No. _____

IN THE

Supreme Court of the United States

JORDY OCHOA

Petitioner,

v.

ROBERT LUNA, SHERIFF OF LOS ANGELES COUNTY,

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is it a violation of clearly established federal law under the Double Jeopardy clause to allow a court to declare a mistrial based on a hung jury, hold a probation violation hearing in which the court finds, based on the evidence presented at the trial, that the defendant did not commit the offense in question, and then hold a second jury trial on the same facts?

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The sole petitioner here is Jordy Ezekiel Ochoa. In addition to the respondent identified above, Warden L.R. Thomas of the Metropolitan Detention Center in Los Angeles and Donald H. Blevins of the Los Angeles County Probation Department were named respondents below.

PRIOR PROCEEDINGS

United States Court of Appeals for the Ninth Circuit

Jordy Ezekiel Ochoa v. L.R. Thomas and Donald H. Blevins, Case No. 21-55906, judgment entered September 25, 2024

United States District Court for the Central District of California

Jordy Ezekiel Ochoa v. L.R. Thomas and Donald H. Blevins, Case No. 2:11-cv-06864-JGB-GJS, judgment entered July 7, 2021

California Supreme Court

In re Jordy Ochoa, Case No. S220190, petition denied September 10, 2014

California Court of Appeal

In re Jordy Ochoa, Case No. B250918, petition denied June 27, 2014

California Superior Court

In re Jordy Ochoa, Case No. BA349945, petition denied June 21, 2013

People of the State of California v. Jordy Ochoa, Case No. BA349945, judgment entered August 26, 2009

OPINIONS BELOW

On September 25, 2024, the Ninth Circuit affirmed the district court's denial of relief in an unpublished opinion in *Ochoa v. Thomas*, No. 21-55906, 2024 WL 4286964, at *1 (9th Cir. Sept. 25, 2024) (See Petitioner's Appendix ("Pet. App.") 1-5.)

The district court denied habeas relief and entered judgment against Ochoa on July 27, 2021, *Ochoa v. Thomas*, No. CV 11-6864-JGB (GJS), 2021 WL 3190896, at *1 (C.D. Cal. July 27, 2021). (Pet. App. 6-111.)

The California Supreme Court denied Ochoa's petition on September 10, 2014, in an en banc decision, *In re Ochoa*, No. S220190, 2014 Cal. LEXIS 7358, at *1 (Sept. 10, 2014). (Pet. App. 112-121.)

JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 2254(d), 2241 and 2254. The Ninth Circuit had jurisdiction under 28 U.S.C. §§ 1291 and 2253. The Ninth Circuit's opinion and memorandum disposition affirming the denial of habeas relief were filed on September 25, 2024. This Court has jurisdiction over the judgment under 28 U.S.C. § 1254(1). This petition is timely under Supreme Court Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fifth Amendment to the United States Constitution

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment to the United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 2254(d)

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with

respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim–

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

California Penal Code § 12021(a)(1)

Any person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

STATEMENT OF THE CASE

Ochoa, who had a prior felony conviction in the state of California, was arrested on December 4, 2008, after police officers recovered a firearm that they alleged to be in Ochoa's possession. These events resulted in proceedings against Ochoa under California law in two separate criminal cases: (1) new charges against Ochoa for being a felon in possession of a firearm, and (2) a

probation violation hearing based on the new offense regarding Ochoa's probation status in the prior conviction. *See* Cal. Pen. Code § 12021(a)(1).

A. Ochoa's first trial

Ochoa's first trial took place in June 2009 and functioned both as a jury trial on the firearm charge and a hearing on whether he had violated his probation. (Pet. App. 169-171.) Officer Ortega of the Los Angeles Police Department was the sole eyewitness to testify for the prosecution. (Pet. App. 136.) Ortega testified that on December 4, around 5:30 p.m., he and his partner, Officer Jeff Castillo, were driving a police car approaching 453 N. Kingsley Drive, an apartment complex. (Pet. App. 176.) Ochoa was standing outside the building with two other people, who were later identified as Ochoa's half-brother Edwin Gonzales Ochoa and Edwin's girlfriend Jeanette. (Pet. App. 177-178.)

