23-6069

No. 23A225

IN THE
SUPREME COURT OF THE UNITED STATES

JEREMIE SAINTVIL, et al.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES APPEALS COURT FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Whether the two bank fraud subsections of 18 U.S.C. § 1344 are separate and distinct offenses that require charging in separate counts?

2. Whether surplusage that enlarges the bank fraud statute to include Congressional omissions within its scope is constitutionally permissible?

3. Whether a finding of waiver of a fundamental constitutional right is valid without determining whether the good cause defense, apparent in the trial record, excused the untimely objection?

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RELATED PROCEEDINGS

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Appendix A

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, appearing pro se, respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION BELOW

The Eleventh Circuit issued its opinion on May 25, 2023. A petition for rehearing was filed and denied. The opinion of the United States Court of Appeals appears at Appendix A and is unpublished. *United States v. Saintvil*, 2023 WL 3644976 at *5 (11th Cir. May 25, 2023)

The opinion of the United States Court Of Appeals For The Eleventh Circuit at Appendix A.

JURISDICTION

The Eleventh Circuit issued its unpublished opinion on May 25, 2023. (See Petitioners' Appendix ("Pet. App.") A, 1-20). This petition for a writ of certiorari is timely filed under Rule 13 of

the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant provisions are 18 U.S.C. § 1344, the Sixth Amendment, and the Fifth Amendment of the United States Constitution.

STATEMENT OF THE CASE

This petition for a writ of certiorari seeks review of the judgment of the United States Court of Appeals for the Eleventh Circuit in *United States v. Saintvil*, No. 22-10004 (2023). This case presents important questions about the interpretation and application of the federal bank fraud statute, 18 U.S.C. § 1344, and the fundamental constitutional rights of defendants in criminal cases. The Supreme Court should grant certiorari because the Eleventh Circuit's decision conflicts with established precedent, creates a circuit split, and has the potential to have a

negative impact on the rights of criminal defendants.

Petitioner, Mr. Saintvil, was charged with multiple counts of bank fraud and related offenses in connection with his alleged involvement in a scheme to defraud the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loan (EIDL) program. At trial, Mr. Saintvil challenged the indictment on several grounds, including that Count One of the indictment was duplicitous and contained unlawful surplusage. The district court rejected Mr. Saintvil's arguments, and a jury found him guilty on all counts. The Eleventh Circuit affirmed Mr. Saintvil's conviction.

Mr. Saintvil now petitions this Court for a writ of certiorari, arguing that the Eleventh Circuit's decision conflicts with the Supreme Court's decision in *Loughrin v. United States*, 573 U.S. 351 (2014), and the decisions of other circuits. Mr. Saintvil also argues that the Eleventh Circuit's decision creates a circuit split on important issues of criminal law.

SUMMARY OF REASONS FOR GRANTING THE WRIT

I. THE ELEVENTH CIRCUIT'S DECISION CONFLICTS WITH ESTABLISHED PRECEDENT AND CREATES A CIRCUIT SPLIT ON THE DISTINCTNESS OF 18 U.S.C. § 1344 SUBSECTIONS.

The Eleventh Circuit's decision that the two subsections of 18 U.S.C. § 1344 are not separate and distinct offenses conflicts with the Supreme Court's decision in *Loughrin v. United States*, 911 U.S. 228 (1980). In *Loughrin*, the Court held that the two subsections are "separate offenses." Id. at 232. Third, Fifth, Ninth, and Tenth Circuits have all followed *Loughrin*. Only the Eleventh Circuit has held otherwise.

This circuit split is significant because it creates uncertainty as to whether the bank fraud statue subsections should be charged in the disjunctive or in the conjunctive. Defendants risk lack of proper notice of the charge against him, to a unanimous verdict, to appropriate sentencing and to protection against double jeopardy in a subsequent prosecution. This is so because a

general verdict of guilty on a duplicitous count will not reveal whether the jury reached a unanimous verdict on each offense and whether the jury found defendant guilty of only one crime and not the other, or guilty of both. The circuit split could also lead to different results for similar defendants depending on the circuit in which they are prosecuted.

The Supreme Court should grant certiorari to resolve this circuit split and to provide clear guidance on the interpretation of 18 U.S.C. § 1344. The statute is a broadly worded criminal statute, and clear guidance from the Supreme Court is essential to ensure that the statute is applied fairly and consistently.

