No. 13-7451

In the

Supreme Court of the United States

JOHN L. YATES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, FLORIDA KEYS COMMERCIAL FISHERMEN'S ASSOCIATION, SOUTHEASTERN FISHERIES ASSOCIATION, GARDEN STATE SEAFOOD ASSOCIATION, COMMERCIAL FISHERMEN OF SANTA BARBARA, CALIFORNIA ABALONE ASSOCIATION, AND CALIFORNIA SEA URCHIN COMMISSION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether a commercial fisherman was deprived of fair notice that destruction of fish would fall within the purview of 18 U.S.C. § 1519, which makes it a crime for anyone who "knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object" with the intent to impede or obstruct an investigation, where the term "tangible object" is ambiguous and undefined in the statute, and unlike the nouns accompanying "tangible object" in section 1519, possesses no record-keeping, documentary, or informational content or purpose.

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INTEREST OF AMICI CURIAE

Pursuant to Supreme Court Rule 37.3, Pacific Legal Foundation (PLF), Florida Keys Commercial Fishermen's Association (Florida Keys), the Southeastern Fisheries Association (Southeastern), the Garden State Seafood Association (Garden State), the Commercial Fishermen of Santa Barbara (Santa Barbara), the California Abalone Association (California Abalone), and the California Sea Urchin Commission (California Sea Urchin) respectfully submit this brief amicus curiae in support of Petitioner John L. Yates (Yates).[1]

PLF was founded in 1973 and is widely recognized as the largest and most experienced nonprofit legal foundation of its kind, and has participated in numerous cases before this Court both as counsel for parties and as amicus curiae. PLF attorneys litigate matters affecting the public interest at all levels of state and federal courts and represent the views of thousands of supporters nationwide who believe in limited government. PLF attorneys have participated in numerous criminal cases in this Court, including *Skilling v. United States*, 561 U.S. 358 (2010),

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[1] Pursuant to this Court's Rule 37.3(a), all parties have consented to the filing of this brief. Letters evidencing such consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6, Amici Curiae affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae, their members, or their counsel made a monetary contribution to its preparation or submission.

Hanousek v. United States, 528 U.S. 1102 (2000), and *Unser v. United States*, 528 U.S. 809 (1999). Because of its history and experience on these issues, PLF believes that its perspective will aid this Court in considering the issue on appeal.

Florida Keys represents the interests of the commercial fishermen working the largest commercial seaport in Florida. Florida Keys strives to manage the health of fisheries, the environment, and the fishing industry in south Florida. It also works with law enforcement to protect permit holders from poaching and other forms of thievery. Florida Keys has a long-standing interest in ensuring that commercial fishermen follow the many regulations that come from the state and federal regulators and is concerned about the application of the Sarbanes-Oxley Act in the instant case.

Southeastern is a nonprofit fisheries trade association founded by a core group of fish dealers and fishermen in 1952. Based in Tallahassee, Florida, Southeastern is comprised of companies, individual fishermen, and workers employed within or supportive of the seafood and aquaculture industry. Southeastern defends, protects, and enhances the commercial fishing industry in the southeastern United States for present participants as well as future generations while maintaining healthy and sustainable stocks of fish. Because of its long tradition of problem solving, commitment to America's natural resources, and support for the rule of law, Southeastern believes its views will aid this Court as it considers the problem of criminal overcharging and the case of John Yates.

Garden State is a trade association for the commercial fishing industry of New Jersey. Founded

in 1999, Garden State members include fishing vessel owners and operators throughout the state, from Belford to Cape May. Garden State works with local, state, and federal government, researches, and advocates on behalf of its 200 members and their $100 million of dockside landings and four-fold economic impact. Garden State members are interested in ensuring that the interests of its members are represented at the Court in this case and for this reason are participating as amicus on this brief.

