26-5481

ORIGINAL

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2026

No. ___________

DERICKSON LAWRENCE,

Reg. No. 71243-510,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

Derickson Lawrence

Register No. 71243-510

FCI Butner Medium I

P.O. Box 1000

Butner, NC 27509

Pro Se Petitioner

QUESTIONS PRESENTED

I.

Whether 18 U.S.C. §§ 1341 and 1343 require proof that a defendant intended both to deceive and to wrongfully obtain money or property — such that a jury instruction permitting conviction upon proof of either element alone omits an essential element of the offense — where the Fourth Circuit affirmed convictions on counts for which the government's own witness testified the invoices were reviewed before payment, agreed upon, and not fraudulent or false, and the government separately conceded the same invoices contained no false representations, in conflict with the Ninth Circuit's decision in *United States v. Miller*, the Seventh Circuit's decision in *United States v. Chanu*, and this Court's decisions in *Shaw v. United States*, *Kelly v. United States*, and *Ciminelli v. United States*.

II.

Whether the Fifth Amendment's Grand Jury Clause and *Russell v. United States*, 369 U.S. 749 (1962) are violated when a wire fraud conviction rests on a wire transmission the government admitted before trial it could not identify — where the indictment charged no specific wire, the district court denied a pretrial motion to dismiss for this defect, the government supplied a wire post-indictment through a Bill of Particulars without grand jury resubmission, the parties stipulated that for the specific loan charged it is unknown which server was used, and the Fourth Circuit affirmed — in direct conflict with the Fourth Circuit's own decisions in *United States v. Howard*, 590 F.2d 564 (4th

Cir. 1985) and *United States v. Okun* (4th Cir. 2009), and with the unanimous rule of the First, Second, Fifth, Eighth, and Tenth Circuits that a Bill of Particulars cannot cure a defective indictment.

III.

Whether, where venue must be established independently for each count of a federal indictment, Article III, the Sixth Amendment, and 18 U.S.C. § 3237(a) permit the government to establish wire fraud venue for a specific count in a district where the defendant had no connection on that count — where the parties stipulated the defendant resided in New York, the transmission originated in New York, SBA decision-makers were located in Washington D.C., the government's own exhibit named the SBA in Washington as the destination, the parties stipulated the server used for the specific loan is unknown, and government counsel could not explain the server's location — where the district court ruled that venue is proper 'wherever the wire transmission goes' and 'wherever it continues this process,' in conflict with *United States v. Jefferson*, 674 F.3d 332 (4th Cir. 2012), *United States v. Sterling*, 860 F.3d 233 (4th Cir. 2017), *United States v. Johnson*, 323 U.S. 273 (1944), *Travis v. United States*, 364 U.S. 631 (1961), and *United States v. Brennan*, 183 F.3d 139 (2d Cir. 1999), and contrary to *Travis*'s prohibition on construing venue to give the government the choice of a favorable tribunal.

IV.

Whether the admission of a confidential settlement communication without Rule 403 balancing and in violation of Federal Rule of Evidence 408 violated the Fifth Amendment right to present a complete defense on Count 9, where the improperly admitted document was used four times to establish criminal intent while the government's own witness confirmed under cross-examination that the defendant sent the document to re-establish a business relationship, the government's own records show a 46-to-1 vendor overbilling ratio that independently explains the alleged loss, and the government subsequently reduced Golden Corral restitution by 77 percent upon being confronted with the operational evidence at sentencing — rendering the trial fundamentally unfair under *Andrew v. White*, 604 U.S. 86 (2025), which the Fourth Circuit never applied.

PARTIES TO THE PROCEEDING

Petitioner is Derickson Lawrence, Register No. 71243-510, Defendant-Appellant below, currently incarcerated at FCI Butner Medium I, P.O. Box 1000, Butner, NC 27509.

Respondent is the United States of America, Plaintiff-Appellee below.

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A) Appendices listed below double as citations of the official and unofficial reports of the opinions and orders entered in the case by the courts or administrative agencies.

B) Appendices A, B, C-1, D-2, E, F, G, H and I are included in this submission, except for D-1 and C-2.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at No. 24-4596, Doc. 91, filed April 14, 2026. The opinion is published. It was authored by Circuit Judge Richardson, in which Circuit Judges Wilkinson and Quattlebaum joined. The court affirmed the judgment of the district court in its entirety. The opinion is in Appendix A.

The Fourth Circuit also issued an order on January 15, 2025, denying Petitioner's motion to reconsider the December 4, 2024 order, reported at 2025 U.S. App. LEXIS 967, No. 24-4596. That order is in Appendix C-2.

The opinion of the United States District Court for the Eastern District of Virginia denying Petitioner's motion for a new trial, evidentiary hearing, and related motions is reported at 2024 U.S. Dist. LEXIS 178185, Criminal Action No. 2:23-cr-89 (E.D. Va. Sept. 30, 2024). The opinion was authored by Senior United States District Judge John A. Gibney, Jr. That opinion is cited in Appendix D-1 on the Appendices page iv. The Order, however, cited as D-2 is included in this submission. See Appendices (Page iv) for the complete list of cited opinions and orders.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on April 14, 2026. *United States v. Derickson Lawrence*, No. 24-4596, Doc 92-1 (4th Cir. Apr. 14, 2026). The Fourth Circuit's judgment is in Appendix B.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1), which provides that cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari upon the petition of any party to any civil or criminal case.

