No. _____

In The
Supreme Court of the United States

JAVAAR WATKINS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Constitution requires the Government to persuade a jury "beyond reasonable doubt" in order to sustain a conviction. Over Watkins' objection, the reasonable doubt instruction charged the jury to subjectively consider "life's most important decisions" when considering whether reasonable doubt existed. Was the reasonable doubt instruction constitutionally deficient thereby requiring reversal of Watkins' conviction?

PARTIES TO THE PROCEEDING

Petitioner Javaar Watkins, also known as Javaar Yavonnie Kalem Watkins, also known as Javaar Yavonnie Watkins, also known as Javaar Ya'onnie-K Watkins was the defendant in the district court proceedings and appellant in the court of appeals proceedings. Respondent United States of America was the plaintiff in the district court proceedings and appellee in the court of appeals proceedings.

RELATED CASES

U.S. v. Watkins, No. 1:21-cr-00010, U.S. District Court for the District of North Dakota, Amended Judgment in a Criminal Case entered July 14, 2022.

U.S. v. Watkins, No. 22-2196, U.S. Court of Appeals for the Eighth Circuit. Judgment entered May 9, 2023.

U.S. v. Watkins, No. 22-2196, U.S. Court of Appeals for the Eighth Circuit. Order Denying Petition for Rehearing entered June 20, 2023.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

PETITION FOR A WRIT OF CERTIORARI

Javaar Watkins (Watkins) petitions for a writ of certiorari to review the opinion and judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINION BELOW

The Eighth Circuit's opinion is reported at *U.S. v. Watkins*, 66 F.4th 1179 (8th Cir. 2023) and reproduced at App. 1-15. The Eighth Circuit's denial of Watkins' petition for rehearing and rehearing *en banc* is reproduced at App. 31. The judgment of the District Court for the District of North Dakota is reproduced at App. 16-30.

JURISDICTION

The Eighth Circuit Court of Appeals panel entered its opinion and judgment on May 9, 2023. App. 1-15. The Court denied a timely petition for rehearing and rehearing *en banc* on June 20, 2023. App. 31. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS INVOLVED

> 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 navel 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 offence 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

> 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 defence.

U.S. Const. amend. VI

STATEMENT OF THE CASE

The issue presented in this case involves a conflict between the Courts of Appeals regarding language used in the reasonable doubt criminal jury instruction. In this case, a jury convicted Watkins after being instructed proof beyond a reasonable doubt equates to

proof a person would rely on in making "life's most important decisions." The reasonable doubt instruction was constitutionally defective and misdescribed the bedrock principle of reasonable doubt.

The Government charged Watkins with possession of a firearm by a prohibited person in violation of 18 U.S.C. §§ 922(g)(1) & (9), 924(a)(2), 924(c), 924(e) and 2 on November 6, 2020. Watkins was later indicted by a grand jury on January 14, 2021. The charge against Watkins stemmed from allegations he was involved in an early morning shooting at a Bismarck, North Dakota apartment on September 27, 2020.

Before trial, Watkins submitted proposed jury instructions wherein he included three alternative instructions on reasonable doubt. (R.Doc. 118 at 9-10; App. 33-34). The district court sent the parties a draft set of jury instructions, and at the pretrial conference on February 11, 2022, Watkins objected to the language contained in the court's reasonable doubt jury instruction relating to one's subjective decisions in life. (Pretrial Tr., p. 6-7). The court responded, "That's the pattern – Eighth Circuit pattern jury instruction that's withstood the stand of time for the last 50-plus years." (Pretrial Tr., p. 6). Watkins continued to object, noting that allowing the jury to recall the reasonable doubt that existed when they made important life decisions lowers the burden of the reasonable doubt standard. (Pretrial Tr., p. 6-7). Additionally, Watkins pointed out that pattern instructions from the Ninth Circuit, Tenth Circuit, and state of North Dakota do not include the "life's most important decision" language. *Id.*

Trial against Watkins began February 14, 2022. (TR., Vol. I, p. 1). Before the case was submitted to the jury, Watkins again objected to the phrase "would not hesitate to rely and act upon that proof in life's most importance decisions" in the district court's reasonable doubt jury instruction. (TR., Vol. III, p. 481-82). The court overruled Watkins' objection and noted it was relying on the Eighth Circuit pattern jury instruction on reasonable doubt. (TR., Vol. III, p. 485). At the close of trial, the court used the Eighth Circuit's pattern instruction, and instructed the jury, in part, as follows:

> REASONABLE DOUBT DEFINED F-12
>
> . . . . Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions.
>
> . . .