Santa Barbara is a non-profit corporation comprised of commercial fishermen and organized to integrate regional efforts of fishing communities with the aim of improving the economic and biological sustainability of fisheries. The organization aims to maintain California's fishing heritage, to improve fisheries management where needed, and to contribute to the improvement of ocean health. The organization is concerned about grafting federal criminal law onto the civil state and federal regulatory structure already applicable to commercial fishermen, and thus is interested in this case and believes its views will assist the Court in considering this case.

California Abalone is a non-profit corporation formed in 1971 with a mission to restore and steward a market abalone fishery that utilizes modem management concepts, protect and enhance the resource, and guarantee a sustainable resource for the future. California Abalone members fear the expansion of federal white-collar criminal law to the practice of fishing.

California Sea Urchin was created in 2004 by divers and handlers to ensure a sustainable sea urchin

resource and a reliable supply of quality seafood product for domestic consumption and export. The Commission seeks to support strong local coastal communities, fair levels of income for fishermen engaged in sea urchin commercial fishing, and historically significant cultural and community resources within California's coastal areas.

INTRODUCTION AND SUMMARY OF ARGUMENT

John L. Yates purportedly caught 72 red grouper that the Magnuson-Stevenson Act and related regulations deem undersized.[2] He received a civil fishing citation for violating the Act. *See United States v. Yates*, 733 F.3d 1059, 1061 (11th Cir. 2013). Three years later, the government turned this fish story into a federal prosecution, charging Yates with destruction of evidence,[3] making a false statement,[4] and, most relevant here, destroying, concealing, or covering up "undersized fish" so as to impede a government investigation into his catching undersized red grouper.[5] *Id.* This last alleged crime, a purported violation of the anti-shredding provision of the Sarbanes-Oxley Act (SOX Act) at 18 U.S.C. § 1519 (2002) (Section 1519), sought to punish Yates for throwing fish overboard *after* the government deemed him to have violated the Magnuson-Stevenson Act.

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[2] 50 C.F.R. §§ 622.2, 622.37(d)(2)(ii) (2007).

[3] 18 U.S.C. § 2232(a).

[4] 18 U.S.C. § 1001(a)(2).

[5] 18 U.S.C. § 1519.

Sound principles of statutory construction refute the government's overly expansive interpretation of Section 1519. That is not to say that this Court should look for "legislative intent" so as to deem this application of Section 1519 improper. *See Yates*, 733 F.3d at 1064 (noting that the court did not need to resort to legislative intent or history to reach its decision). Rather, as Justice Oliver Wendell Holmes once said: "We do not inquire what the legislature meant; we ask only what the statute means." *See* Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 417, 419 (1899); *see also Rickman v. Carstairs*, 5 B. & Ad. 651, 663, 110 Eng. Rep. 931, 935 (1833) ("The question in this and other cases of construction of written instruments is, not what was the intention of the parties, but what is the meaning of the words they have used."); R.W.M. Dias, *Jurisprudence* 237 (4th ed. 1976) ("[T]he amorphous composition of the legislative body compels a tribunal to address itself to what the enactment means, not what particular persons may have meant.").

The Eleventh Circuit erred when it determined that the "ordinary meaning" rule of statutory interpretation means that a "fish" is a "tangible object" as that term is used in Section 1519. Although a fish is a tangible object and thus the ordinary meaning canon may point to the Eleventh Circuit's outcome, "various canons of interpretation point to different outcomes, requiring sound judgment as to which have the strongest force." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 159 (2012) (Scalia/Garner). Here, the Eleventh Circuit failed to consider any other canons of interpretation, several of which would have led to

an interpretation of "tangible object" that does not include "fish." Several canons merited a mention: the principles of *ejusdem generis*, surplusage, associated words, and ultimately the rule of lenity. When the scales of interpretation put those principles on one side and the ordinary meaning principle on the other, the scales tip heavily in favor of Yates. Ordinary meaning of the word "object" cannot apply here, despite the Eleventh Circuit's understandable desire to punish what it perceives as wrongdoing. *See* Scalia/Garner, *supra*, at 301. The jury decided that Yates threw fish overboard (or instructed his boatswain to do so), and the instinct to punish is a strong one. *Id*. But a fair system of laws requires precision in the definition of offenses and punishments. The less the courts insist on precision, the less the legislatures will take the trouble to provide it. *Id*.

