No. 25-6158

IN THE

SUPREME COURT OF THE UNITED STATES

John Nock
(Your Name) — PETITIONER

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Nock
(Your Name)

P.O. Box 7000
(Address)

Texarkana, Texas 75505
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER THE DISTRICT COURT'S REFUSAL TO APPOINT SUBSTITUTE COUNSEL VIOLATED MR. NOCK'S SIXTH AMENDMENT RIGHT TO EFFECTIVE REPRESENTATION?

2. WHETHER THE DISTRICT COURT VIOLATED MR. NOCK'S FIFTH AMENDMENT RIGHT TO DUE PROCESS BY ALLOWING A LAY WITNESS TO PROVIDE EXPERT TESTIMONY?

3. WHETHER THE DISTRICT COURT'S CALCULATION OF LOSS AMOUNT CONFLICTS WITH PRECEDENCE ESTABLISHED BY OTHER CIRCUITS AND THE SUPREME COURT?

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

United States v. Brian Brittsan, 24-1713 (8th Cir. 2025)

United States v. Kevin Griffith, 24-1714 (8th Cir. 2025)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

■ For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
■ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

■ For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was August 7, 2025.

■ No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment 5

Amendment 6

STATEMENT OF THE CASE

John Nock ("Nock") was named along with three other defendants in a 12-count indictment that charged conspiracy to commit wire fraud, 18 U.S.C. § 1349; wire fraud, 18 U.S.C. § 1343; conspiracy to commit money laundering, 18 U.S.C. § 1956(h); and money laundering, 18 U.S.C. § 1957. Dkt.1.

Pretrial

Attorney Ken Osborne ("Osborne") was appointed to represent Mr. Nock on March 23, 2022. Dkt. 19. On June 26, 2023, approximately two months before trial was scheduled to begin, Mr. Nock filed a pro se Motion to Appoint New Counsel, citing lack of preparation and a total lack of communication. Dkt. 70.

Two days later, a hearing was held on the Motion before the Honorable Chief Magistrate Judge Christy D. Comstock. During the hearing, Mr. Nock complained that Osborne was not preparing for trial. He stated that Osborne had not communicated with him, other than to direct Nock to "sit tight" Pre Tr. at 12. Nock advised that the number of documents provided by the prosecution were voluminous, that Osborne had not reviewed a single document and had not provided any of the discovery to the Defendant. Pre Tr. at 12-14.

In response, Osborne acknowledged that, with approximately sixty days to go before trial, he had not begun to take any substantial steps to prepare for trial and would not begin to do so until the government "pare[d] down their witness list." Pre. Tr. at 6. Although Osborne claimed that he had spoken with the other defendant's counsel, he had not met with them in person and did not know what, if any preparation had been conducted by the other attorneys for trial. Pre. Tr. at 18. Despite the fact that this case was described by the prosecution "a very complex, large international fraud scheme" that was "very difficult to detect and to investigate, and to prosecute [which] took significant resources over many years" [S. Tr. at 50], Osborne assured the Magistrate that trial would be " a straight forward credibility case" and that he was fully prepared to try it. Pre. Tr. at 22; Dkt. 72 at 2.

With no demonstration whatsoever that Osborne was, or could be, prepared to defend his client at trial, which was scheduled to commence in less than fourteen days, the Magistrate denied the motion, stating that she had "to keep the train on tracks and to prevent delay."

Trial

One of the Prosecution's main witnesses against Mr. Nock was a Special Agent of the Internal Revenue Service, Nathaniel Nantze ("Nantze"). He was presented to the jury as a lay witness under

Fed. R. Evid. 701 and was not qualified to testify as an expert. His testimony was intended to read emails and documents and answer questions about them.

Among the documents reviewed by Nantze was Exhibit 116, which referenced the Royal Bank of Scotland (RBS) and Nock Holdings and identified Mr. Nock as a "beneficial owner" of large sums of money. Nantze interpreted the document for the jury as representing that there was "absolutely nothing that's stopping [Nock] from doing what [he] wanted to do with this money." Tr. Vol. 2 at 215. Nantze later stated that a beneficial owner means an owner who has control over a bank account or asset and further testified that there was a potential difference between control and ownership. Tr. Vol. 3 at 237.

