No. _____

In The
Supreme Court of the United States

DEMETRIOS STAVRAKIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a federal court, assessing the sufficiency of the evidence in a criminal case based wholly on circumstantial evidence, must apply the "rule of equipoise" and grant a motion for judgment of acquittal when, construing the evidence in the light most favorable to the government, evidence of guilt and innocence is evenly balanced.

RELATED CASES

United States Court of Appeals for the Fourth Circuit, Nos. 20-4149, 20-4184, *United States v. Demetrios Stavrakis*, Judgment entered February 24, 2022;

United States District Court for the District of Maryland, No. ELH-19-00160, *United States v. Demetrios Stavrakis*, Amended Judgment and Conviction and Sentence entered February 25, 2020.

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The unpublished opinion of the Fourth Circuit Court of Appeals is found at 2022 WL 563242 and is reprinted in the Appendix to the Petition ("App.") at 1-21. The district court's order denying Petitioner's motion for judgment of acquittal is reprinted at App. 53.

JURISDICTION

The Fourth Circuit Court of Appeals issued its judgment on February 24, 2022, App. 22-23, and denied rehearing and rehearing en banc on April 5, 2022, App. 54-55. This Court has jurisdiction under 28 U.S.C. § 1254(1). Chief Justice Roberts extended the time for filing this Petition until September 2, 2022.

RELEVANT CONSTITUTIONAL PROVISION AND FEDERAL RULE

The Due Process Clause provides: "No person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

Federal Rule of Criminal Procedure 29 provides:

> Motion for a Judgment of Acquittal (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. . . . (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. . . . 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. . . .

INTRODUCTION

The "rule of equipoise" holds that in a purely circumstantial evidence case, after viewing the evidence in the light most favorable to the prosecution, if "the evidence . . . gives equal, or nearly equal circumstantial support to a theory of guilt and a theory of innocence," a trial court must direct a judgment of acquittal, and an appellate court must reverse a conviction. *See* App. 17-18 (quoting *United States v. Caseer*, 399 F.3d 828, 840 (6th Cir. 2005)). *Accord United States v. Lovern*, 590 F.3d 1095, 1107 (10th Cir. 2009) (then-Judge Gorsuch applying rule of equipoise to reverse conviction). This is a corollary to the Due Process rule of *Jackson v. Virginia*, 443 U.S. 307 (1979),

that a conviction cannot stand unless "after viewing the evidence in the light most favorable to the prosecution, a[] rational trier of fact could have found the essential elements of the crime beyond reasonable doubt." *Id.* at 319. *See United States v. Lopez-Diaz*, 794 F.3d 106, 111-12 (1st Cir. 2015) (quotation omitted); *Caseer*, 399 F.3d at 840.

The federal circuit courts of appeals, as well as state appellate courts around the country, are sharply divided on whether to apply the rule of equipoise. Thus, today, whether a defendant, upon identical evidence, must be acquitted or can be convicted of an alleged criminal offense depends on the jurisdiction in which he or she is prosecuted.

This important and substantial question of whether the rule of equipoise must be applied has been presented to this Court several times in recent years without resolution. *See United States v. Simon*, 12 F.4th 1 (1st Cir. 2021), *cert. denied sub nom. Kapoor v. United States*, 142 S. Ct. 2811 (2022); *United States v. Gaines*, 815 F. App'x 709 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1371 (2021); *United States v. Henning*; 785 F. App'x 430 (9th Cir. 2019), *cert. denied*, 141 S. Ct. 819 (2020); *United States v Hoffman*, 901 F.3d 523 (5th Cir. 2018), *cert. denied*, 139 S. Ct. 2615 (2019); *United States v. Vargas-Ocampo*, 747 F.3d 299 (5th Cir.), *cert. denied*, 574 U.S. 864 (2014). It has drawn the attention and concern of fourteen distinguished retired judges, a panel of nine distinguished law professors, and the 40,000-member-strong National Association of Criminal Defense Lawyers, all of whom filed amicus briefs in

support of the *Hoffman* petition. Briefs of Retired Federal Judges, Criminal Law Professors, and NACDL as Amicus Curiae in Support of Petitioners, *Hoffman*, 139 S. Ct. 2615 (No. 18-1049). This case, in which the Fourth Circuit Court of Appeals declined to apply the rule, and in which the evidence of the arson and fraud charges against Petitioner was unquestionably, wholly circumstantial, presents an opportune vehicle to resolve this critical issue bearing on the fundamental right to due process of law.