The government overreached when it applied Section 1519 to Yates's conduct, and it did so in order to ratchet up the pressure on Yates for purposes of plea bargaining rather than because Section 1519 described his acts. The government charged Yates with violating Section 1519 because adding this charge increased the potential prison penalty he faced from ten years to thirty years. The government expected Yates to plead guilty to some of the alleged wrongdoing with an agreed-upon sentence, so as to reduce the risk of spending time in prison on a crime that did not apply to his facts. In this case, the Court should set out the proper way to interpret a criminal statute to constrain the government's apparently unlimited power to charge Americans for purposes other than getting a conviction. The government exceeds constitutional boundaries when it intimidates those facing criminal charges into waiving their Sixth Amendment right to

jury trial by charging them with crimes that either do not apply to the acts of the defendant or only apply when the law is stretched beyond or nearly beyond reasonable application.

ARGUMENT

I

THE ELEVENTH CIRCUIT ERRED WHEN IT CONCLUDED THAT "TANGIBLE OBJECTS" IN SECTION 1519 APPLIED TO FISH

The Eleventh Circuit determined that a portion of the SOX Act applied to the act of throwing fish overboard:

> 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.

In reaching its conclusion, the Eleventh Circuit briefly explained that the text was unambiguous and that the plain meaning of "tangible object" was broad enough to encompass fish. *Yates*, 733 F.3d at 1064. The Eleventh Circuit should have cast its net wider in determining the principles of statutory construction

that applied. Had it done so, it would have reached the correct conclusion: that Yates did not violate Section 1519 because that law did not apply to his acts.

A. Under the *Ejusdem Generis* Rule of Statutory Interpretation, Fish Are Not Objects Within the Meaning of Section 1519

The *ejusdem generis* canon applies when a law includes a catchall phrase at the end of a list of specifics. James A. Holland & Julian S. Webb, *Learning Legal Rules* 202 (3d ed. 1996) ("The *ejusdem generis* rule only comes into effect when dealing with general words at the end of a list."). If a law includes a list of specific items followed by a general catchall word, then "the principle of *ejusdem generis* essentially says that: It implies the addition of *similar* after the word *other*." Scalia/Garner, *supra*, at 199; *see also* Steward Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 435 (1888) ("*[E]jusdem generis* "is a rule of legal construction that general words following an enumeration of particulars are to have their generality limited by reference to the preceding particular enumeration."); William D. Popkin, *A Dictionary of Statutory Interpretation* 74 (2007) ("[T]he *ejusdem generis* canon asserts that a general phrase at the end of a list is limited to the same type of things (the generic category) that are found in the specific list.").

Courts have applied this rule to "all sorts of syntactic constructions that have particularized lists followed by a broad, generic phrase." Scalia/Garner, *supra*, at 200. For example, this Court concluded that a list that set out " 'seamen, railroad employees, or other class of workers engaged in foreign or interstate

commerce'" only included transportation workers engaged in foreign or interstate commerce. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 109, 115 (2001) (quoting 9 U.S.C. § 1). Likewise, in another case addressing this rule, the Court held that "'automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails' " did not include an airplane. *See McBoyle v. United States*, 283 U.S. 25, 26-27 (1931) (quoting 18 U.S.C. § 408 (1919)). In both of those cases, this Court limited the general phrase at the end to only refer to the same types of things in the specific list that came before the general phrase.

Courts rely on this canon of interpretation for two reasons: one, when the initial terms all belong to an obvious and readily identifiable genus, one presumes that the law has that category in mind for the entire passage. Scalia/Garner, *supra*, at 199. Second, when the general term is given its broadest application, it makes the prior enumeration of specific items unnecessary. Courts should "[c]onsider the listed elements, as well as the broad term at the end, and ask what category would come into the reasonable person's mind." *Id.* at 208.

