No. ___-_____

IN THE

SUPREME COURT OF THE UNITED STATES

ROYEL PAGE, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Seventh Circuit, sitting en banc, erred as a matter of law in holding that, pursuant to *Direct Sales Co. v. United States*, 319 U.S. 703 (1943), evidence of repeat, distribution-sized drug transactions alone is sufficient to prove a conspiracy, as opposed to a mere buyer-seller relationship, switching sides of a longstanding circuit split.

II. Whether the Seventh Circuit, sitting en banc, erred as a matter of law in holding that, pursuant to *United States v. Sineneng-Smith*, 590 U.S. 371 (2020), a district court can never plainly err by failing to give an unrequested buyer-seller jury instruction, creating a split with three circuits holding that the party-presentation principle does not preclude plain-error review under Federal Rule of Criminal Procedure 52(b).

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

DIRECTLY RELATED CASES

United States v. Page, No. 21-3221, U.S. Court of Appeals for the Seventh Circuit. Judgment entered Dec. 18, 2024.

United States v. Page, No. 2:17-cr-175, U.S. District Court for the Eastern District of Wisconsin. Judgment entered Nov. 22, 2021.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Royel Page respectfully prays for a writ of certiorari to review the judgment below.

OPINIONS BELOW

The en banc decision of the United States Court of Appeals for the Seventh Circuit appears at Appendix A to the petition and is published, *United States v. Page*, 123 F.4th 851 (7th Cir. 2024). Pet. App. 1a-92a. The panel decision of the United States Court of Appeals for the Seventh Circuit appears at Appendix B to the petition and is published, *United States v. Page*, 76 F.4th 583 (7th Cir. 2023). Pet. App. 93a-102a. The Rule 29 decision of the United States District Court for the Eastern District of Wisconsin appears in transcript form at Appendix C to the petition and is unpublished. Pet. App. 103a-107a.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit, sitting en banc pursuant to sua sponte rehearing, decided this case on December 18, 2024. No petition for rehearing was filed. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Rule 52 of the Federal Rules of Criminal Procedure provides, in its entirety:

> **(a) Harmless Error.** Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.
>
> **(b) Plain Error.** A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

Fed. R. Crim. P. 52.

INTRODUCTION

An important circuit split exists regarding the evidence necessary to prove a drug conspiracy, as opposed to a mere buyer-seller relationship. This issue has been percolating in the circuits since this Court's landmark decision in *Direct Sales Co. v. United States*, 319 U.S. 703 (1943), and is implicated in hundreds, if not thousands, of federal drug cases every year.

Prior to this case, the Seventh Circuit had long held that, pursuant to *Direct Sales*, evidence of repeat sales of large quantities of drugs is <u>not</u> sufficient, without more, to prove a drug conspiracy. *See United States v. Lechuga*, 994 F.2d 346, 347-50 (7th Cir. 1993) (en banc). The Ninth Circuit also holds this view. *See United States v. Loveland*, 825 F.3d 555, 560-62 (9th Cir. 2016). Other circuits have taken the opposing view. *See infra.*

Here, after voting sua sponte to rehear the case en banc, the Seventh Circuit reversed its longstanding precedent and reinterpreted *Direct Sales* to

hold that evidence of repeat sales of large quantities of drugs is sufficient, without more, to prove a drug conspiracy. *Page*, 123 F.4th at 862; Pet. App. 14a. The majority's 7-3 decision was based on a clear misreading of *Direct Sales* that is prevalent in other circuits and must be corrected to ensure consistent application of this Court's precedent and to prevent wrongful convictions.

The majority also misinterpreted *United States v. Sineneng-Smith*, 590 U.S. 371 (2020)—and created a circuit split—in holding that there is never plain error when a district court fails to instruct a jury on the distinction between a drug conspiracy and a buyer-seller relationship, as long as the defendant is represented by counsel. *Page*, 123 F.4th 865; Pet. App. 19a. This holding, which was based on a fundamental misunderstanding of the interplay between Rule 52(b) of the Federal Rules of Criminal Procedure and the party-presentation principle, conflicts with the application of *Sineneng-Smith* in the First, Sixth, and Ninth Circuits. *See infra.*

This Court should grant certiorari to resolve the circuit splits and put an end to two critical misinterpretations of this Court's decisions.