Ortega testified that as the police car approached the apartment building, he saw Ochoa look in the direction of the officers, reach into the waistband of his shorts with both hands and toss a black object into Jeannette's purse, which she held open on her lap. (Pet. App. 179-180.) Ortega then saw Ochoa run into the apartment complex and upstairs into an apartment. (Pet. App. 180.) Officer Ortega recovered a semi-automatic handgun from the bottom of Jeannette's purse. (Pet. App. 182.) After

additional officers arrived, they brought Ochoa downstairs and arrested him. (Pet. App. 183.)

The prosecution also presented the testimony of Stacy Vanderschaaf, who had swabbed portions of the gun for DNA and sent it to an outside lab for testing. (*See generally* Pet. App. 55 (summarizing testimony).) She testified that the lab had identified three different people's DNA on the gun but had excluded Ochoa as a contributor. (Pet. App. 55.) The parties stipulated that the gun had been tested for fingerprints, and no identifiable fingerprints had been found. (Pet. App. 175, 184.)

The defense called four eyewitnesses, who all testified to a different version of events than the one Officer Ortega had described. According to the defense, it was impossible for Officer Ortega to have observed Ochoa toss a gun with both hands into Jeannette's purse because Ochoa had been carrying his baby, along with some ice cream and nachos he had just purchased from the ice cream truck, when the officers arrived. (*See* Pet. App. 198-190 (Margarita Xatruch) (testifying she gave Ochoa money to take his crying son downstairs to get ice cream and ten minutes later he returned with his baby, ice cream, and nachos); Pet. App. 190 (Marta Alfaro) (testifying Ochoa was "carrying [the baby] . . . He had the nachos, and the baby had his ice cream."); Pet. App. 192 (Yesenia Gonzales) (testifying Ochoa took his crying baby outside for a few minutes and returned with nachos and ice cream); Pet. App.

193 (Eunice Paz) (testifying she was across the street and watched Ochoa leave the building with his baby, buy ice cream and nachos, say hello to his brother and walk back inside).)

The jury hung seven-to-five for acquittal, and the court declared a mistrial. (Pet. App. 195.)

B. The probation violation hearing

Immediately after declaring a mistrial, the trial judge turned to Ochoa's probation revocation hearing, which the parties had stipulated would be decided based on the same evidence that had been adduced at trial. The court made a finding that the evidence presented at trial did not establish by a preponderance of the evidence that Ochoa had possessed a weapon and concluded that Ochoa had not violated his probation. (Pet. App. 200.) The court set the felon in possession charge for retrial.

C. Ochoa's second trial

On August 21, 2009, a second jury trial was held on the felon in possession charge. Trial counsel did not object to Ochoa's retrial. As the District Court found, much of the testimony at Ochoa's second trial was "substantially similar" to what was presented at his first trial. (Pet. App. 59.) The same two witnesses testified for the prosecution, and the substance of their testimony was the same. However, Ochoa's trial counsel only presented three of the four defense witnesses that had testified about the events of

December 4 at the first trial. He failed to call Ochoa's mother-in-law Marta Alfaro, who had testified – consistently with the other defense witnesses – that Ochoa had briefly left the apartment to buy ice cream while carrying the baby, and that he had returned with the baby, ice cream, and nachos. (*See* Pet. App. 189-190; Pet. App. 59.)

At the second trial, the jury convicted Ochoa. He was sentenced to 365 days in county jail and three years of probation. (Pet. App. 11.)

D. Direct appeal

Ochoa appealed his conviction, arguing (among other claims) that his retrial should have been barred by state law collateral estoppel principles. The California Court of Appeal affirmed the judgment in a published opinion, holding that although all the elements of collateral estoppel were satisfied, Ochoa's second trial was permissible under California's "public policy" exception, which had a carve-out for probation revocation matters. *See People v. Ochoa*, 191 Cal. App. 4th 664, 672 (2011). The state appellate court did not analyze Ochoa's claim under the federal Double Jeopardy Clause because Ochoa had argued only under state law principles.