This canon fits this case better than any other canon, including the plain meaning canon. A record and document call to mind tangible ways in which information is recorded, and are of a genus that does not include "fish," because "fish" are not used to record information. A ship's log that records data about the catch would, by contrast, be a record or document subject to the act.

Moreover, if "tangible object" had the broad meaning that the Eleventh Circuit ascribed to it, then

the law would not have needed to list "record" and "document" separately. "Tangible object" swallows "record" and "document" within its overbroad maw. Therefore, the Eleventh Circuit's reliance upon "plain meaning" to determine that a fish was an object fails to properly apply the canons of interpretation because the context here shows that the ordinary meaning of a word is not the proper meaning within the statute or legal document subject to interpretation. Scalia/Garner, *supra*, at 70. Here, in the context of Section 1519, and further in the context of a list of items that are specific, inserting "fish" where the word "object" appears leads to a result contrary to the meaning of the rest of the text as a whole.

B. The Surplusage Rule of Statutory Interpretation Supports Yates's Interpretation of Section 1519

The surplusage canon holds "that no provision [of a statute or document] should be construed to be entirely redundant." *Kungys v. United States*, 485 U.S. 759, 775, 778 (1988). Put another way, the canon provides that courts "must . . . lean in favor of a [statutory] construction that will render every word operative, rather than one which may make some idle and nugatory." Thomas McIntyre Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 58 (1868). The way to give "records," "documents," and "tangible objects" meaning is to interpret "tangible objects" to mean objects similar to records and documents, yet objects that do not include "documents" and "records" as synonyms.

An "object" within the meaning of Section 1519 may be a computer or portable media storage device,

both of which are not documents or records *per se* but can be used to store documents or records. *See United States v. Wortman*, 488 F.3d 752, 755 (7th Cir. 2007) (affirming Section 1519 conviction where defendant destroyed CD containing evidence related to federal investigation of child porn); *United States v. Smyth*, 213 Fed. App'x 102, 104 (3d Cir. 2007) (noting Section 1519 conviction for destroying computer hard drive so as to obstruct federal investigation). Here, however, a "fish" is not related to "documents" or "records." Interpreting "objects" to refer to a nonassociated word like "fish" is a violation of the surplusage canon. *See, e.g.*, *Lowe v. SEC*, 472 U.S. 181, 207 n.53 (1985) ("[W]e must give effect to every word that Congress used in the statute."); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) ("In construing a statute we are obliged to give effect, if possible, to every word Congress used.").

C. The Rule of *Noscitur a Sociis* Counsels That Fish Are Not Objects Within the Meaning of Section 1519

The associated words canon, also known as *noscitur a sociis*, provides that when words are associated in a context suggesting that the words have something in common, they should be interpreted as qualitatively similar, with related meanings. *See Third Nat'l Bank in Nashville v. Impac Ltd.*, 432 U.S. 312, 322 (1977) (stating the doctrine). Here, the grouping of records, documents, and tangible objects should be interpreted to denote similar meaning. A fish is not similar to records and documents.

In *Schreiber v. Burlington Northern, Inc.*, 472 U.S. 1, 7-8 (1985), this Court explained this doctrine:

> it is a "'familiar principle of statutory construction that words grouped in a list should be given related meaning.'" All three species of misconduct, *i.e.*, "fraudulent, deceptive, or manipulative," listed by Congress are directed at failures to disclose. The use of the term "manipulative" provides emphasis and guidance to those who must determine which types of acts are reached by the statute; it does not suggest a deviation from the section's facial and primary concern with disclosure or congressional concern with disclosure which is the core of the Act.

Id. (citation omitted).

Here, as in *Burlington Northern*, the use of the words "documents" and "records" limits the reach of Section 1519 when it uses the word "objects." "Objects" cannot include "fish,"because if that was the case then the three words "documents," "records," and "objects" would have nothing in common despite being *associated* in a list together.

