

No. 25-1236

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**In the Supreme Court of the United States**

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JAMES P. ABRAMS, PETITIONER

*v.*

UNITED STATES OF AMERICA

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

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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### **QUESTION PRESENTED**

Whether the court of appeals correctly rejected petitioner's challenges to the sufficiency of the evidence, when he had raised them only in a general Federal Rule of Criminal Procedure 29 motion in the district court, which he failed to renew at the close of evidence.

**PARTIES TO THE PROCEEDING**

Petitioner (defendant-appellant below) is James P. Abrams.

Respondent (appellee below) is the United States of America.

**RELATED PROCEEDINGS**

United States Court of Appeals (3d Cir.):

*United States v. Abrams*, No. 25-3245 (Apr. 21, 2026)

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-58a) is reported at 165 F.4th 784.

### JURISDICTION

The judgment of the court of appeals was entered on January 30, 2026. The petition for a writ of certiorari was filed on April 16, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

Following a jury trial in the United States District Court for the Middle District of Pennsylvania, petitioner was convicted on 18 counts of wire fraud, in violation of 18 U.S.C. 1343; one count of mail fraud, in violation of 18 U.S.C. 1341; five counts of aggravated identity theft, in violation of 18 U.S.C. 1028(A)(a)(1); one count of money laundering, in violation of 18 U.S.C. 1956(a)(1)(B)(i); 12

counts of unlawful monetary transactions, in violation of 18 U.S.C. 1957; four counts of obstruction of justice, in violation of 18 U.S.C. 1519; and seven counts of false statements, in violation of 18 U.S.C. 1001(a)(2). Pet. App. 78a-79a. Petitioner was sentenced to 72 months of imprisonment, to be followed by three years of supervised release. *Id.* at 81a-82a. The court of appeals affirmed. *Id.* at 1a-58a.

1. Petitioner procured \$1.1 million in investments in his renewable energy startup by furnishing investors with “forged documents and false information that overstated the company’s financial condition and business prospects.” Pet. App. 2a. He laundered those funds through a series of accounts and used them to pay his debts and to purchase a private residence. *Id.* at 6a-7a. And when confronted by agents from the IRS, petitioner made a series of false statements. *Id.* at 8a-9a.

In June 2006, petitioner and his father founded EthosGen, a renewable energy startup. Pet. App. 3a. In 2013, after his father had left to join Rockwell Collins, an aerospace manufacturer, EthosGen and Rockwell Collins signed an agreement with Viking Heat Engines, a Norwegian company. See *ibid.* Under that agreement, Viking was to provide heat engines, Rockwell Collins would integrate them with other technology, and EthosGen would market and sell the finished system. *Id.* at 3a-4a.

In 2017, Binghamton University Foundation’s business incubator, the Koffman Southern Tier Incubator (KSTI), invited EthosGen to participate in a pitch event. Pet. App. 4a. Soon afterward, KSTI began preliminary due diligence for a potential investment in EthosGen. See *ibid.* During the due diligence process, petitioner repeatedly gave KSTI false information and

forgeries relating to EthosGen's financial performance, operational history, partner companies, and intellectual property portfolio. *Ibid.*; see Presentence Investigation Report (PSR) ¶ 10.

For example, petitioner provided KSTI with a doctored version of the agreement among EthosGen, Rockwell Collins, and Viking, which had been altered to make it appear that EthosGen, not Viking, owned and invented the heat engines, and bore the forged signature of a Rockwell Collins executive. Pet. App. 4a. Petitioner also gave KSTI a forged EthosGen tax return for 2016, along with falsified financial statements, that inflated EthosGen's income and assets and decreased its liabilities. *Ibid.*; see PSR ¶ 12. The fraudulent tax return purported to be verified by EthosGen's accountant, when in fact the accountant had not authorized the use of his name or his signature for that purpose. *Ibid.*

