No. 24-675

In the Supreme Court of the United States

JOSEPH R. JOHNSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

SARAH M. HARRIS
Acting Solicitor General
Counsel of Record
MATTHEW R. GALEOTTI
ANDREW W. LAING
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioner sufficiently alleged and proved that he "did not by misconduct or neglect cause or bring about his own prosecution," as necessary to obtain a certificate of innocence under 28 U.S.C. 2513 as a prerequisite to a damages suit for unjust imprisonment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes:

Miscellaneous:

In the Supreme Court of the United States

No. 24-675

JOSEPH R. JOHNSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-27a) is reported at 114 F.4th 148. A prior opinion of the court of appeals (Pet. App. 34a-57a) is reported at 19 F.4th 248. The opinion of the district court (Pet. App. 28a-33a) is unreported but is available at 2022 WL 1592445.

JURISDICTION

The judgment of the court of appeals was entered on August 21, 2024. On November 12, 2024, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including December 19, 2024, and the petition was filed on that date. 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 Eastern District of Pennsylvania, peti-

tioner was convicted of making false statements, in violation of 18 U.S.C. 1001, and aggravated identity theft, in violation of 18 U.S.C. 1028A. Judgment 1. He was sentenced to 32 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals reversed. Pet. App. 57a. As a prerequisite to a damages suit for unjust imprisonment, petitioner sought a certificate of innocence under 28 U.S.C. 2513, which the district court denied. Pet. App. 33a. The court of appeals affirmed. *Id.* at 27a.

1. In 2005, a civil action was filed against entertainer Bill Cosby, alleging sexual assault. Pet. App. 35a. Ten years later, the plaintiff in that suit filed another lawsuit against Cosby, alleging defamation and invasion of privacy, in the United States District Court for the Eastern District of Pennsylvania. *Ibid.* The same attorney represented the plaintiff in both cases. *Id.* at 35a-36a.

Petitioner "became fixated on the claims against Cosby and decided to come to his defense." Pet. App. 35a. Petitioner began emailing "threat[s]" to the plaintiff's attorney using an alias. *Id.* at 36a; see *id.* at 29a-30a. Petitioner threatened, for example, to disclose the plaintiff's residential address. *Id.* at 36a. He also emailed the attorney an unsigned IRS referral form alleging that the plaintiff had failed to report certain income. *Id.* at 36a-37a.

Petitioner later impersonated the plaintiff's counsel by hand-delivering to the district court a "Praecipe" for filing in the defamation case. Pet. App. 37a. Specifically, petitioner gave the Clerk's office an envelope with a photocopy of a previous filing that included the attorney's signature, along with the unsigned IRS referral form accusing the plaintiff of failing to report taxable income. *Ibid.* After the court uploaded the documents

to the docket, the plaintiff's counsel told the court that she had neither submitted nor authorized anyone else to submit those documents. *Ibid.* The court struck the filing from the docket the following day. *Ibid.*; see Presentence Investigation Report (PSR) ¶¶ 14-15.

On the same day the district court struck petitioner's filing, petitioner deleted the e-mail account he had used to send messages to the plaintiff's attorney. PSR ¶ 16. Petitioner later told FBI investigators that he had never e-mailed the plaintiff's attorney, that he had never used that e-mail account, and that his "PACER account had been compromised" at the time he had submitted the unauthorized filing. PSR ¶¶ 24-25.

2. A federal grand jury in the Eastern District of Pennsylvania charged petitioner with one count of making a false statement, in violation of 18 U.S.C. 1001; and one count of aggravated identity theft, in violation of 18 U.S.C. 1028A. Pet. App. 38a. The charges focused on petitioners' unauthorized court filing. *Ibid.* Following a jury trial, petitioner was convicted on both counts, and the district court sentenced him to 32 months of imprisonment, to be followed by three years of supervised release. *Id.* at 38a-39a.

