No. 23-638

IN THE
Supreme Court of the United States

KENNETH WENDELL RAVENELL,
Petitioner,
v.
UNITED STATES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF REPRESENTATIVES GLENN F. IVEY AND HANK JOHNSON AS AMICI CURIAE SUPPORTING PETITIONER

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IDENTITY AND INTEREST OF AMICI CURIAE

In accordance with Supreme Court Rule 37.3(a), the Honorable Glenn F. Ivey and Hank Johnson, United States Representatives, respectfully submit this brief as amici curiae in support of Petitioner.[1]

Congressman Glenn F. Ivey

Congressman Ivey is an attorney who represents Maryland's 4th Congressional District. Prior to his election to Congress in 2022, he served on Capitol Hill as chief counsel to the Senate Majority Leader, as counsel to Senator Paul Sarbanes during the Whitewater investigations, Chief Majority Counsel to the Senate Banking Committee, and on the staff of Rep. John Conyers (D-MI). He also worked for U.S. Attorney Eric Holder as an assistant U. S. Attorney, and as chair of Maryland's Public Service Commission. He was twice elected as State's Attorney for Prince George's County where he worked with the Obama Administration to cut crime. He is a

[1] Pursuant to Rule 37.2, the counsel of record for all parties have received timely notice of Amici's intent to file this brief. Pursuant to Rule 37.6, Amici affirms that no counsel or party authored this brief in whole or part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No persons other than Amici or counsel made a monetary contribution to its preparation or submission.

1983 graduate of Princeton University and a 1986 graduate of Harvard Law School.

Congressman Ivey serves on the House Committee on the Judiciary, which is charged with overseeing the administration of justice within the federal courts, federal administrative agencies, and federal law enforcement entities. Congressman Ivey specifically serves on the House Committee on the Judiciary's Subcommittees on the Administrative State, Regulatory Reform, and Antitrust, Courts, Intellectual Property, and the Internet, and Responsiveness and Accountability To Oversight. He is the Ranking Member of the House Committee on Homeland Security's Subcommittee on Oversight, Investigations, and Accountability. He is also a member of the House Committee on Ethics.

Congressman Hank Johnson

Congressman Johnson is an attorney who represents Georgia's 4th Congressional District. Prior to his election to Congress in 2006, Congressman Johnson practiced criminal defense law in Georgia for 27 years, served as a magistrate judge for 12 years, and served as a county commissioner for 5 years. Congressman Johnson serves on the House Committee on the Judiciary and is the Ranking Member of the Subcommittee on Courts, Intellectual Property, and the Internet, as well as a member of the Subcommittees on Administrative State, Regulatory Reform, and Antitrust and Crime and Federal Government. He is also a member of the House Committee on Transportation & Infrastructure and

its Subcommittees on Aviation & Highways and Railroads, Pipelines, and Hazardous Materials. He is a 1976 graduate of Clark College (now Clark Atlanta University) and 1979 graduate of Texas Southern University Thurgood Marshall School of Law.

SUMMARY OF ARGUMENT

Federal statutes of limitation are Congress' domain. They serve several important purposes, and this Court has long enforced them. They reflect "a legislative judgment about the balance of equities in a situation involving the tardy assertion of otherwise valid rights." *United States v. Marion*, 404 U.S. 307, 322 n.14 (1971). And the "time and manner of their operation . . . and the acts from which the time limited shall begin to run, will generally depend on the sound discretion of the legislature." *Terry v. Anderson*, 95 U.S. 628, 634 (1877) (internal quotation omitted).

In the criminal context, when a defendant invokes the statute of limitations defense, the burden is on the Government to prove that the crime charged occurred within the limitations period. *E.g.*, *Musacchio v. United States*, 577 U.S. 237, 248 (2016). Although Mr. Ravenell raised this defense, the District Court refused to instruct the jury on it. The Fourth Circuit affirmed this erroneous decision. In so doing, the Fourth Circuit denied Mr. Ravenell his right to a fair trial and effectively rendered the statute of limitations meaningless for non-overt act conspiracies. The Court should grant review.

ARGUMENT

I.

Congressional time limits for commencing prosecutions reflect a legislative policy determination and play a vital role in the American justice system.

