

NO. \_\_\_\_\_

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***IN THE SUPREME COURT OF  
THE UNITED STATES***

OCTOBER TERM, 2022

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JONG SUNG KIM,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

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**PETITION FOR A WRIT OF CERTIORARI  
FROM THE UNITED STATES SUPREME COURT  
TO THE  
THE ELEVENTH CIRCUIT COURT OF APPEALS**

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## **QUESTION PRESENTED**

I) Whether due process and the Fifth and Sixth Amendments require circuit courts to review *Brady* and *Giglio* violation claims *de novo*, rather than for an abuse of discretion?

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## **OPINION BELOW**

The unpublished opinion of the United States Court of Appeals for the Eleventh Circuit can be found at *United States v. Jong Sung Kim*, (“*Kim II*”) 2022 U.S. App. LEXIS 23661, 2022 WL 3642252 (Unpublished); USCA11 Case: 21-12406, and appears as *Appendix A* to the petition.

## **JURISDICTION**

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on or after November 14, 2022, with denial of the Defendant’s petitions for rehearing and rehearing en banc. *See Appendix B.* The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL PROVISION INVOLVED**

The Fifth Amendment to the Constitution provides:

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.

The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

### **STATUTORY PROVISIONS INVOLVED**

**18 USC § 1951.** Interference with commerce by threats or violence.

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term “robbery” means the unlawful taking or

obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term “extortion” means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term “commerce” means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

....

18 USC § 1951.

## **STATEMENT OF THE CASE**

### **A. Introduction.**

This case involves the recurring and important question of whether due process and the Fifth and Sixth Amendments require circuit courts to review *Brady* and *Giglio* claims *de novo*, rather than for an abuse of discretion.

### **B. Procedural History.**

A grand jury in the northern district of Georgia indicted JONG SUNG KIM, “aka John Kim,” with Eugene Chung, Athith Vorasith and others. Kim was charged in Count 1 with Hobbs Act conspiracy. Count 3 charged Kim with a substantive Hobbs Act violation, that on December 16, 2009, Chung, Vorasith and Kim obstructed commerce by extortion, by obtaining food and beverages from Victim #1<sup>1</sup>, and by attempting to obtain currency by threats and violence. Counts 5 and 6 charged Chung and Kim with interference with commerce by obtaining \$500 payments from Victim #1, induced by force, violence and fear, in violation of 18 USC §§1951(a) and 2. Count 5 alleged unlawful receipt

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<sup>1</sup>“Victim #1” was publically identified as Yoon Soo Lee.

of \$500 on January 13, 2010. Count 6 charged unlawful receipt of \$500 on January 21, 2010.

At trial, the jury acquitted Kim of Counts 1 and 3, but convicted on Counts 5 and 6. Within 14 days of verdict, pursuant to FRCP Rule 33(b)(2), Kim filed his first motion for new trial based upon an accidental and unknown submission to the jury of transcripts which contained extrinsic prejudicial evidence about Kim. The district court denied Kim's first motion for new trial and sentenced him to serve 18 months on Counts 5 and 6, concurrently. Kim timely filed his first notice of appeal.

On March 2, 2020, within 3 years of verdict, pursuant to Rule 33(b)(1), Kim filed a second motion for new trial based upon newly discovered evidence. On August 13, 2020, the Eleventh Circuit denied Kim's first appeal. *United States v. Kim*, 823 F.App'x 804 (11<sup>th</sup> Cir. 2020) ("*Kim I*"), attached hereto as *Appendix C*. Following the mandate on Kim's first appeal, the parties submitted additional briefing to the district court on the second motion for new trial. On June 25, 2021, the district court denied Kim's second motion for new trial, and he timely

appealed.

On August 24, 2022, the Eleventh Circuit issued an unpublished opinion affirming the denial of Kim’s second motion for new trial.

*United States v. Jong Sung Kim*, 2022 U.S. App. LEXIS 23661, 2022 WL 3642252 (Unpublished); USCA11 Case: 21-12406, (“*Kim II*”)

*Appendix A.* On November 14, 2022, the Eleventh Circuit denied John Kim’s petitions for rehearing and rehearing en banc. *See Appendix B.* John Kim remains free on an appeal bond granted by the district court.

