No. 95-942

In the Supreme Court of the United States

OCTOBER TERM, 1995

DEBORAH GORE DEAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Whether the court of appeals properly determined, on the facts of this case, the scope of one object of several multiple-object conspiracies.

2. Whether the court of appeals correctly held on the record before it that petitioner received a fair trial and that alleged instances of prosecutorial misconduct did not deny petitioner due process.

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BRIEF IN OPPOSITION

STATEMENT

Petitioner, Deborah Gore Dean, was an employee of the Department of Housing and Urban Development ("HUD") from 1982 to 1987. In July 1984, she was promoted to Executive Assistant to the Secretary. In 1987, petitioner was nominated by the President to become an Assistant Secretary of HUD. Hearings were held on her nomination by the Senate Committee on Banking, Housing, and Urban Affairs ("Senate Banking Committee") on August 6, 1987, but petitioner's nomination was not discharged.

In the spring of 1989, the Inspector General of HUD ("IG") reported apparent mismanagement of the Moderate Rehabilitation Program ("Mod Rehab Program"), a program aimed at upgrading substandard housing for low-income tenants. The program was established in 1978 to fund the improvement of marginally deteriorating rental housing and to subsidize rents of lower-income families living in those improved units. Congress authorized HUD to pay owners of substandard housing, either directly or indirectly through public housing agencies, to upgrade the properties. Regulations made state and local public housing authorities primarily responsible for program administration. According to the IG, top Department officials had, from 1984 to 1989, allocated hundreds of millions of dollars of program funds on an informal, undocumented, and discretionary basis. Ignoring regulations that should have governed their funding decisions, the officials directed money to favored developers, many of whom had connections to the Department. App., *infra*, 2a.[1]

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[1] The appendix to the petition includes an abridged version of the opinion of the court of appeals and omits relevant portions of the court's discussion. A complete copy of the court's opinion is appended to this brief.

A subcommittee of the House Committee on Government Operations investigated further and found that, largely because of the administration of the Mod Rehab Program, HUD had become "synonymous with rampant abuse, favoritism, and mismanagement." App., *infra*, 2a-3a. The subcommittee identified petitioner as a "key player" in the Department's "giveaway game." App., *infra*, 3a.

On July 7, 1992, a grand jury returned a thirteen-count indictment, charging petitioner with three separate multiple-object conspiracies in violation of 18 U.S.C. § 371 (Counts One Two, and Three), one count of having accepted an illegal gratuity in violation of 18 U.S.C. § 201, four counts of perjury in violation of 18 U.S.C. § 1621, and five counts of concealment and false statements in violation of 18 U.S.C. § 1001 (the "substantive § 1001 counts"). The district court subsequently dismissed one of the substantive § 1001 counts. The case against petitioner, which was brought by an Independent Counsel, centered on petitioner's involvement with the Mod Rehab Program.

In all three conspiracy counts, petitioner was charged with planning both to defraud and to commit an offense against the United States. The "offense" against the United States that petitioner allegedly schemed to commit was 18 U.S.C. § 1001 (the "§ 1001 object"). Count Three also listed an additional criminal "offense" — the acceptance of an illegal gratuity in violation of 18 U.S.C. § 201 — as an object of the conspiracy.

Following a jury trial, petitioner was convicted by general verdict of all twelve remaining counts and was sentenced to a term of confinement and a fine. Petitioner appealed, arguing, among other things, that there was insufficient evidence to support her convictions.

After oral argument before the court of appeals, this Court decided *Hubbard* v. *United States,* 115 S. Ct. 1754 (1995),

narrowing the reach of 18 U.S.C. § 1001. Relying on *Hubbard*, the court of appeals reversed petitioner's convictions on the four substantive § 1001 counts. The court reasoned that those counts charged false statements before the Senate Banking Committee and that, under *Hubbard*, § 1001 does not make criminal false statements to the legislative branch. App., *infra*, 33a-34a.

The panel declined, however, to reverse the three conspiracy convictions. The court of appeals explained that, in contrast to the substantive § 1001 counts, the § 1001 objects of the conspiracy counts did not involve Dean's statements to the Senate Banking Committee. App., *infra*, 34a n.10. Instead, the § 1001 objects included "actions Dean took as a Department official," which was conduct that was plainly within the jurisdiction of an executive agency — the Department of Housing and Urban Development." *Ibid.*

Petitioner sought rehearing and suggested rehearing in banc in the court of appeals, specifically calling the court's attention to *Hubbard* and arguing that the invalidation of the substantive § 1001 counts required reversal of the conspiracy counts that charged violation of § 1001 as one of their objects. After requesting and receiving a response from the United States, the court of appeals denied the petition without dissent. Pet. App. A-25.