A. Statutes of limitation are legislatively enacted to achieve particular purposes.

Statutes of limitation have "long been respected as fundamental to a well-ordered judicial system." *Bd. of Regents of Univ. of State of N. Y. v. Tomanio*, 446 U.S. 478, 487 (1980). Whether criminal or civil, they garner such respect because "important public policy lies at their foundation." *Wood v. Carpenter*, 101 U.S. 135, 139 (1879); *see also Marion*, 404 U.S. at 322 n.14 (explaining that the public policies underpinning civil and criminal statutes of limitation "are in many ways similar"). Indeed, "[s]tatutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence." *Wood*, 101 U.S. at 139.

This Court has articulated several purposes of statutes of limitation. "They promote repose by giving security and stability to human affairs." *Id.* Further, the promptness they require protects against the "loss of evidence from death or disappearance of witnesses, destruction of documents, or failure of memory." *Missouri, K. & T.R. Co. v. Harriman Bros.*, 227 U.S.

657, 672 (1913); *see also Marion*, 404 U.S. at 322 n.14 (same); *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945) (Statutes of limitation prevent "the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost."). Delay, by contrast, risks "impair[ing] the accuracy of the fact-finding process," *Tomanio*, 446 U.S. at 487, because the passage of "time is constantly destroying the evidence of rights," *Wood*, 101 U.S. at 139. Put differently, statutes of limitations "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Marion*, 404 U.S. at 322 n.14 (internal quotation omitted). Such statutes also provide another principal benefit—clarity, both to the individual defendant (as a "known statute of limitations provides a date after which they may no longer fear arrest and trial") and to the prosecutor (who "know[s] the deadline by which charges must be filed"). *United States v. Briggs*, 592 U.S. ---, 141 S. Ct. 467, 471 (2020). And "[s]uch a time limit may also have the salutary effect of encouraging law enforcement officials to promptly investigate suspected criminal activity." *Toussie v. United States*, 397 U.S. 112, 115 (1970).

Moreover, and as to criminal litigation specifically, "[t]he purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions." *Id.* at 114. In so doing, statutes of limitation safeguard the right to a fair trial, setting

up a "limit beyond which there is an irrebuttable presumption" that the right would be prejudiced. *Marion*, 404 U.S. at 322. Indeed, limitations bars constitute "the primary guarantee against [ ] overly stale criminal charges." *United States v. Ewell*, 383 U.S. 116, 122 (1966). These principles were well summarized by the drafters of the Model Penal Code, who identified five reasons for criminal statutes of limitations:

> First, and foremost, is the desirability that prosecutions be based upon reasonably fresh evidence. With the passage of time memories fade, witnesses die or leave the area, and physical evidence becomes more difficult to obtain, identify, or preserve. In short, possibility of erroneous conviction is minimized when prosecution is prompt. Second, if the actor long refrains from further criminal activity, the likelihood increases that he has reformed, diminishing the necessity for imposition of the criminal sanction. If he has repeated his criminal behavior, he can be prosecuted for recent offenses committed within the period of limitation. Hence, the need for protecting society against the perpetrator of a particular offense becomes less compelling as the years pass. Third, after a protracted period the retributive impulse which may have

> existed in the community is likely to yield to a sense of compassion aroused by the prosecution for an offense long forgotten. Fourth, it is desirable to reduce the possibility of blackmail based on a threat to prosecute or to disclose evidence to enforcement officials. Finally, statutes of limitations 'promote repose by giving security and stability to human affairs.'

MODEL PENAL CODE § 1.06 cmt. 1 (AM. L. INST. 1985) (footnotes omitted).

But it is not just the Court and commentators who have expounded on the purpose behind statutes of limitation—the legislature has weighed in too. For example, when introducing a bill to promulgate civil statutes of limitation for tort and contract actions brought by the Government, the Committee on the Judiciary of the House of Representatives stated that "[s]tatutes of limitation have the salutary effect of requiring litigants to institute suits within a reasonable time of the incident or situation upon which the action is based." An Act to establish a statute of limitations for certain actions brought by the Government (Public Law 89-505), S. Rep. No. 1328, 89th Cong., 2d Sess. 2 (1966), reprinted in 1966 U.S.C.C.A.N. 2502, 2503–04.

And in enacting criminal statutes of limitation, Congress recognized that the statutory time-bar

> insure[s] that verdicts of acquittal or conviction rest on reliable evidence and testimony; that the resources of the criminal justice system are most efficiently used in the investigation and prosecution of recently committed crimes; that the ancient wrongs of an individual should not be resurrected against him except in cases of active concealment . . . and that statutes of limitation serve to encourage prompt action on the part of law enforcement officers and prosecutors.

