

APP NO. _____

**IN THE SUPREME COURT OF THE UNITED
STATES**

JUAN MARTINEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Application for an Extension of Time to File Petition
for a Writ of Certiorari to the United States Court of
Appeals for the Eleventh Circuit

**PETITIONER'S APPLICATION TO EXTEND TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

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To the Honorable Clarence Thomas, as Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Juan Martinez ("Mr. Martinez" or "Petitioner") respectfully requests that the time to file his Petition for Writ of Certiorari in this matter be extended for 60 days up to and including August 21, 2026. The Court of Appeals issued its opinion on January 23, 2026 (Appendix A); a petition for rehearing en banc was timely filed, and the Court of Appeals denied the petition on March 24, 2026 (Appendix B). Absent an extension of time, the Petition for a Writ of Certiorari in this Court would be due on June 22, 2026. Petitioners are filing this Application more than ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

Background

This case presents an important legal question on which there is a significant circuit split: Is legal impossibility still a viable defense in criminal cases? If so, is it a defense to the inchoate offense of conspiracy? And if so, is it an element-negation defense or an affirmative defense? And finally, does a criminal defendant have a constitutional right to argue it to the jury?

The Circuits are split on all of the above questions, and this Court's intervention is required to settle the issue. This Court should take this case for that reason. Additionally, the question presented here is inherently

interesting and difficult, with deep historical and common-law roots, and knotty analytical nuances, which have been the cause of much disagreement among the Circuits. The legal impossibility defense is the source of, inter alia, the hoary “attempting to hunt deer out of season” hypotheticals that have embellished many an appellate decision. But the contours of the doctrine and its application in modern criminal practice are contested and unsettled.

This case is about an aerospace engineer, Mr. Martinez, who was working as a consultant for an aerospace startup. Mr. Martinez’s specialty was wind-tunnel testing, and he was hired to design a wind tunnel test for the startup. One of the startup’s members was working at Gulfstream at the time, and he sent Mr. Martinez some technical documents from prior Gulfstream wind tunnel tests. Mr. Martinez used the documents, and the jury found that Mr. Martinez believed that he was not entitled to have them.

But what Mr. Martinez did not know was that the startup actually had a joint development contract with Gulfstream, that expressly allowed the startup (and its consultants) to have and to use proprietary Gulfstream technical documents. So, the defense sought to argue that while Mr. Martinez may have *thought* he was conspiring to wrongfully use templates from prior Gulfstream wind tunnel tests, as a matter of law he *could not have* committed that crime because, unbeknownst to him, the startup had a

proprietary information-sharing contract with Gulfstream. In short, because Mr. Martinez (unbeknownst to him) had a *legal entitlement* to the documents, it was *legally impossible* for him to conspire to steal them, even if that is what he thought he was doing.

The District Court expressly ordered defense counsel not to make that argument to the jury. A panel of the Eleventh Circuit affirmed. Mr. Martinez petitioned for en banc review, which was denied. The issues are cleanly preserved and squarely presented.

Reasons For Granting An Extension Of Time

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. Undersigned counsel of record Mr. Mason, a member of this Court's bar, has litigated this case for the past four years. Mr. Mason tried this case, and briefed and argued it in the Eleventh Circuit, and will be counsel before this Court. Mr. Mason has numerous upcoming litigation deadlines which would make it burdensome for him to meet the June 22, 2026 deadline for the Petition in this case. Mr. Mason's most pressing upcoming deadlines are as follows:

- *People of the State of California v. Valentino Amil*, Case No.: CRI-26008373 (San Francisco Superior Court). Murder case. Preliminary hearing setting, May 15, 2026. Preliminary hearing likely to be set for June or July.