(R.Doc. 144, p. 15; App. 32).

The jury convicted Watkins on February 18, 2022. (R.Doc. 145). He was subsequently sentenced to 324 months' imprisonment, five years' supervised release, and a $100 special assessment. (R.Doc. 162 & App. 16-30). Watkins filed a timely appeal with the Eighth Circuit Court of Appeals on June 6, 2022. The Eighth Circuit affirmed Watkins' conviction in its opinion and judgment on May 9, 2023. (App. 1-15). Regarding the reasonable doubt instruction, the Eighth Circuit relied on *Holland v. U.S.*, 348 U.S. 121, 140 (1954), which tersely discussed a reasonable doubt instruction and

caselaw from the Sixth Circuit and Eighth Circuit. *U.S. v. Watkins*, 66 F.4th 1179, 1187 (8th Cir. 2023).

Watkins petitioned for rehearing and rehearing *en banc*, which the Eighth Circuit denied on June 20, 2023. (App. 31). Watkins now files this Petition for Writ of Certiorari due to the conflict between the Courts of Appeals regarding the important matter of reasonable doubt-jury instructions.

REASONS FOR GRANTING THE PETITION

The most important jury instruction an empaneled jury will hear in any criminal case is the instruction on reasonable doubt. The requirement that the Government must prove the defendant committed the crime beyond a reasonable doubt in order to sustain a conviction dates back to this Nation's early history. *In re Winship*, 397 U.S. 358, 361 (1970).

The *Winship* Court recognized that long-standing precedent established the Government's proof beyond reasonable doubt burden in criminal cases is a constitutional requirement of due process. *Id.* at 362. Additionally, the *Winship* Court noted the importance of the reasonable doubt standard as it relates to the presumption of innocence. Specifically, the Court noted it is an 'axiomatic and elementary' principle which is the very 'foundation of the administration of our criminal law.' *Id.* at 363 (citing *Coffin v. U.S.*, 156 U.S. 432, 453 (1895)). Profoundly, the Court recognized the importance to a free society that it have confidence the

Government cannot convict a person guilty of a crime "without convincing a proper factfinder of his guilt with utmost certainty." *In re Winship*, 397 U.S. at 364. Upon that review of precedent, the *Winship* Court unambiguously held "that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *Id.*

The Sixth Amendment affords additional constitutional protections when it comes to the reasonable doubt standard. This Court recognizes that the Sixth Amendment's jury trial right requires that it is for the jury to decide whether proof exists to convict beyond a reasonable doubt, not judges. *Sullivan v. Louisiana*, 508 U.S. 275, 277-78 (1993).

As set forth below, inconsistency exists among the Courts of Appeals regarding the use of the subjective phrase "life's most important decisions" in reasonable doubt jury instructions. That phrase misdescribes and lowers the Government's reasonable doubt burden of proof, which is a structural error warranting reversal.

I. The Courts of Appeals Are Split on Reasonable Doubt Instructions.

"Life's most important decisions" are riddled with reasonable doubt. Yet, the jury in Watkins' case was instructed that proof beyond a reasonable doubt is proof the jury members would not hesitate to act upon in "life's most important decisions." In other words, the jury was told that it is fine to have reasonable doubt

and still convict the defendant. This amounts to an unconstitutional lowering of the Government's burden of proof in a criminal case.

The reasons why this phrase is constitutionally unacceptable was eloquently explained many years ago in a D.C. Circuit case:

> Being convinced beyond a reasonable doubt *cannot be equated* with being 'willing to act . . . in the more weighty and important matters in your own affairs.' A prudent person called upon to act in an important business or family matter would certainly gravely weigh the often neatly balanced considerations and risks tending in both directions. But, in making and acting on a judgment after so doing, such a person would not necessarily be convinced beyond a reasonable doubt that he had made the right judgment. Human experience, unfortunately, is to the contrary.
>
> The jury, on the other hand, is prohibited from convicting unless it can say that beyond a reasonable doubt the defendant is guilty as charged. Thus there is a substantial difference between a juror's verdict of guilt beyond a reasonable doubt and a person making a judgment in a matter of personal importance to him. *To equate the two in the juror's mind is to deny the defendant the benefit of a reasonable doubt*.