E. Habeas proceedings

On August 19, 2011, Ochoa filed a *pro se* federal habeas petition alleging that his second trial violated his rights under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. After

Ochoa was appointed counsel, he lodged a First Amended Petition for Writ of Habeas Corpus, which is the operative petition in this appeal. (Pet. App. 122-167.) The district court issued a *Rhines* stay to allow Ochoa to exhaust his remedies in state court.

Ochoa filed a habeas petition pleading all three claims in the state trial court, which the court denied on June 21, 2013, on the ground that the court lacked jurisdiction because Ochoa was not in state custody. (Pet. App. 118-120.) The state court of appeals similarly denied Ochoa's habeas petition on jurisdictional grounds on June 27, 2014. (Pet. App. 113.) The California Supreme Court denied Ochoa's claims "on the merits" on September 10, 2014. (Pet. App. 112.)

Back in district court, the magistrate judge issued a Report and Recommendation recommending that the court resolve several procedural matters in Ochoa's favor and deny all claims on the merits. (Pet. App. 6-108.) With respect to Ochoa's double jeopardy claim, the magistrate judge determined that Ochoa had not demonstrated that the state court decision was contrary to, or an unreasonable application of, clearly established federal law under the Antiterrorism and Effective Death Penalty Act ("AEDPA"). With respect to Ochoa's ineffective assistance of counsel claim, the magistrate judge determined that because the Double Jeopardy Clause did not clearly preclude Ochoa's second trial, the state court was not unreasonable in

concluding that Ochoa was not denied his Sixth Amendment right to the effective assistance of counsel when counsel failed to make a double jeopardy objection. The district court adopted the Report and Recommendation in full. (Pet. App. 109-111.)

After oral argument, the Ninth Circuit Court of Appeals denied Ochoa's claims in a memorandum decision on September 25, 2024. (Pet. App. 1-5.)

REASONS FOR GRANTING THE WRIT

The Double Jeopardy Clause of the Fifth Amendment protects defendants from being tried for the same conduct which was the subject of an "acquittal." For double jeopardy purposes, an acquittal encompasses any favorable resolution of a factual element of the crime, regardless of whether the court calls its resolution an acquittal or uses some other terminology. Because the Double Jeopardy Clause encompasses the principle of collateral estoppel, a retrial is precluded whether or not the favorable resolution occurred during the same case. There is no Supreme Court precedent that requires the acquittal to have occurred in a criminal proceeding.

In Ochoa's case, the sole factual dispute in both his felon in possession trial and his probation violation proceedings was whether he had possessed a firearm. Because the court necessarily decided that the prosecution's evidence in the first trial had been insufficient to prove possession, this finding should have barred Ochoa's retrial under the Double Jeopardy

Clause. *See Ashe v. Swenson*, 397 U.S. 436, 445 (1970) (holding that a prior acquittal based on the fact that the defendant was not among a group of robbers precluded the defendant's retrial in a separate robbery trial against a different victim in the same robbery).

The state court's contrary conclusion was unreasonable. In Ochoa's direct appeal, the state appellate court decided in a published opinion that all the elements of collateral estoppel were met but held that a state law carve-out barred relief. *Ochoa*, 191 Cal. App. 4th at 672. Because the federal Double Jeopardy Clause contains no similar carve-out, the state court's subsequent denial of Ochoa's federal claim was unreasonable. The district court also erred in denying relief on the basis that the Supreme Court had not opined on the precise factual scenario Ochoa faced. As the Supreme Court has repeatedly cautioned, "AEDPA does not require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied." *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007) (quoting *Carey v. Musladin,* 549 U.S. 70, 81 (2006) (Kennedy, J., concurring in judgment). Here, the state court "misapplied a governing legal principle" to the "set of facts" in Ochoa's case. *Wiggins v. Smith*, 539 U.S. 510, 520 (2003).

