No. 24-522

In the Supreme Court of the United States

EGHBAL SAFFARINIA, a/k/a Eddie Saffarinia,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the D.C. Circuit

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999, and focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement.

Cato's concerns in this case are with the scourge of overcriminalization and defending and securing the principle of defendant autonomy against coercive plea bargaining.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court's precedent is "unmistakable: Courts should not assign federal criminal statutes a 'breathtaking' scope when a narrower reading is

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[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

reasonable. In the last decade, it has become nearly an annual event for the Court to give this instruction."[2]

Petitioner Eghbal "Eddie" was an official with the federal Department of Housing and Urban Development. J.A. at 2a. Due to his position, federal law required him to file annual financial forms listing various liabilities for routine government review. *Id.* The government accused Mr. Saffarinia of failing to disclose that he owed money to the owner of a company that received contracts from his office. *Id.* at 3a. Mr. Saffarinia was charged with violating both 18 U.S.C. § 1001 and § 1519. Pet. at 29.

The government considered dismissing the § 1519 charges in exchange for Mr. Saffarinia pleading guilty under § 1001, which would likely have yielded a guidelines range of zero to six months' imprisonment. *Id.* Mr. Saffarinia declined and was tried by a jury. J.A. at 3a. The government then requested that he be sentenced to 27 months in federal prison. Pet. at 29. The district court imposed a sentence of a year and a day in prison, followed by a year on supervised release. J.A. at 3a. Mr. Saffarinia appealed his conviction to the D.C. Circuit, which affirmed the district court's judgment. *Id.*

This Court should reverse the decision below. The D.C. Circuit's interpretation of § 1519 is breathtakingly broad in light of Congress's intent and this Court's consistent precedent. Only a narrower construction will properly construe the statute and prevent the government from using it to coerce

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[2] *United States v. Dubin*, 27 F.4th 1021, 1041 (5th Cir. 2022) (en banc) (Costa, J., dissenting) (collecting cases).

defendants into surrendering their constitutional right to a jury trial.

ARGUMENT

I. SECTION 1519 SHOULD BE INTERPRETED NARROWLY.

An anti-obstruction statute "that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter."[3] The D.C. Circuit's sweeping interpretation of § 1519 threatens to turn it into an atomic weapon instead of the spot intervention it was meant to be. Section 1519 was first enacted in the Sarbanes-Oxley Act.[4] Section 1519 renders it a felony punishable by up to 20 years' imprisonment to make false statements with the intent to influence the "proper administration" of a "matter" within federal jurisdiction.[5] The Act passed in response to fraud at Enron and, as this Court has recognized, was meant to ban "corporate document-shredding."[6] Earlier law already made it a crime to cause other people to shred documents, but "a

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[3] *McDonnell v. United States*, 579 U.S. 550, 576 (2016) (citation and quotation marks omitted); *see also Aguilar v. United States*, 515 U.S. 593, 599 (1995) (noting a century's worth of precedent placing "metes and bounds on the very broad language of [an anti-obstruction] catchall provision").

[4] *Yates v. United States*, 574 U.S. 528, 534 (2015) (plurality op.).

[5] 18 U.S.C. § 1519.

[6] *Yates*, 574 U.S. at 536.

conspicuous omission" existed—the law did not punish someone "who destroys records himself."[7]

This provision was never meant to be "all-encompassing."[8] Senators involved in drafting it wrote that it "should be used to prosecute only those individuals who destroy evidence with the specific intent to impede or obstruct a pending or future criminal investigation, a formal administrative proceeding, or bankruptcy case"—*not* to support prosecutions "where the individual may have reason to believe that the documents may tangentially relate to some future matter within the conceivable jurisdiction of an arm of the federal bureaucracy."[9] Section 1519 applies merely to "a small category of criminal acts which are not currently covered under [other] laws—for example, acts of destruction committed by an individual acting alone and with the intent to obstruct a future criminal investigation."[10]

A key reason for this limit was § 1519's overlap with other obstruction statutes, many of which provide for lesser punishment (as this Court noted in narrowly

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[7] *Id.*

[8] *Id.* at 540.

[9] S. Rep. No. 107-146 at 27 (2002) (additional views of Sen. Hatch et al.).

