No. _____

In The
Supreme Court of the United States

JOHN G. WILLIAMS, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

FRITZ SCHELLER, ESQ.
FRITZ SCHELLER, P.L.
200 East Robinson Street
Suite 1150
Orlando, Florida 32801
(407) 792-1285
fscheller@flusalaw.com
Counsel for Petitioner

QUESTION PRESENTED

Given *Stromberg v. California*, *Yates v. United States*, and *Griffin v. United States*, whether this Court has clearly established that a jury's verdict that might have been based on a "legally inadequate" theory of criminal liability necessarily violates the Due Process Clause, which relief requires that verdict's vacatur *per se*. *See Yates v. United States*, 354 U.S. 298, 312 (1957) (explaining the rule "which requires a verdict to be set aside in cases where the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected").

Asked differently, whether, in a federal prosecution, a general guilty verdict on charges of wire fraud must be set aside (on Due Process grounds under *Yates*) if the jury *could have* or *might have* found guilt based on a "legally inadequate" or "legally insufficient" reason or theory of criminal liability (like the mere breaching of a civil contract).[1]

---

[1] *See generally, e.g.*, *United States v. Yates*, ___ F.4th ___, and available at 2021 WL4699251 (9th Cir. Oct. 8, 2021).

PROCEEDINGS IN FEDERAL TRIAL AND APPELLATE COURTS DIRECTLY RELATED TO THIS CASE

Petitioner, John G. Williams, Jr., was the criminal defendant in the district court and the appellant in the court of appeals. Respondent, the United States of America, was the prosecutor and plaintiff in the district court and the appellee in the court of appeals. The related cases include the following:

United States District Court (M.D. Fla. (Fort Myers Division)):

United States v. John G. Williams, Jr., Case No. 2:17-cr-16-JES-UAM

United States Court of Appeals (11th Cir.):

United States v. John G. Williams, Jr., Appeal No. 19-12053, available at ___ F. App'x ___, 2021 WL 4206273 (11th Cir. Sept. 16, 2021) (unpublished). *See* Appendix.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

FEDERAL STATUTES

OTHER

TABLE OF AUTHORITIES – Continued

PETITION FOR A WRIT OF CERTIORARI

Petitioner John G. Williams, Jr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit's unpublished decision and opinion, ___ F. App'x ___ (per curiam), also available at 2021 WL 4206273 (11th Cir. Sept. 16, 2021), is provided in the petition's appendix. *See* Appendix; *see also United States v. John G. Williams, Jr.*, 2021 WL 4206273 (11th Cir. Sept. 16, 2021) (per curiam) (unpublished).

JURISDICTION

The Eleventh Circuit issued its decision and opinion on September 16, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Mr. Williams has timely filed this petition pursuant to S. Ct. Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution says:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., amend. V.

STATEMENT OF THE CASE

Introduction

This case asks the question left unanswered by the Court in *Yates v. United States*, 354 U.S. 313 (1957) – whether a jury's general verdict *must* be set aside and vacated under the Fifth Amendment's Due Process Clause when such verdict *could* or *might have been* based on a "legally inadequate" theory of criminal

liability.[2] Mr. Williams was charged with conspiracy and wire fraud matters[3] along with his co-defendants[4]

---

[2] At the outset, Mr. Williams is fully aware and cognizant of the Court's precedent established in *Hedgpeth v. Pulido*, 555 U.S. 57 (2008) (establishing harmless error review to alternative theory error), and *Skilling v. United States*, 561 U.S. 358 (2010) (extending the holding from *Pulido* to cases on direct review). As noted in *Pulido*, "Both *Stromberg* and *Yates* were decided before we concluded in *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824 (1967), that unconstitutional errors could be harmless. Accordingly, neither *Stromberg* nor *Yates* had reason to address whether the instructional errors they identified could be reviewed for harmlessness, or instead required automatic reversal." *Pulido*, 555 U.S. at 60. Here, "The question presented for review, as set forth in the petition, is simply whether a general verdict of guilty under circumstances such as existed here 'is reversible.' " *Griffin*, 502 U.S. at 48. It is Mr. Williams's position that the facts of his case require automatic reversal. His case does not rest merely on "an instructional error," rather, it involves a "theory of conviction which 'could not constitute a lawful foundation for a criminal prosecution.' " *United States v. Holly*, 488 F.3d 1298, 1305 n.2 (10th Cir. 2007) (distinguishing the type of legal insufficiency present in that case "from the type of legal insufficiency present in *Yates* and *Stromberg*, both of which involved legal errors that were not subject to harmless error review and therefore could not sustain a conviction under any circumstances") (quoting *Stromberg*, 283 U.S. at 368). That's to say, breaching a contract is not illegal; accordingly, were the jury to have found Mr. Williams guilty of conspiracy and wire fraud because he broke a contract with Lee County in this case, his convictions (Mr. Williams would argue) cannot stand because they are based on a legally insufficient theory of liability. In other words, the case of Mr. Williams involves a legal error that cannot (or should not) be subject to harmless error review because the criminal convictions sustained by Mr. Williams cannot be upheld under any circumstances. His motion for judgment of acquittal should have been granted by the district court and the Eleventh Circuit erred when affirming its denial.

in a case involving local government grant applications, business agreements, and public contracts.[5] When Mr. Williams and his co-defendants breached its contract with Lee County, Florida, the prosecution suggested this was a criminal act for which the jury *could* hold Mr. Williams liable to the charges levied against him. It is well-settled that "[i]t is not illegal for a party to breach a contract[.]" *United States v. Blankenship*, 382 F.3d 1110, 1133 (11th Cir. 2004). Mr. Williams was found guilty on a general verdict form. *See* Doc. 190. However, it is impossible to tell from the verdict

---

Mr. Williams respectfully and humbly asks that the Court accept his case to consider that "while there are some errors to which [harmless-error analysis] does not apply, [though] they are the exception and not the rule," the question presented here fits within the exception – is it fair to let stand a jury's general verdict when it *could have been* or it *might have been* based on a legally inadequate theory of criminal liability, in violation of the Fifth Amendment's Due Process Clause? *See Pulido*, 555 U.S. at 60-61 (collecting cases on constitutional harmless-error review such that "harmless-error analysis applies to instructional errors so long as the error at issue does not categorically vitiate *all* the jury's findings") (internal quotation omitted) (emphasis in original); *see also Neder v. United States*, 527 U.S. 1 (1999).