In federal habeas proceedings, the Ninth Circuit likewise misapplied the same principle to Ochoa's case, finding that Ochoa is not entitled to relief because this Court has never held that a probation violation proceeding can

produce an acquittal for Double Jeopardy purposes. But clearly established federal law from this Court does allow for the facts in Ochoa's case to trigger a Double Jeopardy violation, and the Ninth Circuit refused to apply that law.

ARGUMENT

At the conclusion of Ochoa's initial trial and probation revocation proceeding, the trial court found that the evidence was insufficient to prove that Ochoa had possessed a firearm, even under the lower preponderance of evidence standard. Under longstanding Supreme Court precedent, such a finding constitutes an "acquittal" for double jeopardy purposes. Mr. Ochoa's subsequent conviction at his second trial thus violated Ochoa's Fifth Amendment rights.

1. Applicable law

Under the Double Jeopardy Clause of the Fifth Amendment,[1] a criminal defendant may not be prosecuted for an offense after an "acquittal." *See North Carolina v. Pearce*, 395 U.S. 711 (1969) *overruled on other grounds in Alabama v. Smith*, 490 U.S. 794 (1989); *see Smith v. Massachusetts*, 543 U.S. 462, 467 (2005) (holding that after an acquittal, "if the prosecution has

[1] The Fifth Amendment protection against double jeopardy is enforceable against the States through the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 794 (1969).

not yet obtained a conviction, further proceedings to secure one are impermissible").

"Acquittal" is a term of art in the double jeopardy context, and although an "acquittal" is something that typically flows from a criminal proceeding, Supreme Court precedent does not require it. As the Supreme Court explained in *United States v. Scott*, a defendant is "acquitted" for double jeopardy purposes whenever "the ruling of the judge, *whatever its label*, actually represents a resolution in the defendant's favor, correct or not, of some or all of the factual elements of the offense charged." 437 U.S. 82, 97 (1978) (emphasis added); *see Evans v. Michigan*, 568 U.S. 313, 325 (2013) ("Here we know the trial court acquitted Evans, not because it incanted the word 'acquit' (which it did not), but because it acted on its view that the prosecution had failed to prove its case."). This is true whether the proceedings are a jury trial or a bench trial, or whether the finding of insufficient evidence is made by a judge or a jury. *See Smith*, 543 U.S. at 467 (holding that when the presiding judge made a finding of insufficient evidence as to several charges in the middle of a jury trial, the Double Jeopardy Clause precluded the judge from later reconsidering this ruling).

Because the principle of collateral estoppel "is embodied in the Fifth Amendment guarantee against double jeopardy," a factual finding in favor of a defendant in one case, regardless of the nature of the proceeding, also has

preclusive effect in subsequent cases. *Ashe*, 397 U.S. at 445; *see Harris v. Washington*, 404 U.S. 55, 56 (1971) (explaining that collateral estoppel is "an integral part of the protection against double jeopardy guaranteed by the Fifth and Fourteenth Amendments."). Collateral estoppel in this context "means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be relitigated between the same parties" in a criminal prosecution. *Ashe*, 397 U.S. at 443.

Applying *Ashe*, the Ninth Circuit has held, in a case governed by AEDPA and which involved both a civil proceeding and a criminal proceeding, that it is clearly established federal law that the Fifth Amendment "precludes relitigation of ultimate issues that were necessarily decided in a prior proceeding between the parties." *Wilkinson v. Gingrich*, 806 F.3d 511, 513 (9th Cir. 2015).

In *Wilkinson*, the defendant claimed, in a civil traffic court proceeding, that he was not the driver of a car which had been stopped and ticketed for speeding. He was found to have not committed the traffic violation as a result. Later, the state of California charged Wilkinson with perjury, for having lied about not being the driver. He objected to the perjury trial on the basis of collateral estoppel principles and the Double Jeopardy clause; the prosecution was permitted to proceed, and he was convicted of the perjury charge. After pursuing his state direct and habeas appeals and losing,

Wilkinson pursued relief in federal habeas, arguing that the state had misapplied *Ashe* "when it failed to recognize that the traffic court judge necessarily decided an issue of ultimate fact in the traffic court proceeding that was also an issue of ultimate fact in the perjury trial." *Id.* at 515. The U.S. District Court granted relief. The state appealed, and the Ninth Circuit affirmed the District Court.

