No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHNATHON NICO WISE,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether specific grounds must be identified in a Rule 29 motion for judgment of acquittal to preserve error?

PARTIES

Johnathon Nico Wise is the petitioner; he was the defendant-appellant below. The United States of America is the respondent; it was the plaintiff-appellee below.

Pursuant to Rule 12(6) Petitioner provides notice that Walter Freeman Jordan was a party to the proceedings below, but Petitioner believes he has no interest in the outcome of this petition. He previously petitioned this Court for a writ of certiorari, which was denied in Docket No. 19-8020 on April 20, 2020.

Pursuant to Rule 14(b(iii), Petitioner provides notice of a directly related proceeding, *United States v. Deandre Bendard Santee,* No. 18-20618 in the United States Court of Appeals for the Fifth Circuit, affirmed on October 16, 2019 (*United States v. Santee,* 780 Fed.Appx. 176 (5th Cir. 2019)).

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PETITION FOR A WRIT OF CERTIORIARI

Petitioner Johnathon Nico Wise respectfully petitions for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The original judgment in in the district court was entered judgment on August 17, 2018, which judgment is attached as an appendix. The published opinion of the United States Court of Appeals for the Fifth Circuit is captioned as *United States v. Jordan*, 945 F.3d 245 (5th Cir. 2019), and is provided as an appendix. The unpublished order denying panel rehearing of the United States Court of Appeals for the Fifth Circuit in that case is also provided as an appendix to the this petition.

JURISDICTIONAL STATEMENT

On April 15, 2020, rehearing was denied and the judgment affirmed. On March 19, 2020 this Court entered an order extending the deadline to file any petition for a writ of certiorari due on or after that date to 150 days from the date of the lower court judgement, order denying discretionary review, or orders denying a timely petition for rehearing. The instant Petition is filed within 150 days of entry of the denial of rehearing. *See* Sup. Ct. Rule 13.1 and 13.3. This Court's jurisdiction to grant *certiorari* is invoked under 28 U.S.C. § 1254(1).

FEDERAL RULES INVOLVED

Federal Rule of Criminal Procedure 29(a)-(c) provides:

> (a) Before Submission to the Jury. After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

(b) Reserving Decision. The court may reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

(c) After Jury Verdict or Discharge.

(1) *Time for a Motion.* A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later.

(2) *Ruling on the Motion.* If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.

(3) *No Prior Motion Required.* A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

STATEMENT OF THE CASE

A. Proceedings in the District Court

Petitioner Johnathon Nico Wise, ("Wise"), was charged by complaint on August 1, 2017, and then by indictment on August 24, 2017, with the offense of Aiding & Abetting Aggravated Credit Union Robbery (Count One) in violation of Title 18 U.S.C. § 2113(a), (d) and 18 U.S.C. § 2. ROA.11933-11942, ROA.11954-11955. After a four day Jury trial, Wise was convicted on January 25, 2018. ROA.12090.

B. Facts

On July 24, 2017, Houston Police Department ("HPD") Officers investigating Walter Jordan ("Jordan") observed a cellular phone associated with him moving west from the Third Ward area of Houston, Texas. ROA.705-708. Live surveillance followed a maroon Volkswagen Jetta from Third Ward to Katy, Texas, and back, with Walter Jordan as the sole occupant. ROA.748-750, 797. Cellular phones linked to co-defendants, other than Wise, were later identified as in contact with Jordan or having travelled in the same direction that day. ROA.1314-1315, ROA.1319-1328, ROA.1351-1352.

Officers continued surveillance the following day, July 25, 2017, including surveillance from a pole camera on Greenmont Street in Third Ward. ROA.708-709, 750-751. A stolen black Toyota Tundra pick-up truck and a silver Chevrolet Malibu owned by Jaylen Loring were observed on Greenmont. ROA.712-713, 716. Later, a silver Nissan Rogue arrived. ROA.753. The Rogue belonged to Deandre Santee, a good friend of Daryl Anderson. ROA.956-957. There, Jordan told Anderson he "had a play… a robbery of some sort." ROA.962. Anderson had known Walter Jordan most of his life, but had never met Wise or talked to him. ROA.954-955, 996.

