No.

In The
Supreme Court of the United States

MICHAEL A. MAGGIO

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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October 2, 2017

QUESTION PRESENTED

In *United States v. Sun-Diamond Growers of California,* 526 U.S. 398, 403-04 (1999), and *McDonnell v. United States,* 136 S. Ct. 2355, 2371-72 (2016), this Court required a quid pro quo element for bribery under 18 U.S.C. § 201 to avoid overbreadth and vagueness, prosecution of innocent acts, and federalism concerns. In *Sabri v. United States,* 541 U.S. 600, 605 (2004), however, the Court held that there was no quid pro quo requirement for bribery under 18 U.S.C. § 666(a)(1)(B).

The circuits are about evenly split on whether there is a quid pro quo requirement under § 666. Some go both ways.

The question presented is:

Should the considerations of *McDonnell* and *Sun-Diamond* of fair notice under the due process clause, federalism, and free speech, and even the "necessary and proper" clause apply to bribery prosecutions under § 666(a)(1)(B) and require a quid pro quo element?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael A. Maggio respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The Eighth Circuit's July 3, 2017 opinion (Pet.App. 1a-10a, Appendix A) is published at *United States v. Maggio*, 862 F.3d 642 (8th Cir. 2017).

The District Court for the Eastern District of Arkansas's March 10, 2016 order denying Petitioner's motion to withdraw his plea (Pet.App. 11a-21a, Appendix B) is unreported.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Eighth Circuit entered its judgment on July 3, 2017.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Art. I, § 8, cl. 18:

> The Congress shall have power ...
> ...
> To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

U.S. Const., amend. I:

> Congress shall make no law ... abridging the freedom of speech ... and to petition the Government for a redress of grievances.

U.S. Const., amend. V:

> No person shall ... be deprived of life, liberty, or property, without due process of law ....

18 U.S.C. § 666 is reproduced in the Statutory Appendix C. (Pet.App. 22a-23a)

STATEMENT OF THE CASE

A. Introduction and summary

This is a judicial bribery case against a former Arkansas state judge brought under 18 U.S.C. § 666(a)(1)(B). Petitioner pled to an information on January 9, 2015 charging him with accepting a thing of value in exchange for a remittitur to a litigant in a case before him.[1]

Petitioner was to cooperate with the government, and his sentencing was postponed. Over thirteen months after pleading guilty, however, Petitioner reneged on cooperation, and he sought to withdraw his guilty plea on the ground there was no factual basis for it and no quid pro quo could be shown, despite Petitioner's agreeing to the government's factual scenario at the guilty plea. The U.S. District Court for the Eastern District of Arkansas denied the motion March 10, 2016. (Pet.App. 11a-21a) Three weeks later, Petitioner was sentenced to the maximum sentence of incarceration under the statute: 120 months with two years supervised release.

Petitioner appealed to the U.S. Court of Appeals for the Eighth Circuit challenging the factual basis of his plea, despite admissions in the plea agreement, and challenged the lack of a quid pro quo for conviction under § 666(a)(1)(B). That court affirmed July 3, 2017. *United States v. Maggio,* 862 F.3d 642 (8th Cir. 2017).

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[1] Petitioner was removed from office before the plea and surrendered his law license after.

The Court of Appeals held that Petitioner's as-applied challenge that lack of nexus was not jurisdictional and "was 'foreclosed by his guilty plea.'" (Pet.App. 6a, quoting *United States v. Seay,* 620 F.3d 919, 922 n.3 (8th Cir. 2010)) The Court of Appeals also held that *McDonnell v. United States,* 136 S.Ct. 2355 (2016), involved 18 U.S.C. § 201(a)(3), not § 666(a)(1)(B), and § 666 did not require proof of an "official act" or quid pro quo to satisfy the "necessary and proper" clause. (Pet.App. 7a & n.8, 862 F.3d at 646 & n.8, citing *Sabri v. United States,* 541 U.S. 600, 605 (2004)) The Court of Appeals also narrowly distinguished *United States v. Whitfield,* 590 F.3d 325 (5th Cir. 2009), on their different but relevant facts where the Fifth Circuit required quid pro quo of a state judge accused of bribery under § 666.

