No. _____

In the Supreme Court of the United States

NOEL JONES,
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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QUESTIONS PRESENTED

(1) If a criminal defendant pleading guilty to a drug conspiracy is required to admit to an enhancing drug quantity as part of his guilty plea but has been misinformed about the scope of conduct for which he can be held criminally liable, is his guilty plea constitutionally defective requiring automatic reversal?

(2) Is a defendant's ongoing buyer-seller relationship with a heroin supplier who is a member of a large drug distribution conspiracy sufficient to establish the defendant's knowing and voluntary participation in the conspiracy?

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Petitioner Noel Jones respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

JUDGMENT AT ISSUE

On March 21, 2015, Noel Jones pleaded guilty to conspiring to distribute at least a kilogram of heroin, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. The district court sentenced him to 327 months of imprisonment. Mr. Jones filed a timely motion to vacate his sentence pursuant to 28 U.S.C. § 2255, arguing in part that his trial counsel was ineffective for failing to file a notice of appeal, despite Mr. Jones's request for one. The district court reinstated his judgment to re-start the time to file an appeal, and Mr. Jones timely appealed. The Fifth Circuit affirmed the district court's judgment. *See* Opinion, *United States v. Jones*, No. 17-30829 (5th Cir. Aug. 7, 2020). A copy of the panel decision is attached hereto as the Appendix.

JURISDICTION

The final judgment of the Fifth Circuit Court of Appeals was entered on August 7, 2020. No petition for rehearing was filed. Mr. Jones's petition for a writ of certiorari is timely filed pursuant to Supreme Court Rule 13.1, as modified by this Court's Order dated March 19, 2020, which extended the deadline for petitions for writs of certiorari to 150 days from the date of the lower court judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides:

> No person shall be held to answer for a . . . crime, unless on a presentment or indictment of a Grand Jury . . . nor be deprived of life, liberty, or property, without due process of law . . .

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to be informed of the nature and cause of the accusation . . .

21 U.S.C. § 841(a)(1) provides:

> Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.

21 U.S.C. § 846 provides:

> Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

21 U.S.C. § 841(b)(1)(A)(i) provides:

> In the case of a violation of subsection (a) of this section involving 1 kilogram or more of a mixture or substance containing a detectable amount of heroin, such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life. . .

STATEMENT OF THE CASE

In March 2014, Noel Jones was indicted as a member of a twelve-person drug conspiracy involving the distribution of more than a kilogram of heroin over the course of more than three years, from 2011 to 2014. According to the record, Ernest Diaz was the top-level supplier for the charged conspiracy, and he would provide Terence Taylor with large quantities of heroin for distribution. Mr. Taylor would then distribute wholesale quantities to five individuals: Malcom Bolden, Percy Depron, Arthur McKinnis, Melvin Smith, and Terrell Davis. In addition to selling gram quantities to their own street-level customers, Mr. Boldon and Mr. Depron answered Mr. Taylor's "dope" phone and conducted sales for him. Two other co-defendants—Narcisse Trotter and Theodore Griffin—allowed Mr. Taylor to use their residences to store, package, and sell heroin to others. Mr. McKinnis similarly sold gram quantities to his own customers, and he also sold larger quantities to Mr. Jones and another co-defendant, Terrell Dyer.

Mr. Jones pleaded guilty to the conspiracy as charged, but his factual basis did not establish his knowledge of, or participation in, the broadly charged conspiracy. Instead, it only described a "heroin dealing partnership" between him and Mr. Dyer, in which they purchased wholesale quantities of heroin from Mr. McKinnis and then resold the drugs in gram quantities to a "common group of street-level customers." Mr. Jones and Mr. Dyer shared phones to communicate with their shared customers, and Mr. Jones admitted to personally selling one to four grams of heroin to undercover DEA agents on six occasions between March and November 2013. In other

words, the specific facts to which Mr. Jones admitted only described his involvement in a smaller drug conspiracy than the one charged, occurring over a much shorter period of time.