[3] Mr. Williams, specifically, was charged in Count 1 with conspiracy, and then in Counts 2, 3, 4, and 5 with wire fraud. He was found guilty of Counts 1, 2, and 3, but was acquitted of Counts 4 and 5.

[4] The co-defendants were Dr. Kay Gow and her husband Robert Gow. *See* Doc. 3.

[5] According to the indictment, "Lee County [Florida] awarded VR Labs a $5 million grant through the FIRST initiative program for the reimbursement of Qualified Capital Investments ("QCIs") expended by or on behalf of VR Labs to build a manufacturing facility in Lee County." Doc. 3, page 6.

whether the jury found Mr. Williams criminally guilty on a valid and permissible ground (he committed fraud), or, because it found him in breach of contract, an otherwise "legally inadequate" and impermissible reason to convict an accused. If the jury held Mr. Williams liable because it found that he broke the contract with Lee County,[6] this would be considered a "legally inadequate" theory of criminal responsibility. *See Blankenship*. This Court implied in *Yates* that this kind of verdict may very well violate the Due Process Clause. *See Griffin v. United States*, 502 U.S. 46, 52 (1991). Mr. Williams now presents his case for the chance and opportunity to expressly address the question left unanswered in *Yates*, *i.e.*, whether a jury's general verdict violates the Due Process Clause if, *inter alia*, it *might* (or it *could*) have been based on a "legally inadequate" theory of liability. *See Yates*, 502 U.S. at 55-56; *see also*, *e.g.*, *Clark v. Crosby*, 335 F.3d 1303, 1308 (11th Cir. 2003) (observing "that the Supreme Court has *not* clearly established that a general verdict that might have been based on a 'legally inadequate' theory violates the Due Process Clause") (emphasis in original).

Procedural history

Mr. Williams was indicted with his co-defendants, Kay Gow and her husband Robert Gow, with

[6] Such suggestions were made in the district court, *see*, *e.g.*, Doc. 279 at pages 98 ("They [Lee County] didn't get what they wanted. They wanted their money to be used for hard costs. They didn't get that."), 126-127, 152, 216, 222, and 224.

conspiracy to commit wire fraud and substantive counts of wire fraud.[7] The indictment was returned on February 23, 2017. *See* Doc. 3. Trial was held between February 5, 2019, and February 22, 2019. *See* Docs. 161-188. Mr. Williams was found guilty of one count of conspiracy and two substantive counts of wire fraud. *See* Doc. 190 (the jury's verdict).

Sentencing was held on May 20, 2019. *See* Doc. 233. Mr. Williams was sentenced to 30 months in prison (or 2 ½ years) followed by three years of supervised release. *See* Doc. 242; *see also* Doc. 249 (the corrected judgment). Mr. Williams appealed his case to the Eleventh Circuit Court of Appeals on June 3, 2019. *See* Doc. 257 (notice of appeal). He lost on direct appeal. *See* Appendix.

Underlying substantive facts

On appeal, Mr. Williams, along with his co-defendant Kay Gow,[8] argued that the district court erred when denying their motions for judgment of acquittal. In his written Rule 29 motion to the district court, Mr.

---

[7] Count 1 of the indictment alleged criminal conspiracy in violation of 18 U.S.C. § 371. Counts 2 through 5 charged substantive wire fraud violations, 18 U.S.C. § 1343. The remaining counts, Counts 6 and 7, did not involve Mr. Williams; rather, they charged the co-defendants with money laundering offenses. Mr. Williams was found guilty after jury trial for Counts 1, 2, and 3, but he was acquitted of Counts 4 and 5. *See* Doc. 3 (the indictment); *see also* Doc. 190 (jury verdict).

[8] Robert Gow passed away shortly after the trial. *See United States v. Gow*, 2021 WL 4206273, at *1 n.2 (11th Cir. Sept. 16, 2021).

Williams synthesized the underlying substantive facts, in pertinent part:

> John G. Williams, Jr. graduated from the Virginia Military Institute ("VMI") and thereafter served in the Army and Navy. John G. Williams Jr.'s family owned a farm in Virginia Beach, VA for several generations, where they grew and sold produce like butter beans and casaba melons. Defendant Williams worked on the farm.
>
> Defendants Robert and Kay Gow were land-developers in Virginia who, by the late 1990s, earned sufficient wealth to retire to Florida. While they lived in Virginia, the Gows bought produce at the Williams' farm and, as a result, befriended the Williams family. In the early 2000s, Kay and Robert Gow started Herbal Science, a company whose mission was to discover, and consistently replicate, the chemical compounds in plants that benefit human beings and help fight disease. The Gows eventually owned and controlled a variety of Herbal Science-related companies, including Herbal Science, LLC, Herbal Science Group, LLC, Herbal Science Singapore, Ltd., and Botanical Technologies, LLC (collectively, "Herbal Science"). Herbal Science hired PhD chemists and biologists, earned patents from the United States Government, and published findings in various peer-reviewed journals. *See*, e.g., Williams Exhibits 47 & 48, "Optimized Turmeric Extracts have Potent Anti-Amyloidogenic Effects" and "Pharmacokinetic analysis of

anti-allergy and anti-inflammation bioactive in a nettle (*urtica dioica*) extract".

In the early 2000s, the Williams family sold the farm. The Gows knew about that sale. In 2005, after the sale of his family farm, John G. Williams, Jr. was approached to invest in Herbal Science. He invested $250,000. In 2007, around the time that Weston Presidio and Aisling Capital collectively invested $28 million in Herbal Science, John G. Williams, Jr. and his son, John M. Williams, invested an additional $500,000 in Herbal Science. John M. Williams got a job with Herbal Science. He developed, and coded, Herbal Science's proprietary software platform, which shortened the time it took to analyze the chemical data from plant extracts. He also worked as a lab analyst and DART technician. John G. Williams, Jr. also provided maintenance and engineering services to Herbal Science. The Gows trusted John G. Williams, Jr. and John M. Williams with Herbal Science's confidential information, including its technology and trade secrets. John G. Williams, Jr. knew about his son's work at Herbal Science and its value.