Coincidentally, the quid pro quo question is before the Court in another petition for certiorari filed September 20, 2017 in *Jackson v. United States,* 17-448, 2017 WL 4280574, from the Eleventh Circuit: "Does a federal funds bribery conviction under 18 U.S.C. § 666(a)(1)(B) require proof of a quid pro quo or an 'official act,' as defined in *McDonnell v. United States,* 136 S. Ct. 2355 (2016)?"

B. Petitioner's campaign fund-raising for Arkansas Court of Appeals

In 2013, Petitioner decided to run for an open position on the Arkansas Court of Appeals. The election was in May 2014, and he was running as a "conservative" who was "pro business." Judicial elections in Arkansas are nonpartisan. Judicial

candidates can't seek contributions,[2] but others can for them. The Court of Appeals below put it on Petitioner even though that wasn't what happened: "Through a lobbyist, Maggio solicited '"nursing home folks"'—stockholders, not residents—for financial support." (Pet.App. 2a, 862 F.3d at 643) Petitioner was aware of the source of the contribution.

On Petitioner's docket was a nursing home liability case. *Perkins v. Greenbrier Care Center,* 23CV-12-125 (Faulkner Circuit Court).[3] That case was already tried, and it resulted in a $5.2 million judgment against the nursing home. Pending before Petitioner was a remittitur motion from the nursing home that the judgment was excessive.

Meanwhile, "Individual B" created a campaign committee for Petitioner and solicited funds. B had solicited $50,000 for Petitioner's campaign from "Individual A"[4] whose company owned Greenbrier Care Center. The judgment was discussed, and A's contributions would be paid whether Petitioner granted the pending

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[2] Arkansas Code of Judicial Conduct, Rule 4.1(A)(8).

[3] Arkansas's current judicial records are available on CourtConnect through the Arkansas Supreme Court's website: https://courts.arkansas.gov/ click on "Court Dockets."

[4] The two were referred in the information and plea colloquy of January 9, 2015 only by letters but it is not a secret with the slightest exercise of logic: A is Michael Morton and B is Gilbert Baker. Neither has been charged with the bribes, but they were sued in state court in *Perkins v. Maggio*, infra n.5, after Petitioner's bribery conviction.

remittitur motion or not because it would be appealed if not granted. Petitioner thus granted a remittitur what was legally appropriate and reduced the judgment to $1,000,000.[5]

C. The investigation and Petitioner's guilty plea and the stipulated factual basis for the plea

In the course of the FBI's 2014 investigation, Petitioner was interviewed with counsel he had at the time and ultimately agreed to a negotiated disposition with a guilty plea to federal bribery. He waived indictment and was charged by information on January 9, 2015. 4:15-cr-00001 BSM (E.D. Ark.). He agreed to the government's version of the facts, which included a statement there was a quid pro quo for the bribe. Since the motion to withdraw the plea, however, he's has disputed that concession.

D. Withdrawing the plea because no crime occurred

By January 2016, over a year later, and after several debriefings and long-

[5] The appropriateness was discussed in the state court case after the fact with the litigation over it. A former and well respected federal judge testified by deposition that the remittitur was required under the facts, and the sentencing judge recognized here at sentencing that he would have remitted it, too. The plaintiffs in the nursing home case accepted the remittitur then challenged it after the guilty plea.

Petitioner's bribery conviction resulted in further litigation in the state court, and Petitioner and A and B were sued for judicial bribery. *Perkins v. Maggio et al.,* 23CV-14-862 (Faulkner Circuit Court). Petitioner was dismissed for judicial immunity, and that case is still pending and without a final order to appeal.

standing dissatisfaction with then-defense counsel,[6] Petitioner ultimately changed counsel and reneged on the plea agreement with the government by moving to withdraw the guilty plea and its sentencing concessions. Petitioner challenged the factual basis for the plea and federal jurisdiction to even prosecute him and claimed he was strong-armed into it by defense counsel. After a hearing, the District Court denied relief, and Petitioner was later sentenced.