Although Mr. Jones obtained his drug supply from Arthur McKinnis, nothing in his factual basis or the record indicated that he was aware of any broader drug conspiracy or agreement beyond those buyer-seller transactions. Aside from Mr. Dyer and Mr. McKinnis, the only other co-defendant mentioned in his factual basis was Mr. Taylor, who was identified with Mr. McKinnis as Mr. Jones's heroin source. However, the factual basis did not indicate that Mr. Jones purchased directly from Mr. Taylor, and other record documents established that he did not.[1] Moreover, as U.S. Probation noted in Mr. Jones's Presentence Investigation Report ("PSR"), "there [was] no information indicating McKinnis exercised any supervisory or managerial control over Dyer and Jones, or acted as a leader or organizer in any other capacity." Thus, there was no evidence that Mr. Jones knew of the charged drug conspiracy, much less that he voluntarily participated in it or could have reasonably foreseen the broader and large-scale drug activity being committed by other individuals linked to Mr. McKinnis.

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[1] For example, Mr. McKinnis's factual basis stated that he "purchased wholesale quantities of heroin from Terence Taylor and resold it to street-level heroin dealer Noel Jones," and Mr. Taylor's factual basis stated only that he "sold *or otherwise transferred or distributed* heroin" to Mr. Jones and others. *See* Factual Basis, *United States v. Taylor, et al.*, No. 2:14-cr-259, ECF No. 167, at 1 (E.D. La. Mar. 31, 2015); Factual Basis, *United States v. Taylor, et al.*, No. 2:14-cr-259, ECF No. 189, at 3 (E.D. La. Mar. 31, 2015) (emphasis added). Likewise, Mr. Jones's Presentence Investigation Report explained that "McKinnis purchased heroin from Taylor, then redistributed the heroin to Dyer and Jones, in addition to selling to street-level customers."

Nevertheless, the district court accepted Mr. Jones's guilty plea at his re-arraignment, which was conducted simultaneously with six other co-defendants. During an *en masse* plea colloquy, the court explained the rights that each defendant would forfeit by pleading guilty and then explained the elements that the government would have to prove beyond a reasonable doubt to establish their guilt at trial. The district court specifically instructed that, at trial, the government would have had to prove the following elements against each of them individually:

> "One, that two or more persons, directly or indirectly, reached an agreement to distribute a controlled substance, which in this case is heroin;"
>
> "Second, that the defendant knew of the unlawful purpose of the agreement;"
>
> "Third, that the defendant joined in the agreement willfully, that is, with the intent to further its unlawful purpose;"
>
> "Fourth, that the overall scope of the conspiracy involved least 1 kilogram [of] heroin."

Mr. Jones, like his co-defendants, stated that he understood the elements and pleaded guilty to the conspiracy charge. However, he did not know at the time—and apparently neither did the district court or defense counsel—that he could only be held accountable for the drug quantity that was reasonably foreseeable to him, not the total amount attributable to the entire charged conspiracy. Nor was he informed of the possibility that he could be guilty of a separate conspiracy from the one charged.

Importantly, Mr. Jones's PSR highlighted his lack of involvement in the broad conspiracy and his lesser culpability. In addition to describing the relationships among the various co-defendants (or, in Mr. Jones's cases, lack thereof), the PSR identified the drug quantities attributable to each one. The PSR calculated that the

entire conspiracy involved a total of just over 3 kilograms (3,014.75 gross grams) of heroin. Nearly 2.9 kilograms of that amount, however, was specifically attributed to Mr. Diaz and Mr. Taylor, with another 50 grams resulting from a search of Mr. Taylor's vehicle. With respect to Mr. Jones, the PSR determined that he was "responsible for 28 grams of heroin" as part of the conspiracy—based specifically on his six heroin sales to undercover DEA agents as well as another sale by Mr. Dyer, which was attributable to Mr. Jones by virtue of their partnership. However, as the PSR noted, Mr. Jones's factual basis included a stipulation that he would be "held accountable for at least one kilogram but less than three kilograms of heroin" based on "reasonably foreseeable conduct of his co-conspirators within the timeframe of the Indictment." That was the same quantity to which the other parties stipulated pursuant to their plea agreements with the government.

At sentencing, Mr. Jones was designated a career offender, resulting in an advisory Sentencing Guidelines range of 262 to 327 months of imprisonment. Before imposing sentence, the district court discussed a heroin overdose death by an individual who purchased drugs from two other members of the broadly charged conspiracy: Terence Taylor and Malcom Bolden. The court noted that Mr. Jones "could have been the one" who sold those drugs to the victim because he was "part of the same conspiracy, drugs from the same person." The court then sentenced Mr. Jones to 327 months of imprisonment, with 240 months to run consecutive to any state sentence previously imposed, and the remaining 87 months to run concurrent to his state court sentences.

