

No. 25-841

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In the  
Supreme Court of the United States

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HENRY TROY WADE,  
*Petitioner,*

v.

UNITED STATES,  
*Respondent.*

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On Petition for a Writ of Certiorari before Judgment to the  
United States Court of Appeals for the Eleventh Circuit

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PETITION FOR REHEARING

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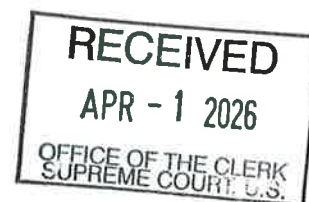
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**PETITION FOR REHEARING OF  
ORDER DENYING PETITION FOR WRIT  
OF CERTIORARI BEFORE JUDGMENT  
(SUPREME COURT RULE 44.2)**

This petition for rehearing is submitted pursuant to Supreme Court Rule 44.2 and is limited to substantial grounds not previously presented in this posture.

The prior petition challenged the conviction on sufficiency, evidentiary, and procedural grounds. This petition does not repeat those arguments. It instead presents a distinct question: whether any jury determination was required on the element of authorship.

Because that issue was not previously presented as a structural jury-function defect, rehearing is warranted under Rule 44.2. It presents distinct constitutional defects involving digital authorship, missing identity records, jury-function failure, grand jury impairment, and a *Franks* warrant defect. This petition does not seek reconsideration of arguments previously rejected, but identifies a distinct constitutional defect that was not presented to the Court and therefore not considered.



## INTRODUCTION

This case presents a structural constitutional defect: the Government did not prove who performed the charged digital act, yet the jury was not required to decide that element, and the conviction was allowed to stand. This issue was not previously presented.

The prosecution arose from COVID-era PPP and SBA programs and an indictment brought against a legally blind defendant whose identity was used in connection with the loan applications. The record reflects that multiple individuals had access to petitioner's identity, and that identity-theft issues were present during the SBA's pandemic-era rollout, which affected hundreds of thousands of applicants nationwide.

Despite these conditions, no jury determination of authorship was required to obtain a conviction. The jury instructions, as reflected in the record, permitted conviction under 18 U.S.C. § 1343 without requiring the jury to determine who performed the charged digital act. These circumstances are consistent with the widespread identity-theft issues documented during the SBA's pandemic-era rollout.



## SYNOPSIS OF THE QUESTIONS PRESENTED

1. Whether this case presents a recurring and nationally significant question warranting rehearing under Rule 44.2: whether the Government's undisclosed and standard-less distinction between civil False Claims Act enforcement and criminal prosecution — resulting in materially different penalties for indistinguishable conduct — constitutes arbitrary enforcement in violation of due process and this Court's limits on prosecutorial discretion.

2. Whether a wire-fraud conviction may stand where the indictment charged personal authorship but the Government expanded its theory to participation without requiring the jury to determine who performed the act (*Stirone v. United States*, 361 U.S. 212 (1960)).

3. Whether due process permits conviction without proof of digital authorship.

4. Whether the Fifth and Sixth Amendments are violated where the jury was not required to determine who performed the charged act (*Gaudin*, *Sullivan*, *Yates*).

5. Whether conviction is valid where legal blindness limits the ability to perform the charged acts.

6. Whether the Government's failure to preserve or disclose identity-theft records violates *Brady*, *Kyles*, *Trombetta*, and *Youngblood*.

7. Whether in camera withholding of material evidence violates *Brady* and *Giglio*.

8. Whether the warrant is invalid under *Franks*.

9. Whether dismissal is required where grand jury errors substantially influenced the charging decision or created grave doubt as to its validity (*Bank of Nova Scotia*).

10. Whether this case presents recurring national issues of digital attribution.



### **REASONS FOR GRANTING THE PETITION FOR REHEARING**

**I. This petition satisfies Rule 44.2 because it presents a substantial ground not previously presented**

The Court's denial did not address a distinct structural defect that was not previously presented and or considered in the Court's review. This petition isolates that jury-function defect and presents it as an independent constitutional failure.