Petitioner contends that there is no federal jurisdiction over his alleged bribery offense because whatever federal funds were received by his judicial district had nothing whatsoever to do with his act in a civil trial that is his alleged bribery; the government can show no nexus, no quid pro quo, and the "necessary and proper" clause and *McDonnell* require that it does.[7]

Contrary to his guilty plea, moreover, Petitioner disputes that there was any quid pro quo for his action as a state trial judge in granting a remittitur in exchange for a campaign contribution to support his race for a seat on the Arkansas Court of

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[6] As revealed at the February 2, 2016 in camera hearing on former defense counsel's motion to be relieved (which was denied at that time but subsequently granted), Petitioner began having serious disagreements with defense counsel about the conduct of the case and his plea. Petitioner concluded he committed no crime and felt badgered into the guilty plea by his defense lawyers, but attempted to go through with his cooperation for a time.

[7] Petitioner also submits that the language of *McDonnell* involves the First Amendment right of constituents to talk to a public official and a public official to talk to them, either as free speech or redress of grievances. *See* discussion at 10-11 infra.

Appeals. The remittitur, accepted by the plaintiffs in lieu of a new trial, as recognized by the district court judge, was legally proper because the verdict could only have been based on passion or prejudice. Moreover, the remittitur could have been refused and appealed in state court. Petitioner submits this is now a fact beyond dispute. Thus, he was charged and convicted with bribery for taking a campaign contribution from a person with a pending case where his action as a trial judge was legally required and there was no nexus or quid pro quo. How can this be a crime?

E. The Eighth Circuit affirms

The Eighth Circuit affirmed. *United States v. Maggio*, 862 F.3d 642 (8th Cir. 2017) (Pet.App. 1a)

1. There was an appeal waiver because Petitioner's constitutional challenge was as-applied

First, the Court of Appeals held that Petitioner's as-applied constitutional challenge was non-jurisdictional and thus barred by his appeal waiver.[8] (Pet.App. 5a-6a, 862 F.2d at 645) However, the Court concluded that the Government only preserved the appeal waiver as to Petitioner's as-applied constitutional challenge and plus the waiver was "at least slightly less clear with respect to factual-basis challenges than others we have seen." (*Id.* at 6a, 862 F.3d at 645) Thus, the Court

[8] And that since it was an explicit waiver, the outcome of *Class v. United States*, 137 S. Ct. 1065 (2017) (mem. granting certiorari, set for argument Oct. 4, 2017), was irrelevant. (Pet.App. 3a n.4; *Maggio*, 862 F.3d at 644 n.4)

declined to foreclose Petitioner's remaining claims on that basis but opted to follow its reasoning in *United States v. Hines*, 541 F.3d 833 (8th Cir. 2008).

> Leaving aside the waiver, Maggio's arguments that there was no factual basis for finding him guilty are all easily resolved. The (again, nonjurisdictional) nexus theory is squarely foreclosed by *United States v. Hines*, in which we held "the plain language of [§ 666] does not require as an element to be proved beyond a reasonable doubt, a nexus between the activity that constitutes a violation and federal funds. The claim that Maggio was not an agent of the state government is belied by his stipulation that he "was an agent of the State of Arkansas and the Twentieth Judicial District." Maggio's claim that there was no basis for finding any quid pro quo ignores his express admission of "accept[ing] financial support ... *intending to be influenced and induced* to remit the judgment" (emphasis added)."

Id. at 7a, 862 F.3d at 646 (citations omitted).