[10] *Id.*

construing § 1519's ban on destroying physical evidence).[11] For example:

- 18 U.S.C. § 1001(a) provides for to five years' imprisonment for committing obstruction "in any matter within [federal] jurisdiction."
- 18 U.S.C. §288 provides for up to a year's imprisonment for making a false postal-loss claim.
- 18 U.S.C. § 1035 provides for up to five years' imprisonment for making false statements relating to a health care benefit program.
- 18 U.S.C. § 1920 provides for up to five years' imprisonment for making a false statement to obtain federal employee compensation—and only a year's imprisonment if the amount of the benefits was less than $1,000.
- 18 U.S.C. § 1922 provides for up to a year's imprisonment for similar falsification by someone responsible for making federal employee-compensation reports for a supervisor.

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[11] *Id.*; *see also Yates*, 574 U.S. at 540 ("Congress placed §1519 (and its companion provision §1520) at the end of the chapter, following immediately after the pre-existing §1516, §1517, and §1518, each of them prohibiting obstructive acts in specific contexts. See §1516 (audits of recipients of federal funds); §1517 (federal examinations of financial institutions); §1518 (criminal investigations of federal health care offenses).").

The D.C. Circuit's decision below threatens to make § 1519 outshine this entire galaxy of statutory provisions. It distorts the phrase "proper administration" of "matters" to reach *any* false statement to influence *any* government activity, even routine review of mandatory paperwork.[12] While Congress caps falsely claiming postal losses at a year's imprisonment, the decision below would transform something as innocuous as signing a roommate's name when receiving certified mail into felony obstruction—punishable by twenty years in prison.[13]

Congress neither designed this scheme nor left the deployment of § 1519 up to unbridled prosecutorial discretion. Just last term, this Court decided *Fischer v. United States*, involving 18 U.S.C. § 1512—§ 1519's sister provision, also contained within the Sarbanes-Oxley Act.[14] Similar in function to § 1519, § 1512 punishes with up to twenty years' imprisonment obstructing "any official proceeding."[15] Similarly to the prosecution here, the Government in *Fischer* argued that § 1512 is a sweeping catch-all provision.[16]

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[12] *United States v. Saffarinia*, 101 F.4th 933, 940–41 (D.C. Cir. 2024), *reh'g & reh'g en banc den'd* July 23, 2024.

[13] *See* 18 U.S.C. §288.

[14] 144 S. Ct. 2176, 2181 (2024).

[15] 18 U.S.C. §§ 1512(c)(2), 1519.

[16] *Fischer*, 144 S. Ct. at 2183.

This Court disagreed. It recognized the "broad array" of federal obstruction statutes.[17] It held that only interpreting § 1512 narrowly would prevent all these laws from being made mere surplusage.[18] Congress provided tailored provisions, with punishments ranging from fines to decades of imprisonment, and § 1512 did not "override" them.[19] This Court could not "lump together" every sort of obstruction as § 1512's subject matter.[20] In passing the Sarbanes-Oxley Act, Congress did not "impose up to 20 years' imprisonment on essentially all defendants who commit obstruction of justice in any way and who might be subject to lesser penalties under more specific obstruction statutes."[21] As Justice Jackson observed, never in American history has Congress

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[17] *Id.* at 2187.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 2189; *see also id.* at 2194 (Jackson, J., concurring) (writing that the Government's understanding of § 1512 "exhibits all the generality of . . . catchall misdemeanor obstruction provisions while displaying none of their restraint"); *Marinello v. United States*, 584 U.S. 1, 9 (2018) ("To interpret the Omnibus Clause [of a tax-obstruction statute] as applying to all Code administration would potentially transform many, if not all, of these misdemeanor provisions into felonies, making the specific provisions redundant . . . ."); *Yates*, 574 U.S. at 547 ("Section 1519 . . . . describes not a misdemeanor, but a felony punishable by up to 20 years in prison.").

enacted a singular anti-obstruction statute "that would obviate the need for any other."[22]

Undeterred by *Fischer*, the D.C. Circuit held that the Act did just that—but through § 1519 rather than § 1512.[23]

Fischer warned that a distorted interpretation like the D.C. Circuit's would interfere with the separation of powers by "giving prosecutors broad discretion to seek a 20-year maximum sentence for acts Congress saw fit to punish only with far shorter terms of imprisonment."[24] This would also violate the due process requirement of fair warning.[25] Such constitutional concerns are especially relevant in the context of obstruction, which has an inherently broad meaning.[26]

In *Fischer* and other decisions, this Court has avoided these problems by using narrowing constructions. In *Marinello v. United States*, this Court cabined the reach of a federal statute penalizing obstruction with the "due administration" of the Tax Code.[27] It did so by carefully identifying what

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[22] *Fischer*, 144 S. Ct. at 2193 (Jackson, J., concurring).