By early 2010, much of the $28 million that Weston Presidio and Aisling Capital had invested in Herbal Science was gone. The Government's theory, at trial, was that Herbal Science's financial difficulties led the Gows to seek a merger with Vitarich Laboratories and, when that failed, use Government funding to keep Herbal Science afloat long enough to merge with another entity. The Government

alleged that John G. Williams conspired with the Gows to effectuate such a merger. However, the Government presented no evidence that John G. Williams, Jr. knew about the poor financial health of Herbal Science or had any reason to believe that such a merger was necessary. In fact, the opposite is true. The Government elicited testimony from multiple witnesses that the Gows presented themselves as having great personal wealth, and thus the kind of people who would not face financial difficulties. Moreover, the Gows were loath to share financial information regarding Herbal Science or other Herbal Science-related entities with anyone. *See*, *e.g.*, testimony of Reginald Steele, Jeff Kottkamp regarding their failed attempts to obtain financials. It is inconceivable, given the evidence the Government presented, that John G. Williams, Jr. had any idea regarding Herbal Science's poor financial health.

In or about late 2010, the Gows created VR Labs. The ultimate purpose of VR Labs was to bottle and sell Herbal Science products. In early 2011, VR Labs applied for a $5M Lee County FIRST Incentive Award Grant ("Incentive Award").

On February 15, 2011, Lee County awarded VR Labs the Incentive Award, and entered a written agreement with VR Labs outlining the terms of the Incentive Award (the "Agreement").

The Agreement noted that Lee County funds were to be used to reimburse VR Labs for Qualified Capital Investments ("QCI"), which included "hard costs" like building expenses and hardware, but not "soft costs" like salaries. Importantly, the Government presented no evidence that John G. Williams, Jr. knew, or had any reason to know, that the Incentive Award funds were meant for QCI. Further, Defendant Williams was not a signatory to the Agreement.

In or around Spring 2011, John G. Williams, Jr., who is a licensed electrical engineer in Virginia and who had already been entrusted with proprietary Herbal Science information, was hired to develop, source, and improve a bottling line for VR Labs.

In April 2011, Defendant Williams, who had a pre-existing corporation called Williams FRM – Fast Response Maintenance, LLC ("Williams FRM"), filed an application with the State of Florida for the fictitious name Williams Specialty Bottling Equipment ("WSBE"). The application, which is available to view on the internet through the Florida Department of State notes that WSBE is a fictitious name for Williams FRM and that the application was filed by John Williams. Thereafter, Defendant Williams studied bottling lines and met with A- Packaging (a bottling line vendor in Indiana). He engaged in communications with A-Packaging regarding VR Labs' needs. He also advised VR Labs and

Herbal Science regarding the electrical needs for the bottling line.

In September 2011, Defendant Williams sent an invoice to VR Labs for $1,775,714.00 ("WSBE Invoice"). The WSBE Invoice outlined the component parts of the bottling line that WSBE would provide, as well as WBSE's obligation to: (1) develop, install, and test a proprietary software package to enhance system performance and provide proprietary information requirements, (2) develop, install, and test a proprietary security system for the bottling line, and (3) perform preventive maintenance and repairs, to include all parts and labor for two years from installation.

Importantly, John M. Williams, not John G. Williams, Jr., was responsible for the software development, testing, and installation. The WSBE Invoice included, among other things, a physical address for WSBE in Florida, a physical address for WSBE in Virginia, WSBE's IRS Employer Identification Number, and Defendant Williams' phone number. VR Labs submitted the WSBE Invoice, along with all of this identifying information, to Lee County.

The Government presented no evidence that John G. Williams, Jr. knew or had any reason to know that the WSBE Invoice would be submitted to Lee County. However, of note, the WSBE Invoice contains no false statements or attempts to conceal or otherwise hide Mr. Williams' involvement with the

bottling line. By putting two physical addresses and his cell phone number on the invoice, Mr. Williams was plainly making himself available to anyone who might inquire as to the bottling line.

Between September 2011 and May 2012, Mr. Williams sent $956,355.97 of Lee County funds to A-Packaging for payment on the bottling line. In that same time frame, Mr. Williams pressed Kay Gow to let him get the line installed, but he was rebuffed.

He was routinely advised that the VR Labs plant was not ready to receive the line. Williams went so far as to blind carbon copy John Saltamartine on emails to Kay Gow regarding his efforts to get the line installed.

During Spring 2012, expensive components of the bottling line (e.g. the cooling tunnel) were delivered to the VR Labs plant in Florida. Other parts of the bottling line were in Arkansas, Illinois, and Indiana.

In late July 2012, Robert Brown, the contractor in charge of building out the plant, placed a lien on the building and threatened anyone who entered therein with arrest for trespass. As a result, the remaining pieces of the bottling line could not be delivered.

In late 2012, John Saltamartine met with John M. Williams to discuss the points on the bottling line that would benefit from sensor analysis. They met on several occasions. Eventually, Mr. Saltamartine calculated the

potential savings from the discussed efficiency upgrades and John M. Williams' software in the millions of dollars. The software's value was heightened by the fact that VR Labs would own it, could license it, and also planned to install it on multiple lines. Similarly, Jeff Kottkamp testified that he had spoken with a friend who had recently purchased (not licensed) software for $1M.

In November 2012, FBI Special Agent Kuchta approached defendant Williams in Virginia and inquired as to the bottling line, the bottling line software, and the Lee County funds. Williams advised SA Kuchta that the Gows, who he and others believed to be independently wealthy, were responsible for repaying the Incentive Award. Mr. Williams believed that any risk of loss from the Incentive Award fell on the Gows, not Lee County. Mr. Williams later emailed SA Kuchta, directing SA Kuchta's attention to the part of the Agreement that required VR Labs to repay all funds received by Lee County, regardless of whether it was successful or not. Mr. Williams further advised SA Kuchta that his son was working on the software. Ultimately, John G. Williams, Jr. took a line of credit on his own home and used the proceeds to pay A-Packaging on the bottling line. A-Packaging eventually transferred possession of the bottling line to Mr. Williams and Mr. Williams delivered the line to VR Labs. John G. Williams, Jr. believed in Herbal Science and wanted it to succeed.

Between 2005 and 2015, John G. Williams, Jr., members of the Williams family (including his mother and father), and Williams-controlled corporate entities invested or loaned $1,835,007.74 to Herbal Science and VR Labs. Of this, $799,655 was paid to Herbal Science as repayable notes between 2013 and 2015.