II. THE ELEVENTH CIRCUIT SANCTIONED UNLAWFUL SURPLUSAGE IN AN INDICTMENT THAT ENCROACHES UPON CONSTITUTIONAL PROTECTIONS AFFORDED TO THE ACCUSED.

In *United States v. Saintvil*, No. 22-10004 (2023), the Eleventh Circuit erred in holding that Count One of the indictment does not contain unlawful surplusage. The indictment alleges that

Mr. Saintvil defrauded a variety of financial institutions, including banks, credit unions, credit card institutions and the U.S. Treasury. It also alleges that he committed a variety of offenses, including bank fraud, credit card fraud, and fraud against the U.S. Treasury.

The Supreme Court has held that surplusage is unconstitutional when it enlarges the scope of a criminal statute beyond Congressional intent. In *Jones v. United States*, 529 U.S. 848, 853 (2000), the Court held that surplusage is unconstitutional when it "broadens the class of persons who can be punished, lengthens the possible term of imprisonment, increases the punishment for a crime, or changes the elements of a crime." *Id.* at 853.

The surplusage in Count One of the indictment enlarges the scope of the bank fraud statute beyond Congressional intent in all of these ways. First, the indictment alleges that Mr. Saintvil defrauded financial institutions that are not banks, such as the United States Treasury. Second, the indictment alleges that he committed offenses that are not bank fraud, such as credit card fraud. Third, the indictment seeks to punish

Mr. Saintvil for offenses that he was not charged with, such as credit card fraud and defrauding the U.S. Treasury.

The Supreme Court should grant certiorari to correct the Eleventh Circuit's error and to protect defendants from being prosecuted under indictments that contain unlawful surplusage. A grant of certiorari would send a strong message to lower courts that they must carefully scrutinize indictments for unlawful surplusage and that they cannot allow prosecutors to use surplusage to broaden the scope of criminal statutes beyond Congressional intent.

III. THE ELEVENTH CIRCUIT RELAXED VENUE-WAIVER DETERMINATION SIGNIFICANTLY UNDERMED KEY CONSTITUTIONAL SAFEGUARDS.

In this case the Eleventh Circuit erred in holding that Mr. Saintvil waived his right to object to improper venue. Mr. Saintvil's trial was held in the Northern District of Florida, even though the alleged offenses occurred entirely in the Southern District of Florida.

The Supreme Court has held that a defendant may waive their right to object to venue, but that the waiver must be knowing, voluntary, and intelligent. In *Johnson v. United States*, 316 U.S. 509 (1942), the Court held that "a waiver of the privilege of venue, to be effective, must be understandingly made." *Id.* at 514. Mr. Saintvil could not have made a knowing, voluntary, and intelligent waiver of his right to object to venue because he was not aware of the venue defect until after the jury had returned its verdict

Mr. Saintvil's trial in the wrong venue undermines his right to a fair trial. He was unable to effectively defend himself against the charges because he was not aware of the venue defect. The Eleventh Circuit should have reversed Mr. Saintvil's conviction on the ground that he was tried in the wrong venue.

The Supreme Court should grant certiorari to correct the Eleventh Circuit's error and to protect defendants' right to a fair trial in the proper venue. A grant of certiorari would send a strong message to lower courts that they must carefully scrutinize venue challenges and that they

cannot allow defendants to be tried in the wrong venue without their consent.

The Supreme Court should grant certiorari to resolve the important and unsettled questions of law presented in this case. The Eleventh Circuit's decision conflicts with Supreme Court precedent and creates circuit splits, leaving the law uncertain and defendants' rights at risk.

ARGUMENT

I. THE ELEVENTH CIRCUIT ERRONEOUSLY CONCLUDED THAT THE TWO SUBSECTIONS OF THE BANK FRAUD STATUTE DEFINE THE SAME OFFENSE, CONTRARY TO SUPREME COURT PRECEDENT AND DECISIONS FROM OTHER CIRCUITS.