[23] *Saffarinia*, 101 F.4th at 940–41.

[24] *Fischer*, 144 S. Ct. at 2189–90 (majority op.).

[25] *See Marinello*, 584 U.S. at 6–7; *Aguilar*, 515 U.S. at 600.

[26] *Marinello*, 584 U.S. at 7; *cf. Kousisis v. United States*, No. 23-909 (U.S. June 17, 2024).

[27] *Marinello*, 584 U.S. at 7.

"particular person or thing" was the provision's subject matter—in that case, "specific, targeted acts of administration."[28] Reading the provision to be broader would threaten to make everyday acts felonies punishable by three years' imprisonment, such as paying "a babysitter $41 per week in cash without withholding taxes."[29] This Court believed the felony obstruction provision failed to reach even a person knowingly "running the risk of having violated an IRS rule."[30] *Marinello* held that the provision at issue did not cover "routine, day-to-day work," including "the review of tax returns," but only a "reasonably foreseeable" formal government action.[31] Additionally,

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[28] *Id.*

[29] *Id.* at 10; *see also McDonnell*, 579 U.S. at 576 (rejecting an interpretation of a public-corruption statute that would leave people subject to up to fifteen years' imprisonment—five fewer than what is provided for by § 1519—"without fair notice, for the most prosaic interactions").

[30] *Marinello*, 584 U.S. at 10; *see also Yates*, 574 U.S. at 547 ("Yates would have had scant reason to anticipate a felony prosecution . . . ."); *Aguilar*, 515 U.S. at 602 ("Under the dissent's theory, a man could be found guilty under § 1503 if he knew of a pending investigation and lied to his wife about his whereabouts at the time of the crime, thinking that an FBI agent might decide to interview her . . . . The intent to obstruct justice is indeed present, but the man's culpability is a good deal less clear from the statute than we usually require in order to impose criminal liability.").

[31] *Marinello*, 584 U.S. at 13; *cf. Aguilar*, 515 U.S. at 599 ("The action taken by the accused must be with an intent to influence judicial or grand jury proceedings; it is not enough that there be

while this Court has noted that § 1519 facially applies to "any federal investigation or proceeding, including one not even on the verge of commencement," *Yates*, 574 U.S. at 547, it is "quite another to say a proceeding need not even be foreseen." *Arthur Andersen LLP v. United States*, 544 U.S. 696, 708 (2005).

As for prosecutorial discretion, it could not offer even cold comfort in *Marinello*, where "at oral argument the Government told [this Court] that, where more punitive and less punitive criminal provisions both apply to a defendant's conduct, the Government will charge a violation of the more punitive provision."[32] This kind of "discretion" threatens public confidence in criminal justice.[33] The Court instead narrowly construed the provision at issue, just as Mr. Saffarinia now asks it to do for § 1519.

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an intent to influence some ancillary proceeding . . . ."); *id.* at 607 (Stevens, J., concurring in part and dissenting in part) ("We should abjure a construction of a criminal statute that leads to criminalizing nothing more than an evil intent accompanied by a harmless act, particularly when, as here, the statutory language does not clearly extend liability so far.").

[32] *Marinello*, 584 U.S. at 11.

[33] *Id.*

II. INTERPRETING SECTION 1519 TOO BROADLY ENABLES THE GOVERNMENT TO ENGAGE IN COERCIVE PLEA BARGAINING.

Avoiding coercive plea bargaining is an important aspect of the rationale for narrowing constructions of anti-obstruction statutes. The *Marinello* Court sought to avoid leaving entirely to the plea-bargaining process control over which of a huge range of anti-obstruction provisions to apply to a defendant.[34] Its concern was well-founded. Mr. Saffarinia was subjected to excessive pressure during plea negotiations because of prosecutors' distortion of § 1519. He was offered a plea under 18 U.S.C. § 1001 with a maximum punishment of five years' imprisonment.[35] When he declined this overture, the Government charged him under § 1519—thereby *quadrupling* his potential sentence.[36]

Overbroad interpretations of vague federal laws only worsens problems endemic in plea bargaining. As this Court has noted before, plea bargaining "is not some adjunct to the criminal justice system; it *is* the

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[34] *Id.* at 9 ("To interpret the Omnibus Clause as applying to all Code administration would potentially transform many, if not all, of these misdemeanor provisions into felonies, making the specific provisions redundant, or perhaps the subject matter of plea bargaining.").

