No. 23-____

In the Supreme Court of the United States

KENNETH WENDELL RAVENELL, PETITIONER

v.

UNITED STATES

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress has long provided that, "[e]xcept as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years" of the offense. 18 U.S.C. § 3282(a). That provision "imposes a nonjurisdictional defense that becomes part of a case" once "a defendant raises it in the district court." *Musacchio v. United States*, 577 U.S. 237, 246 (2016). At that point, the government "bears the burden of establishing compliance with the statute of limitations by presenting evidence that the crime was committed within the limitations period." *Id.* at 248. Section 3282(a) applies to several criminal conspiracy statutes, including the federal money-laundering conspiracy statute, 18 U.S.C. § 1956(h), which does not require proof of an overt act for the government to satisfy its elements. *Whitfield v. United States*, 543 U.S. 209, 214 (2005). The Court has long "held that the Government must prove the time of the conspiracy offense if a statute-of-limitations defense is raised." *Smith v. United States*, 568 U.S. 106, 113 (2013) (citing *Grunewald v. United States*, 353 U.S. 391, 396 (1957)).

The question presented is whether, to comply with 18 U.S.C. § 3282(a) in a prosecution for a non-overt-act conspiracy, the government bears the burden of proving to a jury that the conspiracy existed within the limitations period (as the First, Second, Third, Fifth, Sixth, and Ninth Circuits hold); or bears no burden beyond proving the elements of the non-overt-act conspiracy (as the Fourth Circuit, joining the Eleventh Circuit, held below).

RELATED PROCEEDINGS

Supreme Court of the United States:

Ravenell v. United States, No. 23A212 (Oct. 25, 2023) (order extending time to file a petition for a writ of certiorari)

Ravenell v. United States, No. 22A261 (Nov. 7, 2022) (order denying application for bail pending appeal and request for administrative stay)

United States Court of Appeals (4th Cir.):

United States v. Ravenell, No. 22-4369 (4th Cir. July 14, 2023) (denial of rehearing en banc)

United States v. Ravenell, No. 22-4369 (4th Cir. Apr. 25, 2023) (opinion below)

United States District Court (D. Md.):

United States v. Ravenell, No. 1:19-cr-00449-LO (D. Md. June 22, 2022) (entering judgment)

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INTRODUCTION

This case presents an important criminal statute-of-limitations issue that has divided the courts of appeals 6–2 and, in this case, resulted in the unfair and unreliable conviction of Kenneth Ravenell, an accomplished Baltimore criminal defense attorney. This Court's decisions make clear that when a defendant raises a statute-of-limitations defense under 18 U.S.C. § 3282(a) to a prosecution for a non-overt-act conspiracy, "the Government must prove the time of the conspiracy offense." *Smith v. United States*, 568 U.S. 106, 113 (2013) (citing *Grunewald v. United States*, 353 U.S. 391, 396 (1957)). Six courts of appeals follow that rule, requiring the government to prove to a jury, as a factual matter, that the charged conspiracy existed in the limitations period. In the Second, Third, and Sixth Circuits, the government may meet that burden by proving facts about the purpose or scope of the charged conspiracy from which the jury could infer that the conspiracy would continue into the limitations period. In the First, Fifth, and Ninth Circuits, the government must prove conspiratorial conduct within the limitations period.

But the Fourth Circuit here, joining the Eleventh, parted ways with those courts of appeals and this Court's precedent. The Fourth Circuit adopted a conclusive presumption, as a matter of law, that a non-overt-act conspiracy continues indefinitely unless the defendant affirmatively proves otherwise. In short, the government has no burden of proof on the statute of limitations.

That decision is wrong. It produced a panel dissent and a 9–5 denial of rehearing en banc. It nullifies § 3282(a) and Congress' judgment about which

prosecutions are too stale and unreliable to pursue. And it deals a blow to the jury as "a foundation of our justice system and our democracy" and "a necessary check on governmental power." *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 210 (2017).

Here's what happened: In July 2021, the government charged Mr. Ravenell in a superseding indictment with money-laundering conspiracy and other charges based on his representation of two clients. Under a tolling agreement, the government could look back only to July 2, 2014, to prove the conspiracy. At trial, however, most of the government's evidence related to events and transactions before that date. Yet despite Mr. Ravenell's repeated requests, the district court refused to give a statute-of-limitations instruction, even though it was then "incumbent on the judge to charge [the jury] that in order to convict," it must determine that "the central aim of the conspiracy" "continued" into the limitations period, *Grunewald*, 353 U.S. at 415. The jury thus never learned that the timing of the charged conspiracy mattered, or that the government had the burden of proving the conspiracy continued past July 2, 2014. Put simply, the jury had no way of doing its job as to the charged money-laundering conspiracy, even while it acquitted Mr. Ravenell of all other charges.

The Court should intervene.

1. The Fourth Circuit's decision conflicts with this Court's precedent, deepens a circuit split, and is fundamentally wrong.

The Fourth Circuit, aligning with the Eleventh, held that the government need not prove to a jury that a non-overt-act conspiracy existed in the limitations period. The court reasoned that once the government

proves the elements of the conspiracy, it's presumed as a matter of law to continue until the defendant shows otherwise. That rule contravenes *Smith* and *Grunewald*, which make clear that § 3282(a) requires the government to prove to a jury that a non-overt-act conspiracy continued into the limitations period. It also eviscerates criminal defendants' time-honored right to trial by jury by preventing them from mounting, and the jury from deciding, a critical defense.

The Fourth and Eleventh Circuits' rule also splits with the approaches of six other courts of appeals, which hold that the government must prove to a jury that a non-overt-act conspiracy continues into the limitations period. In the Second, Third, and Sixth Circuits, the government may carry that burden by offering evidence about the purpose and scope of the charged conspiracy that would allow the jury to infer that the conspiracy did in fact continue into the limitations period. The First, Fifth, and Ninth Circuits go even further, holding that the government must offer evidence of conduct in furtherance of the conspiracy in the limitations period.

The Fourth Circuit's rationale—that it doesn't make sense to require the government to prove an overt act within the limitations period for a non-overt-act conspiracy—fails. For one thing, as the Second, Third, and Sixth Circuits' rule makes clear, proof about the purpose or scope of the charged conspiracy doesn't require proof of an overt act. For another, the First, Fifth, and Ninth Circuits' overt-act requirement comes from *the statute of limitations*, not the non-overt-act offense itself.

2. The question presented is important, and this case is an ideal vehicle for resolving it. Section 3282(a)

reflects a congressional judgment balancing criminal liability against the costs of delay. The Fourth and Eleventh Circuits' rule nullifies that judgment and ignores the important interests Congress sought to protect in ensuring that prosecutions proceed on evidence that has not become stale. The result is a rule that threatens to deprive defendants like Mr. Ravenell of their liberty contrary to Congress' intent and the fundamental right to trial by jury.