The petition for writ of certiorari is timely filed within 90 days of the entry of the Fourth Circuit's judgment pursuant to Supreme Court Rule 13.1. The 90-day period expires on July 13, 2026.

Petitioner Derickson Lawrence proceeds pro se and in forma pauperis pursuant to Supreme Court Rule 39 and 28 U.S.C. § 1915. A motion to proceed in forma pauperis accompanies this petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are set forth in full in Appendix I to this petition.

The following provisions are at issue:

U.S. Const. art. III, § 2 (Trial of Crimes)

U.S. Const. amend. V (Grand Jury Clause; Due Process Clause)

U.S. Const. amend. VI (Vicinage Clause)

18 U.S.C. § 1341 (Mail Fraud)

18 U.S.C. § 1343 (Wire Fraud)

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INTRODUCTION

Derickson Lawrence is a pro se petitioner serving 87 months in federal prison following conviction on eleven counts of wire and mail fraud. He submits this petition to present four constitutional questions that were raised at every level of the proceedings below and dismissed at each level without substantive analysis.

At the district court, the jury instruction error and the evidentiary challenge were raised in a post-trial motion. The district court stated it 'doubts these grounds have merit' and denied the motion on timeliness grounds without reaching the merits. 2024 U.S. Dist. LEXIS 178185 (E.D. Va. Sept. 30, 2024). The venue challenge and indictment defect were raised before trial in ECF No. 36 and renewed in a Rule 29 motion at J.A. 0895-0901. Both were denied without analysis.

In the Fourth Circuit, appointed counsel raised three separate issues. With leave of court, Lawrence filed a pro se supplemental brief raising five additional questions — including all four questions presented here. The Fourth Circuit issued a published opinion addressing appointed counsel's arguments in full. The pro se questions — including a bilateral circuit split on the essential elements of federal fraud, an internal Fourth Circuit conflict on pass-through venue, a Fifth Amendment Grand Jury Clause challenge supported by the rule of every circuit to address the question, and an evidentiary challenge governed by this Court's 2025 decision in *Andrew v. White* — were disposed of in a single footnote:

> 'Lawrence, with leave of this Court, submitted a pro se supplemental brief... To the extent it raises sentencing challenges not addressed in counsel's brief, we find they are without merit.'

Doc. 91 at n.1. The footnote cites no authority. It distinguishes no circuit precedent. It does not acknowledge the internal Fourth Circuit conflict with *Jefferson*, *Sterling*, *Howard*, or *Okun*. It does not apply *Andrew v. White*, 604 U.S. 86 (2025). It does not address the bilateral split between the Fourth, Ninth, and Seventh Circuits on the conjunctive fraud instruction standard. It does not address the unanimous rule of seven circuits that a Bill of Particulars cannot cure a defective indictment. Four constitutional questions. One footnote. No analysis.

The questions presented are not close questions on this record. The government's own witness testified the invoices underlying seven counts were not fraudulent or false. The government conceded no false representations existed. The parties stipulated the defendant was in New York and the server used for the specific loan charged is unknown. Government counsel admitted before trial it could not identify a physical wire. The government's own exhibit named the SBA in Washington as the transmission destination. The government subsequently cut Golden Corral restitution 77 percent when confronted at sentencing with the operational evidence the jury never fully evaluated. The district judge wrote the defendant's objection in his own hand on the face of the signed restitution order.

These are not the facts of a routine fraud prosecution. They are the facts of a case in which the essential elements of the charged offenses were never established under the correct legal standards — at the instruction level, the indictment level, the venue level, and the evidentiary level simultaneously. Each question independently justifies a grant. Together they describe a systematic application of federal fraud liability beyond the boundaries this Court's own decisions in *Shaw*, *Kelly*, *Ciminelli*, *Stirone*, *Russell*, *Travis*, and *Andrew v. White* have established.

This Court's review is warranted.

STATEMENT OF THE CASE

Derickson Lawrence owned and operated MarketView, Inc., a small business providing paycard services to BOTH, Inc., which operated several Golden Corral restaurant locations in the mid-Atlantic region. Beginning in 2004, MarketView issued debit-card-like paycards to Golden Corral employees through which employees could receive their wages. Golden Corral sent payroll funds to MarketView, and MarketView maintained those funds in a pooled account designated account '0898' for distribution to cardholders.

The government charged that beginning in approximately 2017, Lawrence transferred cardholder payroll funds from account 0898 to a personal brokerage account and used those funds to trade options. Lawrence countered that the shortfall in account 0898 was caused by operational failure — specifically, overbilling by Fiserv, a debit card transaction processor, manufacturer, and service provider, which billed the account for 17,223 cards in September 2019 against only 374 active cardholders, a 46-to-1 ratio documented in government exhibits. The defense calculated $73,125 in resulting overbilling — a figure that corresponds within $1,875 to the $75,000 settlement demand made by the government's own primary witness, Gary Carter, in a contemporaneous email describing the loss as a 'pay card collapse.' J.A. 1443 (Gov. Exhibit 48).

In September 2019, Golden Corral terminated its relationship with MarketView, and MarketView had lost its only client. Lawrence then applied for a Paycheck Protection Program loan from the Small Business Administration in early 2020. The government charged that the PPP application contained false representations about MarketView's operating status. That charge became Count 11.