- *People of the State of California v. Babak Hajhosseini*, Case No.: 24CJCF07892-01 (Los Angeles Superior Court). Rape case. Motion to Dismiss following Preliminary Hearing (Penal Code section 995), June 3, 2025; Petition for Writ of Mandamus Due June 17, 2026.
- *United States of America, v. Mohamadali Abolahrar*, Case No.: 25-6467 (9th Cir.) Reply Brief due May 29, 2026.
- *Salehpour et al. v. Rising Roads et al.*, Case No.:24VEVC03167. Demurrer opposition due June 15; hearing on June 30, 2026.
- *United States of America v. Naason Joaquin Garcia*, Case No.: 1:25-cr-00370. Pretrial briefing due May 23, 2026 (first round) and July 24, 2026 (second round).
- *People v. Anthony Jefferson*, Case No. 19CR03654. Long-pending robbery/kidnapping case. Trial setting hearing May 28, 2026.
- Mr. Mason's daughter's college graduation from UCLA, June 12, 2026, followed by a long-planned family vacation (Mr. Mason's first since 2019) from June 15, 2026 to June 29, 2026.

2. This case presents a significant issue appropriate for this Court's review: How is the doctrine of legal impossibility to be defined? The Eleventh Circuit's opinion defined it as an affirmative defense, and imposed the requirement that the defendant must have known of the circumstances the rendered the crime legally impossible. This definition is contrary to the long common-law history of the doctrine; it exacerbates an already-developed circuit split on legal impossibility; and it has the effect of negating the doctrine entirely as a practical matter. Any one of these

reasons would support this Court's intervention; together, they make a particularly strong case for certiorari.

- a. The Eleventh Circuit's opinion characterizes legal impossibility as an affirmative defense, which is internally incoherent.

The Eleventh Circuit Opinion characterizes the legal impossibility defense as an affirmative defense. This is wrong. Legal impossibility, by definition, negates an element. This distinction is critically important. While trial courts have some latitude in restricting argument on affirmative defenses, they do not when it comes to whether the prosecution has failed to prove an element of the offense. Legal impossibility is always an argument about failing to prove an element. In a conspiracy case, if the underlying act the defendant conspires to commit is *not actually a crime*, then the prosecution has *failed to prove a necessary element* of conspiracy—namely, the element that the act the defendant conspired to do would be another Federal crime if it was actually carried out.

Legal impossibility is, by definition, the negation of an element. Legal impossibility is *not* an affirmative defense. An affirmative defense, like duress, necessity, or self-defense, applies when, though all the elements are met, the defendant may be excused because of some exogenous fact. In legal impossibility, an element (the criminality of the contemplated act) is *missing*.

Thus, by definition, legal impossibility is not and cannot be an affirmative defense.

This distinction is not merely academic. It has a critical practical application. Trial courts have substantial latitude in limiting defendants' ability to present and argue affirmative defenses. By contrast, defendants have a constitutional right to argue element-negation theories.

Here, the Eleventh Circuit affirmed the district court's order prohibiting the defense from arguing legal impossibility by creating a novel threshold requirement, which has the effect of eliminating the legal impossibility defense altogether. The Eleventh Circuit held that the legal impossibility defense requires that the defendant know about the circumstances that render the crime legally impossible. But that is literally the opposite of the legal impossibility defense. The defendant's unawareness is *the whole point* of the impossibility defense. If the would-be poacher knew that hunting season began on October 1, then his decision to go hunt on October 15 would not be an attempt to hunt out of season. The *whole point* of the legal impossibility doctrine is that the defendant does *not* know the requisite legal fact. The would-be poacher does not know that hunting season already started; he believes he is committing a crime and he attempts to commit a crime—but he's not. So too, the would-be wrongful user of proprietary aerospace data does not know that he is actually contractually

entitled to the data he's using; he believes he's committing a crime and he attempts to commit a crime—but he's not.

The Eleventh Circuit's holding that legal impossibility is an affirmative defense that requires a threshold showing that the defendant knew about the relevant legal fact is inconsistent with the long common-law history of the doctrine of legal impossibility; is internally incoherent because legal impossibility, by definition, is not dependent on the defendant's knowledge; and exacerbates the sharp and fully percolated circuit split on legal impossibility.

- b. The Circuits are split on the existence and scope of legal impossibility as a defense.