Mr. Ravenell could have been acquitted had the jury been properly instructed, and the court of appeals denied en banc review 9–5, despite circuit conflict. The Court should grant review.

OPINIONS BELOW

The court of appeals' opinion (App. 1a-57a) is reported at 66 F.4th 472. The court of appeals' order denying Mr. Ravenell's petition for rehearing en banc (App. 58a-71a) is unpublished. The district court's decision (App. 80a-93a) denying Mr. Ravenell's motion for a new trial is unpublished.

JURISDICTION

The court of appeals issued its opinion and entered judgment on April 25, 2023, App. 1a-57a, and denied rehearing en banc on July 14, 2023, App. 58a-71a. On September 7, 2023, the Chief Justice extended the time to file a petition to November 13, 2023. *See* 28 U.S.C. § 2101(c). On October 25, 2023, the Chief Justice further extended the time to file a petition to December 11, 2023. This petition is timely filed on December 11. The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the U.S. Constitution 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 of 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.

Section 3282(a) of Title 18, U.S. Code, provides:

> IN GENERAL.—Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

STATEMENT

A. Legal background

1. Congress has placed a five-year statute of limitations on prosecuting non-capital criminal offenses. 18 U.S.C. § 3282(a). Section 3282(a) "imposes a nonjurisdictional defense that becomes part of a case" once "a defendant raises it in the district court." *Musacchio v. United States*, 577 U.S. 237, 246 (2016).

The statute of limitations is the result of an important congressional policy determination, and it

plays an essential role in criminal proceedings. As "the primary guarantee against bringing overly stale criminal charges," *United States v. Marion*, 404 U.S. 307, 322 (1971), the statute of limitations "reflects a policy judgment by the legislature that the lapse of time may render criminal acts ill suited for prosecution," *Smith*, 568 U.S. at 112. When the prosecution waits too long to bring charges, "basic facts" will often have "become obscured by the passage of time," making evidence less reliable and limiting the defendant's access to information critical to his defense. *Marion*, 404 U.S. at 323. "It is Congress, not [the courts], that balances" "the interests in favor of protecting valid claims" against "the interests in prohibiting the prosecution of stale ones." *Rotkiske v. Klemm*, 140 S. Ct. 355, 361 (2019). As the Court has explained, § 3282(a) should "be liberally interpreted in favor of repose." *Toussie v. United States*, 397 U.S. 112, 115 (1970).

2. Section 3282(a) applies to many federal crimes, including conspiracy offenses. Some conspiracy statutes require proof of an "overt act"—*i.e.*, an "act performed in carrying out the agreement." Wharton's Criminal Law § 8:7 (16th ed. 2023). Non-overt-act conspiracies, in contrast, do not require proof of an overt act because the criminal agreement itself is the unlawful act. *See, e.g.*, *United States v. Shabani*, 513 U.S. 10, 16 (1994).

Smith and *Grunewald* made clear that the government bears the burden under § 3282(a) of proving that a conspiracy—whether an overt-act or a non-overt-act conspiracy—continued into the limitations period. *Grunewald* involved an overt-act conspiracy to defraud the United States. *See* 353 U.S. at 393-95, 396 n.9. The Court explained that, in addition to proving an overt act, the government had "to prove that the

conspiracy as contemplated in the agreement" "was still in existence" during the limitations period. *Id.* at 396. And in *Smith*, which involved non-overt-act conspiracies under the narcotics laws and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(d), *see* 568 U.S. at 108, the Court reiterated *Grunewald*'s holding "that the Government must prove the time of the conspiracy offense if a statute-of-limitations defense is raised," *id.* at 113 (citing *Grunewald*, 353 U.S. at 396). *See Shabani*, 513 U.S. at 11 (21 U.S.C. § 846 doesn't require an overt act); *Salinas v. United States*, 522 U.S. 52, 63 (1997) (RICO conspiracy doesn't require an overt act).

3. The federal money-laundering conspiracy statute relevant here, 18 U.S.C. § 1956(h), prohibits "conspir[ing] to commit any offense defined in" 18 U.S.C. § 1956 or § 1957. Section 1956 imposes criminal liability for "the knowing and intentional transportation or transfer of monetary proceeds from specified unlawful activities, while § 1957 addresses transactions involving criminally derived property exceeding $10,000 in value." *Whitfield v. United States*, 543 U.S. 209, 212-13 (2005). Money-laundering conspiracy is a non-overt-act conspiracy. *Id.* at 214.

B. Factual and procedural background

1. Mr. Ravenell is a well-respected, longtime criminal defense attorney practicing in Baltimore. App. 78a. His many career achievements include arguing before this Court. *See Maryland v. Blake*, No. 04-373 (U.S.).

In July 2021, the government charged Mr. Ravenell with money-laundering conspiracy, in violation of 18 U.S.C. § 1956(h), among other offenses, based on his representation of two clients, Richard Byrd and

Leonaldo Harris. The government's theory was that Mr. Ravenell offered Byrd advice on how to operate his marijuana-trafficking organization without detection by law enforcement, and that Mr. Ravenell used his position as a partner at his law firm, Murphy, Falcon, Murphy, Ravenell & Koch (MFM), to help Byrd launder his ill-gotten gains. App. 96a, 99a-107a, 110a-111a. The government alleged that Harris channeled tainted funds to Mr. Ravenell as payment for fees Harris incurred when Mr. Ravenell represented him in a criminal case. App. 109a-110a. Under a pre-indictment tolling agreement, the government could look back only to July 2, 2014, to prove a money-laundering conspiracy. App. 12a; *see* 18 U.S.C. § 3282(a).

The indictment alleged that between August 2009 and August 2017, Mr. Ravenell conspired to: (1) conduct financial transactions involving the proceeds of drug-trafficking organizations, with the intent to promote drug-trafficking activity, *see* 18 U.S.C. § 1956(a)(1)(A)(i); (2) conduct financial transactions involving drug-trafficking proceeds, knowing that the transactions were designed "to conceal or disguise" the nature, location, source, ownership, or control of those proceeds, *id.* § 1956(a)(1)(B)(i); or (3) engage in monetary transactions involving property worth more than $10,000 that was derived from drug-trafficking activity, *see id.* § 1957(a). App. 3a-4a, 106a-107a. Most of the events the government pointed to in support of the money-laundering conspiracy charge in the indictment occurred before July 2, 2014. App. 100a-109a.