This petition isolates a jury-function defect not previously presented in this form.

**II. The Absence of a Jury Determination as to the Actor Constitutes Structural Error Under *Gaudin* and *Sullivan***

The record reflects that the Government's case proceeded in the absence of a reliable determination of authorship, including admissions that materially inaccurate testimony was presented to the grand jury. Specifically, the Government's witness acknowledged:

Q: And was that based upon something that you inaccurately testified to in front of the grand jury?

A: Yes, ma'am.

(Trial Tr. Sept. 16-17, 2024, p. 74, lines 1-7)

This admission confirms that the charging process itself rested at least in part, on inaccurate testimony, further undermining any subsequent determination of authorship. Despite these deficiencies, the jury was not required to determine who performed the charged act. Under *Gaudin*, *Sullivan*, and *Yates*, the absence of a required jury determination on an essential element constitutes structural error. To the extent the record failed to identify the actor responsible for the charged conduct, the evidence was constitutionally insufficient under *Jackson v. Virginia*, 443 U.S. 307 (1979).

Multiple alternative actors existed and were not excluded.

Despite this failure of proof, the jury was not required to determine authorship.

Under *Gaudin*, *Sullivan*, and *Yates*, this is structural error.

### **III. Conviction Without a Jury Finding on the Wire Element Eliminates an Essential Constitutional Safeguard**

The prior petition did not present this issue. It did not address whether the jury was required to identify any qualifying communication as part of its verdict.

The record reflects that the jury was permitted to convict without resolving whether any qualifying communication occurred. (Trial Tr. Sept. 20, 2024, p. 54, lines 1–25).

This issue concerns the absence of a required jury determination on an essential element, not the sufficiency of the evidence, and is therefore properly presented under Rule 44.2.

#### **IV. Where Multiple Actors Exist, the Absence of a Jury Determination of Identity Constitutes Structural Error**

The prior petition did not present this issue. It did not address whether the jury was required to identify the specific actor responsible for the charged conduct.

The record reflects that multiple individuals had access to petitioner's identity. (Trial Tr. Sept. 20, 2024, p. 54, lines 1–25). The jury was nevertheless permitted to convict without determining which individual performed the act.

This issue concerns the absence of a required jury determination on authorship, not the sufficiency of the evidence, and is properly presented under Rule 44.2.

#### **V. Conviction in the Absence of Attribution Evidence Eliminates the Constitutionally Required Jury Finding**

The prior petition did not present this issue. It did not address whether the absence of attribution records affected the jury's obligation to determine authorship. The absence of attribution evidence also implicates due process concerns where the Government

proceeds on a theory unsupported by reliable evidence, including the use of materially misleading or incomplete information. See *Napue v. Illinois*, 360 U.S. 264 (1959).

The record reflects that identity-theft and attribution records were missing or unavailable. This absence of evidence is relevant not as an independent *Brady* claim, but because the jury was permitted to convict without determining who performed the charged act.

This issue concerns the absence of a required jury determination on an essential element, rather than a standalone evidentiary violation, and is properly presented under Rule 44.2.

#### **VI. The Integrity of the Charging Process Was Compromised, Resulting in the Absence of a Required Jury Determination**

The prior petition did not present this issue. The record reflects that the defense identified “multiple material misrepresentations to the grand jury” creating “grave doubt.” (Trial Tr. Sept. 20, 2024, p. 54, lines 1–25).

This is relevant not as a standalone dismissal claim, but because the jury was not required to determine authorship, presenting a structural issue not previously raised. The use of materially inaccurate or misleading information in the charging process further implicates due process under *Mooney v. Holohan*, 294 U.S. 103 (1935), which prohibits convictions obtained through fundamentally unfair means.

## **VII. Constitutional Defects in the Warrant Process Allowed the Case to Proceed Without a Required Jury Finding**

The prior petition did not present this issue. It did not address whether attribution uncertainties, including those reflected in the warrant record, affected the jury's obligation to determine authorship. The record reflects that the warrant affidavit omitted known identity-attribution uncertainties and conflicting records while presenting a narrative of attribution.