ARGUMENT

Neither of the questions presented in the petition warrants review. As to both issues presented, the court of appeals simply applied settled law to the facts before it. The court's resolution of those questions plainly was correct. The petition therefore should be denied.

I. PETITIONER'S FIRST QUESTION PRESENTED IS PREMISED ON A MISREADING OF THE HOLDING BELOW

A. THE COURT OF APPEALS HAD NO OCCASION TO APPLY *YATES* TO THE CONSPIRACY COUNTS

Petitioner first (Pet. 6-14) argues that this Court should grant certiorari to decide whether the court of appeals' failure to reverse the multiple-object conspiracy counts is in conflict with this Court's precedent and creates a conflict among the circuits. But petitioner's alleged conflict is illusory, as it rests entirely on a misreading of the court of appeals' decision. Petitioner's real claim is that the court of appeals misinterpreted the scope of the § 1001 object of the multiple-object conspiracies. That question is, of course, entirely fact-specific. In any event, a review of the record demonstrates that the court accurately construed the scope of the § 1001 object and affirmed the conspiracy convictions by properly applying settled law.

Petitioner argues that the court of appeals' reversal of her convictions on the substantive § 1001 counts for false statements she made to the Senate Banking Committee on August 6, 1987, requires that the Court also set aside her convictions on the multiple-object conspiracy counts.[2] Pet. 6. In support of her

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[2] This argument is inapplicable to Count Three, which charged that petitioner conspired to violate both § 1001 and § 201. Because the court of appeals affirmed petitioner's conviction on the substantive § 201 count (see App., *infra*, 3la-33a), there is an independent and adequate basis for the

argument, petitioner cites *Yates* v. *United States*, 354 U.S. 298 (1957), which held that a conviction by general guilty verdict of a multiple-object conspiracy must be reversed if one of the objects of the conspiracy is legally inadequate. But *Yates* is inapposite here. As the court of appeals explained, the conduct charged in the substantive § 1001 counts, petitioner's false statements to the Senate Banking Committee, is *not* the conduct identified as the § 1001 object of the conspiracies. Instead, the conspiracy counts alleged that petitioner made false statements and covered up actions that she took "as a Department official" (App., *infra*, 34a n.10) and that accordingly served to conceal her scheme from her HUD colleagues; her statements to the Senate Banking Committee were cited only as overt acts in furtherance of the conspiracy.[3]

That the court of appeals did not view the conduct involved in the substantive § 1001 counts and in the conspiracy counts as identical is confirmed by the court's description of the alleged conspiracies. The court noted that all three conspiracies followed the same pattern: developers seeking Mod Rehab Program funds hired petitioner's coconspirators, who held themselves out as able to obtain such funds; petitioner used her influence at HUD to make sure that her coconspirators' clients received program monies or favored treatment; and in exchange for petitioner's assistance, her coconspirators helped her professionally, worked on her political behalf, and, in one instance, gave her $4,000. App., *infra*, 9a. The court then noted that, "[t]o hide the conspiracies, Dean concealed the way the Department actually made its funding decisions." *Ibid*. Nowhere in the court's

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conspiracy verdict.

[3] The overt acts used to establish a conspiracy need not be criminal in character. See *Yates,* 354 U.S. at 334; *Braverman* v. *United States*, 317 U.S. 49, 53 (1942).

summary of the gist of the conspiracy counts did it even mention petitioner's false statements to the Senate Banking Committee.[4]

To further distinguish the scope of conduct included within the § 1001 object of the conspiracy counts from the § 1001 substantive counts, the court began the section immediately following its discussion of the conspiracies by stating that:

> The *other* eight counts in the indictment arise from Dean's testimony before the Senate Committee on Banking, Housing and Urban Affairs regarding her nomination for Assistant Secretary for Community Planning and Development.

App., *infra*, 33a (emphasis added). And in the next to last sentence of that section, the court reiterated that petitioner was convicted of the substantive § 1001 counts "for statements she made before Congress." App., *infra*, 34a. The court added (at App., *infra*, 34a n.10 (emphasis added)) that,

> [*b*]y *contrast,* the government supported Counts One, Two, and Three, in which it claimed that Dean had conspired to violate 18 U.S.C. § 1001, with evidence of actions Dean took as a Department official. This conduct was plainly within the jurisdiction of an executive agency — the Department of Housing and Urban Development.