2. a. At trial, most of the prosecution's evidence of the supposed money-laundering conspiracy related to events before July 2, 2014.

The evidence focused primarily on Mr. Ravenell's representation of Byrd, who ran a marijuana-distribution organization and became a client of MFM in 2011 after he was arrested on drug charges. App. 4a-6a.

The government introduced evidence to show that Mr. Ravenell used the attorney-client relationship to help Byrd launder his drug-trafficking proceeds. Byrd and his associates, all cooperating with the government, claimed that Byrd paid Mr. Ravenell in cash for advising him on how to evade law enforcement and launder his money through businesses, real estate, and other ventures. App. 4a-6a. They also claimed that Mr. Ravenell used MFM to receive Byrd's drug-trafficking proceeds through seemingly legitimate third parties. App. 5a-6a. The transactions and events the government focused on occurred between 2009 and 2013, and sometimes even earlier. *See* App. 34a-35a; C.A. JA169-76, JA2962-81 (government's opening and closing argument).

Law enforcement began arresting Byrd's associates in April 2013, and Byrd's last payment to MFM was in January 2014. App. 53a. In April 2014, Byrd was arrested and abandoned his criminal activities. App. 21a, 53a; C.A. JA692-93. The government offered evidence that in May 2014, Mr. Ravenell then met with another drug distributor, Darnell Miller, who was connected to Byrd, and "offered to 'wash' Miller's money." App. 20a. Miller testified that after that meeting, he had no further contact with Mr. Ravenell. C.A. JA1496-97.

The government's evidence after July 2, 2014, was sparse. The government showed that Mr. Ravenell formally remained Byrd's lawyer until October 2014, and that money connected to Byrd remained in MFM

accounts until at least August 2014. App. 19a-20a. Finally, the government presented evidence that in August 2014, Mr. Ravenell paid a towing service $750 on Byrd's behalf for the storage of Byrd's vehicles that were seized after an earlier arrest. App. 21a.

For his part, Harris testified that, after his arrest on drug charges, he enlisted an associate to use drug proceeds to pay Mr. Ravenell for Harris's defense. App. 6a. That associate claimed that Mr. Ravenell knew the money came from drug proceeds. *Id.* Harris's last payment to MFM was in April 2014 and Mr. Ravenell formally withdrew as Harris's lawyer in November 2014. App. 22a. That month, after receiving a target letter from the government, the associate "destroyed records about her collection of drug money and attempted to contact Ravenell." *Id.*

b. Mr. Ravenell asked the court to instruct the jury that the government had the burden of proving that the conspiracy existed in the limitations period. App. 8a-9a. His first requested instruction said that the government had to "prove beyond a reasonable doubt that at least one overt act in furtherance of the conspiracy was committed after July 2, 2014." *Id.* (bolding omitted). After the district court denied that instruction, defense counsel proposed an instruction that "the government must prove by a preponderance of the evidence that the alleged conspiracy continued after July 2, 2014." *Id.* (emphasis omitted). In a subsequent colloquy with the court after the government questioned that "lower burden," defense counsel adjusted the request to proof beyond a reasonable doubt. *See* C.A. JA279-80; App. 45a & n.2 (Gregory, J., dissenting); App. 14a (majority). The court again refused, holding that it could "deal[] with [the limitations issue] as a matter of law." App. 9a.

c. The jury acquitted Mr. Ravenell of all charges except for the money-laundering conspiracy charge. App. 7a. The district court sentenced him to serve 57 months in prison. Dist. Ct. Doc. 568, at 2.

3. The court of appeals affirmed over a dissent by Judge Gregory. App. 1a-57a.

a. The majority concluded that the government had no burden to prove that the conspiracy existed in the limitations period. App. 16a-17a. Instead, the majority held that the government had to prove only that the conspiracy existed, period, and that Mr. Ravenell bore the burden of proving the conspiracy did *not* continue into the limitations period. *Id.* Concluding that Mr. Ravenell had not offered affirmative evidence of termination or withdrawal before the limitations period, the majority held that the district court did not err in declining to instruct the jury on the statute of limitations. App. 17a-18a.

The majority began by reasoning that the government does not have to prove that a non-overt-act conspiracy continues into the limitations period because non-overt-act conspiracies are presumed as a matter of law to continue unless the defendant proves otherwise. App. 15a-17a. Thus, all the government has to prove, in the majority's view, is an agreement to enter into a non-overt-act conspiracy, and the burden is "on the defendant to show that [the] non-overt act conspiracy ended prior to the statute of limitations." App. 17a. According to the majority, "[a]ny other requirement would contravene the nature of a non-overt act conspiracy" and "eviscerate the line between non-overt act and overt act conspiracies" by requiring the government to "show an overt act

demonstrating the conspiracy's continuation" into the limitations period. *Id.*

The majority reasoned that because the government didn't need to prove that the money-laundering conspiracy continued into the limitations period, and because Mr. Ravenell didn't offer "affirmative evidence showing that the conspiracy terminated or that he affirmatively withdrew," the district court wasn't required to provide any statute-of-limitations instruction. *Id.* And reviewing the evidence for itself, the majority concluded that the government had introduced evidence that the conspiracy continued into the limitations period. App. 19a-22a.

The majority also faulted Mr. Ravenell's proposed jury instructions. App. 13a-15a. The majority rejected the first proposed instruction on the ground that the money-laundering conspiracy statute doesn't require proof of an overt act. App. 13a-14a. As for Mr. Ravenell's subsequent request for an instruction that the government must prove that the conspiracy continued into the limitations period, the majority criticized defense counsel for initially referring to a preponderance of the evidence rather than beyond a reasonable doubt. App. 14a. But that academic critique ignored the colloquy adjusting the instruction (noted by Judge Gregory in dissent, App. 45a), *supra* p. 10, precisely because the majority proceeded to rest its decision on its categorical rejection of placing any burden on the government to prove compliance with the statute of limitations, App. 15a-18a.

b. Judge Gregory dissented. App. 43a-57a. He explained that the statute of limitations barred Mr. Ravenell's conviction for money-laundering conspiracy unless the jury found that the charged conspiracy

continued beyond July 2, 2014. App. 43a. Once Mr. Ravenell raised a statute-of-limitations defense, § 3282(a) put the burden on the government to prove that the conspiracy continued into the limitations period and required a jury instruction saying so. App. 43a-47a, 55a-56a. The majority's contrary approach nullified the statute of limitations, Judge Gregory explained, and Mr. Ravenell's proposed instruction was correct, because it would have informed the jury of the government's burden of proving the timing of the conspiracy. App. 46a, 49a-51a.

