No. 26-

IN THE

Supreme Court of the United States

JUAN MARTINEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether, and if so how, the doctrine of legal impossibility applies in conspiracy cases.

PARTIES TO THE PROCEEDING

The United States and Petitioner Juan Martinez were the only parties to the proceedings in District Court.

RELATED PROCEEDINGS

United States District Court for the Southern District of Georgia: *United States v. Martinez*, No. 4:22-00170 (August 18, 2023).

United States Court of Appeals (11th Cir.): *United States v. Martinez*, No. 24-10533 (January 23, 2026).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Juan Martinez respectfully prays that a writ of certiorari issue to review the judgment of the Eleventh Circuit, which affirmed the judgment of the United States District Court for the Southern District of Georgia, convicting Petitioner of conspiracy to steal trade secrets in violation of 18 U.S.C. § 1832(a)(5).

OPINION AND ORDER BELOW

The opinion of the Eleventh Circuit, *United States v. Martinez*, No. 24-10533, 2026 WL 184361 (11th Cir. Jan. 23, 2026), is included as Appendix A to this Petition. App. A.

JURISDICTION

The judgment of the Eleventh Circuit was entered on January 23, 2026. App. A. On March 24, 2026, the Eleventh Circuit entered an order denying Petitioner's Petition for Rehearing En Banc. App. B. On May 22, 2026, an extension of time to file the petition for a writ of certiorari was granted through and including July 22, 2026, in Application No. 25A1298.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) Trade Secret Theft (Conspiracy): "Whoever, with intent to convert a trade secret, that is related to a product or service used in or intended for use in interstate

or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly . . . conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy, shall . . . be fined under this title or imprisoned not more than 10 years, or both." 18 U.S.C. § 1832(a)(5)

2) Due Process: "No person shall be . . . deprived of life, liberty, or property, without due process of law[.]" U.S. Const. amend. V

3) Fair Trial: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI

INTRODUCTION

For most of the Nation's history, no court questioned the principle that a person cannot be convicted of conspiring to do something that is not a crime. This is the doctrine of legal impossibility, whose common-law roots date back to the nineteenth century. If the act a defendant conspires to commit would not be a crime even if fully carried out as planned, then an essential element of the charged conspiracy offense is missing. Agreement to commit a lawful act is not a criminal conspiracy even if the conspirators think they are plotting a crime.

The most important aspect of the legal impossibility doctrine is that it applies, by definition, when the defendant *thinks* he is committing a crime, and *does not know* that the act he is conspiring to commit is not actually a crime. That is the essence of the doctrine: it applies to defendants as to whom the mens rea element of conspiracy is fully satisfied, because they *thought* they were conspiring to commit a crime.[1] In the narrow circumstance in which the act that a defendant is conspiring or attempting to commit is not itself a crime, then the conspiracy or attempt is not a crime either.

Over the past century, however, our circuit courts have made a collective muddle of the doctrine. Seven circuits hold that legal impossibility fully applies to the inchoate offenses of conspiracy and attempt.

Four circuits hold that legal impossibility does *not* apply to inchoate offenses.

And one circuit (the Eleventh Circuit, in this case) now holds that legal impossibility is not an element-negation defense at all, but is rather an affirmative defense relevant only to mens rea, and is thus unavailable to a defendant who was unaware of the reasons why his contemplated act was not a crime. The Eleventh Circuit's opinion is internally inconsistent and is contrary to the weight of

1. Legal impossibility is distinct from factual impossibility. A wealth of caselaw and scholarship adumbrates the difference. A defendant who attempts to murder a man who was already dead does not have an impossibility defense because, if everything went as he planned, he would have committed murder. *See United States v. Williams*, 553 U.S. 285, 300 (2008). But a defendant who attempts to hide his money from the IRS to avoid taxes does have an impossibility defense if, it turns out, he did not owe taxes on the money after all. *See United States v. Carter*, 15 F.4th 26, 36 (1st Cir. 2021).

history and precedent. It completes a full twelve-circuit percolation of this issue, and is an ideal vehicle for this Court to take up and resolve these questions once and for all:

- What is the doctrine of legal impossibility?
- Does it apply to inchoate offenses?
- Is it an element-negation defense or an affirmative defense?
- When it applies does it negate mens rea, or does it negate the objective criminality of the contemplated act?
- Can legal impossibility be created by operation of a contract that defines or alters the legal status of a document, thing, or act?