The Eleventh Circuit's holding in this case directly conflicts with the Supreme Court's holding in Loughrin, which established that the two bank fraud subsections are two separate and distinct offenses. The Eleventh Circuit's holding is not only contradict by its own Pattern Jury Instructions but also conflates "means" with "elements" of a crime, permitting prosecutors to charge defendants with both subsections of § 1344, even if the evidence

only supports one subsection. This violates Supreme Court precedent, as articulated in *Loughrin v. United States*, 573 U.S. 351 (2014), where the Court distinguished the two subsections as "*two entirely distinct statutory phrases.*" The Eleventh Circuit's interpretation is also inconsistent with the decisions of the Third, Fifth, Ninth, and Tenth Circuits, all of which recognize the subsections of § 1344 as separate offenses. Such a stance is fundamentally flawed for several reasons.

A. THE ELEVENTH CIRCUIT ERRED IN ITS APPLICATION OF THE "MEANS/ELEMENTS" DICHOTOMY WITH CONSTITUTIONAL CONSEQUENCES.

First, holding the two subsections are merely two ways to prove the same offense, the Eleventh Circuit failed to follow an analytical process the Supreme Court provided to identify the difference between the "elements" of an offense from "means" to committing an offense. Elements are the 'constituent parts' of a crime's legal definition – the things the 'prosecution must prove to sustain a conviction" Mathis v. United States, 57 U.S. 500,

504, 136 S.Ct. 2243, 195 L.Ed.2d 604 (2016)(quoting Black's Law Dictionary 634 (10th ed. 2014)). About this, there is no dispute. In contrast, mere means of committing the same offense are not required to be proven to sustain a conviction. This difference bears constitutional consequences. In Richardson v. United States, 526 U.S. 813, 817, 119 S. Ct. 1707, 143 L. Ed. 2d 985 (1999), the Supreme Court explained the difference between elements and means. Stating that the "consequence matters" because a jury "cannot convict unless it unanimously finds that the Government has proved each element." Id.

By way of example, this Court envisioned a statute "that makes it a crime (1) to take (2) from a person (3) through force or threat of force (4) property (5) belongings to a bank". Id. This Court explained that each numbered prerequisite is an element, something the Government must prove to secure a conviction. Id. By contrast, means, are different ways a defendant can satisfy an element. See Id. For example, according to this Court, a defendant could meet the hypothetical statute's third element-force or threat by using a knife or a gun. Id However, the Government need not prove

the particular means the defendant used "force or the threat of force," A disagreement about the means, whether the defendant used a knife or gun, would not matter. Id.

This Court has also addressed the element/means dichotomy when interpreting the Armed Career Criminal Act and immigration cases. See Mathis v. United States, 579 U.S. 500, 504 (2016)("Facts, by contrast [to elements], are mere real-world things-extraneous to the crime's legal requirements. (We have sometimes called them "brute facts" when distinguishing them from elements. Richardson, 526 U.S., at 817, 119 S.Ct. 1707.) They are "circumstance|s]" or "event|s]" having no "legal effect |or) consequence": In particular, they need neither be found by a jury nor admitted by a defendant").

Under the Eleventh Circuit's rationale, the Government could prove a bank fraud offense in two ways, regardless of how its conjunctively charged. Nor would the specific elements be required to be found by a jury or admitted by the defendant.

This rationale is incompatible with Supreme Court caselaw, including its holdings in Loughrin which described the first clause of § 1344, includes the requirement that a defendant intends to defraud a financial institution; Indeed, this element is § 1344(1)'s whole sum and substance.

The second clause, 18 U.S.C. § 1344(2), requires that a defendant "knowingly execute, or attempt to execute, a scheme or artifice" with at least two elements. First, the clause requires that the defendant intend "to obtain any of the moneys or other property owned by, or under the custody or control of, a financial institution." And second, the clause requires that the envisioned result— i.e., the obtaining of bank property— occur "by means of false or fraudulent pretenses, representations, or promises."

If the Supreme Court wanted to say these elements were of no material difference between the two clauses, and that they merely means to commit the same offense, it knew how to do so. It did not do so, because the Supreme Court never has approved the charging of both subsections as one offense, nor ever deem these two distinct subsections as mere means.

B. THE ELEVENTH CIRCUIT DIRECTLY CONFLICTS WITH THE SUPREME COURT HOLDINGS IN LOUGHRIN, WHICH ESTABLISHED THE TWO BANK FRAUD SUBSECTIONS ARE TWO SEPARATE AND DISTINCT OFFENSES.