Petitioner likewise falsified EthosGen's operational history. He provided KSTI with a chart purporting to show that EthosGen had installed some 30 systems, including six units sold to the U.S. Navy. See Pet. App. 4a-5a; PSR ¶ 13. For the purported Navy sales, petitioner produced a contract between Rockwell Collins and a U.S. Department of Energy (DOE) laboratory that had been altered to replace Rockwell Collins with EthosGen. Pet. App. 5a. The signatory for the DOE lab testified that petitioner did not have his permission to use his name and identity on the forged contract. PSR ¶ 14. Petitioner also created false financial records to show the claimed revenue from the fabricated Navy contract and other nonexistent contracts. Pet. App. 5a. In reality, at that time, EthosGen had not sold any heat-engine system to anyone. PSR ¶ 13.

Relying on those false materials, along with other false statements and records made by petitioner, *e.g.*, PSR ¶ 17, KSTI proceeded with the investment, creating an entity called B!ingTech Ventures LLC for that purpose. PSR ¶ 19. KSTI’s contract with B!ingTech provided for an initial \$200,000 investment by KSTI that would go to EthosGen, with a second \$200,000 contingent on the completion of certain benchmarks. Pet. App. 6a. While the investment was being finalized, three angel investors joined B!ingTech, purchasing ownership interests in EthosGen totaling \$700,000. *Ibid.* The overall \$900,000 initial investment was deposited in EthosGen’s bank account in May 2018. PSR ¶ 20.

Within weeks, petitioner used \$100,500 of the investment funds to pay off existing debts, many of which were for personal expenses. Pet. App. 6a. He then cycled \$700,000 from EthosGen’s bank account through four other accounts. *Ibid.* And in June 2018, petitioner wired nearly \$800,000 from EthosGen to purchase a personal residence in South Carolina. *Id.* at 7a. EthosGen’s bank flagged the transactions and closed the bank accounts. *Ibid.* Petitioner told his investors that he had used the money to “secure unit inventory.” *Ibid.*

Petitioner then set out to secure the second \$200,000 investment from KSTI by providing additional forged documents and false information to KSTI. Pet. App. 7a; PSR ¶ 25. Among numerous additional forged documents, petitioner provided falsified documentation of sales that never occurred. PSR ¶¶ 26-28; see PSR ¶¶ 29-31. In reliance upon petitioner’s false information, B!ingTech released the additional \$200,000. Pet. App. 8a; see PSR ¶ 31.

In February 2019, Internal Revenue Service agents interviewed petitioner. Pet. App. 8a-9a. In that in-

interview and in a later proffer, petitioner lied repeatedly, including by claiming that EthosGen had paid Rockwell Collins for a unit installed on a U.S. Navy ship; that investors had agreed to pay him \$200,000 per year in guaranteed compensation; that EthosGen owed him \$800,000, including for deferred compensation; that he had been truthful throughout the due diligence process; and that he did not know who signed the various forged agreements, such as the contract between EthosGen and Rockwell Collins. *Id.* at 9a; see PSR ¶¶ 35, 38.

2. A grand jury in the Middle District of Pennsylvania returned an indictment charging petitioner with 18 counts of wire fraud, in violation of 18 U.S.C. 1343; one count of mail fraud, in violation of 18 U.S.C. 1341; five counts of aggravated identity theft, in violation of 18 U.S.C. 1028(A)(a)(1); one count of money laundering, in violation of 18 U.S.C. 1956(a)(1)(B)(i); 12 counts of unlawful monetary transactions, in violation of 18 U.S.C. 1957; four counts of obstruction of justice, in violation of 18 U.S.C. 1519; and seven counts of false statements, in violation of 18 U.S.C. 1001(a)(2). Pet. App. 78a-79a.

Petitioner proceeded to trial. At the close of the government's case, petitioner moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29(a). Pet. App. 10a. Defense counsel stated only: "I move for judgment of acquittal on [R]ule 29[(a)]. I waive argument." C.A. App. 809. The district court denied petitioner's motion, finding it "clear that the presentation of evidence so far if believed by the jury would certainly satisfy the government's burden of proof beyond a reasonable doubt." *Ibid.* Petitioner then chose to present evidence in his own defense. See *id.* at 811-817.