There can be no doubt, therefore, that the court of appeals did not view the § 1001 object of the conspiracies as relating to petitioner's statements to the Senate Banking Committee. And under this reading of the indictment, reversal of the substantive § 1001 counts (which involved statements to Congress) has

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[4] Neither did the court discuss petitioner's statements to the Senate anywhere else in the its extensive discussion of the evidence supporting petitioner's conviction on the three conspiracy counts. See App., *infra*, 8a-31a.

nothing to do with the question whether petitioner engaged in *other* conduct that gave rise to the conspiracy charges. The issue actually raised by the court of appeals' decision, therefore, is not whether *Yates* was properly applied, but rather whether the court of appeals accurately determined the scope of the § 1001 object of the conspiracies. This fact-bound question plainly does not warrant review.

B. THE COURT OF APPEALS PROPERLY APPLIED SETTLED LAW TO THE FACTS OF THIS CASE

Review of petitioner's convictions on the multiple-object conspiracies also is inappropriate because the court of appeals' decision is clearly correct. The indictment identifies the § 1001 goal of each of the conspiracies in substantially the same terms:

> It was a further goal of the conspiracy that the defendant DEBORAH GORE DEAN would falsify, conceal, and cover up the manner in which HUD funding decisions were actually made in order to hide the existence and ongoing nature of the conspiracy.

Pet. App. A-29 (Count One ¶ 13); see Pet. App. A-42 (Count Two ¶ 15); Pet. App. A-57 (Count Three ¶ 19). Each conspiracy count then sets forth in specific detail the manner and means by which its goals were accomplished. In Count One, for example, the next nine paragraphs allege how petitioner used her official position to facilitate the award of HUD benefits (including Mod Rehab Program funds) to her coconspirators and how she and her coconspirators benefitted from her conduct. Count One ¶¶ 14-22. Not once in those subsequent paragraphs did the government refer to petitioner's testimony before the Senate Banking Committee. But in the tenth paragraph the indictment charges, in language tracking the definition of the § 1001 goal, that:

> It was a further part of the conspiracy that defendant DEBORAH GORE DEAN would falsify, conceal, and cover up the manner in which HUD funding decisions, including Mod Rehab funding decisions, were actually made, in order to hide the existence and ongoing nature of the conspiracy, so that its goals might be accomplished.

Pet. App. A-29 (Count One ¶ 23); see Pet. App. A-42 (Count Two ¶ 25); Pet. App. A-57 (Count Three ¶ 19). By placing the allegations in the charging instrument immediately after the explanation of the typical operation of the conspiracy (and at least 60 paragraphs *before* petitioner's false statements to Congress are even mentioned in Count One), the indictment made clear that the § 1001 object of the conspiracies was not limited to hiding petitioner's scheme from the Senate Banking Committee. This interpretation of the indictment makes sense. One would expect one aspect of a conspiracy to be its concealment from those uninvolved; otherwise, it would be a short-lived criminal venture.

Indeed, the indictment does not refer to petitioner's statements to the Senate Banking Committee until it sets forth the overt acts in furtherance of each conspiracy — and then it does so only in the last two paragraphs of the section. See Pet. App. A-40 to A-41 (Count One ¶¶ 87-88); Pet. App. A54 to A-55 (Count Two ¶¶ 107-08); Pet. App. A-64 (Count Three ¶¶ 64-65). Read in context, therefore, it is clear that the court of appeals correctly concluded that the § 1001 object defined in the indictment addressed "conduct [that] was plainly within the jurisdiction of an executive agency — the Department of Housing and Urban Development." App., *infra*, 34a n.10.

