No. 10-7385

IN THE SUPREME COURT OF THE UNITED STATES

WILTON JOSEPH FONTENOT, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Federal law makes it a crime to knowingly falsify a document "with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States." 18 U.S.C. 1519. The question presented is whether the district court plainly erred in instructing the jury that conviction under that statute does not require proof of the defendant's knowledge of federal agency jurisdiction.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-11) is reported at 611 F.3d 734.

JURISDICTION

The judgment of the court of appeals was entered on July 13, 2010. The petition for a writ of certiorari was filed on October 12, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted of

knowingly falsifying a document with the intent to obstruct a matter within the jurisdiction of a federal agency, in violation of 18 U.S.C. 1519. Pet. App. 2, 4. He was sentenced to 15 months of imprisonment, to be followed by 24 months of supervised release. Id. at 4; Gov't C.A. Br. 3. The court of appeals affirmed. Pet. App. 1-11.

1. Petitioner was a corrections officer in a Florida facility. Pet. App. 2. On November 22, 2003, petitioner and a subordinate were involved in an altercation with an inmate during an inspection of the inmate's cell, which ended with petitioner choking the inmate into unconsciousness with a plastic trash bag. Id. at 2-3. Petitioner's official report after the altercation stated that he had followed proper procedures and that the inmate had attacked him through the feeding slot in the cell door. Id. at 2. Other corrections officers' accounts differed from petitioner's. Id. at 2-3. Petitioner's subordinate initially filed a report matching petitioner's, but later admitted that he had falsified that report at petitioner's request. Ibid. The subordinate stated that, in actuality, petitioner had entered the cell in violation of proper procedures and had initiated the confrontation by punching the inmate in the head. Id. at 3.

2. Following an FBI investigation, petitioner was indicted on one count of violating a person's constitutional rights, in violation of 18 U.S.C. 242; one count of corruptly persuading

another person with intent to delay or prevent communication of a federal offense to a federal law enforcement officer, in violation of 18 U.S.C. 1512(b)(3); and one count of knowingly falsifying a document with the intent to obstruct a matter within the jurisdiction of a federal agency, in violation of 18 U.S.C. 1519. Pet. App. 3 & n.1, 9 n.5; Gov't C.A. Br. 2, 10.

As relevant to the third count, Section 1519 imposes criminal sanctions on any person who "knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States." 18 U.S.C. 1519. At trial, the district court instructed the jury that to convict petitioner under Section 1519,

> the government is not required to prove that the defendant knew his conduct would obstruct a federal investigation, or that a federal investigation would take place, or that he knew of the limits of federal jurisdiction. However, the government is required to prove that the investigation that the defendant intended to impede, obstruct, or influence did, in fact, concern a matter within the jurisdiction of an agency of the United States.

Pet. App. 4 (brackets omitted). Petitioner did not object to that instruction. Ibid.

The jury found petitioner guilty of violating Section 1519, but it acquitted him on the other two counts. Pet. App. 3 n.1, 4.

Petitioner did not move for a judgment of acquittal following the verdict. Id. at 4.

3. On appeal, petitioner argued that Section 1519 required proof that he knew the falsified report would be part of a federal investigation, and he sought reversal of his conviction on the ground that the government had failed to present such proof. Pet. App. 4. Because petitioner's "argument, in essence, [was] that there was insufficient evidence to convict him under [a] jury instruction that the court should have given," the court of appeals construed the argument as a challenge to the jury instruction on the elements of Section 1519. Id. at 5. And because petitioner had not objected to that instruction, the court reviewed the challenge for plain error, requiring petitioner to show "(1) error, (2) that is plain, * * * (3) that affects [his] substantial rights," and (4) "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." Ibid. (internal quotation marks and citation omitted); see, e.g., United States v. Marcus, 130 S. Ct. 2159, 2164 (2010).

In evaluating whether petitioner had satisfied that standard, the court of appeals expressly declined to address "the actual requirements of the statute." Pet. App. 6 n.2. It instead rejected petitioner's argument on the ground that any error was not plain, because "it is not clear under current law that § 1519 requires that the defendant know that the investigation will fall

within the jurisdiction of the federal government." Id. at 6. The court concluded, as a textual matter, that it was "at least plausible" to read the federal-jurisdiction clause of the statute "as a simple jurisdictional element that operates independently of the defendant's intent or knowledge." Ibid. The court furthermore observed that the legislative history did not plainly resolve the matter in petitioner's favor, quoting a statement from Senator Patrick Leahy suggesting that Congress did, in fact, intend the clause as a jurisdictional element. Id. at 7 (quoting S. Rep. No. 146, 107th Cong., 2d Sess. 14 (2002)(Senate Report)). Finally, the court found no clear support in its own circuit precedent for petitioner's interpretation of the statute. Id. at 7-9.