[35] 18 U.S.C. § 1001(a).

[36] 18 U.S.C. § 1519.

criminal justice system."[37] And despite the fact that plea bargaining was unknown at the Founding and nowhere mentioned in the Constitution, ours is now "a system of pleas, not a system of trials."[38] In principle, a guilty plea is invalid if it was "induced by promises or threats which deprive it of the character of a voluntary act."[39] But the inability to formulate a judicially administrable test for distinguishing between permissible inducement and impermissible coercion has engendered a growing chorus of concern and even condemnation among scholars, activists and even jurists. For example, former district court judge Nancy Gertner contends that courts' voluntariness inquiry has devolved into "a Kabuki ritual." Judge Gertner relates how she would ask during plea colloquies, "Has anyone coerced you to plead guilty . . . and I felt like adding, 'like thumbscrews or waterboarding? Anything less than that—a threatened tripling of your sentence should you go to trial, for example"—as happened to Mr. Saffarinia here—"doesn't count."[40]

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[37] *Missouri v. Frye*, 566 U.S. 134, 144 (2012) (citation and quotation marks omitted).

[38] *Lafler v. Cooper*, 566 U.S. 156, 170 (2012).

[39] *Machibroda v. United States*, 368 U.S. 487, 493 (1962).

[40] Nancy Gertner et al., *'Why the Innocent Plead Guilty': An Exchange*, THE N.Y. REV. OF BOOKS (Jan. 8, 2015), *available at* https://tinyurl.com/4h26sjnd.

Despite the ostensibly contractual nature of plea bargaining,[41] standard contract-law defenses against oppression and coercion are notably absent, contributing to a power imbalance that the government can exploit by stretching broad statutory language. The reality of a tilted negotiating table is lamentable given that unlike other contracts, plea agreements entail the exercise of judicial power[42] in a setting where, unlike private contracts, market forces cannot help ensure that their terms are fair. The judicial power in question—conviction—is one of the greatest and most dangerous powers belonging to government actors. The Founders sought to cabin that power not only by dividing government between separate branches,[43] but also by encoding a plethora of procedural and substantive rights for criminal

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[41] *See Puckett v. United States*, 556 U.S. 129, 137 (2009) ("Although the analogy may not hold in all respects, plea bargains are essentially contracts."); *United States v. Yooho Weon*, 722 F.3d 583, 588 (4th Cir. 2013) ("[W]e interpret the terms of the parties' plea agreement in accordance with traditional principles of contract law."); *United States v. Ortiz-Garcia*, 665 F.3d 279, 283 (1st Cir. 2011) (same).

[42] F. Andrew Hessick, *Consenting to Adjudication Outside the Article III Courts*, 71 VAND. L. REV. 715, 720 (2018) (identifying "the ability 'to render dispositive judgments'" as one of three features of "what constitutes the judicial power") (quoting *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995)).

[43] THE FEDERALIST NO. 47 (James Madison) ("[T]he preservation of liberty requires that the three great departments of power should be separate and distinct.").

defendants and interposing a citizen jury between those defendants and government actors seeking to convict and punish them. Indeed, the Bill of Rights devotes more words to the subject of criminal procedure than any other—and not by accident.

In the plea process, however, defendants bargain away nearly all of those protections, including particularly the right to have the government prove its case in open court to the satisfaction of a unanimous jury.[44] They do so with minimal protections. To be sure, judges can reject plea deals, and some impose conditions for accepting them.[45] But again, plea bargaining is not subject to the market forces that generally ensure fairness in private contractual negotiations. As amicus explained in another case involving appeal waivers, there is no "market" for plea bargains. The prosecutor has a monopoly over the

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[44] *Ramos v. Louisiana*, 590 U.S. 83 (2020).