Letter from Roger A. Pauley, Director of Off. of Legis., U.S. Dep't of Just. to Phillip B. Heyman, Assistant Att'y Gen., Crim. Div., U.S. Dep't of Just. (May 11, 1979), *in* LEGISLATIVE HISTORY OF THE COMPREHENSIVE CRIME CONTROL ACT OF 1984: P.L. 98-473: 98 STAT. 1837, 3384 (1984).

Given the important public policy objectives at stake, it is unsurprising that courts routinely emphasize the importance of statutes of limitation. As Chief Justice Marshall stated, a system that allowed for the flouting of statutes of limitation "would be utterly repugnant to the genius of our laws." *Adams v. Woods*, 6 U.S. (2 Cranch) 336, 342 (1805) (reasoning that "[i]n a country where not even treason can be prosecuted after a lapse of three years, it could scarcely be supposed that an individual would remain forever liable to a pecuniary forfeiture"). Nor is it surprising that the Court has for over 150 years extolled the virtues of statutes of limitation, which

should receive "support from the courts" to effectuate their purpose, i.e., as "a statute of repose." *Mercer's Lessee v. Selden*, 42 U.S. 37, 45 (1843) (collecting cases, in the civil context, that are "illustrative of the policy of the statute of limitations, and the favour with which it is regarded by the courts"). This is no less true in the criminal context; as this Court has instructed on multiple occasions, courts must "liberally interpret[ ]" statutes of limitation, including § 3282, "in favor of repose." *Toussie*, 397 U.S. at 115 (quotation omitted); *also Marion*, 404 U.S. at 322 n.14; *United States v. Scharton*, 285 U.S. 518, 522 (1932).

B. It is Congress' prerogative to enact statutes of limitation, which this Court has long regarded as a product of the legislature's policy determination.

As the Court has recognized, statutes of limitation "come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate." *Donaldson*, 325 U.S. at 314; *Marion*, 404 U.S. at 322 n.14 (same). In other words, statutes of limitation, by their very name, arise from legislative action and not judge-made law. The first federal statute of limitations arose at the founding when the first Congress enacted a three-year limitations period for capital offenses other than willful murder and forgery and a two-year limitations period for most non-capital offenses. Act of Apr. 30, 1790, ch. 9, § 32, 1 Stat. 112, 119.

In the criminal arena, a "statute-of-limitations defense does not call the criminality of the defendant's conduct into question, but rather reflects a policy judgment by the legislature that the lapse of time may render criminal acts ill suited for prosecution." *Smith v. United States*, 568 U.S. 106, 112 (2013); *cf. Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 463–64 (1975) ("[T]he length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones."). Thus, it is well-established that statutes of limitation "represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice." *Marion*, 404 U.S. at 322.

Congress' activity in the area of statutes of limitation underscores that Congress will revise and amend limitation periods when it deems it appropriate and necessary. Section 3282—the default statute of limitations for non-capital federal offenses—reflects Congress' declared policy to both impose a limitations period of five years for such offenses and "that the statute of limitations should not be extended 'except as otherwise expressly provided by law.'" *Toussie*, 397 U.S. at 115 (quoting 18 U.S.C. § 3282(a)). And, to be sure, since extending the default statute of limitations for non-capital federal offenses to five years in 1954, Congress has repeatedly passed exceptions that created longer statute of limitations periods for certain offenses. Examples of criminal offenses now subject to longer

statute of limitations periods include, but are not limited to, the theft of major artwork, 18 U.S.C. § 3294, child abduction and sex offenses, 18 U.S.C. § 3299, arson offenses, 18 U.S.C. § 3295, the recruitment or use of child soldiers, 18 U.S.C. § 3300, securities fraud offenses, 18 U.S.C. § 3301, and terrorism offenses, 18 U.S.C. § 3286. *See generally* Lindsey Powell, *Unraveling Criminal Statutes of Limitations*, 45 AM. CRIM. L. REV. 115, 121 (2008).