This is relevant not as a standalone claim under *Franks v. Delaware*, but because it reflects that the case proceeded without requiring the jury to determine who performed the charged act.

This petition therefore presents a structural issue concerning the absence of a required jury determination, rather than a separate Fourth Amendment claim, and is properly presented under Rule 44.2.

## **VIII. National importance**

This case also presents a recurring and national significant due process question concerning the Government's undisclosed and standard-less distinction between civil enforcement under the False Claims Act and criminal prosecution for materially indistinguishable conduct. In the context of pandemic-era SBA and PPP programs — where widespread identity-theft, third-party access, and attribution uncertainty were documented — similarly situated conduct may be treated as civil or criminal without any articulated standard. This absence of a discernible framework permits materially different penalties to be imposed for indistinguishable conduct, raising concerns of arbitrary

enforcement and exceeding constitutional limits on prosecutorial discretion.

This petition presents a substantial ground not previously presented concerning the absence of any required jury determination of authorship in cases involving digital attribution.

This case arises in the context of federal prosecutions involving COVID-era relief programs, where digital submissions and identity verification were frequently unreliable. Federal oversight findings confirm that identity-theft and attribution failures were widespread in the SBA's administration of the Economic Injury Disaster Loan program.

The SBA Office of Inspector General reported that hundreds of thousands of applications were associated with identity-theft complaints and that the agency received over 150,000 returned loan statements indicating potential fraud. Subsequent oversight confirmed continued systemic deficiencies, including over 250,000 hotline complaints and the absence of reliable processes to identify, track, and resolve identity-theft cases.

These findings underscore the significance of the issue presented here: whether a jury must determine who performed the charged act where attribution is uncertain.

Without requiring such a determination, convictions may rest without any constitutionally valid jury finding on the identity of the actor.

This issue — Including the Government’s unarticulated distinction between civil and criminal enforcement for indistinguishable conduct — is of recurring and exceptional national importance.

**IX. This petition satisfies Rule 44.2**

This petition presents substantial grounds not previously presented. It identifies a structural jury-function defect, grounded in *Gaudin* and *Sullivan*, that was not raised in this form in the prior petition.

The prior petition challenged the conviction on sufficiency, evidentiary, and procedural grounds. It did not present the distinct question whether the jury was required to determine who performed the charged act.

The Court’s denial did not address this distinct structural defect. Although related issues were previously presented, this specific defect—arising from the absence of any jury determination of authorship—was not presented in this posture and was not considered in the Court’s review.

Rehearing is therefore warranted.

**X. Chart of Structural Jury-Function Defect**

<b>Authority</b>	<b>Constitutional Requirement</b>	<b>Structural Defect Identified</b>
<i>United States v. Gaudin</i> , 515 U.S. 506 (1995)	Jury must determine every essential element of the offense	No jury determination of authorship
<i>Sullivan v. Louisiana</i> , 508 U.S. 275 (1993)	Absence of a valid jury finding constitutes structural error	No valid jury finding exists
<i>Yates v. United States</i> , 354 U.S. 298 (1957)	Verdict invalid where it may rest on an improper or unsubmitted ground	Jury not required to determine authorship



## CONCLUSION

The petition for rehearing should be granted.

This petition presents a substantial ground not previously presented: whether a conviction may stand in the absence of any jury determination as to who performed the charged act. The prior petition did not present this issue as a structural defect concerning the jury's constitutional role.

Because the absence of a jury finding on an essential element renders the verdict constitutionally invalid, and because that issue was not previously presented to this Court, rehearing is warranted under Rule 44.2.

Respectfully submitted,

/s/ Henry Wade

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March 27, 2026

**RULE 44.2 CERTIFICATE**

I, HENRY WADE, petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.

2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

/s/ Henry Wade  
Petitioner, Pro se

Executed on March 27, 2026



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