One of the most important jurisprudential functions of this Court is to maintain harmony and uniformity among the Circuits. This Court regularly grants certiorari in order to resolve splits among the Circuits, particularly when those splits have percolated, meaning that all the Circuits have weighed in. *See, e.g., Diaz v. United States*, 144 S. Ct. 1727 (2024); *Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017); *Warger v. Shauers*, 574 U.S. 40 (2014).

Here, there are clear and on-point decisions from all the Circuits, and there is a profound split. Eight circuits expressly hold that legal impossibility is a defense to inchoate offenses; four hold that legal

impossibility is not a defense to inchoate offenses. The Eleventh Circuit's opinion here is an ideal vehicle for the Court to resolve this dispute, because it squarely presents this Court with the following issues: What does legal impossibility mean? Is it a negation of elements, or is it an affirmative defense? Does it apply to inchoate crimes? The forthcoming Petition will define the Issue Presented, in sum and substance as follows: "What is the definition of legal impossibility as a defense in criminal cases, and is it a defense to the inchoate crimes of attempt and conspiracy?"

The Circuits are split on this question, as follows.

Circuits in which legal impossibility is a defense to inchoate crimes:

- *United States v. Carter*, 15 F.4th 26, 36 (1st Cir. 2021) (Yes) ("Pure legal impossibility is always a defense" – including where, as here, the defendants were charged and convicted of the inchoate crime of conspiracy.")
- *Ventimiglia v. United States*, 242 F.2d 620, 622, 625 (4th Cir.1957) (Yes) (reversing conspiracy conviction and holding that holding that legal impossibility "exists where the act, though consummated, would not be criminal; consequently, an attempt or agreement to commit it would also not be," and that "there can be no conviction for conspiracy

to commit an offense against the United States if the act that the alleged conspirators agree to do has not been made unlawful”).

- *United States v. Oviedo*, 525 F.2d 881, 886 (5th Cir. 1976) (Yes) (reversing attempt conviction and holding that legal impossibility defense applies when the defendant’s acts, “even if fully carried out as he desires, would not constitute a crime”).

- *United States v. Peete*, 919 F.2d 1168, 1176 (6th Cir. 1990) (Yes) (“An example of a Hobbs Act legal impossibility would be a citizen's lawful campaign contribution to a United States Senate candidate though the citizen incorrectly believes the contribution is illegal.”).

- *United States v. Frazier*, 560 F.2d 884, 888 (8th Cir. 1977) (Yes) (“Legal impossibility refers to those situations in which the intended acts, even if successfully carried out, would not amount to a crime. Thus, attempt is not unlawful where success is not a crime, and this is true even though the defendant believes his scheme to be criminal.”).

- *United States v. Chavez*, 29 F.4th 1223, 1227 (10th Cir. 2022) (Yes) (“The legal impossibility defense to an attempt crime generally applies to “a situation ‘when the actions which the defendant performs or sets in motion, even if fully carried out as he desires, would not constitute a crime.’”).

- *In re Sealed Case*, 223 F.3d 775, 779 (D.C. Cir. 2000) (Yes)

“Contrary to the government's assertion that impossibility as a matter of law is not a defense to conspiracy, it clearly is in this context. Because the transaction described by the government does not violate FECA, there can be no finding of conspiracy.”)

Circuits in which legal impossibility is *not* a defense to inchoate crimes:

- *United States v. Trapilo*, 130 F.3d 547, 553 (2d Cir. 1997) (No)

“Where, as here, an indictment alleges conspiracy, legal impossibility affords a conspirator no defense.”).

- *United States v. Hsu*, 155 F.3d 189, 203 (3d Cir. 1998) (No) (“We

conclude that legal impossibility is not a defense to conspiracy.”).

- *United States v. Everett*, 692 F.2d 596, 599 (9th Cir. 1982) (No)

To this mix we now add the instant case, *United States v. Martinez*, No. 24-10533, 2026 WL 184361, at *4 (11th Cir. Jan. 23, 2026). This case appears to place the Eleventh Circuit functionally in the “No” group, because while the decision begins by stating that “[w]e recognize that, in certain cases, the doctrine of legal impossibility can be a defense to the charge of conspiracy,” the Court then held that legal impossibility is an affirmative defense that requires proof that the defendant *knew* the reason why the contemplated crime was legally impossible. (This caveat, it should go without saying, has

the effect of negating the legal impossibility defense entirely, because the definitional essence of the doctrine is that the defendant does *not* know about the legal impossibility at the time of the act.)

