No. ____________________

IN THE SUPREME COURT
OF THE UNITED STATES

ANDREW N. MACRITCHIE, AKA ANDREW MACRITCHIE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Ninth Circuit's "prophylactic" rule barring a defendant from introducing any evidence of individual investor behavior to disprove the materiality or intent elements of wire fraud is foreclosed by this Court's precedent and violates a defendant's due process rights.

PARTIES TO THE PROCEEDINGS

Petitioner is Andrew MacRitchie, who was the appellant in the court below. Respondent, the United States of America, was the appellee in the court below.

RELATED PROCEEDINGS

United States Court of Appeals for the Ninth Circuit: *United States v. MacRitchie*, Nos. 23-2308, 24-5402 (Sep. 5, 2025).

United States District Court for the District of Oregon: *United States v. MacRitchie*, 3:20-CR-00228-SI-3 (May 20, 2025).

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The Ninth Circuit's opinion is published at 152 F.4th 924 (9th Cir. 2025), and is reprinted in the Appendix to the Petition ("Pet. App.") at 1a-57a.

JURISDICTION

The Ninth Circuit entered its judgment on September 5, 2025. Pet. App. 43a. A timely petition for rehearing was denied on December 29, 2025. Pet. App. 78d. On March 27, 2026, this Court extended the time to file for a writ of certiorari until May 28, 2026. This petition is timely under Supreme Court Rule 13.3. This Court has jurisdiction under 28 U.S.C. §1254(1).

RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

Fifth Amendment

> No person shall be . . . deprived of life, liberty, or property, without due process of law[.]

Sixth Amendment

> In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Federal Wire Fraud Statute 18 U.S.C. § 1343

> Whoever, having devised or intended to device any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

INTRODUCTION

This petition is related to the pending writ of certiorari in *Jesenik v. United States*, which appeals from the same Ninth Circuit decision and raises substantially similar issues to Mr. MacRitchie. Mr. MacRitchie and Mr. Jesenik were codefendants in the six-week trial below. Mr. MacRitchie incorporates Mr. Jesenik's petition by reference.

In *United States v. Lindsey*, out of concern that evidence of individual lender behavior could "easily" touch on impermissible defenses—such as lender negligence, intentional disregard of false statements, or lack of actual reliance—the Ninth Circuit announced a "prophylactic" prohibition of all such evidence to disprove materiality. *See* 850 F.3d 1009, 1017–18 (9th Cir. 2017). In *United States v. Jesenik*, however, the Ninth Circuit vastly expanded *Lindsey*'s scope to bar *all* evidence of individual investor behavior, including the intentional disregard of *truthful* disclosures, to disprove intent and materiality. Pet. App. 34a–39a.

The Ninth Circuit's ruling is in tension with this Court's precedent and departs from its sister circuits. Without this Court's intervention, defendants in the Ninth Circuit will face wire fraud charges—and, by extension, any federal criminal charge with a materiality element—without the benefit of evidence accessible to defendants in other jurisdictions. That cannot be. This Court should correct the Ninth Circuit and vacate Mr. MacRitchie's conviction.

STATEMENT OF THE CASE

A. Legal Background

1. This Court has narrowly construed the federal wire fraud statute.

This Court has cabined the reach of the wire fraud statute, consistent with its aversion to broadly construing federal criminal statutes absent clear congressional intent. *See, e.g.*, *Ciminelli v. United States*, 598 U.S. 306, 316 (2023) (rejecting government's right-to-control theory of wire fraud); *Kelly v. United States*, 590 U.S. 391, 403 (2020) ("Federal prosecutors may not use property fraud statutes to 'set[ ] standards of disclosure and good government for local and state officials.'"); *Skilling v. United States*, 561 U.S. 358, 403–12 (2010) (construing honest services fraud narrowly); *Cleveland v. United States*, 531 U.S. 12, 26–27 (2000) (rejecting government argument that the "property" element of the mail fraud statute should encompass state-held licenses); *McNally v. United States*, 483 U.S. 350, 359–60 (1987) (confining fraud statutes to protect property rights only).

In *Kousisis v. United States*, this Court further narrowed the reach of the wire fraud statute, in particular emphasizing that "[t]he 'demanding' materiality requirement substantially narrows the universe of actionable misrepresentations." 605 U.S. 114, 135 (2025). Evidence of the investor's "actions" or "behavior" may constitute "strong evidence" of the materiality *vel non* of an alleged misrepresentation. *Kousisis*, 605 U.S. at 139 (Thomas, J., concurring).

