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In The
Supreme Court of the United States

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DEENVAUGHN ROWE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the District Court erred in denying Mr. Rowe's motion under Rule 29, Fed. R. Crim. P. to dismiss the bribery and bribery conspiracy charges against him when the prosecution failed to show a quid pro quo.

2. Whether the Court should require organizer-leader enhancements to be calculated in such broadly-based prosecutions by evaluating each participant's significance to the overall scheme to avoid artificially inflating Petitioner's federal sentencing guidelines offense level by looking to his actions at the local level in the underlying nationwide drug conspiracy.

3. Whether the motion for a second remand to the District Court presents an extraordinary circumstance such that waiver should not apply when, although the issue was not raised in the opening brief, (1) the remand relates to a criminal defendant's constitutional rights, (2) the Government had a full and fair opportunity to respond to the motion before briefing commenced, (3) no party moved to preclude the court's consideration of the request, (4) appellate counsel misread, rather than deliberately disregarded, the court's order, and (5) no alternative procedural vehicle exists through which the issue could be raised.

4. Whether it was error for the appellate court not to order a remand *sua sponte* where the evidentiary record is undeveloped and serious concerns regarding the effectiveness of counsel have arisen.

RULE 14.1(b) CERTIFICATE

Petitioner certifies as follows:

(i) Parties:

The parties who appeared before the United States District Court for the District of Columbia and in the United States Court of Appeals for the District of Columbia Circuit in the proceedings which resulted in the judgment from which a writ of certiorari is sought are: Petitioner Deenvaughn Rowe and Respondent the United States of America.

(ii) Corporate disclosure statement:

No corporation was before the Court of Appeals or the District Court below.

(iii) Related cases:

The underlying case, *United States v. Deenvaughn Rowe*, 16-cr-00144-003 (TSC), was initiated in the United States District Court for the District of Columbia. Final Judgment was entered on October 13, 2017.

Other directly related cases are *United States v. Alicia Norman*, 16-cr-00144-003 (TSC) and *United States v. Kendra Brantley*, 16-cr-00144-003 (TSC), and *United States v. Deenvaughn Rowe*, 16-cr-00144-003 (TSC), initiated in the United States District Court for the District of Columbia. Final Judgment was entered on September 22, 2017 in *Brantley*, and September 25, 2017 in *Norman*. The Court of Appeals, No. 17-3070, entered its consolidated opinion, reported at 926 F.3d 804 (D.C. Cir. 2019), and judgment on June 11, 2019. The Supreme Court of the United States, No. 19-6589, denied the subsequent petition for certiorari on March 23, 2020.

The United States District Court for the District of Columbia entered a decision following remand in *United States v. Rowe*, No. 16-cr-144-1, 2023 WL 346093 (D.D.C. Jan. 19, 2023). The Court of Appeals, No. 23-3010, entered its underlying opinion and judgment on March 31, 2026.

/s/ Barry Coburn

Barry Coburn

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
RULE 14.1(b) CERTIFICATE	ii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES.....	vi
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL & STATUTORY PROVISIONS	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION.....	5
I. The Government failed to establish the elements of bribery, in light of the Court’s recent decision in <i>Snyder v. United States</i>	5
II. The organizer-leader enhancements should be calculated in such broadly- based prosecutions as this case by evaluating each participant’s significance to the overall scheme	7
III. There exists a divide among Circuits regarding whether an issue is waived when not included in an Appellant’s opening brief, even in extraordinary circumstances.	9
CONCLUSION	12
APPENDIX:	
APPENDIX A: Unpublished Opinion of The United States Court of Appeals For the District of Columbia Circuit entered March 31, 2026	A-1
APPENDIX B: Published Opinion of The United States Court of Appeals For the District of Columbia Circuit entered June 11, 2019.....	A-6
APPENDIX C: Judgment in a Criminal Case of The United States District Court For the District of Columbia entered October 13, 2017	A-21
APPENDIX D: Memorandum Opinion and Order from the United States District Court for the District of Columbia, filed January 19, 2023	A-28

APPENDIX E: Order of The United States Court of Appeals For the District of Columbia Circuit Denying Petition for Rehearing or Rehearing En Banc, entered April 27, 2026	A-37
--	------