The court of appeals reversed and remanded for entry of a judgment of acquittal. Pet. App. 34a-57a. The court took the view that the evidence failed to show that petitioner's statements were material. *Id.* at 46a; cf. *United States* v. *Gaudin*, 515 U.S. 506, 509 (1995). The court recognized that petitioner caused the docketing of a false praecipe, which the district court later struck. Pet. App. 46a. But the court of appeals deemed the evidence insufficient to show materiality, on the theory that it did not establish that petitioner had "influenced" "any decision entrusted to" the trial judge. *Ibid.*

Petitioner was released from custody, having served 15 months in confinement. Pet. App. 3a-4a.

3. Following his release from custody, petitioner moved the district court for a certificate of innocence, Pet. App. 28a, which is a prerequisite to maintaining a damages suit against the United States based on a claim that he had been "unjustly convicted * * * and imprisoned," 28 U.S.C. 1495; see 28 U.S.C. 2513. To obtain a certificate of innocence, the movant "must allege and prove" that (1) his conviction was "reversed or set aside on the ground that he is not guilty of the offense of which he was convicted"; (2) he "did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States"; and (3) he "did not by misconduct or neglect cause or bring about his own prosecution." 28 U.S.C. 2513(a).

The district court denied petitioner's motion. Pet. App. 28a-33a. The court found that "[i]t was clearly [petitioner's] misconduct in the filing of a false document on the docket of this court which caused or brought about his prosecution." *Id.* at 33a. The court explained that "[petitioner]'s conduct was not just a waste of public time and resources," but also "disrupted the administration of justice, interfered with the orderly work of the federal courts, and flouted the respect due to judges and attorneys sworn to uphold the law." *Ibid.* (citation omitted). And the court observed that petitioner failed to meet his burden under Section 2513(a) because he "ha[d] come forward with no proof that his misconduct did not cause or bring about his prosecution." *Ibid.*

4. The court of appeals affirmed. Pet. App. 2a-27a. Although petitioner had appealed *pro se*, the court appointed amici curiae "to submit briefs regarding [peti-

tioner]'s entitlement to a certificate of innocence." *Id.* at 5a. After considering their arguments, the court of appeals agreed with the district court that petitioner had failed to show that his misconduct or neglect did not bring about his prosecution. *Id.* at 19a, 26a-27a.

The court of appeals observed that Section 2513(a)(2) "refers to a causal relationship between a petitioner's 'misconduct or neglect' and his 'prosecution.'" Pet. App. 8a (citation omitted). The court stated that it "must interpret [Section] 2513(a)(2)'s causal language in two steps." *Id.* at 10a. "First," the court had to "determine the correct standard for factual causation under * * * the ordinary meaning of 'caus[ing] or bring[ing] about [one's] own prosecution.'" *Id.* at 10a (brackets in original) (quoting 28 U.S.C. 2513(a)(2)). "Second," the court would turn to the question whether Section 2513(a)(2) "incorporates proximate causation principles" —*i.e.*, "legal" causation—as an additional requirement. *Id.* at 8a, 10a (citation omitted).

On factual causation, the court of appeals determined that Section 2513(a)(2) incorporates a but-for standard. Pet. App. 10a-15a. The court noted that this Court has consistently interpreted statutory causal language as denoting but-for causation, and that nothing in Section 2513(a)(2) indicated congressional intent to deviate from that default rubric. *Id.* at 11a-14a. The court rejected petitioner's argument that Section 2513(a)(2) instead "approximates sole causation," such that a movant fails to meet his burden "only if his misconduct was the sole cause of" his prosecution. *Id.* at 12a. The court recognized that petitioner's view of factual causation "finds support in" *Betts* v. *United States*, 10 F.3d 1278 (7th Cir. 1993), which had taken the view that "a petitioner fails § 2513(a)'s third requirement only if he 'acts or fails to

act in such a way as to mislead the authorities into thinking he . . . committed an offense." Pet. App. 11a (quoting *Betts*, 10 F.3d at 1285) (brackets omitted). But the court observed that petitioner's interpretation "does not reflect the ordinary meaning of factually 'caus[ing]' a 'prosecution,'" *ibid.* (citation omitted; brackets in original), and that *Betts* had reached its conclusion "purely on policy grounds," *id.* at 13a n.5.