### **C. Statement of Facts.**

John Kim is a 58 year-old resident alien, living with his wife and children in Suwanee, Georgia. He came to the U.S. from South Korea when he was 8. He has no family left in South Korea. Kim works in construction. Previously, he and his wife built and ran dry cleaners. Since his 2013 arrest in this case, Kim’s behavior has been exemplary.

#### *The Gah Bin Room Salon.*

In 2009 and 2010, in Duluth, GA, there existed “Gah Bin,” a “room salon” bar where Korean men drank in private rooms while entertained by young Asian women. The “girls” poured drinks, fed customers, made

small-talk and sang karaoke. The food was not fancy or expensive. Thirty dollar bottles of scotch were sold for \$300. After tips and fees, tabs at Gah Bin somehow ran over \$1,000. Gah Bin was located in a strip mall and was inauspicious to say the least.

In early 2009, Eugene Chung and a business partner opened Gah Bin. Chung invested substantial funds to help open it. Post-arrest, John Kim told the FBI that Chung invested \$10,000 in Gah Bin. After Chung and his partner ran the bar for a few months, the partner absconded with all the operating funds. The business closed. Chung's partner and proceeds were gone, but he maintained the keys, fixtures, liquor license and sub-lease rights to Gah Bin.

*Chung's Agreement with Yoon Soo Lee to Operate Gah Bin.*

Around June 2009, Yoon Soo Lee contacted Patrick Lee, a real estate agent, to see about procuring Gah Bin. In the past, Yoon Soo ran other room salons. He often had partners or investors to finance his operations. At Yoon Soo's request, Patrick Lee arranged a meeting and Chung agreed to let Yoon Soo take ownership of the bar in exchange for monthly payments. Chung's recorded statement to the undercover FBI

agent described the agreement:

[E. Chung] I invested \$ 25,000 in his first place,

...

So, I said, hyung, I up \$25,000 in that spot, and he [Yoon Soo] was like why don't I do this? You get me in the spot I'll give you 25% because you put \$25,000 for the equipment and everything.

(Gov. Ex. 19<sup>2</sup>).

Based on this handshake agreement, Yoon Soo Lee received ownership and control of Gah Bin. He began running the bar and within two weeks of the meeting with Chung, Gah Bin was open again for business. For a while, all went well. Yoon Soo Lee hired a new "girls." He ran Gah Bin, made money and paid Chung a portion of the proceeds as agreed. However, around November of 2009, Yoon Soo gave \$700 to Patrick Lee, but Patrick failed to deliver it to Chung. Chung grew frustrated and complained to Yoon Soo. Yoon Soo complained back, to Chung's wife at her bank branch:

[Chung to undercover FBI agent]:

I let him have the spot but he didn't pay.

...



He didn't pay me nothing, hyung And then he went to my wife and makes me look like I'm some kinda dog looking for a bone. Hyung, I went crazy, hyung.

(Gov. Ex. 19, UCE recording on June 17, 2010).

*The Bar Fight (Count 3).*

On December 16, 2009, Chung, Andy Vorasith and Brian Kong were drinking at Dok Doh sushi restaurant. John Kim joined the group. At Dok Doh, the men drank two large bottles of sake'. After dinner, someone suggested they go elsewhere for another drink. Brian Kong announced he had no more money. Kim mentioned Eugene was owed money by Yoon Soo and they could go collect the money or drink for free at Gah Bin. Never at Dok Doh did the men discuss or plan to assault Lee.

Kong testified that they arrived at Gah Bin and were seated by a waiter. Yoon Soo came out and moved them into a private room. According to Kong, they began drinking, *a lot*. They were drunk. Kong testified, "First we were drinking and it was good mood, and then John Kim was whispering to Eugene something, and then Eugene got upset." Next, Chung jumped on top of Yoon Soo, began choking him and

demanded repayment of his money. Chung sent someone out to retrieve his gun. Andy punched Yoon Soo in the nose. Chung stuck the pistol in Yoon Soo's face and demanded repayment of his investment. John Kim did not attack or assault Yoon Soo Lee.