Nantze reviewed emails and documents relating to wire transfers, detailing the procedure whereby investor's money traveled through various bank accounts. Tr. Vol. 5 at 8-22.

Nantze interpreted the legal effect of the Memorandum of Understanding (MOU) between the defendants and investors and advised that the MOU and other agreements did not permit the defendants to utilize the investor funds in the manner that had been described to the jury. Tr. Vol. 3 at 178-179. He interpreted another clause as a guarantee by Nock as an assurance

that investors would receive "100 percent return on [their] investment every week." Tr. Vol. 3 at 179-180. In so doing, he ignored other caveats in the agreements which stated that the estimated returns were "provided on a best-effort basis" and testified that the defendants did not comply with the terms of the contract. Id. Neither Nock nor the other defendants were to be handling the investments, but were trained instead to place investment funds per contract.

In a number of instances, Nantze summarized emails and provided his interpretation of the intent behind them: he claimed that a defendant was attempting to justify the movement of funds (Tr. Vol. 3 at 82-83), that the defendants were concerned about money laundering (Tr. Vol. 3 at 96), that Mr. Nock not responding properly when questioned by a potential investor (Tr. Vol. 2 at 208), and Nantze opined that one email contained "lulling language" (Tr. Vol. 5 at 191).

Mr. Nock was convicted on all charges. Tr. Vol. 9 at 6-11. After trial, Nock filed a second pro se motion complaining of the ineffective assistance provided both before and during trial. This time, the Magistrate agreed and dismissed Osborne from representation.

Sentencing

A sentencing hearing was held on March 14, 2024. Among the objections to the Presentence Investigation Report, Mr. Nock argued that the Base Offense Level in his sentencing calculation was improperly increased by two levels based on the addition of $7.5 million that was placed in a escrow account but was then returned to the investor. S. Tr. at 11-12. The Court overruled all of Nock's objections, S. Tr. at 15-18, 21-23, 26-28, and 31-38. Sentence was imposed below the calculated Guidelines sentencing range to at term of 250 months imprisonment.

REASONS FOR GRANTING THE PETITION

1. THE DISTRICT COURTS REFUSAL TO APPOINT SUBSTITUTE COUNSEL VIOLATED MR. NOCK'S SIXTH AMENDMENT RIGHT TO EFFECTIVE REPRESENTATION.

Mr. Nock respectfully submits that a writ of certiorari is warranted on this issue whereas the United States Court of Appeals for the Eight Circuit has upheld a decision of the lower district court that is in direct conflict with relevant decisions of this Honorable Court in the matters of Wheat v. United States, 486 U.S. 153, 100 L. Ed. 2d 140, 108 S. Ct. 1692 (1988) and Morris v. Slappy, 461 U.S. 1, 103 S. Ct. 1610, 75 L. Ed. 2d 610 (1963).

"The Sixth Amendment to the Constitution guarantees that '[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense" ' Wheat v. United States, 486 U.S. at 159 (alteration and ellipsis in original). In cases such as the one at bar, where the defendant was unable to use his own funds to secure counsel, "the Sixth Amendment secures the right to the assistance of counsel, by appointment if necessary, for any serious crime." Id. (citing Gideon v. Wainwright, 372 U.S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792 (1963)).

In this case, Mr. Nock was unable to secure counsel of his choice because his funds had been frozen at the beginning of the proceedings. Accordingly, attorney Ken Osborne was appointed under the Criminal Justice Act to represent him. Fifteen months after defense counsel was appointed, and approximately 60 days before trial was scheduled to begin, Mr. Nock filed a Pro Se Motion to Appoint New Counsel. In so doing, and in the hearing on the matter, Mr. Nock stated that counsel had yet to begin preparing for trial and could not possibly be ready within the time remaining to prepare. Nock advised that the discovery documents provided by the prosecution contained thousands of pages of documents, the majority of which were obtained from his place of business. He stated that counsel had refused numerous requests to meet and review the documents and expressed the belief that doing so was critical to the defense because Nock was intimately familiar with each document. He further noted that Osborne had not generated any witness list, filed no motions, and had not even discussed the indictment with his client.

