

Nos. 25-756 and 25-757

In the Supreme Court of the United States

LARRY HOUSEHOLDER, PETITIONER

v.

UNITED STATES OF AMERICA

MATTHEW BORGES, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court adequately instructed the jury on the *quid pro quo* element of public-official honest-services bribery (18 U.S.C. 1343 and 1346) and Hobbs Act extortion (18 U.S.C. 1951).

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OPINION BELOW

The opinion of the court of appeals (25-756 Pet. App. 1a-95a) is reported at 137 F.4th 454.

JURISDICTION

The judgment of the court of appeals was entered on May 6, 2025. A petition for rehearing was denied on July 25, 2025 (25-756 Pet. App. 96a-97a). On October 10, 2025, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari in No. 25-756 to and including December 22, 2025, and the petition

was filed on that date. On October 28, 2025, Justice Kavanaugh extended the time to file a petition for a writ of certiorari in No. 25-757 to and including December 22, 2025, 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 Southern District of Ohio, petitioners Larry Householder and Matthew Borges were convicted of conspiring to commit racketeering activity, in violation of 18 U.S.C. 1962(c) and (d). 25-756 Judgment 1; 25-757 Judgment 1. Householder was sentenced to 240 months of imprisonment, to be followed by one year of supervised release. 25-756 Judgment 2-3. Borges was sentenced to 60 months of imprisonment, to be followed by three years of supervised release. 25-757 Judgment 2-3. The court of appeals affirmed. 25-756 Pet. App. 1a-95a.

1. Householder was a member of the Ohio House of Representatives who aspired to become Speaker. 25-756 Pet. App. 2a-3a. FirstEnergy Corporation, an Ohio public utility that was in “dire financial straits” and sought a taxpayer-funded bailout, agreed to bankroll Householder’s bid to become Speaker; in return, Householder agreed to help secure a billion-dollar bailout and, later, defend the bailout from an effort to repeal it by referendum. *Id.* at 3a-12a.

To facilitate the exchange, Householder set up an entity called “Generation Now” and designated it as a tax-exempt social-welfare organization under 26 U.S.C. 501(c)(4). 25-756 Pet. App. 4a. Unlike contributions to a political campaign, contributions to a Section 501(c)(4) entity are not subject to campaign-contribution limits or disclosure requirements. *Ibid.* Generation Now thus enabled Householder to receive “unlimited money” that

“wouldn’t be traced back” to FirstEnergy. *Ibid.* (citation omitted).

FirstEnergy paid \$1 million to Generation Now in 2017 and an additional \$1.4 million in 2018. See 25-756 Pet. App. 5a, 9a. Although Householder spent some of the money on the campaigns of state House candidates, he also used a portion of the funds for personal purposes. *Id.* at 6a. For example, he used \$300,000 to resolve a pending lawsuit against him and to pay related legal expenses. 25-756 Gov’t C.A. Br. 10.

All but one of Householder’s chosen candidates won their races in 2018, and once elected, those candidates voted for Householder to become Speaker. 25-756 Pet. App. 8a-10a. After taking office in January 2019, Householder established a new energy subcommittee and filled it with representatives whom he had helped elect. *Id.* at 10a. He then worked with FirstEnergy to draft the bailout legislation. *Ibid.* To avoid creating an electronic record of the interaction, his office and the company exchanged hard copies of the bill. *Ibid.*

The bailout legislation encountered opposition after it was introduced in April 2019. 25-756 Pet. App. 10a-11a. Over the next two months, FirstEnergy paid approximately \$15 million to Generation Now. *Id.* at 11a. In return, Householder pressured state legislators who opposed the legislation to change their position. 25-756 Gov’t C.A. Br. 19-20.

In July 2019, the legislature passed and the governor signed the bill, under which FirstEnergy would receive \$1.3 billion. 25-756 Pet. App. 12a. Opponents of the legislation sought to repeal it by referendum, a procedure that required them to collect approximately 265,000 signatures in 90 days. *Ibid.* Householder and FirstEnergy then agreed to the “same arrangement” as before, with

Householder working to defeat the referendum in return for payments to Generation Now. *Id.* at 13a (citation omitted).