TABLE OF AUTHORITIES

	Page(s)
 <u>CASES</u>	
<i>Ballard v. United States</i> , 329 U.S. 187 (1946)	9
<i>Bd. of Regents of the Univ. of Wash. v. EPA</i> , 86 F.3d 1214 (D.C. Cir. 1996)	9
<i>Dickerson v. United States</i> , 530 U.S. 428 (2000)	9
<i>Kane v. Town of Harpswell (In re Kane)</i> , 254 F.3d 325 (1st Cir. 2001)	10
<i>McNabb v. United States</i> , 318 U.S. 332 (1943)	9
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	9
<i>Simmons v. City of Phila.</i> , 947 F.2d 1042 (3d Cir. 1991)	10
<i>Snyder v. United States</i> , 603 U.S. 1 (2024)	5, 6
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	5
<i>United States v. Albertson</i> , 645 F.3d 191 (3d Cir. 2011)	10
<i>United States v. Andrews</i> , 681 F.3d 509 (3d Cir. 2012)	10
<i>United States v. Batista</i> , 684 F.3d 333 (2d Cir. 2012)	8
<i>United States v. Dean</i> , 629 F.3d 257 (D.C. Cir. 2011)	6
<i>United States v. Garcia</i> , 497 F.3d 964 (9th Cir. 2007)	8
<i>United States v. Grigsby</i> , 692 F.3d 778 (7th Cir. 2012)	8
<i>United States v. McClinton</i> , 135 F.3d 1178 (7th Cir. 1998)	8

<i>United States v. Schaffer</i> , 183 F.3d 833 (D.C. Cir. 1999)	6
<i>United States v. Sun-Diamond Growers</i> , 526 U.S. 398 (1999)	6
<i>United States v. Talladino</i> , 38 F.3d 1255 (1st Cir. 1994)	8
<i>United States v. (Henry) Williams</i> , 827 F.3d 1134 (D.C. Cir. 2016)	7
<i>Williams v. Romarm, SA</i> , 756 F.3d 777 (D.C. Cir. 2014)	9
<i>World Wide Mins., Ltd. v. Republic of Kazakhstan</i> , 296 F.3d 1154 (D.C. Cir. 2002)	9

CONSTITUTIONAL PROVISION

U.S. CONST. amend. VI	1
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STATUTES

18 U.S.C. § 201(b)	6
18 U.S.C. § 201(b)(2)	2, 6
18 U.S.C. § 371	2, 6
21 U.S.C. § 841(a)(1)	2
21 U.S.C. § 846	2
28 U.S.C. § 1254(1)	1

RULES

D.C. Cir. R. 27	10
Fed. R. App. P. 27	10
Fed. R. Crim. P. 29	i, 6

PETITION FOR WRIT OF CERTIORARI

Petitioner Deenvaughn Rowe respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit appears at Appendix A to the petition and is unpublished.

JURISDICTION

The Court of Appeals' judgment was entered in an unpublished opinion on March 31, 2026. A timely petition for rehearing or rehearing en banc was denied on April 27, 2026 (Appendix E). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS

Sixth Amendment of U.S. Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, 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.

STATEMENT OF THE CASE

Mr. Rowe and two co-defendants, former USPS colleagues Kendra Brantley and Alicia Norman, were charged by a grand jury sitting in the District of Columbia with conspiracy to commit bribery in violation of 18 U.S.C. § 371; bribery in violation of 18 U.S.C. § 201(b)(2); and conspiracy to distribute, dispense, and possess marijuana with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) and 846. See ECF No. 1 (Indictment, Aug. 16, 2016); see also Crim. Case No. 16-144-2 (United States v. Brantley) (D.D.C.); and Crim. Case No. 16-144-3 (United States v. Norman) (D.D.C.).

On July 21, 2017, following a joint jury trial, a jury convicted Mr. Rowe of all three counts against him. See Minute Order (first), Jul. 21, 2017. On October 2, 2017, the District Court sentenced Mr. Rowe to ninety-seven (97) months of incarceration and forty-eight (48) months of supervised release.

At trial, the Government alleged that Mr. Rowe ran a bribery and drug-distribution scheme from the Lamond-Riggs Post Office (“Lamond-Riggs”) in the District of Columbia. The Government contended that Mr. Rowe used his office computer to track packages and then directed a Lamond-Riggs letter carrier, Kendra Brantley, and a letter technician, Alicia Norman, to deliver certain packages to individuals on the street, allegedly in exchange for cash.

The Government presented testimony from agents and investigators, video surveillance of Ms. Brantley and Ms. Norman delivering packages to an individual in a white Range Rover, and text messages between the co-defendants. The Government did not present testimony from any insider or cooperating witnesses or play any wiretaps for the jury. A large portion of the Government’s case against Mr.

Rowe focused on screenshots of searches made using Mr. Rowe's USPS login credentials. The Government alleged that Mr. Rowe used his USPS login credentials to search and track packages containing marijuana. No one testified to observing Mr. Rowe making the entries.