Attorney Osborne acknowledged that he had conducted no meaningful preparation for trial at that point other than to contact the other attorneys and the prosecution. He acknowledged that he had not met with his client to discuss the discovery materials, but advised that he had not prevented Mr. Nock from stopping by his office if his client wished to do so. Counsel

further admitted that he had not reviewed the voluminous discovery materials, that he had no intention to do so, and that he was waiting on the prosecution to reduce their witness list before beginning trial preparation. Nevertheless, Osborne stated that the case was straightforward and he was ready to proceed to trial.

In upholding the Magistrate's denial, the United States Court of Appeals found that Nock had not demonstrated a justifiable dissatisfaction with Osborne. Acknowledging that Nock and Osborne had different opinions about the length of time required to prepare for a defense, the appellate court felt that "the reality [is] that a person accused of crime is often genuinely unhappy with an appointed counsel who is nonetheless doing a good job." United States v. Nock, Slip. Op. *6 (quoting United States v. Borrow, 287 F.3d 733, 738 (8th Cir. 2013)).

Mr. Nock respectfully submits that reasoning of the Magistrate and appellate court in this matter contradict this Court's precedence. While the Magistrate focused on the attorney's reputation and assurance that he was about to roll up his sleeves and get to work, the Court of Appeals focused on Nock's general dissatisfaction with Osborne. Both of these decisions ignore this Court's admonition that "the appropriate inquiry focuses on the adversarial process, not the accused's

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relationship with his lawyer as such." Wheat, 486 U.S. at 159 (quoting United States v. Cronic, 466 U.S. 648, 657, n. 21, 80 L. Ed. 2d 657, 104 S. Ct. 2039 (1984)).

In denying Mr. Nock's request for new counsel, the Magistrate acknowledged that Osborne had conducted no preparation for trial other than to speak with other attorneys involved with the case. Stating Osborne's reputation with the court as an efficient attorney, the Magistrate determined it was her responsibility to "keep the train on the tracks and to prevent delay." United states v. Nock, Slip. Op. at 5. However, this unreasoned "insistence upon expeditiouseness in the face of a justifiable request for delay" violates a defendant's rights for adequate representation Morris v. Slappy, 461 U.S. at 11-12 (quoting Ungar v. Sarafite, 376 U.S. 575, 589, 11 L. Ed. 2d 921, 84 S. Ct. 841 (1964)). It is worthy of note, however, that the same Magistrate agreed with Nock's complaint after trial had concluded and dismissed Osborne after the defendant renewed his complaint.

In Slappy, defense counsel, who had mere days to prepare for a defense, was found to be constitutionally adequate for the task whereas he spent days reviewing the files and investigation notes, conferred with his client for three hours, and met with him twice again on the following day. 401 U.S. at 6. In

contrast, the attorney in the case at bar had done none of these things, despite the fact that this was labeled by both the district court and prosecution as one of the more complex cases in the district's history with international parties and witnesses and multiple dealings covering a span of seven years.

2. THE DISTRICT COURT VIOLATED MR. NOCK'S FIFTH AMENDMENT GUARANTEE OF DUE PROCESS BY ALLOWING A LAY WITNESS TO PRESENT EXPERT TESTIMONY

Under Rule 701 of the Federal Rules of Evidence, a lay witness may offer opinions that are "(a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on specific, technical, or other specialized knowledge within the scope of Rule 702. However, a witness may only testify to a matter if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Fed. R. Evid. 602.

Based on a reading of these two provisions conjunctively, appellate courts have consistently held Rule 701 requires that inference or opinion be rationally based on the perception of lay witness and personal knowledge is required by Rule 602 as a basis for all lay testimony. See, Gravely v. Providence Partnership, 549 F.2d 958 (4th Cir. 1977); United States v. Smith, 550 F.2d

277 (5th Cir.) cert. denied, 434 U.S. 841, 89 S. Ct. 138, 54 L. Ed. 2d 105 (1977); Farner v. Pacar, Inc., 562 F. 2d 518 (8th Cir. 1977); United States v. Jaxaca, 569 F. 2d 518 (9th Cir.) Cert. denied, 439 U.S. 926, 99 S. Ct. 310, 58 L. Ed. 2d 319 (1978).