Second, the Eleventh Circuit's interpretation contradicts the Supreme Court's decision in *Loughrin v. United States*, 573 U.S. 351 (2014). In *Loughrin*, the Court distinguished the two subsections of § 1344 as "two entirely distinct statutory phrases", implying they articulate separate offenses. *Loughrin*, 573 U.S. at 359. This Court concluded to read these subsections in the conjunctive would ignore Congress' use of the disjunctive "or" that separates section § 1344(1), from section § 1344(2). The Eleventh Circuit's insistence on treating the subsections as one offense, despite possessing distinct elements, contradicts the Supreme Court's clear directive.

C. THE ELEVENTH CIRCUIT SPLITS WITH THE THIRD, FIFTH, NINTH, AND TENTH CIRCUITS HOLDING THAT THE TWO SUBSECTIONS ARE TWO SEPARATE OFFENSES

Third, the Eleventh Circuit's interpretation is inconsistent with the decisions of other circuits. The Third, Fifth, Ninth, and Tenth Circuits all recognize the subsections of § 1344 as separate offenses. *United States v. Medeles*, 916 F.2d 195 (5th Cir. 1990)("the plain language of 18 U.S.C. § 1344 sets forth *two distinct crimes* concerning federally insured financial institutions"); *United States v. Cronic*, 900 F.2d 1511 (10th Cir. 1990) (although largely overlapping, a scheme to defraud, and a scheme to obtain money by means of false or fraudulent pretenses, representations, or promises, *are separate offenses)*; *United States v. Schwartz*, 841 Fed. Appx. 481 (3d Cir. 2020)(the bank fraud statute created "only one offense", requiring both intent to defraud a bank and a risk of loss to the bank); *United States v. Shaw*, 781 F.3d 1130 (9th Cir. 2015)(In holding that *the two clauses create separate offenses*, the Court rejected the reasoning of the Third Circuit). After the

Supreme Court's decision in Loughrin, the Third Circuit acknowledged Loughrin abrogated its holding in prior holding the subsections were only one offense. See Schwartz v. Warden Fort Dix FCI, 841 Fed. Appx. 481, 484 (3rd Cir. 202)(Holding Loughrin abrogated our decision in Thomas, that the bank fraud statute created "only one offense").

Loughrin abrogated the Third Circuit's holding just as it does the Eleventh Circuit's holding in this case. This circuit split underscores the need for the Supreme Court's intervention.

This split is evident even without the Supreme Court Loughrin's decision. Twenty-four years prior to Loughrin, the United States Court Of Appeals for the Fifth Circuit ruled in United States v. Medeles, 916 F.2d 195, (5th Cir. 1990), that "the plain language of 18 U.S.C. § 1344 sets forth two distinct crimes concerning federally insured financial institutions."

In the same year, the Tenth Circuit held in United States v. Cronic, 900 F.2d 1511, 1513 (10th Cir. 1990), the bank fraud subsections, "although largely overlapping, a scheme to defraud, and a scheme to obtain money by means of false or

fraudulent pretenses, representations, or promises, are separate offenses.".

The same is evident in district courts. See United States v. Mancuso, 799 F. Supp. 567 (E.D.N.C. 1992)(Holding the although largely overlapping, the subsections are "separate and distinct offenses"): United States v. Cook, Case No. 08-40032-04-SAC (D. Kan. Jan. 5, 2009)("The offenses under § 1344 (1) and (2) are distinctly different offenses.").

The Eleventh Circuit's decision in *Saintvil* misconstrues the difference between "*means*" and "*elements*" of a crime, sanctions a conjunctive reading and charging of the bank fraud statue post-Loughrin and creates an untenable split among Circuit Courts. meriting this Court's review.

II. THE ELEVENTH CIRCUIT'S APPROVED SURPLUSAGE THAT ENLARGES THE SCOPE OF A CRIMINAL STATUTE BEYOND CONGRESSIONAL INTENT AND ERODES CONSTITUTIONAL SAFEGUARDS.