In the ensuing months, Generation Now received approximately \$38 million from FirstEnergy and its affiliates. 25-756 Pet. App. 13a. Once again, Householder used a portion of the funds for personal expenses, such as paying off credit-card debt and making home repairs. 25-756 Gov't C.A. Br. 24.

Householder worked with Matthew Borges, a lobbyist hired by FirstEnergy, to defeat the referendum campaign. 25-756 Pet. App. 10a, 13a-16a. As part of that effort, Borges tried to bribe an employee at the voter-contact firm that was collecting signatures for the referendum, offering to pay off the employee's debts in return for signature-count information. 25-757 Gov't C.A. Br. 26-27.

The employee reported the solicitation to the Federal Bureau of Investigation (FBI). 25-757 Gov't C.A. Br. 27. At the FBI's direction, the employee accepted \$15,000 from Borges but never sent Borges the information he sought. *Id.* at 29. In a series of recorded conversations with the employee, Borges candidly described the "unholy alliance" among Householder, FirstEnergy, and his lobbying firm. *Id.* at 28 (citation omitted). Borges also paid himself hundreds of thousands of dollars from the same account (funded by Generation Now) that he used to bribe the employee. *Id.* at 32.

Ultimately, the referendum campaign did not collect enough signatures and the ballot initiative failed. 25-756 Pet. App. 16a. The day that the bailout legislation took effect, FirstEnergy transmitted another \$3 million to Generation Now. *Ibid.* FirstEnergy later paid an additional \$2 million to Generation Now in support of a

ballot initiative that would allow Householder to extend his term as Speaker. 25-756 Gov’t C.A. Br. 30-31.

2. A grand jury in the United States District Court for the Southern District of Ohio indicted petitioners and others on one count of conspiring to commit racketeering activity, in violation of 18 U.S.C. 1962(c) and (d). Indictment 1-40. To obtain a conviction for racketeering conspiracy, the government was required to show that petitioners “‘intended to further an endeavor which, if completed,’ would have resulted in the commission of [at least] two predicate offenses.” 25-756 Pet. App. 17a (citation omitted). The indictment alleged that the defendants conspired to engage in a pattern of racketeering activity consisting of seven predicate offenses: public-official and private-official honest-services wire fraud, in violation of 18 U.S.C. 1343 and 1346; Hobbs Act extortion, in violation of 18 U.S.C. 1951; violation of the Travel Act, 18 U.S.C. 1952; money laundering, in violation of 18 U.S.C. 1956; engaging in monetary transactions in property derived from specified unlawful activity, in violation of 18 U.S.C. 1957; and state bribery, in violation of Ohio Rev. Code Ann. § 2921.02 (West 2020). Indictment 10-11.

At the conclusion of a 26-day trial, the district court instructed the jury that, to establish the federal bribery predicates, the government was required to prove a “*quid pro quo*,” which the court defined as “the public official’s solicitation, receipt, acceptance, or agreement to accept a thing of value in exchange for specific official action.” D. Ct. Doc. 260, at 30-31 (Mar. 6, 2023). The court explained that while the agreement “need not be express, it must be explicit,” meaning that “the government must show that the contours of the proposed exchange were clearly understood by both the public offi-

cial and the payor, even if the proposed exchange was not communicated between them in express terms.” *Id.* at 31. The court also cautioned that “efforts to buy favor or generalized goodwill do not necessarily amount to bribery.” *Ibid.*

The jury found petitioners guilty. 25-756 Pet. App. 17a-18a. The district court sentenced Householder to 240 months of imprisonment, to be followed by one year of supervised release, and Borges to 60 months of imprisonment, to be followed by three years of supervised release. Householder Judgment 2-3; Borges Judgment 2-3.

3. The court of appeals affirmed. 25-756 Pet. App. 1a-95a. Among other things, the court of appeals rejected petitioner’s claim that the jury instructions on federal bribery were erroneous. *Id.* at 18a-26a.

