No. 13-7451

IN THE

Supreme Court of the United States

JOHN L. YATES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF FOR *AMICUS CURIAE* CATO INSTITUTE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Did the Eleventh Circuit go overboard when it interpreted Section 1519, a provision of the Sarbanes-Oxley Act that forbids the destruction of "any record, document, or tangible object," to criminalize the throwing of undersized fish into the Gulf of Mexico?

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INTEREST OF *AMICUS CURIAE*[1]

Established in 1977, the Cato Institute is a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to help restore the principles of constitutional government that are the foundation of liberty. Toward those ends, Cato holds conferences and publishes books, studies, and the annual *Cato Supreme Court Review*.

This case concerns Cato because it implicates the constitutional right of individuals to receive fair notice of conduct Congress has proscribed. Cato submits this brief to demonstrate how the Eleventh Circuit's overbroad construction of the "anti-shredding provision" in the Public Company Accounting Reform and Investor Protection Act ("Sarbanes-Oxley") failed to account for the Court's established rules of statutory construction and violated the Petitioner's right to fair notice.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Poet James Whitcomb Riley famously observed: "When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck." In this case, the Eleventh Circuit was confronted not with a duck, but rather fish—undersized fish caught by petitioner John Yates, a

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[1] Pursuant to Rule 37.3(a), letters of consent from all parties to the filing of this brief have been submitted to the Clerk. Pursuant to Rule 37.6, this brief was not authored in whole or in part by counsel for any party, and no person or entity other than *amicus* made a monetary contribution to its preparation or submission.

commercial fisherman accused of directing his crewmen to throw the aforementioned finned fauna back into the Gulf of Mexico after receiving a citation by the Florida Fish and Wildlife Commission. Mr. Yates's purported act ordinarily would amount to a civil violation, resulting in potential fines and possible suspension of his fishing license for a short period of time. The government, however, criminally prosecuted Mr. Yates three years after the conduct in question under the document-shredding provision of Sarbanes-Oxley—a provision enacted in the wake of the mass destruction of financial documents and records surrounding Enron Corporation's collapse and the resulting government investigation. That sordid episode in the nation's financial history was well-documented by this Court in *Arthur Andersen v. United States*, 544 U.S. 696 (2005).

By labeling a *fish* a "tangible object" under Sarbanes-Oxley, the government equated it with a financial "record" or "document" of the type central to the government's investigation of Arthur Andersen in the collapse of Enron and criminally prosecuted Mr. Yates for violating the document-shredding provision of Sarbanes-Oxley. But, a fish is not a record or a document. It does not walk like a record or a document (or even swim like one), and it does not quack like a record or a document. In poet Riley's surmise, a fish is neither a record nor a document.

Unfortunately for Mr. Yates—and, importantly, for countless unforeseeable future situations confronting other unsuspecting citizens—the Eleventh Circuit ignored the plain meaning of the statute, the text surrounding the term "tangible object," and the overall statutory context and intent, focusing instead on a

dictionary definition of the term. The Sarbanes-Oxley provision at issue in the case states:

> Whoever 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 or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S.C. § 1519 (2002) (emphasis added).

Even a cursory review of the words surrounding "tangible object" makes clear that this document-shredding statute—enacted in the wake of a vast financial fraud—has no application to a fish being thrown back into the water. Unlike a record or document, it would be quite difficult indeed for a person to "make[] a false entry in" a *fish*. Considering the context of the statute, there simply is no way to equate a fish with a "record" or "document." Further, the term "tangible object" cannot possibly sweep in all physical objects, lest the terms "document" and a "record" be rendered superfluous. Determining in isolation the meaning of a word or words in a statute runs afoul of the Court's long-standing admonishment that "the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Deal v. United States*, 508 U.S. 129, 132 (1993); *see also Johnson v. United States*, 559 U.S. 133, 138-139 (2010) (holding term "physical force" has "a number of meanings," and that "context determines meaning").