Mr. Jones's counsel did not file a notice of appeal, but Mr. Jones filed a timely motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. In his motion, Mr. Jones raised several ineffective assistance of counsel claims against his trial counsel, including alleging that his counsel "failed to file a notice of appeal after sentencing," despite Mr. Jones specifically requesting that he do so. In his § 2255 filings, Mr. Jones also claimed that his trial counsel was ineffective for failing to challenge the drug quantity attributable to Mr. Jones, failing to file certain pretrial motions, and failing to explain the appellate process to him. Of particular note, Mr. Jones stated that he had asked counsel to move to sever him from the other co-defendants in his case since he did not know many of them (including Mr. Taylor).

The district court determined that an "out of time appeal" was the appropriate remedy for Mr. Jones's ineffective assistance of counsel claim related to the failure to file a notice of appeal, so it dismissed his § 2255 petition without prejudice and reinstated his criminal judgment. Mr. Jones filed a timely, *pro se* notice of appeal on October 11, 2017. The appeal was docketed with the Fifth Circuit on October 13, 2017, identifying Mr. Jones's trial counsel as his counsel of record for the appeal.

Mr. Jones's trial counsel initially remained on the appeal. However, after two years of missed deadlines, show cause orders, and deficient filings, a Fifth Circuit judge relieved counsel of his appellate duties, struck his previously-filed briefs and motions, and ordered the appointment of new appellate counsel. In the order, the judge explained that it had "twice found [counsel's *Anders*] briefs to be deficient and now receives [his] second supplemental brief, which suffers from the same

deficiencies." After detailing the deficiencies of counsel's appellate filings, the judge found that he failed to perform his "constitutional duty to advocate actively on behalf of his client" and concluded that the failure "presents a 'pressing circumstance' warranting the substitution of counsel in the interest of justice."

On October 10, 2019, Mr. Jones's newly-appointed counsel filed a merits brief challenging the validity of his conspiracy conviction. Mr. Jones first argued that the district court made two, distinct Rule 11 errors, each of which required reversal under the plain error review standard: First, the district court accepted Mr. Jones's guilty plea based on a factual basis that was insufficient to establish his guilt of the charged conspiracy (as opposed to a separate, narrower conspiracy). Second, the district court failed to properly inform him of the nature of the conspiracy charge to which he was pleading guilty—specifically, the government's burden of proving that one kilogram of heroin was the amount reasonably foreseeable to him as opposed to the amount attributable to the "overall conspiracy."

Additionally, Mr. Jones argued that his guilty plea was unknowing and involuntary because he was not on "real notice of the true nature" of the conspiracy charge against him, urging that the error was a structural constitutional defect in the proceeding that mandated automatic reversal under Supreme Court precedent. In particular, the record showed that from his initial arraignment through sentencing, Mr. Jones was never notified that drug quantity is an independent sentencing inquiry rather than a formal element of the drug conspiracy offense, nor did the court explain that the relevant quantity for statutory sentencing purposes is

the amount that is reasonably foreseeable to an individual defendant rather than the amount involved in the "overall scope" of the charged conspiracy. Mr. Jones also was not made aware that he could be guilty of a separate, smaller drug conspiracy than the one charged. Instead, he was led to believe that his unlawful heroin dealing partnership with Mr. Dyer necessarily made him guilty of the charged conspiracy and accountable for the entire amount of drugs involved in that broadly charged conspiracy. In short, the record reflected a pervasive misunderstanding by the district court and parties regarding the elements of the charged conspiracy offense, the government's burden of proof at trial, and the scope of conduct for which Mr. Jones could be held criminally liable.

A panel for the Fifth Circuit affirmed Mr. Jones's judgment on August 7, 2020, in a published decision.[2] With respect to the sufficiency of Mr. Jones's factual basis, the court concluded that his admission to working with Mr. Dyer "to resell the heroin in gram quantities to street-level customers on a daily basis" was sufficient to support his conviction of a one-kilogram heroin conspiracy, in light of the three-year conspiracy window charged in the indictment—even though Mr. Jones did not admit to selling heroin throughout that period and only admitted to sales in a single year. App'x at 5. The Fifth Circuit also determined that the district court "did not clearly err in finding that individuals other than Jones and Dyer were part of the same

[2] The panel's decision is attached as the Appendix to this petition and can also be located at *United States v. Noel Jones*, 969 F.3d 192 (5th Cir. 2020).

conspiracy." *Id.* While acknowledging that there was "limited evidence that Jones worked directly with other conspirators," the panel found that the court "could reasonably have inferred that Jones knew he was part of a larger venture that included others such as Taylor" based on his "ongoing involvement" with his supplier, Mr. McKinnis. *Id.* at 5–7.

