No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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MARTIN VERA-RIVAS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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## QUESTION PRESENTED

Border patrol agents found Martin Vera-Rivas near the border in an area populated by wineries, campgrounds, and ATV parks—places where U.S. citizens often go. They arrested him on suspicion of illegally entering the United States. He confessed to the elements of the offense.

The question presented is:

Does mere proximity to the border corroborate the criminal conduct at the core of illegal entry, thereby defeating a corpus delici defense?

## PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioner Martin Vera-Rivas and the United States. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

All proceedings directly related to the case, per Rule 14.1(b)(iii), are as follows:

- *United States v. Vera-Rivas,* No. 19-CR-3622-JLB-CAB, U.S. District Court for the Southern District of California, opinion issued March 7, 2023.
- *United States v. Vera-Rivas*, No. 23-374, U.S. Court of Appeals for the Ninth Circuit. Unpublished opinion issued November 7, 2024.

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## INTRODUCTION

Martin Vera-Rivas's misdemeanor illegal entry trial revolved around a doctrine deeply rooted in the American legal tradition: corpus delicti. *See generally* David A. Moran, *In Defense of the Corpus Delicti Rule*, 64 Ohio St. L.J. 817, 829–31 (2003). That doctrine guards against the dangers of coercive or unreliable confessions by prohibiting the government from obtaining convictions based on a defendant's statements alone. Instead, the government must corroborate the criminal conduct at the core of the offense with independent evidence.

The Ninth Circuit—and only the Ninth Circuit—has developed a body of case law about how this doctrine applies to illegal entry and reentry under 8 U.S.C. §§ 1325, 1326.[1] When it comes to § 1325 and § 1326, the Ninth Circuit has agreed

[1] The sole exception is the Third Circuit's 1954 decision in *United States v. Vasilatos*, in which the court rebuffed an illegal reentry defendant's corpus delicti challenge by

that corpus delici requires the government to corroborate the defendant's alienage. *See, e.g.*, *United States v. Gonzalez-Godinez*, 89 F.4th 1205, 1210 (9th Cir. 2024), *cert. denied*, No. 23-7780, 2024 WL 4427104 (U.S. Oct. 7, 2024). In past cases, the Ninth Circuit has deemed documents from prior deportation proceedings, direct evidence of the defendant's illegal crossing, or apprehension in a remote area to satisfy this criterion. But in the decision below, the Ninth Circuit found corpus delici satisfied based on Mr. Vera-Rivas's mere proximity to the border—even though his arrest area was populated with wineries, campgrounds, and other areas where one can expect to find U.S. citizens.

That decision guts the corpus delici doctrine in the many § 1325 and § 1326 cases arising in communities near the border, effectively depriving thousands of border arrestees of corpus delici's protections. And given new enforcement priorities, the volume of these prosecutions will only grow. Furthermore, though this defense is rarely litigated in other circuits (precluding any circuit split), it is regularly litigated in the Ninth Circuit. Accordingly, this Court should bring the Ninth Circuit into alignment with this Court's corpus delicti precedents by granting this petition. *See Wong Sun v. United States*, 371 U.S. 471 (1963); *Opper v. United States*, 348 U.S. 84 (1954).

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saying that it had "examined the record and regard the proof as adequate." 209 F.2d 195, 198 (3d Cir. 1954).

## OPINION BELOW

The Ninth Circuit affirmed Mr. Vera-Rivas's conviction in an unpublished opinion. *See United States v. Vera-Rivas*, No. 23-374, 2024 WL 4707897, at *1 (9th Cir. Nov. 7, 2024)) (attached here as Appendix A).

## JURISDICTION

On November 7, 2024, the Ninth Circuit denied Mr. Vera-Rivas's appeal and affirmed his conviction. *See* Appendix A. This Court thus has jurisdiction under 28 U.S.C. § 1254(1).

## STATEMENT OF FACTS

On September 19, 2019, Martin Vera-Rivas was charged with misdemeanor illegal entry. 18 U.S.C. § 1325(a)(1). He pled not guilty and proceeded to a bench trial before a magistrate judge.

At trial, the government called two witnesses, both border patrol agents. The first to testify was the agent who arrested Mr. Vera-Rivas. At the outset, the arresting agent admitted that he did not recognize Mr. Vera-Rivas or have an "independent recollection" of arresting him. He therefore proposed to testify by reading his report into the record, per the "recorded recollection" hearsay exception. Fed. R. Evid. 803(5). The report stated that on May 15, 2019, radio operators had alerted their patrolling colleagues that something had activated a seismic intrusion device in an area known as "Zullners." Zullners, the report asserted, "is known to be a commonly used route of travel for illegal aliens to further their entry into the United States." Defense counsel objected that the radio call was inadmissible

hearsay, and the magistrate judge agreed to receive that testimony only "for the limited purpose of effect on the listener, not for the truth of the matter asserted."