Judge Barkett concurred, emphasizing additional evidence in the legislative history. Pet. App. 10-11. Among other things, she noted Senator Leahy's statement that "[t]he fact that a matter is within the jurisdiction of a federal agency is intended to be a jurisdictional matter, and not in any way linked to the intent of the defendant." Id. at 11 (quoting 148 Cong. Rec. S1783-01, S7419 (daily ed. Mar. 12, 2002) (statement of Senator Leahy)).

ARGUMENT

Petitioner renews (Pet. 13-34) his claim that 18 U.S.C. 1519 requires proof that a defendant knew that a matter he intended to obstruct fell within the jurisdiction of a federal agency. Because petitioner failed to raise that claim at trial, the court of

appeals did not address it and instead concluded only that petitioner was not entitled to relief under the plain-error standard. That limited conclusion, which does not conflict with any decision of this Court or any other court of appeals, does not warrant this Court's review.

1. Petitioner did not raise his statutory-interpretation claim at trial either by objecting to the relevant jury instruction or by moving for acquittal following the verdict. Pet. App. 4. The court of appeals therefore correctly concluded that the claim had been forfeited and was reviewable only for plain error. Id. at 5; see Fed. R. Crim. P. 52(b). The plain-error standard requires petitioner to demonstrate, among other things, that any error "is clear or obvious, rather than subject to reasonable dispute." United States v. Marcus, 130 S. Ct. 2159, 2164 (2010) (internal quotation marks omitted); see also ibid. (appellant also must show that error affected substantial rights and seriously affected fairness, integrity, or public reputation of judicial proceedings).

In concluding that petitioner had failed to meet that standard, the court of appeals "ma[de] no holding regarding the actual requirements of the statute," recognizing that it was "sufficient to observe that the statutory language is not so clear as to allow reversal for plain error." Pet. App. 6 n.2. Because the court of appeals' ruling rests exclusively on plain-error grounds, review of the substantive question presented by petitioner

is unwarranted. Not only did the courts below not address the question presented, but petitioner concedes (Pet. 20) that "[n]o reported decision applying 18 U.S.C. § 1519 to date has squarely addressed this issue." Review of the issue in the first instance by this Court would therefore be premature. Petitioner moreover fails to explain how he would be entitled to relief even if the Court were to answer the substantive question presented in his favor. He neither acknowledges nor addresses the plain-error standard and therefore provides no argument for why the court of appeals' actual holding (that any error in his case was neither clear nor obvious) was mistaken, or why he otherwise satisfies the plain-error standard.

2. Review is furthermore unwarranted because the court of appeals' decision is correct. The district court did not err, let alone plainly err, in instructing the jury that proof of knowledge of federal-agency jurisdiction is not required for conviction under Section 1519.

a. As this Court's interpretation of materially identical language demonstrates, the phrase "within the jurisdiction of any department or agency of the United States" is properly read as a jurisdictional requirement, rather than a fact of which a defendant must be subjectively aware. In United States v. Yermian, 468 U.S. 63 (1984), the Court addressed whether knowledge of federal-agency jurisdiction was required for conviction under 18 U.S.C. 1001,

which at the time provided that "[w]hoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully . . . makes any false, fictitious or fraudulent statements or representations . . . shall be fined." Id. at 68 (emphasis added). The Court concluded that the emphasized phrase was "a jurisdictional requirement," whose "primary purpose" was "to identify the factor that makes the false statement an appropriate subject for federal concern," and that the statute "unambiguously dispenses with any requirement" that the government prove that false statements "were made with actual knowledge of federal agency jurisdiction." Id. at 68-70.

The Court explained that this conclusion would be "equally clear" if -- as is the case with Section 1519 -- the "jurisdictional language * * * appeared as a separate phrase at the end of the description of the prohibited conduct." Yermian, 468 U.S. at 69 n.6. The predecessor to Section 1001, which prohibited "knowingly and willfully" making "any false or fraudulent statements or representations, . . . in any matter within the jurisdiction of any department or agency of the United States," ibid., was worded nearly identically to the present Section 1519. The Court stated that the "most natural reading of this version of [Section 1001] also establishes that 'knowingly and willfully' applies only to the making of false or fraudulent statements and not to the predicate facts for federal

jurisdiction." Ibid.; see United States v. Feola, 420 U.S. 671, 676-686 (1975) (knowledge that victim is federal officer not required for conviction of assaulting federal officer in violation of 18 U.S.C. 111).