At present, Congress has set five-years as the limitations period for a non-overt act conspiracy charged under the federal money-laundering conspiracy statute. *See* 18 U.S.C. § 1956(h), 18 U.S.C. § 3282. As such, because Congress has made prosecution of such an offense "subject to the statute of limitations," effect must be given "to the clear expression of congressional will that in such a case no person shall be prosecuted, tried, or punished" when the statute would "bar a given prosecution." *Toussie*, 397 U.S. at 123–24.

C. The Government bears the burden when the defendant raises a statute of limitations defense.

It is a bedrock principle of American criminal law that the Government always bears the burden of proving the defendant is guilty of the charges. As this Court said nearly 150 years ago:

> In criminal cases the true rule is that the burden of proof never shifts; that in all cases, before a conviction can be had, the

> jury must be satisfied from the evidence, beyond a reasonable doubt, of the affirmative of the issue presented in the accusation that the defendant is guilty in the manner and form as charged in the indictment.

Lilienthal's Tobacco v. United States, 97 U.S. 237, 266 (1877); *also Speiser v. Randall*, 357 U.S. 513, 526 (1958) ("Due process commands that no man shall lose his liberty unless the Government has borne the burden of producing the evidence and convincing the factfinder of his guilt."). But in practice, amorphous conspiracy charges threaten to dilute this bedrock prohibition. Unwritten "'exceptions' that informally relax the rules of evidence" and "standards of proof in favor of the prosecution" mean "proof of agreement does not pose a significant barrier to a conspiracy charge, and is difficult for the defendant to disprove when multi-person activity is implicated in the criminal process." Steven R. Morrison, *The System of Modern Criminal Conspiracy*, 63 CATH. U. L. REV. 371, 406–07 (2014). Blurred lines between proof of the elements of the conspiracy and proof of the timeliness of the charges threaten to dilute the prohibition on burden shifting even further.

It is settled law that, when a criminal defendant invokes a statute of 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 or by establishing an exception to the limitations period." *Musacchio v.*

United States, 577 U.S. 237, 248 (2016); *see also United States v. Piette*, 45 F.4th 1142, 1163 (10th Cir. 2022) (evaluating the Supreme Court's precedent and finding it "settled that if a defendant invokes the statute of limitations as a defense, the burden shifts to the government to establish the timing of the offense beyond a reasonable doubt").

But without any authorization, direction, or prompting from Congress, the trial court in this matter relieved the Government of its burden to prove the alleged conspiracy continued into the limitations period. Unless this Court imposes a course correction, the Fourth Circuit's holding affirming the trial court's ruling will eliminate the limitations defense for defendants in future non-overt act cases in that circuit, contrary to the will of Congress.

II.

The Fourth Circuit's opinion eviscerates the statute-of-limitations defense for non-overt act conspiracies.

Relying on precedents of its own and from the Eleventh Circuit, the Fourth Circuit held that in the face of a limitations defense in a non-overt act conspiracy case, the Government need only "prove an agreement to enter into a conspiracy." *United States v. Ravenell*, 66 F.4th 472, 482 (4th Cir. 2023). In other words, the Fourth Circuit ruled that the Government need prove nothing more than a conspiratorial agreement—and bears no burden to prove that the conspiracy continued into the limitations period. The

Fourth Circuit's view is that, if the Government proves a conspiracy existed (without regard to how ancient the agreement), it has carried its burden on limitations, and the defendant is left to attempt to show the conspiracy "was terminated or he withdrew from it" outside the limitations period. *Id.* (quoting *United States v. Walker*, 796 F.2d 43, 49 (4th Cir. 1986)). Under this framework, as the Fourth Circuit held, a trial court has no obligation to instruct on a timely raised limitations defense unless the defendant introduces evidence of "affirmative acts" of termination or withdrawal. *Id.* (quoting *Walker*, 796 F.2d at 49).

The Fourth Circuit's holding lacks any plausible grounding in the relevant statutes or this Court's precedents. Nothing in 18 U.S.C. § 3282 suggests Congress intended to relieve the Government of *any* burden on statute of limitations in non-overt act conspiracy cases.

The lower court here unilaterally encroached upon a legislative space, specifically reserved for Congress, in failing to instruct the jury on the applicable statute of limitations for the alleged crime. Because statutes of limitation are inherently legislative, it is Congress who dictates the actionable timeframe when a defendant remains culpable. Stripping a defendant of these legislative rights not only carries due process implications, but it eviscerates the boundary between Congress and the courts. The Fourth Circuit's opinion defies Congress's legislative intent in erasing the five-year statute of

limitations, but even more troubling, it now stands as authority that courts can role-play as legislatures.