Anderson initially refused Jordan and left with Santee. ROA.962-963. But, Jordan called and persuaded him to return, saying "I just need some extra eyes… I ain't got nobody else…I just need you to watch out." ROA.963-964. Anderson and Santee returned in the Rogue a few minutes later. ROA.964. Jordan explained the robbery to Anderson one-on-one. ROA.997. Wise was not there when this occurred; he was elsewhere in a Volkswagen Jetta. ROA.965-966, 968-969. Jordan told Anderson to keep an eye out for cops while they robbed the bank. ROA.967-968. During these instructions, Jordan changed clothes next to the Tundra. ROA.969-970. Jordan then got in the truck and Anderson went to the Rogue to relay instructions to Santee. ROA.970-972. Santee knew Walter Jordan though not as well as Anderson. ROA.975-976. Meanwhile, Wise was still in the Volkswagen. ROA.971.

At the Nissan Rogue, Anderson told Santee, "Just follow me." ROA.971-972. A few minutes later, Wise got into the passenger seat of the Rogue. ROA.972-74. Four vehicles then left Greenmont in a caravan. ROA.792. Anderson drove the Volkswagen, which left last. ROA.791. As the cars pulled away, the Rogue, driven by Santee, pulled up next to the Tundra. ROA.975. The fourth vehicle was driven by Jaylen Loring.

Ms. Loring only interacted with Jordan "during the course of planning and executing this robbery." ROA.879. She knew him as "Wacko." ROA.878. She did not know any of her other co-defendants. ROA.879. Wacko promised her money to be a lookout. ROA.883-884. He called her that morning and told her to meet him on Greemont, where she and him had discussed the robbery the night before. ROA.886-887. After they all drove away from Greenmont, Loring lost the others, but looked for the black Tundra and caught up because she did not know the destination. ROA. 903-905. Jordan called her and told her, "follow us." ROA.906. She heard other voices on the phone call "but it's, like, nobody is directly saying anything. It's just voices." ROA.906. It

was "like the phone was on speaker." ROA.907. But nothing else was being "directly said" about the robbery, just a lot of voices. ROA.907. The only voice she recognized was Jordan's. ROA.907.

A police expert analyzed records including call and cellular telephone tower data from the service provider associated with the cell phones obtained in the investigation. ROA.1303-1306, 1310-1312, 1319. According to his testimony, the phone with the number ending 2498 in the Nissan Rogue was used to text and call during the drive west on I-10, including a call to Anderson for about an hour. ROA.1330-1333. This was consistent with Daryl Anderson's testimony. In the area of the credit union, Anderson said he was "on the phone with Mr. Santee" and had been "[t]he whole ride." ROA.978.

There, Anderson went a different direction than the others to look for law enforcement. ROA.978. As he did so, Anderson was on a three-way call with Jordan and Santee. ROA.978-979. Santee, driving the Rogue, followed Anderson as instructed. ROA.979. The Rogue was seen following a police car, also as Anderson directed. ROA.981. Around that time, Walter Jordan told Jaylen Loring it was going to be the second bank. ROA.908-909.

Ms. Loring went inside, came out, and told Jordan over the phone that there was no security. ROA.909. Loring then drove around and looked for security for about forty-five minutes to an hour. ROA.911. The Nissan Rogue parked in a lot across the street from the credit union and facing it. ROA.762. The black Tundra parked park in the space in front of the bank and three males exited and ran into the front doors of the credit union. ROA.762. Shortly thereafter, officers observed a fourth do likewise. ROA.762. Jaylen Loring watched the robbery nearby from the grocery store parking lot. ROA.912-913.