2. *McDonnell* involved a different statute, and it is not enough on point to matter here

The Court of Appeals declined to reconsider its decision in *Hines* in light of this Court's recent decision in *McDonnell v. United States*, 136 S. Ct. 2355 (2016), because *McDonnell* involved § 201 not § 666. Pet.App.7a n.8, 862 F.3d at 646 n.8:

> *McDonnell* had nothing to do with § 666 or what sort of federal connection is necessary to give Congress authority over state-level corruption. True, the Court expressed concerns that if the statutory language were read too broadly, "public officials could be subject to prosecution, without fair notice, for the most prosaic interactions," *id.* at ___, 136 S. Ct. at 2372-73, and Maggio likewise warns that upholding his conviction would result in "overcriminalization and free ranging prosecution" under § 666. But the logical parallel between those issues is far too abstract to establish that our specific holding in *Hines* is in doubt after *McDonnell.*

The Court of Appeals also narrowly factually distinguished the Fifth Circuit's opinion in *United States v. Whitfield*, 590 F.3d 325 (5th Cir. 2009). (Pet.App. 8a, 862 F.3d at 646-47.

REASONS FOR GRANTING THE WRIT

This case gives the Court the opportunity to resolve whether *McDonnell* limits federal power under the due process clause, federalism, the First Amendment, and the "necessary and proper" clause of U.S. Const., Art. I, § 8, cl. 18 to require a quid pro quo element to demonstrate the federal interest in prosecution with due process of law. It also allows the Court to resolve a circuit split on the constitutional requirement of a quid pro quo under § 666(a)(1)(B).

I. *McDonnell v. United States* requires proof of a quid pro quo to satisfy due process for notice and federalism when state actor is involved. Petitioner submits the First Amendment and "necessary and proper" clause are also implicated.

McDonnell's prosecution raised multiple "constitutional concerns" and "constitutional considerations" *McDonnell v. United States,* 136 S.Ct. at 2367, 2372.

> In addition to being inconsistent with both text and precedent, the Government's expansive interpretation of "official act" would raise significant constitutional concerns. Section 201 prohibits quid pro quo corruption — the exchange of a thing of value for an "official act." In the Government's view, nearly anything a public official accepts — from a campaign contribution to lunch — counts as a quid; and nearly anything a public official does — from arranging a meeting to inviting a guest to an event — counts as a quo. See Brief for United States 14, 27; Tr. of Oral Arg. 34-35, 44-46.
>
> But conscientious public officials arrange meetings for constitu-

> ents, contact other officials on their behalf, and include them in events all the time. The basic compact underlying representative government assumes that public officials will hear from their constituents and act appropriately on their concerns — whether it is the union official worried about a plant closing or the homeowners who wonder why it took five days to restore power to their neighborhood after a storm. The Government's position could cast a pall of potential prosecution over these relationships if the union had given a campaign contribution in the past or the homeowners invited the official to join them on their annual outing to the ballgame. Officials might wonder whether they could respond to even the most commonplace requests for assistance, and citizens with legitimate concerns might shrink from participating in democratic discourse.

Id. at 2372.

a. Due process

> A related concern is that, under the Government's interpretation, the term "official act" is not defined "with sufficient definiteness that ordinary people can understand what conduct is prohibited," or "in a manner that does not encourage arbitrary and discriminatory enforcement." *Skilling,* 561 U.S., at 402-403 (internal quotation marks omitted).

Id.

b. Federalism

"The Government's position also raises significant federalism concerns." *Id.*

c. "Necessary and proper" exercise of federal power

The federal government only has a constitutional interest in prosecution when it is "necessary and proper for carrying into execution the foregoing powers." U.S. Const., Art. I, § 8, cl. 18. There has to be some limits on federal power to make

something a crime and to prevent overcriminalization just because Congress wants to make something a crime. *Compare United States v. Lopez,* 514 U.S. 549 (1995) (Commerce Clause prohibited federal government from prosecuting gun-free school zone cases); *Jones v. United States,* 529 U.S. 848 (2000) (arson of a home doesn't involve interstate commerce); *United States v. Morrison,* 529 U.S. 598 (2000) (violence against women doesn't involve interstate commerce); *Printz v. United States,* 521 U.S. 898 (1997) (Congress couldn't mandate local law enforcement to conduct background checks for firearms purchases for ATF).