[45] *See, e.g.*, Fed. R. Crim. Proc. 11 (c) (3); *see also United States v. Aigbekaen*, No. CR JKB-15-0462, 2022 WL 3106949, at *20 (D. Md. Aug. 3, 2022) (describing the court's "general practice" of refusing to accept plea agreements that select a particular sentence or agree that a certain sentencing guideline does or does not apply); Hon. Emmet G. Sullivan, *Enforcing Compliance with Constitutionally-Required Disclosures: A Proposed Rule*, 2016 CARDOZO L. REV. DE·NOVO 138, 141 (2016) (describing a standing order in every criminal case requiring the government to provide *Brady* material during plea bargaining); Carissa Byrne Hessick, *Judges and Mass Incarceration*, 31 WM. & MARY BILL RTS. J. 461, 472 n.55 (2022) (describing a similar routine order from another federal district court judge).

"price." The defendant cannot get a better deal from another prosecutor, but must either accept the prosecutor's offer or reject it and proceed to trial.[46] Prosecutors also create the market for criminal punishment by bringing criminal charges in the first place. A defendant cannot opt out of this market. He may only decide whether to accept the price proposed in the plea offer or risk the higher price of criminal punishment by proceeding to trial.[47]

Those dynamics are heightened when the question of what charges apply is left to uncontrolled prosecutorial discretion. Besides setting the "price" for the plea agreement, the prosecutor often has significant control over the alternative "price" of a trial through the selection of charges.[48] That is what happened here. Mr. Saffarinia's decision to decline the Government's offer resulted in a *fourfold* increase in his punishment exposure. That shift was made possible by prosecutors' confidence that they were at liberty to charge either § 1001 or § 1519 without judicial constraint—a confidence the D.C. Circuit proved to be well-founded on appeal.

Prosecutors' control over the "price" of a plea agreement, conferred in part by loose interpretations

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[46] Br. Amicus Curiae of Cato Inst. et al. in Supp. of Pet. at *14, Martin v. United States (2024) (No. 23-1022) [hereinafter Cato].

[47] *Id.*

[48] *Id.*; *see also* John F. Stinneford, *Dividing Crime, Multiplying Punishments*, 48 U.C. DAVIS L. REV. 1955 (2015).

of sweeping statutes, allows them to set a price that even an innocent defendant might not rationally refuse. Imagine, for example, that a defendant faces a ten-year sentence if convicted at trial and the parties agree that there is a fifty percent chance of conviction. If the prosecutor offers the defendant a plea agreement with a two-year sentence, it would be arguably irrational for the defendant to reject the deal, because his expected punishment is five years (with a fifty percent chance of a ten-year sentence after trial).[49] Even worse, to quote Judge Jed Rakoff, "there is some evidence that the pressure of the situation may cause an innocent defendant to make a less-than-rational appraisal of his chances for acquittal and thus decide to plead guilty when he not only is actually innocent but also could be proven so."[50] Indeed, one defendant who rejected a plea offer was subjected to multiple competency evaluations because the prosecutor, defense attorney, and judge all perceived this as

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[49] Cato, *supra*, at *14–15 (citing CARISSA BYRNE HESSICK, PUNISHMENT WITHOUT TRIAL: WHY PLEA BARGAINING IS A BAD DEAL 37 (2021) (explaining the economics of expected punishments and plea bargains)); *see also* ABA CRIM. JUST. SEC., PLEA BARGAIN TASK FORCE REPORT 15 (2023), available at https://tinyurl.com/2s4efwmv ("[T]he state may induce the defendant to plead guilty with incentives that make it irrational for even an innocent person to turn down the deal. Such offers are inherently coercive.").

[50] Cato, *supra*, at *15 (citing Jed S. Rakoff, *Why Innocent People Plead Guilty*, THE N.Y. REV. OF BOOKS (Nov. 20, 2014), available at https://tinyurl.com/56tpp8jr.

indicative of potential mental infirmity.[51] Certainly a lack of statutory clarity makes it harder for defendants to rationally assess their options.

The lack of effective external constraints and a judicially administrable framework to identify and prevent coercion, combined with an ever-shifting array of charges available to the enterprising prosecutor, indisputably result in an unknown—and unquantifiable—number of false guilty pleas. The American Bar Association recently found "substantial evidence" that innocent defendants are coerced into pleading guilty,[52] and a Department of Justice component, the Bureau of Justice Statistics, even acknowledged the fact of coercion in plea bargaining in a 2011 report.[53] A 1985 report from another DOJ component stated that pleas have a "coercive character" and recorded that 77 percent of the defendants surveyed "said they felt they had to accept the plea bargain."[54] The report recommended only

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[51] *Id.* at *15 (discussing *United States v. Tigano*, 888 F.3d 602 (2d Cir. 2018)).