STATEMENT OF THE CASE

Petitioner's appeal arose from his convictions for violating 18 U.S.C. § 844(h)(1), using fire to commit a federal offense, to wit wire fraud; 18 U.S.C. § 1343, two counts of wire fraud; and 18 U.S.C. § 844(i), arson. App. 4-5. The charges arose from the July 29, 2015, intentionally-set-fire of petitioner's solely owned precision machine shop business, Adcor, and the $15 million insurance claim petitioner made (and was paid) for the loss. App. 3-4. The person(s) who actually set the building ablaze was (were) never identified.

Absent *any* evidence implicating petitioner *personally* in setting the fire, and uncontroverted evidence that, at the time of the fire, he was miles away at home, the government's case was built on speculation that petitioner had a motive to hire someone to torch his family-run business (for the insurance proceeds), and "suspicious circumstances" that he created the

opportunity for some unidentified accomplice to set the fire. App. 5. "[T]he government introduced 'voluminous evidence' that Adcor had been in dire financial straits since 2010, . . . [and] had been forced to default on multiple loans and entered various forbearance agreements with its lenders." *Id.* But petitioner introduced voluminous evidence and "argu[ed] that business was turning around in 2015 after several difficult years, and that he had a backlog of orders by the time of the fire." App. 8. Additionally, he introduced evidence and argued that Adcor's "loan and forbearance agreements . . . were common practice in the manufacturing business, and he had paid off much of the debt by 2015." *Id.*

Although the government's evidence unequivocally established that there was no forced entry and the fire was set shortly before 1:30 a.m., App. 3-5, it allowed the possibility of at least three different points of entry. The government hypothesized that the arsonist entered through the front lobby door. "Central to the government's case" was a surveillance video that "showed [petitioner] tampering with the security system at Adcor's front door on the evening before the fire." App. 6. But overwhelming evidence established an array of long-standing problems with the lobby door's security which explained why petitioner taped the electronic latch as he left that evening, App. 8, leaving fully intact the keyed deadbolt (which key also could unlock the latch), and a motion-triggered surveillance camera and alarm system (which failed to detect any entrant at 12:25 a.m. when the inside lobby alarm

was disarmed). App. 6-8. *See* JA:249, 256, 685-86, 1084, 3466, 3469.[1]

It was equally plausible, hardly "wildly speculative," App. 11, 16, that an arsonist unconnected to petitioner entered the unsecured roof hatch, readily accessible from outside and unmonitored by Adcor's security system, JA:2057-59, that gave easy access to the alarm system keypad inside the front shop door (that could have disarmed *both* the alarm zone on the shop floor and the one in the front lobby area). JA:1944. Such an arsonist, who knew of or discovered the presence of the methanol in the drum in the back room of the warehouse, could easily have set the fire that originated in the highly flammable, wooden structure that sat at the core of Adcor's array of expensive machinery. JA:384, 1054, 1201-03, 2979. Other evidence showed that the front shop door could be entered by any stranger or insider by use of a common screwdriver. JA:2041-42.

Substantial and compelling evidence established that two former disgruntled employees were motivated, and had the opportunity, to torch petitioner's business. Although they "[b]oth testified at trial as to their innocence, [and] neither was cross-examined by the defense," App. 7, both had strong reasons to seek revenge against petitioner. Long-time former employee Brown was unceremoniously fired by petitioner two years earlier, together with three immediate family

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[1] The "JA" references are to the Joint Appendix that was filed in the Fourth Circuit Court of Appeals.

members, amidst dissatisfaction with his standing at Adcor and controversy regarding his entitlement to benefits for certain Adcor intellectual property. JA:903-04, 918-22. Brown admitted that petitioner's lawsuit against him, that settled one year before the fire, financially crippled him. JA:922-30. DeMilt, another long-tenured executive employee, also claimed he was professionally disrespected by petitioner shortly before he quit and was stiffed out of $50,000 in commissions. JA:1494-95, 1500, 1505-08. Either would have "benefitted" substantially from their revenge by destroying petitioner's business. App. 11.

