No. _____

In the
Supreme Court of the United States

Stoney Prior,

Petitioner,

v.

United States of America,

Respondent.

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

Petition for a Writ of Certiorari

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Questions Presented for Review

In *Mathews v. United States*, 485 U.S. 58, 63 (1988), this Court recognized "[a]s a general proposition" that a criminal "defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor." The federal circuits, however, espouse markedly different opinions on the scope and application of this maxim. The circuits are divided over whether *Mathews* is limited to the defense of entrapment and the applicable appellate standard of review when the trial court fails to provide the requested defense instruction.

The questions presented are:

1. Is a criminal defendant entitled to a jury instruction on any recognized defense supported by the evidence?
2. If the district court rejects a jury instruction on the defendant's recognized theory of defense, what is the applicable appellate standard of review?

Related Proceedings

The United States District Court for the District of Nevada entered final judgment against Petitioner Stoney Prior on January 14, 2022, in *United States v. Stoney Prior*, Case No. 3:18-cr-00019-LRH-CLB-1, Dist. Ct. Dkt. 306.[1]

On January 14, 2024, the Ninth Circuit affirmed Prior's conviction in an unpublished decision, *United States v. Prior*, No. 22-10022, 2024 WL 81102 (9th Cir. Jan. 8, 2024). Appx. 1–2. On April 18, 2024, the Ninth Circuit denied Prior's request for rehearing in *United States v. Prior*, Case No. 1022, App. Dkt. 55. Appx. 3.

[1] The electronic docket for the District of Nevada is cited as "Dist. Ct. Dkt.," and the electronic docket for the Ninth Circuit Court of Appeals is cited as "App. Dkt."

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Petition for a Writ of Certiorari

Petitioner Stoney Prior respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Opinions Below

The district court's oral ruling denying Prior's request to instruct the jury on his third-party culpability defense is available on the District of Nevada's electronic docket at *United States v. Stoney Prior*, No. 3:18-cr-00019-LRH-CLB-1, Tr. Day 6, Dkt. 334, p. 170 (D. Nev. Aug. 13, 2021). Appx. 5.

The Ninth Circuit's memorandum affirming the district court is unpublished but electronically available at *United States v. Prior*, No. 22-1022, 2024 WL 81102 (9th Cir. Jan. 8, 2024). Appx. 1–2.

The Ninth Circuit's order denying Prior's petition for rehearing and en banc review is unpublished but available on the Ninth Circuit's electronic docket at *United States v. Prior*, No. 1022, Dkt. 55. Appx. 3.

Jurisdiction

The Ninth Circuit entered final judgment denying rehearing on April 18, 2024. Appx. 3. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). This petition is timely. Sup. Ct. R. 13.1.

Relevant Constitutional Provision

Under the Fifth Amendment, "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law. . . ." U.S. Const. amend. V.

Introduction

Due Process requires that "criminal prosecutions must comport with prevailing notions of fundamental fairness." *California v. Trombetta*, 467 U.S. 479, 485 (1984). This Court has "long interpreted this standard of fairness to require that criminal defendants be afforded a *meaningful* opportunity to present a complete defense." *Id.* (emphasis added); *see also Crane v. Kentucky*, 476 U.S. 683, 690 (1986) ("the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense") (cleaned up).

A necessary corollary to a defendant's meaningful opportunity to present a complete defense is the right "to an instruction as to any recognized defense 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). This is because it is the evidence adduced at trial that provides juries the facts to consider and the jury instructions that provide jurors the legal principles under which to consider those facts. *Id.* at 64 ("The issues of fact in a criminal trial are usually developed by the evidence adduced and the court's instructions to the jury."); *see also Tyson v. Trigg*, 50 F.3d 436, 448 (7th Cir. 1995) (the right to present a defense "would be empty if it did not entail the further right to an instruction that allowed the jury to consider the defense").