In 2017, the Gows approached the Williamses about a merger that would result in the creation of a new entity. The Gows advised that the Williamses' $799,655 in repayable Herbal Science notes would be converted to equity in the new entity, thus extinguishing the Williamses' ability to recover their cash. The Williamses sued Herbal Science in Delaware. The Williamses obtained a default judgment for $799,655, including interest.

On February 19, 2019, the Government rested its case-in-chief. Thereafter, Defendant Williams made an application, pursuant to F.R.Cr.P. 29, for a Judgment of Acquittal as to all counts of the Indictment. The Court denied Defendant Williams' Motion as to Counts 1, 2, and 3 (Conspiracy to Commit Wire Fraud and two (2) counts of Wire Fraud) and reserved ruling as to Counts 4 and 5 (two (2) counts of Wire Fraud).

On February 20, 2019, Defendant Kay Gow began her case-in-chief. Defendant Kay Gow testified in her own defense and presented no other testimony. On February 21, 2019 Defendant Kay Gow rested. Thereafter,

> neither Defendant Robert Gow nor Defendant Williams put forth a case.
>
> On February 21, 2019, Defendant Williams renewed his Motion for Judgment of Acquittal pursuant to Rule 29(a). The Court denied Defendant Williams' renewed Motion regarding Counts 1, 2, and 3 and continued to reserve decision regarding Counts 4 and 5. The Court noted that it did not believe it could consider any evidence admitted outside of the Government's case-in-chief.
>
> On February 22, 2019, the jury returned, as to Defendant Williams, verdicts of guilty as to Counts 1, 2, and 3 and not-guilty as to Counts 4 and 5. On March 5, 2019, the Court denied, as moot, Defendant Williams' Motion for Judgment of Acquittal as to Counts 4 and 5.

Doc. 212-1, pages 1-9 (footnotes omitted); *see also Gow*, 2021 WL 4206273 at *1-3.

On review to the Eleventh Circuit Court of Appeals

On appeal, it was asserted that "[t]he Government also framed its argument about the counts related to Lee County in terms of contract law:

> And the county did not receive what it bargained for. It didn't receive a deal where the people who got the grant money spent it for permissible purposes. And in the end, of course, they never got what they bargained for

> at all, because they never got the pilot plant, they never got the jobs that were promised pursuant to the agreement, they didn't get the benefit of their bargain.

(Doc. 276 at 29). Thus, in the view of the Government, since Lee County did not get 'what it bargained for' the defendants committed fraud. (Doc. 276 at 29). The district court denied [Kay] Gow's motion for judgment of acquittal. (Doc. 276 at 45)." Initial Brief of co-appellant Kay Gow, pages 37-38, and available at 2020 WL 614443, at *37-38.[9]

In other words:

> The Court should also reverse [Appellants'] wire fraud convictions related to Lee County. According to the Government, the "big lie" in the case was that the County awarded money to be used to pay for qualified capital improvements, and that the money should not have gone to pay the soft costs such as salaries to Dr. Gow and her husband. Yet, when the Government explained its rationale, it employed the language of contract law: the county "did not receive what it bargained for," that is, "they never got the pilot plant, they never got the jobs that were promised pursuant to the agreement." (Doc. 276 at 29).
>
> Breaching a contract, even intentionally doing so, is not a federal crime. *See United*

[9] Mr. Williams adopted the arguments raised and briefed by his co-appellant by motion which was granted by the appellate court in an order dated July 17, 2020.

States v. Blankenship, 382 F.3d 1110, 1132 (11th Cir. 2004) ("It is not illegal for a party to breach a contract; a contract gives a party two equally viable options (perform or pay compensation), between which it is generally at liberty to choose."); *United States v. Berheide*, 421 F.3d 538, 540 (7th Cir. 2005) ("breach of contract is not a crime"); *see also United States v. Chandler*, 388 F.3d 796, 801, 803 (11th Cir. 2004); *McEvoy Travel Bureau, Inc. v. Heritage Travel, Inc.*, 904 F.2d 786, 791 (1st Cir. 1990) ("Nor does a breach of contract in itself constitute a scheme to defraud.").

Here, the Government urged the jury in closing arguments to convict Dr. Gow [and Mr. Williams] based on a legally inadequate theory; *i.e.*, VR Labs promised to create 200 jobs, and because it failed to do so, Dr. Gow [and Mr. Williams] could be convicted of defrauding Lee County. (Doc. 279 at 125).

It is true that Lee County never received the employment that VR Labs had an obligation to generate. But the parties specifically devised a remedy for such a breach: VR Labs would have to pay Lee County its money back within 45 days.

Even if VR Labs breached its contract, the company's ultimate inability to perform this goal under the agreement cannot render its principals *criminally liable* for wire fraud. Expanding the criminal law to sweep in garden variety breaches of contracts, breaches for which the parties have already devised a

> remedy, would raise insurmountable due process concerns because breaching a contract is not "plainly and unmistakably" proscribed by criminal law. *Chandler*, 388 F.3d at 805 (reversing wire fraud conviction under rule of lenity).
>
> If the Court agrees that the failure to create jobs, standing alone, is a legally unsustainable ground for conviction, then both wire fraud counts related to Lee County must be vacated. Where multiple alternative grounds for conviction are submitted to a jury, a resulting general verdict of guilty must be set aside if it is "impossible to tell" whether it may have been based solely upon an unconstitutional or "legally inadequate" ground among those submitted. *Griffin v. United States*, 502 U.S. 46, 56 (1991).
>
> The logic of *Griffin* should control the outcome here. Dr. Gow [and Mr. Williams] was convicted for Counts Two and Three on a general verdict form. (Doc. 190 at 2). Thus, it is impossible to tell whether the jury found her guilty based on a legally inadequate theory, that is, VR Labs' breach of its agreement to create the jobs promised constitutes wire fraud. Under *Griffin*, this Court must therefore reverse Counts Two and Three.

See id. at 47-49, available at 2020 WL 614443, at *47-49.

The government argued: "Ample evidence, therefore, showed that [Appellants] had not just breached a

contract – instead [Kay Gow] had made multiple false representations to the county [Lee County] and had deceived the county about the very nature of VR Labs, its ability to succeed as a functioning company, and its intended use of the county grant money. The jury reasonably could find from that evidence that she had done so intending to obtain funds from the county both to operate VR Labs and to enrich herself and her husband." Gov't Answer Brief, page 48, and available at 2020 WL 4932383 at *48.