The court of appeals observed that the predicate offenses of public-official honest-services fraud and Hobbs Act extortion “requir[e] the government to show a quid pro quo agreement: that the official received a payment (the quid) and in return agreed to take official action (the quo).” 25-756 Pet. App. 19a. And the court recognized that “the need for a quid pro quo is critical in the campaign contribution context, where it ‘is the corrupt *agreement* that transforms the exchange from a First Amendment protected’ contribution into bribery.” *Id.* at 19a-20a (citation omitted).

The court of appeals also made clear that, although the agreement “can be informal, unwritten, or implied,” the government must show “an unambiguous meeting of the minds between the official and the payor.” 25-756 Pet. App. 21a. And the court upheld the jury instructions, which came “straight from” and “hew[ed] * * *

closely to” this Court’s decision in *Evans v. United States*, 504 U.S. 255 (1992). 25-756 Pet. App. 22a.

Judge Thapar issued a concurring opinion. 25-756 Pet. App. 64a-95a. He acknowledged that petitioners’ guilt is “clear under current law,” but he encouraged this Court to “revisit *Evans*.” *Id.* at 64a, 67a.

ARGUMENT

Petitioners challenge (25-756 Pet. 14-21; 25-757 Pet. 11-17, 21-24) the district court’s jury instructions on public-official honest-services fraud and Hobbs Act extortion. The court of appeals correctly rejected that challenge, and its decision does not conflict with any decision of this Court or of another court of appeals. This Court has previously denied petitions for writs of certiorari raising similar issues, and it should follow the same course here. See *Benjamin v. United States*, 145 S. Ct. 982 (2024) (No. 24-142); *Allinson v. United States*, 143 S. Ct. 427 (2022) (No. 22-328); *Silver v. United States*, 141 S. Ct. 656 (2021) (No. 20-60); *Davis v. United States*, 142 S. Ct. 401 (2021) (No. 21-5081); *Blagojevich v. United States*, 584 U.S. 930 (2018) (No. 17-658); *Terry v. United States*, 571 U.S. 1237 (2014) (No. 13-392); *Siegelman v. United States*, 566 U.S. 1043 (2012) (No. 11-955); *Scrushy v. United States*, 566 U.S. 1043 (2012) (No. 11-972).

1. In *McCormick v. United States*, 500 U.S. 257 (1991), this Court addressed the elements of a prosecution for extortion under color of official right in violation of the Hobbs Act. The defendant in *McCormick* was a state legislator who received campaign contributions from a lobbyist, discussed a bill with the lobbyist, and later sponsored the bill. *Id.* at 260-261. The government charged the legislator with Hobbs Act extortion, and the jury was instructed that it could find the legis-

lator guilty if the contribution was made “with the expectation that [it] would influence [the legislator’s] official conduct, and with knowledge on the part of [the legislator] that [the contribution was made] with that expectation.” *Id.* at 265 (citation omitted). This Court reversed the resulting conviction on the ground that the instruction had not required proof of a *quid pro quo*. *Id.* at 273-274.

This Court again addressed Hobbs Act extortion a year later in *Evans v. United States*, 504 U.S. 255 (1992). The defendant there, a county commissioner, had been convicted under the Hobbs Act for accepting \$8000, purportedly as a campaign contribution, knowing that it was intended to secure his vote and lobbying efforts on a particular matter. *Id.* at 257. The jury had been instructed that, “if a public official demands or accepts money in exchange for a specific requested exercise of his or her official power,” the official’s conduct violates the Hobbs Act “regardless of whether the payment is made in the form of a campaign contribution.” *Id.* at 258 (brackets and citation omitted). The Court held that the instruction “satisfie[d] the *quid pro quo* requirement of *McCormick*.” *Id.* at 268.