The federal circuits, however, are entrenched in an intra- and inter-circuit split over both *Mathews*' scope and the standard of review to apply when assessing theory-of-defense instructional errors. A circuit minority limits *Mathews* to the defense of entrapment. The circuit majority applies *Mathews* to all recognized defenses, but the majority is itself split on the standard of review for defense instructional errors. The circuit majority has inconsistently adopted three standards of review, holding: (1) this error can never be harmless; (2) this error can be harmless; and (3) the error (as here) does not constitute an abuse of discretion when jurors received a generic reasonable doubt instruction (as they do in nearly every criminal case).

To bring consistency and comity in the circuits concerning defendants' rights to have juries properly instructed on the theory of defense under *Mathews*, this Court's review is requested. Sup. Ct. R. 10(a), (c).

Statement of the Case

A. Prior presented unrebutted evidence supporting his third-party culpability defense at trial.

Stoney Prior was convicted of two counts of second-degree murder. Appx. 1. Prior's chief defense at trial was that a third party, Kim Abel, shot the two decedents. Appx. 2. Prior also proposed two other alternate suspects: one who confessed to the killings, and one who admitted he saw the decedents at the crime scene. App. Dkt. 15, pp. 9, 19–20.

At trial, undisputed evidence revealed Abel: (1) owned the murder weapon; (2) was drinking with Prior and driving him around in her truck before the

shootings; (3) was with Prior at her home after the shootings; (4) hid the murder weapon in her home; (5) drove Prior from her home to her cousin's home after the shootings; (6) repeatedly lied to law enforcement about her involvement in the shootings; (7) told police she was scared of the victims' families; and (8) committed suicide before Prior's trial. App. Dkt. 15, pp. 44–46.

Based on this evidence, the district court concluded it was appropriate to admit evidence supporting Prior's third-party culpability defense theory. App. Dkt. 15, p. 45. The third-party culpability defense evidence admitted at trial included: (1) unrebutted evidence of Abel's long history of physical violence against others; (2) unrebutted evidence of Abel's violent temper and mental instability; and (3) unrebutted expert evidence of Prior's low IQ and highly compliant, conflict-adverse personality traits that render him gullible and likely to follow the suggestions of those in his social circle, like Abel. App. Dkt. 15, pp. 45–46.

B. The district court denied Prior's request to instruct the jury on his third-party culpability defense.

To identify and explain his third-party defense to jurors, Prior requested the district court provide jurors the following third-party culpability instruction:

> It is the government that has the burden of proving the defendant guilty beyond a reasonable doubt. The defendant is not required to prove the guilt of any other person. If after considering all of the evidence, including any evidence that another person committed the offenses, you have a reasonable doubt that the defendant committed the offenses, you must find the defendant not guilty. A reasonable belief that another person may have committed the offenses may by itself leave you with reasonable doubt.

Appx. 4.

There was no dispute Prior's requested third-party defense instruction accurately stated the law based on the evidence presented. *See* App. Dkt. 15, pp. 57–59; App. Dkt. 35, p. 24. The government therefore did not object to the instruction's language. The government instead objected to the premise of a third-party instruction in the first instance because the instruction allowed jurors to consider Abel's culpability. App. Dkt. 15, p. 47. The government also claimed Prior's third-party defense was covered in other instructions but without identifying any such instruction. App. Dkt. 15, p. 47.

The district court refused to provide Prior's requested third-party culpability instruction, summarily finding the third-party defense was covered in other pattern instructions, like the reasonable doubt instruction, and could create confusion. Appx. 5. Prior's jury thus never received any instruction from the district court advising that third-party culpability was indeed a viable defense theory that could create reasonable doubt. App. Dkt. 15, p. 48. Nor was Prior's jury advised that Prior did not carry the burden of proving his third-party culpability defense. App. Dkt. 15, p. 48.

Prior timely appealed the district court's refusal to instruct the jury on his third-party defense.

C. The Ninth Circuit held the reasonable doubt instruction was an adequate substitute for Prior's third-party defense instruction.

The Ninth Circuit Court of Appeals assumed Prior was entitled to an instruction on his third-party culpability defense. Appx. 1–2. Reviewing the instructional error for abuse of discretion, the court nonetheless affirmed the

district court's failure to instruct the jury on Prior's third-party defense. Appx. 2. The court predicated its holding on the belief that the generic "reasonable-doubt instruction" provided to jurors "adequately covered the issue." Appx. 2. In the court's view, Prior's requested third-party defense "instruction would have been superfluous" because, "to properly follow the instructions and find Prior guilty, the jury could not reasonably doubt whether Prior, as opposed to a third party, committed the murders." Appx. 2.