STATEMENT OF THE CASE[1]

In 2017, a federal grand jury returned a 34-count indictment against 12 defendants for selling heroin. Royel Page was charged in just two of those counts, and not with drug conspiracy. Two years later, the grand jury returned a superseding indictment against Page and others, adding drug-conspiracy and related charges, in violation of 21 U.S.C. §§ 841, 846. The district court had jurisdiction under 18 U.S.C. § 3231 and the substantive statutes.

In 2021, Page proceeded to trial before Seventh Circuit Judge Michael Y. Scudder, sitting by designation. The jury instructions defining the elements of the conspiracy charge included the circuit's pattern instruction on "Membership in Conspiracy." Page did not request, and the district court did not propose, the circuit's pattern instruction on "Buyer/Seller Relationship," despite the fact that the evidence consisted primarily of large, repeated, cash drug sales, and despite the fact that circuit precedent was clear that such evidence, without more, could not sustain a conspiracy conviction. *See* 7th Cir. Pattern Crim. Jury Instr. 5.10, 5.10(A); Pet. App. 111a-114a.

[1] Unless otherwise cited, the following facts are taken from the panel decision and are undisputed. *See Page*, 76 F.4th at 584-85; Pet. App. 94a-96a.

Page's Rule 29 motion for a judgment of acquittal was denied. Tr. 737-39; Pet. App. 104a-106a. The jury convicted on all counts, and the district court imposed a slightly below-guidelines sentence of 90 months' imprisonment.

Page appealed. The Seventh Circuit had jurisdiction under 18 U.S.C. § 3742 and 28 U.S.C. § 1291. The panel unanimously held that the district court committed plain error by failing to give the buyer-seller jury instruction and remanded for a new trial because the government's conspiracy evidence was "comparatively thin." *See Page*, 76 F.4th at 588; Pet. App. 102a. The government neither moved for rehearing nor filed a petition for certiorari.

Four months later, the Seventh Circuit issued an order, stating that it had voted sua sponte to rehear the appeal en banc. In a 7-3 decision with a 62-page dissent, the majority reversed the panel, switched sides of a circuit split, and held that evidence of repeat, distribution-sized drug transactions, without more, is sufficient to support a conspiracy conviction. *Page*, 123 F.4th at 862; Pet. App. 14a. The majority also created a circuit split in holding that, where a defendant is represented by counsel, a district court can never commit plain error by failing to give a buyer-seller jury instruction. *See id*. at 865; Pet. App. 19a.

This petition followed.

REASONS FOR GRANTING THE PETITION

I. An important circuit split exists regarding the evidence necessary to prove a drug conspiracy, as opposed to a mere buyer-seller relationship, pursuant to *Direct Sales*.

Prior to this case, the Seventh Circuit had long held that evidence of repeat, distribution-quantity drug transactions, without more, cannot sustain a conspiracy conviction. *See, e.g.*, *Lechuga*, 994 F.2d at 347-50; *see also, e.g.*, *United States v. Colon*, 549 F.3d 565, 569 (7th Cir. 2008) (reaffirming *Lechuga*). The Ninth Circuit has taken the same view. *See, e.g.*, *Loveland*, 825 F.3d at 560 ("[E]ven repeated sales and large quantities [cannot] sustain a conspiracy conviction."); *see also, e.g.*, *United States v. Mendoza*, 25 F.4th 730, 738-39 (9th Cir. 2022) (reaffirming *Loveland*). *But see Page*, 123 F.4th at 862 (collecting opposing cases from other circuits); Pet. App. 13a-14a. These cases concluded that, pursuant to *Direct Sales*, 319 U.S. at 713, such evidence merely proves "knowledge, acquiescence, carelessness, indifference, lack of concern," whereas a conspiracy additionally requires "informed and interested cooperation, stimulation, instigation." *See Lechuga*, 994 F.2d at 350; *see also Colon*, 549 F.3d at 568; *Loveland*, 825 F.3d at 562.

Here, after sua sponte voting to rehear the case en banc, the Seventh Circuit reversed its longstanding precedent, switched sides of the circuit split, and held that "evidence of repeated, distribution-quantity transactions of illegal drugs between two parties, on its own, can sufficiently sustain a drug

conspiracy conviction, consistent with the holding in *Direct Sales*." *Page*, 123 F.4th at 862; Pet. App. 14a. Thus, both sides rely on *Direct Sales*; the issue is simply which side has misread the decision.

