

No. \_\_\_\_\_

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

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**HENRY WADE,  
Petitioner,**

*v.*

**UNITED STATES OF AMERICA,  
Respondent.**

---

**ON PETITION FOR WRIT OF CERTIORARI  
BEFORE JUDGMENT  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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**PETITION FOR WRIT OF CERTIORARI**

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December, MMXXV

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## QUESTIONS PRESENTED

1. Whether a conviction under 18 U.S.C. §1343 must be vacated where the Government obtained a verdict under a theory materially broader than the indictment—permitting conviction without a finding of personal authorship or submission of the charged digital communication—thereby constructively amending the indictment and displacing the grand jury's charging function in violation of the Fifth Amendment and this Court's decisions in *Stirone v. United States* and *Ex parte Bain*?
2. Whether the judgment is void where the district court withheld from the jury essential factual determinations concerning identity and authorship of a charged digital submission, and the jury was permitted to convict without deciding who committed the charged act, in violation of the Fifth and Sixth Amendments and this Court's decisions in *United States v. Gaudin* and *Sullivan v. Louisiana*?
3. Whether dismissal of the indictment is required where the grand jury was presented with materially inaccurate or misleading testimony concerning identity and authorship, the Government possessed contradictory information, and the district court evaluated the defect under an incorrect legal standard rather than the "substantial influence" test required by *Bank of Nova Scotia v. United States*, implicating due process under *Mooney v. Holohan* and *Napue v. Illinois*?

4. Whether the Government violated *Brady v. Maryland*, *Giglio v. United States*, and *Kyles v. Whitley* by failing to obtain and disclose attribution-relevant digital records held by cooperating administrative agencies in a prosecution turning on digital authorship and identity, and whether federal courts are divided on the scope of prosecutors' disclosure duties in interagency digital-evidence cases?
5. Whether structural error occurs where a criminal prosecution turning on complex digital evidence was conducted in a manner that *collectively* prevented constitutionally adequate adversarial testing—due to judicial conduct affecting neutrality, restrictions on jury function, and disability-based barriers that denied a legally blind defendant meaningful access to digital evidence—in violation of the Due Process Clause, the Sixth Amendment, and Title II of the Americans with Disabilities Act?

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## OPINIONS BELOW

This is a petition for certiorari before judgment to the Eleventh Circuit in No. 25-12697-C, where no briefing schedule has been set.

The Middle District of Florida issued several interlocutory and post-trial orders relevant to the federal questions presented. All post-trial motions have been denied. Because sentencing has not occurred, no final judgment has been entered. Pursuant to S. Ct. R. 14.1(i), each district-court order reproduced in the Appendix is listed below:

1. **Order Denying Motion to Dismiss the Indictment** (M.D. Fla. ECF No. 83), entered Feb. 23, 2024 — App.19-22.
2. **Orders Denying Motions to Compel Special Agent Testimony**
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  - Doc. 352, entered Oct. 17, 2025 — App.73-74;
  - Doc. 354, entered Oct. 21, 2025 — App.75.

**7. Other Relevant District-Court Orders**

- Doc. 359, entered Oct. 30, 2025 — App.76-77;
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- Doc. 362, entered Nov. 4, 2025 — App.79.

This case remains in an interlocutory posture: all post-trial motions have been denied, no sentence has been imposed, and no final judgment has been entered, making immediate review appropriate at this stage.

The Eleventh Circuit docket reflects the filing of a notice of appeal but no merits briefing, panel assignment, or appellate disposition.

**JURISDICTION**

Notice of Appeals was filed in the Eleventh Circuit on August 7, 2025. This Court has jurisdiction under 28 U.S.C. §2101(e).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

(Rule 14.1(f)–(g) Compliant)  
U.S. Constitution  
Fifth Amendment

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... nor shall any person 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 a speedy and public trial, by an impartial jury ... and to be informed of the nature and cause of the accusation; 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 defense.”

### Article VI — Supremacy Clause

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land.”

### Federal Disability-Access Provisions Section 504 of the Rehabilitation Act of 1973 29 U.S.C. § 794

“No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity conducted by any Executive agency.”

### Section 508 of the Rehabilitation Act 29 U.S.C. § 794d

“When developing, procuring, maintaining, or using electronic and information technology, each Federal department or agency shall ensure that individuals with disabilities ... have access to and use of information and data that is comparable to the access provided to individuals without disabilities.”

Americans with Disabilities Act (ADA)  
42 U.S.C. § 12132 — Prohibition of Discrimination

“No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity.”

Federal Criminal and Procedural Statutes  
18 U.S.C. § 1343 — Wire Fraud

“Whoever, having devised or intending to devise any scheme or artifice to defraud ... transmits or causes to be transmitted by means of wire ... for the purpose of executing such scheme or artifice, shall be fined ... or imprisoned not more than 20 years ....”

Jencks Act — 18 U.S.C. § 3500

“After a witness called by the United States has testified on direct examination, the court shall, on motion

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**SBA / EIDL Statutory Provisions**  
**15 U.S.C. § 636(b)(2) — Disaster Loans (EIDL Program)**

“The Administrator is authorized to make such loans ... to persons who have suffered substantial economic injury as a result of such disaster ....”