In a concurrence in *Evans*, Justice Kennedy emphasized that a *quid pro quo* need not be stated “in express terms, for otherwise the law’s effect could be frustrated by knowing winks and nods.” *Evans*, 504 U.S. 274 (Kennedy, J., concurring in part and concurring in the judgment). Rather, a corrupt bargain may be inferred from an official’s “words and actions, so long as he intends it to be so and the payor so interprets it.” *Ibid.*

2. The parties have litigated these cases on the premise that the same *quid pro quo* requirement applicable to Hobbs Act extortion under color of official right

also applies in prosecutions for public-official honest-services fraud. 25-756 Pet. App. 19a n.3. And as the court of appeals recognized (*id.* at 22a), the jury instructions here “come straight from” *Evans*.

This Court explained in *Evans* that, in this context, the color-of-official-right element of Hobbs Act extortion—the element that the Court was interpreting—is satisfied if the official “obtain[s] a payment to which he was not entitled, knowing that the payment was made in return for official acts.” 504 U.S. at 268; see *McCormick*, 500 U.S. at 266 n.5. As the court of appeals observed (25-756 Pet. App. 22a), the instructions here “matched this language”: they defined extortion as an official’s receipt of something of value “‘knowing’” that it was given “‘in return for the public official performing or agreeing to perform a specific official action.’” *Ibid.* (citation omitted).

And as the court of appeals correctly recognized (25-756 Pet. App. 22a), “[a]n instruction can’t misrepresent the law when it hews so closely to Supreme Court precedent.” Petitioners err in contending (25-756 Pet. 16-18; 25-757 Pet. 15-16, 22) that, like the jury instructions rejected in *McCormick*, the instructions improperly focused on the payor’s expectations instead of requiring a *quid pro quo*. The district court instructed the jury that the government was required to prove that Householder solicited, received, accepted, or agreed to accept a thing of value “*in exchange for specific official action.*” D. Ct. Doc. 260, at 31 (emphasis added).

Borges similarly errs in contending (25-757 Pet. 23) that the instructions failed to require “the explicit, unambiguous *quid pro quo* that *McCormick* demands.” The instructions repeatedly stated that the bribe must be paid in exchange for “specific official action,” D. Ct.

Doc. 260, at 30-32 (using the phrase seven times), and explicitly specified that the “bribery agreement” must be “*clearly* understood by both the public official and the payor,” *id.* at 31 (emphasis added). Taken as a whole, the instructions made clear that the government was required to prove that Householder agreed, when he received the payments, to perform a specific official action, even if the date of fulfillment was not yet determined. See *United States v. Hills*, 27 F.4th 1155, 1179 (6th Cir. 2022) (explaining that a public official commits bribery by accepting a bribe in return for taking specific official action “as opportunities arise”), cert. denied, 143 S. Ct. 305 (2022), and 143 S. Ct. 606 (2023).

Contrary to petitioners’ contention (25-756 Pet. 20-21; 25-757 Pet. 11-16), the decision below does not conflict with this Court’s First Amendment precedents. The Court has explained that the First Amendment does not protect corruption, whose “hallmark” is “the financial *quid pro quo*: dollars for political favors.” *McCutcheon v. FEC*, 572 U.S. 185, 192 (2014) (plurality opinion) (quoting *FEC v. NCPAC*, 470 U.S. 480, 497 (1985)). The danger of chilling legitimate campaign activity was addressed by instructions requiring the jury to find beyond a reasonable doubt that a public official unambiguously agreed to perform specific official action in exchange for money. See 25-756 Pet. App. 24a-25a. Nor is there any ambiguity about whether the circumstances here involved corruption; “overwhelming evidence” showed that “Householder solicited and received money from FirstEnergy in exchange for official action.” *Id.* at 45a.*

* Borges acknowledges (25-757 Pet. 17-21) that his claim is essentially derivative of Householder’s, and does not suggest that he would prevail in this Court unless Householder also prevails.