The Ninth Circuit ignored clearly established federal law when it denied habeas relief to Ochoa; it should have recognized, as it did in *Wilkinson*, that the trial court in Ochoa's case "failed to recognize" that it had decided the ultimate issue in his case—whether or not he had possessed a firearm.

2. The prior judicial finding of insufficient evidence barred Mr. Ochoa's retrial under the Double Jeopardy Clause

In Ochoa's case, the trial court evaluated all of the evidence that had been presented in the felon in possession trial and concluded that it could not "say that it is more likely than not that Mr. Ochoa on the facts that I have before the court at this time committed the crime." (Pet. App. 202.) In making this ruling, the trial court indicated that although it found the testimony of Officer Ortega credible, that testimony did not "tilt the balance sufficiently" to establish that Ochoa had possessed the firearm. (Pet. App. 202.) The trial court noted that neither Ochoa's DNA nor his fingerprints had been found on

the gun, and that four defense witnesses had testified "that Mr. Ochoa was carrying a two-year-old baby," which would have been "inconsistent with his using both hands to take the gun out of the back of his shorts." (Pet. App. 201.) The trial court's finding constituted a "conclusion that the Government ha[s] not produced sufficient evidence to establish the guilt of the defendant" under the rule outlined in *Scott*. 437 U.S. at 97; *see also Evans*, 568 U.S. at 318 ("[O]ur cases have defined an acquittal to encompass *any ruling* that the prosecution's proof is insufficient to establish criminal liability for an offense.") (emphasis added).

As the magistrate judge in Ochoa's case recognized, "[t]here is no question that" the Supreme Court cases Ochoa cited "state certain broad principles, including that when there is a substantive ruling in a criminal case in a defendant's favor—*i.e.*, one that finds the government's evidence insufficient to establish guilt of the criminal charges alleged—this is an acquittal in that criminal case and double jeopardy, therefore, adheres and prevents further prosecution on those same charges." (Pet. App. 45.) But the district court went on to conclude that Ochoa "did not receive any 'substantive ruling' of acquittal *within his Criminal Case itself*," but only in the probation revocation case, and that the Supreme Court had not clearly held that events "in a different case" can have an acquittal effect on a pending criminal charge. (Pet. App. 45 (emphasis added).) This is an incorrect

conclusion.

In *Ashe*, 397 U.S. 436, this Court considered a case in which a man had been accused of robbing several victims at a poker game. The fact that the robbery had occurred was undisputed; the only disputed issue was whether the defendant was one of the robbers. At a trial on charges involving one of the victims, the jury acquitted the defendant "due to insufficient evidence" of the defendant's identity as one of the robbers. *Id.* at 439. The Supreme Court held that this acquittal precluded subsequent prosecution on charges involving a *different* player because to try the defendant after a jury had found insufficient evidence of his participation in the robbery would violate his rights under the Double Jeopardy Clause.

Ashe had been well-settled law for decades at the time of Ochoa's 2009 trial and subsequent habeas proceedings. The Ninth Circuit had occasion to consider the holding in *Ashe* in a case decided prior to hearing Ochoa's case: In *Wilkinson*, 806 F.3d 511, the Ninth Circuit applied *Ashe* in a case in which a finding in a traffic court case—also not a criminal proceeding—was precluded from use in a later criminal trial by the Double Jeopardy Clause. *Id.* at 513.