Prior timely petitioned for rehearing and en banc review. App. Dkt. 54. The Ninth Circuit summarily denied his petition. Appx. 3. Prior now petitions this Court for review.[2]

Reasons for Granting the Petition

A. *Mathews* recognized a criminal defendant's right to a jury instruction on any recognized defense supported by the evidence.

In *Mathews v. United States*, this Court reiterated that "[a]s a general proposition a defendant is entitled to an instruction as to *any* recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor." 485 U.S. 58, 63 (1988) (cleaned up) (emphasis added). *Mathews* thus held that, even if a

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[2] As there is no dispute Prior's proffered third-party defense instruction was a correct statement of the law and substantiated by the evidence, this Petition addresses only the district court's failure to instruct jurors on Prior's third-party defense. *See Wirth v. Branson*, 98 U.S. 118, 121 (1878) (requiring proffered instruction to be a correct statement of the law) *United States v. Sorensen*, 73 F.4th 488, 491 (7th Cir. 2023) (requiring "more than a scintilla of evidence" to demonstrate proposed defense) (citation omitted).

criminal defendant denies one or more elements of the crime, the defendant is entitled to an entrapment instruction when sufficient evidence exists to allow a reasonable juror to find entrapment. *Id.* at 64–66. In support, the Court cited *Stevenson v. United States*, 162 U.S. 313 (1896), where this Court held the evidence supported a self-defense theory, entitling the defendant to a self-defense jury instruction. *Mathews*, 485 U.S. at 63.

B. A third-party culpability defense is a recognized defense for which a defendant is entitled to a jury instruction under *Mathews*.

Mathews did not limit the right to a defense theory instruction to certain defenses, nor did it define defenses eligible for a jury instruction. *Mathews* instead acknowledged defendants' rights to a defense theory instruction on any "recognized defense" supported by the evidence. *Id.*

Third-party culpability is a "recognized defense." This Court concluded in *Chambers v. Mississippi* that a defendant's due process right to present a complete defense is violated by a court's exclusion of probative admissible evidence that someone else may have committed the crime. 410 U.S. 284, 302–03 (1973). "There is no question that the defendant has the right to introduce evidence of third-party culpability." *People of Territory of Guam v. Ignacio*, 10 F.3d 608, 615 (9th Cir. 1993) (citations omitted); *see also Holmes v. South Carolina*, 547 U.S. 319 (2006) (excluding evidence of third-party guilt violated the defendant's right to present a complete defense and denied him a fair trial); *Washington v. Texas*, 388 U.S. 14, 19 (1967) (state's interest in precluding evidence of third-party culpability violated defendant's Sixth Amendment rights); *United States v. Stevens*, 935 F.2d 1380,

1401–03 (3d Cir. 1991) (exclusion of evidence tending to implicate an unknown third party was not harmless error); *United States v. Calle*, 822 F.2d 1016, 1021 (11th Cir. 1987) (third-party guilt is a substantive defense that cannot be limited by trial court under the guise of impeachment rules); *United States v. Armstrong*, 621 F.2d 951, 953 (9th Cir. 1980) (trial court erred in excluding evidence that a third-party committed the offense requiring reversal).

Notably, "[t]hird-party culpability evidence is some of the most powerful evidence a criminal defendant can offer to the jury." *Bradford v. Paramo*, 100 F.4th 1088, 1096 (9th Cir. 2024) (citation omitted). "Exclusion of such evidence is often a considerable blow to the defense." *Id.* at 1096–97.

Given the critical impact a third-party culpability defense may have at trial, this Court recognized in *Holmes* that evidence of third-party guilt need not actually establish the guilt of the third party to be admitted. 547 U.S. at 327. Rather, it is "widely accepted" that such evidence need only raise a reasonable doubt as to the guilt of the defendant. *Id.*; *see also id.* ("Evidence tending to show the commission by another person of the crime charged may be introduced by accused when it is inconsistent with, and raises a reasonable doubt of, his own guilt . . . .") (citation omitted); 40A Am. Jur. 2d, Homicide § 286, at 136–38 (1999) ("[T]he accused may introduce any legal evidence tending to prove that another person may have committed the crime with which the defendant is charged. . . .).