2. The Ninth Circuit's "prophylactic" rule precludes a defendant from introducing evidence of investor behavior to prove materiality

The Ninth Circuit in *United States v. Lindsey*, a mortgage fraud case, concerned that "evidence of individual lender behavior can easily touch on lender negligence, intentional disregard, or lack of reliance—none of which is a defense to mortgage fraud," announced a "prophylactic rule against all evidence of individual lender behavior" as a defense to wire fraud. 850 F.3d at 1017–18. In its opinion below, the Ninth Circuit expanded that rule to prohibit a defendant from introducing *any* evidence of individual investor behavior to contest *any* element of wire fraud. *See* Pet. App. 38a.

B. Factual and Procedural Background

Mr. MacRitchie was the Chief Compliance Officer at Aequitas, a company that marketed private credit investments to sophisticated investors and their financial advisors. Mr. MacRitchie appeals from his wire fraud convictions after a six-week trial with two codefendants in the United States District for the District of Oregon.

1. District Court Proceedings

On April 3, 2023, Mr. MacRitchie went to trial with co-defendants Robert Jesenik, the company's CEO, and Brian Rice, a vice president in charge of sales to Registered Investment Advisors ("RIAs"). The government claimed investors were told in oral sales pitches and marketing materials that their funds were being used to purchase credit receivables when, in fact, the money was also being used to operate the company and redeem investors. The investments were governed by Regulation D of the Securities Act and therefore marketed only to accredited investors interested in specialized "alternative investments." The government's witnesses—including professional RIAs with fiduciary duties to perform due diligence—testified that they ignored written transaction documents and financial statements that disclosed all the information the government claimed was hidden.

Mr. MacRitchie attempted to defend himself by arguing that he believed all information was accurately conveyed in a manner that Aequitas's sophisticated target audience would readily understand, and in good faith reliance on the advice of counsel and accountants. There was ample evidence that the disclosure documents revealed everything the government claimed was omitted from sales pitches and marketing materials. Yet, based on its interpretation of the Ninth Circuit's decision in *Lindsey*, the district court instructed the jury that an investor or investment advisor's "disregard[] [of] information" is "not a defense," Pet. App. 82e, and the government argued to the jury that "[y]ou cannot disclose away fraud," Pet. App. 116h; *see also* Pet. App. 119i. These instructions and arguments erroneously instructed the jury to not consider truthful disclosures as to any issue, allowed the jury to convict on an invalid legal theory, and fundamentally undermined Mr. MacRitchie's right to a fair trial.

Also based on *Lindsey*, the district court permitted the government to elicit testimony that RIAs relied on marketing materials and oral representations without consulting the written transaction documents—even though such reliance would have been contrary to their fiduciary obligations and federal regulations—and then barred Mr. MacRitchie from challenging this subjective and misleading materiality evidence because doing so would constitute improper "victim blaming." C.A.E.R. Vol 1 at 216-17.

The jury deliberated for four days, returning mixed verdicts. C.A.E.R. Vol. 18 at 4649. It found Mr. MacRitchie guilty of Counts 1 to 29 (the wire fraud-related counts) and acquitted him of Count 30 (conspiracy to commit money laundering). C.A.E.R. Vol. 7 at 1675–92. It also found Mr. Jesenik only guilty of Count 31 (bank fraud), with which Mr. MacRitchie was not charged. *Id.*

At sentencing, the government sought a 17.5-year sentence for Mr. MacRitchie. *See* C.A.E.R. Vol. 4 at 959. The district court found Mr. MacRitchie had no criminal history, rejected the government's requests to apply aggravated role and perjury enhancements, and sentenced Mr. MacRitchie to 70 months' imprisonment. C.A.E.R. Vol. 2 at 376–77. Mr. MacRitchie self-surrendered to FCI Otisville on January 4, 2024. His projected release date is December 25, 2027.

2. Ninth Circuit Proceedings

Mr. MacRitchie appealed, and the Ninth Circuit affirmed. On appeal, Mr. MacRitchie argued the district court's interpretation of *Lindsey* was inconsistent with both this Court's and the Ninth Circuit's precedent, prevented him from presenting a complete defense as to the specific intent and materiality elements of wire fraud, and violated his constitutional rights.