Here, as in *Wilkinson*, the judge in the first proceeding "necessarily decided, in [Petitioner's] favor, an issue that was critical to both . . . proceedings": whether or not Ochoa had possessed the gun. *Id.* If anything,

the circumstances of Ochoa's case are even more compelling: on direct appeal, the state appellate court held in a published opinion that "the record before us establishes that" the "threshold requirements for collateral estoppel" were satisfied in Ochoa's case. *Ochoa*, 191 Cal. App. 4th at 672. Because California state collateral estoppel doctrine contains a specific carve-out for probation violation hearings, however, the court denied relief.[2] But because the collateral estoppel principles contained in the federal Double Jeopardy Clause have no similar carve-out for probation violation hearings, the California Supreme Court was unreasonable in later denying Ochoa's federal double jeopardy claim.

But denying relief simply because the acquittal flowed from a probation violation hearing instead of a criminal trial disregards this Court's prior holdings, and this Court has cautioned,

> AEDPA does not require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied. Nor does AEDPA prohibit a federal court from finding an application of a principle unreasonable when it involves a set of facts different from those of the case in which the principle was announced.

Panetti v. Quarterman, 551 U.S. 930, 953 (2007) (cleaned up); *see Wiggins v.*

[2] The opinion did not analyze the issue under the federal Double Jeopardy Clause because the parties did not raise the federal claim on direct appeal.

Smith, 539 U.S. 510, 520 (2003) ("A federal court may grant relief when a state court has misapplied a 'governing legal principle' to 'a set of facts different from those of the case in which the principle was announced.'"); *see also Abdul-Kabir v. Quarterman*, 550 U.S. 233, 246-56 (2007) (canvassing several Supreme Court opinions to apply the rule that capital sentencing juries must be able to give meaningful consideration and effect to mitigating evidence); *Brewer v. Quarterman*, 550 U.S. 286, 288-89 (2007) (same); *Gonzalez v. Duncan*, 551 F.3d 875, 879-80 (9th Cir. 2008) (identifying governing legal principle for cruel and unusual punishment claim by examining five Supreme Court opinions). As the Court noted in *Panetti*, AEDPA "recognizes . . . that even a general standard may be applied in an unreasonable manner" and give rise to federal habeas relief. *Panetti*, 551 U.S. at 953.

Here, *Ashe* makes clear that a factual finding in favor of a defendant has preclusive collateral estoppel effect under the Double Jeopardy Clause even in a separate prosecution with a different case number. *See Ashe*, 397 U.S. at 439. And in *Wilkinson*, the Ninth Circuit held that habeas relief under AEDPA was appropriate even though "[t]he Supreme Court ha[d] not applied *Ashe* to foreclose a subsequent perjury prosecution," which was the specific factual scenario present in that case. *Wilkinson v. Gingrich*, 806 F.3d 511, 519 (9th Cir. 2015). The Ninth Circuit explained that habeas relief was

nonetheless appropriate because the Supreme Court "has made clear that collateral estoppel and the Double Jeopardy Clause apply regardless of the nature of the offense or the availability of new evidence." *Id.*

Moreover, the rule articulated in *Scott* makes clear that a favorable factual finding need not bear the label of an "acquittal"; instead, the relevant inquiry is whether the court's ruling represented a "conclusion that the Government had not produced sufficient evidence to establish the guilt of the defendant." 437 U.S. at 97. This Court more recently reaffirmed *Scott* in *Evans*, noting that a series of longstanding Supreme Court cases "have defined an acquittal to encompass *any ruling* that the prosecution's proof is insufficient to establish criminal liability for an offense." *Evans*, 568 U.S. at 318-19 (emphasis added) (citing *United States v. Scott*, 437 U.S. 82, 97 (1978); *Burks v. United States*, 437 U.S. 1, 10, 98 (1978); *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977)).

Taken together, these prior Supreme Court cases thus unambiguously outline the principles that (1) a prior factual finding in favor of the defendant precludes subsequent prosecution even in a *different* case and that (2) such a factual finding need not be labeled an "acquittal"—and does not need to be the product of a criminal proceeding—so long as the factfinder evaluated the evidence and concluded that the prosecution's evidence was not sufficient to support a conviction.

CONCLUSION

For all the reasons set forth above, the Petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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Federal Public Defender

DATED: December 23, 2024

By:_____
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