Scurry v. U.S., 347 F.2d 468, 470 (D.C. Cir. 1965), cert. denied, 389 U.S. 883 (1967) (emphasis added).

Presently, there is a circuit split when it comes to describing the reasonable doubt standard to the jury in each circuit's model criminal jury instructions.

A. Circuits Using "Life's Most Important Decisions."

The Second,[1] Third, Fifth, Sixth, Eighth, and Eleventh Circuit Courts of Appeals all use the exact, or very similar language to describe the reasonable doubt standard to the jury: "[p]roof beyond reasonable doubt is proof of such convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in *life's most important decisions*." (emphasis added). Third Circuit Model Criminal Jury Instructions, § 3.06 (2021); Fifth Circuit Pattern Jury Instructions, § 1.05 (2019); Sixth Circuit Pattern Jury Instructions, § 1.03 (2023); Eighth Circuit Model Criminal Jury Instructions, § 3.11 (2022); and Eleventh Circuit Pattern Jury Instructions, Criminal Cases, § B3 (2022).

The Second Circuit has justified the use of this instruction on the basis that the trial court has discretion to determine the language to use when instructing the jury "as long as it adequately states the law." *U.S. v. Alkins*, 925 F.2d 541, 550 (2d Cir. 1991). The commentary to the Fifth Circuit's reasonable doubt

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[1] The Second Circuit does not have published jury instructions, but it has case law expressing preference for the objectionable language in the reasonable-doubt jury instruction. *Perez v. Irwin*, 963 F.2d 499, 502 (2d Cir. 1992).

instruction cites to *Victor v. Nebraska*, 511 U.S. 1 (1994), and *Holland v. U.S.*, 348 U.S. 121 (1954), for the premise that "there is not a specific definition of reasonable doubt that must be used as long as the concept is correctly conveyed to the jury." Fifth Circuit Model Jury Instructions (Criminal Cases), § 1.05 (commentary). The Sixth Circuit has case law recognizing its reasonable doubt instruction as correct. *U.S. v. Hynes*, 467 F.3d 951, 957 (6th Cir. 2006); *but see U.S. v. Ashrafkhan*, 964 F.3d 574, 579-80 (6th Cir. 2020) (holding that reasonable doubt instruction that *omitted* the phrase "proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives" from the reasonable doubt instruction was proper; instruction given did not tend to confuse the jurors nor place too high of a burden of proof on the government). The Eighth Circuit has long taken the position that the Court has a duty to instruct on the meaning of reasonable doubt and it would be in error not to. *Friedman v. U.S.*, 381 F.2d 155, 160 (8th Cir. 1967).

B. Circuits Declining Use of "Life's Most Important Decisions."

Neither the First, Ninth, Tenth, or D.C.[2] Circuit Courts of Appeals include language pertaining to "life's most important decisions" in their reasonable doubt

[2] The D.C. Circuit does not have published jury instructions, but it has case law expressing the "substantial difference" between a juror's guilty verdict and a person making a judgment on a personal matter. *Scurry*, 347 F.2d 468, 470.

instructions. First Circuit Pattern Criminal Jury Instructions, § 3.02 (2016); Ninth Circuit Model Criminal Jury Instructions, § 6.5 (2023); and Tenth Circuit Pattern Criminal Jury Instructions, § 1.05 (2021).