On legal causation, the court of appeals observed at the outset that petitioner and his amici "did not mention proximate causation in their briefs," and that they had addressed that question for the first time "at oral argument." Pet. App. 15a. The court then explained that courts "typically apply proximate causation principles to statutes that condition remedies on plaintiffs showing that defendants caused their injuries by unlawful conduct," and that Section 2513 is not such a statute. *Id.* at 15a. The court observed that Section 2513 instead requires the movant "to 'allege and prove'" "three 'requisite facts' about his own conviction, acts, and misconduct or neglect, regardless of the government's negligence or misconduct regarding his prosecution." *Id.* at 16a (citation omitted). The court further reasoned that Section 2513(a)(2)'s use of disjunctive language—"cause *or* bring about"—"emphasize[d] the breadth of [petitioner]'s burden regarding causation," which further counseled against adopting a proximate-cause standard. *Id.* at 18a (emphasis added; citation omitted).

Turning to the facts here, the court of appeals recognized, like the district court, that petitioner had committed misconduct by using an attorney's signature without her consent to file an exhibit in federal court. Pet App. 19a. The court of appeals also found that petitioner's misconduct was a factual cause of his prosecu-

tion because "[i]f [petitioner] had not used the lawyer's signature to file the exhibit, the government would not have prosecuted him." *Ibid.* And the court rejected petitioners' arguments that absurdity or superfluity concerns undermined its interpretation of the statute. *Id.* at 22a-24a.

ARGUMENT

Petitioner does not dispute that 28 U.S.C. 2513(a)(2) incorporates a factual-causation requirement, that the requirement incorporates the default standard of but-for causation, or that his actions were indeed a but-for cause of his prosecution. Instead, petitioner contends (Pet. 9-22) that the court of appeals erred in determining that Section 2513(a)(2) does not separately incorporate a legal- or proximate-causation requirement. The court correctly rejected that position, which neither petitioner nor his court-appointed amici timely raised. In any event, the decision below does not conflict with any decision of this Court or any other court of appeals. This case is also an unsuitable vehicle for addressing the question presented because petitioner would not be entitled to relief even under the standard that he advances. Finally, the proper interpretation of Section 2513(a) is a question that arises very infrequently; and when it has, this Court has denied similar petitions for writs of certiorari. See *Davis* v. *United States*, 142 S. Ct. 1211 (2022) (No. 21-1063); *Graham* v. *United States*, 562 U.S. 1178 (2011) (No. 10-366). The same result is warranted here.

1. Because a suit for damages against the United States for unjust imprisonment under 28 U.S.C. 1495 and 2513 is a waiver of the sovereign immunity of the United States, those statutes "must be strictly construed in favor of the sovereign." *Orff* v. *United States*, 545

U.S. 596, 602 (2005). It appears to be undisputed that Section 2513(a)(2) "exclude[s] from the operation of the remedial provisions of the statute those who, though innocent, had negligently or willfully failed to take the necessary measures to avoid conviction." *Osborn* v. *United States*, 322 F.2d 835, 843 (5th Cir. 1963). And here, the lower courts correctly found that petitioner failed to meet his burden to prove that he did not "bring about his own prosecution" through "misconduct or neglect." Pet. App. 26a (quoting 28 U.S.C. 2513(a)(2)).

The statutory phrase "cause or bring about" is undefined and thus carries its ordinary meaning. See *Burrage* v. *United States*, 571 U.S. 204, 210 (2014); Pet. App. 10a. To "[c]ause" something is "to effect, bring about, produce, induce, [or] make" it. 2 *The Oxford English Dictionary* 196 (1933); see *Webster's Third New International Dictionary* 356 (1986) (*Webster's*) (to "serve[] as cause or occasion of"). And one thing "brings about" another when it "bring[s] [it] to pass" or "occasion[s]," "accomplish[es]," or "effect[s]" it. 1 *OED* 1108; see *Webster's* 278 (to "cause to take place" or to "effect").