The Eleventh Circuit reviewed the matter *de novo*. *See Gow*, 2021 WL 4206273, at *3 ("'We review both a challenge to the sufficiency of the evidence and the denial of a Rule 29 motion for judgment of acquittal *de novo*.'") (quoting *United States v. Gamory*, 635 F.3d 480, 497 (11th Cir. 2011)). "In doing so," the court reiterated, "'[w]e view the evidence in the light most favorable to the government,' making all reasonable inferences and credibility choices in the government's favor, and then 'determine whether a reasonable jury *could* have found the defendant guilty beyond a reasonable doubt.'" *Id*. (quoting *Gamory*, 635 F.3d at 497) (emphasis added). The court admonished, "We will 'not disturb the denial of a Rule 29 motion so long as a reasonable trier of fact *could* find guilt beyond a reasonable doubt.'" *Id*. (quoting *United States v. Chafin*, 808 F.3d 1263, 1268 (11th Cir. 2015)) (emphasis added).

The Eleventh Circuit held that a reasonable jury in this case *could* find Mr. Williams guilty beyond a reasonable doubt "because the jury is free to choose between reasonable conclusions to be drawn from the

evidence presented at trial," and, moreover, "'[i]t is not necessary for the evidence to exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt.'" *Gow*, 2021 WL 42062783 at *4 (quoting *United States v. Garcia*, 447 F.3d 1327, 1334 (11th Cir. 2006)). To be sure, "We must uphold the denial of a motion for judgment of acquittal as 'long as a reasonable trier of fact *could* find guilt beyond a reasonable doubt.'" *Id*. (quoting *Chafin*, 808 F.3d at 1268) (emphasis added).

The court swept aside the argument that finding guilt based on a breach-of-contract theory was "legally inadequate" and certainly impermissible. Specifically, the court dispensed with this presentation, thusly:

> [Appellants] argue[ ] that there are innocuous explanations for her [meaning Kay Gow's] conduct, but none of the explanations demonstrates that a reasonable jury could not have found beyond a reasonable doubt that she [or Mr. Williams] intended to defraud Lee County. First, she takes out of context a prosecutor's isolated statement during trial that Lee County "did not receive what it bargained for," because it "never got the pilot plant, they never got the jobs that were promised pursuant to the agreement." Thus, she contends that the government's case against her rested on a breach of contract theory, which cannot support a conviction for federal wire fraud. We disagree. The government's case was based on the evidence that we have summarized, notwithstanding the prosecutor's stray comment

> that may have roughly alluded to breach of contract principles. Moreover, the district court properly instructed the jury that "[a] statement or representation is false or fraudulent if it is about a material fact that the speaker knows is untrue, or makes with reckless indifference to the truth, and makes with the intent to defraud." *See United States v. Clay*, 832 F.3d 1259, 1311 (11th Cir. 2016). Accordingly, a reasonable jury could have concluded that Kay Gow promised to create jobs to secure the grant award while knowing – or being recklessly indifferent to the possibility – that VR Labs would not be able to fulfill that promise.

Gow, 2021 WL 4206273, at *6; *see* Appendix.

Framing the question presented

The jury in this case could have relied on a theory of prosecution among others that would not legally sustain criminal liability. This was not a matter involving a "prosecutor's stray comment that may have roughly alluded to breach of contract principles." *Id*. Because the jury returned a general verdict, there is no way to determine on what basis it found guilt – the verdict *could* have been based on a breach-of-contract theory, a "legally inadequate" theory under federal law to sustain a criminal conviction. *See*, *e.g.*, *Clark v. Crosby*, 335 F.3d 1303, 1308-1309 (11th Cir. 2003). Though the appellate court found that there was sufficient evidence to uphold the jury's verdict because the jury *could* reasonably find guilt beyond a reasonable

doubt (presumably on a valid and legally acceptable theory of criminal liability), the Eleventh Circuit did not substantively account for the "legally inadequate" theory of liability posited by the government at trial, i.e., because there was a breach of contract with Lee County, a finding of guilt was permissible (in other words, breaching the contract with Lee County was criminally illegal). Rather, the court held, when "[c]onsidering all the evidence . . . we are not persuaded" that Mr. Williams is right. "Although [Mr.] Williams might 'disagree[]' with the interpretation of the evidence, mere disagreement about the best way to read the evidence presented at trial is insufficient to show that no reasonable jury could have convicted him." *Gow*, 2021 WL 4206273 at *8; *see also* Appendix. In short, "Viewing all this evidence in the light most favorable to the government, a reasonable construction of the evidence allowed the jury to find the defendant guilty beyond a reasonable doubt. In other words, a reasonable jury *could* infer that Williams knew of the plan to defraud Lee County and intended to join the conspiracy to do so." *Id*. (emphasis added). Maybe, . . . but the argument challenges the nature of the general verdict rendered by the jury which *could have been* or even *might have rested* on a legally insufficient theory of criminality. If so, then the jury's general verdict violates the Due Process Clause of the Fifth Amendment and Mr. Williams's convictions cannot stand. Ergo, the appellate court erred when upholding the district court's ruling denying the motion for judgment of acquittal.

The Eleventh Circuit rendered its unpublished decision and opinion on September 16, 2021. It affirmed the district court. *See* Appendix ("the district court did not err in denying Williams's motion for judgment of acquittal"). Mr. Williams now comes before this Honorable Court on his petition thus filed. Having served his sentence of imprisonment, Mr. Williams remains under terms and conditions of supervised release pending this petition for writ of certiorari.

REASONS FOR GRANTING THE WRIT

This petition squarely presents a firm and ready opportunity to directly answer the question left open in *Yates v. United States*, 354 U.S. 298 (1957), that is, whether a jury's general verdict that might have been based on a "legally inadequate" theory of criminal liability violates the Due Process Clause of the Fifth Amendment.

