

No. _____

In the Supreme Court of the United States

CHRISTOPHER FILLINE, *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*

**PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a federal court must grant a motion for judgment of acquittal when, construing the evidence in the light most favorable to the Government, evidence of guilt and innocence is evenly balanced.

2. Whether evidence that one person planned to commit an unlawful act, he asked others to commit acts that furthered that plan, and they did so in secrecy is sufficient to prove a conspiracy when the concealment of their actions had equally plausible explanations.

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Petitioner Christopher Filline asks that a writ of certiorari issue to review the opinion and judgment entered by the United States Court of Appeals for the Fifth Circuit on June 1, 2026.

PARTIES TO THE PROCEEDING

Pursuant to Sup. Ct. R. 14.1(b)(i), the parties to the proceedings in the court whose judgment is sought to be reviewed are:

Petitioner Christopher Filline, the defendant in the district court and appellant below.

Respondent United States of America, the plaintiff in the district court and appellee below.

RELATED PROCEEDINGS

All proceedings directly related to the case are as follows:

- *United States v. Filline*, No. 5:20-CR-32-1 (W.D. Tex. Jan. 28, 2025) (amended judgment)
- *United States v. Filline*, No. 25-50049 (5th Cir. June 1, 2026) (published opinion)

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INTRODUCTION

A jury found Petitioner Christopher Filline guilty of conspiracy to commit wire fraud after the district court denied his motion for judgment of acquittal. On appeal, Filline acknowledged that there was sufficient evidence of a fraudulent scheme: he asked others to get rid of his car, they took it to a secluded area and burned it, and then he reported it stolen and filed a claim with his insurer to receive a financial benefit. But he argued that the Government failed to prove the *agreement* necessary for conspiracy to commit wire fraud: that at least one other person shared his intent to defraud. The court of appeals disagreed. Asking only whether the jury's inferences were rational, not whether the inferences had equally reasonable inferences that no other person agreed to commit wire fraud, the Fifth Circuit held that the circumstantial evidence of an agreement to commit fraud was sufficient to support a finding that Filline was guilty beyond a reasonable doubt.

The decision below raises two important questions about the role courts play in enforcing the reasonable-doubt standard:

First, must a court reverse a conviction if, after construing the trial evidence in favor of the verdict, the evidence is in equipoise? A majority of the circuits say yes. As then-Judge Gorsuch explained, if the evidence is equally balanced for and against guilt, a

court “must reverse the conviction, as under these circumstances a reasonable jury *must necessarily entertain* a reasonable doubt.” *United States v. Lovern*, 590 F.3d 1095, 1107 (10th Cir. 2009) (emphasis in original; quoting *United States v. Caseer*, 399 F.3d 828, 840 (6th Cir. 2005)).

Yet the en banc Fifth Circuit, along with the Third Circuit, rejected the equipoise rule more than a decade ago. These circuits limit the sufficiency inquiry to whether a jury’s inferences were rational and whether evidence established every element of the crime. This approach is inconsistent with Federal Rule of Criminal Procedure 29 and the constitutionally required reasonable doubt standard, which allows a conviction only when evidence of guilt exceeds evidence of innocence. *See In re Winship*, 397 U.S. 358 (1970).

Second, the decision below conflicts with this Court’s conspiracy precedent that requires conspirators to know about the ultimate conspiratorial goal. *See Ingram v. United States*, 360 U.S. 672, 678 (1959); *United States v. Falcone*, 311 U.S. 205, 210 (1940). *Ingram* and *Falcone* place important limits on whether inferences can be deemed rational and sufficient to support a guilty verdict

when the alleged conspirators completed acts that aided the ultimate substantive offense, but evidence is lacking that they knew about the intended goal.

This Court should grant certiorari to reinforce the courts' role in administering the reasonable doubt standard to reinforce the presumption of innocence and guard against convictions based on a pile of inferences that could equally point to guilt or innocence.