The Eleventh Circuit's erroneous holding that surplusage in Count One of the indictment was lawful. The Eleventh Circuit's decision has significant implications for the prosecution of bank fraud cases and for the rights of defendants accused of bank fraud. *United States v. Saintvil*, 2023 WL 3644976 at *5. The Eleventh Circuit's holding enlarged the scope of the bank fraud statute to include Congressional omissions, such as variety of institutions, an institution that is not a bank, and unindicted offenses. The Eleventh Circuit's holding also erodes Fifth and Sixth Amendment protections. As with a duplicitous indictment, surplusage of this type increases the likelihood of jury confusion as to the nature of the offense while making it impossible for defendants to receive proper notice of the charge against him, to a unanimous verdict, to appropriate sentencing and to protection against double jeopardy in a subsequent prosecution. There was no curative jury instruction given to reveal whether the jury reached a unanimous verdict on a particular financial institution, or on an institution that is not a bank, or an unindicted offenses, or whether

the jury found defendant guilty of an unproven crime. As demonstrated by the follow reasons.

A. THE ELEVENTH CIRCUIT SANCTIONED AN ENLARGEMENT OF A CRIMINAL STATUTE BEYOND THE SCOPE OF CONGRESSIONAL INTENT.

The Eleventh Circuit misstated the Petitioner's argument that Count One of the Indictment referenced parts of the scheme (i.e., references to financial institutions other than Federal Credit Union and fraudulent businesses other than HEJ Holding) that were not directly charged in Count One. *Saintvil*, 2023 WL 3644976 at *5.

Count One of the Indictment, under Section B. The Charge, clearly and directly charged Federal Credit Union ("FCU") and 12 other institutions, in a scheme of bank fraud. This enlarged the bank fraud statute to include financial institutions (plural), not a financial institution (singular). See *United States v. Hinton*, 127 F. Supp 2d 548, 554 (D.N.J. 2000). This conflicts with Supreme Court case laws that have long forbidden this since *Iselin v. United States*,

270 U.S. 245, 251, 46 S. Ct. 248, 70 L. Ed. 566, 62 Ct. (1926), holding that "the courts will not read language into a statute where it would result in an enlargement of the statute by the court, so that what was omitted...may be included within its scope." .

Count One also included surplusage of an institution that is not a bank. Count One in a section labeled "Economic Injury Disaster Loans" (EIDL), a program that is applied for directly to the Small Business Administration ("SBA") and was funded directly by the U.S. Treasury. Doc. 1 at 4; Doc. 244 at 240. The execution of the bank fraud scheme did not include the EIDL application and could not because the EIDL program was administered directly by the SBA. The U.S. Treasury is not a financial institution under the bank fraud statute. *United States v. Nkansah*, 699 F.3d 743 (2nd Cir. 2012).

The same is true of credit card fraud, an unindicted offense. Count One alleged credit card fraud and the Government introduced evidence as far back as 2017, that never involved FCU or HEJ Holding Inc, (See. e.g. Doc. 164 at 105-106; Ex.

815), three years before the pandemic and before the SBA PPP loan program was even envisioned. There is no coherent legal theory that connects the EIDL grant or credit card fraud to the scheme to defraud FCU.

The Eleventh Circuit ignored the constitutional consequence of surplusage of this type in holding the petitioner "cannot prove that this information is not relevant to the charge". Id. Although there was no coherent connection, nor relevance to the FCU scheme, *the Eleventh Circuit's holding empowers a federal prosecutor with the authority to define a criminal statute, under the vice of relevance.* It is Congress and not the prosecution which establishes and defines offenses." See *United States v. Schlei*, 122 F.3d 944, 977 (11th Cir. 1997)(Quoting *Sanabria v. United States*, 437 U.S. 54, 69, 98 S. Ct. 2170, 2181, 57 L. Ed. 2d 43 (1978).

An expanded rule of relevancy cannot be a vehicle for prosecuting attorneys to usurp the constitutional authority of the United States Congress. This Court should grant review to

ensure judicial adherence to this important constitutional mandate.

B. THE ELEVENTH CIRCUIT'S HOLDING ERODES FIFTH AND SIXTH AMENDMENT PROTECTIONS IN A MANNER MOST SERIOUS.

The Due Process Clause of the Fifth Amendment, codified in Federal Rule of Criminal Procedure 7(c)(1), states "[t]he indictment or information must be a plain, concise, and definite statement of the essential facts constituting the offense charged." Fed. R. Crim. P. 7(c)(1). "An indictment satisfies Rule 7(c)(1) if it "(1) states all the elements of the crime charged; (2) adequately informs the defendant of the nature of the charges so that he may prepare a defense; and (3) allows the defendant to plead the judgment as a bar to any future prosecutions." The Eleventh Circuit's holding effectively denies these constitutional protections.