**15 U.S.C. § 636(a)(6) — Identity-Verification Requirement**

“The Administrator shall verify the applicant’s identity and shall require such documentation as necessary to establish eligibility for any loan under this section.”

**Federal Jurisdiction Statutes**  
**28 U.S.C. § 1254(1)**

“Cases in the courts of appeals may be reviewed by the Supreme Court by ... writ of certiorari granted upon the petition of any party to any civil or criminal case ....”

## 28 U.S.C. § 1651(a) — All Writs Act

“The Supreme Court ... may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”

## 28 U.S.C. § 2101(e)

“An application to the Supreme Court for a writ of certiorari to review any case before judgment ... may be filed at any time before judgment.”

## S. Ct. R. 10 — Considerations Governing Review

“A petition for a writ of certiorari will be granted only for compelling reasons ... including conflicts among courts of appeals or important federal questions that have not been, but should be, settled by this Court.”

## S. Ct. R. 11 — Certiorari Before Judgment

“A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice.”

## STATEMENT OF THE CASE

### A. Procedural Background: Indictment, Pretrial Motions, and Denials

Petitioner was charged in the United States District Court for the Middle District of Florida with one count of wire fraud under 18 U.S.C. § 1343, arising from an Economic Injury Disaster Loan (“EIDL”) application submitted to the Small Business Administration (“SBA”). The indictment alleged that Petitioner personally authored and submitted the application. App.278-286.

Before trial, Petitioner filed motions challenging: (1) inaccuracies in grand-jury testimony, including conflicting statements concerning payroll, EIN data, business operations, and bank-account access; (2) the absence of SBA identity-verification, fraud-flag, and administrative-handling records; and (3) the lack of authorship-trace materials, metadata, backend logs, or original SBA files. (App.19/26/30, see also App. 255/508).

The district court denied these requests on February 23, 2024, and September 13 and 18, 2024. App.19, 26, 28, 30.

Petitioner also moved to compel testimony and production of SBA verification and administrative materials. (M.D. Fla. ECF Nos. 178, 181). Those motions were denied on September 13, 2024. App. 26, 28.

The case proceeded to trial in September 2024. The court denied Petitioner’s Rule 29 motions for judgment of acquittal on September 24 and 25, 2024.

App.31, 32. No sentence has been imposed, and no final judgment has been entered.

Following trial, Petitioner filed Rule 33 motions based on newly discovered evidence, including identity-theft materials (App. 687), SBA call-log and administrative records (App.76, 78, 79), ADA-access documentation (App.643, 706), and affidavits descrying third-party device access and authorship-related inconsistencies. App.643, 706. These motions were denied on October 17 and October 21, 2025. App.73, 75.

Petitioner filed a notice of appeal on August 13, 2025. The Eleventh Circuit docketed the appeal as No. 25-12697-C. No briefing schedule has been issued, and no rulings have been entered.

#### **B. Grand-Jury Proceedings: Testimony, Requests for Records, and Denials**

The indictment rested on testimony from a single case agent. (App.508). Petitioner challenged the accuracy of that testimony concerning purported authorship, business operations, bank-account access, and the contents and reliability of the SBA administrative file. Petitioner requested underlying SBA records to evaluate these assertions, including identity-verification flags, backend logs, fraud indicators, and administrative-handling materials. Those requests were denied. (App.19, 26, 28, 30, 630; see also App.348, 468, 541, 580, 593, 597).

The AUSA made remarks to the grand jury reinforcing the challenged statements. App.508-540. These matters are included solely as procedural background pursuant to Rule 14.1(g).

Two independent witnesses—neither associated with the case agent nor any alleged codefendants—later provided declarations describing authorship-related inconsistencies, third-party device access, and contradictions with the Government's identity theory. App.643, 706. These declarations were unavailable to the grand jury.

### **C. Trial Proceedings: Indictment Theory, Trial Theory, and Identity/Authorship Evidence**

At trial, the Government advanced a theory permitting conviction if Petitioner “participated,” “benefited,” or was “involved,” even if he “did not do this by himself.” App.616 This presentation differed from the indictment's allegation that Petitioner personally authored and submitted the EIDL application. App.278.

Petitioner challenged authorship and identity, citing digital-trace limitations, the absence of metadata linking him to the application, and the Government's failure to produce SBA verification materials, backend logs, and fraud-flag indicators. (App.348, 468, 541, 580, 593, 597). Petitioner also submitted ADA documentation describing significant visual-access limitations that impeded his ability to review electronic discovery. App.643, 706.

Trial testimony concerning SBA EIDL certification and system behavior described the signer-specific nature of SBA liability warnings and internal processes relevant to authorship. App.597-615. Newly discovered SBA materials reflected inconsistencies in administrative handling and identity-verification. App.76, 78, 79, 189, 229, 642.

The district court instructed the jury on the elements of wire fraud. App.355. The instructions did not require the jury to determine who authored or submitted the application. The jury returned a guilty verdict on September 24, 2024. App. 630.