The First Circuit has long criticized the phrase "life's most important decisions" in the reasonable doubt instruction. *See Gilday v. Callahan*, 59 F.3d 257, 264 (1st Cir. 1995); *U.S. v. Noone*, 913 F.2d 20, 29 (1st Cir. 1990) (admonishing the use of this type of instruction due to the risk of jurors misunderstanding the reasonable doubt standard); *U.S. v. Drake*, 673 F.2d 15, 20 (1st Cir. 1982); *Dunn v. Perrin*, 570 F.2d 21, 24 (1st Cir. 1978) (recognizing that equating a finding of guilt with "life's most important decisions" tends to trivialize the constitutional burden of proof on the Government). The Ninth and Tenth Circuits have also joined in that criticism. *See Ramirez v. Hatcher*, 136 F.3d 1209, 1214 (9th Cir. 1998) (noting that the phrase "life's most important decisions" might understate the Government's burden); *U.S. v. Jaramillo-Suarez*, 950 F.2d 1378, 1386 (9th Cir. 1991) (urging trial courts not give the "willing to act" instruction which includes the "life's most important decisions" phrase by agreeing with the jury instructions committee comments that "choosing a spouse, buying a house, borrowing money, and the like . . . are wholly unlike the decisions jurors ought to make in criminal cases"); *Tillman v. Cook*, 215 F.3d 1116, 1127 (10th Cir. 2000) (recognizing the phrase "life's most important decisions" as "imprecise language" and suggests eliminating to avoid future problems); and *Monk v. Zelez*, 901 F.2d 885, 890 (10th

Cir. 1990) (noting the phrase was repeatedly criticized and courts must guard against the dilution of the reasonable doubt standard).

Ironically, had Watkins allegedly committed these crimes in North Dakota's western border state, Montana, the Ninth's Circuit's model reasonable doubt instruction would have been given. Ninth Circuit Model Jury Instructions, § 6.5 (2023). That reasonable doubt instruction does not contain the subjective phrase "life's most important decisions." *Id*.

C. Circuits Providing No Reasonable Doubt Jury Instructions.

The Fourth and Seventh Circuit Courts of Appeals have chosen not to define reasonable doubt for the jury. These Circuits have taken the position that it is inappropriate for judges and attorneys to define the reasonable doubt standard believing that any attempts to define the term can only muddy the waters. *U.S. v. Hatfield*, 591 F.3d 945, 949 (7th Cir. 2010).

In fact, in reaffirming its rule that reasonable doubt not be defined, the Fourth Circuit relied on language from *Holland* recognizing that "[a]ttempts to explain the term 'reasonable doubt' do not usually result in making it any clearer to the minds of the jury." *U.S. v. Reives*, 15 F.3d 42, 44 (4th Cir. 1994) (quoting *Holland*, 348 U.S. 121, 140). The *Reives* Court also noted the division in the circuit courts "about if, when, and how the concept of 'reasonable doubt' should be defined." *Id.* Specifically, the Court noted that four

circuits agree that failure to define is reversible, four agree that it is for the trial court's discretion on defining reasonable doubt, two circuits (including the Fourth) essentially condemn the use of any definition, and state courts are similarly divided. *Id.* at fn.1.

Likewise, the Seventh Circuit reaffirmed its rule that neither judges nor attorneys define "reasonable doubt." *U.S. v. Glass*, 846 F.2d 386, 387 (7th Cir. 1988). In *Glass*, the Court noted the amount of confusion that the jury had where the trial court allowed defense counsel to define reasonable doubt during closing argument. *Id.* Ironically, defense counsel caused the confusion in the case when it attempted to define reasonable doubt by stating – "reasonable doubt" as "that level of doubt which would cause you to act or not in a matter of the highest importance and concern to yourself." *Id.* at 386.

Because the Courts of Appeals are split on whether or not to instruct a jury that proof beyond a reasonable doubt equates to proof the jury members would not hesitate to rely on when making "life's most important decisions," this Court should grant Watkins' petition.

II. Federal Judges Have Commented on Problems with the Subjective Phrase "Life's Most Important Decisions."

In *Victor*, this Court analyzed two reasonable doubt jury instructions used in two separate murder cases in state cases, one a California case and the other a Nebraska case. 511 U.S. 1. Both instructions

included phrases that were challenged on appeal regarding "moral certainty," "substantial doubt," and "strong probabilities." *Id.* at 7, 18. While the Court ultimately found such instructions valid, it reaffirmed the requirement that reasonable doubt instructions must (1) convey to the jury that it consider only the evidence, and (2) properly state the government's burden of proof. *Id.* at 5.