Mr. Nock respectfully submits that a Writ of Certiorari should issue on this issue whereas the decision of the Eighth Circuit Court of Appeals contradicts legal Precedence in its own and other circuits.

IRS Special Agent Nathaniel Nantz was not qualified as an expert; his qualifications were not discussed in any detail, yet his testimony far exceeded the scope permitted under Rules 701 and 604. He testified to legal conclusions, interpreted emails, interpreted bank documents, evaluated credibility, and endorsed the government's case. He repeatedly rendered inadmissible opinions and invaded the province of the jury, and his position as a federal agent and the prosecution's main witness endowed his interpretations with inflated credibility.

3. THE DISTRICT COURT'S CALCULATION OF THE LOSS AMOUNT BASED ON THE INTENDED LOSS RATHER THAN ACTUAL LOSS CONFLICTS WITH PRECEDENCE IN OTHER CIRCUITS AND THE SUPREME COURT.

Mr. Nock respectfully submits that a Writ of Certiorari should issue to settle a dispute between the circuits following

this court's decision in Kisor v. Wilke, 588 U.S. 558, 139 S. Ct. 2400, 204 L. Ed. 2d 841 (2019).

The sentencing court erred when it used the "intended loss" rather than the "actual loss" in determining the proper loss amount for the guideline calculation that resulted in a two-level increase in offense level under the sentencing table of guideline § 2B1.1. S. Tr., at 9-18. As a result, the loss amount for sentencing guideline purpose should have been $18,652,916.00 and not the $26,152,916.00 figure used as sentencing. S. Tr., at 15-18. The addition of roughly $7.5 million raised the Offense Level by two points and increased the advisory sentencing range by sixty-two months.

The difference came from an amount of funds that were placed in escrow and could only be retrieved when a transaction was finalized and met certain predetermined criteria. This standard business practice is actually intended to prevent fraud.

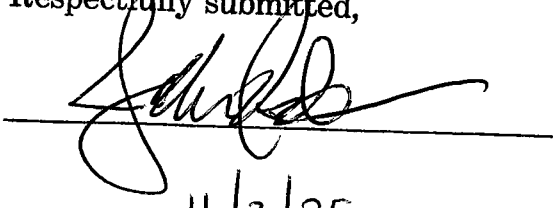
The sentencing court dismissed Nock's urging the court to follow the nonbinding precedent for this Circuit established in United States v. Banks, 55 F.4th 246 (3rd Cir. 2022) that, "in the context of a enhancement for basis economic offenses, the ordinary meaning of the word 'loss' in the loss the victim actually suffered." Id. at 258. While the court dismissed the

out of Circuit case Banks, stating that other courts, "carefully analyzed it and found that Banks was wrong" it ignored other legal precedent that spoke favorable with the underlying logic in Banks. S. Tr., at 12. See, United States v. Wheeler, No. 5:22-CR-38-FL-1, 2023 U.S. Dist. LEXIS 116405, *5 (E.D.N.C. July 6, 2023) (Rejecting government argument to decline to follow Banks and follow prior Fourth Circuit precedent Pre-Kisor for following guideline commentary); United States v. Kirschner, 995 F.3d 327, 333 (3d Cir. 2021)(Noting that at least some of the commentary to § 2B1.1 "sweeps more broadly than the plain text of the Guideline"); United States v. Kirilyuk, 29 F. 4th 1128, 1138 (9th Cir. 2022) (Case, "illustrates the egregious problem with the Application Note's expansion of the meaning of 'loss'" in rejecting strict interpretation of application note and noting, "Instead, § 2B1.1 is driven by 'the amount of loss caused by the crime'")(quoting United States v. Gainza, 982 F. 3d 762 (9th Cir. 2020)(emphasis added) United States v. Riccardi, 989 F. 3d 476, 481 (6th Cir. 2021)("Notwithstanding the importance of the 'loss' amount to a proper application of § 2B1.1(b)(1), the "guideline itself leaves this critical word undefined.") In the immediate case, the actual loss allegedly attributable to Nock is a precise and actual number that can be attributed to the alleged conspiracy and is more rooted in fact than the amount of "intended loss" argued by the government and agreed to by the sentencing judge. "Only" the actual loss should have formed the baseline for the sentencing calculation here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 11/3/25