The agent continued reading the report. It recounted that the arresting agent had responded to "an area on state route 94 directly north of [Zullners]," about 250 yards north of the border and several miles away from the Tecate port of entry. "While driving in this area," the report said, the agent had "observed five subjects jumping from the brush onto state route 94 and start running the highway east [sic]." Per the report, the agent got out of his vehicle, approached the group, and questioned them about their immigration status. He then arrested them and arranged for their transport to the border patrol station.

On cross-examination, defense counsel elicited further information about the arrest area from the arresting agent. In response to her questions, the agent acknowledged that the group was arrested on Highway 94. Eastbound, the highway connected to an interstate, which linked San Diego with Arizona. Westbound, it intersected with another highway that went to the port of entry. There were wineries "very close to the arrest site," along with a campground and an ATV park. "People use that area for recreation," defense counsel summed up, and the agent agreed.

The government also called the agent who had interrogated Mr. Vera-Rivas back at the border patrol station. This interrogating agent testified that during that interrogation, Mr. Vera-Rivas admitted the elements of illegal entry. He also noted

that just before his arrest, his group had run toward the arresting agent's vehicle, mistaking it for the car that would take them further into the interior.

When the interrogating agent finished testifying, both parties rested. Defense counsel then asked for the magistrate judge to acquit Mr. Vera-Rivas, either for insufficient evidence, *see* Fed. R. Crim. P. 29, or in her capacity as finder of fact, under the corpus delicti doctrine.

The magistrate judge rejected that defense, finding that the few details given in the arresting agent's report sufficiently corroborated the statements made during the interrogation. ER-85–88. The magistrate judge admitted that she could not rely on any physical signs of border crossing, stating, "I do not have evidence about how he was dressed, what he looked like." ER-86.

But she thought five corroborating factors concerning the circumstances of Mr. Vera-Rivas's arrest were sufficient. Three factors had to do with Mr. Vera-Rivas's location. His arrest site was (1) close to the border; (2) far from a port of entry, and (3) north of Zullners, a "known alien smuggling route." The magistrate judge also noted that (4) Mr. Vera-Rivas was hiding in the shrubs with four other individuals; (5) when the group emerged from the shrubs, they ran toward the border patrol vehicle, corroborating Mr. Vera-Rivas's account of the group's mistake.[2]

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[2] The magistrate judge also observed that the agent went to the arrest site in "response to a communication from San Diego Sector Communications via agency radio." But both the magistrate judge (following defense objections), and the Ninth Circuit on appeal, acknowledged that this statement was not admitted for its truth. *United States v. Vera-Rivas*, No. 23-374, 2024 WL 4707897, at *1 (9th Cir. Nov. 7,

Based on these facts, the magistrate judge convicted Mr. Vera-Rivas and imposed a time-served sentence. Mr. Vera-Rivas then appealed his conviction to the district court. The district court affirmed.

The Ninth Circuit affirmed, too, in a memorandum disposition. Though the court's corpus delici analysis was brief, the court referenced each of the facts about Mr. Vera-Rivas's location. *Vera-Rivas*, No. 23-374, 2024 WL 4707897, at *1 (9th Cir. Nov. 7, 2024). It then cited and quoted two corpus delici cases, both of which involved arrest location. *Id.* at *2 (citing *Gonzalez-Godinez*, 89 F.4th at 1210 (finding corroboration where defendant "was either sliding away from a partially deconstructed border fence or hiding in the nearby brush" and was "in a remote, easy-to-cross area"), and *United States v. Garcia-Villegas*, 575 F.3d 949, 951 (9th Cir. 2009) (finding corroboration where defendant was found "with torn clothes and bloody hands, hiding in a bush on the American side" of the border)).

This petition follows.

## REASONS FOR GRANTING THE PETITION

As this Court explained a half-century ago, "a conviction must rest upon firmer ground than the uncorroborated admission or confession of the accused." *Wong Sun*, 371 U.S. at 489. Known as the rule of "*corpus delicti*," or "body of the crime," this phrase requires prosecutors to present more than just an accused's confession to secure a conviction—they must present corroborating evidence. Black's

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2024).