In *United States v. Jesenik*, the Circuit held the district court had not erred in curtailing Mr. MacRitchie's cross examination of the investor witnesses' testimony that they had not reviewed disclosure documents to disprove materiality based on *Lindsey*. Pet. App. 34a-37a. But the Ninth Circuit then impermissibly expanded *Lindsey*, holding that its prohibition against individual investor behavior evidence equally bars defendants from using such evidence "to show whether the defendants had an intent to defraud." Pet. App. 38a. The Court likewise affirmed the district court's jury instruction that "[i]t is not a defense to a charge of mail or wire fraud . . . that an investor or registered investment advisor may have been gullible, careless, naive, or negligent or *even that an investor or registered investment advisor intentionally disregarded information*," because that instruction was "drawn from *Lindsey*" and "'negligence' is not a defense to wire fraud." Pet. App. 39a-40a (emphasis added).

Mr. MacRitchie joined his codefendant, Mr. Jesenik's, petition for rehearing en banc. Pet. App. 65c–76c. The Ninth Circuit denied the petition. Pet. App. 77d-78d.

REASONS FOR GRANTING THE WRIT

The Ninth Circuit's "bright-line" rule against all evidence of individual investor behavior effectively vitiates the critical protection afforded by the materiality element. *Kousisis*, 605 U.S. at 135 (noting the need for a "demanding" materiality standard). Although animated by a legitimate concern, the Ninth Circuit's rule in *Lindsey*, as applied since, goes too far. *See* 850 F.3d at 1017 (stating that, because "evidence of individual lender behavior can easily touch on lender negligence, intentional disregard, or lack of reliance . . . a bright-line rule against evidence" of individual behavior is necessary). In *United States v. Jesenik*, the Ninth Circuit treated *Lindsey* as a categorical bar against *all* evidence of individual investor behavior to disprove *any* element—including evidence that would tend to disprove intent or to impeach witness testimony that the alleged misstatements influenced their decision-making. By categorically barring defendants from challenging the government's evidence of individual investor behavior, the Ninth Circuit unconstitutionally infringed on Mr. MacRitchie's rights under the Fifth Amendment.

There is an urgent need for this Court's intervention. The Ninth Circuit's categorical bar conflicts with the law in other Circuits, implicates all federal crimes with a materiality element, and imperils the constitutional rights of defendants within its jurisdiction. Because the issue has been clearly presented and preserved below, this case presents the ideal opportunity for this Court's review.

For these reasons, and the reasons stated in codefendant Robert Jesenik's petition, this Court should issue a writ of certiorari, correct the Ninth Circuit's blanket evidentiary prohibition, and vacate Mr. MacRitchie's conviction.

A. The Ninth Circuit's Rule is in Tension with Supreme Court Precedent

In *Jesenik*, the Ninth Circuit treated *Lindsey* as categorically prohibiting all individual investor behavior evidence as to any element of wire fraud, including evidence that specific witnesses intentionally disregarded *truthful* disclosures that accompanied the purportedly false statements and evidence otherwise challenging those witnesses' credibility. That created two problems. First, it hamstrung Mr. MacRitchie's defense as to specific intent—namely, his good-faith belief that the alleged misstatements were accurate in light of the fulsome, attorney-approved disclosures that accompanied them, and would have been understood by the sophisticated accreditor investors to whom they were directed. Second, it prevented Mr. MacRitchie from challenging the credibility of the government's witnesses, including their testimony as to whether the alleged misstatements would have "a natural tendency to influence" other members of "the decisionmaking body to which [they were] addressed." *Neder v. United States*, 527 U.S. 1, 16 (1999).

As applied below, its "prophylactic" rule also allowed the government to elicit *subjective* viewpoint testimony that fundamentally misled the jury as to how an average member of the relevant audience—here, accredited investors and their professional RIAs—would have *objectively* understood Mr. MacRitchie's statements. *See Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013) ("[M]ateriality is judged according to an objective standard."). Mr. MacRitchie, however, was entitled to challenge the government's proof that his alleged misstatements (1) were intended to be false or misleading, and (2) likely to drive their recipients' decisionmaking. This includes, to the extent the government chooses to elicit actual reliance testimony, his right to impeach the witnesses' credibility insofar as they testified they, in fact, relied on the alleged misstatements. *See Giglio v. United States*, 405 U.S. 150, 154–55 (1972) (discussing a defendant's right under the Due Process Clause to present evidence tending to undermine a government witness's credibility to the jury).