D. Courts Hold in Favor of Defendants Where a Reasonable Doubt Exists as to the Meaning of a Purportedly Applicable Statute

Because this is a criminal case, the Court has yet a fourth canon of statutory interpretation to weigh against the Eleventh Circuit's plain meaning of the words canon—the rule of lenity. Chief Justice John Marshall explained the rule of lenity early in this nation's history:

> The rule that penal laws are to be construed strictly . . . is founded on the tenderness of

> the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment.

United States v. Wiltberger, 18 U.S. (5 Wheat.) 76, 95 (1820). Courts apply the rule when, after all the tools of interpretation have been applied, "a reasonable doubt [as to statutory interpretation] persists." *Moskal v. United States*, 498 U.S. 103, 108 (1990).

Here, many rules of statutory interpretation weigh in favor of reading Section 1519 so as not to substitute "fish" for "object." Under the rule of lenity, Yates must merely show that there is a "reasonable doubt" about whether "object" can mean "fish" within the meaning of Section 1519. *Moskal*, 493 U.S. at 108. Because many rules of interpretation favor Yates's interpretation of Section 1519, this Court should conclude, at a minimum, that a reasonable doubt exists as to the statute's meaning and that, as such, the Court must order Yates's conviction vacated. *See Skilling*, 561 U.S. at 410-11 ("'ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity'") (citation omitted). In doing so, the Court should consider *why* the government intentionally expanded the meaning of Section 1519 so as to apply to a commercial fisherman with no connection to the accounting practices at issue that led to the passage of Section 1519 and the rest of the SOX Act.

II

THE FEDERAL GOVERNMENT MISINTERPRETED THE LAW SO AS TO UNCONSTITUTIONALLY EXACT A PLEA BARGAIN

In light of the proliferation of federal criminal statutes and regulations, the nation has reached a point where virtually every citizen is potentially at risk for prosecution. Glenn Harlan Reynolds, *Ham Sandwich Nation: Due Process When Everything Is a Crime*, 113 Colum. L. Rev. Sidebar 102, 104 (2013). Instead of the government investigating *crimes* to determine who committed them, the system allows for the government to target a *person* and then find the crime with which to charge him. *Id.*

That is what occurred here. In 2007, Yates found his ship boarded by a state fish and wildlife official ostensibly to do a safety check. *Yates*, 733 F.3d at 1061. The official cited Yates for violating a fishing regulation because he had 72 fish on board that were close but just short of the minimum-sized fish that he could catch in the area of the Gulf of Mexico where he was fishing. *Id.* But that civil violation turned into multiple federal criminal charges three years later when the federal government decided that this commercial fisherman was a criminal worthy of facing more than twenty years in prison because he may have thrown some undersized fish overboard. *Id.* at 1061-63. The ability of the government to charge a defendant with crimes of the government's choosing, crimes that by their own terms bear little relation to the purported wrongdoing of the defendant in any particular case, allows the government to "stack charges against defendants to coerce pleas." Paul J.

Larkin, Jr., *Strict Liability Offenses, Incarceration, and the Cruel and Unusual Punishments Clause*, 37 Harv. J.L. & Pub. Pol'y 1065, 1067 (2014). Put another way:

> Once charged with a crime, defendants are in a tough position . . . even if they consider themselves entirely innocent, they will face strong pressure to accept a plea bargain—pressure made worse by the modern tendency of prosecutors to overcharge with extensive "kitchen-sink" indictments: Prosecutors count on the fact that when fac[ing] a hundred felony charges, the prospect that a jury might go along with even one of them will be enough to make a plea deal look attractive.

Reynolds, *supra*, at 105. In this case, if the government had evidence to charge Yates with destruction of evidence and making a false statement, the penalties for those crimes equaled, at most, ten years. *See* 18 U.S.C. § 2232(a), 18 U.S.C. § 1001(a)(2). Deciding that penalty was not intimidating enough; the government intentionally mis-applied Section 1519—with its 20 year prison sentence—so as to heighten the pressure Yates felt to plea bargain. By wrongly charging Yates with a crime that did not apply, the government dealt itself a bargaining chip that had no place at the table.