Additionally, there was no testimony that anyone had given Mr. Rowe any money or other thing of value in exchange for his tracking packages or for arranging deliveries. Instead, the Government asserted Mr. Rowe's cash deposits and spending were not proportional to his salary as a USPS station manager. Mr. Rowe's trial counsel did not present an affirmative defense case.

Mr. Rowe appealed his convictions and further alleged that his trial counsel was ineffective. The D.C. Circuit affirmed Mr. Rowe's convictions and remanded the case to the District Court to consider Mr. Rowe's "colorable" ineffective assistance of counsel ("IAC") claims. Mr. Rowe petitioned for a writ of certiorari on November 12, 2019, challenging the sufficiency of the evidence holding and a sentence enhancement. His petition was denied. The evidentiary hearing for Mr. Rowe's IAC claims was held on October 15, 2021, and only Mr. Rowe and his trial counsel testified.

Mr. Rowe testified that he gave his trial counsel the names of multiple other USPS employees who had and used his log-in credentials. Trial counsel acknowledged that he had not interviewed all of these potential witnesses. Additionally, trial counsel struggled to remember portions of his conversations with the few witnesses

he spoke to. Mr. Rowe also testified that Mr. Brennan did not interview or call witnesses who were capable of testifying to explain Mr. Rowe's additional income.

In addition to these witnesses, Mr. Rowe testified he told trial counsel about his gambling habits and income he received from the U.S. Department of Veteran Affairs. Mr. Rowe asked his trial counsel to hire an investigator for his case. Trial counsel testified that he believed an investigator was not necessary. Finally, Mr. Rowe testified that trial counsel neglected to review relevant discovery with him.

On January 19, 2023, the District Court issued a memorandum opinion denying all of Mr. Rowe's IAC claims. Mr. Rowe appealed to the Court of Appeals for the District of Columbia Circuit. Subsequently, on June 3, 2024, Mr. Rowe's present counsel filed a motion seeking a second remand to the District Court, so that an evidentiary record could be developed concerning the assistance afforded by the lawyer who represented Mr. Rowe in the District Court following this Court's remand. The Government timely opposed the motion seeking a second remand on June 11, 2024. Mr. Rowe's reply in support of the motion was filed on June 17, 2024. On August 1, 2024, the D.C. Circuit Court issued an Order which is central to the issue presented in this Petition. It stated:

Upon consideration of the motion to remand, the opposition thereto, and the reply, it is

ORDERED that the motion to remand be referred to the merits panel to which this appeal is assigned. The parties are directed to address in their briefs the issues presented in the motion to remand rather than incorporate those arguments by reference.

The Clerk is directed to enter a revised briefing schedule.

Counsel for Mr. Rowe misinterpreted the Order, and did not restate, in his opening brief, the arguments made in the earlier motion in favor of a second remand. This error did not become apparent to Mr. Rowe's counsel until asked about it during oral argument.

On March 31, 2026, the appellate court issued its decision, finding that Mr. Rowe failed to demonstrate that any alleged deficiencies in counsel's performance were prejudicial under *Strickland v. Washington*, 466 U.S. 668 (1984). In a footnote, the appellate court addressed the second remand issue, finding that Mr. Rowe forfeited his arguments for a second remand because he failed to address them in his opening brief.

REASONS FOR GRANTING THE PETITION

I. The Government failed to establish the elements of bribery, in light of the Court's recent decision in *Snyder v. United States*.

Mr. Rowe's 2019 Petition for a Writ of Certiorari raised two issues. The Government's 2020 Opposition contended that both issues were not ripe for consideration because of the interlocutory posture. Sections I and II set forth these issues again.

First, the District Court erred by failing to grant Mr. Rowe's motion to dismiss the bribery and bribery conspiracy counts. No one testified to bribing Mr. Rowe and no surveillance or wiretap evidence showed that anyone had. Absent proof of a quid pro quo, the Government failed to establish beyond a reasonable doubt the offense of bribery and conspiracy to commit bribery. Because the Government failed to prove a

quid pro quo beyond a reasonable doubt, it was error to deny Mr. Rowe's motions under Fed. R. Crim. P. 29, and Mr. Rowe is entitled to a judgment of acquittal of bribery (18 U.S.C. § 201(b)(2)) and conspiracy to commit bribery (18 U.S.C. § 371).