OPINION BELOW

The Fifth Circuit's opinion is reported at 176 F.4th 870 and is reproduced at Pet. App. 1a–17a.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fifth Circuit was entered on June 1, 2026. This petition is filed within 90 days of that judgment. *See* Sup. Ct. R. 13.1, 13.3. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the U.S. Constitution provides in part that “[n]o person shall be ... deprived of life, liberty, or property, without due process of law[.]”

Federal Rule of Criminal Procedure 29(a) provides that:

After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction.

STATEMENT

A jury found Petitioner Christopher Filline guilty of one count: conspiracy to commit wire fraud. At trial, the Government introduced evidence that Filline, who was the police chief in a small Texas town, orchestrated the disappearance of his wife's car so that he could report it as stolen, file a false claim with the insurance company, and receive a payout. Filline moved for a judgment of acquittal several times, challenging the sufficiency of the evidence. He argued that the Government failed to prove an essential conspiracy element: that he agreed with another person to pursue the fraudulent objective. The district court denied the motions, and Filline raised the challenge again on appeal.¹

1. The trial evidence, viewed in a light most favorable to the verdict, showed that Filline asked one of his subordinates, Ambrose Rymers, to ask one of his cousins to get rid of his wife's car,

¹ Following the jury's verdict, Filline was sentenced to probation and ordered to pay restitution. He paid the restitution, and the district court terminated his probation early. But he remains a felon based on this, his only conviction.

a Lincoln Navigator. Pet. App. 3a. His wife loved that car and wanted to keep it, but the shocks on the Navigator needed repair. *Id.* at 6a. Filline, who often complained about his financial troubles, thought the car was a “piece of junk.” *Id.* at 3a (quoting C.A. ROA 919). Filline had even asked a mechanic to burn it, but the mechanic thought he was joking. *Id.* Rymers, however, understood Filline’s request to get rid of the car be sincere and believed that he was being asked to do something criminal. *Id.* Filline also insisted on secrecy, telling Rymers that, after it was done, they would never speak of it again. *Id.* at 13a. And he threatened to kill Rymers if he told anyone. *Id.*; see C.A. ROA. 1029.

Neither Rymers nor any other witness testified that he knew Filline was planning to file a false insurance claim that the car had been stolen. Rymers did not even know that Filline owed money on the car, and there was no evidence that Rymers or anyone else knew about Filline’s insurance policy. See C.A. ROA 1019. Instead, Rymers testified that he agreed to disappear the car because Filline, his friend and superior, “needed help” and he felt sorry for him. Pet. App. 10a (quoting C.A. ROA 1026).

So Rymers asked his cousin, Oscar Hernandez, for help, and the two took the Navigator late one night. *Id.* at 3a–4a. Hernandez drove the vehicle to a secluded area and set it on fire. *Id.* A couple

of days later, Filline reported the Navigator stolen and filed his insurance claim. *Id.* at 4a. After a brief investigation, which did not involve Rymers or Hernandez, the insurance company paid the claim, forgiving the amount Filline owed on the Navigator. *Id.* at 5a. The arson investigation remained open, though. A couple of years later, Hernandez was arrested for an unrelated offense, and his statements ultimately led to Rymers admitting that he helped get rid of the car. *Id.* at 5a–6a.

2. On appeal, Filline challenged the sufficiency of the evidence. He argued that, even viewing the evidence in a light most favorable to the guilty verdict, there was insufficient evidence that he conspired with any other person to commit wire fraud. He relied on this Court’s decisions in *Falcone* and *Ingram*,² among others, to argue that, even though Rymers and Hernandez committed acts that furthered his scheme to defraud his insurance company, those acts alone were not enough to prove they were even aware of, let alone shared, his fraudulent intent, as is required for a wire fraud conspiracy conviction. And without coconspirators, of course, there was no conspiracy.

² *Ingram v. United States*, 360 U.S. 672 (1959); *United States v. Falcone*, 311 U.S. 205 (1940).