The government's well-known efforts to stack crimes at the outset of criminal litigation in order to bargain from a position of strength is known as "overcharging." *See* Ronald Wright & Marc Miller, *The Screening/Bargaining Tradeoff*, 55 Stan. L. Rev. 29, 34 (2002). The nature of the plea bargain process prompts prosecutors to practice overcharging to

intimidate defendants with the implications of prison sentences that could run for years. *See* Laurie L. Levenson, *Peeking Behind the Plea Bargaining Process: Missouri v. Frye & Lafler v. Cooper*, 46 Loy. L.A. L. Rev. 457, 470 (2013). Moreover, the U.S. Sentencing Guidelines add to the government's ability to pressure defendants into pleading guilty by overcharging and challenging the defendant to go to trial and risk being found guilty (which can happen even when the defendant is not guilty, *see Missouri v. Frye*, 132 S. Ct. 1399, 1412 (2012) (Scalia, J., dissenting) (noting that "a unanimous jury finding beyond a reasonable doubt can sometimes be wrong")). The sentencing disparity between a pre-trial plea-bargained sentence, versus a post-trial court sentence, is stark.[6] *See* Andrew E. Taslitz, *Prosecutorial Preconditions to Plea Negotiations: "Voluntary" Waivers of Constitutional Rights*, 23 Crim. Just. 14, 20 (2008).

Because most criminal convictions are secured through plea negotiations, the government has an incentive to file more serious charges than those supported by the evidence with the "'hope that a defendant will be risk averse.'" *See* H. Mitchell Caldwell, *Coercive Plea Bargaining: The Unrecognized Scourge of the Justice System*, 61 Cath. U. L. Rev. 63, 84 (2011) (quoting Wright & Miller, 55 Stan. L. Rev. at 85). Moreover, the government will often file "all possible charges in an indictment, including those with very little support," so as to help secure a plea down the road. *Id.* (quoting Wright & Miller, 55 Stan. L. Rev. at 107).

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[6] This disparity is colloquially called a "trial tax." *See* Jenny Roberts, *Effective Plea Bargaining Counsel*, 122 Yale L.J. 2650, 2668 (2013).

More than fifty years ago, this Court emphasized that "[i]t is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned." *In re Winship*, 397 U.S. 358, 364 (1970) (referring to reasonable doubt standard). The moral force of criminal law is likewise diluted when the pressure of taking a case to trial leads those not even arguably culpable of all the crimes with which they are charged with pleading guilty so as to avoid the risk of spending a large portion of their lives in prison.

It is not unconstitutional for the government to increase the charges against a defendant "on which he [is] *plainl*y subject to prosecution" if the defendant refuses to plea to lesser charges. *See Bordenkircher v. Hayes*, 434 U.S. 357, 365 (1978) (emphasis added). But that is not the type of overcharging complained of here. In this case, the government charged Yates with violating a statute on which he was *not* plainly subject to prosecution. That is what makes Yates's case undoubtedly violative of the "constitutional limits upon [the Government's] exercise [of its prosecutorial discretion]," as the majority said in *Bordenkircher*. *Id.* Even if this Court rejects the arguments above and concludes that Section 1519 is broad enough to apply to Yates, then the point remains that the Supreme Court had to accept the case to determine whether the statute applied to him. That alone requires a conclusion that the statute does not *plainly* apply to him, as in *Bordenkircher*.

"[O]ften it takes nothing more than a fertile imagination to spin several crimes out of a single transaction." *Irby v. United States*, 390 F.2d 432, 439 (D.C. Cir. 1967) (Bazelon, C.J., dissenting) (citing

Munson v. McClaughry, 198 F. 72, 74 (8th Cir. 1912). Here, the fertile imagination of the government spun out a case of a commercial fisherman shredding "objects" while at sea as if he was a Wall Street accountant with a paper shredder for a boatswain. This Court should reject the government's imaginative interpretation of the law and hold that Yates did not violate Section 1519 by his conduct in the instant case.

CONCLUSION

The judgment of the lower court should be reversed.

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Respectfully submitted,

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