In 2023, Lawrence was indicted on nine counts of wire fraud and one count of mail fraud arising from the paycard scheme, and one count of wire fraud arising from the PPP loan application. The indictment charged Count 11 without identifying any specific wire transmission. Before trial, defense counsel filed ECF No. 36 challenging Count 11 for failure to specify a wire, lack of specificity, and improper venue. The district court denied the motion. The government subsequently filed a Bill of Particulars through ECF No. 49 identifying an April 30, 2020 wire — without returning to the grand jury. At trial, government witnesses testified that neither TD Bank nor the SBA had any record of the April 30 wire, that the wire could not be reconstructed, and that the data was sent through a bulk transmission that would have gone regardless of Lawrence's application. J.A. 0899-0901. The parties stipulated that TD Bank's PPP loan application transactions were processed through servers in Chicago, Illinois or Ashburn, Virginia, and then through TD Bank's main data center in Canada, and that for SBA Loan No. 4242357703 — the specific loan underlying Count 11 — it is unknown which server was used. Doc. 68, Stipulation F, J.A. 1034.

Following a five-day trial before the Honorable John A. Gibney, Jr., Senior United States District Judge for the Eastern District of Virginia, a jury convicted Lawrence on all eleven counts under jury instructions that permitted conviction upon finding that Lawrence engaged in a scheme 'to deceive or to cheat' rather than requiring the jury to find both elements conjunctively. The government's own witness, Ms. Pam Baker, testified on cross-examination that invoices 1 through 7 were always sent to her ahead of time, J.A. 296; that she received and reviewed each invoice before it was paid, J.A. 298; that there was no problem once the parties agreed on the invoice to pay, J.A. 297; and that the invoices were not fraudulent or false, J.A. 297. The government separately conceded at J.A. 973 that the same invoices contained no false representations. Gary Carter, the government's primary witness, was cross-examined at

J.A. 0890, Page 775, Lines 11-20, and confirmed that the defendant sent the Confidential Draft Proposal to re-establish a business relationship with Golden Corral — not to execute a fraud — and that his $75,000 settlement demand was an informal estimate he described as going 'out on a limb.'

The district court sentenced Lawrence to 87 months imprisonment and entered a restitution order on October 25, 2024. Doc. 135. On the face of the signed restitution order, Judge Gibney wrote in his own hand: 'Objected to by Derickson Lawrence.' Id. At sentencing, the court expressed uncertainty about the government's restitution calculations, asking whether the money had 'somehow miraculously appeared' and stating 'Say No More' when the government conceded it could not locate the victims. J.A. 1242-1243. The court proactively preserved Lawrence's appellate rights on the record. Id. The government subsequently cut its restitution demand to Golden Corral specifically by 77 percent — from $460,000 to $106,000 — coinciding with Lawrence's submission of operational evidence at sentencing. J.A. 1295. Overall restitution across all victims was reduced by 50 percent. Id.

Lawrence timely appealed. In the Fourth Circuit, appointed counsel raised three issues: sufficiency of intent, the sophisticated-means sentencing enhancement, and misjoinder. With leave of court, Lawrence also filed a pro se supplemental brief raising five additional questions including the jury instruction error, the pass-through venue theory, the defective indictment, and the improperly admitted settlement evidence. The Fourth Circuit issued a published opinion on April 14, 2026, affirming on all grounds. Doc. 91. The court addressed appointed counsel's three arguments in the body of the opinion. All four questions presented here were disposed of in a single footnote that stated 'we find no merit' without citation, analysis, or any engagement with the authorities presented. Doc. 91 at n.1. The Fourth Circuit did not address the bilateral circuit split on the deceive-and-cheat standard, the internal Fourth Circuit conflict with

Jefferson and *Sterling* on pass-through venue, the internal Fourth Circuit conflict with *Howard* and *Okun* on the Bill of Particulars rule, or the applicability of *Andrew v. White*, 604 U.S. 86 (2025) to the evidentiary challenge. This petition follows.

SUMMARY OF ARGUMENT

The Fourth Circuit's published opinion affirmed eleven counts of wire and mail fraud following a five-day trial. All four questions presented here were raised in Petitioner's pro se supplemental brief, accepted by the Fourth Circuit with leave of court, and disposed of in a single footnote stating 'we find no merit' without citation, analysis, or engagement with any of the authorities presented. Doc. 91 at n.1. None of the four questions received substantive analysis at any level of the proceedings below. All four warrant this Court's review.

The federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, require proof that a defendant intended both to deceive and to wrongfully obtain money or property. The jury instruction given at trial permitted conviction upon proof of either element alone — defining the scheme to defraud as conduct by which someone intends 'to deceive or to cheat' another. Doc. 105-1, PageID 845. The disjunctive 'or' standard directly conflicts with the conjunctive 'and' standard required by this Court's decisions in *Shaw v. United States*, *Kelly v. United States*, and *Ciminelli v. United States*, and with the Ninth Circuit's decision in *United States v. Miller* and the Seventh Circuit's decision in *United States v. Chanu*. The government's own witness testified the invoices underlying Counts 1 through 7 were reviewed before payment, agreed upon, and not fraudulent or false. J.A. 296-298. The government separately conceded the same invoices contained no false representations. J.A. 973. Under the conjunctive standard, these concessions eliminate the deception element on the face of the record. This Court should grant certiorari, reverse, and remand for new trial under the conjunctive instruction standard.