The court of appeals affirmed. Pet. App. 2a. In a published decision, the court explained that its review is to determine only “whether the jury’s verdict is rational.” *Id.* at 9a (citing *United States v. Vargas-Ocampo*, 747 F.3d 299, 301 (5th Cir. 2014) (en banc)). The court described the evidence in detail: Filline pursued a fraudulent scheme to get rid of the Navigator, claim it was stolen, and then file a false insurance report to receive a payout. Pet. App. 1a–7a. The court also described the circumstantial evidence that at least one other person, presumably Rymers, shared Filline’s fraudulent intent. *Id.* at 10a–15a. As the court put it, “Filline’s financial distress supplied motive”; the “plan’s structure, secrecy, and execution showed coordinated action”; and the participants’ silence after the car was burned was “the mechanism that made the fraudulent insurance claim possible.” *Id.* at 10a. In other words, the court held that there was sufficient proof of a wire fraud conspiracy because (1) Filline had a plan, (2) he asked Rymers and Hernandez to do something that furthered his plan, and (3) they kept what they had done a secret after an investigation into the burned Navigator began.

The court of appeals found it important that “Rymers understood the request to involve criminal conduct” but he nevertheless “agreed because he knew Filline ‘needed help’ and felt sorry for

him.” *Id.* From that evidence, the court jumped to the conclusion that Rymers knew he “was helping relieve Filline’s financial pressure by making the Navigator disappear in a way that would support an insurance payout,” *id.* at 11a, even though the court could not point to any evidence Rymers knew the Navigator was covered by an insurance policy that would result in a payout. The court also found that the concealment after the vehicle was destroyed, along with Filline’s command to Rymers to never speak about it and threat to kill Rymers if he did, supported an inference that burning the vehicle was “part of a larger fraud whose success depended on keeping Filline separated from the burning and preserving the appearance of a genuine theft.” *Id.* at 13a–14a. The court commented that the jury was not “required to accept Filline’s alternative theory that all this secrecy was merely meant to spare his wife’s feelings” that he destroyed the car she loved to avoid paying for costly repairs. *Id.* at 14a.

REASONS FOR GRANTING THE WRIT

This petition presents two questions that independently warrant this Court's review.

First, the federal courts of appeals are deeply divided over whether a district court should direct a judgment of acquittal when evidence of guilt and evidence of innocence is in equipoise. In most circuits, the district court would have been bound to grant Filline's motion for a judgment of acquittal. In the Fifth Circuit, the district court was bound not to. Only this Court can resolve the conflict over this recurring and important question, and this case presents an ideal vehicle through which to do so.

Second, Filline's conviction for conspiracy to commit wire fraud must be vacated because—contrary to this Court's precedent—the Government failed to advance sufficient evidence that Filline conspired with anyone who also shared his intent to defraud and knew about the ultimate fraudulent purpose. The circumstantial evidence presented falls short of proof beyond reasonable doubt because no alleged coconspirator knew Filline had an insurance policy from which he would financially benefit if his car was stolen.

I. The Courts of Appeals Are Deeply Divided Over Whether the Equipoise Rule Applies to Sufficiency-of-the-Evidence Review.

1. “[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364 (1970). This “reasonable-doubt standard plays a vital role in the American scheme of criminal procedure.” *Id.* at 361. It “provides concrete substance for the presumption of innocence—that bedrock ‘axiomatic and elementary’” principle whose “enforcement lies at the foundation of the administration of our criminal law.” *Id.* at 361 (quoting *Coffin v. United States*, 156 U.S. 432, 453 (1895)). Federal Rule of Criminal Procedure 29 effectuates the reasonable-doubt standard by allowing the trial court to enter a judgment of acquittal after the jury verdict when the evidence is insufficient to sustain a conviction.

The reasonable doubt standard requires the factfinder to “*rationally* apply that standard to the facts in evidence.” *Jackson v. Virginia*, 443 U.S. 307, 317 (1979) (emphasis added). In *Jackson*, the Court rejected the notion that, as long as the jury was properly instructed on the reasonable-doubt standard, an appellate court could reverse a conviction for insufficiency only if there was “no evidence” to support guilt. *Id.* at 318. Rather, a “‘reasonable doubt,’

at a minimum, is one based upon ‘reason.’” *Id.* at 316–17. In other words, the jury verdict is “not irretrievably committed to jury discretion.” *Id.* at 317 n.10.