On this point, the 62-page dissenting opinion of Judge Jackson-Akiwumi (joined by Judges Rovner and Lee) is more persuasive. *Id.* at 870-900; Pet. App. 30a-92a. As the dissent explains, the majority's holding "erases the critical element of intent, effectively collapsing the lines between drug distribution, aiding and abetting a drug distribution conspiracy, and conspiracy to distribute drugs." *Id.* at 870 (emphasis added); Pet. App. 30a. Such an outcome is wholly inconsistent with *Direct Sales*, which found that "one does not become a party to a conspiracy by aiding and abetting it" but rather by "join[ing] both mind and hand with [another] to make its accomplishment possible." *Direct Sales*, 319 U.S. at 709, 713; *see also Iannelli v. United States*, 420 U.S. 770, 777 (1975) ("Conspiracy is an inchoate offense, the essence of which is an agreement to commit an unlawful act.").

The dissent further demonstrates that, pursuant to *Direct Sales*, even in the context of "unlimited quantities" of drugs and knowledge of an illegal enterprise, the defendant's intent to join the conspiracy is not a foregone conclusion:

> The difference in the commodities has a further bearing upon the existence and the proof of intent. There may be circumstances in which the evidence of knowledge is clear, yet

> the further step of finding the required intent **cannot** be taken. Concededly, not every instance of sale of restricted goods, harmful as are opiates, in which the seller knows the buyer intends to use them unlawfully, will support a charge of conspiracy. But this is not to say that a seller of harmful restricted goods has license to sell in unlimited quantities, to stimulate such sales by all the high-pressure methods, legal if not always appropriate, in the sale of free commodities;

Page, 123 F.4th at 883-84 (quoting *Direct Sales*, 319 U.S. at 712) (emphasis added); Pet. App. 58a. Indeed, *Direct Sales* specifically advised that a conspiracy is not presumed even where there is a "continuous course of sales, made either with strong suspicion of the buyer's wrongful use or with knowledge, but without stimulation or active incitement to purchase." *Direct Sales*, 319 U.S. at 712 n.8 (emphasis added); *see also Loveland*, 825 F.3d at 562 & n.51 (distinguishing *Direct Sales* because, in that case, there were additional factors such as "high pressure sales" to indicate a conspiracy).

Finally, the dissent exposes the fallacy of the majority's view that repeat transactions necessarily imply the "prolonged cooperation" referred to in *Direct Sales*. *Page*, 123 F.4th at 884; Pet. App. 59a. "Prolonged cooperation" was a factor in *Direct Sales* because it showed not only the defendant's knowledge of his partner's unlawful purpose but also that he had the requisite intent—i.e. he had "join[ed] both mind and hand with him" to further the enterprise. *Id.*; Pet. App. 60a. Thus, pursuant to *Direct Sales*, "[r]epeat transactions may serve as evidence of the prolonged cooperation,

but the two factors remain distinct." *Id.*; Pet. App. 59a; *see also Mendoza*, 25 F.4th at 738 (conspiracy requires "evidence of a prolonged and actively pursued course of sales" plus "knowledge of and a shared stake in" drug operation) (internal quotations omitted).

The majority's holding has grave consequences for defendants. As the dissent reveals, the holding "relieve[s] the government of its burden to prove all elements of a conspiracy, striking at the heart of due process." *Page*, 123 F.4th at 888; Pet. App. 68a. The federal government charges tens of thousands of drug cases each year.[2] Without clarifying the correct reading of *Direct Sales*, most circuits will continue to uphold a multitude of unconstitutional conspiracy convictions, while only defendants in the Ninth Circuit will be assured their constitutional protections.

In sum, *Direct Sales* is directly at odds with the majority's view that repeat, distribution-quantity transactions involving illicit goods automatically bridge the gap between knowledge and intent and alone demonstrate the "informed and interested cooperation, stimulation, instigation" necessary for a conspiracy. *Direct Sales*, 319 U.S. at 713. This Court should grant the petition to resolve the circuit split.