The jury found petitioner guilty on all counts. Pet. App. 78a-81a. He did not renew his Rule 29 motion at

the close of all the evidence, nor did he file a motion for judgment of acquittal after trial. The district court sentenced him to 72 months of imprisonment, to be followed by three years of supervised release. *Id.* at 81a-82a.

3. The court of appeals affirmed. Pet. App. 1a-58a. It rejected, among other claims, petitioner's challenges to the sufficiency of the evidence supporting the jury's verdict as to the fraud- and aggravated-identity-theft counts. *Id.* at 12a-39a. In doing so, the court of appeals rejected petitioner's request for de novo review of those sufficiency challenges. *Id.* at 12a. It agreed with the government that plain-error review applied, because petitioner's general Rule 29 motion at the close of trial was insufficient to preserve the specific arguments asserted on appeal, which were thus reviewable only for plain error. *Ibid.* "[A] general Rule 29 motion," the court maintained, "does not preserve all sufficiency arguments later raised on appeal." *Id.* at 16a.

The court of appeals explained, as a general matter, an "argument on appeal is preserved if it depends on (1) the same legal rule or standard and (2) the same facts as the argument presented to the district court." Pet. App. 13a. The court emphasized that the "animating principles of preservation doctrine" require that "a party put the district court squarely on notice of the point at issue" and that the party's "presentation must be sufficiently particularized—that is, framed as specific argument—because even the most learned judges are not clairvoyant and need not anticipate and join arguments that are never raised by the parties." *Id.* at 16a-17a (citation and internal quotation marks omitted).

"These tenets," the court of appeals continued, "reflect a practical goal: to encourage litigants to directly identify for the district court the purported grounds for

error.” Pet. App. 17a (brackets, citation and internal quotation marks omitted). The court accordingly explained that “the ultimate question is whether the party gave the District Court the opportunity to consider the argument.” *Ibid.* (brackets, citation and internal quotation marks omitted). And it observed that “[n]othing about Rule 29 warrants an exception to that reasoning.” *Ibid.*

The court of appeals stated that other circuits “have held (often with little analysis) that a broadly stated Rule 29 motion without specific grounds preserves the full array of sufficiency challenges for appeal.” Pet. App. 18a (citation and internal quotation marks omitted). But it observed that such “authority rarely offers a justification,” and could not identify a persuasive reason why Rule 29 practice “should carve out an exception to the ordinary rule that counsel must make specific objections which state the grounds for or scope of the objection.” *Id.* at 18a-19a (brackets, citation and internal quotation marks omitted)

Because petitioner had raised only a general Rule 29 motion, the court of appeals reviewed petitioner’s sufficiency challenges for plain error. Pet. App. 23a. Nonetheless, with respect to the fraud counts, the court found “no error” under the “first prong” of the plain-error test set forth in *United States v. Olano*, 507 U.S. 725 (1993), Pet. App. 24a, which requires that “there was an error” in the first place, *id.* at 23a (quoting *Olano*, 507 U.S. at 732). And with respect to the aggravated-identity-theft counts, the court similarly found “no error under *Olano*.” *Id.* at 31a.

#### ARGUMENT

Petitioner renews (Pet. 5-21) his contention that the court of appeals erred in reviewing his sufficiency

claims for plain error. This Court has repeatedly denied petitions for writs of certiorari presenting similar issues. See *Tovar v. United States*, 146 S. Ct. 2659 (2026) (No. 25-6344); *Door v. United States*, 142 S. Ct. 785 (2022) (No. 21-5804); *Ricks v. United States*, 580 U.S. 1001 (2016) (No. 16-5278). The same course is warranted here. The decision below is correct, and this case would in any event be an unsuitable vehicle for reviewing the question presented.