The statutory phrase thus requires *actual* causation, which this Court has consistently interpreted as denoting "but-for" causation absent any contrary textual or contextual indications. See *Comcast Corp.* v. *National Ass'n of African Am.-Owned Media*, 589 U.S. 327, 332 (2020) ("This ancient and simple 'but for' common law causation test * * * supplies the 'default' or 'background' rule against which Congress is normally presumed to have legislated when creating its own new causes of action.") (citation omitted); see also, *e.g.*, *Burrage*, 571 U.S. at 210-212; *University of Tex. Sw. Med. Ctr.* v. *Nassar*, 570 U.S. 338, 346-347 (2013). And petitioner, whose "misconduct" was undisputed before the court of ap-

peals, Pet. App. 19a, does not contest in this Court that his actions, including his filing of a false document, were a but-for cause of his prosecution in this case.

Although he did not do so until oral argument in the court of appeals, petitioner now asserts (*e.g.*, Pet. I) that the statute also implicitly incorporates a "proximate causation" requirement. Pet. App. 15a-18a, 20a-25a. The "phrase 'proximate cause' is shorthand for the policy-based judgment that not all factual causes contributing to an injury should be legally cognizable causes." *CSX Transp., Inc.* v. *McBride*, 564 U.S. 685, 701 (2011). Courts typically read "proximate causation principles" into "statutes that condition remedies on" the plaintiffs' showing "that defendants caused their injuries by unlawful conduct." Pet. App. 15a-16a (collecting examples). Section 2513, however, identifies a prerequisite to suit and requires the movant to "prove" "facts" about himself, including that he did not "bring about his own prosecution" by his own misconduct. 28 U.S.C. 2513(a) and (b). That inquiry does not turn on any wrongdoing by the contemplated defendant (*i.e.*, the United States).

Moreover, when Congress intends to include a "proximate cause" standard, it has well-established tools to do so. Pet. App. 16a-17a; see *Rotkiske* v. *Klemm*, 589 U.S. 8, 14 (2019) ("Atextual judicial supplementation is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language or provision."). And when, as here, "the legislative text uses less legalistic language, *e.g.*, 'caused by,' 'occasioned by,' 'in consequence of,' or * * * 'resulting in whole or in part from,'" and the context does not suggest additional atextual requirements, there is "little reason for courts to hark back to stock, judge-made proximate-cause formulations." *CSX Transp.*, 564 U.S. at 702-703.

In contending otherwise, petitioner would atextually redefine (Pet. 9) "misconduct or neglect" to require conduct that "misled the government into believing that he committed the charged offense." But petitioner identifies no basis in the statute, in any dictionary, or even in the judge-made concept of "proximate cause" that would support cabining the meaning of "misconduct or neglect" to cover exclusively "misleading" acts. Pet. 12, 14 (citation omitted). Petitioner instead points (Pet. 13-14) to a handful of cases that, in his view, establish that "the common usage of the phrase 'cause or bring about'" incorporates an equitable proximate-cause standard "akin to the common-law tort doctrines" of unclean hands, contributory negligence, and estoppel, and he posits Congress incorporated the same rubric when it enacted Section 2513(a)(2). But he does not explain how those doctrines, even if applicable, would be limited solely to "misleading" conduct.

None of petitioner's scattered citations stands for the proposition that the phrase "cause or bring about" necessarily refers to proximate causation—or, more specifically, to exclusively "misleading" conduct—or that the phrase has a particular settled meaning that Congress intentionally imported into Section 2513. Indeed, petitioner's principal citations do not even arise in tort. See *The Jay St. Terminal No. 3*, 281 F. 279, 280 (2d Cir. 1922) (contract); *Fidelity & Cas. Co.* v. *Stacey's Ex'rs*, 143 F. 271, 272 (4th Cir. 1906) (same); *Utah Const. Co.* v. *Salmon River Canal Co.*, 85 F.2d 769, 770 (9th Cir. 1936) (interpretation of judicial decree concerning water rights), cert. denied, 300 U.S. 663 (1937). And to the extent that petitioner does invoke tort law, the court of appeals correctly observed (Pet. App. 17a-18a) that the tort law defense of contributory negligence must be

proved by the defendant, and has no analogue in Section 2513, which imposes pleading and proof requirements on a potential plaintiff.