d. First Amendment rights of candidates to receive contributions and contributors to make them

In this case, moreover, we have the First Amendment right of candidates and and their supporters. A campaign contribution is not per se a bribe. It is a necessary evil in democracies and where almost all officials, including judges in many states,[9]

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[9] ABA, Fact Sheet on Judicial Selection Methods in the States (undated, but after 2002):

> Highest state court: 7 states have partisan elections, 14 states have nonpartisan elections, 17 states have uncontested retention elections after initial appointment.
>
> Intermediate appellate court: 6 states have partisan elections, 11 states have nonpartisan elections, 14 states have uncontested retention elections after initial appointment.
>
> Trial courts: "A total of 39 states hold elections—whether partisan, nonpartisan, or uncontested retention elections—for trial courts of general jurisdiction."

are elected. In Arkansas, the 2016 Chief Justice race cost nearly $1,000,000 or $1.73 per vote.[10]

The U.S. Attorney's Manual urges caution as to campaign contributions, and, under 18 U.S.C. § 201, it says:

> [C]ampaign contributions represent a necessary feature of the American political process, they normally inure to the benefit of a campaign committee rather than directly to the personal benefit of a public officer, and they are almost always given and received with a generalized expectation of currying favor with the candidate benefitting therefrom.

U.S. Attorney's Criminal Resource Manual 2046.[11]

Citizens United v. FEC, 558 U.S. 310, 327 (2009), allows broad fund-raising and spending for issues as well as candidates of their choice. "First Amendment standards, however, 'must give the benefit of any doubt to protecting rather than stifling speech.' *WRTL,* 551 U.S., supra, at 46 (opinion of Roberts, C.J.) (citing *New York Times Co. v. Sullivan,* 376 U.S. 254, 269-270 (1964))." Nothing is quintessentially more free speech than campaign advertising, no matter what it is and

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https://www.americanbar.org/content/dam/aba/migrated/leadership/fact_sheet.authcheckdam.pdf; *see also* https://ballotpedia.org/Partisan_election_of_judges.

[10] Spencer Willems, "Ad costs near $1M in chief justice race," Arkansas Democrat-Gazette (Feb. 16, 2016) (between the two candidates and an out-of-state group that got involved against one. http://www.arkansasonline.com/news/2016/feb/19/ad-costs-near-1m-in-chief-justice-race-/#/. There were 579,299 votes cast in that race against a 2016 estimated state population of 2,988,248: $1.73 spent per vote.

[11] https://www.justice.gov/usam/criminal-resource-manual-2046-other-issues.

how it is framed and targeted and who is paying for it as long as it's a U.S. person.

Petitioner is manifestly not arguing that he has a First Amendment right to be bribed. His argument is that, despite his plea to the government's version of the facts, he didn't even commit a crime, and that's why he sought to withdraw his plea. Having a quid pro quo requirement, moreover, insures against federal over-criminalization and free ranging prosecution with no proof whatsoever of a federal interest. It is a logical step that *McDonnell* protects against mere bona fide campaign contributions being swept up into a federal bribery investigation.

e. A quid pro quo requirement is a necessary restraint on federal prosecution and insures fair convictions of those deserving to be convicted

A quid pro quo requirement should be implied into § 666 to make it consistent with *United States v. Sun-Diamond Growers of California,* 526 U.S. 398 (1999). *See McDonnell,* 136 S.Ct. at 2373:

> The Court in *Sun-Diamond* declined to rely on "the Government's discretion" to protect against overzealous prosecutions under § 201, concluding instead that "a statute in this field that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter." 526 U.S., at 408, 412.