[2] *See* U.S. Courts, Federal Judicial Caseload Statistics 2024, available at https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2024 (17,327 drug-offense filings).

II. The Seventh Circuit has created a circuit split regarding whether the party-presentation principle, as articulated in *Sineneng-Smith*, precludes plain-error review under Rule 52(b).

After overruling its precedent to find sufficient evidence of a conspiracy, the Seventh Circuit turned to the question of whether the district court erred in failing to give a buyer-seller jury instruction. Implicitly overruling another long line of its cases, *see, e.g.*, *United States v. Gee*, 226 F.3d 885, 896 (7th Cir. 2000), the majority held that, pursuant to the party-presentation principle in *Sineneng-Smith*, 590 U.S. at 375, there is never error "when a district court does not sua sponte give an instruction on a defense theory that a defendant did not request." *Page*, 123 F.4th at 865; Pet. App. 19a.[3] The majority cited no other circuit that has held similarly regarding a missing buyer-seller instruction, which is not an affirmative defense but rather "restates the elements instruction from the defense's perspective," specifically in the context of a drug-conspiracy charge.[4] *Id.* at 869 (Easterbrook, J., concurring) (emphasis added); Pet. App. 28a.

[3] The majority's holding implies that the alleged error was failing to give the instruction to the jury without warning. This is a red herring. As the dissent easily concludes, to avoid this issue, the district court could have (but was not required to) simply ask the parties at the instruction conference whether they wanted the buyer-seller instruction; if they had said no, then any error was waived. *See id.* at 899-900; Pet. App. 92a.

[4] The majority's reliance on cases in other circuits pertaining to affirmative defenses is inapposite. *Id.* at 865-66; Pet. App. 20a. As noted above, even the concurrence acknowledged that the buyer-seller instruction is not an affirmative defense. Nor does *Direct Sales* speak of a buyer-seller argument as an affirmative defense but rather as a means to distinguish the elements of a conspiracy.

In *Sineneng-Smith*, 590 U.S. at 380, this Court cited the party-presentation principle in holding that the circuit court had abused its discretion in "radical[ly] transform[ing]" the appeal. This Court did not hesitate to add, however, that the principle "is supple, not ironclad"; that courts are not "hidebound by the precise arguments of counsel"; and that there are "circumstances in which a modest initiating role for a court is appropriate." *Id.* at 376, 380.

Sineneng-Smith and similar cases[5] were about a circuit court exceeding its discretion by commandeering an appeal. Thus, the closest fit to the facts of *Sineneng-Smith* is actually the Seventh Circuit's sua-sponte decision to rehear Page's appeal en banc despite the fact that the government: (1) did not move for rehearing, (2) agreed that plain-error review applied, and (3) never raised the party-presentation principle.

In any event, as the dissent aptly explains, Rule 52(b) clearly authorizes a defendant to object to an error for the first time on direct appeal despite the general principle of party presentation. *See* Fed. R. Crim. P. 52(b). "While appellate courts generally defer to counsel's strategic decisions, the plain error doctrine acknowledges the reality that

[5] *See, e.g.*, *Wood v. Milyard*, 566 U.S. 463, 474 (2012) (reversing Tenth Circuit's decision to sua sponte dismiss a habeas petition on statute-of-limitations grounds despite government having waived that defense); *Greenlaw v. United States*, 554 U.S. 237, 255 (2008) (vacating Eighth Circuit's decision to sua sponte order a sentence increase despite government not filing a cross appeal).

representation by counsel does not guarantee perfect safeguarding of a defendant's rights." *Page*, 123 F.4th at 897; Pet. App. 86a.

Indeed, *Olano* expressly addressed this situation:

> Although in theory it could be argued that "[i]f the question was not presented to the trial court no error was committed by the trial court, hence there is nothing to review," this is **not** the theory that Rule 52(b) adopts. If a legal rule was violated during the district court proceedings, and if the defendant did not waive the rule, then there has been an "error" within the meaning of Rule 52(b) **despite the absence of a timely objection**.

United States v. Olano, 507 U.S. 725, 733-34 (1993) (emphasis added and internal citation omitted); *see also Greer v. United States*, 593 U.S. 503, 507 (2021) (applying plain-error review to omitted *Rehaif* instruction in trial that occurred prior to decision).