There was a language barrier between Chung and Yoon Soo, and the men were screaming at each other. Brian Kong attempted to translate, but his Korean was not good. John Kim interceded. He interpreted between Yoon Soo and Chung, and calmed the situation down. Chung and Andy left. Kim stayed and helped Lee wipe the blood from his nose and told him to pay Chung the money he owed. The men took no money from Gah Bin that night.

*Crime is Created and Two \$500 Payments are Made (Counts 5 and 6).*

Soon after the bar fight, Yoon Soo Lee became an FBI informant. In January of 2010, he began calling John Kim, trying to set him up. During the ensuing conversations, Kim never asked for money or threatened Lee. Rather, Lee repeatedly begged Kim to deliver or take the money. During this time, Kim told Lee he was sorry that he did not

help him during fight. Kim told Lee to get a restraining order if things remained bad with Chung. Rather than intimidate or belittle Lee, Kim told him to “hit back” and to “have some balls.”

On January 6, 2010, Yoon Soo called Kim at the direction of the FBI. Yoon Soo offered to give \$500 directly to John Kim, and John Kim replied - its not my money, I don't care about it. On January 13, 2010, Lee met with Kim at Gah Bin and again begged him to deliver money to Chung. Thus, John Kim accepted a \$500 payment to help Lee on January 13, 2010. Kim also was present at Gah Bin on January 21, 2010, when Yoon Soo made another \$500 payment. Lee gave the cash to one of Chung's associates, JIN HO.

After January 21, 2010, Kim's alleged involvement in the conspiracy ended. The FBI continued to investigate Chung and others, but John Kim was never in the picture. Chung, his associates, and the undercover agent conducted several criminal transactions including purchasing quantities of marijuana and firearms, conducting extortion at the Atlanta Airport, as well as attempting to establish a prostitution house. During the year and a half the FBI agent was embedded in

Chung's group, he did not see John Kim once.

At trial, Yoon Soo Lee claimed he was traumatized for years by Chung, Kim, Patrick and others. Yoon Soo's past problems were that these men would drink but not pay their tabs, sometimes they lifted up the tables, once Kim threw a glass at him, and once Kim slapped the manager. Patrick Lee would take off his clothes and yell when he got drunk. Yoon Soo made no claim of being extorted for "protection payments" at his prior bars.

Yoon Soo testified that Patrick and Chung approached him in 2009 and insisted he take control of Gah Bin. Yoon Soo claimed he initially refused because he feared harassment by Kim and others. Yoon Soo said he only agreed to take over Gah Bin after Chung promised to protect it from Kim and others in exchange for \$1,500 a month. When asked how much he paid Chung for ownership and control of Gah Bin, Lee replied - nothing, he had been given the bar for free.

Yoon Soo Lee claimed Chung accosted him immediately when the men entered the bar on December 16th, that Chung put him in a head-

lock and drug him into the private room. Lee made no mention of seating the men, and serving them several bottles of scotch and beer.

*The Defense.*

At its core, Kim's defense was that he lacked intent to extort Yoon Soo Lee. His belief was the payments made by Lee to Chung were induced by Lee's agreement to purchase Chung's remaining interest in Gah Bin, not because of threats, violence or fear. Contrary to his trial testimony, Lee was not paying for protection or in response to extortion. He was making payments to Chung because he agreed to pay for possession and use of Gah Bin.

Yoon Soo Lee was a liar and a fraud. He had a habit of not repaying debts and a habit of lying to extricate himself. He failed to repay \$20,000 to a prior bar investor, then lied about it. He failed to repay a \$60,000 loan for a BMW he purchased for a girlfriend. Instead, he reported the car stolen. He lied to the insurance company and the Gwinnett police. He flew to L.A. and lied to detectives there as well. The defense presented witnesses who testified Lee was a known liar and a fraud, and his reputation for truthfulness was not good in the

community.