A quid pro quo requirement in § 666 was held unnecessary in *Sabri v. United States,* 541 U.S. 600, 606 (2004):

> It is true, just as Sabri says, that not every bribe or kickback offered or paid to agents of governments covered by § 666(b) will be traceably skimmed from specific federal payments, or show up in the

> guise of a quid pro quo for some dereliction in spending a federal grant. Cf. *Salinas v. United States,* 522 U.S. 52, 56-57 (1997) (The "expansive, unqualified" language of the statute "does not support the interpretation that federal funds must be affected to violate § 666(a)(1)(B)"). But this possibility portends no enforcement beyond the scope of federal interest, for the reason that corruption does not have to be that limited to affect the federal interest. Money is fungible, bribed officials are untrustworthy stewards of federal funds, and corrupt contractors do not deliver dollar-for-dollar value. Liquidity is not a financial term for nothing; money can be drained off here because a federal grant is pouring in there.[12]

Salinas v. United States, 522 U.S. 52, 56-57 (1997), dodged the quid pro quo question under § 666 which was adopted to eliminate the state actor question under § 201. *See* discussion in ELLEN S. PODGOR, ET AL., WHITE COLLAR CRIME § 7.3 at 212 (2013).

Sabri is contrary to *Sun-Diamond* and *McDonnell* and should be overruled or limited to protect against unbridled government prosecutorial charging discretion. Moreover, a quid pro quo requirement is consistent with the weight of authority in the circuit split, to which we now turn.

II. Certiorari should be granted to resolve a circuit split on a quid pro quo requirement in § 666.

Without a quid pro quo requirement we have only the "Government's boundless interpretation of the federal bribery statute." *McDonnell,* 136 S.Ct. at 2375. That

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[12] *Sabri* was last mentioned in *United States v. Comstock,* 560 U.S. 126, 136 (2010), as involving the Spending Power. *McDonnell* did not mention *Sabri,* and it didn't have to.

immediately raises due process and overcriminalization concerns.

Whether there should be a quid pro quo requirement under § 666 is an important question that needs clarification from this Court. Sections 201 and 666 are not that different, and § 666 is designed to reach a different bad actor, not broaden the crime of federal bribery by eliminating elements to prove intent and assure the right people are prosecuted. Its legislative history says so in H.R. Rep. 99-797, § 42 n.19 (1986), reprinted in 1986 U.S.C.C.&A.N. 6138, 6153 ("18 U.S.C. 666 prohibits bribery of certain public officials, but does not seek to constrain lawful commercial business transactions.").[13] This amendment shows it was designed to narrow § 666. *United States v. Jennings,* 160 F.3d 1006, 1016 n.4 (4th Cir. 1998).

But that's not what's happened below. The case law is not consistent even within some circuits on whether a quid pro quo is required. Look deep enough and some circuits are even in conflict with themselves and they don't recognize it, such as the court below.

a. Circuits holding no § 666 quid pro quo requirement

The following circuits have no quid pro quo requirement under § 666: *United States v. Garrido,* 713 F.3d 985, 1002 (9th Cir. 2013), cert. den. 134 S.Ct. 1333 (2014); *United States v. McNair,* 605 F.3d 1152, 1187-88 (11th Cir. 2010); *United*

[13] Cited and quoted in *United States v. Chafin,* 808 F.3d 1263, 1269 (11th Cir. 2015); *United States v. Walsh,* 156 F.Supp.3d 374, 389 (E.D. N.Y. 2016).

States v. Jackson, 688 Fed. Appx. 685 (11th Cir. 2017), pet. for cert. pending 17-448.

b. Circuits holding there is a § 666 quid pro quo requirement

The following circuits find a quid pro quo requirement under § 666: *United States v. Ganim,* 510 F.3d 134, 150 (2d Cir. 1993), cert. den. 552 U.S. 1313 (2008); *United States v. Jennings,* 160 F.3d at 1014-15; *United States v. Jefferson,* 674 F.3d 332, 359 (4th Cir. 2012), cert. den. 568 U.S. 1041 (2012); *United States v. Whitfield,* 590 F.3d 325, 353 (5th Cir. 2009), cert. den. 562 U.S. 833 (2010).

c. Circuits seeming to go both ways, including the court below in another case

1. Sixth Circuit: *Compare United States v. Abbey,* 560 F.3d 513, 520-21 (6th Cir. 2009), with *United States v. Terry,* 707 F.3d 607, 614 (6th Cir. 2013), cert. den. 134 S. Ct. 1490 (2014).