Regarding the wire fraud charge arising from submission of a $30,000 claim for a new security system, even as the panel recounted the evidence, it required a precarious chain of inferences to establish petitioner's intent to defraud. Whatever oversight responsibility petitioner may have had for this small facet of Adcor's huge insurance claim, petitioner unquestionably assigned it to his number two executive, Hyatt. App. 7, 8, 12. Hyatt was responsible for assessing the damage and obtaining repair/replacement bids. It was clear that the security system that was there failed to avert or capture the unpermitted entry. Travelers, the insurance company that paid the claim, had full access to Adcor and had independently gaged the damage to the security system. App. 9. Hyatt only presented his bids to Adcor's public adjuster, not Travelers. It was the public adjuster who ultimately submitted the alleged "fraudulent" claim, as part of an entirely transparent process. Petitioner was *not* copied on the submission to

Travelers. There was no evidence he reviewed this amidst the overwhelming and chaotic claim and restoration process. And Travelers paid a greatly reduced settlement without accusing Stavrakis. As the panel seemed to recognize, the only way to bridge this evidentiary gap was to resort to the separately challenged "willful blindness" instruction. App. 13, 19.

In its Memorandum denying petitioner's renewed, post-verdict motion for judgment of acquittal, the district court rejected his reliance on *United States v. Makriannis*, 774 F.2d 1164 (6th Cir. 1985), an unpublished opinion with facts bearing an uncanny resemblance to the instant case. App. 48-50. These included clear evidence of arson, a business in bad financial straits, an alarm secured premises with no sign of forced entry, and a substantial insurance claim. *Makriannis* at *1-*2. In a case where "[t]he evidence clearly establishe[d] arson," *id.* at *1, and "[t]here [wa]s sufficient evidence . . . to support the conclusion that defendant had both motive and opportunity to commit the arson," *id.* at *2, the court overturned the verdicts holding: "We find, at best, that the government's case presented evidence sufficient to support equally persuasive inference[s] of both guilt and innocence. This equipoise cannot sustain a criminal conviction." *Id.* at *1.

The district court rejected *Makriannis* because the case upon which it relied for application of the rule of equipoise, *United States v. Leon*, 534 F.2d 667 (6th Cir. 1976), had been "overruled" by *United States v. Ellerbee*, 73 F.3d 105, 107 (6th Cir. 1996), and *United*

States v. Stone, 748 F.2d 361, 363 (6th Cir. 1984). App. 50.[2] Although the panels in *Stone* and *Ellerbee* purported to abrogate the rule, in *Caseer*, 399 F.3d 828 at 840, a case not cited by the district court, the Sixth Circuit subsequently applied the rule of equipoise to reverse a conviction on insufficiency grounds. *Id.*

On February 24, 2022, Judges Wilkinson, Motz, and Harris of the Fourth Circuit Court of Appeals issued their 19-page, unpublished opinion, App. 1-21, and judgment, App. 22-23, affirming Mr. Stavrakis' conviction and 15-year sentence. It predominantly addressed whether the wholly circumstantial evidence adduced at a "lengthy and complex jury trial," App. 5, was legally sufficient to support guilty verdicts on arson and fraud charges. The opinion touched on the question of whether the Fourth Circuit should adopt the "rule of equipoise." App. 17-18 (citation omitted). The panel noted that "the parties spen[t] much of their briefing addressing this doctrine and a purported disagreement among the circuits as to its vitality." *Id*. But it declined to fully address the issue, as it has done on

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[2] The district court added, secondarily, that *Makriannis* was distinguishable because Makriannis made an inquiry about a possible gas leak at the torched restaurant that the government relied upon as evidence of guilty knowledge. App. 50. The Sixth Circuit said this was "too ambiguous to support an inference of clear knowledge of arson." *Id.*; 774 F.2d at *2. But this is little different from Stavrakis' "ambiguous" acts in taping the front door (to redress the recurrent sticking problem) and not immediately sharing this with the ATF agents (in the chaotic aftermath of the fire).

previous occasions,[3] because it determined, relying predominantly on the district court's analysis (raising doubts about its application of the applicable *de novo* standard of review), that the conflicting evidence "made a substantial and 'compelling' case against the defendant" and, thus, "the evidence here is not in equipoise." *Id.*

REASONS FOR GRANTING THE WRIT

This petition presents a critical question that has deeply divided the federal courts of appeals, as well as the highest state appellate courts around the country, and warrants this Court's review.