As to Counts 5 and 6, the \$500 payments on January 13th and 21<sup>st</sup>, the defense was these payments were induced by the FBI, and Kim lacked the intent to commit or further an extortion scheme. The payments from Lee were not induced by force, violence, threats or fear. Kim was not aiding and abetting Chung by delivering the payments. At most, Kim's intent was to aid and assist Lee after he *begged* him to facilitate delivery of the money owed to Chung. Pertaining to Counts 5 and 6, Kim requested the pattern jury instruction on entrapment. The district court refused. The jury convicted Kim of Counts 5 and 6.

*Sentencing.*

Based upon the factors of 18 USC §3553(a), the district court found 18 months to be a reasonable sentence. Kim appealed his convictions.

*Kim's Second Motion for New Trial.*

While Kim's first appeal was pending, the prosecutor disclosed a recent discovery of several undercover recordings made by Yoon Soo Lee early in the investigation. These recordings had not previously been

produced to the defense. The undisclosed recordings contained additional conversations between Lee and Kim in January 2010. (USDC NDGA 1:13-CR-379, Doc:458-Exhibits 1-5<sup>3</sup>). The dates and content of the undisclosed calls had proximity and relevance to the offenses of conviction. Kim filed a second motion for new trial, asserting the undisclosed calls were exculpatory as they contained independent evidence of Kim's lack of intent to extort Lee, and additional evidence of government inducement which would have supported his request for an entrapment instruction. Additionally, the recordings contained statements which contradicted Yoon Soo's trial testimony. In response, the government submitted an affidavit from the case agent who stated the recordings were discovered in 2019 when a FBI database that was going to be shut down.

*The District Court's Order.*

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January 9, 2010 (01-09-2010\_080449PM) = Exhibit 1  
January 16, 2010 (1-16-2010\_010650PM) = Exhibit 2  
January 21, 2010 (1-21-2010\_115231AM) = Exhibit 3  
January 21, 2010 (1-21-2010\_065633PM) = Exhibit 4  
January 26, 2010 (1-26-2010\_014712PM) = Exhibit 5.

In denying the second motion for new trial, the district court made several findings including the following:

To the extent Kim's argument is based on his defense that Lee's trial story<sup>4</sup> did not make sense, the Court disagrees.

(USDC NDGA 1:13-CR-379, Doc:486-10).

Kim also contends that this call revealed Lee to be his equal, with plenty of power and control and the ability to say "no." However, Kim fails to show that this, even if true, would have affected the jury's verdict.

(USDC NDGA 1:13-CR-379, Doc:486-11).

The next call took place January 16, 2010, during which Kim and Lee discussed Kim's desire to become the owner of a bar called Yulbup. Kim asks for Lee's help and expertise (rather than money). Again, Kim fails to demonstrate that any different jury verdict likely would have resulted based on the fact that he requested Lee's expertise.

(USDC NDGA 1:13-CR-379, Doc:486-11).

The district court denied Kim's second motion for new trial and his requests for discovery and an evidentiary hearing.

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That Chung gave him Gah Bin, an operational "room-salon" bar, for free, and he was making payments for protection by Chung.



*The Eleventh Circuit Opinion.*

The Eleventh Circuit denied Kim's second appeal on all grounds. In denying Kim's *Brady* and *Giglio* claims, the panel applied an abuse of discretion standard. *United States v. Kim*, No. 21-12406, *Appendix A*, panel opinion at p. 9. The panel opinion concluded that the undisclosed recordings were not exculpatory and failed to help establish Kim's lack of intent to extort Yoon Soo Lee. (*Kim*, 21-12406, *Appendix A*, panel opinion at pp. 11-12).

This petition for a writ of certiorari follows.