Ingram v. United States exemplifies this principle in action. 360 U.S. 672 (1959). There, the Court reversed the convictions of two lottery employees for conspiring to evade federal taxes, holding that the circumstantial evidence offered—the employees’ intimate involvement in the lottery, their cooperation in secrecy, and their knowledge of the lottery’s profitability—was “colorless as to the vital issue of knowledge” of their employers’ federal tax liability given that their conduct was “reasonably explainable” by the illegality of the lottery under state law. 360 U.S. at 679. Evidence that the defendants “might have wanted the taxes to be evaded if they had known of them ... is not evidence that they did know of them.” *Id.* at 680. *Ingram* thus applied the equipoise rule: where circumstantial evidence is equally explainable by innocent conduct (concealment motivated by state-law illegality) as by the charged offense (a conspiracy to evade federal taxes), the evidence is insufficient as a matter of law. *Id.* at 680–81.

2. Consistent with this approach, a majority of circuits hold that, where evidence of guilt and innocence is in equipoise, a con-

viction cannot stand. “If the evidence viewed in the light most favorable to the verdict gives equal or nearly equal circumstantial support to a theory of guilt or a theory of innocence ... a reasonable jury must necessarily entertain a reasonable doubt.” *United States v. Lopez-Diaz*, 794 F.3d 106, 111–12 (1st Cir. 2015) (quoting *United States v. Flores-Rivera*, 56 F.3d 319, 323 (1st Cir. 1995)); *see also* *United States v. Caseer*, 399 F.3d 828 (6th Cir. 2005).

Along with the First and Sixth Circuits, the Seventh, Eighth, Tenth, Eleventh, and D.C. Circuits have endorsed the equipoise rule for similar reasons. *See, e.g., United States v. Johnson*, 592 F.3d 749, 755 (7th Cir. 2010) (“In this situation, the evidence is essentially in equipoise; the plausibility of each inference is about the same, so the jury necessarily would have to entertain a reasonable doubt.”); *United States v. Wright*, 835 F.2d 1245, 1249 n.1 (8th Cir. 1987); *United States v. Lovern*, 590 F.3d 1095, 1107 (10th Cir. 2009); *Cosby v. Jones*, 682 F.2d 1373, 1383 (11th Cir. 1982); *Curley v. United States*, 160 F.2d 229, 233 (D.C. Cir. 1947). As then-Judge Gorsuch explained, even when viewing the evidence in the light most favorable to the verdict, there may be “no way to distinguish among several plausible and competing inferences about its meaning.” *Lovern*, 590 F.3d at 1107. “Put differently, the jury simply had no non-speculative reason to favor any one of these explanations

over the others.” *Id.* In such instances, the court “must reverse the conviction, as under these circumstances a reasonable jury *must necessarily entertain* a reasonable doubt.” *Id.* (internal quotation marks omitted; emphasis in original). Notably, Judge Gorsuch cited *Ingram* as support for this principle.³ *Id.*

The Fifth Circuit used to follow the equipoise rule until the court unanimously rejected it en banc in *United States v. Vargas-Ocampo*, 747 F.3d 299 (5th Cir. 2014) (en banc), a year after the Third Circuit had also done so. *See United States v. Caraballo-Rodriguez*, 726 F.3d 418, 431–32 (3d Cir. 2013) (en banc). In the Fifth Circuit’s view, the equipoise rule “usurp[s] the jury’s function” because it encourages appellate courts to engage in “the type of fine-grained factual parsing necessary to determine that the evidence presented to the factfinder was in equipoise.” *Vargas-Ocampo*, 747 F.3d at 301 (cleaned up). In the Fifth Circuit, therefore, an appellate court reviewing a sufficiency challenge may consider only

³ A district court in the Second Circuit recently granted a motion for judgment of acquittal based on the equipoise rule and *Ingram*. *United States v. Hussain*, 785 F. Supp. 3d 9, 27 (D. Vt. 2025). There, the prosecution proved that *others* committed wire fraud, but it did not prove that the defendant acted with specific intent to defraud simply because he committed acts that furthered the fraudulent plan. *Id.* The Government voluntarily dismissed its appeal. Order, *United States v. Hussain*, No. 25-622 (2d Cir. June 18, 2025), ECF No. 24.