Law Dictionary (10th ed. 2014). One reason for this corroboration rule is "the high incidence of false confessions and the resulting need to prevent errors in convictions based upon untrue confessions alone." *United States v. Lopez-Alvarez*, 970 F.2d 583, 589 (9th Cir. 1992). Another is to "preserve a robust criminal justice system premised on 'extrinsic evidence independently secured through skillful investigation,'" rather than one that relies heavily on confessions. *United States v. Gadson*, 763 F.3d 1189, 1218 (9th Cir. 2014) (quoting *Lopez-Alvarez*, 970 F.2d at 589 n.5).

When it comes to unlawful border crossings, corroboration of alienage may seem like overkill—after all, who would lie about not being a United States citizen? But there are solid reasons for requiring the prosecutor to present "extrinsic evidence independently secured through skillful investigation." *Lopez-Alvarez*, 970 F.2d at 589 n.5.

For one, it is not uncommon for a person to be an unknowing U.S. citizen, as federal law provides at least five different, complex statutes under which a person may automatically become a citizen without knowing it. *See* 8 U.S.C. §§ 1401, 1403, 1409, 1431, and former 1432. And even if a person is aware of their citizenship status, they may have an incentive to deny it. In one analysis, 86% of the individuals who falsely stated they were "aliens" did so because they were threatened by immigration officials or did not want to remain detained while their citizenship claims were being adjudicated. Jacqueline Stevens, *U.S. Government Unlawfully Detaining and Deporting U.S. Citizens As Aliens*, 18 Va. J. Soc. Pol'y &

L. 606, 627–28 (2011). Indeed, in the Ninth Circuit's *United States v. Galindo-Gallegos* case, a Border Patrol agent testified that "sometimes American citizens who face criminal charges falsely claim to be deportable aliens, because it is much better to be put on a bus to Mexico than sent to jail in the United States." 244 F.3d 728, 732 (9th Cir. 2001). Mental illness also sometimes "le[ads] [arrestees] to initiate false claims of alienage." Stevens, *supra*, at 628. These kinds of incidents are not merely anecdotal—an estimated *20,000 citizens* have been wrongfully deported since 2003. *Id*. at 607

If the Ninth Circuit continues to find that mere proximity to the border corroborates illegal entry or reentry, however, then thousands of people arrested near the border each day will effectively have no corpus delicti protections to illegal entry or reentry prosecutions. This Court should grant the petition to restore this deeply-rooted protection at the border.

Granting the petition would bring the Ninth Circuit back into line with this Court's precedents. This Court has made clear that corroboration is "sufficient" under corpus delicti only "if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth." *Opper*, 348 U.S. at 93. Lower courts, including the Ninth Circuit, have understood this to mean that the prosecution must "introduce sufficient evidence to establish that the criminal conduct at the core of the offense has occurred"—not merely corroborate extraneous details from the confession. *Lopez-Alvarez*, 970 F.2d at 592; *accord United States v. Rodriguez-Soriano*, 931 F.3d 281, 288 (4th Cir. 2019) ("[T]here must be substantial

independent evidence that the offense has been committed in the first instance[.]"); *United States v. Tanco-Baez*, 942 F.3d 7, 24–25 (1st Cir. 2019) (holding that the corroborating evidence must be "probative of the key unconfirmed admission," bearing more than a "remote relationship [to] . . . the essential fact").

In most cases, prosecutors can readily satisfy corpus delicti's demands in illegal entry cases by corroborating alienage with foreign records, documents found on the arrestee, or documents from the defendant's "A-File." An A-File is "the official record for an individual recording all of that individual's contacts or encounters with Immigration Customs Enforcement, Citizenship and Immigration Services, Custom and Border Protection, and the Legacy INS." *United States v. Ruiz-Lopez*, 749 F.3d 1138, 1140 (9th Cir. 2014) (simplified). A-File documents standing alone will often satisfy corpus delicti, as in the Ninth Circuit, "[a] defendant's admissions that he is an alien, together with a deportation order, suffice to establish alienage." *Galindo-Gallegos*, 244 F.3d at 732.