What's more, the majority's approach "desecrat[ed]" Mr. Ravenell's Sixth Amendment right to a jury trial by taking the statute-of-limitations question from the jury. App. 56a. Instructing the jury clearly on the law "is a prerequisite" to realizing the right to trial by jury. *Id.* Without proper instructions, Judge Gregory reasoned, "the jury becomes mired in a factual morass, unable to draw the appropriate legal conclusions based on those facts." *Id.* By leaving the jury without crucial guidance, "[t]he district court's instructional error thus strikes at the heart of Ravenell's 'fundamental constitutional right' to a jury trial." *Id.*

Worse still, the district court's failure to instruct the jury also impaired Mr. Ravenell's ability to defend himself. Mr. Ravenell couldn't have presented a statute-of-limitations defense that made sense to a jury lacking guidance from the court about the temporal limitations on the money-laundering conspiracy charge. App. 53a-54a. And whatever the prosecution's view of the evidence, there was "ample evidence in the record that would have allowed the jury to conclude that the alleged money laundering conspiracy" did not continue to July 2, 2014. App. 51a. Thus, with a

statute-of-limitations instruction, the jury could have acquitted Mr. Ravenell. App. 52a-54a. But "the jurors were kept in the dark about this crucial limitation on [Mr. Ravenell's] prosecution," meaning they considered the evidence "unconstrained by the passage of time" and could not fulfill "their duty to make factual determinations regarding the temporal evidence before them." App. 54a.

4. Mr. Ravenell sought rehearing en banc. He also filed a motion for bail pending appeal, which the panel unanimously granted, staying his sentence pending issuance of the mandate. App. 74a-75a.

a. The court of appeals denied rehearing en banc by a 9–5 vote. App. 58a-71a.

In a solo opinion concurring in the denial of rehearing, Judge Wilkinson doubled down on the view that the government has no burden to show that a non-overt-act conspiracy exists in the limitations period. App. 61a. Instead, he opined, the defendant must show that a non-overt-act conspiracy did not continue into, or that he withdrew before, the limitations period. *Id.* Conducting his own assessment of the record, Judge Wilkinson concluded that the government produced sufficient evidence of overt acts within the limitations period. App. 61a-62a.

In a dissent joined by Judges King, Wynn, and Thacker, Judge Gregory reiterated that the jury in Mr. Ravenell's case "had no way of knowing that Congress set a temporal limit on Ravenell's criminal exposure and, in turn, could not determine whether that limit barred Ravenell's conviction." App. 64a. The district court's failure to instruct the jury "overrode Congress's intent to set limits on criminal liability and took a pivotal determination out of the jury's hands."

App. 66a. That was also a Sixth Amendment problem, because "courts must ensure that jurors are properly informed of the laws governing a defendant's criminal exposure" in order "to preserve [the] promise" of trial by an impartial jury. App. 68a.

b. The court of appeals granted Mr. Ravenell's motion to stay the mandate pending the disposition of a petition for writ of certiorari. App. 72a-73a.

REASONS FOR GRANTING THE PETITION

1. The Fourth Circuit's decision conflicts with this Court's precedent holding that the government bears the burden of proving that a conspiracy continued into the limitations period. It also deepens a circuit split with six other courts of appeals, which all require the government to prove the timing of the conspiracy. The Fourth Circuit's contrary reasoning lacks merit, and its decision nullifies § 3282(a) by removing any temporal constraints on prosecuting non-overt-act conspiracies.

2. The question presented is critically important. Statutes of limitations reflect a legislative judgment that beyond a certain point, certain prosecutions are fundamentally unfair. Section 3282(a) and this Court's precedent commit that question in any given case to a jury, which must assess whether the government's evidence proves compliance with those limits or else is too stale to warrant prosecution. The Fourth Circuit's decision ignores both that legislative judgment and the fundamental, time-honored role of the jury in our legal system.

This case also is an ideal vehicle for resolving the question presented. The Fourth Circuit and district court squarely decided the question, rejecting a statute-of-limitations instruction after concluding that

the government had to prove only the elements of the non-overt-act conspiracy. Had it been properly instructed, the jury could have concluded that the government failed to meet its burden.

Only this Court can resolve the split and bring the Fourth Circuit in line with its precedent. The Court should grant review.

I. The Fourth and Eleventh Circuits' rule that the prosecution has no burden to prove that a conspiracy continued into the limitations period conflicts with the decisions of this Court and six other courts of appeals.

Contrary to this Court's decisions and those of six other courts of appeals, the Fourth and Eleventh Circuits impose no burden on the government to prove to a jury that a non-overt-act conspiracy continues into the limitations period. Instead, the Fourth and Eleventh Circuits hold that the government need only prove that a non-overt-act conspiracy was formed to trigger a presumption that it continued indefinitely. But this Court has long held that the government "bears the burden of establishing compliance with the statute of limitations by presenting evidence that the crime was committed within the limitations period." *Musacchio*, 577 U.S. at 248; *see Smith*, 568 U.S. at 113; *Grunewald*, 353 U.S. at 396. And the First, Second, Third, Fifth, Sixth, and Ninth Circuits all require the government to prove to a jury that a non-overt-act conspiracy existed in the limitations period, whether by proving facts about the scope or purpose of the charged conspiracy or an overt act within the limitations period. Had Mr. Ravenell been tried in one of those circuits, he would have received statute-of-

limitations instructions, and the jury could have acquitted him.

A. The Fourth and Eleventh Circuits' rule conflicts with this Court's precedent.

1. The Fourth and Eleventh Circuits hold that the government has no burden to prove to the jury that a non-overt-act conspiracy existed in the limitations period.

The Fourth and Eleventh Circuits hold that the government need not prove to a jury that a non-overt-act conspiracy existed in the limitations period. Instead, if the government merely proves the existence of a non-overt-act conspiracy, the court presumes as a matter of law that the statute of limitations is satisfied, and the jury plays no role in that determination.

a. Over a dissent by Judge Gregory, the Fourth Circuit held that the government need not prove to the jury that a non-overt-act conspiracy continues into the limitations period, and that the district court did not have to provide a statute-of-limitations instruction. App. 16a-18a. In the majority's view, "non-overt act conspiracies are presumed to continue" as a matter of law "absent evidence to the contrary." App. 16a. Thus, once the government proves the existence of a conspiracy (at any time), it doesn't need to show that it continued into the limitations period. *Id.* Instead, *the defendant* bears the burden of "show[ing] that a non-overt act conspiracy ended prior to the statute of limitations." App. 17a. Because, in the majority's view, Mr. Ravenell didn't offer "affirmative evidence showing that the conspiracy terminated or that he affirmatively withdrew" before the limitations period, the Fourth Circuit held that the district court wasn't

required to give a statute-of-limitations instruction. App. 17a-18a.

b. Similarly, in *United States v. Harriston*, 329 F.3d 779, 783 (11th Cir. 2003) (per curiam), a case involving non-overt-act RICO and drug-trafficking conspiracies, the Eleventh Circuit held that "[t]he government only has to show" the elements of a conspiracy. The conspiracy then "is deemed to have continued" unless the defendant "show[s] that he affirmatively withdrew" "or that the final act in furtherance of the conspiracy has occurred." *Id.* Because the defendant in *Harriston* made no such showing, the statute of limitations did not bar his conviction. *Id.* at 783-85.