3. The court of appeals’ decision does not conflict with the decision of any other court of appeals. Every court of appeals to consider the issue has determined that *McCormick’s quid pro quo* requirement “may be met by implication from the official’s and the payor’s words and actions and need not entail an express statement.” *United States v. Benjamin*, 95 F.4th 60, 68 (2d Cir.), cert. denied, 145 S. Ct. 982 (2024); see *United States v. Correia*, 55 F.4th 12, 31 (1st Cir. 2022); *United States v. Allinson*, 27 F.4th 913, 925 (3d Cir.), cert. denied, 143 S. Ct. 427 (2022); *United States v. Terry*, 707 F.3d 607, 613 (6th Cir. 2013), cert. denied, 571 U.S. 1237 (2014); *United States v. Blagojevich*, 794 F.3d 729, 738 (7th Cir. 2015), cert. denied, 577 U.S. 1234 (2016); *United States v. Carpenter*, 961 F.2d 824, 827 (9th Cir.), cert. denied, 506 U.S. 919 (1992); *United States v. Siegelman*, 640 F.3d 1159, 1171 (11th Cir. 2011), cert. denied, 566 U.S. 1043 (2012).

The Third and Ninth Circuit cases cited by Borges (25-757 Pet. 16) do not show otherwise. See *Carpenter*, 961 F.2d at 827 (9th Cir.); *United States v. Davis*, 841 Fed. Appx. 375, 379 (3d Cir.), cert. denied, 142 S. Ct. 401 (2021). As an initial matter, the Third Circuit’s decision was unpublished and so would not bind that court in future cases. In any event, the Third and Ninth Circuits both rejected the notion that the terms of the bargain must be “express,” *Davis*, 841 Fed. Appx. at 379, or “specifically stated,” *Carpenter*, 961 F.2d at 827. The courts instead agreed that, while the contributor and official must “clearly understand the terms” of the bargain, “[t]he jury may consider both direct and circumstantial evidence * * * to determine if there was a meeting of the minds on a quid pro quo.” *Ibid.*; see *Davis*, 841 Fed. Appx. at 379. That parallels the jury

instructions here, under which the government was required to “show that the contours of the proposed exchange were clearly understood by both the public official and the payor, even if the proposed exchange was not communicated between them in express terms.” D. Ct. Doc. 260, at 31.

Householder also cites (25-756 Pet. 19-20) cases from the First, Eighth, and D.C. Circuits, but in each case, the court (1) considered a *quid pro quo* arrangement outside the campaign-contribution context and (2) affirmed the conviction. See *United States v. McDonough*, 727 F.3d 143, 155 n.4, 166 (1st Cir. 2013), cert. denied, 571 U.S. 1177 (2014); *United States v. Chastain*, 979 F.3d 586, 591, 594 (8th Cir. 2020); *United States v. Ring*, 706 F.3d 460, 466, 474 (D.C. Cir.), cert. denied, 571 U.S. 827 (2013). Any statements in those decisions about how to analyze a case involving campaign contributions would not bind those courts in future cases. See, e.g., *Benjamin*, 95 F.4th at 72-73 (rejecting as dicta statements made in previous cases that did not involve campaign contributions). Nor would any disagreement about whether *McCormick*’s *quid pro quo* requirement applies *outside* the campaign-contribution context be implicated by these cases, where the court of appeals proceeded on the premise that FirstEnergy’s payments were campaign contributions governed by *McCormick* and *Evans*. See 25-756 Pet. App. 19a-20a, 27a n.6.

4. This Court should reject petitioners’ invitation (25-756 Pet. 14-21; 25-757 Pet. 21-24) to revisit *Evans*. Although members of this Court have criticized *Evans*, those criticisms concern the Court’s decision to equate Hobbs Act extortion with bribery. See *Silver*, 141 S. Ct. at 656-657 (Gorsuch, J., dissenting from denial of certi-

orari); *Ocasio v. United States*, 578 U.S. 282, 300 (2016) (Breyer, J., concurring); *Evans*, 504 U.S. at 278-290 (Thomas, J., dissenting). But petitioners have not challenged that aspect of *Evans*. Instead, their questions presented (25-756 Pet. i; 25-757 Pet. i) concern only the nature of the proof needed to establish a *quid pro quo* in the campaign-finance context, not *Evans*'s equation of Hobbs Act extortion with bribery. See Sup. Ct. R. 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court."); *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992) ("The framing of the question presented has significant consequences."). And that extortion-specific issue would not, in any event, affect the separate honest-services predicates.