#### **D. Post-Trial Motions and Newly Discovered Evidence**

Petitioner's Rule 33 motions presented newly discovered evidence including SBA call-log and administrative-handling materials, identity-theft documentation, affidavits detailing third-party device access and authorship inconsistencies, SBA administrative-record anomalies, and ADA documentation. (App.73, 75–79, 189, 229, 642, 643, 687, 706. These motions were denied on October 17 and October 21, 2025.

#### **E. SBA Identity-Verification Deficiencies and Federal Oversight Findings (Rule 14.1(g) Legislative Facts)**

Oversight bodies—including the DOJ COVID-19 Fraud Enforcement Task Force, the SBA Office of Inspector General, and the Pandemic Response Accountability Committee—have reported significant deficiencies in pandemic-relief identity-verification systems. These materials are cited solely as legislative facts under Rule 14.1(g) and are not offered to supplement the evidentiary record. App. 189, 229.

#### **F. Prosecutorial Conflict: Government Counsel Identified as Witness**

During post-trial proceedings, Petitioner submitted record materials showing that a member of the prosecution team was contemporaneously identified as a material witness in related civil litigation. App.421. Petitioner also sought a stay pending review, which was denied under Rule 8. App.699. These conflict-of-interest and stay-denial matters remain unresolved.

#### **G. Current Posture**

All post-trial motions have been denied. No sentence has been imposed, and no final judgment has entered. Petitioner's appeal in No. 25-12697-C remains pending without briefing or disposition. Petitioner therefore seeks certiorari before judgment under Rule 11.

#### **SUMMARY OF THE ARGUMENT**

This petition presents pure questions of constitutional law arising from a convergence of structural errors that undermined the grand jury's charging function, the petit jury's fact-finding role, and the adversarial framework itself in a federal wire-fraud prosecution premised entirely on digital authorship and identity attribution. Under this Court's precedents—including *Stirone v. United States*, *Ex parte Bain*, *United States v. Gaudin*, *Sullivan v. Louisiana*, *Mooney v. Holohan*, *Kyles v. Whitley*, and *Bank of Nova Scotia v. United States*—

errors that alter who decides essential facts, expand the basis of conviction beyond the indictment, or corrupt the grand-jury process “infect the entire framework within which the trial proceeds” and are not subject to harmless-error review.

The indictment charged a narrow, single-actor theory: that Petitioner personally authored and submitted an SBA EIDL application. The Government’s proof at trial, however, depended on digital systems that—by the Government’s own witnesses—could not identify who authored, signed, or submitted the application, did not preserve backend audit or access-control logs, and did not maintain identity-verification or attribution metadata. Yet the jury was never asked to determine authorship. Instead, the prosecution advanced an expanded theory of liability while the jury instructions omitted any requirement that jurors find who performed the charged acts.

When combined with (1) a broadened trial theory, (2) jury-instruction omissions, (3) materially misleading grand-jury testimony concerning authorship and system capabilities, (4) rolling and mid-trial disclosures of SBA administrative records, and (5) unresolved prosecutorial conflict issues affecting the integrity of the proceedings, the prosecution collapsed the constitutional safeguards governing grand-jury charging, jury fact-finding, and due process.

Federal oversight findings—cited solely as Rule 14.1(g) legislative facts—confirm that the identity-verification and record-attribution deficiencies exposed in this case are systemic within SBA pandemic-relief programs. The questions presented

therefore extend well beyond this prosecution and implicate the constitutional limits of digital-evidence prosecutions nationwide.

### **1. Structural Constructive Amendment and Removal of Essential Elements**

The indictment charged that Petitioner personally authored and submitted the EIDL application. At trial, however, the Government advanced a materially broader theory permitting conviction based on “participation,” “involvement,” or “benefit,” even if Petitioner “did not do this by himself.” The jury instructions did not require jurors to determine who authored or submitted the application and did not confine the jury to the indictment’s exclusive-authorship theory.

Under *Stirone* and *Bain*, expanding the basis for conviction beyond the grand jury’s charge constitutes a constructive amendment and structural error. And under *Gaudin* and *Sullivan*, removing from the jury an essential factual determination tied to an element of the offense—here, authorship and identity— violates the Sixth Amendment. The combined effect was to permit conviction on a theory the grand jury never charged and the jury never found.

### **2. Grand-Jury Impairment and Misapplication of Governing Standards**

The indictment rested on testimony from a single case agent concerning authorship, identity, and SBA administrative records. That testimony was later shown—through SBA records and trial admissions—

to be inaccurate or incomplete on foundational points, including the Government's ability to attribute authorship through SBA systems. Government counsel reinforced those representations during the grand-jury proceedings.

Although the district court later acknowledged that portions of the grand-jury information were incorrect, it applied a perjury-only standard, rather than the "substantial influence" test mandated by *Bank of Nova Scotia*. Under *Mooney*, *Napue*, and *Bank of Nova Scotia*, an indictment obtained through materially misleading testimony on core charging facts compromises the structural integrity of the grand-jury process and cannot be cured by a petit-jury verdict.