The federal courts of appeals are divided over whether a district court should direct a judgment of acquittal, or a circuit court should reverse a criminal conviction, when, in a case relying solely on circumstantial evidence, and after viewing the evidence in the light most favorable to the government, the evidence supporting guilt and the evidence supporting innocence are in equipoise. Such evidence necessarily requires that the trier of fact entertain a reasonable doubt of guilt. But the district court below, as well as the Fourth Circuit Court of Appeals, declined to apply this rule to this case. In most circuits, the district court,

[3] The Fourth Circuit neither adopted nor rejected the rule of equipoise in *United States v. Christian*, 452 F. App'x 283, 286 n.2 (4th Cir. 2011); *United States v. Tinsley*, 228 F. App'x 317, 320 (4th Cir. 2007).

applying the rule of equipoise, would have granted the petitioner's motion for a judgment of acquittal or the court of appeals would have reversed. Only this Court can resolve the conflict over this recurring and important question. This case presents an opportune vehicle through which to do so.

The petition should be granted, and the decision below reversed.

ARGUMENT

I. The courts of appeals are divided over the applicability of the equipoise rule.

The First, Second, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits hold that, where evidence of guilt and innocence is in equipoise, a conviction cannot stand.[4] The First Circuit adopted the equipoise rule in *United States v. Andujar*, 49 F.3d 16, 20 (1st Cir. 1995). As it explained in one of its many cases reaffirming its approach, that rule is essential to satisfy due process:

> If the evidence viewed in the light most favorable to the verdict gives equal or nearly equal circumstantial support to a theory of guilt or

[4] *E.g.*, *United States v. Fernandez-Jorge*, 894 F.3d 36, 51 (1st Cir. 2018); *United States v. Louis*, 861 F.3d 1330, 1333 (11th Cir. 2017); *United States v. Valle*, 807 F.3d 508, 515 (2d Cir. 2015); *United States v. Johnson*, 592 F.3d 749, 755 (7th Cir. 2010); *United States v. Lovern*, 590 F.3d 1095, 1107 (10th Cir. 2009); *United States v. Boesen*, 491 F.3d 852, 857 (8th Cir. 2007); *Caseer*, 399 F.3d 828, 840 (6th Cir. 2005); *United States v. Wright*, 835 F.2d 1245, 1249 n.1 (8th Cir. 1987).

> a theory of innocence . . . a reasonable jury must necessarily entertain a reasonable doubt.

Lopez-Diaz, 794 F.3d at 111-12 (1st Cir. 2015) (quotation omitted). The Sixth Circuit adopted the equipoise rule in *United States v. Caseer*, 399 F.3d 828 (6th Cir. 2005), likewise explaining: "If the evidence . . . gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence, we must reverse the conviction, as under these circumstances a reasonable jury must necessarily entertain a reasonable doubt." *Id.* at 840 (internal citation and quotation marks omitted). The Second, Seventh, Eighth, Tenth, and Eleventh Circuits have endorsed the rule for the same reasons.[5]

It appears that only two federal circuit courts of appeals have rejected the rule of equipoise. Although the Fifth Circuit initially followed the equipoise rule too, that court, sitting en banc, rejected the rule in *United States v. Vargas-Ocampo*, 747 F.3d 299 (5th Cir. 2014) (en banc). In the Fifth Circuit's view, the equipoise rule "usurp[s] the jury's function" because it encourages appellate courts to engage in "'the type of fine-grained factual parsing' necessary to determine that the evidence presented to the factfinder was in

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[5] *See*, *e.g.*, *Johnson*, 592 F.3d at 755 ("In this situation, the evidence is essentially in equipoise; the plausibility of each inference is about the same, so the jury necessarily would have to entertain a reasonable doubt."); *Wright*, 835 F.2d at 1249 n.1; *Lovern*, 590 F.3d at 1107; *Cosby v. Jones*, 682 F.2d 1373, 1383 (11th Cir. 1982); *Valle*, 807 F.3d at 515.

'equipoise.'" *Id.* at 301 (quotations omitted). But five of the fourteen judges joined the decision only and declined to join the opinion abrogating the rule of equipoise. *Id.* at 300 n.**.

Similarly, though the Ninth Circuit, too, initially followed the rule of equipoise, that court sitting en banc rejected the rule in *United States v. Nevils*, 598 F.3d 1158 (9th Cir. 2010). In *Nevils*, the court recited the two-step inquiry required in *Jackson v. Virginia*:

> First, a reviewing court must consider the evidence presented at trial in the light most favorable to the prosecution. *Jackson*, 443 U.S. at 319, 99 S. Ct. 2781. . . . Second, after viewing the evidence in the light most favorable to the prosecution, the reviewing court must determine whether this evidence, so viewed, is adequate to allow "*any* rational trier of fact [to find] the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319, 99 S. Ct. 2781.