The question presented by Mr. Williams is whether, in a federal criminal prosecution, a jury's general guilty verdict on charges of wire fraud *must* be set aside on Due Process grounds under *Yates v. United States*, 354 U.S. 298 (1957), if the jury *could have* or *might have* found guilt based on a "legally inadequate" reason or theory of criminal liability (in this instance, the breach of a civil contract). *See*, *e.g.*, *Clark v. Crosby*, 335 F.3d 1303, 1309 (11th Cir. 2003) ("the decision in *Yates* was constitutionally mandated . . . only if a general verdict that might rest on a legally inadequate

basis violates the Due Process Clause"); *see also*, *e.g.*, *United States v. Jefferson*, 674 F.3d 332, 361 (4th Cir. 2012) ("[p]ursuant to the Supreme Court's decision in *Yates v. United States*, when a general verdict on a single criminal charge rests on alternative theories, one valid and the other invalid, the verdict must be set aside if it is impossible to tell which ground the jury selected") (internal quotation omitted); *United States v. Fuchs*, 218 F.3d 957, 962 (9th Cir. 2000) ("[t]he Supreme Court has held that when a general verdict may be based on a legally inadequate ground, such as because of a statutory time bar, the verdict should be set aside").

The Seventh Circuit has summarized the rule, generally:

> There have been a number of Supreme Court and appellate decisions on the problems that stem from general verdicts. The critical factor in many of these cases is whether the appellant's claim is based on the alleged legal insufficiency or an alleged factual insufficiency. As noted above, "[t]he general rule is that when a jury returns a guilty verdict on an indictment charging several acts in the conjunctive, . . . the verdict stands if the evidence is sufficient with respect to any one of the acts charged." *Turner v. United States*, 396 U.S. 398, 420, 90 S. Ct. 642, 654 (1970). This rule does not hold true, however, when a general jury verdict renders it impossible to say whether a defendant was convicted on an unconstitutional or legally invalid ground. Thus,

> the conviction must "be set aside in cases where the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected," *Yates v. United States*, 354 U.S. 298, 312, 77 S. Ct. 1064, 1073 (1957), *overruled on other grounds*, *Burks v. United States*, 437 U.S. 1, 98 S. Ct. 2141 (1978).

United States v. Beverly, 913 F.2d 337, 362 (7th Cir. 1990) (footnote omitted).

What happens, for example, when a promise is broken? Should the party at fault be held to criminal responsibility? What about a breach-of-contract? Should a broken contract become illegal and a crime? Of course not. As the Eleventh Circuit has explained it: "A contract is a document that serves only to establish a legal relationship between two parties; it gives each party nothing more than a legal expectancy in having the other party *either* perform *or* (generally) respond in damages." *United States v. Blankenship*, 382 F.3d 1110, 1133 (11th Cir. 2004) (emphasis in original). Hence, "It is not illegal for a party to breach a contract," more so, "a contract gives a party two equally viable options (perform or pay compensation), between which it is generally at liberty to choose." *Id.*; *see also*, *e.g.*, *United States v. Berheide*, 421 F.3d 538, 540 (7th Cir. 2005) ("but breach of contract is not a crime"); *McEvoy Travel Bureau, Inc. v. Heritage Travel, Inc.*, 904 F.2d 786, 791 (1st Cir. 1990) ("not every use of the mails or wires in furtherance of an unlawful scheme to deprive another of property constitutes mail or wire

fraud," to be sure, "[n]or does a breach of contract itself constitute a scheme to defraud"). Even were it presumed or assumed that Mr. Williams breached any contract with Lee County, that in and of itself could not be a ground on which to find him guilty of a crime.[10]

What happens, then, if the jury in this case *did* find Mr. Williams guilty of the wire fraud allegations because it said he broke the agreement with Lee County? This would be a "legally inadequate" theory of criminal liability and the conviction could not stand. We don't know this for certain, if at all (as a truth), because the jury's findings were returned as a general verdict. We don't know on what basis the jury rendered its general verdict. The government would argue that there were other valid reasons to find Mr. Williams guilty, the least of which, he committed fraud (or joined in a conspiracy to commit fraud as against Lee County). *See*, *e.g.*, *Turner v. United States*, 396 U.S. 398, 420 (1970) ("when a jury returns a guilty verdict on an indictment charging several acts in the conjunctive, as Turner's indictment did, the verdict stands if the

---

[10] This Court said in *Cramer v. United States*, 325 U.S. 1, 36 n.45 (1945), that "[t]he verdict in this case was a general one of guilty, without special findings as to the acts on which it rests. Since it is not possible to identify the grounds on which [the defendant] was convicted, the verdict must be set aside if any of the separable acts submitted was insufficient." Likewise, Mr. Williams assumes the position that the verdict in his case was also a general guilty verdict, without special findings. Because the jury's verdict *could have* or even *might have been* based on a breach-of-contract theory, a legally infirm reason to sustain the convictions, it violates the Fifth Amendment's Due Process Clause *per se*, and as such, it must be reversed.

evidence is sufficient with respect to any one of the acts charged"). Indeed, the Eleventh Circuit upheld the jury's verdict on this viewpoint, ruling that there was legally sufficient evidence (as a factual matter) to sustain Mr. Williams's convictions for Counts 1, 2, and 3. *See* Appendix. Again, it is impossible to determine from the general verdict on what basis the jury found Mr. Williams guilty, a legally valid reason (criminal defrauding) or a legally inadequate theory (breach-of-contract). Mr. Williams takes the position that in the circumstances presented by this case, the fact that his jury *could have* rested its verdict on a "legally inadequate" theory of criminal liability (in this case, the breach of a civil contract), the general verdict *must* be found to violate the Fifth Amendment's Due Process Clause and his convictions should be vacated and set aside.[11] And because this Court "has *not* clearly

---

[11] *See Griffin v. United States*, 502 U.S. 58, 55 (1991). Justice Scalia wrote:

> *Yates*, however, was the first and only case of ours to apply *Stromberg* [*v. California*, 283 U.S. 359 (1931)] to a general verdict in which one of the possible bases of conviction did not violate any provision of the Constitution but was simply legally inadequate (because of a statutory time bar). As we have described, that was an unexplained extension, explicitly invoking neither the Due Process Clause (which is an unlikely basis) nor our supervisory powers over the procedures employed in federal prosecution.

Id. Justice Scalia went on to note in *Griffin*, "Our continued adherence to the holding of *Yates* is not at issue in this case." *Id*. at 56. It *is* here, in this petition – Mr. Williams asks whether *Yates* extends to and means that a general verdict cannot stand under the Due Process Clause when the jury *could have* or *might have*

established that a general verdict that might have been based on a 'legally inadequate' theory violates the Due Process Clause" given this kind of record, Mr. Williams respectfully asks the Court to grant his petition and accept his case for review on the merits to directly answer that question. *Clark v. Crosby*, 335 F.3d 1303, 1308, 1310 (11th Cir. 2003) ("the Court's discussion in *Griffin* does not foreclose the possibility that the decision in *Yates* was compelled by the Due Process Clause"). This case offers the chance and opportunity to answer the issue left open by the Court in *Yates v. United States*, 354 U.S. 298 (1957) – to what degree is *Yates* applicable when reviewing a jury's general verdict for infirmity; an invitation the Court would be well-justified in accepting to resolve the question presented because it is nationally significant, recurs daily in the operation of our federal criminal courts, and remains an issue deeply rooted in the history and fundamental operation of our criminal procedure.

