No. 25-1236

# In the Supreme Court of the United States

JAMES P. ABRAMS,

*Petitioner*,

*v.*

UNITED STATES,

*Respondent*.

*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

## BRIEF OF FORMER JUDGES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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## INTEREST OF *AMICI CURIAE*[1]

*Amici curiae* are 12 former Article III judges who have devoted much of their professional lives to the criminal justice system and who maintain a continuing interest in restoring a system of justice that is fair both in practice and procedure. Collectively, they served decades in the federal judiciary. *Amici* have presided over numerous complex, multi-count criminal trials and have decided appeals from such trials. Their experience informs their view that the Third Circuit's specificity requirement burdens defendants without conferring any corresponding benefit on the courts.

*Amici* are:

- Honorable Dennis M. Cavanaugh—United States District Judge (2000–14) and Magistrate Judge (1993–2000) for the District of New Jersey
- Honorable Robert J. Cindrich (Ret.)—United States District Judge for the Western District of Pennsylvania (1994–2004)
- Honorable Christopher F. Droney (Ret.)—United States Circuit Judge for the Second Circuit Court of Appeals (2011–20), United

[1] *Amici* affirm that no counsel for a party authored this brief in whole or in part, and no one other than *Amici* or their counsel made a monetary contribution intended to fund the preparation or submission of the brief. Timely notice was provided to all parties.

States District Judge for the District of Connecticut (1997–2011)

- Honorable Jeremy D. Fogel (Ret.)—United States District Judge for the Northern District of California (1998–2018)
- Honorable W. Royal Furgeson, Jr. (Ret.)—United States District Judge for the Western District of Texas (1994–2013)
- Honorable Nancy M. Gertner (Ret.)—United States District Judge for the District of Massachusetts (1994–2011)
- Honorable Richard J. Holwell (Ret.)—United States District Judge for the Southern District of New York (2003–12)
- Honorable Timothy K. Lewis (Ret.)—United States Circuit Judge for the Third Circuit Court of Appeals (1992–99), United States District Judge for the Western District of Pennsylvania (1991–92)
- Honorable Stephen M. Orlofsky (Ret.)—United States District Judge (1996–2003) and Magistrate Judge (1976–80) for the District of New Jersey
- Honorable Shira A. Scheindlin (Ret.)—United States District Judge for the Southern District of New York (1994–2016), United States Magistrate Judge for the Eastern District of New York (1982–86)
- Honorable Thomas I. Vanaskie (Ret.)—United States Circuit Judge for the Third Circuit Court of Appeals (2010–19), United

States District Judge for the Middle District of Pennsylvania (1994–2010)

- Honorable T. John Ward (Ret.)—United States District Judge for the Eastern District of Texas (1999–2011)

## SUMMARY OF ARGUMENT

The Third Circuit's decision below imposes on criminal defendants a procedural requirement that is unsupported by the Federal Rules of Criminal Procedure and that serves no useful judicial purpose. According to the Third Circuit and the minority view of the Fifth, Eighth, and Eleventh Circuits, defendants who move for judgment of acquittal under Rule 29(a) forfeit *de novo* appellate review unless they enumerate with particularity the specific grounds for acquittal on each contested count. That requirement is unnecessary: Rule 29(a) empowers district judges to enter judgment of acquittal on their own motion, and they are uniquely qualified to determine what briefing, if any, they require. It is equally disruptive: demanding a detailed legal accounting of every alleged evidentiary deficiency in the middle of trial comes at the expense of the fair, orderly, and efficient resolution of trial. And its downstream consequences are likewise troubling: defendants facing forfeiture will raise every conceivable sufficiency challenge on every element of every count, disrupting proceedings and consuming judicial resources. Those who fall short will turn to raising collateral attacks, forcing appellate courts to undertake the very sufficiency review the minority circuits' rule seeks to avoid, at greater cost and with greater disruption to the finality of criminal judgments.

The impact of the minority circuits' misguided construction of Rule 29 is manifest, and it will remain so for as long as the split persists. This Court should weigh in now and provide clarity on this important issue by rejecting the minority view and holding that a general motion for judgment of acquittal under Rule

29(a) preserves *de novo* review of sufficiency challenges on appeal.