In the credit union, around 1:00 P.M., someone in athletic clothing with face and hands covered jumped over the counter of Ms. Williams, a teller. ROA.835-836, 839. A second robber

came over the counter, while a third robber was noticed to have a cell phone in his hand. ROA.837-838. The second, who had a backpack, told Williams to get on the ground and asked her where the money was. ROA.840. She got up and unlocked a drawer for him. ROA.840. He told her to stay with another man while he went through the drawers. ROA.841. They the robbers went in the vault room with Mr. Osborne, the Vice President, but had Williams stand with her hands raised next to the drive- through lanes. ROA.842. When the robbers could not get into the vaults, they asked Williams, but she did not have access. ROA.843-844. The third robber then came over the counter. ROA.844. He looked down at his shirt, showed Williams a pistol in his waistband, and told her to get on the floor. ROA.844.

Mr. Osborne tried to explain that he only had half the combination and could not open the safe. ROA.857. The robbers accused Osborne of lying or stalling and one hit him on the head. ROA.858. Osborne then saw the third robber and the gun in his waistband. ROA.859. At some point Ms. Williams heard a fourth person come into the credit union and yell that the cops were "'down the street.'" The robbers ran, jumped over the counter, and left. ROA.847. A little more than $8,000 was taken from the teller drawers. ROA.865.

After the robbers left in the Tundra, the other three vehicles departed, but were almost immediately detained. ROA 762. The Nissan Rogue was pulled over with Santee driving and Wise in the front passenger seat. ROA.763, 1013. A total of three cellular phones were recovered from that vehicle. ROA.1016-1017, 12058. A white iPhone was found on Wise. ROA.1038, 1040-1041. A black iPhone was in the driver's seat and a black Samsung cell phone in the center console on the passenger side. ROA.1015. According to records introduced into evidence, they belonged to different people.

The white iPhone found on Wise had the number ending 9812, and was activated the day before the robbery in an account in his name. ROA.1239, 1314. The expert witness testified he did not "get much information on that particular number." ROA.1314-1315. The Samsung Galaxy in the console had the phone number ending 2498 and was in the name of a girlfriend of Jordan, Anna Rogers. ROA. 10241233-1234, 1280-1281.

During the search of the Rogue, the Tundra led police on a high-speed chase, but the occupants were ultimately apprehended. ROA. 1048, 1056, 1092.

C. Wise's Motions for Acquittal

Wise moved for acquittal at the close of evidence, and it was denied. ROA.1355-1359. He further made a *general* written motion for judgment of acquittal alleging insufficient evidence on all elements of the count of conviction. Appendix at A37; ROA.12092-12109. Wise alleged that "[t]here was insufficient evidence to prove Wise aided or abetted the elements of the substantive offense of bank robbery or the enhancement in this case." ROA.12096. A41, ¶11. After a reviewing the evidence, Wise further argued that:

> "The evidence against Johnathon Nico Wise is insufficient to support his conviction. No rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt even viewing the evidence in the light most favorable to the verdict. As a result, Defendant requests a judgment of acquittal on all counts pursuant to Federal Rule of Criminal Procedure 29(c).
>
> - ROA.12104; Appendix at A49, ¶40.

The Government filed a written response and after an oral hearing on March 23, 2018, the motion was denied without written order. ROA. 12113-12130,12132, 12184-12202.

D. Sentencing

Wise filed written objections to the pre-sentence investigation report. ROA.20686-20696. An objection to the firearm special offence characteristic enhancement was overruled.

ROA.12204-12213, 20743. Wise was sentenced to: a term of confinement of one hundred twenty-one months confinement; three years supervised release to run concurrently; a $100 special assessment; no fine; and restitution in the amount of $401, jointly and severally with his Co-Defendants. ROA.12138-12144, 12220. On July 29, 2015, timely written notice of appeal was given. ROA.12145.

E. Proceedings in the Fifth Circuit

In his first point of error to the Fifth Circuit, Wise argued that "Evidence that Wise Aided & Abetted Aggravated Credit Union Robbery was Constitutionally Insufficient." Appendix at A57. Wise argued in support of that point of error that, pursuant to post-trial Fifth Circuit Precedent, the jury was required to find that Wise "was required to have advance knowledge and intent to aid and abet those aggravating facts [assault or threat to the life of another person by use of a dangerous weapon or device]." *Id.* at A66.