### **3. Suppression and Late Disclosure of Identity-Trace and Administrative Evidence**

Throughout the proceedings, Petitioner sought SBA administrative records bearing on identity attribution, verification, and system handling. The Government did not produce all responsive materials pretrial and acknowledged during trial that additional SBA records were still being received and produced on a rolling basis.

Under *Brady*, *Giglio*, and *Kyles*, the Government bears an affirmative duty to learn of and disclose favorable evidence held by cooperating agencies. Where, as here, suppressed or belatedly disclosed materials bear directly on the only contested issue—digital authorship and identity attribution—the violation undermines the structural reliability of the

verdict, particularly when combined with jury-instruction omissions and constructive amendment.

#### **4. Digital-Evidence Prosecutions and Jury-Function Breakdown**

The Government's own witnesses testified that SBA systems did not authenticate applicant identity beyond self-certification, did not preserve historical audit or access logs identifying user actions, and did not maintain metadata capable of identifying who authored or signed an application. Yet the jury was never required to determine authorship and was instead permitted to convict on a broadened participation theory.

This case therefore presents a recurring and unresolved constitutional question: how juries may determine identity and authorship in digital-evidence prosecutions when the Government's systems cannot supply the data ordinarily used for attribution. The failure to submit that determination to the jury constitutes a structural impairment of the jury's role, not a mere evidentiary dispute.

#### **5. Disability-Based Barriers and Adversarial Breakdown**

These structural failures were compounded by documented disability-access barriers that limited Petitioner's ability to access and review electronic discovery central to authorship and identity. In a prosecution turning entirely on digital evidence, the inability to meaningfully access that evidence undermined the adversarial process in a manner

analogous to the structural deprivations recognized in *United States v. Cronic and Gonzalez-Lopez*.

## **6. Prosecutorial Conflict and Structural Integrity of the Proceedings**

The record further reflects unresolved conflict-of-interest issues arising from the contemporaneous identification of a member of the prosecution team as a material witness in related civil litigation. Structural neutrality of the prosecution is a constitutional prerequisite under *Young v. United States ex rel. Vuitton et Fils S.A.* Where prosecutorial impartiality is compromised, the defect infects the entire proceeding and is not subject to harmless-error analysis.

The denial of a stay under Rule 8 leaves these structural concerns unaddressed and entrenched while appellate proceedings remain pending, reinforcing the need for immediate intervention.

## **7. Exceptional National Importance Under Rule 10(c)**

Oversight bodies—including the DOJ COVID-19 Fraud Enforcement Task Force, the SBA Office of Inspector General, and the Pandemic Response Accountability Committee—have documented widespread identity-verification failures and administrative-record deficiencies in pandemic-relief programs, involving thousands of investigations and prosecutions. These findings underscore that the constitutional questions presented here—constructive-amendment limits, jury-element

requirements, interagency disclosure duties, prosecutorial neutrality, and digital-authorship attribution—are recurring and nationally significant.

#### **8. Imperative Public Importance Warranting Certiorari Before Judgment**

Immediate review is warranted under Rule 11. The case remains interlocutory, yet it presents pure, record-complete constitutional questions that cannot be remedied through ordinary post-judgment review. Because the errors concern the allocation of constitutional authority among the grand jury, the petit jury, the prosecution, and the court itself, delay would perpetuate the very structural harms this Court’s precedents forbid. Absent guidance from this Court, lower courts will continue to apply divergent standards to digital-evidence prosecutions, grand-jury errors, and jury-function impairments in cases of exceptional public consequence.

#### **Conclusion**

The indictment-trial divergence, jury-instruction omissions, grand-jury impairments, disclosure failures, digital-evidence limitations, and unresolved prosecutorial-conflict issues identified here constitute multiple, reinforcing structural errors under this Court’s precedent. Because those errors foreclose harmless-error analysis and implicate recurring questions of national importance, certiorari before judgment is warranted.

## REASONS FOR GRANTING THE PETITION

### **I. This Case Presents a Clean, Recurring Constitutional Question Concerning Whether Juries May Be Bypassed on Identity and Authorship in Digital-Evidence Prosecutions (*Rule 10(a); Rule 10(c)*)**

This petition presents a fundamental and recurring constitutional question about the allocation of authority among the grand jury, the petit jury, and the court in modern federal prosecutions premised on digital submissions: may a defendant be convicted of wire fraud when the jury is not required to determine who authored or submitted the digital communication forming the basis of the charge, and when the Government's own systems cannot supply the data ordinarily used to attribute authorship or identity?

The indictment charged a narrow, single-actor theory—that Petitioner personally authored and submitted an SBA EIDL application. App.278. The trial record, however, establishes that the Government's proof depended on SBA administrative systems that did not authenticate applicant identity beyond self-certification, did not preserve historical audit or access-control logs, and did not maintain attribution-capable metadata or geolocation data identifying who authored, signed, or submitted the application. App.113, 541, 548, 616.

Despite those attribution failures, the case proceeded as if authorship were legally resolved. The jury was permitted to convict without ever being required to determine who performed the charged act. That bypass of the jury's elemental role raises a pure

question of constitutional law under the Fifth and Sixth Amendments, one that recurs in digital-evidence prosecutions nationwide and can be resolved only by this Court.