The Fifth Circuit panel also found no reversible error in the district court's explanation of the conspiracy offense to which Mr. Jones was pleading guilty. *See* App'x at 7. The court recognized that the district court's instruction on the government's burden of proof regarding drug quantity was incorrect, but nevertheless determined that reversal was not required because Mr. Jones could not show "that he would have chosen not to plead guilty had he been instructed differently." *Id.* at 8. The court again relied on its conclusion that Mr. Jones's factual basis showed he "was directly involved in distributing at least a kilogram of heroin" based on his admission to selling heroin with Mr. Dyer on a "daily basis" combined with the three-year duration of the charged conspiracy. The court thus found that there was "no reason to think that he would have chosen to plead not guilty because he admitted in the factual basis that he had direct involvement in distributing more than a kilogram of heroin over the duration of the conspiracy." *Id.* at 8–9.

Finally, the Fifth Circuit panel rejected Mr. Jones's argument that his lack of notice regarding the true nature of the charged conspiracy offense was a structural constitutional error mandating automatic reversal. The panel quoted language from this Court's ruling in *United States v. Dominguez Benitez* that "the omission of a

single Rule 11 warning without more is not colorably structural," and then explained: "As long as a defendant received his indictment, understood the charges against him, and reviewed his factual basis with counsel, a defendant's 'attempt to recast his Rule 11 claim as a due process claim is invalid.'" App'x at 9–10 (quoting *United States v. Jerome*, 707 F. App'x 853, 853 (5th Cir. 2018), *cert. denied*, 138 S. Ct. 2008 (2018)). The court did not address Mr. Jones's central argument that he did *not* "understand the charges against him" due to the failure of either the district court or his trial counsel to properly instruct him about the nature and elements of the charged conspiracy.[3]

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit's structural error ruling conflicts with this Court's prior decisions.

This Court has recognized a category of errors in criminal proceedings that mandate automatic reversal of a conviction without requiring a prejudice inquiry: structural constitutional errors. Structural errors are those that deprive defendants of "basic protection" without which "a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment

[3] Mr. Jones also argued on appeal that he was denied his Sixth Amendment right to effective assistance of counsel throughout the proceedings, including by counsel's failure to subject the prosecution's case to meaningful adversarial testing and counsel's facilitation of a guilty plea that lacked factual support. The Fifth Circuit declined to consider his ineffective assistance of counsel claims on direct appeal since they had not been addressed by the district court, dismissing them without prejudice to Mr. Jones's right to raise the issues in a § 2255 proceeding. *See* App'x at 10.

may be regarded as fundamentally fair." *Rose v. Clark*, 478 U.S. 570, 577-78 (1986). As this Court explained in *Weaver v. Massachusetts*:

> The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. Thus, the defining feature of a structural error is that it affect[s] the framework within which the trial proceeds, rather than being 'simply an error in the trial process itself.

137 S. Ct. 1899, 1908 (2017) (citations and internal quotation marks omitted). Such errors are intrinsically harmful and therefore require "automatic reversal without any inquiry into prejudice." *Id.* at 1905. In fact, structural errors must be corrected even if there exists "strong evidence of a petitioner's guilt" and no "evidence or legal argument establishing prejudice." *Id*. at 1906.

This Court has previously determined that a criminal defendant's lack of "real notice of the true nature of the charge against him" renders his guilty plea involuntary and thus constitutionally defective. *Henderson v. Morgan*, 426 U.S. 637, 645 (1976). That defect occurs when a defendant is not informed—or is misinformed—regarding a critical element of the charged offense to which he is pleading. For example, in *Henderson*, the Court affirmed the vacatur of a second-degree murder plea because the defendant was not informed about the relevant *mens rea* requirement, namely, that the underlying assault had to have been "committed with a design to effect the death of the person killed." 426 U.S. at 645. The Court explained that, in such situations, a guilty plea will be constitutionally defective "because [the defendant] has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt." *Id*. at 645 n.13. In other words, the guilty

plea "was involuntary and the judgment of conviction was entered without due process of law" because "respondent did not receive adequate notice of the offense to which he pleaded guilty[.]" *Id*. at 647.