For these reasons, *Mathews*' recognition that a defendant "is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor" applies to the defense of third-party

culpability. 485 U.S. at 63. Under *Mathew*s, defendants are entitled to a jury instruction explaining their third-party defense to jurors once evidence tending to prove another's guilt has been admitted. *See id.* After all, "[t]he purpose of [jury instructions] is to inform the jury of its function, which is the independent determination of the facts, and the applicable law, as given by the court, to the facts found by the jury." 2A Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc. Crim.* § 485, n.3 (4th ed.) (June 2024 update). It is thus the jury instructions that frame "the issues of fact" for jurors to resolve when they are considering the evidence and adjudicating guilt. *Mathews*, 485 U.S. at 64. Absent a theory-of-defense instruction, jurors are ill-equipped to understand the viability of a given defense or its potential effect on the evidence and the reasonable doubt inquiry.

C. The circuits are divided over a defendant's right to a third-party culpability defense instruction.

While the third-party culpability defense is unquestionably a "recognized defense," *see supra* at 7–8, the circuits remain split within and without over whether defendants are entitled to a third-party defense jury instruction and, if so, the applicable appellate standard of review for defense instructional errors.

1. Minority view: There is no right to a third-party defense instruction.

The First and Sixth Circuits limit *Mathews*' right to a theory-of-defense instruction to the defense of entrapment. *Keahey v. Marquis*, 978 F.3d 474 (6th Cir. 2020); *Hardy v. Maloney*, 909 F.3d 494, 500 (1st Cir. 2018). Thus, in these circuits, defendants have no right to a third-party defense instruction. *Id.*

2. Majority view: There is a right to a third-party defense instruction, but division exists over the appellate standard of review.

The remaining circuits do not limit *Mathews* to the defense of entrapment, but they disagree over whether the failure to provide a theory-of-defense instruction is subject to either some variant of harmless-error-analysis or, in one instance, a form of abuse of discretion review.

a. Five circuits hold the failure to provide a requested instruction on a recognized defense can never be harmless.

The failure to give a theory of defense instruction has resulted in reversal of the underlying convictions without any consideration of harmlessness in the Second, Fifth, Eighth, Ninth, and Eleventh Circuits. *See United States v. Goldson*, 954 F.2d 51 (2d Cir. 1992) (reversing for failure to give a defense theory instruction under *Mathews* without engaging in harmless-error-analysis); *United States v. Theagene*, 565 F.3d 911, 918 (5th Cir. 2009) (trial court's refusal of properly requested instruction on defense theory is reversible error); *Arcoren v. United States*, 929 F.2d 1235, 1246 (8th Cir. 1991) (reversible error to deny admission of evidence supporting the defense theory and instruct jurors on that theory); *United States v. Escobar de Bright*, 742 F.2d 1196, 1201 (9th Cir. 1984) ("the defendant's theory of the case is one of those rights 'so basic to a fair trial' that failure to instruct where there is evidence to support the instruction can never be considered harmless error"); *United States v. Arias*, 431 F.3d 1327, 1340–41 (11th Cir. 2005) (reversing for failure to give a defense theory instruction under *Mathews* without engaging in harmless-error-analysis) (citation omitted). Thus, in these circuits, the

failure to provide a requested defense instruction that accurately sets forth the law and is supported by the evidence constitutes per se reversible error.

b. Seven circuits hold the failure to provide an instruction on a recognized defense can be harmless.

But the Fifth and the Ninth Circuits have also sometimes joined the Third, Fourth, Seventh, Tenth, and D.C. Circuits by applying harmless-error-review to defense theory instructional errors. But even then, the harmless-error-review applied varies between the circuits.