2. This Court's precedent makes clear that the government must prove to a jury that a non-overt-act conspiracy existed in the limitations period.

The Fourth and Eleventh Circuits' approach contravenes this Court's precedent, which establishes that under § 3282(a), the government must prove to a jury that a non-overt-act conspiracy existed in the limitations period.

a. The Court has long held that under § 3282(a), "[w]hen a defendant presses a limitations defense," the government "bears the burden of establishing compliance with the statute of limitations by presenting evidence that the crime was committed within the limitations period." *Musacchio*, 577 U.S. at 248; *see Smith*, 568 U.S. at 113; *Grunewald*, 353 U.S. at 396. Thus, as *Smith* explained in the context of non-overt-act RICO and narcotics conspiracies, "the Government must prove the time of the conspiracy offense if a statute-of-limitations defense is raised." 568 U.S. at 113

(citing *Grunewald*, 353 U.S. at 396). Indeed, the government *agreed* in *Smith*, explaining that *Grunewald* required it "to prove that the charged conspiracies continued to exist within the five years preceding the filing of the operative indictment." U.S. Br. 15, 23-24, *Smith*, 568 U.S. 106 (No. 11-8976). The jury instructions stated that the government must "prove[] beyond a reasonable doubt that the conspiracies existed, that Smith was a member of those conspiracies, *and* that the conspiracies 'continued in existence within five years' before the indictment." *Smith*, 568 U.S. at 108, 114. And as the Court explained in *Grunewald*, "the crucial question" in determining the duration of the conspiracy, and thus whether it satisfies the statute of limitations, "is the scope of the conspiratorial agreement." 353 U.S. at 397.

That longstanding rule makes sense. The due-process guarantee requires the government to prove beyond a reasonable doubt "every fact necessary to constitute the crime." *In re Winship*, 397 U.S. 358, 363 (1970). Although compliance with the statute of limitations isn't an element of a crime, *Smith*, 568 U.S. at 111-12, Congress nonetheless required the government in § 3282 to prove that the prosecution is timely, *see Smith*, 568 U.S. at 113 (citing *Grunewald*, 353 U.S. at 396), just as it must prove the elements of the crime. The Fourth Circuit's decision eliminates that requirement.

b. The government's burden requires jury instructions so that the jury can determine the timing and duration of the conspiracy. Indeed, as *Grunewald* explained, it is "incumbent on the judge to charge [the jury] that in order to convict," it would have to determine "the central aim of the conspiracy" "continued in being" into the limitations period. 353 U.S. at 415.

After all, it is well-established that "a defendant is entitled to an instruction as to any recognized defense"—like the statute of limitations—"for which there exists evidence sufficient for a reasonable jury to find in his favor." *Mathews v. United States*, 485 U.S. 58, 63 (1988). Without a statute-of-limitations instruction, jurors have no way of knowing that they must decide whether "the action in question is … time barred," *Griffin v. United States*, 502 U.S. 46, 59 (1991), and so cannot perform their fundamental role.

Failing to instruct the jury on the statute of limitations thus undermines the defendant's Sixth Amendment rights, which guarantee that the jury will decide "the issue of criminal liability … in the first instance." *McCormick v. United States*, 500 U.S. 257, 270 n.8 (1991). That right "is fundamental to the American scheme of justice," and "reflect[s] a profound judgment about the way in which law should be enforced and justice administered." *Duncan v. Louisiana*, 391 U.S. 145, 149, 155 (1968). Indeed, the Framers recognized that juries helped protect criminal defendants "against arbitrary action," "the corrupt or overzealous prosecutor," and "the compliant, biased, or eccentric judge." *Id.* at 156. But the jury cannot fulfill its role unless the trial court "guide[s] [it] by appropriate legal criteria through the maze of facts before it." *Bollenbach v. United States*, 326 U.S. 607, 613-14 (1946).

3. The government had the burden to prove to the jury that the charged conspiracy continued into the limitations period, and the jury, if so instructed, could have acquitted.

Under this Court's decisions (and those of other courts of appeals, discussed below (at 22-30)), the government had to prove to the jury beyond a reasonable doubt that the money-laundering conspiracy with which it charged Mr. Ravenell continued into the limitations period. *See Musacchio*, 577 U.S. at 248; *Smith*, 568 U.S. at 113; *Grunewald*, 353 U.S. at 396. Mr. Ravenell asked for instructions on that requirement, *supra* p. 10, and at oral argument before the court of appeals, the government conceded that a correct instruction would have stated "that the government has to prove" beyond a reasonable doubt "that the conspiracy continued into the limitations period," C.A. Oral Argument 38:23-39:42.

There was significant evidence from which the jury, had it been properly instructed, could have found that the government failed to prove that the conspiracy continued into the limitations period. The government charged Mr. Ravenell with conspiring to conduct or engage in particular money-laundering transactions, and it relied heavily on evidence relating to transactions that pre-dated July 2, 2014. *Supra* pp. 8-10. What's more, Byrd's last payment to MFM was in January 2014, and he was arrested and ceased his criminal activities by April 2014. *Supra* p. 9. There was significant evidence showing that Harris paid the entire fee he owed to MFM before July 2, 2014, and thus that the alleged conspiracy to pay his defense fees with tainted money had ended by then. App. 52a (Gregory, J., dissenting). The jury wasn't obligated to

share the prosecution's (or the Fourth Circuit majority's) view of the evidence, but instead could have found that, with no more drug proceeds being provided to Mr. Ravenell, there was nothing left to launder and no continuing agreement to do so. But without a statute-of-limitations instruction, the jury didn't know that Mr. Ravenell's conviction may have been time-barred or have any guidance on how to decide whether it was.

B. The Fourth and Eleventh Circuits' rule conflicts with the decisions of six other courts of appeals.

The Fourth Circuit's decision doesn't just conflict with this Court's precedent. It also deepens a circuit split with the First, Second, Third, Fifth, Sixth, and Ninth Circuits, which all hold that the government must prove to the jury that the conspiracy existed in the limitations period, with the First, Fifth, and Ninth Circuits requiring the government to prove an overt act within the limitations period.

