a temporal requirement that (1) does not inhere in the ordinary meaning of "accumulate" and (2) never appears in the statutory text itself. This argument strains plausibility.

Accordingly, the word “accumulate” in Section 4512 – as construed by Judge Kuo – is not unconstitutionally vague.¹⁶

2. The Clarity of “Prevailing Market Prices”

Bulloch also argues that the phrase “prevailing market prices” in Section 4512 is unconstitutionally vague, because the statute provides no “explicit standards” for determining the market price of a scarce material. Thus, in the way it was applied to him, Section 4512 is prone to arbitrary and selective enforcement. Def. Br. 26.

The vagueness doctrine does not require that a statute provide “perfect clarity and precise guidance.” *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989). Instead, a statute need only establish “sufficiently clear standards to minimize the risk of arbitrary enforcement.” *Thibodeau v. Portuondo*, 486 F.3d 61, 67 (2d Cir. 2007). A statute that provides “objective criteria” and “meaningful guidelines” for ascertaining criminal liability will not run afoul of the Due Process Clause. *Id.* at 68.

¹⁶ In fact, Bulloch’s preferred reading raises more vagueness issues than it resolves. Bulloch proposes that Section 4512 only prohibits withholding masks from the market for an unspecified “period of time.” Leaving aside that the “period of time” requirement appears nowhere in the statutory text, Bulloch never specifies how long of a withholding period is “too long.” Thus, under Bulloch’s approach, future defendants will have little to no guidance on when they have held scarce materials for long enough to fall afoul of Section 4512. By contrast, Judge Kuo’s reading recognizes a simpler rule: One may not accumulate scarce materials for the purpose of resale at above-market prices, no matter how long one withholds those materials from the market.

The phrase "prevailing market price" is "sufficiently clear" to satisfy the Due Process Clause. An item's market price does not depend on the "arbitrary whims of police or juries." *Thibodeau*, 486 F.3d at 69. Instead, one can ascertain a market price by reference to objective data. See, e.g., *Grandon v. Merrill Lynch & Co., Inc.*, 147 F.3d 184, 189 (2d Cir. 1998) (explaining that, at that time, the "prevailing market price" of a security was calculated by reference to the "price at which dealers trade with one another"). That is exactly what the government introduced here. At trial, the government called two expert witnesses to evaluate purchasing data from major hospital systems in and around New York City during March and April of 2020. The witnesses opined that the "prevailing market price" of an N-95 mask — which would likely be higher than the price of a KN-95 mask — during this timeframe was between fifty cents and one dollar, well below Bulloch's proposed resale price of \$5.70. Trial Tr. 128:11-16, 157:16-25, ECF No. 78.

To be sure, pinpointing a market price can be difficult. Prices can change in seconds. And there may be more than one reasonable method to identify the "prevailing" price of a given product. But the inquiry remains rooted in ascertainable data, and the fact that the government may analyze that data "by several methods does not render [a statute] vague." See *United States v. Kaylor*, 877 F.2d 658, 661 (8th

Cir. 1989); *see also Tuilaepa v. California*, 512 U.S. 967, 977 (“[D]ifficulty in application is not equivalent to vagueness.”). Because Bulloch’s guilt was determined by reference to objective data, not caprice, Section 4512 was not applied in an unconstitutional manner.

As a final note, the vagueness doctrine does not “preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding.” *Sproles v. Binford*, 286 U.S. 374, 393 (1932). “Prevailing market price” is one such term. Indeed, one court has summarized “more than a century of unbroken usage of that phrase in every imaginable legal context,” ranging from Supreme Court decisions to state laws. *United States v. Topouzian*, 2021 WL 5882204, at *4-9 (N.D. Ill. Dec. 13, 2021). The established pedigree of the phrase “prevailing market prices” reinforces the conclusion that it is sufficiently clear for Due Process Clause purposes.

* * *

In sum, Section 4512’s use of the terms “accumulate” and “prevailing market price” do not render it unconstitutionally vague.

III. Conclusion

For the foregoing reasons, Bulloch’s conviction is affirmed.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: November 1, 2024
Brooklyn, New York