In *Bousley v. United States*, this Court similarly found that the defendant's guilty plea was "constitutionally invalid" when the district court "*misinformed* him as to the elements" of the offense to which he pled guilty. 523 U.S. 614, 618–19 (1998) (emphasis added). The Court reiterated that a defendant must receive "real notice of the true nature of the charges against him," reaffirming *Henderson*'s declaration that this particular constitutional mandate is "the first and most universally recognized requirement of due process." *Id*. at 618; *see also McCarthy v. United States*, 394 U.S. 459, 466 (1969) (explaining that "a guilty plea . . . cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts"). Because the plea in *Bousley* was constitutionally invalid—due to the lack of mandated notice and resulting absence of a voluntary admission of guilt—so too was the conviction.

Although *Henderson* and *Bousley* did not call upon the structural error doctrine by name, the errors there fall squarely within the categories of structural constitutional defects discussed in *Weaver*. In *Weaver*, the Court explained three broad rationales for why a particular error may not be amenable to a prejudice inquiry and thus qualify as "structural." 137 S. Ct. at 1908. First, an error is structural if "the right at issue is not designed to protect the defendant from erroneous prosecution but instead protects some other interest," in which case "harm

is irrelevant to the basis underlying the right." *Id.* Second, an error is structural "if the effects of the error are simply too hard to measure," such as when "the precise effect of the violation cannot be ascertained." *Id.* (internal quotation marks omitted). And, third, an error will be deemed structural if it results in "fundamental unfairness," in which case it "would be futile for the government to try to show harmlessness." *Id.* In a single case, "more than one of these rationales may be part of the explanation for why an error is deemed structural." *Id.*

Those rationales applied in *Henderson* and *Bousley*, as they do here. The bedrock due process requirement of a knowing and intelligent plea does not just guard against erroneous conviction, but safeguards "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." *United States v. Gary*, 954 F.3d 194, 204 (4th Cir. 2020). In other words, the deprivation itself is the harm—not just the resulting conviction. Indeed, "[t]he longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alterative courses of action open to the defendant." *Hill v. Lockhart*, 474 U.S. 52, 69 (1985) (internal quotation marks and citations omitted). That test cannot be satisfied when, as here, the defendant is not properly advised about the nature of his charged offense or the scope of conduct for which he could be held criminally responsible at trial.

The panel's conclusion that Mr. Jones's error is not structural not only contradicts this Court's prior decisions, but it also misapplies this Court's decision in *Dominguez Benitez*. As the panel noted, this Court stated in *Dominguez Benitez* that

"[t]he omission of a *single* Rule 11 warning *without more* is not colorably structural." 542 U.S. 74, 81 n.6 (2004) (emphasis added). However, that case involved a single Rule 11 warning regarding the consequences of a guilty plea—it did not involve misinformation regarding a critical element of the offense. *Id.* at 78 (noting the trial judge's failure "to mention that Dominguez could not withdraw his plea if the court did not accept the Government's [sentencing] recommendations"). Moreover, this Court made a point in *Dominguez Benitez* to contrast discrete Rule 11 violations—for which record evidence may show that "a misunderstanding was inconsequential"—with "the *constitutional question* whether a defendant's guilty plea was knowing and voluntary." *Id.* at 84, 84 n.10 (emphasis added). The implication being that, in the event of a constitutionally defective guilty plea—*e.g.*, where a defendant does not understand the true nature of the offense to which he is pleading—record evidence of guilt is not relevant to reversal because evidence of prejudice and harm is itself irrelevant. In *Dominguez Benitez*, the Court also reaffirmed the well-known principle that "structural errors undermining the fairness of a criminal proceeding as a whole" require reversal "without regard to the mistake's effect on the proceeding." *Id.* at 81.

The errors in this case are in the same category of constitutional defects addressed by this Court in *Henderson* and *Bousley*. Thus, under this Court's precedent, the errors rendered Mr. Jones's guilty plea unknowing and involuntary and thus constitutionally defective, mandating automatic vacatur. The Fifth Circuit panel's published decision created binding circuit precedent that conflicts with this Court's prior ruling, and this Court's review and correction is therefore warranted.