In two circuits, though harmless-error-review is applied, it does not appear the failure to give a defense-theory instruction would ever be harmless. *See United States v. Lewis*, 53 F.3d 29, 32, 35 (4th Cir. 1995) (failure to give defense instruction is reversible error if the remaining instructions did not "substantially cover[]" the defense and proffered instruction "dealt with some point in the trial so important, that failure to give the requested instruction seriously impaired the defendant's ability to conduct his defense," but noting "it would be anomalous to conclude that a district court's failure to give a defendant's proposed instruction which substantially impaired his ability to present his defense can be harmless"); *United States v. Cruse*, 805 F.3d 795, 816 (7th Cir. 2015) ("we have never found a failure to give the buyer-seller instruction to be harmless").

In four circuits, harmless-error-review depends on whether the defense-theory instruction is substantially covered by the remaining instructions and whether its absence did not prejudice defendant or seriously impair the defendant's ability to adequately present the defense. *See United States v. Davis*, 183 F.3d 231,

250 (3d Cir. 1999) (failure to give defense-theory instruction is error when "the omitted instruction . . . is not substantially covered by other instructions, and is so important that its omission prejudiced the defendant"); *United States v. Sarno*, 73 F.3d 1470, 1485 (9th Cir. 1995) (despite previously holding the failure to properly instruct jurors on a recognized defense theory is "not subject to harmless error analysis," affirming failure where "instructions actually given, taken as a whole, adequately encompass the defendant's theory") (citations omitted); *United States v. Trujillo*, 390 F.3d 1267, 1275 (10th Cir. 2004) (applying harmless-error-analysis to defense-theory instructional error and asking if "'the error . . . had substantial influence' on the outcome of the trial 'or if one is left in grave doubt' as to its influence") (citation omitted); *United States v. Taylor*, 997 F.2d 1551, 1558 (D.C. Cir. 1993) (generally "the refusal to give an instruction requested by a defendant is reversible error only if the instruction . . . was not substantially covered in the charge actually delivered to the jury" and "concerns an important point in the trial so that the failure to give it seriously impaired the defendant's ability to effectively present a given defense") (cleaned up).

And, in one circuit, the harmless-error-analysis asks whether the defense became known to jurors through closing argument. *United States v. Simkanin*, 420 F.3d 397, 411 (5th Cir. 2005) (because the defense theory instruction was "substantially covered in the charge given to the jury" and closing argument "squarely" placed the defense before the jury, the lack of a defense instruction did not seriously impair defendant's ability to effectively present his defense). *But Cf. Boyde v. California*, 494 U.S. 370, 384 (1990) (recognizing arguments from counsel

are "not evidence" and "likely viewed as the statements of advocates," whereas jury instructions "are viewed as definitive and binding statements of the law") (citations omitted).

These varied tests for harmless error create another level of inconsistency in the circuits.

c. One circuit holds the failure to give an instruction on a recognized defense is subject to abuse-of-discretion review.

As demonstrated in Prior's case, the Ninth Circuit also, at times, applies abuse-of-discretion review to assess whether a generic reasonable doubt instruction rendered the defense-theory-instruction "superfluous." Appx. 2 (citing *United States v. Del Toro-Barboza*, 673 F.3d 1136, 1147 (9th Cir. 2012) ("So long as the instructions fairly and adequately cover the issues presented, the judge's formulation of those instructions or choice of language is a matter of discretion."); *United States v. Govan*, 152 F.3d 1088, 1093 (9th Cir. 1998) (defendant's request for an instruction requiring the government to disprove an "innocent explanation" for his conduct was covered by the instructions given because the requested instruction "can be reduced to the unremarkable assertion that the government must prove beyond a reasonable doubt that he committed the crimes in question"). The court never addressed harmless error in Prior's case, espousing only an obligation to review "claims of error in the failure to give an instruction for abuse of discretion and assertions of legal error in instructions that were given de novo." Appx. 2–3.

D. The Ninth Circuit improperly substituted a generic reasonable doubt instruction for the theory of defense.

The Ninth Circuit's decision in Prior's case eviscerates defendants' rights to a defense-theory instruction by allowing a generic reasonable doubt instruction to substitute for a defense theory instruction. This violates *Mathews*. The Ninth Circuit compounded its error by relegating this instructional error to abuse-of-discretion review.