Petitioners also err in suggesting (25-756 Pet. 17; 25-757 Pet. 16) that *Evans* has created "confusion" about what the government must prove in an extortion case involving campaign contributions. In the typical case, "the trier of fact is quite capable of deciding the intent with which words were spoken or actions taken as well as the reasonable construction given to them by the official and the payor." *Evans*, 504 U.S. at 274 (Kennedy, J., concurring in part and concurring in the judgment). Petitioners cite no evidence that *Evans* has led to arbitrary or inconsistent results or that courts or juries have struggled with applying the decision.

4. In all events, these cases would be poor vehicles for resolving the question presented.

First, petitioners have not adequately preserved many of their contentions. For example, Borges argues (25-757 Pet. 3) that the jury instructions should have required "an unambiguous this-for-that exchange," but he never requested such language from the district court.

See D. Ct. Doc. 174, at 24-28, 33-35, 47 (Jan. 4, 2023) (petitioners' proposed instructions); D. Ct. Doc. 193, at 7-12 (Jan. 25, 2023) (petitioners' objections to the government's proposed instructions); 3/6/23 Tr. 11-18 (charge conference). Borges contends (25-757 Pet. 11) that the jury should have been required to find that the bargained-for official act "would not have occurred absent the payment," but his own proposed instructions rejected that view. See D. Ct. Doc. 174, at 33-34 ("It is not a defense to bribery that the public official would have done the official act anyway, even without the receipt of the property."). Nor did Borges challenge the federal bribery instructions in the court of appeals.

Similarly, Householder frames (25-756 Pet. i) the question presented as whether *McCormick's* *quid pro quo* requirement is satisfied "when a political candidate accepts a political contribution knowing that the donor believes the candidate will take official action because of the contribution," but his own proposed instructions suggest that the answer is yes. See D. Ct. Doc. 174, at 27 ("[I]f the public official has entered an explicit quid pro quo agreement, * * * or if the public official *knows that the donor believes* that the public official has entered such an agreement, then the contribution is a bribe.") (emphasis added).

Under a number of doctrines, petitioners' acceptance of, and failure to object to, the jury instructions on the grounds they now advance preclude them from obtaining relief in this Court. See, e.g., *United States v. Olano*, 507 U.S. 725, 733 (1993) (waiver and forfeiture); *United States v. Wells*, 519 U.S. 482, 488 (1997) (invited error); *City of Springfield v. Kibbe*, 480 U.S. 257, 259-260 (1987) (per curiam) (prudential concerns about en-

tertaining arguments inconsistent with a party's proposed jury instructions).

Second, petitioners have not established that the payments in these cases could even be viewed as legitimate campaign contributions. See 25-756 Gov't C.A. Br. 78-80. The payments were made to Generation Now, not to Householder or his campaign. Cf. *Evans*, 504 U.S. at 255; *McCormick*, 500 U.S. at 260. If the undisclosed multimillion-dollar payments were viewed as contributions, they would have far exceeded applicable campaign-contribution limits and violated disclosure laws. See Ohio Rev. Code Ann. §§ 3517.10, 3517.102 (West 2020). Householder, moreover, used a portion of the funds for personal purposes, such as settling a personal lawsuit, paying off credit cards, and paying for home repairs. See pp. 3-4, *supra*. If this Court wishes to revisit *Evans* based on the concern that the decision may sweep in “everyday political activity,” 25-756 Pet. App. 66a (Thapar, J., concurring), the Court should do so in a case that actually involves everyday political activity.

Finally, any instructional error here was harmless. Overwhelming evidence showed that Householder expressly solicited financial contributions in exchange for performing or agreeing to perform specific official action. See, *e.g.*, 25-756 Gov't C.A. Br. 13-16, 24. Because that conduct would constitute bribery even on petitioners' theory, any instructional error was harmless beyond a reasonable doubt. See *id.* at 80-84.

CONCLUSION

The petitions for writs of certiorari should be denied.
Respectfully submitted.

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