In this case, the circuit court impermissibly expanded the reach of Sarbanes-Oxley's document-shredding provision by ignoring surrounding words of the statute that make clear its focus was intended to be the destruction of financial records and other business-related documents—not *fish* (or even fowl). Not surprisingly, the Act's central purpose is to "protect investors" by increasing the reliability of corporate record-keeping. Pub. L. 107-204, 116 Stat. 745 (2002); *see also Lawson v. FMR LLC*, 134 S. Ct. 1158, 1161 (2014) (stating that purpose of Sarbanes-Oxley is "[t]o safeguard investors in public companies and restore trust in the financial markets following the collapse of Enron Corporation"). Underscoring the misapplication of the statute to the conduct at issue here is the title of the provision under which Mr. Yates was criminally charged: "Destruction, alteration, or falsification of records in Federal investigations and bankruptcy." Neither the title nor text of Section 1519 nor the overall statutory context could have given Mr. Yates fair notice that the act of throwing fish into the Gulf of Mexico following a civil citation was a violation.

The impact of the Eleventh Circuit's error does not end with Mr. Yates. If a "tangible object" includes a fish, and the act of throwing an undersized fish back into the Gulf of Mexico is a criminal violation of the Sarbanes-Oxley document-shredding provision, then federal prosecutors may use Section 1519 to punish a limitless array of conduct for minor civil infractions. As one absurd example, a smoker stealing the last few puffs of his cigarette as he enters the lobby of a government building could be criminally charged for dousing that cigarette in his coffee cup as he approaches the metal detectors manned by a federal officer. Despite the lack of any destruction or alter-

ation of a record or record-keeping device, the prospective defendant could be said to have "concealed" a "tangible object" with the intent to impede an investigation into laws that prohibit smoking in a building and thus could be subject to criminal liability for attempting to conceal his civil infraction. *See Haggar Co. v. Helvering*, 308 U.S. 389, 394 (1940) ("A literal reading of [statutes] which would lead to absurd results is to be avoided when they can be given a reasonable application consistent with their words and with the legislative purpose."); *see also Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 200 & n.3 (1993) (citing cases dating back to 1869 applying "the common mandate of statutory construction to avoid absurd results").

If this Court will pardon the continuing puns, *amicus* finds the government's theory here fishy.

ARGUMENT

Petitioner Yates was not given fair notice that 18 U.S.C. § 1519, a criminal provision in the Sarbanes-Oxley Act that carries a punishment of up to 20 years in prison, applied to his purported conduct directing his crewmen to throw undersized fish into the Gulf of Mexico after receipt of a *civil* citation (which merely carried a fine and potential permit suspension). Properly read in context, Section 1519 cannot be extended to the conduct at issue here.

By narrowly focusing on the dictionary meaning of the term "tangible object" in isolation and divorced from the context of Section 1519, the Eleventh Circuit violated the explicit direction of the Court for determining the scope of a statute. *See Deal*, 508 U.S. at 132 ("the meaning of a word cannot be determined in isolation, but must be drawn from the context in which

it is used"). Regardless of a dictionary definition of "tangible object," "the meaning of statutory language, plain or not, depends on context." *Bailey v. United States*, 516 U.S. 137, 145 (1995) (quoting *Brown v. Gardner*, 513 U.S. 115, 118 (1994)). Indeed, nearly 70 years ago Judge Learned Hand warned that courts must resist making "a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish[.]" *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir. 1945). Courts must determine the "plainness or ambiguity of statutory language . . . by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co*., 519 U.S. 337, 341 (1997).

If the Eleventh Circuit's broad construction of "tangible object" is correct, then Section 1519 violated Mr. Yates's constitutional right to fair notice. No average citizen could fathom that the act of throwing undersized fish into the Gulf of Mexico (or any body of water) following his receipt of a civil citation could result in a felony prosecution and 20 years in prison. Such an expansive construction of Section 1519 denied Mr. Yates fair notice by judicially creating a statute "so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case." *Giaccio v. Pennsylvania*, 382 U.S. 399, 402–03 (1966).