**II. The Record Presents a Structural  
Constructive-Amendment and Element-  
Removal Error in the Precise Form This  
Court Has Deemed Constitutionally  
Intolerable (*Rule 10(a); Rule 10(c)*)**

This case presents a textbook constructive-amendment and element-removal error under this Court's settled precedent.

The grand jury charged that Petitioner personally authored and submitted the application. App.278. At trial, however, the Government advanced a materially broader theory permitting conviction based on "participation," "involvement," or "benefit," even if Petitioner "did not do this by himself." (App.616; 548). The jury instructions did not require jurors to determine who authored or submitted the application, nor did they confine the jury to the indictment's exclusive-authorship theory. App.616.

Under *Stirone v. United States* and *Ex parte Bain*, a defendant may not be convicted on a basis that differs in substance from the grand jury's charge. Under *United States v. Gaudin* and *Sullivan v. Louisiana*, removal from the jury of an essential factual determination defining criminal liability constitutes structural error and is never harmless.

This case presents those doctrines in their most dangerous modern form: the Government charged personal authorship, proceeded without attribution-

capable proof, broadened the theory of liability, and then permitted conviction without a jury finding on who committed the charged act. That sequence collapses the constitutional functions of both the grand jury and the petit jury and presents a recurring structural problem in digital-evidence prosecutions.

### **III. The Grand Jury Was Permitted to Operate on Admitted-Inaccurate Information While the Court Applied the Wrong Governing Legal Standard (*Rule 10(a)*)**

The indictment rested on testimony from a single case agent concerning identity, authorship, and SBA administrative records. (App.508, as integrated into App.548, 616). The trial and post-trial record establishes that core representations made to the grand jury concerning those matters were inaccurate or incomplete, including assertions regarding the Government's ability to attribute authorship through SBA systems. (App.541; 548, 616).

The record further reflects that the agent later acknowledged under oath that the indictment followed from information he had inaccurately provided to the grand jury. (App. 548, 616). The district court itself acknowledged that incorrect information had been presented, yet evaluated the defect under a perjury-only framework rather than the controlling "substantial influence" standard mandated by *Bank of Nova Scotia v. United States*. App.548.

Whether lower courts may insulate indictments obtained through materially misleading identity- and authorship-related representations by demanding

proof of perjury or malicious intent—contrary to *Bank of Nova Scotia, Mooney v. Holohan*, and *Napue v. Illinois*—is a recurring and exceptionally important question of federal criminal procedure warranting this Court’s review.

**IV. The Record Demonstrates Late, Rolling Disclosure of Administrative Materials, Incomplete Agency Files, and Missing Attribution Logs, Raising Core Brady/Kyles and Due-Process Questions (Rule 10(a); Rule 10(c))**

This case cleanly presents disclosure and record-integrity questions governed by *Brady v. Maryland*, *Giglio v. United States*, and *Kyles v. Whitley* in an interagency setting.

The trial record reflects that, during witness testimony, the Government acknowledged it was still receiving SBA administrative materials through encrypted channels and attempting to provide them to defense counsel in real time. App.541. The record further establishes that SBA administrative files did not contain all system-generated records, that historical logs capable of reconstructing user-specific actions were not preserved, and that attribution-relevant materials were incomplete or unavailable. App.16, 541, 548, 616.

Where, as here, the only contested issue is digital authorship and identity attribution, the timing, completeness, and integrity of administrative production is constitutionally central. Whether the Government may proceed to conviction while attribution-relevant materials arrive mid-trial—or

are missing altogether—presents a recurring constitutional question in digital-evidence prosecutions that requires this Court’s guidance.

**V. The Trial Record Reflects a Convergence of Defense-Right Restrictions That Prevented Constitutionally Adequate Adversarial Testing of Identity Evidence (*Rule 10(a); Rule 10(c)*)**

The certworthiness of this case is reinforced by a convergence of defense-right restrictions occurring precisely when identity- and attribution-related evidence was being introduced and disputed.

The record reflects denial of Rule 106 completeness requests, limits on recross following late-produced administrative materials, Jencks disputes arising after witnesses acknowledged unproduced notes, and judicial intervention assisting the prosecution in responding to defense objections. App.548, 593; 616. Proceedings continued without curing disclosure deficiencies central to attribution.

In a case hinging entirely on digital authorship and identity, these restrictions prevented the jury from seeing a constitutionally complete, adversarially tested account of the evidence. Taken together, they implicate the structural guarantees recognized in *Chambers v. Mississippi*, *Delaware v. Van Arsdall*, and *United States v. Cronic*.

**VI. The Record Presents an Unresolved Prosecutorial-Conflict Question of Structural Constitutional Dimension (*Rule 10(a); Rule 10(c)*)**

The record further reflects unresolved conflict-of-interest issues arising from the contemporaneous identification of a member of the prosecution team as a material witness in related civil litigation. App.421. Structural neutrality of the prosecution is a constitutional prerequisite under *Young v. United States ex rel. Vuitton et Fils S.A.* When a prosecutor's impartiality is compromised, the defect infects the entire proceeding and is not subject to harmless-error analysis.