Accordingly, in most sufficiency-of-the-evidence challenges to § 1325 and § 1326 convictions, a deportation order or an associated A-file document will be the "strongest piece of evidence" confirming alienage. *United States v. Hernandez*, 105 F.3d 1330, 1333 (9th Cir. 1997). The Ninth Circuit nearly always relies on such documents when deeming alienage sufficiently corroborated. *See, e.g.*, *Ruiz-Lopez*, 749 F.3d at 1141–42 (relying on deportation and other documents in the defendant's agency file, as well as prior admissions); *United States v. Ramirez-Cortez*, 213 F.3d 1149, 1158 (9th Cir. 2000) (finding sufficient corroboration based on the defendant's

prior deportation order, prior admissions of alienage, and the testimony of an INS agent); *Hernandez*, 105 F.3d at 1332–33 (relying on a deportation order, mode of entry, and previous admissions); *United States v. Sotelo*, 109 F.3d 1446, 1448-49 (9th Cir. 1997) (relying on prior deportation documents and admissions of alienage during that deportation).

In other cases, evidence of the person crossing the border can provide corroboration. For example, *Garcia-Villegas* presented a rare case where the government decided not to rely on A-file documents. 575 F.3d at 951. But in that case, the Court had before it compelling observational evidence confirming alienage. A law enforcement witness saw the defendant climb over two border fences to enter the United States. *Id*. Then, a second officer found him on the other side with torn clothes and bloody hands. *Id*. This "mode of entry evidence" allowed a reasonable factfinder to conclude that the defendant was "conscious that he had no legal right to enter the United States." *Id*. Because that corroborating information "c[ame] not only from the defendant but also from two independent sources," it was "sufficient to provide the corroboration" corpus delicti requires. *Id*.; *see also Hernandez*, 105 F.3d at 1333 (relying partially on "mode of entry").

But here, largely due to the agent's memory problems and the sparseness of his report, the Ninth Circuit could not rely on any of these forms of evidence. The government put forward no deportation order, A-file evidence, or other documentary evidence establishing alienage. And the government offered no observations relating to mode of entry.

Nor could facts apart from location satisfy corpus delici's demands. Though the border patrol agent's report confirmed that Mr. Vera-Rivas ran toward him, that merely corroborated an extraneous detail from Mr. Vera-Rivas's confession. It did not relate to the conduct at the core of the offense—to the contrary, one would not expect someone entering illegally to run toward border patrol.

The same observation applies to hiding in the bushes. For one thing, the group stopped hiding in the bushes as soon as they saw law enforcement—again, hardly a reaction associated with wrongdoing. But even setting that aside, to satisfy corpus delicti, the corroborating evidence must be "probative of the key unconfirmed admission," bearing more than a "remote relationship [to] . . . the essential fact." *Tanco-Baez*, 942 F.3d at 25. And *generalized* suspicious behavior, like hiding, does not corroborate the *specific* fact at the core of the offense: alienage. In *Rodriguez-Soriano*, for example, a defendant confessed to illegally straw purchasing a firearm. 931 F.3d at 288. The government tried to corroborate that statement by showing that the defendant had behaved suspiciously, telling inconsistent stories about the purchase. *Id*. at 290. But that generalized suspicious behavior was not enough. While that conduct "may suggest that he lied to the ATF agents, [it] d[id] not establish that he knowingly made a false statement at the time of purchase." *Id*. at 290. Here, too, the group's evasive behavior—though perhaps suspicious in some generalized sense—is not itself probative of alienage.

Thus, the only factors the Ninth Circuit could rely on to corroborate the offense's core had to do with location. Oftentimes, that would not offend corpus

delici, as immigrants are frequently apprehended in remote areas where people seldom go unless they are crossing the border. *E.g.*, *Galindo-Gallegos*, 244 F.3d at 730. But Mr. Vera-Rivas was arrested in a recreational area, populated with wineries, campgrounds, and ATV parks. Unlike hopping a border fence, merely being in a recreational area does not suggest a "conscious[ness] that [one] ha[s] no legal right to enter the United States." *Garcia-Villegas*, 575 F.3d at 951. To the contrary, many people visit the arrest site despite full confidence in their U.S. citizenship. The arresting agent's opinion about Zullners suffers from the same flaw. *Anyone* who visits the arrest area will be north of an illegal immigration route, yet many such visitors are in fact U.S. citizens.

These factors—equally applicable to U.S. citizens and undocumented people—cannot corroborate alienage. By reaching the opposite conclusion, the Ninth Circuit effectively held that arrest anywhere in the border region satisfies corpus delici. That would mean that the thousands of people arrested near the border for illegal entry or reentry each day lack corpus delici protections. This Court should restore those protections and bring the Ninth Circuit into alignment with *Wong Sun* and *Opper* by granting this petition.

## CONCLUSION

For these reasons, this Court should grant Mr. Vera-Rivas's petition for a writ of certiorari.

Respectfully submitted,

Date: February 4, 2025

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