I. THE TEXT OF SECTION 1519 ITSELF INDICATES CONGRESSIONAL INTENT TO PROHIBIT DESTRUCTION OF RECORDS AND RECORD-KEEPING DEVICES

The term "tangible object" read in isolation is amorphous, overbroad and nearly limitless. A tangible object, absent context, could mean anything of form or substance. But construing the term "tangible object" in the specific context in which it is used and in the overall context of the statute gives the term the meaning Congress intended "compatible with the rest of the law." *United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988).

In construing a term such as "tangible object," courts are aided by three canons of statutory construction: *noscitur a sociis*, *ejusdem generis*, and the superfluous language canon. Each provides direction to courts in determining the context of a term in order to give the statute the meaning Congress intended. Applying these canons makes clear that the term "tangible object" as used in Section 1519 is most plainly understood as an object *similar* to a record or document.

A. The Eleventh Circuit Failed To Apply Statutory Interpretation Canons to Construe "Tangible Object" in Light of its Specific, Associated Terms

In order to determine the ordinary and natural meaning of a disputed term, the Court must begin with the "ordinary or natural meaning" of the term "in light of the terms surrounding it." *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004). This canon of statutory construction, *noscitur a sociis*, "counsels that a word is given

more precise content by the neighboring words with which it is associated." *United States v. Williams*, 553 U.S. 285, 294 (2008). When those neighboring words comprise a string of statutory terms, they should be given "related meaning." *Dole v. Steelworkers*, 494 U.S. 26, 36 (1990) (internal quotation marks omitted). Modifiers such as "any" that otherwise might expand the meaning of a statutory term do not operate to give the term unlimited breadth when construed in context. *Freeman v. Quicken Loans, Inc.*, 132 S. Ct. 2034, 2042 (2012).

A related canon of statutory construction, *ejusdem generis*, instructs courts that general words, such as "tangible object," should be construed to embrace "only objects similar in nature to those objects enumerated by the preceding specific words." *Circuit City Stores v. Adams*, 532 U.S. 105, 114–15 (2001); *see also Paroline v. United States*, 134 S. Ct. 1710, 1721 (2014) ("It is . . . a familiar canon of statutory construction that [catchall] clauses are to be read as bringing within a statute categories similar in type to those specifically enumerated.") (quoting *Fed. Maritime Comm'n v. Seatrain Lines, Inc.*, 411 U.S. 726, 734 (1973)). The Eleventh Circuit erred by failing to consider the term "tangible object" in light of its neighboring terms. The term "tangible object" in section 1519 immediately follows the terms "record" and "document" and together are given meaning by the preceding transitive verbs "alters, destroys, mutilates, conceals, covers up, falsifies [and] makes a false entry in." 18 U.S.C. § 1519. When read in this context, "record," "document," and "tangible object" all share a common characteristic—each term refers to an object capable of a record-keeping function that is able to be "alter[ed]" or "falsif[ied]" or in which a person can "make[] a false entry." Moreover, the use of the

preposition "in" means that "tangible object," as used in the anti-shredding provision, must be a thing "in" which a false entry can be made. By using the term "tangible object" in this context, Congress intended to address objects used in the record-keeping function such as hard-drives, computer discs, thumb-drives, and other media upon which information can be stored—not fish, which hardly can be falsified (not under existing technology, at least), as the statute expressly contemplates.[2]

B. The Eleventh Circuit's Construction Renders Superfluous the Terms "Record" and "Document"

The Court has instructed that statutory language must be construed under "the assumption that Congress intended each of its terms to have meaning." *Bailey*, 516 U.S. at 145. "A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)). This warning to "avoid rendering superfluous" any statutory language is "heightened when

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[2] The U.S. Sentencing Commission appears to agree with *amicus's* interpretation given the following commentary: "Records, documents, or tangible objects' includes (A) records, documents, or tangible objects that are stored on, or that are, magnetic, optical, digital, other electronic, or other storage mediums or devices; and (B) wire or electronic communications." U.S. Sentencing Guidelines Manual, app. C, amend. 653 (2003). Even the district court initially observed that "if you look at the title [of Section 1519] for at least a clue as to what congress meant, it talks about destruction, alteration, or falsification of records in federal investigations. It might be a stretch to say throwing away a fish is a falsification of a record." J.A. 95.

the words describe an element of a criminal offense." *Astoria Fed. Savings & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991); *Bailey*, 516 U.S. at 145 (quoting *Ratzlaf v. United States*, 510 U.S. 135, 140–41 (1994)).