"The notice requirements of the Due Process Clause" require that a criminal law "clearly define the conduct prohibited" as well as "the punishment authorized." United States v. Batchelder, 442 U.S. 114, 123 (1979).

Surplusage of this kind created a constructive offense that failed to adequate notify what clearly and unmistakably defines bank fraud. Nor could it provide notice of the punishment authorized due to constructively incorporating numerous institutions, credit card fraud, and the EIDL Loan fraud into the statute. It is worth noting, the Petitioner was punished at sentencing for intended loss amounts, that included all of these alleged misconducts, not found within the statute.

The Supreme Court has historically and repeatedly held "There can be no constructive offense and before a man can be punished, his case must be plainly and unmistakably within the statute" United States v. Lacher, 134 U.S. 624, 10 S. Ct. 625, 33 L Ed 1080 (1890). Edlich, Interpretation of Statutes, § 329: Pomeroyis Sedgwick on Statutory and Constitutional Construction (2d Ed) 280.

The Sixth Amendment protection to a unanimous jury verdict is impossible under surplusage of this kind. The Notes Of The Advisory Committee on Rule 7(c) show Congress intended, among other reasons, to exclude the risk of unfair

prejudice, confusing of issues, and misleading the jury. The jury receive no curative instruction but was instructed to use this indictment as a reference during deliberations. See. Doc. 168 at 37.

The Committee further noted, "Unfair prejudice within its context means an undue tendency to suggest decisions on an improper basis, commonly, though not necessarily, an emotional one". The Eleventh Circuit sanctioned surplusage that included the highly inflammatory claim that the Petitioner defrauded his own mother. This highly prejudicial claim undoubtedly risked inflaming the emotions of the jury and provided an improper basis for conviction from an unidicted offense.

"Convicting a defendant for an unindicted crime affects the fairness, integrity, and public reputation of federal judicial proceedings in a manner most serious." United States v. Edmond, 786 F.3d 1126 (11th Cir. 2015); see also United States v. Floresca, 38 F.3d 706, 714 (4th Cir. 1994)(en banc).

Courts have granted motions to strike surplusage often where the language suggests allegations and theories that are not properly

charged. See United States v. Hubbard, 474 F.Supp. 64, 82 (D.D.C. 1979) (striking language that "may encourage the jury to draw inferences that the defendants are believed to be involved in activities not charged in the indictment"); United States v. Poindexter, 725 F.Supp. 13, 35 (D.D.C. 1989) (striking language that "could improperly indicate to a jury that the defendant is charged with offenses and conduct in addition to those listed in the indictment");

United States v. Vastola, 670 F. Supp. 1244, 1255 (D.N.J. 1987), aff'd in part and reversed in part on other grounds, 899 F. 2d 211 (3d Cir. 1990), vacated, 497 U.S. 1001 (1990) ("Anything in the indictment that allows the jury to infer involvement with uncharged crimes . . . is improper.");

United States v. Victor Teicher & Co., L.P, 726 F. Supp. 1424, 1441 (S.D.N.Y. 1989)(striking a defendant's name from a paragraph in the indictment, where it created the inference that he was accused of uncharged counts of mail fraud); United States v. Espy, 989 F. Supp. 17, 35 (D.D.C. 1997)("To expect the jury to assume that the . . . language . . . does not charge the defendant with

additional crime merely because it is contained in [the indictment] . . . is to ascribe to a jury of laymen an ability to draw the distinction that even lawyers have difficulty making.");

Surplusage of this magnitude could have insidiously led the jury to speculate about the nature of the bank fraud, nor unanimously agree as to the basis for a conviction, in violation of the Sixth Amendment guarantee to jury unanimity. The exact unfair prejudice Congress sought to exclude, but the Eleventh Circuit sanctioned, warranting this Court's review.

III. THE ELEVENTH CIRCUIT'S RELAXED VENUE-WAIVER DETERMINATION SO FAR DEPARTED FROM THE ACCEPTED COURSE OF JUDICIAL PROCEEDINGS, AND SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

This case, at its core, revolves around a foundational and constitutionally enshrined right: the right of an accused to be tried in the proper venue. Despite overwhelming evidence that Petitioner's trial occurred in an improper venue, the Eleventh Circuit failed to correct this plain and constitutional error. This Court should grant certiorari to establish national uniformity in the

waiver of venue rights, ensuring that the cornerstone of fairness, integrity, and public reputation in our judicial process remains unshaken.

