No. 25-6158

IN THE SUPREME COURT OF THE UNITED STATES

JOHN NOCK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.



REPLY BRIEF FOR PETITIONER

REPLY

The Government's Brief in Opposition attempts to portray this case as a fact-bound disagreement over discretionary rulings. It is not. The petition presents three recurring and nationally significant federal questions:

Whether the Sixth Amendment permits a court to force a defendant to trial with appointed counsel who admits he has not undertaken meaningful preparation in a complex federal prosecution.

Whether federal agents may, under the guise of lay testimony, interpret contracts, characterize intent, and supply legal conclusions without objection and without meaningful appellate review.

Whether, after Kisor v. Wilkie, 588 U.S. 558 (2019), courts may continue to defer to Sentencing Guidelines commentary expanding the definition of "loss" beyond the text of § 2B1.1.

These questions implicate structural features of federal criminal adjudication and warrant this Court's review.

I. The Sixth Amendment Issue Demonstrates Structural Failure of the Adversarial Process

The Government characterizes petitioner's request for substitution of counsel as mere dissatisfaction. That characterization is inconsistent with the record.

Appointed counsel admitted that he had not completed meaningful preparation in a complex, multi-year financial prosecution involving numerous transactions and international components. Despite petitioner's repeated warnings that counsel was unprepared, substitution was denied principally to avoid delay. Trial proceeded.

The constitutional deficiency manifested in a concrete and devastating way: the complete failure to investigate and deploy the foundational compliance package (Exhibit E), which was the genesis of all client transactional agreements.

Exhibit E documented:

Client authorization of the transactions;

Express risk acknowledgment;

Sophisticated-party status;

Transactional structure and anticipated financial mechanisms;

That profits were to arise from Special Financial Entities rather than guarantees by petitioner.

This compliance package was serially omitted from evidentiary presentation and never meaningfully used to test the prosecution's theory of fraudulent intent. The jury never saw it. The adversarial process never confronted its contents.

A competent attorney reviewing that document would have:

Filed targeted pretrial motions addressing intent;

Challenged the scope and framing of the indictment;

Restricted the government investigator's interpretive testimony;

Prevented narrative conclusions from substituting for proof.

The failure here was not strategic. It was structural. Under United States v. Cronic, 466 U.S. 648 (1984), when counsel fails to subject the prosecution's case to meaningful adversarial testing, prejudice is presumed. This case presents precisely that scenario.

The later removal of counsel post-trial, following renewed complaints concerning lack of preparation and communication, confirms that petitioner's concerns were not speculative.

The Sixth Amendment guarantees an adversarial proceeding—not merely the physical presence of an attorney.

II. Rule 59(a) Does Not Bar Review of Structural Constitutional Violations

The Government relies heavily on Rule 59(a) waiver. Procedural default principles cannot insulate structural Sixth Amendment violations from review.

The constitutional injury occurred at trial—when an unprepared defense confronted a fully developed federal prosecution. Even assuming arguendo a technical waiver, Rule 59(a) cannot extinguish structural constitutional protections.

The denial of prepared counsel implicates the integrity of the adversarial process itself.

III. The Lay-Witness Question Presents a Recurring National Issue

The Government minimizes the Rule 701 issue as isolated. It is not.

The lead investigator interpreted contracts, characterized communications as "lulling," and supplied conclusions regarding intent—all while testifying as a lay witness. This growing practice allows federal agents to provide interpretive gloss that risks supplanting the jury's role.

The Eighth Circuit reviewed under plain-error standards, but the underlying legal question remains unresolved: what are the constitutional and evidentiary limits when investigators function as narrators of legal meaning?

Absent guidance from this Court, federal trials risk permitting law enforcement witnesses to deliver quasi-expert conclusions under Rule 701.

IV. The Loss-Calculation Question Reflects a Post-Kisor Circuit Division

The Government acknowledges that Kisor governs deference to agency commentary but contends no conflict warrants review.

The Third Circuit has held that the definition of "loss" in § 2B1.1 does not unambiguously include intended loss. United States v. Banks, 55 F.4th 246 (3d Cir. 2022). Other circuits defer to commentary expanding the definition.

This division remains consequential. The application of intended loss increased petitioner's offense level and expanded the advisory sentencing range substantially. The Sentencing Commission's subsequent amendment does not resolve the split retroactively.

Whether guideline commentary may expand text after Kisor remains a nationally recurring sentencing issue.

V. This Case Presents a Clean Vehicle for Review

Each issue was squarely presented and resolved below:

The Sixth Amendment claim was directly addressed.

The Rule 701 issue was analyzed.

The loss-calculation question was resolved under circuit precedent.

These are legal questions of structural and national importance, not factbound disputes.

CONCLUSION

For the foregoing reasons, and those stated in the Petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

John Nock

Petitioner, Pro Se

Prisoner ID No. 92534-509

FCI Texarkana

P.O. Box 7000

Texarkana, Texas 75505

Date: March 4, 2026