---

based its verdict on a legally inadequate theory presented during the course of trial. In *Clark*, for example, the Eleventh Circuit said that this Court "has not clearly established that the decision in *Yates* was constitutionally mandated." Conversely, *Clark* also noted that "the Court's discussion in *Griffin* does not foreclose the possibility that the decision in *Yates* was compelled by the Due Process Clause[.]" 335 F.3d at 1310. This petition humbly invites the Court to address and answer that possibility. *See*, *e.g.*, *Czech v. Melvin*, 904 F.3d 570, 576 (7th Cir. 2018) (stating that "[n]o Supreme Court precedent clearly established that a conviction entered on a general verdict was unconstitutional merely because the jury instructions included a legal theory that was invalid under state law").

Justice Scalia explained the history and acceptance of general verdicts in *Griffin v. United States*, 502 U.S. 50, 49-52 (1991); *see also* Fed. R. Crim. P. 7(c)(1) (allowing a charging document (an indictment or information), in a single count, to "allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means"). He noted the acceptance and validity of general verdicts "on multicount indictments where some of the counts were legally defective," *Griffin*, 502 U.S. at 50, as well as "a general verdict under a *single* count charging the commission of an offense by two or more means." *Id*. (emphasis in original). Hence, the "regular practice for prosecutors to charge conjunctively, in one count, the various means of committing a statutory offense, in order to avoid the pitfalls of duplicitous pleading." *Id*. at 51.

But, as observed in *Griffin*, even general verdicts are not without boundaries. The Eleventh Circuit synthesized this Court's jurisprudence in *Clark v. Crosby* by examining three cases:

> In the first case, *Stromberg v. California*, 283 U.S. 359, 51 S. Ct. 532 (1931), the Supreme Court reviewed a conviction under a California statute that prohibited the display of a red flag for the purposes of opposing government, inviting anarchistic action, or aiding seditious propaganda. The defendant had been convicted for violating the statute, but the jury returned a general verdict that did not indicate which of the three purposes the defendant had been found guilty of pursuing.

> The Court held that the first purpose prohibited under the statute – opposing government – was protected by the First Amendment, which prompted the Court to conclude: "The first clause of the statute being invalid upon its face, the conviction of the appellant, which so far as the record discloses may have rested upon that clause exclusively, must be set aside." *Id*. at 370, 51 S. Ct. at 536.[12]
>
> In *Yates v. United States*, 354 U.S. 298, 77 S. Ct. 1064 (1957), the Supreme Court had occasion to review a general verdict once again, but this time in a slightly different context. In *Yates*, the defendants had been charged in a single count with conspiring to advocate the overthrow of the government (the "advocacy" charge) and with conspiring to organize, as the Communist Party, a society that advocates the overthrow of the government (the "organizing" charge). The defendants were convicted, but the jury's general verdict did not indicate whether the jury found them guilty on the "advocacy" charge or the "organizing" charge. The Supreme Court concluded that the "organizing" charge was barred by the statute of limitations, and, citing *Stromberg*, applied the rule "which requires a verdict to be set aside in cases where the verdict is supportable on one ground, but not on another, and it is

---

[12] The Seventh Circuit interprets: "*Stromberg* stood only for the narrow proposition that a general verdict must be set aside when one of the possible bases for conviction was unconstitutional." *Czech*, 904 F.3d at 576.

> impossible to tell which ground the jury selected." *Id*. at 312, 77 S. Ct. at 1073.
>
> Finally, in *Griffin v. United States*, 502 U.S. 46, 112 S. Ct. 466 (1991), the Supreme Court reviewed yet another general jury verdict and discussed, at some length, the line of cases that includes both *Stromberg* and *Yates*. In *Griffin*, the defendant had been charged in a multiple-object conspiracy. The defendant was convicted, but the evidence at trial was insufficient to support a conviction based on one of the objects of the conspiracy charged in the indictment, and the jury's general verdict did not indicate which of the charged objects provided the basis for conviction. Departing from the rule announced in *Stromberg* and *Yates*, the Court concluded that a defendant's conviction need not be set aside when the jury returns a general verdict and the evidence is insufficient to support a conviction on one, but not every, ground charged.

Clark, 335 F.3d at 1308-1309.

The Eleventh Circuit emphasized:

> In reaching this conclusion, the *Griffin* Court examined its prior decisions in *Stromberg* and *Yates*. The Court observed that the decision in *Stromberg* was *constitutionally* compelled, but noted that the holding in *Stromberg* "do[es] not necessarily stand for anything more than the principle that, where a provision of the Constitution forbids conviction on a particular ground, the constitutional guarantee is violated by a general verdict that

may have rested on that ground." *Griffin*, 502 U.S. at 53, 112 S. Ct. at 471. In reaching this conclusion, the *Griffin* Court suggested that the conviction in *Stromberg* did not necessarily violate the Due Process Clause. Instead, the Court concluded that the conviction in *Stromberg*, which might have been based on a provision of a state statute that criminalized conduct protected by the First Amendment, violated the First Amendment itself.[13]

By contrast, the *Griffin* Court concluded that it was unlikely that the result in *Yates* was constitutionally compelled. The propriety of the conviction in *Yates* was in doubt because of a statutory time-bar; unlike the conviction in *Stromberg*, there was no danger that the *Yates* conviction was based on an unconstitutional statute. Thus, while the conviction in *Stromberg* violated the First Amendment, the decision in *Yates* was constitutionally mandated, the *Griffin* Court reasoned, only if a general verdict that might rest on a legally inadequate basis violates the Due Process Clause. But the *Griffin* Court observed that *Yates* "made no mention of the Due Process Clause." 502 U.S. at 52, 112 S. Ct. at 470. In fact, the Court noted that the basis for the decision in *Yates* was not clear:

---

[13] In *Griffin*, Justice Scalia collected a number of the Court's cases, observing, "A host of our decisions, both before and after *Yates*, has applied what [is] called 'the rule of the *Stromberg* case' to general verdict convictions that may have rested on an unconstitutional ground." *Griffin*, 502 U.S. at 55 (citations omitted).