**REASONS FOR GRANTING THE PETITION**

**I) THE ELEVENTH CIRCUIT INCORRECTLY APPLIED AN ABUSE OF DISCRETION STANDARD OF REVIEW WHEN KIM'S *BRADY* AND *GIGLIO* CLAIMS SHOULD HAVE BEEN REVIEWED *DE NOVO*.**

In deciding Kim's appeal, the panel applied an abuse of discretion standard:

We review for an abuse of discretion a district court's denial of a motion for a new trial based on an alleged *Brady* or *Giglio* violation. *United States v. Stein*, 846 F.3d 1135, 1145, 1151 (11th Cir. 2017).

*United States v. Kim*, 21-12406, panel opinion at p. 9.

The circuit court failed to review the *Brady/ Giglio* claims or the existence of *Brady / Giglio* violations, *de novo*. *Id.*

While Kim agrees with the circuit court's reliance on *United States v. Stein*, he disagrees with its interpretation of the case. In his opening circuit brief, Kim also cited *Stein* but for the premise that the circuit court "reviews *Brady* and *Giglio* claims *de novo*. *United States v. Stein*, 846 F.3d 1135, 1145 (11<sup>th</sup> Cir. 2017)." (USCA11 Case: 21-12406, Kim's opening circuit brief at p. 23). A quick look at *Stein* confirms Kim's original citation and interpretation:

Mr. Stein argues that the government violated *Brady* and *Giglio*, and thus the district court erred in denying his motions for a new trial. We review *de novo* alleged *Brady* or *Giglio* violations. *United States v. Brester*, 786 F.3d 1335, 1339 (11th Cir. 2015); *United States v. Jones*, 601 F.3d 1247, 1266 (11th Cir. 2010).

*Stein*, 846 F.3d at 1145.

Kim also cited *United States v. Brester*:

We review an alleged Brady violation *de novo*. *United States v. Schlei*, 122 F.3d 944, 989 (11th Cir. 1997).

*Brester*, 786 F.3d at 1339.

(*Kim*, 21-12406, opening brief at p. 23).

Similarly, *Stein* also cites *Jones*, which held, “We review *de novo* alleged Brady violations.” *Jones* 601 F.3d at 1266.

Kim recognizes that generally, motions for new trial are reviewed for an abuse of discretion. However, *Brady* and *Giglio* claims carry greater weight, and the constitutional implications are far more significant than some other matters which may arise in a motion for new trial. The cases cited above clearly mandate that *Brady* violations should be reviewed *de novo*. Kim’s *Brady* and *Giglio* claims were raised at the first possible moment / first possible stage after the disclosure failures were discovered by the prosecutor and after the prosecution informed the Kim about them. Kim could not have raised the disclosure violations at trial, because he was not aware of the government’s failure to disclose the recordings until well after the verdict.

The government should not reap the benefit of a less stringent standard of review by waiting to disclose the violation. Put another way, the very nature of this *Brady* / *Giglio* violation places a criminal

defendant in a position where he cannot raise the issue at trial or before a motion for new trial, because he does not know about it. A motion for new trial is his first opportunity to raise the claims, and he should not be penalized with a lower standard of review when he did not cause the initial harm. Furthermore, given the inherent nature of the claims, failure to disclose favorable evidence, it follows such claims most will be raised after trial, not during.

Other circuits agree. Alleged *Brady* violations are reviewed de novo. *United States v. Woodley*, 9 F.3d 774, 777 (9th Cir. 1993). *United States v. Bracy*, 67 F.3d 1421, 1428 (9<sup>th</sup> Cir. 1993), 1995 U.S. App. LEXIS 28202, \*14. While the denial of a motion for new trial based upon a Brady claim is reviewed for an abuse of discretion, "the district court's determination as to the existence of a Brady violation is reviewed de novo." *United States v. Graham*, 484 F.3d 413, 416 (6th Cir. 2007) (internal citation omitted). "

Use of the incorrect standard of review created prejudice for John Kim and was not harmless.