Further, the Fourth Circuit's opinion that the government need only "prove an agreement to enter into a conspiracy" conflicts with this Court's explications of the interaction between Congress' conspiracy statutes and the statute of limitations. In *Grunewald v. United States*, an overt-act conspiracy case, the Court explained that it is "incumbent on the Government to prove that the conspiracy, as contemplated in the agreement as finally formulated, was still in existence" within the limitations period. 353 U.S. 391, 396 (1957). In *Smith*, the Court left no doubt that the Government bears this same burden in non-overt act conspiracy cases as well. *See* 568 U.S. at 113 (stating that "the Government must prove the time of the conspiracy offense if a statute-of-limitations defense is raised" (citing *Grunewald*, 353 U.S. at 396)).

Neither *Grunewald* nor *Smith* states or suggests that the Government carries its burden merely by proving that a conspiracy was formed on some unspecified date prior to indictment. In *Smith*, the Court noted that the jury instructions given at trial required the Government to prove *both* that the alleged "conspiracies existed" *and* that the "conspiracies 'continued in existence within five years' before the indictment." 568 U.S. at 108 (citation omitted). And the Court concluded that the Government satisfied its burden, not by proving that the conspiracies *existed,* but by proving that the

conspiracies "*continued* past the statute-of-limitations period." *Id.* at 113 (emphasis added).

Under this Court's precedents, then, the Government's burden on statute of limitations in a case of a purported continuing conspiracy requires a showing that the conspiracy as agreed by the participants extended into the limitations period. As the Court put it in *Grunewald*, the "crucial question . . . is the scope of the conspiratorial agreement." 353 U.S. at 397. And indeed, the Department of Justice's *Criminal Resource Manual* expressly acknowledges that the Government bears the burden of proving that conspiracy agreements extend into the limitations period and that "the crucial question in this regard is the scope of the conspiratorial agreement." U.S. Dep't of Justice, *Criminal Resource Manual* § 652. Statute of Limitations for Conspiracy (last visited Jan. 10, 2024), https://www.justice.gov/archives/jm/criminal-resource-manual-652-statute-limitations-conspiracy.

To be sure, the manner in which the Government proves the "crucial question" of a conspiracy's scope might vary from case to case. For example, evidence of conspiracy-related activities within the limitations period would suffice. *See, e.g.*, *United States v. Therm-All, Inc.*, 373 F.3d 625 (5th Cir. 2004) (holding that, for a non-overt act conspiracy formed outside the limitations period, the Government must prove an overt act within the limitations period). Additionally, or alternatively, the Government might rely on evidence tending to show the parties intended their conspiracy to extend into the limitations period. *See, e.g.*, *United States v.*

Spero, 331 F.3d 57, 60 (2d Cir. 2003) (explaining that the Government must prove that the "conspiracy contemplates a continuity of purpose and a continued performance of acts" (internal quotation omitted)).

But in any event, what *Grunewald* and *Smith* foreclose is what happened below: the trial court's jury charge left the "crucial question" of the conspiracy's temporal scope unasked and unanswered, despite the specific request of the defendant. Instead, as noted, the Fourth Circuit held that the Government carried its burden merely by proving a conspiracy was formed prior to the limitations period.

That holding is troubling because it effectively exempts non-overt act conspiracies from the statute of limitations. In practice, the statute of limitations means nothing if the Government, as the Fourth Circuit held, may satisfy it merely by proving that a conspiratorial agreement of *any* duration was reached *before* the limitations period.

CONCLUSION

The Fourth Circuit should not be exempting non-overt act conspiracies from the federal statutes of limitation. To the extent any entity should be taking such a measure, it must be Congress, not the courts. It is exclusively the province of Congress to create new exceptions to the statute of limitations. *See, e.g.*, *Hart v. United States*, 910 F.2d 815, 819 (Fed. Cir. 1990) ("Courts are not free to engraft exceptions on the statute of limitations."). And any such

adjustments to the limitations rules require "a legislative judgment about the balance of equities." *Marion*, 404 U.S. at 322 n.14. The courts are neither empowered nor equipped to undertake this balancing or to substitute their judgment for that of Congress. The Court should grant review.

Dated: January 12, 2024

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