1. Under Federal Rule of Criminal Procedure 29(a), a defendant may move for judgment of acquittal if “the evidence is insufficient to sustain a conviction.” Federal Rule of Criminal Procedure 47(b) further provides that a “motion must state the grounds on which it is based and the relief or order sought,” and Rule 51(b) requires that parties object to asserted errors and state “the grounds for th[e] objection.” Errors “not brought to the court’s attention” are reviewed only for plain error. Fed. R. Crim. P. 52(b); cf. Fed. R. Crim. P. 51(b).

The court of appeals correctly applied that framework. To preserve an issue for appeal, a criminal defendant must ordinarily “inform[] the court of the legal error at issue.” *Holguin-Hernandez v. United States*, 589 U.S. 169, 175 (2020). If he fails to do so, the appellate court may correct the error only if it is “plain” and “affect[s] substantial rights,” and even then only if the error “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *United States v. Olano*, 507 U.S. 725, 732 (1993) (quoting *United States v. Young*, 470 U.S. 1, 15 & n.12 (1985)); see Fed. R. Crim. P. 52(b).

Those preservation rules “serve[] to induce the timely raising of claims and objections, which gives the district court the opportunity to consider and resolve

them.” *Puckett v. United States*, 556 U.S. 129, 134 (2009). To effectuate this purpose, an objection must be sufficiently specific “to give the opposing party and the trial judge a fair opportunity to consider the objection, debate it, and rule on it.” *United States v. Echols*, 104 F.4th 1023, 1029 (7th Cir. 2024). “The very word ‘review’ presupposes that a litigant’s arguments have been raised and considered in the tribunal of first instance.” *Freytag v. Commissioner*, 501 U.S. 868, 895 (1991) (Scalia, J., concurring in part and concurring in the judgment); see *Holguin-Hernandez*, 589 U.S. at 176 (Alito, J., concurring) (“A court cannot address particular arguments or facts not brought to its attention.”).

Petitioner’s counterarguments lack merit. First, he asserts that Rule 29 motions are unique, in that there is only “one essential and intrinsic ‘ground’ for every Rule 29 motion: failure of the government to meet its burden of proof on every required element of the offense.” Pet. 14-15. Elsewhere, however, petitioner praises generalized Rule 29 motions as advantageous, because they avoid forcing a defendant to “identify and preserve every conceivable sufficiency argument on every element of every charge” during proceedings. Pet. 19. It makes little sense to instead shift the burden of considering and rejecting every conceivable sufficiency argument onto the district court, let alone to try to figure out what a defendant’s best arguments might be. As the court of appeals pointed out, “even the most learned judges are not clairvoyant.” Pet. App. 17a (citation omitted). And while sufficiency challenges concern a common upshot—*i.e.*, the government has failed to carry its burden—the particular reasons as for *why* may vary, and as with any other motion, it should fall to the moving party to

identify and raise those grounds with the district court to preserve later review. *Id.* at 17a-18a.

Second, petitioner notes that Rule 29's civil analogue—Federal Rule of Civil Procedure 50(a)(2)—explicitly requires motions for judgment as a matter of law to “specify the judgment sought and the law and facts that entitle the movant to the judgment,” *ibid.*, and draws the negative inference that Rule 29's omission of similar language means only a generalized motion is required, see Pet. 12-13. But that inference is mistaken. Rule 29's silence on the issue of specificity does not override Rule 47's “general requirements for all motions.” Fed. R. Crim. P. 47 advisory committee's note (2002 Amendment); see Pet. App. 20a. As the court of appeals explained, while Rule 47(b) was not intended by the drafters to require that “the grounds upon which a motion is made be stated ‘with particularity,’” Fed. R. Crim. P. 47 advisory committee's note (2002 Amendment), it requires that “the argument itself must be presented in some form; merely invoking only an overarching issue, which is broader in scope, will not suffice,” Pet. App. 20a (citation and internal quotation marks omitted).