Petitioner is an aerospace engineer. He was hired as a consultant by an aerospace startup, APAC Airplane Design Consulting, LLC ("APAC"), and was paid a grand total of $4500 to work on a single project: designing a wind-tunnel test for a new wing de-icing technology created and patented by APAC.

APAC hoped to license its technology to aircraft manufacturers, and the first manufacturer to express an interest in jointly developing the new de-icing system was Gulfstream Aerospace Corporation ("Gulfstream"). Gulfstream and APAC signed a contract providing for the exchange of proprietary technical information. The contract was titled the Proprietary Information

Agreement (the "PIA"), and it expressly authorized APAC and its consultants and contractors to obtain and possess proprietary Gulfstream technical documents and information for the purpose of evaluating APAC's technology for use on Gulfstream aircraft.

Petitioner, as noted, was a contractor hired for a single technical project, the wind-tunnel test. He needed to know the test parameters to use to set up the test: number of sensors, placement on the wing, temperature, humidity, wind-speed, etc. The FAA does not publish these parameters or tell applicants in advance how to set up the tests. So applicants must rely on prior test setups that the FAA has approved. Established manufacturers know what the FAA is looking for; startups don't, so Petitioner asked one of the APAC founders, Gilbert Basaldua, who was working at Gulfstream at the time, to send him the technical specifications from a prior test.

Unbeknownst to Petitioner, and despite continued expressed interest from some Gulfstream engineers, the joint-venture discussions between Gulfstream and APAC came to an end. Gulfstream told APAC it did not want to license APAC's de-icing system. But neither party cancelled the PIA, and Mr. Basaldua sent Petitioner the prior Gulfstream test plan. Petitioner used it to help him finalize his own wind-tunnel test plan.

Now, Petitioner had never read or seen the PIA contract. And there was circumstantial evidence from which the jury could find—and did find—that Petitioner believed that his possession of the test plan was unauthorized. There was evidence, in other words, that Petitioner *thought* that he and Basaldua were conspiring to commit a crime.

Gulfstream internal security flagged Basaldua's emails and called the FBI. The Government charged Petitioner with conspiracy to steal trade secrets, 18 U.S.C. § 1832(a)(5).

Petitioner's counsel sought at trial to argue legal impossibility, based on the PIA. Undisputed testimony from Gulfstream executives at trial established that the PIA could be terminated only by written communication; that neither party ever terminated the PIA; that the PIA remained in force throughout the relevant time period in this case; that the PIA expressly permitted APAC and its consultants to possess proprietary Gulfstream documents; that the PIA said nothing about whether technical documents had to be obtained by any specific method or from a specific person; and that certain terms Gulfstream later claimed were violated actually existed only in "Gulfstream's mind."[2] Indeed, Gulfstream's procurement specialist conceded on cross-examination that "there is nothing in the PIA that specifies how exchanges of information are to be taking place."

Petitioner's counsel sought to argue that the PIA made the charged conspiracy legally impossible: because the contract *authorized* the very possession the government called theft, the completed act did not and could not have violated the law, even if Petitioner thought it did.

Petitioner made that argument in a Rule 29 motion, which was denied. Petitioner then attempted to make the argument at closing, but the Government moved for an order prohibiting counsel from making the argument,

2. This is testimony from the Gulfstream executive who oversaw the PIA.

and the District Court granted the motion. Counsel was forbidden from arguing legal impossibility in closing. Petitioner was convicted and sentenced to sixty-three months imprisonment.

The Eleventh Circuit affirmed. The panel began by stating that legal impossibility "can be a defense to the charge of conspiracy," App. A at 9a, but then held that it can only apply when the defendant knows the reason why the contemplated act is not actually a crime. *See Id.* at 11a-12a. Thus, the panel held, because Petitioner was *unaware* of the PIA, he could not make out a legal impossibility defense (and thus, the panel held, it was not a Sixth Amendment violation to prohibit him from trying).

The Eleventh Circuit's reasoning negates the legal impossibility defense entirely, by conditioning the defense on the defendant's subjective knowledge of the authorizing instrument, and eliminating it unless the defendant can prove he had read the contract, regulation, or statute that authorized his conduct.