“whether the inferences drawn by a jury were rational” and “whether the evidence is sufficient to establish every element of the crime.” *Id.* at 302. If rational inferences equally support both the verdict and an acquittal, the Fifth Circuit, as in Filline’s case, must affirm. *See* Pet. App. 15a–16a.

3. In the years since the circuits split, this Court has denied petitions asking the Court to address the validity of the equipoise rule. *See, e.g., Stavrakis v. United States*, 143 S. Ct. 309 (2022) (No. 22-205); *Gaines v. United States*, 592 U.S. 1262 (2021) (No. 20-294); *Hoffman v. United States*, 587 U.S. 1014 (2019) (No. 18-1049); *Vargas-Ocampo v. United States*, 574 U.S. 864 (2014) (No. 13-10737).

But this important question keeps resurfacing, and the circuit split remains entrenched. Even in those circuits where the equipoise rule applies, judges argue for it to be abandoned. *See, e.g., United States v. Goldesberry*, 128 F.4th 1183, 1203–08 (10th Cir. 2025) (Eid, J., dissenting). The split also extends to the state

courts.⁴ It is time to resolve whether the equipoise rule applies to sufficiency review.

This Court has not hesitated to intervene to ensure uniform interpretation and application of Rule 29 before. *See, e.g., United States v. Martin Linen Supply Co.*, 430 U.S. 564, 575 (1977) (holding the Double Jeopardy Clause bars the Government from appealing a judgment of acquittal); *Carlisle v. United States*, 517 U.S. 416, 433 (1996) (holding the district court has no authority to grant a motion for judgment of acquittal filed out of time limit proscribed

⁴ Many state courts have adopted the equipoise rule. *See State v. Schweitzer*, 18 A. 787, 788–89 (Conn. 1889); *Harris v. United States*, 125 A.3d 704, 709 (D.C. 2015); *Dunn v. State*, 454 So. 2d 641, 650 n.13 (Fla. Dist. Ct. App. 1984); *Reid v. State*, 212 Ga. App. 787, 789 (1994), *overruled on other grounds by Maddox v. State*, 322 Ga. App. 811 (2013); *Commonwealth v. Goss*, 428 S.W.3d 619, 626 (Ky. 2014); *Taylor v. State*, 346 Md. 452, 458 (1997); *Commonwealth v. Croft*, 345 Mass. 143, 145 (1962); *State v. May*, 689 S.W.2d 732, 736 (Mo. Ct. App. 1985); *State v. Seibel*, 174 N.H. 440, 445 (2021); *Herron v. State*, 111 N.M. 357, 362 (1991); *Day v. State*, 303 P.3d 291, 298 (Ok. Crim. App. 2013); *State v. Hall*, 269 Or. 63, 70 (1974); *In re J.B.*, 647 Pa. 339, 379–80 (Pa. 2018); *State v. Thomas*, 687 S.W.3d 223, 251 (Tenn. 2024); *Haskins v. Commonwealth*, 44 Va. App. 1, 9 (2004).

Some have rejected it. *See State v. Jones*, 967 N.W.2d 336, 339 (Iowa 2021); *State v. Stack*, 307 Neb. 773, 787 (2020); *Mackey v. State*, No. 01-01-00276-CR, 2002 WL 31521379, at *3 (Tex. App. Nov. 14, 2002) (citing *Matson v. State*, 819 S.W.2d 839, 846 (Tex. Crim. App. 1991)).

by Rule 29). Because of the import constitutional guarantees embodied in the reasonable doubt standard, the Court should do so again.