Nevils, 598 F.3d at 1164-65. The court went on to explain that its reason for rejecting the rule of equipoise was that in its application, the Ninth Circuit had strayed from *Jackson*'s teachings:

> Notwithstanding the Supreme Court's decision and our own precedent, we subsequently strayed from our obligation under step one of the *Jackson* standard to construe the evidence at trial in the light most favorable to the prosecution, returning instead to an approach . . . which indicated that a reviewing court must

> consider whether the evidence at trial was susceptible to an innocent interpretation, and then determine whether a reasonable juror "could choose the hypothesis that supports a finding of guilt rather than hypotheses that are consistent with innocence." . . . By construing the evidence in favor of an innocent explanation, and determining if such an explanation was equally or more reasonable than the government's incriminating explanation, [*United States v.] Bishop*[, 959 F.2d 820 (9th Cir. 1992),] misapplied the first step of *Jackson*, which limits the reviewing court to construing the evidence in the light most favorable to the prosecution. *See Jackson*, 443 U.S. at 319, 326, 99 S. Ct. 2781. Only at the second step of *Jackson* does the reviewing court determine whether *any* rational juror could hold that the evidence, construed in favor of the prosecution, establishes guilt beyond a reasonable doubt. *Id.* at 319, 99 S. Ct. 2781.

Nevils, 598 F.3d at 1165-66. The other courts that have adopted the rule of equipoise apparently have not suffered the Ninth Circuit's unique deviation from *Jackson*'s requirement that the evidence be construed in a light most favorable to the prosecution. Indeed, most of these courts include this critical component as part of their articulation of the equipoise rule. *See*, *e.g.*, *Fernandez-Jorge*, 894 F.3d at 51; *Louis*, 861 F.3d at 1331; *Valle*, 807 F.3d at 515; *Johnson*, 592 F.3d at 755.

Thus, in the Fifth and Ninth Circuits, appellate courts considering orders denying Rule 29 motions

may consider only "whether the inferences drawn by a jury were rational" and "whether the evidence is sufficient to establish every element of the crime," *Vargas-Ocampo*, 747 F.3d at 302, and affirm criminal convictions based solely on circumstantial evidence where, even viewing the evidence in the light most favorable to the prosecution, that evidence gives equal, or nearly equal, support to theories of guilt and innocence.

Commentators have long thought Judge Prettyman's opinion in *Curley v. United States*, 160 F.2d 229, 232-33 (D.C. Cir.), *cert. denied*, 331 U.S. 837 (1947), embraced the rule for the D.C. Circuit. Recently, however, a panel of that court rejected the rule in dicta, while acknowledging that "some language in our early opinions suggests [its] endorsement." *United States v. Shi*, 991 F.3d 198, 208, 208 n.2 (D.C. Cir. 2021). Judge Silberman disagreed on the meaning of *Curley* and endorsed the equipoise rule. *See id.* at 213 (Silberman, J., concurring).

The government asserted below that the Third Circuit has rejected the rule of equipoise in *United States v. Caraballo-Rodriguez*, 726 F.3d 418 (3d Cir. 2013) (en banc). But *Caraballo-Rodriguez* does not even use the word "equipoise." The court reviewed its prior decisions applying the standard of review for sufficiency of the evidence, *but exclusively in the context of the knowledge element of controlled substance prosecutions*. It believed its review in these cases was "more akin to ad hoc second-guessing the juries' verdicts than exercising a review function based on sufficiency of the evidence," leading to inconsistent results. *Id.* at 425,

430. The Third Circuit's tweaking of its standard of review in these *sui generis* cases did not signal rejection of the rule of equipoise in *all* cases.

State courts likewise disagree about the proper approach to sufficiency-of-the-evidence challenges when the evidence, viewed in the light most favorable to the government, is equally balanced as to guilt and innocence. Most state courts have adopted the equipoise rule.[6] But courts in Texas and New Mexico have rejected it.[7] Accordingly, a unifying decision from this Court is needed to reconcile the conflicting views of courts around the country on the application of the rule of equipoise.