The Eleventh Circuit's broad definition of "tangible object" renders superfluous other terms in Section 1519. Because the court's definition broadly includes any object "having or possessing physical form," the court rendered superfluous the terms "record" and "document," both of which would fall under the court's definition of tangible object. *See United States v. Yates*, 733 F.3d 1059, 1064 (11th Cir. 2013). Under the court's expansive construction, "no role remains" for the terms "record" and "document" to perform. *See Bailey*, 516 U.S. at 145. If Congress intended Section 1519 to apply so broadly as to cover any object "having or possessing physical form," as the Eleventh Circuit found, Congress would not have included the more limiting terms "record" and "document."

II. SECTION 1519, VIEWED IN THE BROADER CONTEXT OF SARBANES-OXLEY, INDICATES CONGRESS'S INTENT TO PROSCRIBE DESTRUCTION OF RECORDS IN FINANCIAL FRAUD CASES

The Court has explained on numerous occasions the need to consider statutory language in the "broader context of the statute as a whole." *Robinson*, 519 U.S. at 341; *see also Deal*, 508 U.S. at 13. The broader context of the Sarbanes-Oxley Act supports the view that the statute's reference to "tangible object" cannot possibly include a fish. Section 1519 is one provision in Sarbanes-Oxley, an Act that declares as its broad purpose: "to protect investors by improving the accuracy and reliability of corporate disclosures made

pursuant to the securities laws, and for other purposes." Pub. L. 107-204, 116 Stat. 745 (2002).

Section 1519 is part of the Act's overall scheme to protect investors. It is one of many sections explicitly aimed at "corporate and criminal fraud." Pub. L. 107-204, 116 Stat. at 746. This section addresses financial crime and the destruction of documents, whether in the form of paper records or digital files stored on a tangible object, such as a computer hard drive.[3] This statutory aim is reflected in the title of Section 1519, "Destruction, alteration, or falsification of records in Federal investigations and bankruptcy." 18 U.S.C. § 1519. While titles are not dispositive, they are useful aids that provide "a short-hand reference to the general subject matter involved." *Bhd. of R.R. Trainmen v. Balt. & O. R. Co.,* 331 U.S. 519, 528 (1947).

Other criminal provisions in the Sarbanes-Oxley Act illustrate the Act's focus on financial records and record-keeping. For example, Sarbanes-Oxley added Section 1520 to Title 18, making it a crime for accountants to fail to maintain audit or review work papers for a period of five years, and Section 1350, imposing criminal sanctions on corporate officers who fail to certify financial reports. *See* 18 U.S.C. § 1520 (2014); 18 U.S.C. § 1350 (2014).

There is little doubt that Sarbanes-Oxley is focused on financial fraud in the context of public companies, and therefore has nothing to do with fish. Indeed, outside this specific prosecution, undersigned counsel

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[3] In Arthur Andersen's case, the destruction of records and documents included computer hard drives and the email system that preserved documentation related to Enron Corporation. *See United States v. Arthur Andersen LLP*, No. 02-121, 2002 WL 32153945, at ¶ 10 (S.D. Tex. Mar. 14, 2002) (indictment).

is unaware of any provision of Sarbanes-Oxley being applied to commercial fishing—or any other animal husbandry.