The need for this Court’s guidance is pressing. Two recent cases illustrate why the legal impossibility doctrine, and the question presented squarely by the forthcoming Petition for a Writ of Certiorari in the instant case, is so important.

First, in *United States v. Trump*, No. 9:23-cr-80101 (S.D. Fla.), President Trump and two other defendants, Waltine Nauta and Carlos de Oliveira, were charged with unauthorized possession of national defense documents, 18 U.S.C. sec 793(e). The defense led with a legal impossibility argument: President Trump had the right to have these documents, and one cannot “unauthorizedly” possess what one is authorized to possess; nor can one conspire or attempt to do so. See, e.g., *Trump*, 9:23-cr-80101, ECF Doc. No. 327 (Motion to Dismiss), pp. 2-10.

There were multiple theories as to the substantive grounding of the asserted legal right to possess the documents. They relied on the contention that President Trump had altered the legal status of the documents in some manner, either by declassifying them, or by classifying them as “personal records.” See, e.g., Motion to Dismiss, *supra*, at pp. 4-5; *Hannity*, Fox News, Sep. 21, 2022 (President Trump stating that a president can declassify

documents “even by thinking about it”). That action, however conducted, had altered the documents’ legal status.

The *Trump* case was dismissed for other reasons, so the application of these theories was never fully adumbrated. But the issue would undoubtedly have been brought to a head if the case proceeded to trial against the *other* defendants in the case, Nauta and De Oliveira. Those defendants did not have an immunity defense, did not have the power to declassify or reclassify documents, and would not have known of (and in public filings did not claim to have known of) any prior unmemorialized mental act by the President that had altered the documents’ legal status. See, e.g., *Trump*, 9:23-cr-80101, Doc. 352, at p. 14 (“The Indictment alleges nothing to the effect that Nauta or De Oliveira knew anything of continuing retention of classified documents.”).

Thus, these defendants would have had to rely on a pure legal impossibility argument, raised as a defense to an inchoate offense: namely, that even if they *thought* they were concealing classified documents, the crime they thought they were committing was legally impossible, because unbeknownst to them, the legal status of those documents had been altered.

That is the precise issue on which there is a stark and fully percolated Circuit split. And it is the precise issue presented by this case.

Second, in *Van Buren v. United States*, 593 U.S. 374 (2021), this Court considered the question of how “authorization” defines the boundary of

criminal liability under the Computer Fraud and Abuse Act. This Court expressly reserved the question whether “authorization” may be defined by “limits contained in contracts or policies.” *Id.* at 387, n.8. That question is precisely the one raised here: whether a *contractual* entitlement to possess the documents at issue renders the inchoate offense of conspiracy legally impossible, and thus negates an element of the charged conspiracy.

This question—If a contract (or a mental act of a President) alters the legal status of a document or other item, such that its possession is no longer prohibited, may a conspiracy or attempt defendant who was *unaware* of the alteration in status, and *had* the requisite mens rea for the charged inchoate offense, assert a legal impossibility defense?—is squarely presented by the instant case, and is one on which the Circuits are split.

The time is ripe for this Court to resolve this split, and announce a clear rule for the entire Nation as to what legal impossibility is, and whether it is a defense to inchoate crimes. Otherwise, we will remain in the untenable posture in which identical acts, identical mens rea, and identical legal arguments, result in conviction in some places and acquittal or dismissal in others.

Conclusion

For the foregoing reasons, Petitioner respectfully requests that the time to file the Petition for a Writ of Certiorari in this matter be extended for 60 days, up to and including August 21, 2026.

DATED: May 13, 2026



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CERTIFICATE OF SERVICE

A copy of this application was served by email and U.S. mail to the counsel listed below in accordance with Supreme Court Rule 22.2 and 29.3:

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