The Fifth Circuit's opinion, *sua sponte* broke Wise's single sufficiency point of error in two points of error and used two different standards of review, stating,

> Wise argues that the evidence was insufficient to support his conviction in two respects: first, that there was no evidence Wise "aided and abetted"; second, that there was no evidence Wise had advance knowledge that a weapon would be used. We review the first argument de novo, but we review the second argument for a manifest miscarriage of justice.
>
> - *Jordan,* 945 F.3d at 259.

These were not separate arguments in Wise's brief. *See* Appendix at A57-67. Nevertheless, the Fifth Circuit's opinion then held that "Wise did not raise this issue in making his motion for a judgment of acquittal, so it was not properly preserved for de novo review on appeal." The opinion fails to explain how Wise's general Rule 29 motion sufficiently preserved the general "aided and abetted" sufficiency issue and not the other. The opinion did *not* hold that Wise had raised a

specific grounds for a specific element of a specific count and thereby waived all others. *Id.*at 260*; see also United States v. Herrera,* 313 F.3d 882, 884 (5th Cir. 2002) (en banc) (per curiam). Indeed it could not, it was a *general* motion. *See* § C.

Both cases cited by the Fifth Circuit are inapposite to Wise because in each, the motion focused on one element. *Jordan* 945 F.3d at 260, fn. 39 (citing *United States v. McDowell,* 498 F.3d 308, 312-313 (5th Cir. 2007) and *United States v. Phillips,* 477 F.3d 215, 219 (5th Cir. 2007)). In *McDowell,* "that motion challenged only the obscenity vel non of the video, not whether the Government had proved McDowell possessed the requisite mens rea." *McDowell,* 498 F.3d at 312. In *Phillips,* the "motion raised only the narrow issue whether the loss or damage caused by his online exploits exceeded $5,000.00." *Phillips,* 477 F.3d at 219. Wise's Rule 29 motion contested all evidence for all elements on all counts, not any specific element to the exclusion of others. In the order denying rehearing, the Fifth Circuit merely referred to the original opinion. Appendix at A34, fn. 1 ("In the alternative, Wise argues that his Rule 29 motion sufficiently preserved the issue for de novo review. We reject this argument for the same reasons provided in *United States v. Jordan,* 945 F.3d 245, 260 (5th Cir. 2019)."). This had a cascading effect on Wise's appeal.

Wise's fourth point of error was that the six-level Guideline enhancement for otherwise use of a firearm was clearly erroneous under U.S.S.G. § 1B1.3(a) and § 2B1.3(b)(2)(B) because the use of a firearm was not foreseeable to Wise. The Fifth Circuit held, "[F]or the same reasons that the evidence was sufficient to support a finding that Wise aided and abetted aggravated robbery, the district court had sufficient evidence to conclude that the use of a firearm was reasonably foreseeable to Wise." *Jordan,* 945 F.3d at 263. As the Eleventh Circuit recently recognized, "Of course there's no such thing as a good bank robbery. But from the perspective of the Sentencing Guidelines, there are certainly less bad ones." *United States v. Perez,* 943 F.3d

1329, 1330 (11th Cir. 2019). Had Wise not been convicted of aiding and abetting *aggravated* bank robbery because of the lack of advance knowledge and intent, the trial court could not have found the use of a weapon foreseeable to him and he would his guideline range would have been substantially less.

BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

This case was brought as a federal criminal prosecution involving Aiding and Abetting Aggravated Credit Union Robbery in violation of 18 U.S.C. § 2113 (a), (d), and 18 U.S.C. § 2 (ROA.41-42). The district court therefore had jurisdiction pursuant to 18 U.S.C. § 3231.

REASONS FOR GRANTING THE WRIT

The decision below conflicts with decisions of most other circuits and the plain text of Federal Rule of Criminal Procedure 29 on the important, recurring, question of what, if any, specificity is necessary to preserve error.

The Fifth Circuit has decided an important question of federal law that has not been, but should be, settled by this Court as it conflicts with the plain text of Rule 29. It is important because correct preservation of sufficiency challenges for appellate review is necessary for all federal criminal Defendants who are convicted at trial.[1] Absent guidance from this Court, Defendants nationwide may unintentionally fail to preserve error. Moreover, the Fifth Circuit ruling in this case conflicts with at least half of the other circuits. Four circuits have been silent in this regard.