Whether prosecutors may continue to exercise charging authority while simultaneously serving as material witnesses in related proceedings—and whether courts may defer resolution of such conflicts—presents a recurring institutional question concerning prosecutorial neutrality that transcends the facts of this case.

Despite the presence of this unresolved conflict issue, a stay pending review was denied under Rule 8. (App.699). Whether a prosecution may proceed—and appellate review be delayed—while a colorable structural conflict remains unresolved presents a question of exceptional importance warranting this Court's intervention.

**VII. Rule 10(c) Is Independently Satisfied Because the Record Failures Mirror Documented, Program-Wide SBA Identity-Verification and Record-Integrity Deficiencies (Rule 10(c))**

This petition does not seek to supplement the evidentiary record. It situates the record-established

failures within a broader, undisputed national context documented by federal oversight bodies and cited solely as legislative facts under Rule 14.1(g). App.113, 616, 642.

Those reports document systemic identity-verification failures, overwritten metadata, and non-preservation of attribution logs in SBA pandemic-relief programs—the same deficiencies reflected in the record here. App.113, 541, 548, 616. Uniform national guidance is needed on:

1. constructive amendment and element removal in digital-attribution cases;
2. grand-jury integrity standards when identity and authorship assertions prove inaccurate; and
3. interagency disclosure duties where attribution-relevant records are incomplete, overwritten, or unavailable.

Absent this Court’s intervention, constitutional protections will continue to vary materially across jurisdictions.

### **VIII. Certiorari Before Judgment Is Warranted Because Delay Will Entrench Structural Errors and Leave Prosecutorial-Neutrality Questions Unresolved (Rule 11)**

This case remains interlocutory and presents pure, preserved, record-complete constitutional questions. Ordinary appellate delay will not clarify those questions; it will entrench divergent approaches to

jury-function bypass, grand-jury error, disclosure duties, and prosecutorial neutrality—after the district court declined to pause proceedings despite the presence of unresolved structural and neutrality defects—while unresolved conflicts persist and digital records continue to degrade. App.113, 421, 541; 548, 616.

Rule 11 exists for cases of imperative public importance demanding immediate resolution by this Court. This case presents that need.

## VEHICLE

This case is an ideal vehicle for resolving the Questions Presented under Rules 10 and 11.

1. Clean legal issues; complete record. The questions concern indictment-to-trial alignment, jury function, grand-jury integrity standards, interagency disclosure duties, and prosecutorial neutrality in a digital-attribution prosecution. All are preserved and fully reflected in the appendix record. App.278, 421, 541, 548, 616.
2. Issues preserved and passed upon. The record reflects preservation through pretrial litigation, Rule 29 and Rule 33 motions, post-trial rulings, and denial of a stay notwithstanding preserved structural objections. App.421, 548, 616.
3. No complicating appellate opinion. There is no court-of-appeals decision constraining this Court's review.
4. No alternative factual theory curing the defects. The indictment's single-actor frame-

work and the record's attribution failures, late disclosures, defense-right restrictions, and unresolved conflict present the constitutional questions in their clearest form.

For these reasons, this case is an exceptionally strong vehicle for certiorari before judgment and immediate review.

## CONCLUSION

This case presents multiple, compounding structural constitutional violations that rendered the proceedings invalid from inception and categorically foreclose harmless-error review.

First, the indictment was constructively amended in violation of *Stirone v. United States* and *Ex parte Bain*. The grand jury charged a narrow theory requiring personal authorship and submission of an SBA EIDL application (App.278). At trial, that theory was replaced with a materially broader “participation / involvement / benefit” framework that permitted conviction even if Petitioner “did not do this by himself” (App.616). The jury instructions did not confine the jury to the charged theory, nor did they require a finding of authorship or submission (App.355).

Second, the court withheld essential factual determinations from the jury, including identity and authorship, in violation of *United States v. Gaudin*, *Neder v. United States*, and *Sullivan v. Louisiana*. Because authorship defined the conduct criminalized by the indictment, its removal from jury consideration constituted structural error.

Third, the indictment was obtained through materially inaccurate and misleading grand-jury information, contrary to *Mooney v. Holohan*, *Napue v. Illinois*, *Young v. United States ex rel. Vuitton et Fils S.A.*, and *Bank of Nova Scotia v. United States* (App.508-540). The record reflects that foundational identity- and authorship-related representations presented to the grand jury were later shown to be inaccurate or incomplete, and that the district court applied a perjury-only standard rather than *Bank of Nova Scotia*'s controlling "substantial influence" test.

Fourth, identity-trace, fraud-flag, metadata, and SBA verification materials falling squarely within *Brady*, *Giglio*, and *Kyles* were not timely disclosed (App.76, 78, 79, 189, 229, 642, 643, 687, 706). The trial record further reflects rolling, mid-trial production of SBA administrative materials and the absence of preserved attribution logs capable of identifying who authored or submitted the application (App.113, 541, 548, 616). Where identity and authorship were the sole contested elements, these disclosure failures directly impaired the jury's truth-finding function.