Moreover, Federal Rule of Criminal Procedure 51(b) requires a party to “inform[] the court” of any objection and state “the grounds for th[e] objection.” Errors “not brought to the court's attention” are reviewable only for plain error. Fed. R. Crim. P. 52(b). This Court has “repeatedly cautioned that ‘[a]ny unwarranted extension’ of the authority granted by Rule 52(b) would disturb the careful balance it strikes between judicial efficiency and the redress of injustice, and that the creation of an unjustified exception to the Rule would be ‘[e]ven less appropriate.’” *Puckett*, 556 U.S. at 135-136 (citations omitted). The court of appeals correctly declined to

carve out an atextual exception to Rules 51 and 52 applicable only to Rule 29 motions. See Pet. App. 22a-23a.

Third, petitioner argues that the decision below undermines the purpose of Rule 29, which he describes as reinforcing the presumption of innocence. See Pet. 16-19. But while the presumption of innocence is no doubt a “bedrock” constitutional principle, Pet. 16, this Court has observed that the “seriousness of the error claimed does not remove consideration of it from the ambit of the Federal Rules of Criminal Procedure.” *Johnson v. United States*, 520 U.S. 461, 466 (1997). To the contrary, “[n]o procedural principle is more familiar \* \* \* than that a constitutional right \* \* \* may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.” *Olano*, 507 U.S. at 731 (quoting *Yakus v. United States*, 321 U.S. 414, 444 (1944)). Thus, the presumption of innocence and the requirement of proof beyond a reasonable doubt, however “foundational” (Pet. 16), cannot justify suspension of ordinary preservation rules.

Fourth, petitioner briefly asserts (Pet. 19) that requiring defendants to raise specific sufficiency arguments in the district court intrudes on a district court’s discretion as to how it might want motions to be made. But while a key feature of our judicial system is that district courts have wide discretion to “manage their own proceedings,” *ibid.*, their discretion cannot come at the expense of those courts performing their basic role as the courts of first review. As touched on above, the breadth of the possible inquiry that comes with a general sufficiency challenge only underscores the need for specificity in a Rule 29 motion.

To that end, a defendant’s general claim of insufficient evidence provides no notice to the government or the district court of the claimed defect in the evidence and no fair opportunity to consider it. See *United States v. Kieffer*, 991 F.3d 630, 639 (5th Cir. 2021) (Oldham, J., concurring) (“It’s the litigator’s equivalent of freeing the beagles in a field that might contain truffles.”). To the extent that a particular district court might nonetheless prefer it that way, it is inappropriately placing an unnecessary burden on the appellate court, which is then forced to resolve the asserted errors in the first instance, without the benefit of the district court’s considered and first-hand judgment.

That “turns the adversary process on its head.” Pet. App. 22a; see *Puckett*, 556 U.S. at 134 (the district court “is ordinarily in the best position to determine the relevant facts and adjudicate the dispute”). As the court of appeals observed (Pet. App. 20a-21a), petitioner’s proposed carve-out incentivizes precisely the behavior that error-preservation rules are designed to prevent. His proposed rule would invite defendants to “sandbag[]” the courts by “remaining silent” about their precise claims “and belatedly rais[ing] the error only if the case does not conclude in [their] favor,” *Puckett*, 556 U.S. at 134 (internal quotation marks omitted). That is “the opposite of the way the system is supposed to work.” *Kieffer*, 991 F.3d at 638 (Oldham, J., concurring).

2. To the extent that petitioner asserts a circuit conflict on the question presented (Pet. 8-10), this is not a suitable case to resolve it, for two reasons. First, petitioner failed to renew his Rule 29 motion at the close of all the evidence. Instead, once the district court denied petitioner’s Rule 29 motion made at the close of the government’s case, petitioner put on his own evidence, C.A.