Petitioner also errs in asserting (Pet. 16-18) that the court of appeals failed "properly to apply the canon against surplusage." The court instead detailed precisely why its interpretation gives effect to each statutory prerequisite to a certificate of innocence. Pet. App. 22a-23a. For example, a movant who "did not commit" an "offense" and committed no "misconduct or neglect" causing his prosecution—but whose conviction had not been "reversed or set aside"—would satisfy the second and third requirements for a certificate without satisfying the first. 28 U.S.C. 2513(a); see *ibid.* (requiring a showing that the movant's "conviction has been reversed or set aside on the ground that he is not guilty"). A movant who committed a crime but had been targeted by "a corrupt prosecutor [who] was planning to frame and prosecute him regardless of his misconduct" could satisfy the third requirement without satisfying the second. Pet. App. 22a. And a movant who, like petitioner, secured a reversal of his conviction and whose charged conduct "constituted no offense against the United States," but still engaged in "misconduct" causing his prosecution, would satisfy only the first and second requirements. 28 U.S.C. 2513(a)(2); see Pet. App. 21a-23a.

Petitioner objects (Pet. 16) that the court of appeals' interpretation would mean that a movant could "fail the third element any time he had committed a charged act" that also "constituted misconduct." But that does not identify a statutory redundancy. A movant could satisfy Section 2513(a)(2)'s final requirement by proving that he did *not* engage in "misconduct or neglect." 28 U.S.C.

2513(a)(2). Petitioner simply could not to do so here. Pet. App. 33a.

Finally, petitioner asserts (Pet. 18-19) that the court of appeals' interpretation would yield absurd results. As a threshold matter, "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Lamie* v. *United States Trustee*, 540 U.S. 526, 534 (2004) (citation omitted); *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438, 459 (2002) ("[T]he Court rarely invokes [an absurd results] test to override unambiguous legislation."). Regardless, the result in this case is not absurd because petitioner undisputedly engaged in misconduct when he filed false documents in a federal district court, which "disrupted the administration of justice, interfered with the orderly work of the federal courts, and flouted the respect due to judges and attorneys sworn to uphold the law." Pet. App. 56a; see *id.* at 26a-27a, 33a. Nor is there any dispute that petitioner misled FBI investigators when he deleted his e-mail account, claimed that he never threatened the attorney whose signature he falsified, and falsely claimed that his PACER account had been "compromised." PSR ¶¶ 16, 24-25. Petitioner's misconduct plainly led to his prosecution, and petitioner "has come forward with no proof" suggesting otherwise. Pet. App. 33a.

At all events, petitioner overstates the hypothetical outcomes under the court of appeals' statutory interpretation. Someone who was merely "presen[t]" during a riot whose conviction was later overturned, Pet. 18-19, would likely succeed in arguing that he had not committed misconduct or neglect. And the facts of *United States* v. *Moon*, 31 F.4th 259 (4th Cir. 2022), do not aid petitioner: there, the court of appeals applied the same

test as the decision below, finding that a movant "was a but-for cause of his conviction" for possessing a firearm as a felon because the movant had drawn police officers' attention by "putting pedestrians and other motorists at risk," and because he was found with "methamphetamine, marijuana, an electronic scale, and a firearm." *Id.* at 266. In sum, petitioner provides no sound reason to read Section 2513's text differently from how it is written: as a limited waiver of sovereign immunity that allows only the truly blameless to recover damages for unjust imprisonment.

2. Petitioner claims (Pet. 9-13) that the decision below warrants this Court's intervention because it conflicts with *Betts* v. *United States*, 10 F.3d 1278 (7th Cir. 1993), and *United States* v. *Grubbs*, 773 F.3d 726 (6th Cir. 2014). But this case does not squarely present any circuit disagreement, there are "few opinions on th[e] subject" of Section 2513(a)(2)'s causation requirement, *Abu-Shawish* v. *United States*, 898 F.3d 726, 733 (7th Cir. 2018), and no court has addressed the question presented en banc.