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[6] *Tatum v. State*, 63 Ala. 147, 150 (1879); *State v. Ruiz*, 1998 WL 436557, at *3 (Ariz. Ct. App. Aug. 4, 1998); *State v. Schweitzer*, 18 A. 787, 788-89 (Conn. 1889); *Harris v. United States*, 125 A.3d 704, 709 (D.C. Cir. 2015); *Reid v. State*, 212 Ga. App. 787, 789 (1994), *overruled on other grounds by Maddox v. State*, 322 Ga. App. 811 (2013); *Commonwealth v. Goss*, 428 S.W.3d 619, 626 (Ky. 2014); *Taylor v. State*, 346 Md. 452, 458 (1997); *Commonwealth v. Croft*, 345 Mass. 143, 145 (1962); *Cotton v. State*, 144 So. 3d 137, 145-46 (Miss. 2014); *State v. May*, 689 S.W.2d 732, 736 (Mo. Ct. App. 1985); *Day v. State*, 303 P.3d 291, 298 (Okla. Crim. App. 2013); *In re J.B.*, 189 A.3d 390, 409 (Pa. 2018); *Haskins v. Commonwealth*, 44 Va. App. 1, 9 (2004).

[7] *Mackey v. State*, 2002 WL 31521379, at *3 (Tex. App. Nov. 14, 2002) (rejecting rule of equipoise and citing cases); *State v. Sutphin*, 107 N.M. 126 (1988) (same).

II. The question of whether courts should apply the "rule of equipoise" in evaluating claims of legally insufficient evidence in entirely circumstantial criminal cases is exceptionally important.

As set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979), "the relevant question [in evaluating the sufficiency of the evidence to support a jury's guilty verdict in a criminal case] is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond reasonable doubt." *Id.* at 319. The "rule of equipoise" holds that in a purely circumstantial evidence case, after viewing the evidence in the light most favorable to the prosecution, if "the evidence . . . gives equal, or nearly equal circumstantial support to a theory of guilt and a theory of innocence," a trial court must direct a judgment of acquittal, and an appellate court must reverse a conviction. *See* App. 16 (quoting *Caseer*, 399 F.3d at 840). This is because, with the evidence in a state of equipoise, "a reasonable jury *must necessarily entertain a reasonable doubt.*" *Id.* (emphasis in original). Charges cannot be proven by "piling inference upon inference." *Ingram v. United States*, 360 U.S. 672, 680 (1959) (citation omitted). Thus, the rule effectuates the constitutional command that a conviction cannot stand where, "after viewing the evidence in the light most favorable to the prosecution, [no] rational trier of fact could have found the essential

elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319.

This facet of Due Process is fundamental to American criminal justice. "It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence—that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.'" *In re Winship*, 397 U.S. 358, 372 (1970). Justice Harlan, concurring, emphasized: "[T]he requirement of proof beyond a reasonable doubt in a criminal case [i]s bottomed on a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." *Id.*

The Fourth Circuit acknowledged that it has neither adopted nor rejected the rule of equipoise. App. 18. But seven circuits have adopted it, *see* n.4, *supra*, and application of the rule would mandate reversal of petitioner's conviction. The existence of such a disparity, where a defendant can be found guilty or acquitted based on the application of the rule or lack thereof, warrants this Court's intervention.

The Tenth Circuit's decision in *United States v. Lovern*, 590 F.3d 1095 (10th Cir. 2009), exemplifies the important role the rule of equipoise plays in guarding against convictions based on speculative and conjectural inferences. Then-Judge Gorsuch applied the rule to test the evidence against co-defendant Barron on charges of narcotics distribution by filling bogus

prescriptions. "[T]he strongest piece of evidence supporting the government's theory of the case" was an "instant message conversation" between Barron, a computer technician at Red Mesa Pharmacy, and Heredia, the principal of a website that referred customers to Red Mesa. *Lovern*, 590 F.3d at 1097-98, 1106. According to dissenting Judge O'Brien, the instant message conversation allowed a jury to conclude that Barron knew "the pharmacy's drug operations were illegal" and "occurred without a legitimate medical purpose." *Id.* at 1111. But now-Justice Gorsuch opined that these text messages could "at best, . . . leave[ ] a reasonable fact-finder with a number of equally reasonable inferences about what Mr. Barron might have thought was illicit." *Id*. at 1107. Reversing, Justice Gorsuch concluded that "[e]ven viewing the message in the light most favorable to the jury's verdict, it gives us no way to distinguish among several plausible and competing inferences about its meaning." *Id.*

Significantly, while endorsing and applying the rule of equipoise, these courts reject any special standard of review for circumstantial evidence cases and hold that such evidence "need not 'exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt.'" *United States v. Cabezas-Monano*, 949 F.3d 567, 595 n.27 (11th Cir. 2020); *see United States v. Tillmon*, 954 F.3d 628, 640 (4th Cir. 2019). This Court long ago rejected any such special standard of review. *Jackson*, 403 U.S. at 326 (citing *Holland v. United States*, 348

U.S. 121, 140 (1954)). It presents no impediment to adopting the rule of equipoise.