II. The Fifth Circuit's sufficiency ruling conflicts with this Court's prior decisions.

It is well established that "[a] guilty plea is insufficient in itself to support a criminal conviction." *United States v. Adams*, 961 F.2d 505, 508 (5th Cir. 1992). Instead, "the court must determine that there is a factual basis for the plea" before entering judgment. Fed. R. Crim. P. 11(b)(3). Rule 11(b)(3) requires district courts to "make certain that the factual conduct admitted by the defendant is sufficient as a matter of law" to establish his guilt of the charged offense, *see United States v. Trejo*, 610 F.3d 308, 313 (5th Cir. 2010), and it is intended to protect against a defendant "who mistakenly believes that his conduct constitutes the criminal offense to which he is pleading." *United States v. Lopez,* 907 F.2d 1096, 1100 (11th Cir. 1990) (citing *McCarthy*, 394 U.S. at 467).

"The gist of the crime of conspiracy as defined by the statute is the agreement or confederation of the conspirators to commit one or more unlawful acts," and "the single continuing agreement" among them constitutes the conspiracy offense. *Braverman v. United States*, 317 U.S. 49, 53–54 (1942). As stated in the Fifth Circuit's pattern jury instructions, a guilty verdict cannot be rendered if it is determined that the defendant "was not a member of the conspiracy charged in the indictment . . . even though that defendant may have been a member of some other conspiracy." Pattern Crim. Jury Instr. 5th Cir. 2.16. Thus, in evaluating the evidentiary support for a guilty plea, the district court must determine not only that the defendant participated in *a* drug conspiracy, but that he participated in the *specific* conspiracy to which he is pleading guilty.

"The question whether the evidence establishes the existence of one conspiracy (as alleged in the indictment) or multiple conspiracies" is a factual determination that must be established beyond a reasonable doubt. *United States v. Mitchell*, 484 F.3d 762, 769 (5th Cir. 2007). Moreover, as the Fifth Circuit and other Courts of Appeals have recognized, "evidence of a buyer-seller relationship is not, by itself, sufficient to support a conviction for conspiracy." *United States v. Mata*, 491 F.3d 237, 241 (5th Cir. 2007); *see also, e.g.*, *United States v. Dekle*, 165 F.3d 826, 829 (11th Cir. 1999).

In *Kotteakos v. United States*, this Court confronted a case where, like here, the government charged a single, large conspiracy against several individuals but ultimately proved multiple conspiracies "of the same sort executed through a common key figure" named Simon Brown. 328 U.S. 750, 752 (1946). The defendants were accused of conspiring to violate provisions of the National Housing Act, and Mr. Brown acted as a broker, assisting the others in fraudulently obtaining loans and charging a commission for his services. *Id.* at 753. At trial, the government presented evidence of the defendants' transactions with Mr. Brown related to National Housing Act loans but failed to show any connection between the "separate and independent groups" that were using Mr. Brown to obtain fraudulent loans. *Id.* at 753–54. As the Court put it, "the pattern was that of separate spokes meeting at a common center . . . without the rim of the wheel to enclose the spokes." *Id.* at 755. Thus, this Court stated that the evidence "made out a case, not of a single conspiracy, but of several, notwithstanding only one was charged in the indictment"—a point which the government admitted. *Id.* at 755–56.

Likewise, the evidence in this case established that Mr. Jones was a member of a smaller drug conspiracy—a "heroin dealing partnership"—in which he and his partner purchased their drug supply from Mr. McKinnis and, indirectly, Mr. Taylor. The Fifth Circuit panel determined that Mr. Jones's "ongoing involvement" with those suppliers sufficiently established his involvement in the "larger venture" based on the suppliers' operation of a "narcotics supply chain." App'x at 6. But that evidence only established Mr. Jones's connection to a "common key figure" in the broader conspiracy—evidence that *Kotteakos* makes clear is insufficient. Mr. Jones's ongoing relationship with suppliers involved in a larger conspiracy does not make him a knowing and voluntary participant in the conspiracy, and the panel's sufficiency finding conflicts with this Court's decision in *Kotteakos*. Accordingly, this Court's review is warranted.

CONCLUSION

For the foregoing reasons, Mr. Jones respectfully requests that his petition for a writ of certiorari be granted.

Respectfully submitted January 4, 2021,

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