It is illegal for a public official to accept anything of value “in return for being influenced in the performance of any official act.” 18 U.S.C. § 201(b). Thus understood, bribery “involves the present giving, promise, or demand of something in return for some action in the future.” *United States v. Schaffer*, 183 F.3d 833, 841 (D.C. Cir. 1999). Bribery must include a “quid pro quo – a specific intent to give or receive something of value in exchange for an official act.” *United States v. Sun-Diamond Growers*, 526 U.S. 398, 404-05 (1999) (emphasis in original); *United States v. Dean*, 629 F.3d 27, 259-60 (D.C. Cir. 2011).

A crucial error by the Government relates to a distinction the Court recently clarified between bribes and gratuities. As the Court observed, “bribes are payments made or agreed to *before* an official act in order to influence the official with respect to that future official act.” *Snyder v. United States*, 603 U.S. 1, 5 (2024). On the other hand, “gratuities are typically payments made to an official *after* an official act as a token of appreciation.” *Id.* “American law generally treats bribes as inherently corrupt and unlawful,” on the other hand, gratuities are “more nuanced” and “might be innocuous.” *Id.* at 5–6. Thus, “gratuities after the official act are not the same as bribes before the official act.” *Id.* at 6.

Here, the Government did not set forth any evidence to establish that Mr. Rowe received payments “in return for being influenced.” The Government did not present

any evidence that Mr. Rowe had an agreement with any third party to act. Government argues that Mr. Rowe's deposits of cash into his bank account during the period defined by the indictment was circumstantial evidence that such an agreement was reached. This is insufficient to prove bribery beyond a reasonable doubt. Therefore, Mr. Rowe's convictions on Counts I and III should be vacated. *v. United States*, 437 U.S. 1, 13-17 (1978). *United States v. (Henry) Williams*, 827 F.3d 1134, 1162 (D.C. Cir. 2016).

II. The organizer-leader enhancements should be calculated in such broadly-based prosecutions as this case by evaluating each participant's significance to the overall scheme

The Court's supervisory power is necessary to create a proper standard for review of federal court sentences that include "organizer/leader" or "manager/supervisor" role enhancements in national or international conspiracy prosecutions. Mr. Rowe received a 4-level "organizer" role sentence enhancement. His sentence was based on an artificial magnification of his actions at the local level of a nationwide marijuana procurement and distribution conspiracy. Instead of examining his role in the context of the overall criminal organization depicted by the Government, which had numerous members and functioned on a national basis, his sentence was reviewed by evaluating to what he did strictly at the local level. As a result, his sentence was based on an incorrect methodology. The Court should formulate a rule that requires the lower courts to perform an on-the-record assessment of the known co-conspirators' relative roles in the underlying offense and

the justification for characterizing an offender as an organizer/leader or manager/supervisor of the overall criminal activity.

Evidence necessary to prove the defendant is an organizer or leader focuses on whether he made key strategic decisions for the conspiracy. *United States v. Talladino*, 38 F.3d 1255, 1260 (1st Cir. 1994). *See also United States v. Garcia*, 497 F.3d 964, 969-970 (9th Cir. 2007); *United States v. McClinton*, 135 F.3d 1178, 1191-1192 (7th Cir. 1998) (drug importation and distribution scheme). An organizer-leader initiates a scheme and oversees its execution whereas a manager-supervisor helps supervise aspects of its overall operation. *United States v. Grigsby*, 692 F.3d 778, 791 (7th Cir. 2012). *See also United States v. Batista*, 684 F.3d 333, 344-345 (2d Cir. 2012) (asking whether defendant was in position to affect the distribution ring “as a whole”).

Before the district court the prosecution portrayed Mr. Rowe as working with marijuana distributors on the West Coast and with their local associates who procured, packaged, and then coordinated shipping contraband shipments cross country into this area. Nothing placed Mr. Rowe as conjuring the cross country scheme or as financing or buying wholesale marijuana or arranging or overseeing the packing or sending the various packages from the numerous West Coast mail drops. Instead, the prosecutors relied on forensic evidence from Mr. Rowe’s workstation computer to depict him as tracking parcels coming eastward and then arranging with several co-workers to obtain the shipments for hand-over to a man in a white Range Rover bearing California tags. By focusing on Mr. Rowe’s acts at the local

distribution-side of a nationwide drug scheme, the District Court and the Court of Appeals overinflated his role in the offense as an “organizer” instead of a middleman.