The rule of equipoise has made five recent appearances in this Court. *See United States v. Simon*, 12 F.4th 1 (1st Cir. 2021), *cert. denied sub nom. Kapoor v. United States*, 142 S. Ct. 2811 (2022); *United States v. Gaines*, 815 F. App'x 709 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1371 (2021); *United States v. Henning*, 785 F. App'x 430 (9th Cir. 2019), *cert. denied*, 141 S. Ct. 819 (2020); *United States v. Hoffman*, 901 F.3d 523 (5th Cir. 2018), *cert. denied*, 139 S. Ct. 2615 (2019); *United States v. Vargas-Ocampo*, 747 F.3d 299 (5th Cir.), *cert. denied*, 574 U.S. 864 (2014). Although knowing that the majority of federal circuit courts of appeals adhere to the rule, this Court has declined to repudiate it.

The petition for writ of certiorari in *Hoffman v. United States* sought review of the question: "Whether a federal court must grant a motion for judgment of acquittal when, construing the evidence in the light most favorable to the government, evidence of guilt and innocence is evenly balanced?" Petition for Writ of Certiorari at i, *Hoffman*, 139 S. Ct. 2615 (No. 18-1049). Filing one of three amici briefs in support, fourteen distinguished retired judges who "collectively presided over hundreds of federal criminal trials," urged the Court to take review "and upon review affirm the validity of the rule." Brief of Retired Federal Judges as Amici Curiae in Support of Petitioners at 12, *Hoffman*,

139 S. Ct. 2615 (No. 18-1049).[8] The retired judges pointed out that in *Jackson v. Virginia*, the Court virtually adopted the rule of equipoise. *Id.* at 8. They further demonstrated that the rule of equipoise is supported by *Jackson*'s imperative that the judge "ensure that the jury 'rationally appl[ies]' the reasonable doubt standard to the evidence. *Id.* at 317." *Id.* at 7. For this reason, the judges posited that the rule "is essential in effectuating the constitutional division of labor between judge and jury. The equipoise rule gives judges meaningful authority to police the validity of guilty verdicts while leaving a wide margin to the jury; it does not usurp the jury's role." *Id.* at 8.

The retired judges further highlighted that "[a]nalysis of circumstantial evidence implicates an 'intellectual process' requiring 'lawyer-like scrutiny' such that, in a circumstantial evidence case, the 'ultimate determination of guilt is based . . . on inferences from the evidence,'" a determination that judges are particularly well-suited for and experienced in making. *Id.* at 9. "[B]y focusing on the midpoint in the evidence—*i.e.*, the point where the circumstantial evidence gives rise to equal or nearly equal support to a theory of guilt or a theory of innocence—the equipoise rule merely requires judges to engage in a mode of

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[8] The other persuasive amici briefs were filed by nine distinguished law professors, Brief of Criminal Law Professors as Amicus Curiae, *Hoffman*, 139 S. Ct. 2615 (No. 18-1049), and the 40,000-member-strong National Association of Criminal Defense Lawyers. Brief of NACDL as Amicus Curiae, *Hoffman*, 139 S. Ct. 2615 (No. 18-1049).

evidentiary assessment with which they are already intimately familiar." *Id.*

The Court denied review in *Hoffman v. United States*, 139 S. Ct. 2615 (2019) (Mem.), perhaps persuaded by the Solicitor General's contention that the case was "an unsuitable vehicle for resolving th[e] disagreement" among the circuits over application of the equipoise rule. Brief for the United States in Opposition at 11, *Hoffman*, 139 S. Ct. 2615 (No. 18-1049). But in the instant case, where the resolution of Stavrakis' sufficiency of the evidence arguments, when the evidence is *properly* considered, *see* Argument III, *infra*, turns on the application of the rule, this Court should mandate its application in the Fourth Circuit and the other federal courts of appeals to protect a defendant's right to due process as set forth in *Jackson v. Virginia.*

The rule of equipoise plays a vital role in effectuating the Fifth Amendment right to Due Process by minimizing the risk of convicting innocent persons. Seven circuits have adopted it for this reason. The issue is one of exceptional importance that should be considered by this Court.

III. This case presents an opportune vehicle to resolve the circuit split over the applicability of the rule of equipoise.