1. The Second, Third, and Sixth Circuits require the government to prove facts about the purpose and scope of the charged conspiracy to trigger a presumption from which a jury could find that the conspiracy continued into the limitations period.

In the Second, Third, and Sixth Circuits, the government must prove to a jury that a non-overt-act conspiracy existed in the limitations period. Thus, to satisfy its burden, the government must offer factual proof; if it wishes to rely on a presumption of continuity, it must show that the purpose and scope of the

charged conspiracy would allow the jury to infer that the conspiracy continued into the limitations period.

a. In *United States v. Spero*, 331 F.3d 57, 60 (2d Cir. 2003), the Second Circuit held that when "a conspiracy statute does not require proof of an overt act," and the government proves that the charged "conspiracy contemplates a continuity of purpose and a continued performance of acts, it *is presumed to exist*" until the defendant affirmatively shows that it terminated or she withdrew. The statute-of-limitations question "must be submitted to a properly instructed jury for adjudication." *Id.* at 60 n.2. Applying that rule to a RICO conspiracy, the court held that the government produced sufficient evidence for a jury to find that the loansharking conspiracy existed in the limitations period, because the loansharking was "the type of activity that 'contemplates a continuity of purpose and a continued performance of acts,'" and the government had proved a conspiracy to commit that ongoing activity. *Id.* at 60-61.

The Second Circuit reaffirmed its rule in *United States v. Eppolito*, 543 F.3d 25, 48-49 (2d Cir. 2008), another RICO-conspiracy case. When a statute "does not require proof of an overt act," the government triggers a presumption from which a jury can find the conspiracy continued into the limitations period if it "present[s] sufficient evidence to show a conspiracy that has continuing purposes or goals." *Id.* Whether the conspiracy existed in the limitations period is "within the province of the jury," *id.* at 52, which had been instructed in *Eppolito* that the government had to prove beyond a reasonable doubt that the conspiracy existed in the limitations period, *see id.* at 41-42. The court of appeals ultimately concluded that the government satisfied its burden in *Eppolito* by

producing evidence that the purpose of the conspiracy—to generate income from the illegal enterprise—was ongoing and that the conspiracy did not dissolve before the limitations period. *Id.* at 52-57.

b. The Third Circuit has long taken the same approach. In *United States v. United States Gypsum Co.*, 600 F.2d 414, 417 (3d Cir. 1979), a Sherman Act price-fixing case, the court explained that "[w]hen the conspiracy is alleged to have been formed prior to the statutory period, the issue becomes one of continuation." And the way to determine whether the conspiracy would continue is to determine the scope of the agreement. *Id.* The court thus held that the government had the burden of "present[ing] evidence justifying the jury in finding beyond a reasonable doubt that the particular agreement into which a defendant entered continued into" the limitations period. *Id.* at 417-18. Alternatively, the government could prove an overt act or new agreement in the limitations period. *Id.* at 418. Either way, whether a conspiracy continues into the limitations period is for the jury to decide. *See id.*

Applying those principles, the court concluded that the government's theory of a conspiracy "to maintain high and stable prices" contemplated a "continuous result" that depended on "the continuous cooperation of the conspirators to keep it up." *Id.* at 417. And the government produced sufficient evidence from which a jury could find that the conspiracy had continued into the limitations period by proving there was price-fixing activity in furtherance of the conspiracy during that time. *Id.* at 418.

In sum, the Third Circuit considers it "well settled that a criminal defendant is entitled to an instruction

on the applicable statute of limitations" when she raises a statute-of-limitations defense. *United States v. Jake*, 281 F.3d 123, 128 (3d Cir. 2002) (citing *Grunewald*, 353 U.S. at 396-97); *see United States v. Churuk*, 797 F. App'x 680, 689-90 (3d Cir. 2020).

c. The Sixth Circuit agrees that the government must prove to the jury that a non-overt-act conspiracy continued into the limitations period, as its decisions and pattern jury instructions confirm.

In *United States v. Hayter Oil Co. of Greeneville, Tennessee*, 51 F.3d 1265, 1266, 1270-71 (6th Cir. 1995), a non-overt-act price-fixing case, the Sixth Circuit held that the government was "required to prove that the agreement existed during the statute of limitations period" by offering evidence of "[t]he scope and duration of the conspiracy." In the Sixth Circuit's view, once the government proves that the conspiracy included an agreement that it would continue into the limitations period, the government triggers a rebuttable presumption that the conspiracy continued. *Id.* Whether the conspiracy existed into the limitations period was a question for the jury. *See id.* at 1271. Applying that rule, the Sixth Circuit affirmed the defendants' price-fixing convictions, holding that there was sufficient evidence that the conspiracy existed in the limitations period. *Id.* The government had produced evidence that "regular price-fixing activity continued" during the limitations period, and that the conspirators raised and maintained prices during that period as well. *Id.*

The Sixth Circuit reaffirmed these principles in *United States v. Brown*, 332 F.3d 363, 373-74 (6th Cir. 2003), holding that the government had the burden of "show[ing] beyond a reasonable doubt that the specific

[non-overt-act] conspiracy … was on-going" into the limitations period. The timing of the conspiracy, including whether "to apply the presumption of continuity" based on the government's evidence, was for the jury to decide. *Id.* at 374.

The Sixth Circuit has codified its approach in pattern jury instructions. Those model instructions direct the district court to instruct the jury if the defendant raises "an issue relating to the duration of a conspiracy," like the statute of limitations, because the issue is for the jury to decide. 6th Cir. Pattern Jury Instruction § 3.12 (2023), https://tinyurl.com/mwmvfhsd. The pattern instruction provides that "sometimes a conspiracy may have a continuing purpose, and may be treated as an ongoing, or continuing, conspiracy," which "depends on the scope of the agreement." *Id.* Thus, "[i]f the agreement includes an understanding that the conspiracy will continue over time, then the conspiracy may be a continuing one," at which point a jury can find that the conspiracy "lasts until there is some affirmative showing that it has ended." *Id.*

d. If Mr. Ravenell had faced trial in the Second, Third, or Sixth Circuit, the government would have needed to prove to the jury that the charged money-laundering conspiracy continued into the limitations period by offering evidence that, based on the agreement's scope and purpose, there was an understanding that the conspiracy would continue into the limitations period. The jury, moreover, would have received a statute of limitations instruction and could have acquitted Mr. Ravenell. *Infra* pp. 34-35. The jury could have found, for example, that based on the government's reliance almost entirely on evidence about transactions predating July 2, 2014, *supra* pp. 8-10, any agreement was to "conduct[] or attempt[]

to conduct," 18 U.S.C. § 1956(a)(1), or to "engage[] or attempt[] to engage in," *id.* § 1957(a), particular transactions *before* the limitations period, rather than transactions in the limitations period or an indefinite series of unlawful transactions.