There is no reason why Section 1519 should be interpreted any differently, or why Congress would have expected it to be. Section 1519 was enacted nearly 20 years after Yermian. See Corporate and Criminal Fraud Accountability Act of 2002, Pub. L. No. 107-204, § 802(a), 116 Stat. 800 (2002). "[I]t is not only appropriate but also realistic to presume that Congress was thoroughly familiar with [this Court's] precedents and that it expect[ed] its enactments to be interpreted in conformity with them." North Star Steel Co. v. Thomas, 515 U.S. 29, 34 (1995) (alterations omitted). Congress's adoption in Section 1519 of language and structure similar to that of Section 1001 (and its predecessor) accordingly demonstrates that Congress intended a similar interpretation.

b. The legislative history confirms this interpretation. See Pet. App. 7, 10-11. The Senate Report accompanying the relevant legislation indicates that the intent and federal-agency jurisdiction requirements are separate. The report explained that, under Section 1519, "[d]estroying or falsifying documents to obstruct any of [various] types of matters or investigations, which in fact are proved to be within the jurisdiction of any federal agency are covered by this statute." Senate Report 15 (emphasis

added); see id. at 14 ("Section 1519 is meant to apply broadly to any acts to destroy or fabricate physical evidence so long as they are done with the intent to obstruct, impede or influence the investigation or proper administration of any matter, and such matter is within the jurisdiction of an agency of the United States.") (emphasis added).

Senator Patrick Leahy, who authored the legislation, made statements to similar effect. 148 Cong. Rec. S7418-S7419 (daily ed. July 26, 2002). He explained that "[t]he fact that a matter is within the jurisdiction of a federal agency is intended to be a jurisdictional matter, and not in any way linked to the intent of the defendant." Id. at S7419. "Rather, the intent required is the intent to obstruct, not some level of knowledge about the agency processes [or] the precise nature of the agency [or] court's jurisdiction." Ibid.; see id. at S7418 ("[T]his section would create a new 20-year felony which could be effectively used in a wide array of cases where a person destroys or creates evidence with the intent to obstruct an investigation or matter that is, as a factual matter, within the jurisdiction of any federal agency or any bankruptcy.") (emphasis added).

c. In claiming that Section 1519 does, in fact, require proof of knowledge of federal jurisdiction, petitioner spends little time addressing the text of the statute and none addressing its legislative history. He instead tries (Pet. 13-25) primarily

to analogize Section 1519 to federal-nexus requirements in other statutes (18 U.S.C. 1503, 1505, 1512).*

Those statutes, however, do not contain language materially identical to Section 1519's "any matter within the jurisdiction of any department or agency of the United States," and Congress in any event expressly intended Section 1519 to sweep more broadly than other obstruction statutes. Specifically referring to 18 U.S.C. 1503 and 1512(b), the Senate Report explained that "current federal obstruction of justice statutes relating to document destruction [are] riddled with loopholes and burdensome proof requirements" and "are a patchwork of various prohibitions that have been interpreted very narrowly by federal courts." Senate Report 6. It explained that some provisions, "such [as] section 1503, have been narrowly interpreted by courts, including the Supreme Court in United States v. Aguillar, 115 S. Ct. 593 (1995) [sic], and the First Circuit in United States v. Frankhauser, 80 F.3d 641 (1st Cir. 1996), to apply only to situations when the obstruction of justice may be closely tied to a judicial proceeding." Id. at 6-7. In enacting Section 1519, however, Congress recognized that "the current laws regarding destruction of evidence are full of ambiguities and limitations that must be corrected." Id. at 7. The law review note from which

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* Petitioner also argues (Pet. 26-34) that the specific evidence in his case was insufficient to support the verdict. To the extent that this argument is distinguishable from his argument on the interpretation of Section 1519, it is entirely fact-bound and does not merit this Court's review.

petitioner selectively quotes similarly recognizes that Section 1519 should be construed to eliminate the limitations in other statutes. See Dana E. Hill, Anticipatory Obstruction of Justice, 89 Cornell L. Rev. 1519, 1565-1569 (2004).

Because of the dissimilarities in language and legislative background between 18 U.S.C. 1519 and other obstruction statutes, there is no reason to hold this case for Fowler v. United States, cert. granted, No. 10-5443 (to be argued Mar. 29, 2011). Fowler raises an issue concerning the nature of proof necessary for conviction under 18 U.S.C. 1512(a)(1)(C), which makes it a crime to "kill[] * * * another person, with intent to * * * prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense." However this Court interprets that provision, it would not disturb the court of appeals' conclusion here: that the district court's interpretation of Section 1519 in this case was not clearly and obviously wrong.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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