Fifth, the record demonstrates internal contradictions in the Government's identity theory, confirmed by the Government's own records, inconsistencies in the SBA administrative file (App. 189, 229, 642), and declarations from two independent witnesses (App.643, 706). Petitioner's documented visual disability—combined with the Government's failure to provide effective access to critical electronic evidence (App.643, 706)—further undermined the adversarial process in a prosecution turning entirely on digital attribution.

Sixth, the record reflects unresolved prosecutorial-conflict concerns arising from the contemporaneous identification of a member of the prosecution team as a material witness in related civil litigation (App.421). Structural prosecutorial neutrality is a constitutional prerequisite, and the presence of an unresolved conflict infects the entire proceeding and is not subject to harmless-error review under *Young v. United States ex rel. Vuitton et Fils S.A.*

Despite the presence of these unresolved structural defects, a stay pending review was denied under Rule 8 (App.699), permitting the prosecution and collateral consequences to continue while foundational constitutional questions remained unresolved.

Taken together, these errors—including constructive amendment, element omission, grand-jury impairment, suppression of attribution-critical evidence, ADA-related access barriers, and unresolved prosecutorial-conflict concerns—produced a structural breakdown of the adversarial system under *United States v. Cronic* and *United States v. Gonzalez-Lopez*. Each error independently requires reversal; their convergence makes the constitutional infirmity unmistakable.

The questions presented are also of exceptional national importance under Rule 10(c). Pandemic-relief prosecutions under 18 U.S.C. § 1343 arise from programs in which federal oversight bodies have documented widespread identity-verification failures, overwritten metadata, and inconsistent record-retention practices. As reflected in App.189 and App.229, those findings include more than 69,000 fraudulent Social Security numbers, over \$200 billion

in potentially fraudulent disbursements, more than 104,000 actionable SBA-OIG fraud leads, and thousands of criminal prosecutions nationwide. These materials are cited solely as legislative facts under Rule 14.1(g), to situate—rather than supplement—the record failures presented here.

Uniform nationwide guidance is required. The federal questions presented—constructive amendment, jury-element removal, grand-jury integrity, unified *Kyles* disclosure duties, identity-authorship requirements in § 1343 prosecutions, prosecutorial-neutrality constraints, and constitutionally required accommodation for visually impaired defendants—are recurring, dispositive, and exceptionally important. This case is an optimal vehicle for resolving those questions and for restoring constitutional boundaries in an unprecedented national enforcement landscape.

### **RELIEF REQUESTED**

For the foregoing reasons, and pursuant to 28 U.S.C. §§ 1254(1), 1651(a), and 2101(e) (App.84), and S. Ct. R.s 10, 11, and 20 (App.89), Petitioner respectfully requests that this Court:

1. Grant the petition for a writ of certiorari before judgment to resolve the structural constitutional violations and questions of exceptional national importance presented herein;
2. Vacate the verdict and remand with instructions to dismiss the indictment, where dismissal is required because the proceedings

were infected by non-harmless structural error that invalidated the prosecution from inception, including:

- constructive amendment of the indictment in violation of *Stirone v. United States* and *Ex parte Bain*;
- structural impairment of grand-jury integrity under *Mooney v. Holohan*, *Napue v. Illinois*, *Young v. United States ex rel. Vuitton et Fils S.A.*, and *Bank of Nova Scotia v. United States*;
- removal of an essential factual determination from the jury in violation of *United States v. Gaudin*, *Neder v. United States*, and *Sullivan v. Louisiana*;
- suppression and late disclosure of identity-trace, fraud-flag, metadata, and SBA verification materials in violation of *Kyles v. Whitley*, *Brady v. Maryland*, *Giglio v. United States*, and *Napue*;
- materially inconsistent Government representations concerning identity and authorship that undermined the integrity of the fact-finding process;
- a structural failure of proof under 18 U.S.C. § 1343, where the charged conduct required personal authorship and submission and the jury was not required to make that determination;
- ADA-based structural impairment of Petitioner's ability to access and review digital discovery central to the prosecution; and

- a collapse of the adversarial process under *United States v. Cronic* and *United States v. Gonzalez-Lopez* (see App.69, 109, 348, 355, 421, 468, 508-540, 541, 580, 593, 597-615, 616, 643, 699, 706);
- 3. Alternatively, reverse the judgment and remand for a new trial conducted in strict compliance with this Court's structural-error precedents, including *Stirone*, *Bain*, *Gaudin*, *Sullivan*, *Kyles*, *Mooney*, *Napue*, *Cronic*, and *Gonzalez-Lopez*;
- 4. Grant such other and further relief as this Court deems just and appropriate, including expedited consideration pursuant to Rule 11.