2. In the First, Fifth, and Ninth Circuits, the government must prove to the jury that a non-overt-act conspiracy existed in the limitations period by producing evidence of conspiratorial conduct in the limitations period.

The First, Fifth, and Ninth Circuits impose even more rigorous requirements than the Second, Third, and Sixth Circuits. The First, Fifth, and Ninth Circuits require the government to prove to the jury that a non-overt-act conspiracy continued into the limitations period by showing conspiratorial conduct in the limitations period.

a. In *United States v. Therm-All, Inc.*, 373 F.3d 625, 631-32 (5th Cir. 2004), the Fifth Circuit held that for a non-overt-act conspiracy, "the government must produce evidence of the conspiracy's continued existence during the limitations period" by showing that a "conspirator committed an act of continuing effort" in the limitations period. *Therm-All* involved a price-fixing conspiracy, which, like money-laundering conspiracies, doesn't require proof of an overt act. *Id.* at 628, 634; *see Whitfield*, 543 U.S. at 213-14. The trial court instructed the jury "that the government had to prove 'that the conspiracy charged in the indictment continued after May 31, 1995,' and that it could so find 'only if the government has proven that some action was taken by a conspirator in furtherance of the conspiracy after that date.'" *United States v. Therm-All,*

Inc., 352 F.3d 924, 932 (5th Cir. 2003) (Reavley, J., dissenting), *withdrawn and superseded on denial of reh'g en banc*, 373 F.3d 625. On appeal, the defendants argued that the government failed to produce evidence that the conspiracy existed in the limitations period. *Therm-All*, 373 F.3d at 631. The government countered that it didn't have to produce such evidence because the *defendants* had the burden of showing they abandoned the conspiracy. *Id.*

The Fifth Circuit rejected the government's argument, holding that when a non-overt-act conspiracy is formed outside the limitations period, "an overt act must occur within" the limitations period. *Id.* at 633. In reaching that conclusion, the Fifth Circuit disagreed (*id.* at 636; *see id.* at 634 n.7) with the Second Circuit's approach in *Spero*, which allows the government to trigger a presumption that a conspiracy continued based on evidence of the charged conspiracy's scope and purpose. *See supra* p. 23. Under that approach, the Fifth Circuit reasoned, "once a conspirator has committed an act of continuing effort, the conspiracy would continue indefinitely"—and be "indefinitely actionable"—"unless the conspirator made a showing of abandonment or success." *Therm-All*, 373 F.3d at 632. That made no sense, the Fifth Circuit reasoned, because statutes of limitations are meant "to put old liabilities to rest, to relieve courts and parties from 'stale' claims where the best evidence may no longer be available," and to encourage prompt investigation and prosecution. *Id.* at 634 n.7. "[A]llow[ing] the government to bring claims well after any evidence is found to substantiate the original act of conspiracy" would undermine those purposes and make the statute of limitations meaningless. *Id.*

The Fifth Circuit ultimately concluded that the government produced enough evidence to satisfy that test in *Therm-All*, where the district court had given the jury a statute-of-limitations instruction. *Id.* at 636. And the Fifth Circuit has since reiterated that when a defendant timely raises a statute of limitations defense, she is "entitled" "to have the jury instructed on it." *United States v. Pursley*, 22 F.4th 586, 587 (5th Cir. 2022).

b. The First Circuit likewise holds that the government must prove to a jury that a non-overt-act conspiracy existed in the limitations period by showing conspiratorial conduct in the limitations period. In *United States v. Upton*, 559 F.3d 3, 5-7 (1st Cir. 2009), the defendant was convicted of money-laundering conspiracy (under the same statute at issue here) after using stolen funds to purchase property and selling the property without properly reporting his income. On appeal, the defendant argued that there was insufficient evidence to show the conspiracy continued into the limitations period, because the conspiracy's goal was achieved before the limitations period, when he sold the property. *See id.* at 9-10. Thus, he contended, his later tax violations *within* the limitations period weren't proof of continuation. *Id.*

The First Circuit agreed that "to avoid the statute of limitations bar," the government "had to prove that one of the tax offenses was in furtherance of the central objective of the conspiracy." *Id.* at 11. The court underscored that "[d]etermining the contours of the conspiracy"—like the timing of certain events and whether they were in furtherance of the conspiracy—"ordinarily is a factual matter entrusted largely to the jury." *Id.* The First Circuit nonetheless affirmed because it found there was sufficient evidence for the

jury to infer that the tax offenses that occurred in the limitations period "were part of an ongoing plan to engage in concealment money laundering," and thus that the conspiracy charge was timely. *Id.* at 13-14.

c. The Ninth Circuit, too, agrees that the correct way to instruct the jury is to explain that "it ha[s] to find that a member committed an overt act in furtherance of the conspiracy" within the limitations period. *United States v. Brown*, 936 F.2d 1042, 1048 (9th Cir. 1991). That is the rule even though, as the district court "correctly" instructed the jury in *Brown*, "a finding of an overt act is not necessary to a finding that a Sherman Act conspiracy has been formed" in the first place. *Id.* "Although the jury was told in one instance that an overt act was not necessary and in another that it was necessary, the law was correctly stated," because those two instructions "deal with two separate issues"—the formation of the conspiracy and its continuation into the limitations period. *Id.*

d. Had Mr. Ravenell been tried in the First, Fifth, or Ninth Circuit, the government would have needed to prove to the jury that the money-laundering conspiracy continued into the limitations period by showing that a conspirator took some action in furtherance of the conspiracy within the limitations period. The jury could have acquitted Mr. Ravenell had the district court given it those instructions. *Infra* pp. 34-35. For example, the jury might have rejected the government's weakly supported version of events after July 2, 2014, *supra* pp. 9-10, or concluded that any events in the limitations period were unrelated to any money-laundering conspiracy.

C. The Fourth Circuit's reasons for splitting with this Court's and six other courts of appeals' decisions and holding that the government has no burden to prove to the jury that a non-overt-act conspiracy existed in the limitations period fail.

The Fourth Circuit contravened this Court's precedent and split with six courts of appeals in concluding that the government had no burden to prove to the jury that the conspiracy continued into the limitations period. The Fourth Circuit's reasoning rested on its belief that the only way to prove a conspiracy continued into the limitations period is to prove an overt act, and that such a requirement would eviscerate the distinction between overt- and non-overt-act conspiracies. That reasoning fails.