The trial court's instructions to the jury underscore the nature of the § 1001 object. As to Count Three, for example, the trial court told the jury that the indictment broadly charged that petitioner "conspired to falsely conceal and cover up material

facts and to make false and fraudulent statements and representations concerning the manner in which HUD funding decisions were actually made in order to hide the existence and nature of the unlawful conspiracy." Tr. 3548; see Tr. 3546 (Count One); Tr. 3547 (Count Two). There was no suggestion in the jury charge that the conspiracy counts addressed false statements made to Congress.[5]

In light of the scope of the § 1001 object of the conspiracies and the fact that the court of appeals found the evidence adequate to support conviction as to at least one of the objects of the conspiracy (the conspiracy to defraud the United States), the panel correctly affirmed petitioner's multiple-object conspiracy convictions.[6] That would be so even had the evidence been insufficient to support conviction as to the § 1001 object of the conspiracy; as the court of appeals explained (at App., *infra*, 33a n.9), this Court held in *Griffin* v. *United States*, 502 U.S. 46, 57 (1991), that where one object of a multiple-object conspiracy is invalidated because the evidence is insufficient, the multiple-object conspiracy conviction is still valid. The Court reasoned that it is unlikely that a jury, which is well equipped to analyze evidence, would convict on a ground that was unsupported by adequate evidence when there existed an alternative ground for which the evidence was sufficient. *Id.* at 59-60. In sum, the

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[5] Although the trial court correctly instructed the jury that many *elements* of the § 1001 object in the conspiracy counts and the substantive § 1001 offenses are the same (Tr. 3553), the court did not tell the jury that the § 1001 object and the substantive § 1001 offenses involved the same *conduct.*

[6] As the court of appeals explained after finding the evidence sufficient to affirm petitioner's conviction for conspiracy to defraud the United States, "there is no need to determine whether the evidence relating to Counts One, Two and Three also supports a finding that [petitioner] conspired to violate § 1001. Even if it did not, [petitioner's] convictions on these counts would stand. A general verdict on a multiple object (sic) conspiracy is valid so long as the prosecution submits sufficient proof of one object of that conspiracy." App., *infra*, 33a n.9.

court of appeals' decision affirming petitioner's conspiracy convictions is in complete harmony with the jurisprudence of this Court; no conflict or error is presented.

II. PETITIONER'S DUE PROCESS CLAIM IS INSUBSTANTIAL

Petitioner's second argument (Pet. 14-29) is that prosecutorial misconduct violated her constitutional right to due process and a fair trial. This contention is insubstantial. Petitioner does not argue that the court of appeals applied an improper constitutional standard in assessing her claims. Rather, she complains that the court misapplied settled law to the particular facts of her case. To review this complaint, the Court would have to recreate the context, tone, and atmosphere of a multi-week trial — which included hundreds of documents, numerous witnesses, and comprehensive jury instructions — to determine whether, in light of the overall proceeding, certain isolated prosecutorial statements and nonmaterial evidence tainted the trial sufficiently to make the entire proceeding fundamentally unfair. Review to address such a fact-intensive issue is unwarranted.

It is plain, in any event, that the decision below is correct. Petitioner asserts that the cumulative effect of several alleged instances of prosecutorial misconduct violated her constitutional right to a fair trial. Pet. 14. Even if trial errors occurred, as they do in many prosecutions, both courts below concluded that petitioner's trial was fair. There is no reason to doubt the validity of this conclusion. *United States* v. *Agurs*, 427 U.S. 97, 114 (1976).

1. Petitioner complains that the prosecutor improperly questioned her veracity during closing argument. But petitioner was charged with four counts of perjury, and, as the court of appeals noted, "[t]he prosecutor had every right to argue that she had not told the truth." *App., infra*, 49a. The trial judge similarly

noted that "it's very hard to argue a case of perjury unless you are allowed to refer to the defendant's testimony and have the jury consider what it's worth." Pet. App. A-155 to A-156. Indeed, petitioner's counsel told the jury repeatedly in his opening that this case was about who was telling the truth and who was lying, and that petitioner had not lied. Tr. 77-83.

Moreover, the prosecutor's statements must be considered in context. See *Darden* v. *Wainwright*, 477 U.S. 168, 179 (1986) (must view impact of statements in context of entire trial). In virtually every instance cited by petitioner, the prosecutor's statement as to petitioner's veracity was preceded by a reference to a particular piece of evidence or to an event that called her truthfulness into question. These statements were not pervasive, as petitioner would have it. Rather, the prosecutor merely asked the jury to draw reasonable inferences from evidence properly presented that tended to indicate that petitioner was guilty of the crimes with which she was charged (one of which was perjury).

In addition, even if some of the prosecutor's statements regarding the truthfulness of petitioner's testimony had exceeded the extensive leeway afforded counsel during closing argument,

> a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone, for the statements or conduct must be viewed in context; only by so doing can it be determined whether the prosecutor's conduct affected the fairness of the trial. *United States* v. *Young*, 470 U.S. 1, 11 (1985).