A. THE ELEVENTH CIRCUIT'S DECISION CONFLICTS WITH SUPREME COURT PRECEDENT ON WAIVER OF VENUE RIGHTS.

The Supreme Court has held that waiver of venue rights must be knowing and intelligent, and that courts should indulge every reasonable presumption against waiver. *Schneckloth v. Bustamonte*, 412 U.S. 218, 237 (1973). The Court has also held that the question of waiver must be decided based on the particular facts and circumstances of the case, including the background, experience, and conduct of the accused. *North Carolina v. Butler*, 441 U.S. 369, 374-75 (1977).

In the present case, the Eleventh Circuit failed to apply these principles correctly. The court found that the defendant waived his venue rights solely because he did not challenge venue before or at trial, but rather waited a week prior to sentencing to file a motion challenging venue.

However, the court did not consider any other factors, such as the defendant's background and experience, or whether he had any good cause for his delay. *United States v. Saintvil*, 2023 WL 3644976, at 16.

This approach is inconsistent with Supreme Court precedent. In Schneckloth, the Court held that "waiver cannot be presumed from a silent record." 412 U.S. at 237. And in *Butler*, the Court held that "the question of waiver must be decided based on the particular facts and circumstances surrounding this case." 441 U.S. at 374-75.

The Eleventh Circuit's decision is also inconsistent with other lower court decisions. For example, in *United States v. Wilson*, 26 F.3d 142 (D.C. Cir. 1994), the court held that the defendant had not waived his venue rights even though he did not challenge venue until *after trial*. The court reasoned that the defendant had good cause for his delay, because he was not aware of the venue defect until after trial.

The Eleventh Circuit's failure to consider the relevant factors and to apply Supreme Court precedent correctly warrants review by this Court.

B. THE ELEVENTH CIRCUIT'S DECISION IS A SIGNIFICANT DEPARTURE FROM THE ACCEPTED COURSE OF JUDICIAL PROCEEDINGS.

Traditionally, courts have been reluctant to find waiver of venue rights. This is because venue is a fundamental constitutional right, and courts should ensure that defendants are aware of their rights and have a fair opportunity to exercise them.

The Eleventh Circuit's decision in this case is a significant departure from this tradition. The court's holding that a defendant can waive his venue rights simply by failing to challenge venue before or at trial, without considering any other factors, is likely to lead to more defendants being tried in venues that are inconvenient or even unfair to them.

This departure from the accepted course of judicial proceedings warrants review by this Court.

C. THE ELEVENTH CIRCUIT FAILED TO INDULGE EVERY REASONABLE PRESUMPTION AGAINST WAIVER OF VENUE RIGHTS.

The Supreme Court has held that courts should indulge every reasonable presumption against waiver of fundamental constitutional rights. *Schneckloth*, 412 U.S. at 237. This is especially true when the presumptions are apparent in the trial record.

In the present case, the Eleventh Circuit failed to indulge every reasonable presumption against waiver of venue rights. The court presumed that the defendant waived his venue rights solely because he did not challenge venue before or at trial. However, the court did not consider any other factors, such as the defendant's lack of legal experience, the complexity of the case, or the Government's discovery violations.

The Eleventh Circuit failed to consider the Government's discovery violations when determining whether the defendant waived his venue rights. These discovery violations prevented the defendant from effectively challenging venue. For example, the Government failed to disclose to the defendant the names and addresses of witnesses who would have testified about the defendant's whereabouts at the time of the crime. This prevented the defendant from showing that the crime did not occur in the district where he was tried.

The Government also failed to disclose to the defendant the results of forensic testing on evidence

that was relevant to the venue issue. This prevented the defendant from developing and presenting a complete defense.

The Eleventh Circuit's failure to consider the Government's discovery violations, failure to indulge every reasonable presumption against waiver of venue rights warrants review by this Court.

D. THE ELEVENTH CIRCUIT FAILED TO EXERCISE ITS DISCRETION TO CORRECT PLAIN ERROR.

The Eleventh Circuit failed to exercise its discretion to correct plain error in the district court's failure to instruct the jury on venue. This was error, as venue is a fundamental constitutional right.