There is no question criminal defendants are entitled to a reasonable doubt instruction. The Fifth Amendment's Due Process Clause requires the government prove a defendant's guilt beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970). And the Sixth Amendment guarantee of a trial by jury also requires a jury verdict of guilt beyond a reasonable doubt. *Sullivan v. Louisiana*, 508 U.S. 275 (1993). But no specific language must be used to instruct jurors on the reasonable doubt standard. *Victor v. Nebraska*, 511 U.S. 1, 5 (1994) (citation omitted). Rather, the instructions, "taken as a whole," need only "correctly conve[y] the concept of reasonable doubt to the jury." *Id.* (quoting *Holland v. United States*, 348 U.S. 121, 140 (1954)).

A generic reasonable doubt instruction, like the one provided here, thus typically advises jurors the defendant is presumed innocent unless the government proves every element of the offense beyond a reasonable doubt, the defendant does not have to testify, present evidence, or prove his innocence, and jurors must find the defendant not guilty if they are not convinced beyond a reasonable doubt of his guilt. *See* Dist. Ct. Dkt. 278, pp. 3, 5; *see also* 9th Cir. Model Criminal Instructions

1.2, The Charge-Presumption of Innocence (2022 ed.) (updated Mar. 2024) (the defendant "is presumed innocent unless and until the government proves the defendant guilty beyond a reasonable doubt," "has the right to remain silent[,]" and never has to prove innocence or present any evidence").

But a defense-theory-instruction serves a crucially different purpose and explains different concepts than a reasonable doubt instruction. A defense-theory instruction (1) identifies and explains the defense theory to jurors; (2) acknowledges that evidence exists supporting that defense theory, and (3) instructs jurors they must consider that evidence to decide whether the government has proved guilt beyond a reasonable doubt. *See* Appx. 4.

For instance, an instruction on third-party culpability identifies this defense as a viable defense under the law and advises jurors: (1) "[t]he defendant is not required to prove the guilt of any other person"; (2) they are to "consider[] all of the evidence, including any evidence that another person committed the offenses"; and (3) "[a] reasonable belief that another person may have committed the offenses may by itself" create reasonable doubt as to defendant's guilt. Appx. 4. A third-party culpability instruction also makes clear that, though the defendant may have presented evidence supporting the defense, the government bears the burden of disproving the defense. Appx. 4.

While the reasonable doubt instruction advises jurors that a defendant has no evidentiary burden, absent a third-party defense instruction, no instruction advises jurors how to evaluate evidence presented supporting third-party

culpability. The reasonable doubt instruction does not advise which party has the burden of proving and disproving this defense. As such, the failure to instruct Prior's jury that he need not prove third-party culpability to create reasonable doubt of his own guilt, may well have led the jury to "interpret a failure to prove the [third-party culpability] defense as proof of [Prior's] guilt." *United States v. Zuniga*, 6 F.3d 569, 570 (9th Cir. 1993) (because jurors are "unschooled in the law's intricacies[] [and] may interpret a failure to prove the alibi defense as proof of the defendant's guilt," the alibi instruction "must be given when requested," and cannot be substituted by a different instruction) (cleaned up); *see also United States v. Marcus*, 166 F.2d 497, 503–04 (3d Cir. 1948) ("instructions on the presumption of innocence of the accused, and of the necessity of fastening every necessary element of the crime charged upon the accused beyond a reasonable doubt, are not enough in cases involving the necessary presence of the accused at a particular time and place, when the accused produces testimony that he was elsewhere at the time").

A generic reasonable doubt instruction cannot therefore substitute for any recognized defense-theory instruction. An instruction on reasonable doubt fails to identify the defense, fails to put the defense "squarely" before jurors, and, relative to the third-party defense, fails to advise jurors the defendant was not required to prove beyond a reasonable doubt that someone else committed the offense for the defense to create reasonable doubt as to the defendant's guilt. *Cf.* Dist. Ct. Dkt. 278, pp. 3, 5; *see also* 9th Cir. Model Criminal Instructions 1.2.