The Fifth Amendment's Grand Jury Clause prohibits conviction on a charge the grand jury never endorsed. *Stirone v. United States*, 361 U.S. 212, 216 (1960). That prohibition is per se reversible — not subject to harmless error analysis. The indictment charging Count 11 identified no specific wire transmission. Government counsel admitted before trial it could not identify a physical wire. J.A. 0161-0165. The government supplied a wire post-indictment through a Bill of Particulars without returning to the grand jury. ECF No. 49. At trial, TD Bank had no record of the wire, the SBA had no record of the wire, the wire could not be reconstructed, and the data was sent through a bulk transmission requiring 5,000 minimum loans that would have been sent regardless of Lawrence's application. J.A. 0899-0901; Gov. Exhibit 619, J.A. 7392. The parties' own stipulation confirmed that for SBA Loan No. 4242357703 — the specific loan underlying Count 11 — it is unknown which server was used. Doc. 68, Stipulation F. The ruling below conflicts with the Fourth Circuit's own decisions in *Howard* and *Okun* and with the rule of every circuit that has directly addressed this question. This Court should grant certiorari, reverse, and dismiss Count 11.

The parties stipulated that the defendant resided in Mount Vernon, New York at all times relevant to the case. Doc. 68, Stipulation E. The PPP application originated in New York. The SBA decision-makers were in Washington, D.C. The government's own exhibit named the SBA in Washington as the destination. Gov. Exhibit 619, J.A. 7392. The parties stipulated the server used for the specific loan is unknown. Doc. 68, Stipulation F. Despite this record, the district court ruled venue proper 'wherever the wire transmission goes.' J.A. 0170. That ruling conflicts with the Fourth Circuit's own decisions in *Jefferson* and *Sterling*, with *Johnson* and *Travis*, and with *Travis*'s command that venue provisions not be construed to give the government the choice of a favorable tribunal. This Court should grant certiorari, reverse, and dismiss Count 11 for lack of venue.

The government introduced a confidential settlement draft proposal at trial without Rule 403 balancing and in violation of Federal Rule of Evidence 408. The document was used four times to establish criminal intent on Count 9. The government's own primary witness Carter confirmed on cross-examination that the defendant sent the document to re-establish a business relationship. J.A. 0890, P775, Lines 11-20. Government exhibits document a 46-to-1 Fiserv vendor overbilling ratio providing a complete non-criminal explanation for the alleged loss. J.A. 1192. At sentencing the government cut Golden Corral restitution by 77 percent upon being confronted with the operational evidence. (ECF 133-1; J.A. 1295) ~~J.A. 1295~~. The Fourth Circuit never applied *Andrew v. White*, 604 U.S. 86 (2025), which this Court decided after the district court ruled and which holds that the Due Process Clause forbids evidence so unduly prejudicial as to render a trial fundamentally unfair. This Court should grant certiorari, reverse, and remand for new trial under *Andrew v. White*.

ARGUMENT

I. THE FEDERAL FRAUD STATUTES REQUIRE CONJUNCTIVE PROOF OF INTENT TO DECEIVE AND INTENT TO WRONGFULLY OBTAIN — A DISJUNCTIVE INSTRUCTION OMITS AN ESSENTIAL ELEMENT.

A. The Legal Standard

The federal mail and wire fraud statutes prohibit any scheme or artifice 'to defraud' or 'for obtaining money or property by means of false or fraudulent pretenses, representations, or promises.' 18 U.S.C. §§ 1341, 1343. This Court has consistently interpreted these statutes to require proof of two conjunctive elements — deceptive intent and intent to obtain money or property — not proof of either element alone.

In *Shaw v. United States*, 580 U.S. 63 (2016), this Court held that the fraud statutes require a scheme to deprive the victim of money or property. In *Kelly v. United States*, 590 U.S. 391 (2020), the Court held that the object of the scheme must be money or property in the hands of the victim, not merely the exercise of regulatory authority. In *Ciminelli v. United States*, 598 U.S. 306 (2023), the Court unanimously rejected the right-to-control theory as an impermissible expansion of the fraud statutes, holding that the object of the scheme must be money or property in the traditional sense. Together these three decisions establish a consistent trajectory: the fraud statutes require proof of both deceptive conduct and intent to obtain money or property conjunctively — not disjunctively.

The Ninth Circuit in *United States v. Miller*, 953 F.3d 1095 (9th Cir. 2020) and the Seventh Circuit in *United States v. Chanu*, 40 F.4th 528 (7th Cir. 2022) have both adopted the conjunctive standard. The instruction given at trial in this case — permitting conviction upon finding that the defendant intended 'to deceive or to cheat'

— is the disjunctive standard that conflicts with both circuits and with the trajectory of this Court's trilogy.

B. The Instructional Error

Jury Instruction No. 20, Document 105-1, PageID 845, defined the scheme to defraud as 'any deliberate plan of action or course of conduct by which someone intends to deceive or to cheat another or by which someone intends to deprive another of something of value.' The instruction then defined intent to defraud as acting 'knowingly and with the intention or the purpose to deceive or to cheat.' The disjunctive 'or' appears twice — in the body of the instruction and in the definition of intent. A jury applying this instruction could convict upon finding intent to obtain money alone, without any finding of deceptive conduct.