In this case, it cannot be said that the prosecutor's isolated comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Darden*, 477 U.S. at 181; accord *Donnelly* v. *DeChristoforo*, 416 U.S. 637, 643 (1974). As the court of appeals held, even if any of the prosecutor's statements might have been perceived by the jurors to spill over into expressions of personal belief, "the district court

cured the problem." App., *infra*, 50a. During closing argument, the prosecutor explicitly told the jury that it was for them to determine who is believable. Pet. App. A-82. The trial court reiterated that point in comprehensive instructions to the jury, stressing that it alone was to decide the believability of witnesses. Pet. App. A-147; see, *e.g.*, Tr. 3531 ("You decide the value of the evidence and the believability of the witnesses."); Tr. 3535 ("You are the sole judge of the credibility of the witnesses. In other words, you alone are to determine whether to believe any witness and the extent to which any witness should be believed."); Tr. 3537 ("The defendant has introduced testimony that she is a truthful and honest person. Such evidence may indicate to you that it is unlikely that a truthful and honest person would commit the crimes charged or testify untruthfully. The government has introduced evidence that the defendant has a bad reputation for truth and veracity. You should consider all this evidence along with other evidence in the case in determining the guilt or innocence of the defendant, and you should give it such weight as in your judgment it is fairly entitled to receive."). This Court has found that curative instructions such as these are important factors in minimizing the prejudicial effect of any improper argument by a prosecutor. See *Donnelly*, 416 U.S. at 644.

2. Petitioner asserts that the prosecutor relied in closing argument on three pieces of evidence that he knew or should have known to be false: the testimony of Thomas T. Demery, receipts from Andrew Sankin, and the testimony of Ronald L. Reynolds. The knowing use of perjured testimony violates due process "if there is any reasonable likelihood that the false testimony could have affected the jury's verdict." See *United States* v. *Bagley*, 473 U.S. 667, 680 n.9 (1985). Under this standard, no reversible error occurred here for two reasons: the prosecutor did not knowingly use perjured testimony, and, even

if he had, it is unreasonable to believe that such testimony could have affected this verdict.

a. Petitioner first complains (Pet. 22) that the prosecutor did not on redirect examination correct Demery's denial on cross-examination of ever having lied under oath before Congress, even though the prosecutor assertedly knew that Demery had done so. Petitioner contends that had the prosecutor taken this action, the jury would have been less likely to believe Demery's testimony that he first learned of a Dade County funding request from petitioner, and not vice versa.

There is no factual basis for this claim. Petitioner knew — as a result of the government's pretrial disclosures — that Demery originally had been charged with perjury before Congress, and she was aware of the basis for that charge. She also knew, and the government elicited before the jury, that Demery had pleaded guilty to obstructing a grand jury investigation. Thus, had petitioner actually believed that Demery perjured himself at trial, she had the material to impeach him readily at hand. That she did not do so reinforces what is already apparent from the record: the question as to which petitioner now claims that Demery perjured himself was ambiguous.

But in any event, even if Demery's testimony had been perjurious, that testimony was cumulative and very limited, making it unreasonable to believe that it had an impact on the jury's verdict. The government offered far more probative evidence linking petitioner to the Dade County projects. Indeed, in discussing the sufficiency of the evidence of petitioner's involvement in those projects, the court of appeals did not bother to mention Demery's statements. Rather, that court relied on petitioner's own handwritten note "recording precisely the number of units for which Kitchin's [, a coconspirator's,] client wanted funding," her ties to Kitchin, and Kitchin's testimony that

he had discussed the project with petitioner. App., *infra*, 29a-30a.

b. Petitioner asserts (Pet. 24) that the government presented false evidence at trial by introducing credit card receipts from a coconspirator, Sankin, that indicated he had entertained and given gifts to petitioner. Petitioner asserts that the night before the receipts were entered into evidence, Sankin told the government that he could not recall anything about the documents.

That Sankin denied knowledge of a link between some of the charge slips and petitioner does not mean, of course, that there was no nexus. Sankin acknowledged entertaining and giving gifts to petitioner. Tr. 2701-2704. Moreover, virtually all the receipts referenced petitioner by name or by her HUD title. See, *e.g.*, GX 11f, 11j, 11k, 11l, 11m, 11n, 11o, 11p, llu, l1w, l1q, l1v. Finally, Sankin's alleged inability to link the slips to petitioner may well have been affected by other factors. As the trial court observed, many of the witnesses the government was required to call were adverse, as they were either unindicted coconspirators or individuals who had been given immunity and required to testify. Pet. App. A-155.