A. The decision below conflicts with the plain text of Rule 29.

On its face, Federal Rule of Criminal Procedure 29 permits a defendant to "move for a judgment of acquittal" after a jury verdict or discharge without articulating specific grounds for that motion. Fed. R. Crim. Pro. 29. Before submission to the jury, "on the defendant's motion the court must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." *Id.* Indeed, "[t]he court may on its own consider whether the evidence is insufficient to sustain a conviction," *Id.* Under no section of Rule 29 is either the Defendant or the Court required to state a specific grounds. Regardless, the Fifth Circuit imposed a requirement not contained within the rule, i.e. that Defendants are required to specifically raise an issue in a motion for judgment of acquittal to obtain de novo review. *Jordan* 945 F.3d 245, 260. This position of the Fifth Circuit conflicts with the decisions of other courts of appeals.

[1] For the twelve month period ending March 31, 2020, there were 1,480 federal criminal defendants convicted by a jury. U.S. Courts *Table D-4—U.S. District Courts–Criminal Federal Judicial Caseload Statistics* (March 31, 2020) "U.S. District Courts—Criminal Defendants Terminated, by Type of Disposition and Offense—During the 12-Month Period Ending March 31, 2020" Available at https://www.uscourts.gov/statistics/table/d-4/federal-judicial-caseload-statistics/2020/03/31 (last viewed August 28, 2020).

B. The decision below conflicts with the decisions of other courts of appeals.

"In most circuits, the rule is that a general challenge to the adequacy of the evidence preserves for *de novo* review 'the full range of challenges, whether stated or unstated.' *United States v. Marston*, 694 F.3d 131, 134 (1st Cir. 2012)(quoting *United States v. Hammoude*, 51 F.3d 288, 291 (D.C.Cir. 1995), *cert. denied*, 515 U.S. 1128, 115 S.Ct. 2290, 132 L.Ed.2d 291 (1995)). At least seven circuits (1st, 2nd, 3rd 6th, 7th, 9th, D.C.) have held that motions for acquittal under Rule 29 are not required to state the specific grounds on which they are based.[2] As one court stated, "the very nature of such motions is to question the sufficiency of the evidence to support a conviction… the defendant need not specify the ground of the motion in order to preserve a sufficiency claim for appeal." *United States v. Gjurashaj*, 706 F.2d 395, 399 (2d Cir.1983); *see also United States v. Walker*, 529 Fed.Appx. 256, 260 (3rd Cir. 2013)("We recognize that while the law requires counsel to make specific objections to evidence or instructions, the practice of allowing general Rule 29 objections is now well accepted... [w]e will therefore apply a de novo review to the denial of his Rule 29 motion."); *United States v. Viayra*, 365 F.3d 790, 793 (9th Cir.2004)((agreeing with "[s]everal of our sister circuits [that] have held that *Rule 29* motions for acquittal do not need to state the grounds upon which they are based); *United States v. South*, 28 F.3d 619, 627 (7th Cir. 1994) (noting that Rule 29 does not require anything more than notice that defendant was " contesting the sufficiency of the evidence"); *United States v. Cox*, 593 F.2d 46, 48 (6th Cir. 1979) (stating that a Rule 29 motion need not specify the grounds for acquittal in order for the issue of the sufficiency of the evidence to be properly before the appellate court); *See also* 2A Charles A. Wright, et al., Federal Practice and Procedure § 466 (4th ed. 2016) ("Specificity is

[2] The Fourth, Eighth, Tenth, and Eleventh Circuits do not appear to have expressly addressed the issue.

not required by Rule 29 or by Rule 47."). Indeed, several months before *Jordan*, the Fifth Circuit, stated that "[w]hen a defendant makes a general sufficiency-of-the-evidence challenge, we review the sufficiency of the evidence supporting a conviction de novo." *United States v. Daniels*, 930 F.3d 393, 402 (5th Cir. 2019)(citing *United States v. Brown*, 727 F.3d 329, 335 (5th Cir. 2013)). Nevertheless, it imposed on Wise a requirement to specify the grounds, despite his general motion challenging the sufficiency. No circuit clearly defines a general challenge.