This Court's decision in *Kousisis v. United States*, 605 U.S. 114 (2025), cited by the Fourth Circuit below, does not resolve the question presented here. *Kousisis* addressed whether a defendant must intend to cause the victim net pecuniary loss. It did not address whether the jury must find both deceptive intent and intent to obtain money conjunctively. These are different questions. *Kousisis* answers the loss question. The question presented here asks about the conjunctive instruction standard. The Fourth Circuit's reliance on *Kousisis* answered a question that was not asked and left the actual question unanswered.

C. The Record Demonstrates Concrete Prejudice

The prejudice from the disjunctive instruction is not theoretical on this record. It is established by the government's own evidence.

The government called Ms. Pam Baker as its witness. Ms. Baker testified on cross-examination that invoices 1 through 7 were always sent to her ahead of time, J.A.

296; that she received and reviewed each invoice before it was paid, J.A. 298; that there was no problem once the parties agreed on the invoice to pay, J.A. 297; and that the invoices were not fraudulent or false, J.A. 297. The government separately conceded at J.A. 973 that the same invoices contained no false representations.

These concessions eliminate the deception element on the face of the record. Under the conjunctive standard *Shaw*, *Kelly*, and *Ciminelli* require, no rational trier of fact could find deceptive intent on Counts 1 through 7 where the government's own witness and the government's own attorney confirmed no deception existed. Under the disjunctive instruction given at trial, the jury could convict on a finding of intent to obtain money alone — without any finding of the deception element the statute requires.

The Fourth Circuit affirmed these convictions in a published opinion without addressing the instructional standard, disposing of the pro se challenge in a single footnote stating 'no merit' without citation or analysis. Doc. 91 at n.1. The court below did not distinguish *Miller* or *Chanu*. It did not apply *Shaw*, *Kelly*, or *Ciminelli* to the instructional question. It did not address whether a disjunctive instruction omits an essential element. None of these questions has been answered in this case at any level of the proceedings below.

D. Why This Court Should Grant Certiorari

The bilateral circuit split between the Fourth Circuit's disjunctive standard and the Ninth and Seventh Circuits' conjunctive standard has matured without resolution. Every federal fraud prosecution turns on what the jury is told the government must prove. A defendant in the Fourth Circuit can be convicted of federal fraud without any finding of deception. The same defendant in the Ninth or Seventh Circuit cannot. That geographic inconsistency in the definition of a federal crime — affecting thousands of prosecutions annually — is precisely the national question this Court exists to resolve. This Court should grant certiorari, reverse the convictions on Counts 1 through 7, 8, and 10, and remand for new trial under the conjunctive instruction standard.

II. THE FIFTH AMENDMENT'S GRAND JURY CLAUSE IS VIOLATED WHEN A WIRE FRAUD CONVICTION RESTS ON A WIRE TRANSMISSION NO RECORD CONFIRMS WAS EVER SENT.

A. The Constitutional Foundation

The Fifth Amendment provides that no person shall be held to answer for an infamous crime 'unless on a presentment or indictment of a Grand Jury.' U.S. Const. amend. V. This guarantee is not a technicality. It is the Constitution's primary protection against prosecutorial overreach in federal criminal cases. The grand jury's function is to stand between the government and the citizen as an independent check on whether the evidence justifies each specific charge.

This Court established the governing rule in two landmark decisions. *Russell v. United States*, 369 U.S. 749 (1962) held that an indictment must contain the elements of the offense charged and sufficiently apprise the defendant of what he must be prepared to meet. A Bill of Particulars may provide notice of additional detail but cannot supply what the grand jury never endorsed. *Stirone v. United States*, 361 U.S. 212, 216 (1960) held that after an indictment has been returned its charges may not be broadened through amendment except by the grand jury itself — and that a constructive amendment is per se reversible, not subject to harmless error analysis. Together these decisions establish an absolute rule: the government cannot charge a defendant on a basis the grand jury never specifically endorsed, and a Bill of Particulars cannot retroactively cure that defect.

B. The Record — No Wire Identified, No Wire Found

The indictment charging Count 11 identified no specific wire transmission. Before trial, defense counsel filed ECF No. 36 challenging Count 11 for failure to specify a wire, lack of specificity, and improper venue. The district court denied the motion. At the pretrial hearing, government counsel stated: 'I don't know that we will be able to be more specific... I don't think there is a physical wire, like an email in this case... it will be a combination of documents that reflect the transmission of the information and witness testimony.' J.A. 0161-0165. Government counsel further stated: 'I don't think we are going to have a physical e-mail that is the wire because of how the system worked.' *Id.*

The government then filed a Bill of Particulars through ECF No. 49 identifying an April 30, 2020 wire — without returning to the grand jury. At trial the evidence confirmed what the government had already admitted. TD Bank had no record of the April 30 wire. The SBA had no record of the wire. The wire could not be reconstructed. J.A. 0899-0901. SBA witness McConville testified the data was sent through a bulk transmission requiring a minimum of 5,000 loans that would have been sent regardless of Lawrence's single application. *Id.*; Gov. Exhibit 619, J.A. 7392. Defense counsel raised four separate wire-based arguments in the Rule 29 motion at J.A. 0895-0901, expressly preserving all grounds. The parties' own stipulation confirmed that for SBA Loan No. 4242357703 — the specific loan underlying Count 11 — it is unknown which server was used. Doc. 68, Stipulation F, J.A. 1034.