First, the Fourth Circuit's rationale runs headlong into the longstanding rule that the government "bears the burden of establishing compliance with the statute of limitations by presenting evidence that the crime was committed within the limitations period." *Musacchio*, 577 U.S. at 248; *see Smith*, 568 U.S. at 113; *Grunewald*, 353 U.S. at 396. Congress didn't distinguish between overt-act and non-overt-act conspiracies in § 3282(a), and neither did *Smith*, even though it involved non-overt-act conspiracies and relied on *Grunewald*, an overt-act conspiracy case. *Supra* pp. 6-7.

Second, the Fourth Circuit's core premise—that the only way to prove that a conspiracy continued into the limitations period is by proving overt acts in the limitations period—is wrong, as *Grunewald* and the decisions of the Second, Third, and Sixth Circuits make clear. *Grunewald* explains that "the crucial

question" in determining whether a conspiracy satisfies the statute of limitations "is the scope of the conspiratorial agreement." 353 U.S. at 397. The Second, Third, and Sixth Circuits have thus held that the government must prove to the jury that a non-overt-act conspiracy existed in the limitations period, and that it can do so by presenting evidence about the purpose and scope of the charged conspiracy that would allow a jury to infer that the conspiracy would continue. *Supra* pp. 22-26. For example, when the government charges "[a] conspiracy to restrain or monopolize trade by improperly excluding a competitor from business," it could offer proof that the charged agreement "contemplates that the conspirators will remain in business and will continue their combined efforts to drive the competitor out until they succeed." *United States v. Kissel*, 218 U.S. 601, 607-08 (1910). That doesn't require proof of overt acts, but it does require factual proof about the scope and purpose of the particular conspiracy charged that would allow the jury to infer that it continued beyond a certain date.

Third, and in any event, requiring proof of an overt act *within* the limitations period when the conspiracy was formed outside the limitations period—the First, Fifth, and Ninth Circuits' approach, *supra* pp. 27-30—doesn't transform a non-overt-act conspiracy into an overt-act conspiracy, as the Fourth Circuit thought. Instead, it gives effect to *§ 3282(a)'s* independent requirement that prosecutions be brought within five years. The government need not prove an overt act if it prosecutes the conspiracy within five years of its formation. As the Ninth Circuit correctly put it, the substantive conspiracy offense's overt-act requirement and the statute of limitation's overt-act

requirement "deal with two separate issues." *Brown*, 936 F.2d at 1048.

Finally, *Grunewald* rejected a statute-of-limitations rule that would "great[ly] widen[]" "the scope of conspiracy prosecutions" and "for all practical purposes wipe out the statute of limitations in conspiracy cases" by "extend[ing] the life of a conspiracy indefinitely." 353 U.S. at 402. But the Fourth Circuit's rule does just that by conclusively presuming as a matter of law that non-overt-act conspiracies continue indefinitely absent proof to the contrary. The jury thus need not even receive a statute-of-limitations instruction. Such a presumption is legally and factually unsound.

II. The question presented is important, and this case is the ideal vehicle to address it and bring the Fourth and Eleventh Circuits into line with the decisions of this Court and other courts of appeals.

A. The question presented is critically important. District courts "need to know how to instruct juries." *Maslenjak v. United States*, 582 U.S. 335, 346 n.4 (2017). The Court also has repeatedly recognized the importance of upholding Congress' judgment on statutes of limitations, *see, e.g.*, *United States v. Briggs*, 141 S. Ct. 467, 471 (2020); *Rotkiske*, 140 S. Ct. at 361; *Smith*, 568 U.S. at 112, and it frequently grants review to resolve statute-of-limitations issues, *e.g.*, *Reed v. Goertz*, 598 U.S. 230, 232 (2023); *McDonough v. Smith*, 139 S. Ct. 2149, 2154 (2019); *Kokesh v. SEC*, 581 U.S. 455, 459 (2017). Indeed, statutes of limitations are critical because "[j]ust determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost." *Wilson v. Garcia*, 471 U.S. 261, 271 (1985).

Statutes-of-limitations concerns are particularly acute in criminal cases. Prosecutors need to know "the deadline by which charges must be filed," and "persons who know they may be under investigation" need to know how long the government can hang the threat of prosecution over their heads. *Briggs*, 141 S. Ct. at 471. The Fourth and Eleventh Circuits' rule disregards those concerns by negating § 3282(a) for non-overt-act conspiracies, ignoring Congress' judgment and the important interests it sought to protect. *Supra* pp. 31-33.

B. 1. This case is an ideal vehicle to address the question presented. The Fourth Circuit and the district court squarely decided the question, holding that the government bears no burden of proving compliance with the statute of limitations beyond proving the elements of the non-overt-act conspiracy itself. *Supra* pp. 11-12; App. 83a-85a. On that ground, both courts rejected Mr. Ravenell's requested instructions—one tracking the First, Fifth, and Ninth Circuits' test that the government must prove an overt act in the limitations period, and the other tracking the Second, Third, and Sixth Circuits' test that the government must prove that the conspiracy continued into the limitations period, *supra* p. 10.

Properly instructed, the jury could have acquitted Mr. Ravenell. Without instructions, Mr. Ravenell lost his fundamental right to defend himself. The vast majority of the government's evidence of the charged money-laundering conspiracy pre-dated the July 2, 2014, statute-of-limitations cutoff. But defense counsel couldn't even assert a statute-of-limitations defense at closing argument given the district court's ruling. And as Judge Gregory persuasively explained, a properly instructed jury could have concluded that

the charged conspiracy did not continue into the limitations period. *Supra* pp. 13-14. Indeed, the majority didn't purport to hold that any instructional error would have been harmless, and it would not have been. Although the majority explained *its* view of the evidence, *supra* p. 12, the question is not whether the government presented *sufficient* evidence of a conspiracy within the limitations period, but whether a properly instructed jury could have taken a different view.

2. The Fourth Circuit denied en banc review 9–5 despite the circuit conflict. *See* C.A. En Banc Pet. 6-7. Only this Court can resolve the entrenched disagreement.

* * *

Juries are a centuries-trusted, "necessary check on governmental power" and "a tangible implementation of the principle that the law comes from the people." *Peña-Rodriguez*, 580 U.S. at 210. And the people determined in § 3282(a) that the government must prove compliance with the statute of limitations to ensure fair and reliable criminal prosecutions. The Fourth Circuit's rule disregards that judgment, conflicts with this Court's precedent, and deepens a split with six other circuits—all in a case where the jury, had it been properly instructed, could have acquitted. The Court should grant review.

CONCLUSION

The petition should be granted.

Respectfully submitted.

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