## ARGUMENT

### I. THE MINORITY CIRCUITS' RULE 29 PARADIGM IS UNNECESSARY

In joining the Fifth, Eighth, and Eleventh Circuits,[2] the Third Circuit has adopted an unwarranted construction of Rule 29(a) in which a general motion for judgment of acquittal forfeits *de novo* review of sufficiency arguments on appeal. A motion for judgment of acquittal under Rule 29(a) is meant to test whether the government's evidence is legally sufficient to sustain a conviction. *See* Fed. R. Crim. P. 29(a). A general motion serves that purpose. It puts the issue before the court without adding a procedural hurdle for defendants.

The drafters of the Federal Rules of Criminal Procedure contemplated that a district judge need not wait for a defendant to move at all. Rule 29(a) provides that a "court may on its own consider whether the evidence is insufficient to sustain a conviction." ("Rule 29. Motion for a Judgment of Acquittal") Fed. R. Crim. P. 29(a); *see also* Fed. R.

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[2] *See United States v. Tovar*, 146 F.4th 1318, 1325 n.3 (11th Cir. 2025) (rejecting defendant's "argument that we should review his challenge de novo because he made a 'general' challenge to the adequacy of the evidence," and reviewing sufficiency arguments for plain error); *United States v. Clarke*, 564 F.3d 949, 953–54 (8th Cir. 2009) (reviewing for plain error where defendant made a "general motion, without argument, for judgment of acquittal"); *United States v. Wadi*, 153 F.4th 465, 474–75 (5th Cir. 2025) (applying plain-error review to sufficiency arguments on appeal after defendant made a general Rule 29 motion in district court).

Crim. P. 29 Notes of Advisory Committee on 2002 Amendment ("The rule . . . recognize[s] that a judge may sua sponte enter a judgment of acquittal."); 4 *Orfield's Criminal Procedure Under the Federal Rules* § 29:6 (2025) ("[T]he court may also act of its own motion.") (citing *Wright v. United States*, 243 F.2d 546 (6th Cir. 1957)). If the district judge can evaluate the sufficiency of the government's evidence without any motion whatsoever, it can hardly be said that a motion must be particularized for the district court's (or the court of appeals') benefit.

After presiding over the government's case-in-chief, the district judge may not need a road map from the defense to assess the sufficiency of the evidence under Rule 29(a). "The trial judge's major role is the determination of fact, and with experience in fulfilling that role comes expertise." *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985). District judges' proximity to the evidence enables them to determine—either with or without a defendant's gloss—whether the evidence on a particular count warrants *sua sponte* acquittal.

Moreover, the district judge—not the defendant or an appellate court—is best positioned to assess what articulation, if any, she requires for a Rule 29(a) motion. This Court has recognized the numerous ways in which district judges are entitled to discretion in the management of trials in their courtrooms. *See, e.g.*, *Geders v. United States*, 425 U.S. 80, 86 (1976) ("Our cases have consistently recognized the important role the trial judge plays in the federal system of criminal justice."); *Salve Regina College v. Russell*, 499 U.S. 225 (1991) (discussing principle that

trial courts' fact-intensive determinations deserve deference given proximity to proceedings); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962) (holding courts have inherent power "to manage their own affairs"). That discretion necessarily encompasses the ability to determine what level of specificity, if any, a particular Rule 29(a) motion warrants.

District judges surely have the ability to make these types of decisions. They "must meet situations as they arise and to do this must have broad power to cope with the complexities and contingencies inherent in the adversary process." *Geders v. United States*, 425 U.S. 80, 86 (1976); *see also Quercia v. United States*, 289 U.S. 466, 469 (1933) (the trial judge is "not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law"); *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) (district judges "have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases"). "No one formula" for doing so exists, so district judges must have flexibility to respond to the circumstances before them. *Illinois v. Allen*, 397 U.S. 337, 343 (1970). Imposing a rigid specificity requirement on Rule 29(a) motions strips a trial judge of precisely this flexibility. Where a district judge concludes that further specificity is warranted, she may demand it.

District judges are vested with the authority and expertise to evaluate Rule 29(a) motions on their own terms. To command elaboration, the minority circuits' specificity requirement burdens defendants without conferring any corresponding benefit on the court.