The constitutional sequence is complete. The grand jury found probable cause as to no specific wire because no specific wire was presented to it. The government admitted it could not identify a physical wire. The Bill of Particulars supplied a wire the grand jury never endorsed. At trial neither bank nor agency could confirm that wire existed. The parties stipulated the server used for this specific loan is unknown. The conviction on Count 11 rests on a factual predicate no grand jury ever specifically approved and no trial record confirms ever occurred.

C. The National Circuit Survey

The rule that a Bill of Particulars cannot cure a defective indictment is the unanimous law of every circuit that has directly addressed the question. The Fourth Circuit's own decisions in *United States v. Howard*, 590 F.2d 564, 567 (4th Cir. 1985) and *United States v. Okun* (4th Cir. 2009) both hold that a Bill of Particulars cannot repair a defective indictment. The Second Circuit in *United States v. Pirro*, 212 F.3d 86 (2d Cir. 2000) and *United States v. Gonzalez*, 686 F.3d 122 (2d Cir. 2012) is in accord. The Eighth Circuit in *United States v. Camp*, 541 F.2d 737, 740 (8th Cir. 1976), the Tenth Circuit in *United States v. Miles*, 327 Fed. Appx. 797 (10th Cir. 2009), the First Circuit in *United States v. Barker Steel Co.*, 485 F.2d 123 (1st Cir. 1993), the Fifth Circuit in *United States v. Prince*, 866 F.2d 1374 (5th Cir. 1995), and the Ninth Circuit in *Bush v. United States*, 338 F.2d 400 (9th Cir. 1964) all hold the same. The ruling below conflicts with this unanimous rule and with the Fourth Circuit's own binding precedent in *Howard* and *Okun* — without acknowledging either conflict.

D. Pirro — The Identical Fact Pattern

United States v. Pirro, 212 F.3d 86 (2d Cir. 2000) presents a fact pattern essentially identical to this case. The government knew of the indictment defect before trial. It could have filed a superseding indictment. It chose instead to proceed with a Bill of Particulars. The Second Circuit reversed, holding that the government's knowledge of the defect and its choice not to seek a superseding indictment foreclosed any argument that the Bill of Particulars was an adequate substitute for grand jury action. That is precisely what occurred here. Defense counsel filed ECF No. 36 before trial specifically identifying the failure to specify a wire. The government had notice. It chose to file a Bill of Particulars instead. Under *Pirro* that choice is fatal. Under *Stirone* and *Russell* it is per se reversible.

E. Why This Court Should Grant Certiorari

The internal Fourth Circuit conflict between the ruling below and *Howard* and *Okun* is the most immediate ground for review. When a published circuit opinion conflicts with the circuit's own binding precedent on a question where every circuit to address it has reached the same conclusion, the national legal framework is destabilized in ways that affect every pending wire fraud prosecution where the specific wire is not identified in the indictment. This Court should grant certiorari, reverse, and dismiss Count 11.

III. WHERE VENUE MUST BE ESTABLISHED INDEPENDENTLY FOR EACH COUNT, THE GOVERNMENT CANNOT ESTABLISH WIRE FRAUD VENUE BASED SOLELY ON A SERVER WHOSE LOCATION IS UNKNOWN FOR THE SPECIFIC LOAN CHARGED.

A. The Constitutional and Statutory Framework

Article III, Section 2 of the Constitution provides that the trial of all crimes shall be held in the state where the crime was committed. The Sixth Amendment guarantees the accused the right to trial by an impartial jury of the state and district wherein the crime shall have been committed. Together these provisions establish venue as a constitutional right, not merely a procedural convenience. This Court has consistently held that venue provisions must be construed narrowly and may not be interpreted to give the government the choice of a tribunal favorable to it. *Travis v. United States*, 364 U.S. 631, 634 (1961) (quoting *United States v. Johnson*, 323 U.S. 273, 276 (1944)).

The governing statute, 18 U.S.C. § 3237(a), provides that wire fraud offenses begun in one district and completed in another may be prosecuted in any district in which the offense was begun, continued, or completed. The Fourth Circuit in *United States v. Jefferson*, 674 F.3d 332, 363 (4th Cir. 2012) and *United States v. Sterling*, 860 F.3d 233, 240 (4th Cir. 2017) has held that venue is proper only in a district where an essential conduct element of the offense occurred. Venue must be established independently for each count. *Jefferson*, 674 F.3d at 363. The government cannot borrow a Virginia nexus from one count and apply it to another.

B. The Count-Specific Requirement Forecloses the Government's Position

Counts 1 through 10 involved the defendant's acts in Virginia in connection with the paycard scheme. Those counts had an independent Virginia nexus that the defendant does not challenge. Count 11 is categorically different. It arises from a PPP loan application with no Virginia acts by the defendant.