However, the relevance of the *Victor* opinion is not found in the main opinion, but rather in Justice Ginsburg's concurring opinion. 511 U.S. at 23-28. Specifically, Justice Ginsburg criticized Nebraska's reasonable doubt instruction for the following language (language that Justice O'Connor did not address in the opinion of the Court): "such a doubt as would cause a reasonable and prudent person, in one of the graver and more important transactions of life, to pause and hesitate before taking the represented facts as true and relying and acting thereon." *Id.* at 24. Justice Ginsburg found such language as "unhelpful" and noted that a distinguished committee of federal judges, reporting to the Judicial Conference of the United States in 1987, were critical of this "hesitate to act" language:

> Because the analogy it uses seems misplaced. In the decisions people make in the most important of their own affairs, resolution of conflicts about past events does not usually play a major role. Indeed, decisions we make in the most important affairs of our lives – choosing a spouse, a job, a place to live, and the like – generally involve a very heavy element of

> uncertainty and risk-taking. They are wholly unlike the decisions jurors ought to make in criminal cases. Federal Judicial Center, Pattern Criminal Jury Instructions 18-19 (1987) (commentary on instruction 21).

Victor, 511 U.S. at 24.

Justice Ginsburg further recognized the profound observations made by Second Circuit Chief Judge Jon O. Newman in a law review article that the "hesitate to act standard" was ambiguous. Specifically, Chief Judge Newman questioned that when a jury reaches a "hesitate to act in a matter of importance," what are their options? "Should they decline to convict because they have reached a point of hesitation, or should they simply hesitate, then ask themselves whether, in their own private matters, they would resolve the doubt in favor of action, and, if so, continue to convict?" *Id.* at 24-25.

The observations by distinguished federal judges regarding the ambiguity in the phrase "hesitate to act in life's most important decisions" unveil the problem at hand. First, the phrase is entirely ambiguous. Second, the important decisions in life are riddled with doubt – reasonable doubt – both reasons for acting and not acting. This must not be the yardstick that jurors have in the back of their minds when they enter into deliberation – that the reasonable doubt standard is entirely subjective based on the amount of reasonable doubt each juror was comfortable with in making their own "life's most important decisions."

An equivalent reason for granting the petition is to distinguish the *dicta* in nearly seventy-year-old precedent that *appears* to approve of this "life's most important decisions" phrase. *Holland*, 348 U.S. 121, 140. This is critical because the Eighth Circuit's opinion relied on *Holland* to affirm the use of the reasonable doubt instruction in this case despite *Holland* never actually addressing the phrase in question. *Id.*

It must be noted that the Court in *Holland* only spent a fraction of the opinion on reviewing the jury instruction issue. *Id.* at 139-40. Rather, nearly the entire opinion was spent reviewing the Government's net worth method as its burden of proof in a tax evasion case. *Id.* at 124-25. In an over twenty-page opinion, the Court's terse, conclusory dicta comments regarding the jury instruction would appear to bless the language of the instruction when this in fact was not the case. Rather, the opinion really only discussed the phrase "willing to act" that was used in the instruction. *Id.* at 140. To that phrase, the Court disapproved and indicated the better phrase would be "hesitate to act." At no time however did the *Holland* Court, in its brief review of the reasonable doubt instruction, actually discuss the phrase of the instruction "more serious and important affairs of your own lives. . . ." *Holland*, 348 U.S. at 140. Rather, the *Holland* Court simply and tersely held that the instruction, as a whole, conveyed to the jury the correct concept of reasonable doubt. *Id.* Simply put, *Holland* never addressed the very subjective phrase Watkins now challenges.

Yet, the observations made much more recently by distinguished federal judges hold a polar opposite view of this language. *Victor*, 511 U.S. at 24-25. *Holland* is outdated, weak precedent, with little or no analysis, that needs to be distinguished and made clear to the Courts of Appeals.

III. A Constitutionally Deficient Reasonable Doubt Instruction Is Structural Error, Warranting Reversal.

The Fifth Amendment, U.S. Const., guarantees criminal defendants due process, and due process protects a defendant against conviction except upon proof beyond a reasonable doubt. *Winship*, 397 U.S. at 364. Additionally, the Sixth Amendment, U.S. Const., guarantees a criminal defendant's right to a jury trial, and it is the jury who decides whether proof exists to convict the defendant beyond a reasonable doubt, not judges. *Sullivan*, 508 U.S. 275, 277-78. The central principle in every criminal jury trial is the reasonable doubt standard. It is of the utmost importance that this Court resolve this Circuit split on the use of this phrase "life's most important decisions" which Watkins contends makes the reasonable doubt instruction constitutionally defective.