Indeed, this Court itself has recognized that crystalizing the concept of evidentiary equipoise can make a decisive difference in outcomes. In *O’Neal v. McAninch*, the Court considered whether a federal habeas court should deem a trial error harmless when “the matter is so evenly balanced that [the judge] feels himself in virtual equipoise.” 513 U.S. 432, 435 (1995). It held that, in that situation, the reviewing court should “treat the error, not as if it were harmless, but as if it affected the verdict (*i.e.*, as if it had a ‘substantial and injurious effect of influence in determining the jury’s verdict’).” *Id.*

In other words, this Court has already recognized that, when evidence is at or near equipoise, the party not bearing the burden of proof should prevail—and that the treatment of evidence in equipoise is outcome-determinative in a meaningful number of cases. *See Morrison v. California*, 291 U.S. 82, 94–96 (1934) (where evidence is in equipoise, the Government has not carried its burden of proof); *Davis v. United States*, 160 U.S. 469, 492–93 (1895) (where evidence of a defendant’s sanity is in equipoise, the defend-

ant is entitled to an acquittal), *superseded on other grounds by statute as stated in Dixon v. United States*, 548 U.S. 1, 12 (2006); *cf. Johnson v. United States*, 529 U.S. 694, 713 n.13 (2000) (when interpretations of a criminal statute are in equipoise, the rule of lenity resolves the interpretation in defendant’s favor). The Court should clarify that this logical principle applies as well to reviewing the sufficiency of evidence to establish guilt beyond a reasonable doubt.

II. The Decision Below Conflicts with This Court’s Precedent Requiring, for a Conspiracy Conviction, Clear Evidence of Knowledge About the Intended Unlawful Action.

This Court has long held that “[c]onspiracy to commit a particular substantive offense cannot exist without at least the degree of criminal intent necessary for the substantive offense itself.” *Ingram v. United States*, 360 U.S. 672, 678 (1959) (internal quotation marks omitted). To establish that intent, “the evidence of knowledge” about the intended unlawful action “must be clear, not equivocal.” *Id.* (quoting *Direct Sales Co. v. United States*, 319 U.S. 703, 711 (1943)). “[C]harges of conspiracy are not to be made out by piling inference upon inference.” *Id.* (cleaned up). Otherwise, conspiracy would be “a dragnet to draw in all substantive crimes.” *Id.* (cleaned up).

To convict Filline of conspiring to commit wire fraud, the Government had to prove that he agreed with someone else to commit wire fraud. But Rymers and Hernandez—the only alleged coconspirators identified by the Government—did not have the requisite knowledge and intent to conspire with Filline to commit wire fraud. Thus, no rational jury could find Filline guilty of the charged conspiracy. *See Ingram*, 360 U.S. at 680.

This Court has reversed conspiracy convictions that were similarly based on a pile of inferences and lacked the requisite knowledge about the intended unlawful action. First, in *United States v. Falcone*, the Court held that defendants who furnished illicit distillers with supplies were not guilty of a conspiracy to distill spirits in violation of the revenue laws absent evidence that the suppliers knew of the conspiracy’s ultimate unlawful goal. 311 U.S. 205, 211 (1940). Their sales “may have furthered the object of a conspiracy to which the distiller was a party,” but the suppliers had no knowledge of the conspiracy and thus could not “be brought within the sweep of the Government’s conspiracy dragnet.” *Id.* at 210. “Those having no knowledge of the conspiracy are not conspirators.” *Id.*

Then, in *Ingram*, the Court reversed the convictions of two defendants who were accused of conspiring to commit willful evasion

of federal taxes. 360 U.S. at 680–81. Even viewing the evidence in light most favorable to the Government, the record did not support a finding that defendants Smith and Law *knew* about the tax liability of defendants Ingram and Jenkins. *Id.* “Without the knowledge” of the tax liability or that the taxes were not being paid, “the intent [to willfully evade the taxes] cannot exist.” *Id.* at 680 (quoting *Direct Sales Co.*, 319 U.S. at 711). The Court thus reversed the tax evasion conspiracy convictions for Smith and Law but affirmed them for the others, because there was evidence that Ingram and Jenkins knew of the tax liability and agreed to evade those taxes. *Id.* at 677.