III. THE ELEVENTH CIRCUIT'S ATTEMPT TO FIND SUPPORT IN THE FEDERAL RULES OF CRIMINAL PROCEDURE FOR ITS BROAD DEFINITION OF "TANGIBLE OBJECT" IGNORES THE DIFFERING STATUTORY CONTEXTS

In construing the term "tangible object," the Eleventh Circuit relied on a Fifth Circuit case holding that cocaine fell within the meaning of "tangible object" as used in Rule 16 of the Federal Rules of Criminal Procedure. *United States v. Sullivan*, 578 F.2d 121, 124 (5th Cir. 1978). But, as Learned Hand once warned, "words are chameleons, which reflect the color of their environment." *C.I.R. v. Nat'l Carbide Corp.,* 167 F.2d 304, 306 (2d Cir. 1948) *see also FAA v. Cooper*, 132 S. Ct. 1441, 1450 (2012) ("Because the term 'actual damages' has this chameleon-like quality, we cannot rely on any all-purpose definition but must consider the particular context in which the term appears."). Identical words may carry very different meanings depending on the context in which they are used. *See Robinson*, 519 U.S. at 343-44 (explaining that the word "employees" took on different meanings within different sections of the Civil Rights Act of 1964).

The term "tangible object" carries a far different meaning in the context of Rule 16 than it does with respect to Section 1519. In order to afford a defendant due process and to safeguard against surprises at trial, Rule 16 allows a defendant in any federal criminal case to inspect, copy, or photograph prior to trial any

potential evidence in the possession of prosecutors. Fed. R. Crim. P. 16(a). The rule states:

> Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items[.]

Fed. R. Crim. P. 16(a).

"Tangible object" in Rule 16 appears in an expansive list that encompasses any physical evidence that might be used by prosecutors at trial. When an enumerated list of items spans everything from books and buildings to papers and places, it is clear that the statute encompasses any potential evidence that might be relevant to the government's case against a defendant or relevant to a defense.

Within the broad statutory context, Rule 16 is construed liberally in order to protect the rights of defendants and the criminal justice system as a whole. Rule 16 provides the means for a defendant to examine and inspect the evidence the government has accumulated against him. *See Bowman Dairy Co. v. United States*, 341 U.S. 214, 219 (1951). It also protects the fairness of the criminal justice system, which "would be defeated if judgments were to be founded on a partial or speculative presentation of the facts." *United States v. Nixon*, 418 U.S. 683, 709 (1974). Indeed, "the very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence." *Id*.

While protections afforded to a criminal defendant are to be construed liberally, it is a "well-established

principle that penal statutes are to be construed strictly." *FCC v. Am. Broad. Co*. 347 U.S. 284, 296 (1954). A broad interpretation of "tangible object" in Section 1519 violates the canons of statutory construction and allows for arbitrary enforcement of a criminal statute by police and prosecutors.

IV. IF THE ELEVENTH CIRCUIT'S CONSTRUCTION IS CORRECT, THEN SECTION 1519 FAILED TO PROVIDE FAIR NOTICE TO PETITIONER YATES THAT HIS CONDUCT WAS PROSCRIBED

If "tangible object" means anything having a physical form, as the Eleventh Circuit found, then Section 1519 deprived Mr. Yates of his constitutional right to fair notice. No person is required "at peril of life, liberty or property to speculate as to the meaning" of a criminal statute. *Chicago v. Morales*, 527 U.S. 41, 58 (1999) (quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939)); *see also United States v. Lanier*, 520 U.S. 259, 266 (1997). When considering the reach of a statute, courts must decline to impose punishment if the covered conduct is not "plainly and unmistakably proscribed." *Dunn v. United States*, 442 U.S. 100, 113 (1979). Failing to exercise this appropriate judicial restraint in the criminal context "allows policemen, prosecutors, and juries to pursue their personal predilections." *Kolendar v. Lawson*, 461 U.S. 352, 358 (1983) (quotations omitted).

Under the Eleventh Circuit's view, Section 1519 provides prosecutors unfettered discretion to apply the statute at their whim to an unfathomable range of conduct. The Court need look no further than the egregious application of Section 1519 to Mr. Yates's conduct. Federal prosecutors—three years after the

conduct in question—used the provision to prosecute and convict Mr. Yates of a felony, resulting in his imprisonment, when the most he faced for catching undersized fish was a *civil* monetary fine and a short suspension of his fishing permit. No one could have imagined that Mr. Yates's conduct was "plainly and unmistakably proscribed" by Sarbanes-Oxley's anti-shredding statute. *Dunn*, 442 U.S. at 113.