In *Sullivan*, this Court analyzed the validity of a Louisiana state reasonable doubt jury instruction in a first-degree murder case. 508 U.S. 275, 276-77. The reasonable doubt jury instruction in Sullivan's case was "essentially identical" to the reasonable doubt

instruction the Court held was unconstitutional just three years earlier in *Cage v. Louisiana*, 498 U.S. 39 (1990) (*per curiam*) (overruled on other grounds). The reasonable doubt instruction in the *Cage* case utilized the following subjective terms and phrases: "*doubt as would give rise to a grave uncertainty*"; "*an actual substantial doubt*"; and "*moral certainty*." *Id.* at 40 (emphasis added). In so analyzing these phrases, the *Cage* Court concluded that the words "substantial" and "grave" "suggest a higher degree of doubt than is required for acquittal under the reasonable doubt standard." *Id.* at 41. The *Cage* Court also found fault with the phrase "moral certainty" because "it becomes clear that a reasonable juror could have interpreted the instruction to allow a finding of guilt based on a degree of proof below that required by the Due Process Clause." *Id.*[3]

Along with reaffirming the Fifth Amendment due process requirement in criminal cases, the *Sullivan* Court also noted the interrelated workings of the Sixth Amendment's guarantee of a *jury verdict* of guilt beyond a reasonable doubt. 508 U.S. 275, 278. The Court eloquently explained this principle as follows: "It would not satisfy the Sixth Amendment to have a jury determine that the defendant is *probably* guilty, and then leave it up to the judge to determine (as *Winship*

[3] *But see Estelle v. McGuire*, 502 U.S. 62, 72, fn.4 (1991) (settling on the "reasonable likelihood" standard as the single standard of review for jury instructions). Watkins' position is that regardless of the exact wording of the standard of review, the phrase "life's most important decisions" used in the reasonable-doubt jury instruction is constitutionally deficient.

requires) whether he is guilty beyond a reasonable doubt." *Id.* So, when considering whether a constitutionally deficient reasonable doubt instruction may be harmless error, the *Sullivan* Court concluded that deficient reasonable doubt instructions amounted to "structural error." *Id.* at 281-82. *See also Neder v. U.S.*, 527 U.S. 1, 8 (1999) (citing a string of cases where automatic reversal is required due to "structural error" and citing *Sullivan* as the defective reasonable doubt instruction case).

The *Sullivan* Court's holding recognizes that the Sixth Amendment requires "an actual jury finding of guilty," and "the essential connection to a 'beyond reasonable doubt' factual finding cannot be made where the instructional error consists of a misdescription of the burden of proof, which vitiates *all* the jury's findings. A reviewing court can only engage in pure speculation- in view of what a reasonable jury would have done. And when it does that, 'the wrong entity judge[s] the defendant guilty.' " *Sullivan*, 508 U.S. at 281 (quoting *Rose v. Clark*, 478 U.S. 570, 578 (1986)).

Justice Rehnquist's concurring opinion in *Sullivan* succinctly recognized that: "A constitutionally deficient reasonable-doubt instruction will always result in the absence of 'beyond a reasonable doubt' jury findings. That being the case, I agree that harmless-error analysis cannot be applied in the case of a defective reasonable doubt instruction consistent with the Sixth Amendment's jury-trial guarantee." *Sullivan*, 508 U.S. at 284.

CONCLUSION

Courts must be diligent to protect citizens' constitutional rights, otherwise these cherished rights exist merely as platitudes. It is the silent encroachments that get their first footing by ignoring constitutional rights which then leads to an erosion of the rights altogether, not just for the litigants in the case but for all citizens. *Boyd v. U.S.*, 116 U.S. 616, 635 (1886).

This phrase "life's most important decisions" is not some benign expression in attempting to explain the reasonable doubt standard to the jury, but rather is a malignant misdescription which so infects the reasonable doubt standard by lowering the Government's burden in a criminal trial. This Court must protect the constitutional rights of its citizens by declining to allow the erosion of the reasonable doubt standard. This Court ensures the protection of such rights by granting Watkins' petition for writ of certiorari.

Dated: September 15, 2023.

Respectfully submitted,

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