[52] ABA CRIM. JUST. SEC., *supra*, at 6.

[53] BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUST., PLEA AND CHARGE BARGAINING: RESEARCH SUMMARY 2 (Jan. 24, 2011), https://perma.cc/M6JT-SN5B ("[P]rosecutors have been found to use threats that coerce defendants into accepting pleas to secure a conviction when the evidence in a case is insubstantial.").

[54] William F. McDonald, *Plea Bargaining: Critical Issues and Common Practices* 132 (1985) (report prepared for the National

threadbare changes: "if the state offered defendants a reduction in the length of sentence of about 15 percent to 30 percent, that would be sufficient to keep pleas coming."[55] Not surprisingly, the National Association of Criminal Defense Lawyers agrees that "coercion plays a major role in the ever-increasing percentage of defendants who forego their right to a trial."[56]

Furthermore, the notion that it is virtually impossible to induce innocent people to falsely profess culpability has been entirely exploded by a combination of exonerations[57] and scientific studies. One such study, for example, created a simulation in which students were invited to participate in a project that they were told was designed to test individual work versus group work. Using a confederate in the room, the authors managed to get about half the students to cheat. They then accused *all* the students of cheating and offered leniency to any who agreed to confess. Remarkably, some *fifty-six percent* of innocent subjects chose to plead guilty to avoid the harsher

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Institute of Justice Office of Justice Programs), available at https://tinyurl.com/ysjw78zw.

[55] *Id.*

[56] Nat'l Ass'n of Crim. Def. Laws., *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It* 16 (2018), available at https://perma.cc/DKR5-SFKS.

[57] *See e.g.*, Innocence Project, *America's Guilty Plea Problem Under Scrutiny* (Jan. 23, 2017), https://tinyurl.com/2858t636.

punishment that (they were told) would be imposed had they challenged the accusation and lost.[58]

Again, charge selection in particular drives coercive plea bargaining.[59] Consider Mr. Saffarinia's choice: plead guilty to a count with a maximum five-year sentence, or go to trial on one carrying up to twenty years in prison. Recall also the facts of this Court's decision in *Bordenkircher v. Hayes*.[60] There, the Court rejected a constitutional challenge from a check-fraud defendant who, when facing a sentence of two to ten years, was told that if he rejected the prosecution's five-year plea offer he would be reindicted as a habitual offender—increasing his exposure to a mandatory life sentence.[61] Defendant Hayes refused the offer, was found guilty at trial, and was sentenced to life in prison.[62] The Court held that there is no due process violation so long as the sentence threatened could lawfully be imposed.[63] Nowhere does *Bordenkircher* discuss or even mention the potentially coercive effect of threatening

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[58] Lucian E. Dervan & Vanessa A. Edkins, *The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem*, 103 J. CRIM. L. & CRIMINOLOGY 1 (2013).

[59] ABA CRIM. JUST. SEC., *supra*, at 18.

[60] 434 U.S. 357.

[61] *Id.* at 358–59.

[62] *Id.* at 364.

[63] *Id.*

defendants with such a massive sentencing differential.

Those effects are apparent in cases like the present one. After Mr. Saffarinia declined the government's plea offer, prosecutors responded by charging him under a statute carrying a maximum penalty that was four times higher. Such gamesmanship is only exacerbated by the sort of overbroad, vague interpretation the D.C. Circuit gave § 1519.

CONCLUSION

Section 1519's drafters warned that it should not "be interpreted more broadly than we intend."[64] Certainly it was never meant to be one more means of extracting coerced guilty pleas. However, the Government—yet again—"urges a reading of §1519 that exposes individuals to 20-year prison sentences for" any acts "that *might* have evidentiary value in *any* federal investigation into *any* offense, no matter whether the investigation is pending or merely contemplated, or whether the offense subject to investigation is criminal or civil."[65] The fact remains, though, that "Congress' conception of §1519's coverage

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[64] S. Rep. No. 107-146 at 27 (2002) (additional views of Sen. Hatch et al.).

[65] *Yates*, 574 U.S. at 548.

was considerably more limited than the Government's."[66]

The petition should be granted and the judgment reversed.

Respectfully Submitted,

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[66] *Id.* at 541.