The Court rejected the Government’s argument that circumstantial evidence supported Smith’s and Law’s knowledge of the tax liability and intent to evade it. *Id.* at 679. That evidence supported “the intimate connection of Smith and Law with the operation of the [illegal] lottery, their cooperation in conducting it secretly, and their apparent knowledge that it was conducted for a profit.” *Id.* But “the secrecy of the operation did not go to show that knowledge” of federal tax liability because “efforts at concealment” were not “reasonably explainable only in terms of motivation to evade taxation.” *Id.* Rather, the criminality of the lottery itself was

“more than sufficient reason for the secrecy in which it was conducted.” *Id.* at 680. And “that Smith and Law might have wanted the taxes to be evaded if they had known of them, and that they engaged in conduct which could have been in furtherance of a plan to evade the taxes if they had known of them, *is not evidence that they did know of them.*” *Id.* (emphasis added).

The court of appeals decision here, finding sufficient evidence to support Filline’s conviction for conspiracy to commit wire fraud, conflicts with *Ingram* and *Falcone*. Here, there was no direct evidence that any possible coconspirators knew about either the insurance policy at issue or that Filline intended to defraud the insurance company. Pet. App. 2a. Rymers and Hernandez, the two alleged coconspirators, likely knew of Filline’s general financial troubles, that the car needed costly repairs, and that his wife loved the car. *Id.* at 2a–3a, 6a. But there is no evidence that they knew Filline had an insurance policy from which he would benefit financially if the car was stolen. Nor is there evidence that Rymers or Hernandez knew that Filline planned to report the car as stolen to the insurance company. And while Rymers and Hernandez may have known about the fire investigation after the car was found burned, there is no evidence they knew about the *insurance* inves-

tigation. Without such knowledge, Rymers's and Hernandez's secrecy does not necessarily support that they knew about and were assisting in the insurance fraud.

As in *Ingram*, the secrecy surrounding both the disappearance of the car and the concealment of their acts was not "reasonably explainable only in terms of motivation" to defraud the insurance company. 360 U.S. at 679. It was common knowledge that Filline's wife loved the car and wanted to keep it. Pet. App. 6a. The initial secrecy avoided her knowing that Filline was behind its disappearance. And once the fire marshal was investigating the arson and car theft, there were many reasons for Rymers and Hernandez to cover up their involvement to avoid liability for their actions. The criminality of burning a car in a remote area and failure to disclose their involvement in the arson earlier was "more than sufficient reason for the secrecy" after the burnt car was discovered. *Ingram*, 360 U.S. at 680.

Viewing the evidence in the light most favorable to the verdict, Rymers and Hernandez were willing to help Filline get rid of the car in secret and they believed what they were doing was criminal. Pet. App. 3a, 10a. This suggests that Rymers and Hernandez would have still helped get rid of the car had they known of Filline's insurance policy and intent. But that "is not evidence that

they *did* know of them.” *Ingram*, 360 U.S. at 680 (emphasis added). Rymers, who testified at Filline’s trial, never said he knew the ultimate purpose of getting rid of the car or that Filline had an insurance policy he could benefit from if the car was stolen. *See* C.A. ROA 1006–90. He did not even know whether Filline still owed money on the car. *Id.* at 1019.

The court of appeals’ affirmance of Filline’s conviction conflicts with this Court’s decisions in *Ingram* and *Falcone*.

III. This Case is an Excellent Vehicle for Resolving Both Questions Presented.

This case is an excellent vehicle for resolving the circuit split over the equipoise rule. The Fifth Circuit’s decision explains how the Government’s proof rested on cumulative circumstantial evidence and then asks only one question: “whether the evidence as a whole—strand by strand, fact by fact, inference by inference—could support a rational verdict.” Pet. App. 16a. The court of appeals did not ask, because under its governing law it could not, whether the evidence equally, or near equally, supported a not-guilty verdict. That approach was outcome determinative here, given the inferential chasm between finding that a person believed he was asked to do something criminal in a general sense and finding that the person shared an intent to defraud an insurance company.

This case is also an ideal vehicle to clarify that *Ingram* and *Falcone* are still the good law and for good reason—so that conspiracy does not become a dragnet into which all crimes are swept.

CONCLUSION

FOR THESE REASONS, Filline asks that this Honorable Court grant a writ of certiorari.

Respectfully submitted.

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