In holding that the party-presentation principle precludes plain-error review of the missing jury instruction, the Seventh Circuit created a circuit split with at least three other circuits that have rejected an "expansive" reading of *Sineneng-Smith*, as it contradicts Rule 52(b)'s express language that an error may be reviewed on appeal when it was not "brought to the [district] court's attention." Fed. R. Crim. P. 52(b); *see United States v. Cheveres-Morales*, 83 F.4th 34, 42 (1st Cir. 2023); *United States v. Turchin*, 21 F.4th 1192, 1199-200 (9th Cir. 2022); *United States v. McReynolds*, 964 F.3d 555, 569 (6th Cir. 2020). As the Sixth Circuit rightly found in distinguishing *Sineneng-Smith*, "[n]o principle of party presentation requires

us to abdicate our role in reviewing whether the district court [committed plain error]." *McReynolds*, 964 F.3d at 569 (citing *Olano*, 507 U.S. at 736). Simply put, the Seventh Circuit erred as a matter of law in neglecting to recognize that Rule 52(b) is an exception to the party-presentation principle, not the other way around.

Moreover, as the dissent illuminates, the majority's holding "categorically absolves the district court of its responsibility for ensuring the jury is properly instructed and effectively eliminates appellate review for all unpreserved instructional errors, no matter how apparent or prejudicial the omission." *Page*, 123 F.4th at 897; Pet. App. 86a-87a. This is not the law. *See Kamen v. Kemper Fin. Servs.*, 500 U.S. 90, 99 (1991) ("When an issue or claim is properly before the court, the court . . . retains the independent power to identify and apply the proper construction of governing law.").

The majority's focus on defense counsel's failure to request the instruction, rather than Page's constitutional right to a fair trial regardless of blame, is contrary to Rule 52(b). *See Page*, 123 F.4th at 897 (dissent finding that "[t]he plain error standard exists precisely to address trial-level errors—whether by the court or counsel—that undermine a defendant's constitutional rights in a way that warrants correction, even absent preservation") (emphasis added); Pet. App. 86a. As this Court found in rejecting a lower court's "unduly burdensome articulation" of the plain-error standard, "the

public legitimacy of our justice system relies on procedures that are neutral, accurate, consistent, trustworthy, and fair, and that provide opportunities for error correction." *Rosales-Mireles v. United States*, 585 U.S. 129, 141 (2018) (internal quotations omitted). Here, the majority's effective gutting of Rule 52(b) and refusal to correct an obvious error certainly will cause the public to "bear a rightly diminished view of the judicial process and its integrity." *Id.* (internal quotation omitted).

In sum, this Court should grant certiorari to resolve the circuit split, reiterate Rule 52(b)'s supremacy over the party-presentation principle, and prevent lower courts from improperly using *Sineneng-Smith* to subvert a defendant's statutory right to plain-error review.

III. This case is an ideal vehicle for review.

On appeal before the panel, Page made two related arguments: (1) his conspiracy conviction should be reversed due to insufficient evidence; and (2) the case should be remanded for a new trial because of the missing buyer-seller instruction. Thus, both of the issues presented in this petition were fully preserved in the court below. *C.f. Cheveres-Morales*, 83 F.4th at 42-44 (granting plain-error relief even where forfeited issue arguably not raised on appeal); *Turchin*, 21 F.4th at 1199-1200 (same); *McReynolds*, 964 F.3d at 568-70 (same).

The majority's assertion that the conspiracy evidence at trial was "overwhelming," *Page*, 123 F.4th at 864; Pet. App. 16a, defies logic, as the panel unanimously found that the evidence was "thin." *Page*, 76 F.4th at 588; Pet. App. 102a; *see also Page*, 123 F.4th at 891 (dissent reaffirming that "not much at trial suggested a conspiracy beyond evidence showing Page repeatedly purchased distribution-sized quantities of heroin"); Pet. App. 74a. Indeed, if the evidence had been strong, the majority would have had no need to overturn its precedent and completely reinterpret *Direct Sales*.[6]