## II. THE MINORITY CIRCUITS' RULE IS INEFFICIENT AND DISRUPTIVE

The minority circuits' interpretation of Rule 29(a) also abandons the very efficiency interest that the Federal Rules of Criminal Procedure were devised to protect. The Rules "are designed to promote economy and efficiency" so long as they do not compromise a defendant's rights. *Bruton v. United States*, 391 U.S. 123, 131 n.6 (1968). To that end, the Rules are to be "interpreted to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay." Fed. R. Crim. P. 2; *see Berman v. United States*, 378 U.S. 530, 535 (1964). In practice, the minority's rule does the opposite.

Defendants must move for judgment of acquittal under Rule 29(a) at the close of the government's case-in-chief—before they have presented any evidence or the jury has returned a verdict. Under the minority's approach, a defendant who wishes to preserve *de novo* review must, therefore, produce a motion identifying with particularity the specific grounds supporting acquittal on each contested count midtrial. This would require the defendant to cite the relevant trial record and match admitted evidence against the legal standards governing each count. But final transcripts often are not available at this point, and there is little time to conduct the kind of comprehensive research and briefing that the minority's paradigm would require. *C.f. Salve Regina Coll. v. Russell*, 499 U.S. 225, 231 (1991) ("[T]he logistical burdens of trial advocacy limit the extent to which trial counsel is able to supplement the district judge's legal research with memoranda and briefs.").

This puts the district court between a rock and a hard place: either curtail defendants' ability to prepare the kind of comprehensive motion that the minority circuits would require, or adjourn the trial to give defense counsel adequate time to prepare the motion. Meanwhile, empaneled jurors must wait for trial to resume and suffer further disruption to their daily routines and lives. Once a jury is empaneled, the criminal justice system must move towards prompt, orderly resolution of the charges. *See Arizona v. Washington*, 434 U.S. 497, 516 n.35 (1978) (trial judges "have an interest in having the trial completed as promptly as possible . . . which frequently parallels the constitutionally protected interest of the accused in having the trial concluded by a particular tribunal"). Society itself holds an independent interest in the speedy trial of criminal defendants. *Barker v. Wingo*, 407 U.S. 514, 519 (1972). The minority's rule undermines that interest. It effectively requires a defendant to conduct a minitrial while the jury sits idly by, disrupting and inevitably delaying criminal adjudication.

A detailed and comprehensive midtrial Rule 29 motion would inconvenience district judges too. At the close of the government's case-in-chief, the principal task facing a district judge is researching and preparing the jury charge—a critically important and time-consuming endeavor that judges and their law clerks must juggle along with the demands of their otherwise busy dockets. Foisting on them a complicated motion that requires delving into the factual details of a trial record while they are elbow-deep in preparing the all-important jury charge is an unnecessary distraction. "A trial judge's job is

difficult enough without senseless make-work." *Wainwright v. Witt,* 469 U.S. 412, 430 (1985).

Additionally, the burden the minority's rule imposes on defendants is particularly acute because defendants must litigate Rule 29(a) motions at the same time they are preparing for critical phases of the trial. At the close of evidence, a defendant is preoccupied with researching and crafting jury instructions and preparing for summation. Producing a detailed motion for acquittal at the risk of plain-error review diverts a defendant's finite resources from those essential tasks. This case, involving a 48-count indictment, is a prime example. A fully articulated Rule 29(a) motion would have required counsel to construct what amounts to a midtrial appellate brief, before the record is final, while in the midst of otherwise all-consuming trial tasks. The rule adopted in the decision below thus puts defendants to an impossible choice: neglect the demands of trial or risk forfeiting *de novo* review on appeal.

This Court has warned against precisely this kind of procedural burden. It "generally avoid[s] any rule of judicial administration that 'results in a substantial expenditure of scarce judicial resources on difficult questions that have no effect on the outcome of the case.'" *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 350 (2015) (Thomas, J., dissenting) (quoting *Pearson v. Callahan*, 555 U.S. 223, 236–37 (2009)). The minority's specificity requirement runs headlong into that principle. How a defendant frames his motion does not affect the fundamental question of whether the government presented sufficient evidence to convict. Yet the rule disrupts trial and taxes a system that already suffers from limited

judicial resources. *See Santobello v. New York*, 404 U.S. 257, 261 (1971) (criminal justice system lacks judicial resources to try every case).