> *Yates*, however, was the first and only case of ours to apply *Stromberg* to a general verdict in which one of the possible bases of conviction did not violate any provision of the Constitution but was simply legally inadequate (because of a statutory time bar). As we have described, that was an unexplained extension, explicitly invoking neither the Due Process Clause (which is an unlikely basis) nor our supervisory powers over the procedures employed in federal prosecution.
>
> *Griffin*, 502 U.S. at 55-56, 112 S. Ct. at 472. The decision in *Yates* could have been predicated on either the Due Process Clause or the Supreme Court's supervisory powers, but the *Griffin* Court suggested that it was "unlikely" that the *Yates* decision was compelled by the Due Process Clause.

Clark, 335 F.3d at 1309-1310; *see also Czech*, 904 F.3d at 576 ("[a]nd while *Yates* had applied that rule to federal prosecutions in which a possible basis of conviction was legally improper, it was unclear whether its holding was grounded in the Due Process Clause").

Mr. Williams assumes the position that the propriety of his convictions are at doubt and remain infirm because they may very well rest on a "legally inadequate" theory of criminal liability – a jury found him guilty of the crimes charged because it may have or in fact did hold him responsible for the breach of a contract with Lee County. We simply do not know, and cannot know, given the jury's general verdict form. When

measured against the Court's line of cases, *Stromberg, Yates*, and *Griffin*, Mr. Williams posits that his falls under the penumbra of *Yates*; his convictions do not violate specific constitutional provisions unlike the matter in *Stromberg*, conversely, his case is not covered by *Griffin* because he is not arguing that there was insufficient evidence (as a factual contention) to prove up a legally acceptable means of committing his charged crimes. Rather, Mr. Williams is arguing that in light of *Yates*, because the jury in his case *could have* or even that it *might have* found him guilty on a "legally inadequate" theory of criminality (i.e., the breach of a contract alone cannot support a criminal charge) his right to Due Process under the Fifth Amendment has been violated, reversibly so.

This Court should accept Mr. Williams's case and grant his petition to answer the open question as to whether a jury's general verdict that might be based on a "legally inadequate" theory of liability violates the Due Process Clause. Like Justice Scalia described in *Griffin*:

> *Yates*, however, was the first and only case of ours to apply *Stromberg* to a general verdict in which one of the possible bases of conviction did not violate any provision of the Constitution but was simply legally inadequate (because of a statutory time bar). As we have described, that was an unexplained extension, explicitly invoking neither the Due Process Clause (which is an unlikely basis) nor our supervisory powers over the procedures employed in a federal prosecution.

Griffin, 502 U.S. at 55-56; *see Clark*, 335 F.3d at 1310 ("the Court's discussion in *Griffin* does not foreclose the possibility that the decision in *Yates* was compelled by the Due Process Clause"); *see also United States v. Yates*, ___ F.4th ___, 2021 WL 4699251 (9th Cir. Oct. 8, 2021) ("[t]he Supreme Court has held that 'constitutional error occurs' when a jury 'returns a general verdict that may rest on a legally invalid theory' ") (quoting *Skilling v. United States*, 561 U.S. 358, 414 (2010)).[14]

Mr. Williams acknowledges that "[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion." S. Ct. Rule 10. He submits that the question presented herein merits this Court's attention, time, and resources. The legal question presented for review is narrowly tailored to the facts of his case, yet, has broad, national, and wide-ranging constitutional implications. It is relevant across the country and in our federal criminal courts; it has a daily practical

[14] In this Ninth Circuit case, also styled *Yates*, the defendants there were charged and convicted of conspiracy to commit bank fraud as well as making false bank entries. Like here, in the case of Mr. Williams, the district court denied the defendants' motion for judgment of acquittal. In a case involving a 29-day trial, all of the convictions were set aside because "two of the government's three theories of bank fraud were legally inadequate and that presenting those theories was not harmless." *See Yates*, ___ F.4th at ___, 2021 WL 4699251 at *1. The court said when "[r]eviewing de novo the district court's denial [of the defendants'] motions for judgment of acquittal, we hold that the government's [theories of prosecution] are legally insufficient, and that presenting those theories to the jury was not harmless. We therefore vacate [the convictions]." *Id*. at *4 (citations omitted). Mr. Williams would ask for the same relief granted in *Yates*.

affect and easily understood effect on a defendant's due process rights. It is more than capable of repetition; the issue has been studied by the Court since as early as 1931. But probably most significant, the question asked here is what was asked in *Yates* yet left open and unanswered. Mr. Williams presents an ideal vehicle by which to explore, discuss, study, and focus Fifth Amendment jurisprudence and how it properly and correctly governs the arena of general verdicts rendered by the country's federal criminal juries. The Court's decision would be extremely pragmatic for both the prosecution, the government, criminal defense lawyers, the defense bar generally, and those accused of committing federal crimes. This Court should grant Mr. Williams's petition to answer the issue raised, a question of national significance, repetition, and constitutional practicality.

In closing, too, Mr. Williams would emphasize that his petition is *not* asking for any review of the facts underlying the alleged offense conduct. What he presents for this Court's study and review is a straightforward legal examination on the constitutional question of whether a "legally inadequate" or "legally insufficient" theory of criminal liability necessarily violates the Due Process Clause of the Fifth Amendment when a federal jury returns a general guilty verdict such that one cannot discern on what basis any finding of guilt was rendered, a legally recognized ground (say, for example, criminal fraud) or a legally invalid basis (like the breach of a civil contract). As such, the record-on-appeal as it comes to the Court is clean, remains

without any factual debate or challenge, and offers a single, easily framed legal question this Court specifically left unanswered in *Yates*. Mr. Williams, by this petition, respectfully invites the Court to take advantage of the opportunity herein to close out its jurisprudence governing general verdicts built from *Stromberg*, *Yates*, and *Griffin*.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

FRITZ SCHELLER, ESQ.
FRITZ SCHELLER, P.L.
200 East Robinson Street
Suite 1150
Orlando, Florida 32801
(407) 792-1285
fscheller@flusalaw.com
Counsel for Petitioner