App. 811-817, after which he neither renewed his Rule 29 motion, nor moved for an acquittal after the jury found him guilty, see p.5, *supra*. And regardless of what standard of review should apply to a general Rule 29 motion that was properly renewed, there is broad agreement in the courts of appeals that where a defendant puts on a defense case but “does not renew [his] motion” at the close of all evidence, “the appellate court cannot review the sufficiency of the evidence in the government’s case-in-chief except for plain error.” 2A Charles Alan Wright & Peter J. Henning, *Federal Practice and Procedure* § 463 (4th ed. 2009). Indeed, while petitioner claims (Pet. 20) that “[i]f the same motion were made in the First, Second, Sixth, Seventh, Ninth, Tenth, or D.C. Circuits, those courts would have reviewed Petitioner’s arguments *de novo*,” each of those courts has recognized that where a defendant fails to renew his motion at the close of all evidence, *de novo* review does not apply. See, e.g., *United States v. Freitas*, 904 F.3d 11, 23 (1st Cir. 2018); *United States v. Finley*, 245 F.3d 199, 202 (2d Cir. 2001), cert. denied, 534 U.S. 1144 (2002); *United States v. Morrow*, 977 F.2d 222, 230 (6th Cir. 1992), cert. denied, 508 U.S. 975 (1993); *United States v. Hickok*, 77 F.3d 992, 1002 (7th Cir.), cert. denied, 517 U.S. 1200 (1996); *United States v. Porter*, 928 F.3d 947, 955 (10th Cir. 2019); *United States v. Lopesierra-Gutierrez*, 708 F.3d 193, 206 (D.C. Cir.), cert. denied, 571 U.S. 928 (2013).

The Third Circuit follows the same approach. See, e.g., *United States v. Fields*, 347 Fed. Appx. 782, 785 (2009), cert. denied, 562 U.S. 903 (2010) (“If a defendant fails to renew his motion for judgment of acquittal at the close of the defense’s case, the alleged insufficiency of the evidence with respect to the essential elements of

the offense must constitute plain error in order to warrant reversal.”) (internal quotation marks omitted); see also *United States v. Anderson*, 108 F.3d 478, 480 (3d Cir.), cert. denied, 522 U.S. 843 (1997); *United States v. Barel*, 939 F.2d 26, 31 (3d Cir. 1991); *United States v. Wright-Barker*, 784 F.2d 161, 170-171 (3d Cir. 1986). Petitioner emphasizes (Pet. 3-4, 19-20) the government’s statement in its brief below that this case “present[ed] an opportunity for the Court to resolve the ‘open question’ of the ‘standard for preserving an argument on a Rule 29 motion.’” Gov’t C.A. Br. 22 (citation omitted). But that does not mean that was the only ground on which the case could be resolved. Much less does it mean that this Court’s review would be appropriate. See *Supervisors v. Stanley*, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to “decide abstract questions of law \* \* \* which, if decided either way, affect no right” of the parties); see also *Upper Skagit Indian Tribe v. Lundgren*, 584 U.S. 554, 560 (2018) (the Court may “affirm on any ground supported by the law and the record that will not expand the relief granted below”).

Second, the resolution of the question presented would almost certainly be inconsequential for the additional reason that the court of appeals appears to have ultimately found that the district court committed no error at all, see p.7, *supra*, such that it would affirm even if the plain-error standard did not apply. The court of appeals invoked plain-error review only in a single place, declining to “entertain” petitioner’s proposed “novel requirement” that 18 U.S.C. 1028(A) “demands proof of pecuniary or reputational harm” for aggravated identity theft. Pet. App. 33a-34a. But the court did so only after finding that the argument was, “to put it kindly, a

stretch.” *Id.* at 33a; see *id.* at 31a-34a. It then stated that, “[a]t all events, even if we were inclined to entertain petitioner’s novel requirement, we decline to do so here under plain-error review.” *Id.* at 34a. It is therefore, at a minimum, far from clear that the court of appeals would find any error were it to review the issue de novo.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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