## III. THE MINORITY CIRCUITS' RULE PRODUCES PERVERSE OUTCOMES

The minority rule produces perverse outcomes at trial and on appeal. By requiring defense counsel, in the middle of complex, multicount criminal trials involving potentially dozens of charges and weeks of evidence, to articulate every possible sufficiency challenge on the spot or forfeit appellate review, the minority has created a trap that will: (1) encourage overlitigation to preserve the record for appellate review, and (2) generate postconviction ineffective-assistance-of-counsel claims in collateral proceedings.

The minority's construction of Rule 29(a) encourages any prudent defense attorney, operating under the threat of forfeiture, to catalogue every conceivable deficiency in the government's case on every element of every charged count. Such an approach tends to *diminish*, rather than enhance, the quality of the arguments and their presentation to the district court. Unnecessary, prolix briefing with underdeveloped arguments does little to assist district courts resolving Rule 29(a) motions, much less the courts of appeals who may review appeals from those decisions.

Nor is the risk of cumbersome motions is confined to the minority circuits. Defendants in the Fourth Circuit—the only court of appeals that has not weighed in explicitly on the split—have an incentive to approach their Rule 29 motions as if the minority rule applies, in order to protect against the possibility

that the Fourth Circuit adopts the minority view. And that incentive exists even in the First, Second, Sixth, Seventh, Ninth, Tenth, and D.C. Circuits too, because the government continues to argue for the minority view in those circuits. *See, e.g.*, Brief for the United States at *45–46, *United States v. Jordan*, (7th Cir. Apr. 23, 2026) (Nos. 24-3343, 25-1002), 2026 WL 1223283 (citing *Abrams* and urging Seventh Circuit to adopt a similar rule). So long as this split remains, cautious defense counsel in *any* circuit will feel pressured to file the same kind of blunderbuss motions that the minority rule demands. Only this Court can provide the needed clarity.

Moreover, creating new procedural traps at trial inevitably generates new grounds for postconviction relief. The minority circuits' rule is precisely this kind of mechanism, placing significant burdens on defendants without conferring any commensurate benefit on the court. In the minority circuits, where, as in this case, a defendant's trial counsel fails to articulate specific sufficiency arguments in a Rule 29(a) motion, the defendant loses the more favorable *de novo* standard of review on appeal. Such defendants inevitably will file habeas corpus petitions under 28 U.S.C. § 2255, arguing that their counsel's omission—or deficient Rule 29 briefing—constituted ineffective assistance. The rule will burden already strained district and appellate court dockets by manufacturing new grounds for ineffective-assistance claims.

Under *Strickland v. Washington,* 466 U.S. 668 (1984), habeas petitioners must show that their trial counsel's deficient performance prejudiced them. The prejudice prong requires a showing that, but for

counsel's deficient performance, there is a reasonable probability the outcome would have been different. *Id.* at 694. Where the government's evidence at trial was close and *de novo* review might have resulted in reversal of the conviction on at least one count, defendants may argue that there is a reasonable probability that an adequate Rule 29 motion would have altered the outcome.

While the merits of such a *Strickland* motion may be limited, defendants seeking to lodge ineffective-assistance-of-counsel claims may seize on substandard Rule 29 motions as ammunition in habeas petitions. Courts in the minority circuits thus will face recurring Section 2255 petitions relitigating the sufficiency of the evidence in cases where the Rule 29(a) motion was inadequately articulated. And these petitions will ask courts to do exactly what the minority circuits' rule ostensibly seeks to avoid, because assessing whether a petitioner would have succeeded on appeal under *de novo* review necessarily requires evaluating *de novo* whether the evidence at trial was sufficient to sustain the petitioner's conviction.

* * *

The Third Circuit's formulation of Rule 29(a), like that of the Fifth, Eighth, and Eleventh Circuits, imposes on criminal defendants a procedural requirement that is unsupported by the Federal Rules of Criminal Procedure and is unnecessary, burdensome, and counterproductive. If left uncorrected, the minority circuits' rule will undermine judicial efficiency and lead to unwarranted disparities between otherwise similarly situated defendants. The Court should take this opportunity

to bring clarity and uniformity to this critically important issue.

## CONCLUSION

The Court should grant a writ of certiorari, reject the minority circuits' rule, and reverse the decision below.

Respectfully submitted,

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