The Ninth Circuit was thus mistaken in theorizing that "[t]o properly follow the instructions and find Prior guilty, the jury could not reasonably doubt whether Prior, as opposed to a third party, committed the murders." Appx. 3. The jury never received instruction on the legal concepts governing Prior's third-party defense in order to effectively consider it. *See Carter v. Kentucky*, 450 U.S. 288, 302 (1981). Moreover, this Court previously rejected the Ninth Circuit's theory. *See United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 414 (1999) ("tersely" rejecting government's argument that "[b]y returning a guilty verdict, the jury necessarily rejected respondent's theory of defense").

If the Ninth Circuit's decision stands, the failure to give a theory of defense instruction would never be reversible error. After all, district courts routinely provide reasonable doubt instructions in criminal trials. The reasonable doubt instruction would therefore always be available as a substitute for an instruction on a recognized defense, precluding relief in any scenario. This result not only violates *Mathews*, but it also impermissibly denies defendants any meaningful opportunity to present a complete defense, violating *Trombetta*.

E. This Court's review is necessary to resolve the circuit split concerning defendants' rights to a third-party culpability defense instrution.

Given the entrenched and varied intra- and inter-circuit splits over defendants' rights to a third-party culpability instruction, this Court's review is necessary. The secondary split over the governing standard of review within the majority of circuits that do recognize the right to a third-party defense instruction is

especially concerning. Identifying the proper appellate standard is the crucial starting point for every appellate inquiry. Moreover, this circuit dissention has existed for decades. Lacking intervention from this Court, the previous never-harmless error standard evolved into a sometimes-harmless error standard before eroding into an error subject to abuse-of-discretion review. *See supra* pp. 10–13.

Though it is important that the Court bring the circuits in accord on the important issue of defense-theory instructions for all recognized defenses, it is especially critical for the recognized defense of third-party culpability. "Jurors are not experts in legal principles," and "must be accurately instructed in the law" "to function effectively." *Carter*, 450 U.S. at 302. The third-party culpability defense instruction is appropriate when evidence exists tending to prove a third-party committed the offense and does not require the defendant to prove the third-party's guilt beyond a reasonable doubt. But where, as here, jurors are presented with evidence supporting the third-party defense and never instructed on the legal principles attendant to it nor advised how to consider that evidence relative to the reasonable doubt mandate, jurors cannot effectively assess the defense. *See id.*

Because there can be no meaningful opportunity to present a complete defense if jurors are never instructed on the defense and advised how it may impact the evidence presented, this Court's intervention is necessary to ensure defendants' trial rights are consistently protected. *See Trombetta*, 467 U.S. at 485; *Mathews*, 485 U.S. at 63.

F. The questions presented are ripe for review.

The questions presented are squarely before this Court and ripe for review. Prior presented sufficient evidence of third-party culpability at trial and requested a legally accurate third-party culpability instruction. *See* Appx. 4; App. Dkt. 15, p. 45, 57–59; App. Dkt. 35, p. 24. Indeed, the Ninth Circuit assumed Prior was entitled to the third-party culpability instruction he proffered. Appx. 3.

This case is also the most appropriate to resolve the circuit conflict on the approaches taken to a defense-theory instruction. The Ninth Circuit has issued inconsistent decisions, applying all three of the possible results for resolving defense theory instructional errors: *Escobar de Bright*, 742 F.2d at 1201 (defense instructional error "can never be considered harmless error"); *Sarno*, 73 F.3d at 1485 (the error may be harmless if the instructions taken together "adequately encompass the defendant's theory"); *Del Toro-Barboza*, 673 F.3d at 1147 ("So long as the instructions fairly and adequately cover the issues presented, the judge's formulation of those instructions or choice of language is a matter of discretion.").

Conclusion

For these reasons, Prior requests the Court grant review of the Ninth Circuit's decision affirming the district court's refusal to provide his substantiated defense theory instruction to jurors. This review is necessary to bring consistency to the circuits and ensure defendants are afforded fundamental fairness in criminal prosecutions and a meaningful opportunity to present a defense.

/ / /

Dated this 16th day of July, 2024.

Respectfully submitted,

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