The parties stipulated that at all times relevant to the case the defendant resided in Mount Vernon, New York. Doc. 68, Stipulation E, J.A. 1034. MarketView Resources, Inc. was located at 149 Esplanade in Mount Vernon, New York. Doc. 68, Stipulation C, J.A. 1033. The PPP application originated in New York. The SBA decision-makers were in Washington, D.C. The government's own exhibit confirmed the transmission destination was the SBA in Washington — not Sterling, Virginia. Gov. Exhibit 619, J.A. 7392. The parties further stipulated that TD Bank's PPP loan application transactions were processed through servers in Chicago, Illinois or Ashburn, Virginia, and then through TD Bank's main data center in Canada, and that for SBA Loan No. 4242357703 — the specific loan charged in Count 11 — it is unknown which server was used. Doc. 68, Stipulation F, J.A. 1034.

The count-specific requirement of *Jefferson* means the government must establish venue for Count 11 on the facts of Count 11 alone. Those facts place every relevant actor and location outside the Eastern District of Virginia. The defendant was in New York. The bank was processing in Chicago, Ashburn, or Canada. The destination was Washington. The server location is unknown. There is no Virginia essential conduct element for Count 11 on this record.

C. The District Court's Ruling and Its Internal Contradiction

During the pretrial venue hearing the court expressed judicial skepticism about the government's pass-through theory, raising the FedEx/Memphis analogy — if FedEx routes everything through Memphis, can all mail fraud cases be tried in Memphis? J.A.

0166-0168. Government counsel could not explain why the server was located in Sterling, Virginia. J.A. 0164. Despite that skepticism the court ultimately ruled: 'Apparently, you have venue wherever the wire transmission goes, and wherever there is an essential element, or wherever it continues this process, you have venue for wire fraud.' J.A. 0170. The word 'apparently' signals judicial uncertainty rather than settled legal conclusion.

The ruling contains an internal contradiction. At J.A. 0901 the same court stated: 'I think that's a reasonable inference, that he knew what he sent by e-mail to the SBA in Washington.' The court acknowledged the defendant's essential conduct was directed at the SBA in Washington. It then sustained venue in the Eastern District of Virginia based on a server in Sterling whose location could not be explained and whose use for this specific loan is unknown by stipulation. These two statements cannot be reconciled.

D. The Circuit Split

The Fourth Circuit's own decisions in *Jefferson* and *Sterling* require an essential conduct element in the district. The Second Circuit in *United States v. Brennan*, 183 F.3d 139 (2d Cir. 1999) and *United States v. Ramirez*, 420 F.3d 134 (2d Cir. 2005) — decisions the Fourth Circuit has cited with approval — hold the same. *Johnson* and *Travis* establish the Supreme Court's narrow construction command. The Sixth Circuit in *United States v. Wood*, 364 F.3d 704 (6th Cir. 2004) and *United States v. Singer*, 782 F.3d 270 (6th Cir. 2015) and the Eleventh Circuit in *United States v. Nail*, 146 Fed. Appx. 462 (11th Cir. 2005) have adopted a broader pass-through interpretation. The district court's ruling adopted the broader pass-through theory in direct conflict with the Fourth Circuit's own *Jefferson* and *Sterling* decisions.

E. Why This Court Should Grant Certiorari

Travis commanded sixty-five years ago that venue provisions should not be so freely construed as to give the government the choice of a favorable tribunal. That command is more urgent today. In the cloud computing era the government can route electronic communications through servers in any federal district in the country. If pass-through server hosting establishes venue, *Travis*'s prohibition is effectively eliminated in every wire fraud case involving electronic transmission — which is every wire fraud case. The parties' own stipulation that the server used for the specific loan charged in Count 11 is unknown makes this the cleanest possible vehicle for resolving the question. This Court should grant certiorari, reverse, and dismiss Count 11 for lack of venue.

IV. THE ADMISSION OF A CONFIDENTIAL SETTLEMENT COMMUNICATION WITHOUT RULE 403 BALANCING AND IN VIOLATION OF FEDERAL RULE OF EVIDENCE 408 VIOLATED THE FIFTH AMENDMENT RIGHT TO PRESENT A COMPLETE DEFENSE UNDER *ANDREW v. WHITE*.

A. The Legal Standard

The Due Process Clause of the Fifth Amendment forbids the introduction of evidence so unduly prejudicial as to render a criminal trial fundamentally unfair. *Andrew v. White*, 604 U.S. 86, 96 (2025). This Court decided *Andrew v. White* in January 2025 — after the district court denied the evidentiary challenge in September 2024 and before the Fourth Circuit affirmed in April 2026. The Fourth Circuit's published opinion does not cite *Andrew v. White*. The court below never applied the governing constitutional standard to the evidentiary question presented here.

Federal Rule of Evidence 408 prohibits the admission of statements made during compromise negotiations to prove liability for or the validity or invalidity of a disputed claim. Federal Rule of Evidence 403 requires that even otherwise admissible evidence be excluded when its probative value is substantially outweighed by the danger of unfair prejudice. The district court admitted the Confidential Draft Proposal — a document whose opening text references discussions under the broad terms of a settlement arrangement — without Rule 403 balancing and without analysis of Rule 408's applicability. ECF No. 94, Pages 54-55.

B. The Four Prosecutorial Uses of the CDP

The admission of the CDP was not an isolated evidentiary ruling. The prosecution used it four separate times to establish criminal intent on Count 9. First, to argue the defendant restricted employee website access as part of a coverup. J.A. 0924, P809-810. Second, to argue an inactivity fee was part of the coverup. J.A. 0977, P852. Third, characterized as the defendant trying to stay in Golden Corral's good graces — furtherance of the fraud scheme. J.A. 0929, P814. Fourth, to portray the defendant as accusatory and bad-faith when the court itself read from the document and asked the witness whether the defendant was accusing him of libel. J.A. 0921, P812.