The Eleventh Circuit's excessively broad construction of "tangible object" could lead to criminalizing a wide range of conduct that was never contemplated by Section 1519. An overly ambitious federal prosecutor might use Section 1519 to criminally prosecute the smoker described *supra* or a tourist for hiding an open beer bottle in a brown paper bag when approached by Park Police (the tourist having "concealed" a "tangible object" with the intent to impede an investigation into violations of open container laws). Hunters could be in jeopardy if they shoot an animal out of season—including one of poet Riley's ducks—and then destroy the evidence by eating it. Even the non-smoking, teetotaling, vegan protestor might face criminal prosecution if he burns a copy of the tax code in front of the IRS in an attempt to "influence" a tax-regulation deliberation inside.

Because of the limitless scope of possible violations, ordinary citizens would be forced to "guess at [Section 1519's] meaning and differ as to its application." *Lanier*, 520 U.S. at 266. By adopting a more focused construction of Section 1519 that considers the text of the statute, the specific context of its words, and the broader context of the statute as a whole, the Court could construe the term "tangible object" with sufficient clarity to provide fair notice and prevent arbitrary enforcement.

V. THE ELEVENTH CIRCUIT CONSTRUED A CRIMINAL STATUTE BROADLY IN VIOLATION OF THE RULE OF LENITY

Any doubt about statutory construction of "tangible object" after examining Section 1519's language, its specific context, and the broader context of Sarbanes-Oxley should be resolved in favor of the defendant. The rule of lenity reflects the long-standing tradition of the Court to "exercise[] restraint in assessing the reach of a federal criminal statute[.]" *Andersen*, 544 U.S. at 703 (internal citation omitted). This tradition is grounded in the principle that "legislatures and not courts should define criminal activity." *Bass v. United States*, 404 U.S. 336, 348 (1971) (internal citation omitted). The rule of lenity is triggered when a court is confronted with "two rational readings of a criminal statute, one harsher than the other." *McNally v. United States*, 483 U.S. 350, 359 (1987). The Court "choose[s] the harsher only when Congress has spoken in clear and definite language." *Id*. Thus, any "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Skilling v. United States*, 561 U.S. 358, 410 (2010) (internal citation omitted).

The unconstrained ability of prosecutors to pursue felony charges against Mr. Yates three years after he received a *civil* citation is unduly "harsh." *See*, *e.g*., *United States v. Santos*, 553 U.S. 507, 514 (2008) (limiting the definition of "proceeds" in the federal money-laundering statute in favor of the defendant); *Scheidler v. Nat'l Org. for Women, Inc*., 537 U.S. 393, 408 (2003) (rejecting a harsh application of the term "extortion" in the Hobbs Act in favor of the defendant). The rule of lenity reinforces *amicus's* reasoning that the construction of "tangible object" in Section 1519

should be limited to items similar or naturally fitting within the category of records or documents. This more reasonable reading limits the ability of prosecutors to transform civil infractions into felonies. Even if the Court does not adopt the method of statutory construction *amicus* advocates, the rule of lenity leads to the same outcome: Mr. Yates's conviction should be reversed.

CONCLUSION

The conduct at issue here, disposing of allegedly undersized fish, was not "plainly and unmistakably proscribed," by Section 1519. *Dunn*, 442 U.S. at 112–13. The Eleventh Circuit's interpretation of "tangible object"—in isolation and divorced from its context—violated the Court's principles of statutory construction and consequently Mr. Yates's constitutional right to fair notice. For Mr. Yates and every other individual in this country, "[t]he law is a causeway upon which, so long as he keeps to it, a citizen may walk safely." Robert Bolt, "A Man for All Seasons" Act II, 89 (Vintage 1960) (speech of Sir Thomas More). The government's standardless construction of Section 1519 erodes that causeway, forcing citizens to embark with unsure footing upon potentially treacherous journeys. The Court should ensure that the causeway remains secure by reversing the lower court's ruling.

Respectfully submitted,

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