2. Seventh Circuit: *Compare United States v. Gee,* 432 F.3d 713, 714-15 (7th Cir. 2005), with *United States v. Hawkins,* 777 F.3d 880, 882 (7th Cir. 2015).

3. Eighth Circuit: *Compare United States v. Redzic,* 627 F.3d 683, 692 (8th Cir. 2010), cert. den. 562 U.S. 1170 (2011), and *United States v. Griffin,* 154 F.3d 762, 763 (8th Cir. 1998), with *United States v. Hines,* 541 F.3d at 836, and *United States v. Maggio,* 862 F.3d 642 (8th Cir. 2017).

4. Tenth Circuit: The Tenth Circit finds no real conflict in the circuits; it just sees the cases using different terminology: *United States v. Morgan,* 635 Fed.

Appx. 423, 453-54 (10th Cir. 2015).

III. Whether there must be a quid pro quo requirement in § 666 is a recurring issue in federal courts that needs to be resolved.

There are a significant number of prosecutions for federal bribery: 2,465 since FY2007 under all statutes.[14] Whether there was a quid pro quo for a § 666 bribe is a recurring question vexing the circuits. Some circuits require it, some don't, and some go both ways. Petitioner cites nine cases just since 2010 split three ways on the issue.

This kind of split in the circuits does not and cannot lead to uniformity in the administration of justice. There must be a consistent rule that applies nationwide and not be determined by the fortuity of which circuit one's alleged offense is in.

Moreover, the requirement of a quid pro quo standard insures that the right people are prosecuted. Not those just morally wrong or who appear wrong, but truly wrong. As this Court stated in *McDonnell,* 136 S.Ct. at 2375:

> There is no doubt that this case is distasteful; it may be worse than that. But our concern is not with tawdry tales of Ferraris, Rolexes, and ball gowns. It is instead with the broader legal implications of the Government's boundless interpretation of the federal bribery statute. A more limited interpretation of the term "official act" leaves ample room for prosecuting corruption, while comporting with the text of the statute and the precedent of this Court.

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[14] From the U.S. Sentencing Commission website: preliminary figures in 2017 show there were 281 bribery convictions. https://www.ussc.gov/research/quick-facts (June 2017). Their fiscal year reports from FY2007 to date show there were 2,465 federal bribery convictions, an average of 224 a year, but the U.S.S.C. doesn't specify what statutes.

Petitioner's acceptance of the campaign contribution certainly looks bad considering the timing, but Petitioner earnestly believes that no crime occurred under § 666(a)(1)(B) because there was no quid pro quo. Instead, he was made to plead guilty at the badgering insistence of his counsel in the district court and against his better judgment.[15] He wants his guilty plea set aside, despite his admissions in the plea colloquy, because he can explain them away and already has in camera to the district court which explained them to the government in open court.

CONCLUSION

The writ of certiorari to the Court of Appeals for the Eighth Circuit should be granted.

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[15] Feb. 2, 2016 hearing at 11:18–12:12 (court's report of in camera discussion with Petitioner into the record).

Appendices

Appendix A

United States v. Maggio, 862 F.3d 642 (8th Cir. July 3, 2017) (16-1795) 1a

Appendix B

Order Denying Petitioner's Motion to Withdraw Guilty Plea and to Dismiss the Information, *United States v. Maggio*, 4:15CR00001-01 BSM (March 10, 2016). 11a

Appendix C

Statutory Provisions Involved: 18 U.S.C. § 666 . . . . . 22a