In any event, there can be no doubt that petitioner was not prejudiced by the government's failure to raise the question of perjury during direct examination. The omission subsequently came to light during trial, and the judge allowed defense counsel to cross examine Sankin, eliciting testimony that several of the charge slips "'were definitively not related to Deborah Dean.'" App., *infra*, 46a. Consequently, the jury was able to consider Sankin's testimony.

c. Petitioner further complains (Pet. 23) that the government introduced the testimony of Ronald L. Reynolds, a HUD driver who testified about driving petitioner to lunches where she met a coconspirator, John Mitchell, even though the government had introduced calendars and other evidence that

contradicted some of Reynolds' testimony. According to petitioner, these documents (unlike the Sankin receipts she chides the prosecutor for presenting) must be truthful and Reynolds (unlike Sankin) therefore must be a liar. As noted above, however, there is nothing impermissible about presenting contradictory evidence to the jury and allowing it to sort out the conflict.

Moreover, this testimony was cumulative and could not have had a bearing on the verdict. Reynolds testified that petitioner and Mitchell lunched on certain occasions, and thus had a personal relationship. But the jury had before it evidence that Mitchell was a close companion of petitioner's mother, that petitioner considered Mitchell to be her stepfather and referred to him as "Daddy," and that Mitchell referred to petitioner as his "daughter." Tr. 1368. In light of evidence demonstrating this close, familial relationship, it defies reason to believe that testimony regarding their occasional lunches together infected the jury's judgment.

3. Petitioner asserts (Pet. 25-26) that the prosecutor improperly vouched for government witnesses and suggested the existence of incriminating information outside of the record. Both claims lack merit.

Petitioner apparently interprets the prosecutor's statement that she was "the only one we know who definitively did lie" as an indirect attempt to vouch for the testimony of all other witnesses. But this isolated statement, like the references to petitioner's truthfulness that are discussed above, was argument for an inference that is supported by evidence in the record.

Petitioner also contends that the government offered no evidence that she had misled Secretary Pierce, and therefore that the prosecutor suggested the existence of incriminating information outside the record by arguing: "Just as she's deceived you or attempted to do so, * * *, she misled Samuel

Pierce and didn't tell him of her hidden interest." Pet. 25. But petitioner's initial premise is faulty; there is evidence in the record from which a reasonable factfinder could conclude that petitioner misled the Secretary. For example, petitioner herself stated that Secretary Pierce was a fine man and a prominent attorney. One could reasonably infer from such evidence that Secretary Pierce would not have allowed his Executive Assistant to participate in decisions regarding projects in which she had an interest.

But even if either of the above statements exceeded the broad leeway given attorneys during closing argument (which is far from clear in this case involving concealment and numerous perjury counts), any prejudicial effect was certainly cured by the court's repeated and forceful instructions to the jury and the quantum of evidence establishing petitioner's guilt. See, *e.g., Young*, 470 U.S. at 19-20.

4. Petitioner complains – in an argument not raised below – that the prosecutor acted to prejudice the jury against her by making two purportedly "smart comments," by making quips after she answered some questions during cross examination, and by trying to turn the jury, which was composed entirely of African Americans, against her because she was "a prominent Caucasian." Pet. 27. In fact, there was no such effort to prejudice the jury. The comments about which petitioner complains are taken out of context and misinterpreted. Moreover, even if they had been improper, they plainly are far too isolated to constitute prejudicial error. See *Donnelly*, 416 U.S. at 645.

In particular, according to petitioner (Pet. 27-28), the prosecutor tried to inflame the jury based on race by arguing that she tried to implicate her predecessor, an African American, as the one who approved certain Mod Rehab Program units and that she tried to deceive Secretary Pierce, also an African American,

by keeping him uninformed of her personal interest in certain funding decisions. But the prosecutor never made anything of the race of these two individuals. The government's point had nothing to do with race, and turned only on the official position that these individuals held. The government's argument thus went to an important aspect of its case regarding one of the § 1001 objects of the conspiracies: it explains how petitioner, in both instances, attempted to conceal her involvement in the conspiracies from others at HUD. Nothing in this argument is improper.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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