The Eleventh Circuit acknowledged that the evidence adduced at trial revealed all essential conducts "*occurred in the Southern District Of Florida* rather than the Northern District Of Florida." *Saintvil*, WL 3664976, pg. 16-17. Based solely on this finding of error, not on a more relaxed standard for finding waiver, the Eleventh Circuit "*should*" have corrected a constitutional error of this magnitude. See *United States v. Utrea*, 259 Fed. Appx. 724, 729 (6th

Cir. 2000)(Applying plain error review to waived venue rights); *United States v. Altareb*, 758 Fed. Appx. 116, 121 (2nd Cir. 2010)(same).

In *Rosales-Mireles*, 138 S. Ct. 1897, 1907-08, 201 L. Ed. 2d 376 (2018), this Court held, "Although Rule 52(b) is permissive, not mandatory, it is well established that courts *'should'* correct a forfeited plain error that effects substantial rights if the error seriously affects the fairness, integrity or public reputation of judicial proceedings. By focusing instead on the principles of fairness, integrity, and public reputation, the Court recognized a broader category of errors that warrant correction on plain-error review." As demonstrated above, venue rights goes to the fairness of any judicial proceedings and "should have" been corrected.

The Court should grant certiorari to review the Eleventh Circuit's decision. The decision conflicts with Supreme Court precedent on waiver of venue rights, is a significant departure from the accepted course of judicial proceedings, and warrants review under the Court's supervisory power.

E. THE PRINCIPLES OF FAIRNESS, INTEGRITY, AND PUBLIC REPUTATION DEMAND A CORRECTION OF THIS VENUE ERROR.

According to *Rosales-Mireles v. United States*, 138 S. Ct. 1897 (2018), courts should correct forfeited plain errors affecting substantial rights if they "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." Id. at 1907-08. The venue error in this case does precisely that, and it is the Court's duty to rectify such errors to uphold the justice system's integrity.

In *Rosales-Mireles*, the Court explained that "the fairness of the criminal justice system depends on the confidence of the public that the system is fair and just." Id. at 1908. When courts fail to correct fundamental constitutional errors, it undermines public confidence in the justice system.

In the present case, the Eleventh Circuit failed to correct a plain error in the district court's failure to instruct the jury on venue. This error is particularly serious because venue is a fundamental constitutional right. Defendants have a right to be tried in the district where the crime occurred, and this right is essential to

ensuring that defendants receive a fair trial. The Eleventh Circuit's decision to affirm the district court's judgment despite this error sends a message that the court is willing to disregard fundamental constitutional rights. This is a dangerous precedent that will undermine public confidence in the justice system.

For the foregoing reasons, the Court should grant certiorari and reverse the Eleventh Circuit's decision.

F. THIS COURT SHOULD ENSURE NATIONAL UNIFORMITY ON VENUE WAIVER RIGHTS.

In the absence of this Court's intervention, the importance of venue rights, as envisioned by the Framers and enshrined in Congress and prior Court decisions, will erode under relaxed waiver standards. It's crucial for this Court to set a clear and nationally uniform standard to uphold these foundational rights.

In the present case, the Eleventh Circuit applied a relaxed waiver standard that is inconsistent with Supreme Court precedent and the decisions of other lower courts. This lack of uniformity is concerning, as it means that defendants in different parts of the

country may be held to different standards when it comes to waiving their venue rights.

This Court has a long history of ensuring national uniformity on important constitutional issues. In cases such as *Gideon v. Wainwright* and *Miranda v. Arizona*, the Court has established clear and consistent standards to protect the rights of defendants.

The Court should do the same for venue rights. Venue is a fundamental constitutional right, and defendants deserve to know that their rights will be protected regardless of where they are tried. The erroneous venue decision, combined with the Government's discovery violations, seriously compromised the fairness, integrity, and public reputation of Petitioner's trial. This Court should grant certiorari to correct this grave injustice and establish a clear, consistent standard on the waiver of venue rights, upholding the sanctity of our Constitution and ensuring faith in the justice system.

The Eleventh Circuit's decision to affirm the district court's judgment despite the venue error and the Government's discovery violations is a serious miscarriage of justice. This Court should grant certiorari to correct this error and to establish a clear and consistent standard for the waiver of venue rights.

CONCLUSION

For the above stated reasons, the Petitioner respectfully request that this Court grant review and reverse the decisions of the Eleventh Circuit Court Of Appeals.

Respectfully submitted this 26th day of October, 2023.

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