*The Government Violated Brady and Giglio  
By Failing to Disclose the January 2010 Recordings.*

Suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to guilt, irrespective of the good or bad faith of the prosecution. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Thus, any evidence of an exculpatory nature should be disclosed. *United States v. Yizar*, 956 F.2d 230 (11th Cir. 1992). The duty of disclosure under *Brady* also extends to impeachment evidence. *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (citing *United States v. Bagley*, 473 U.S. 667, 676 (1985)). Evidence is material if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Bagley*, 473 U.S. at 682. "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Id.*

In *Scheer*, this Court wrote the following:

A reasonable probability of a different result is shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. *Kyles v. Whitley*, 514 U.S. 419, 434 (1995) (quotation marks and citation omitted).

In the case of impeachment evidence, a constitutional error may derive from the government's failure to assist the defense by disclosing information that might have been helpful in conducting the cross examination. *United States v. Bagley*, 473 U.S. 667, 678, 105 S. Ct. 3375, 3381 (1985).

*United States v. Scheer*, 168 F.3d 445, 452 (11<sup>th</sup> Cir. 1999).

Here, had the evidence been disclosed, Kim would have been better armed to cross-examine the government's star witness and prove he lacked criminal intent to commit extortion as charged in Counts 5 and 6. Failure to disclose the January 2010 recordings undermined confidence in the outcome of this close case.

***The Giglio<sup>5</sup> Violation.***

Yoon Soo Lee was asked directly about his communications with Kim leading up to the January 13, 2010, acceptance of \$500 by Kim. Lee failed to answer this question truthfully and the jury was given a false picture of John Kim and his criminal intent. Disclosure of the January 9, 2020, recording would have armed Kim's counsel with cross-examination material and would have allowed the jury to see a more

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*Giglio v. U.S.*, 405 U.S. 150 (1972).

accurate picture of Kim's case. A defendant is entitled to a new trial if there is any reasonable likelihood that the withheld information and false testimony *could have* affected the judgement of the jury. A new trial is required unless the prosecution persuades the court that the false testimony was harmless beyond a reasonable doubt. *Guzman v. Secretary, Dept. of Corrections*, 663 F.3d 1336, 1348 (11<sup>th</sup> Cir. 2011).

For the purposes of a *Giglio* claim, "the falsehood is deemed to be material if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *Ford v. Hall*, 546 F.3d 1326, 1331 (11<sup>th</sup> Cir. 2008) (internal quotation marks omitted). Here, the recordings withheld were material and could have affected the judgement of the jury. The undisclosed call from January 9, 2010, revealed Chung's mother was upset that her son had been swindled out of his investment in Gah Bin, and confirmed Kim's belief that the payments to Chung were for a legitimate debt. Both points were in direct contradiction to Lee's trial testimony. Lee was allowed to omit a significant portion of the truth, if not lie about his communications with Kim leading up to the January 13, 2010, first payment. There is a

reasonable probability that if the January recordings had been disclosed, the result of the proceeding could have been different.

### CONCLUSION

For the above enumerated reasons, this Court should grant the Defendant's petition for certiorari, vacate his sentence and remand his case to the Eleventh Circuit.

DATED: This the 11<sup>th</sup> day of February, 2023.

*s/ L. Burton Finlayson*

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No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

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JONG SUNG KIM,

*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

CERTIFICATE OF COMPLIANCE

I hereby certify that Mr. Kim’s *Petition for Writ of Certiorari* contains fewer than 40 pages and contains 5,036 words according to Corel Word Perfect’s word-count tool. Therefore, I have complied with the Court’s page and word-limitation requirements set

[Certificate of Compliance, p. 1 of 2]

forth in Rule 33.2 (b) and 33.1(g), (h).

This 11th day of February, 2023.

*s/ L. Burton Finlayson*

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**CERTIFICATE OF SERVICE**

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I hereby certify that a true and correct copy of JONG SUNG KIM's Motion for Leave to Proceed in Forma Pauperis, Petition for Writ of Certiorari and Appendix are being furnished by United States mail, first-class or "Priority" postage prepaid, to counsel for Respondent, The Honorable Elizabeth Prelogar, Solicitor General of the

United States, Room 5614, Department of Justice, 950 Pennsylvania  
Avenue, N.W., Washington, DC 20530-0001.

This 11<sup>th</sup> day of February, 2023.

*s/ L. Burton Finlayson*

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