As the panel accurately found, the government's conspiracy evidence consisted primarily of conversations where Page requested to purchase distribution quantities of heroin, in cash, from a quasi-relative who referred to Page as "a good customer." *Page*, 76 F.4th at 587; Pet. App. 101a. There was scant evidence of credit extension (i.e. "fronting"), agreement to look for other customers, or business advice. *Id.* at 588; Pet. App. 101a-102a. The en banc dissent reaffirms that the lack of fronting is particularly damning to a conspiracy charge: "[t]here is no trust on the part of the seller who holds the buyer's money in hand and there is only negligible trust on the part of the

[6] The majority's briefly explained conclusion that any instructional error did not affect Page's substantial rights similarly rests on the erroneous finding that the conspiracy evidence was strong. *Page*, 123 F.4th at 867; Pet. App. 24a. The majority's related finding that a buyer-seller instruction would have contradicted Page's claim of innocence also rests on an erroneous finding—namely, that inconsistent defenses are impermissible. *See Mathews v. United States*, 485 U.S. 58, 65-66 (1988).

buyer who, unless the seller goes out of business, will hold the product in hand." *Page*, 123 F.4th at 890; Pet. App. 71a-72a; *see also Loveland*, 825 F.3d at 562 (after cash deal, buyer "could have flushed [drugs] down the toilet for all [seller] cared"); *see also Mendoza*, 25 F.4th at 738 (no conspiracy without evidence of defendant's "involvement" in future drug sales).

Given the slim evidence, it was imperative that the jury receive the buyer-seller instruction because, as the Seventh Circuit has long recognized, distinguishing between a conspiracy and a mere buyer-seller relationship is not intuitive. *See, e.g.*, *United States v. Cruse*, 805 F.3d 795, 816 (7th Cir. 2015) ("An uninstructed jury is not likely to be able to intuit the distinction between an arm's-length agreement to buy or sell drugs and a conspiratorial agreement to distribute drugs."); *Gee*, 226 F.3d at 896 (instruction should be given "because the line between a conspiracy and a mere buyer-seller relationship is difficult to discern"); *United States v. Douglas*, 818 F.2d 1317, 1322 (7th Cir. 1987) (reasonable jurors "could not discern" buyer-seller distinction without instruction). In fact, the importance of the distinction is reflected in the Seventh Circuit's decision to place the buyer-seller instruction immediately after the primary conspiracy instructions in its pattern instructions. *See* 7th Cir. Pattern Crim. Jury Instr. 5.09, 5.10, 5.10(A); Pet. App. 109a-114a.

This Court's denial of plain-error relief for a missing *Rehaif* instruction in *Greer* is readily distinguishable. There, the "bottom line" was that the defendants did not satisfy the substantial-rights prong of Rule 52(b) because neither had made "a sufficient argument or representation on appeal that he would have presented evidence at trial that he did not in fact know he was a felon." *Greer*, 593 U.S. at 514. *Greer*'s holding was limited to *Rehaif* errors but also likely would extend to other errors that rarely cause prejudice. *See id.* at 509 (defendants have difficult burden on plain-error review for *Rehaif* errors because "a jury will usually find that a defendant knew he was a felon based on the fact that he was a felon") (emphasis in original).

Unlike in *Greer*, *id.* at 508, the plain error at Page's trial did not concern a "simple truth" but a vexing distinction that is not intuitive to jurors. Furthermore, in contrast to the defendants in *Greer*, Page argued on appeal not only that the jury may not have convicted had it received a buyer-seller instruction but also that the evidence was insufficient, as a matter of law, to convict him of conspiracy, regardless of the instructions. Thus, *Greer* presents no barrier to plain-error relief in this case. *See also id.* at 520 (Sotomayor, J., concurring in part and dissenting in part) ("If a defendant demonstrates why a jury in an error-free trial might have reasonable doubts

as to the [omitted] element, he has shown a reasonable probability of a different outcome.").

In sum, when there is evidence of a buyer-seller relationship, as there undoubtedly was here, the omission of the buyer-seller instruction is always prejudicial because distinguishing between a conspiracy and a buyer-seller relationship is critical to a fully functioning jury. Unlike in *Greer*, Page has shown more than a reasonable probability that the instruction would have made a difference at his trial because there was ample conflicting evidence.

Thus, there are no procedural hurdles to granting Page's petition. The two issues are legal, straightforward, important, and ripe for review.

CONCLUSION

For the foregoing reasons, Mr. Page's petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 6, 2025