The circumstances call for the Court in the exercise of its supervisory power to issue rules governing the imposition of role in the offense enhancements in these types of cases. *See, e.g., Ballard v. United States*, 329 U.S. 187, 193, 195 (1946) (use of supervisory power to condemn “purposeful and systematic exclusion of women” from a panel of grand and petit jurors in district court); *McNabb v. United States*, 318 U.S. 332, 340-341 (1943) (district court must exclude from evidence a voluntary confession that was the product of prolonged detention). *See also Dickerson v. United States*, 530 U.S. 428, 430-40 (2000) (holding that rule established by *Miranda v. Arizona*, 384 U.S. 436 (1966), initially presented as supervisory rule, was constitutional in nature).

III. There exists a divide among Circuits regarding whether an issue is waived when not included in an Appellant’s opening brief, even in extraordinary circumstances.

To prevent “sandbagging,” the D.C. Circuit, along with other sister Circuits, have held that “issues not raised until the reply brief are waived.” *Bd. of Regents of the Univ. of Wash. v. EPA*, 86 F.3d 1214, 1221 (D.C. Cir. 1996). This rule is meant to ensure that no party is “deprived . . . of the opportunity to respond.” *Id.* The two cases referenced by the appellate court in its Judgment involved parties raising issues, in a substantive manner, for the first time in their reply or oral arguments, thereby depriving appellees of a fair chance to respond. *See Williams v. Romarm, SA*, 756 F.3d 777, 783 (D.C. Cir. 2014); *World Wide Mins., Ltd. v. Republic of Kazakhstan*,

296 F.3d 1154, 1160 (D.C. Cir. 2002). It appears from these two cases, and the cases upon which they rely, that the D.C. Circuit has not afforded an exception for extraordinary circumstances.

The First and Third Circuits, on the other hand, recognize that the waiver rule yields in extraordinary circumstances. *United States v. Albertson*, 645 F.3d 191, 195 (3d Cir. 2011) (quoting *Simmons v. City of Phila.*, 947 F.2d 1042, 1065 (3d Cir. 1991)); *Kane v. Town of Harpswell (In re Kane)*, 254 F.3d 325, 331 (1st Cir. 2001). In these circuits, even if an appellant fails to raise an issue in their opening brief and therefore leaves appellees without a full and fair opportunity to respond, consideration of the issue may still be appropriate. *In re Kane*, 254 F.3d at 331 n.3. These circuits consider three factors: (1) “whether there is some excuse for the [appellant’s] failure to raise the issue in the opening brief”; (2) the extent to which the opposing party would be prejudiced by our considering the issue; and (3) “whether failure to consider the argument would lead to a miscarriage of justice or undermine confidence in the judicial system.” *United States v. Andrews*, 681 F.3d 509, 532 (3d Cir. 2012).

This divide between circuits is subtle but serious. While some allow for exceptions in order to prevent a miscarriage of justice, the D.C. Circuit does not. Thus, a criminal defendant’s constitutional right to competent counsel is fully protected in some jurisdictions, and less so in others.

In Mr. Rowe’s case, before his opening brief was filed, the question of a second remand was thoroughly argued by both sides in a motion duly filed pursuant to Fed. R. App. P. 27 and D.C. Cir. Rule 27. No suggestion was made by the government that

there was any procedural impropriety in doing so. Nor did the government move to strike the motion when Mr. Rowe's current counsel failed to adhere to the Panel's Order, even after the Panel made a point of it during oral argument. None of this excuses counsel's failure to adhere to the Order, however this mistake is highly relevant. If Mr. Rowe was charged in the First or Third Circuits, his case would have been remanded. This is because his case meets the three factors: 1) there is an excuse for counsel's failure to raise the issue in his opening brief; 2) there is no prejudice to the Government because they were allowed a full and fair opportunity to file an opposition; and 3) failure to consider the request for a second remand leads to a miscarriage of justice here. Mr. Rowe's recent appeal was denied because the appellate court found that "Rowe has presented zero evidence—no affidavits, no additional witnesses, no documents—demonstrating that if counsel had interviewed and/or called all four witnesses related to multiple logins, the witnesses would have proffered testimony that would have affected the outcome of the trial." This lack of evidence from Mr. Rowe's remand counsel raises significant concerns about whether Mr. Rowe had competent representation on remand. The appellate court's denial of Mr. Rowe's second remand request closes the door on his ineffective assistance of counsel claims against trial counsel and remand counsel. This is a miscarriage of justice.

This discrepancy between circuits means that a criminal defendant's core constitutional rights rely on his location, as they can be adequately protected in one circuit and cut down in another.

CONCLUSION

For the foregoing reasons this Court should grant this Petition for Writ of Certiorari.

Date: July 24, 2026

Respectfully submitted,

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I certify the following:

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/s/ Barry Coburn
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