C. The CDP Prevented Evaluation of the Complete Defense

The CDP established a criminal fraud narrative before the jury heard the operational evidence. The alternative causation theory was not speculative. Government Exhibit 139 acknowledged 374 active cardholders in September 2019. Government Exhibit 203 showed Fiserv billing fee code 150 — card management fee — for 17,223 cards in the same period. J.A. 1192. That 46-to-1 billing ratio — documented in the government's own exhibits — provides a complete non-criminal explanation for the shortfall in account 0898 that the jury never fully evaluated.

The government's own primary witness confirmed the alternative theory's validity on cross-examination. Gary Carter testified at J.A. 0890, Page 775, Lines 11-20 that the defendant sent the CDP to re-establish a business relationship with Golden Corral — not to execute a fraud. Carter confirmed the $75,000 settlement demand — qualifying only that he had gone 'out on a limb to throw that number out.' That informal commercial estimate is $1,875 from the defense's independently calculated $73,125 in Fiserv overbilling. Two parties independently arriving at the same approximate figure through different methodologies is the strongest possible corroboration of the alternative causation theory. The jury never evaluated that correlation.

D. The Sentencing Record Confirms Materiality

At J.A. 1242-1243 the court expressed judicial disbelief at the government's restitution figures — asking whether the money had 'somehow miraculously appeared' and stating 'Say No More' when the government conceded it could not locate the victims. The court then wrote 'Objected to by Derickson Lawrence' in its own hand on the face of the signed restitution order. Doc. 135, PageID 1079. The government subsequently cut Golden Corral restitution by 77 percent — from $460,000 to $106,000 — coinciding directly with the defendant's submission of operational evidence. J.A. 1295. Evidence that moved the government 77 percent on its own loss calculation satisfies the reasonable probability of a different result standard under *Kyles v. Whitley*, 514 U.S. 419 (1995).

E. Why This Court Should Grant Certiorari

Andrew v. White was decided after the district court ruled and was never applied by the Fourth Circuit. That gap — a governing constitutional standard the court below never considered — is an independent ground for certiorari that does not require a circuit split. Every criminal defendant whose case involves a pre-litigation commercial dispute is at risk of having that dispute's settlement communications admitted without Rule 403 balancing and used to establish criminal intent. This Court should grant certiorari, reverse, and remand for new trial under the correct constitutional standard established in *Andrew v. White*.

CONCLUSION

For the foregoing reasons, Petitioner Derickson Lawrence respectfully prays that this Court grant the petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit.

On Question I — The Court should grant certiorari, vacate the convictions on Counts 1 through 7, 8, and 10, and remand for new trial under jury instructions requiring the government to prove both deceptive intent and intent to wrongfully obtain money or property as conjunctive essential elements of federal wire and mail fraud under 18 U.S.C. §§ 1341 and 1343.

On Question II — The Court should grant certiorari, vacate the conviction on Count 11, and dismiss Count 11 with prejudice on the ground that the Fifth Amendment's Grand Jury Clause prohibits conviction on a wire transmission the grand jury never specifically endorsed, the government admitted it could not identify, no record confirms was ever sent, and that a Bill of Particulars cannot retroactively cure in violation of *Stirone v. United States*, 361 U.S. 212 (1960) and *Russell v. United States*, 369 U.S. 749 (1962).

On Question III — The Court should grant certiorari, vacate the conviction on Count 11, and dismiss Count 11 with prejudice for lack of venue on the ground that Article III, the Sixth Amendment, and 18 U.S.C. § 3237(a) do not permit the government to establish wire fraud venue in a district where the defendant had no connection on the charged count, all essential conduct occurred outside the district, and the server used for the specific loan charged is unknown by the parties' own stipulation, in conflict with *Travis v. United States*, 364 U.S. 631 (1961), *United States v. Jefferson*, 674 F.3d 332 (4th Cir. 2012), and *United States v. Sterling*, 860 F.3d 233 (4th Cir. 2017).

On Question IV — The Court should grant certiorari, vacate the conviction on Count 9, and remand for new trial on the ground that the admission of a confidential settlement communication without Rule 403 balancing and in violation of Federal Rule of Evidence 408 — used four times to establish criminal intent on Count 9 while the government's own witness confirmed the defendant's purpose was to re-establish a business relationship and while government exhibits document a 46-to-1 vendor overbilling ratio independently explaining the alleged loss — rendered the trial on Count 9 fundamentally unfair under *Andrew v. White*, 604 U.S. 86 (2025), and that the prejudicial effect of the improperly admitted evidence contaminated the entire trial proceeding.

In the alternative, Petitioner respectfully requests that this Court vacate the judgment below and remand to the Fourth Circuit for plenary consideration of each of the four questions presented with full briefing and oral argument, with directions to address the circuit conflicts identified herein and to apply the governing standards established in *Shaw v. United States*, *Kelly v. United States*, *Ciminelli v. United States*, *Stirone v. United States*, *Russell v. United States*, *Travis v. United States*, and *Andrew v. White*.

Respectfully submitted,

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