Given the presence of multiple, compounding structural errors; the imminent risk of sentencing absent this Court's intervention; the inability to reconstruct missing or overwritten SBA identity-verification metadata; the documented ADA-based barriers that prevented Petitioner from meaningfully accessing electronic evidence; the presence of unresolved prosecutorial-conflict concerns (App.421, 699); and the nationwide identity-verification instability documented in federal oversight findings (App.189, 229), certiorari before judgment and expedited review are warranted. Immediate intervention is necessary to prevent irreversible harm and to establish uniform constitutional standards governing authorship, identity attribution, disclosure obligations, ADA access, prosecutorial neutrality, and record integrity in federal pandemic-relief prosecutions.

**REQUEST FOR EXTRAORDINARY RELIEF  
(Rule 11)**

**Expedited review is warranted.**

Petitioner faces imminent sentencing, collateral professional and licensing consequences, and disability-related limitations—specifically severe visual impairment and the inability to review electronic records without accommodation—that will become irreversible before the United States Court of Appeals for the Eleventh Circuit can adjudicate any appeal (see App.73, 75–79, 643, 706). Under S. Ct. R. 11, this Court may grant certiorari before judgment when a case presents issues of imperative public importance requiring immediate resolution. This case satisfies that standard for at least three independent and urgent reasons.

**1. Imminent Irreparable Harm**

Absent immediate intervention, Petitioner will suffer irreparable harm that cannot be undone through ordinary appellate review. Sentencing will trigger loss of professional and licensing opportunities, reputational injury, and collateral legal consequences that are permanent in nature. In addition, delay will exacerbate disability-related barriers that have already impaired Petitioner’s ability to access and review electronic evidence central to his defense. As a legally blind defendant, Petitioner cannot meaningfully engage with time-sensitive electronic materials without

accommodation, and those barriers will only worsen once judgment is entered.

These harms will occur before the Eleventh Circuit can act. This Court has recognized that expedited review is warranted where delay itself produces constitutionally significant injury. *Clinton v. Jones*, 520 U.S. 681 (1997).

Independent of personal harm, the record reflects a separate and compounding irreparability concern: the continuing degradation of digital evidence. Trial testimony and oversight findings reproduced in the Appendix demonstrate that SBA identity-verification metadata, device logs, and administrative records were missing, overwritten, or never preserved (App. 189, 229, 642). The passage of time further impairs any ability to reconstruct authorship, identity, or device-level attribution. This risk of permanent evidentiary loss independently satisfies Rule 11.

## **2. Structural Constitutional Errors Require Immediate Correction**

The proceedings below are infected by multiple structural constitutional errors that invalidate the adjudicative framework and categorically foreclose harmless-error review, including:

- constructive amendment of the indictment (*Stirone v. United States*; *Ex parte Bain*);
- grand-jury integrity impairment (*Mooney v. Holohan*; *Napue v. Illinois*; *Bank of Nova Scotia v. United States*; *Young v. United States ex rel. Vuitton et Fils S.A.*);
- suppression of identity-verification and authorship-trace evidence (*Kyles v. Whitley*;

*Brady v. Maryland; Giglio v. United States; Napue);*

- omission of essential elements from jury determination (*United States v. Gaudin; Neder v. United States; Sullivan v. Louisiana*);
- materially inconsistent Government representations concerning authorship and identity;
- a structural failure of proof under 18 U.S.C. § 1343;
- ADA-based structural impairment of Petitioner's ability to access and review digital evidence essential to his defense; and
- a collapse of adversarial reliability under *United States v. Cronic* and *United States v. Gonzalez-Lopez*.

Structural errors "infect the entire framework in which the trial proceeds" and require automatic reversal. *Sullivan*, 508 U.S. at 281. Permitting sentencing to proceed on the basis of a constitutionally void adjudicative structure would directly contravene this Court's precedent. Immediate review is necessary to prevent the entry of a judgment invalid from inception.

### **3. National-Importance Emergency: Identity-Verification Collapse in SBA Pandemic Programs**

Oversight findings reproduced in App.189-228 and App.229-255 document unprecedented, system-wide identity-verification failures in SBA's EIDL and PPP programs, including:

- more than 69,000 fraudulent Social Security numbers associated with SBA loans;

- over \$200 billion in potentially fraudulent disbursements;
- more than 104,000 SBA-OIG actionable fraud leads;
- approximately 1.3 million unemployment-insurance claims flagged as potentially fraudulent;
- more than 3,500 criminal pandemic-fraud prosecutions;
- more than 400 related civil enforcement actions; and
- over \$1.4 billion in seized or forfeited CARES Act funds.

These Rule 14.1(g) legislative facts establish that federal pandemic-relief identity-validation systems were materially unstable at the time of the alleged conduct. That instability directly relates to the central factual questions in this case—authorship, identity, metadata integrity, and verification—and magnifies the consequences of the structural errors identified above.

Immediate Supreme Court intervention is required both to prevent irreparable harm to Petitioner and to establish uniform national standards governing pandemic-relief prosecutions. Thousands of cases rely on administrative datasets that federal oversight bodies have warned are incomplete, overwritten, unverifiable, or at risk of imminent loss. Each error identified above converged on the same constitutional injury: the removal of the jury as the body responsible for determining who committed the charged act, on what evidence, and under what legal theory.

Respectfully submitted,

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Dated: December 29, 2025 *Pro Se Petitioner*