The Fourth Circuit acknowledged the well-settled *de novo* standard of review for Stavrakis' challenges to the sufficiency of the evidence. App. 14. Yet throughout

its opinion, it repeatedly relied upon the district court's ruling denying Stavrakis' motion for judgment of acquittal. The panel cited it more than thirty times, characterizing it as "thorough and carefully reasoned" and "a comprehensive and well-reasoned opinion." App. 3, 10. It repeatedly recited the district court's conclusion that the evidence, while wholly circumstantial, was "substantial" and "compelling." App. 12, 14, 18. This does not reflect the independent review of the evidence demanded by the *de novo* standard, much less the application of the rule of equipoise adopted by at least seven other circuits.

The facts and inferences especially mattered here. As the panel observed while "slic[ing] the onion into thin layers," App. 12, to distinguish the two cases that reversed business arson convictions upon which Stavrakis placed primary reliance, App. 16,[9] "sufficiency cases are necessarily highly fact specific. . . ." *Id*. The panel had to decide whether the jury impermissibly arrived at its verdict relying on "pure speculation," App. 15, or "piling inference upon inference," *Ingram v. United States*, 360 U.S. 672, 680 (1959), or, instead, by relying upon *reasonable* inferences from the circumstantial evidence that would allow it to *reasonably* "f[ind] the essential elements of the crime[s] beyond reasonable doubt." *Jackson*, 443 U.S. at 319.

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[9] *United States v. Makriannis*, 774 F.2d 1164 (6th Cir. 1985) (unpublished); *United States v. Yoakam*, 116 F.3d 1346 (10th Cir. 1997).

This case is opportune to resolve the sharp conflict among the federal circuit courts of appeals regarding application of the rule of equipoise because here, petitioner asserted and maintained his innocence throughout trial. The government presented *no* direct evidence to contradict this assertion. There was no evidence that petitioner set the fire. Not even the government suggested this. Indeed, there was no evidence of *who* set the fire. There was no evidence of which of three entryways, the front lobby door, the front warehouse door, or the roof hatch, the arsonist used to enter.

Instead, to prove guilt, the government had to rely *entirely* on inferences from the evidence at trial. If these inferences gave circumstantial support to a theory of guilt, they gave equal, or stronger, circumstantial support to a theory of innocence. To reach a guilty verdict, the jury had to speculate, *inter alia*, that: (1) petitioner had a financial motive to destroy his decades long-standing family business (in the face of evidence that equally showed improving business conditions and a history of liquidating personal assets and using creative financing to bridge temporary business shortfalls); (2) petitioner taped the front lobby door to facilitate clandestine entry of an arsonist (in the face of undisputed evidence that the front doors were chronically defective and required an immediate fix on the night of the arson to engage the other security systems that safeguarded Adcors' facility); (3) the arsonist entered through the front lobby doors (in the face of evidence that equally, or more strongly, suggested entry through the front warehouse door or unsecured roof

hatch); (4) petitioner's general manager Hyatt obstructed justice by deleting video files of the arsonist's entry before turning them over to law enforcement, and then destroyed the hard drive back-up (though he was never charged with being an accomplice or involved in the arson in any way); and (5) petitioner was willing to risk loss of human life and financial demise by having someone torch his family business. But neither the jury, the district court, nor the Fourth Circuit could rely on such inference piling to overcome the equipoise rule's mandate that, after viewing the evidence in the light most favorable to the prosecution (which petitioner has done), a judgment of acquittal *must* be entered if the evidence provides equal, or nearly equal, circumstantial support to a theory of guilt and a theory of innocence. *See Ingram*, 360 U.S. at 680 (impermissible to pile inference upon inference). Under these circumstances, "[no] rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319.

The panel dismissed as utterly "unsupported" the equally plausible theory that the fire was set for revenge by one of two disgruntled employees. App. 11. But the evidence no more proved that petitioner was a principal and accomplice to the arson and concomitant fraud, than it proved some other unidentified person or persons, unconnected to Stavrakis, set fire to Adcor. Even viewing the wholly circumstantial case against petitioner in a light most favorable to the government, the rule of equipoise mandated an acquittal as a matter of law; instead, a man who continues to claim his

innocence is serving a fifteen-year sentence, based solely on circumstantial evidence arguably proving that he had a motive and created an opportunity for an unidentified arsonist to set the fire—hardly evidence upon which a "rational trier of fact could find guilt beyond a reasonable doubt." *Jackson*, 443 U.S. at 317 (emphasis added).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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