In *Betts*, the Seventh Circuit observed that the "misconduct or neglect" provision in Section 2513(a)(2) precludes issuance of a certificate of innocence where there is "a causal connection between the petitioner's conduct and his prosecution." 10 F.3d at 1285. *Betts* added that such a "causal connection" requires that the movant "acted or failed to act in such a way as to mislead the authorities into thinking he had committed an offense," such as when he "'takes the fall' for someone else" by "falsely confess[ing] to a crime or intentionally withhold[ing] exculpatory evidence." *Ibid.* In the *Betts* panel's view, the critical requirement is "an affirmative act or an omission by the [movant] that misleads the au-

thorities as to his culpability." *Ibid.* The Sixth Circuit, in turn, has endorsed that language in *Betts* without explanation or analysis. *Grubbs*, 773 F.3d at 732 n.4.

The decision below expressed disagreement with *Betts* insofar as petitioner construed that case as excluding "charged conduct" from the statutory definition of "misconduct." Pet. App. 13a-15a & n.5; see *id.* at 20a-21a. But petitioner now seeks this Court's review on a different issue—namely, whether Section 2513(a) implicitly incorporates a "proximate[] cause[]" standard. Pet. I. And *Betts* did not discuss or adopt a "proximate cause" rubric at all; the reasoning and result of *Betts* therefore do not reflect any endorsement of the proximate cause approach that petitioner urges this Court to adopt. In any event, this case does not squarely conflict with *Betts* because petitioner would not be entitled to a certificate of innocence even under the standard articulated in that case. Petitioner's spoliation and concealment of evidence, and his untruthful statements to investigators, would satisfy *Betts*'s interpretation of Section 2513.

Petitioner "misl[e]d the authorities into thinking he had committed an offense," *Betts*, 10 F.3d at 1285, because he deactivated the e-mail account he had used to communicate with the plaintiff's attorney, PSR ¶ 16; falsely denied e-mailing that attorney or using his own e-mail account, PSR ¶ 24; and untruthfully claimed that his "PACER account had been compromised" when he submitted a false filing, PSR ¶¶ 24-25; see Gov't C.A. Supp. Br. 5-6. And as the district court explained, petitioner's conduct was "a waste of public time and resources," "disrupted the administration of justice," and "interfered with the orderly work of the federal courts"—and he failed to come forward with any evi-

dence suggesting otherwise. Pet. App. 33a (citation omitted). While the court of appeals ultimately determined that the specific conduct charged did not satisfy the elements of the charged offenses, the term "misconduct" plainly extends beyond criminal violations, and petitioner's own misconduct (as opposed to, say, the manipulations of others) led authorities to believe that he had committed those offenses.

Any circuit disagreement, moreover, is shallow. As petitioner acknowledges (Pet. 11-12), just one additional court of appeals has accepted the standard articulated in *Betts*. See *Grubbs*, 773 F.3d at 732 n.4. And the only other court of appeals to have considered the same statutory text found *Betts* unpersuasive. In *United States* v. *Graham*, 608 F.3d 164 (2010), cert. denied, 562 U.S. 1178 (2011), the Fourth Circuit observed that *Betts*'s interpretation of Section 2513(a) is flawed because it appears to require "'willful misconduct,'" which adds text absent from the statute and "effectively reads 'neglect' out of the statute." *Id.* at 174 (citation omitted).

The shallowness of any disagreement is likely attributable to the infrequency with which the issue arises. As the Fourth Circuit observed 15 years ago in *Graham*, federal courts do not "regularly ha[ve] occasion to consider certificates of innocence," and only a handful of court of appeals decisions have interpreted Section 2513 or its predecessors since the first such statute was enacted in 1938. 608 F.3d at 173 n.4; see pp. 13-14, *supra*. The infrequency of the issue is an independent basis for denying further review of the question presented, which will affect very few cases.

At all events, this case would not be a suitable vehicle for reviewing the question presented. Petitioner did not previously brief the arguments he now presents in this

Court. He made no effort to meet his burden to "come forward with no proof that his misconduct did not cause or bring about his prosecution." Pet. App. 33a. And, as explained above, he would not be entitled to relief under the standard he proposes.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General
MATTHEW R. GALEOTTI
ANDREW W. LAING
Attorneys

MARCH 2025