Although individual investor behavior evidence could be offered for impermissible purposes—such as to argue victim negligence or intentional disregard of *false* statements—it could also be offered for narrower, and proper, purposes. As this Court has acknowledged, "[a] party's actions may reveal that a contract term is not material even if the contract's language would suggest otherwise," or may otherwise serve as circumstantial evidence of how that statement would have affected a typical member of the group to whom it was addressed. *Kousisis*, 605 U.S. at 139 (Thomas, J., concurring). Here, for example, evidence that the individual witness intentionally disregarded *truthful* statements that accompanied the purportedly false statement—and dispelled any falsity—would tend to disprove that a misrepresentation was made and, relatedly, to prove a defendant's good faith. Likewise, such evidence would call into question whether others reading the alleged misstatement would have also been influenced by it, alongside the truthful disclosures. Evidence that a witness intentionally disregarded *truthful* information, moreover, tends to undermine that person's reliability as a representative of the audience to whom the statements, taken together, were addressed.

In the context of the False Claims Act, this Court found lender behavior to be highly relevant to materiality, and that evidence of the government's subjective reliance supported materiality while evidence of its subjective non-reliance was "very strong evidence" of a lack of materiality. *See Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 193, 195 (2016). Although the Ninth Circuit incorrectly reasoned that evidence relating to materiality under the False Claims Act should be treated differently than evidence relating to materiality under the wire and mail fraud statutes, this Court has since indicated that the same standard applies in both contexts, *see Kousisis*, 605 U.S. at 131–32, 140–41 (citing *Universal Health Services*, 579 U.S. at 193).

B. The Ninth Circuit's Rule Conflicts with Other Circuits' and Creates Due Process Disparities

The practical effect of the Ninth Circuit's "prophylactic" rule is that a defendant prosecuted elsewhere may resist or challenge the government's individual investor behavior evidence—and be acquitted—while a defendant in the Ninth Circuit may not. The Second Circuit, for example, recognizes that "[i]t can hardly be the law that the 'point of view' . . . of an investor who is admitted to be wrong . . . is relevant to prove what a reasonable investor . . . would have deemed important."

United States v. Litvak, 889 F.3d 56, 69 (2d Cir. 2018) (reversing securities fraud conviction where government relied on witnesses' subjective testimony about the significance of defendant's misstatements, but that particular trader's viewpoint differed from how reasonable investors in particular market viewed issue).

Indeed, no other circuit has adopted a bright-line, prophylactic rule against defendants' use of individual investor behavior evidence. The Fourth Circuit expressly declined the opportunity to do so. *See United States v. Raza*, 876 F.3d 604, 621 (4th Cir. 2017) (agreeing with the Ninth Circuit that materiality is an objective standard but noting that it "need not go so far" as to "bar[] evidentiary use of a lender's past lending practices on the materiality issue").

The Seventh, Fourth, and Third Circuits are also in conflict with the Ninth Circuit, as they all recognize, in line with this Court's precedent, that the materiality standard articulated in *Universal Health Services* applies in the wire fraud context. *See United States v. Clark*, 140 F.4th 395, 418 (7th Cir. 2025) (citing *Universal Health Services* to define materiality in wire fraud case); *United States v. Palin*, 874 F.3d 418, 422–23 (4th Cir. 2017) (assuming *Universal Health Services* materiality standard applies to wire fraud); *United States v. Ferriero*, 866 F.3d 107, 120–22 (3d Cir. 2017) (applying *Universal Health Services* False Claims Act half-truth standards to wire fraud).

It cannot be that a defendant in the Ninth Circuit is entitled to less due process than one prosecuted in another jurisdiction. The Ninth Circuit's expansive prohibition against all individual investor behavior evidence, moreover, threatens to undermine the materiality element's protections in other federal statutes. This Court should intervene, correct the Ninth Circuit, and reverse Mr. MacRitchie's conviction.

CONCLUSION

For the foregoing reasons, and for the reasons stated in codefendant Robert Jesenik's petition, the Court should issue a writ of certiorari.

Dated this 28th day of May, 2026.

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