C. This Court should resolve this question through this case

This issue merits the Court's attention through this case for a variety of reasons. As stated above, the holding conflicts with a plain reading of the rule and clarity is necessary for the hundreds of defendants who are convicted at trial every year to preserve the issue for appeal. More acutely, however, the Fifth Circuit is in conflict with the circuits that have addressed the issue and the publication of its decision in this case may provide incorrect guidance to the circuits that have not addressed the issue. Lastly, given its history in this and other cases, it is unlikely that the Fifth Circuit will reverse itself to remove the extra-textual requirement it has imposed.

This Court has recently reversed the Fifth Circuit twice in error preservation cases where it imposed restrictions or requirements not grounded in law. *See Davis v. United States* 589 U.S. ___ (2020)(per curiam) ("[T]there is no legal basis for the Fifth Circuit's practice of declining to review certain unpreserved factual arguments for plain error."); *Holguin-Hernandez v. United States,* (2020) ("We do not agree with the Court of Appeals' suggestion that defendants are required to refer to the 'reasonableness' of a sentence to preserve such claims for appeal…The rulemakers, in promulgating Rule 51, intended to dispense with the need for formal 'exceptions' to a trial court's rulings… they chose not to require an objecting party to use any particular language or even to wait until the court issues its ruling.. The question is simply whether the

claimed error was "brought to the court's attention." Rule 52(b). Here it was."). This is another such instance. Rule 29 does not mandate any required level of specificity to accomplish its purpose or preserve error.

The Fifth Circuit will not resolve the matter, itself. The ruling in this case and *Daniels* a few months earlier reveal that the Fifth Circuit takes an inconsistent and improperly narrow view of error preservation, as this Court's two recent ruling recognize. Moreover, this issue confronts all federal criminal Defendants who are convicted after trial. Absent guidance, Defendants and Courts will be left to their own different interpretations of what constitutes sufficient preservation of error for sufficiency review. This would not resolve the circuit split. This case is an ideal vehicle to provide clarity as the court below expressly held, without explanation, that a specific ground for a Rule 29 motion must be identified to preserve error for *de novo* review. This Court may resolve the standard of review and remand for further proceedings.

If, however, the Court wishes to look deeper, Petitioner would be entitled to relief under *de novo* review. Aggravated Credit Union robbery is a combination offense or is equivalent to such an offense, including 18 U.S.C. 924(c) because it requires that (1) a credit union robbery occur; and (2) that an assault or threat to the life of another person occurs by use of a dangerous weapon or device. *See United Sates v. Gibson,* 709 Fed.Appx. 271, 273 (5th Cir. 2017); 18 U.S.C. § 2113. It requires a second crime to occur during or in relation to the first. Petitioner was therefore required to have advance knowledge and intent to aid and abet those aggravating facts, not just the robbery. *Rosemond v. United States*, 572 U.S. 65, 134 S.Ct. 1240, 1248, 188 L.Ed.2d 248 (2014)). There was no evidence from any source, including surveilling police or cooperating witnesses that dangerous weapons were seen anywhere or were mentioned prior to the robbery. No rational juror could have found Petitioner aided or abetted this aggravating element of the offense. For similar

reasons, the sentencing guidelines enhancement of the use of the firearm pursuant to U.S.S.G. § 1B1.3(a) and § 2B1.3(b)(2)(B) could not be upheld.

Proper review of the denial of Petitioner's Rule 29 motion would result in favorable outcomes for him. Only the extra-textual requirement imposed by the Fifth Circuit to limit the availability of *de novo* review precludes relief. Because this requirement is in disagreement with other courts and the plain text of Rule 29, this Court should grant relief to provide guidance on preservation to the hundreds of defendants convicted each year and courts on this important question of federal law. This Court should grant *certiorari*.

CONCLUSION

For the foregoing reasons, Petitioner asks that this Honorable Court grant a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 4th day of September, 2020.

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