The Eleventh Circuit's reasoning contravenes the entire centuries-long history of the doctrine, and cannot be correct. If two hunters agree to shoot a deer on October 20, and act in furtherance of the plan, then whether or not they are guilty of criminal conspiracy surely depends only on when hunting season actually started. If it started on October 15, and one hunter knew that, but the other believed, mistakenly, that it didn't start until November, then it cannot possibly be the case that the first hunter can state a legal impossibility defense but the second cannot, because he was unaware of the relevant regulation. Yet that is what the Eleventh Circuit just held in this case.

The importance of a clear and uniform articulation of this doctrine by this Court goes far beyond overeager deer hunters. This exact issue arose in the recent classified documents case involving President Trump and two charged co-conspirators. The co-conspirators were charged with agreeing to, and taking concrete steps to, hide classified documents from federal investigators at President Trump's Florida residence after the conclusion of President Trump's first term.

The two charged co-conspirators had no presidential immunity, and the evidence for mens rea and actus reus was strong. If the case had proceeded to trial, their only viable defense would have been legal impossibility, on the grounds that—*unbeknownst to them*—the President had declassified the documents prior to the expiration of his term, or declared them "personal" records, or in some other manner altered the documents' legal status.

On such a defense, it should be *irrelevant* whether the defendants knew about whatever prior act had altered the documents' status. That is how legal impossibility has always worked. But under the Eleventh Circuit's ruling in this case, the defense would have been barred to them unless they knew about the reasons why the documents were no longer classified.

The Eleventh Circuit's opinion is wrong, and more importantly, it is confused. The whole point of the doctrine is that the defendant *does not know* that what he conspires to do is actually legal. He *thinks* he is committing a crime. And he thinks he is committing a crime because he *does not know* about the statute, regulation, contract, or the verbal utterance or unstated mental act of a President that changed the status of the documents.

The only predicate question for the legal impossibility doctrine is whether the completed act would have constituted a crime. Whether the defendant *knew* that, or knew *why*, is not part of the analysis. Yet under the Eleventh Circuit's confused opinion, charged co-conspirators Nauta and De Oliveira would have been precluded from even arguing legal impossibility.

Their case is precisely Petitioner Juan Martinez's case. The only difference is that their cases were dismissed on other grounds prior to trial, whereas Petitioner went to trial; was ordered by the District Court not to argue or even mention legal impossibility to the jury; and was convicted.

The circuits are sharply and intractably divided on the nature of legal impossibility:

- Seven circuits hold that legal impossibility negates an element of the substantive offense and is therefore a defense to conspiracy. The agreement to commit an act cannot be criminal where the act itself, even if completed, would not constitute a crime. *See United States v. Carter*, 15 F.4th 26, 36 (1st Cir. 2021); *Ventimiglia v. United States*, 242 F.2d 620, 626 (4th Cir. 1957); *United States v. Oviedo*, 525 F.2d 881, 886 (5th Cir. 1976); *United States v. Peete*, 919 F.2d 1168, 1176 (6th Cir. 1990); *United States v. Frazier*, 560 F.2d 884, 888 (8th Cir. 1977);

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

- Three circuits hold that legal impossibility is categorically *not* a defense to conspiracy, reasoning that conspiracy punishes the agreement to do what one believes to be a crime; that this agreement is independently blameworthy regardless of the accuracy of the belief; and that therefore only the defendant's subjective intent is required for conviction. *See United States v. Trapilo*, 130 F.3d 547, 552 n.9 (2d Cir. 1997); *United States v. Hsu*, 155 F.3d 189, 203 (3d Cir. 1998); *United States v. Everett*, 692 F.2d 596, 599 (9th Cir. 1982).

- The Seventh Circuit endorsed the merits of the element-negation framework, but the passage is arguably dicta. *See United States v. Lange*, 312 F.3d 263, 268 (7th Cir. 2002).

- Finally, the Eleventh Circuit, in the case at bar, stated that legal impossibility can apply to conspiracy, but then expressly defined the doctrine as an affirmative defense applying solely to mens rea, that may be asserted only when the defendant had prior knowledge of the reasons why the act was not a crime—a definition that contradicts the historical meaning of the doctrine, and guarantees that it never actually can apply in a conspiracy case.[3] Thus the Eleventh

3. If a person knows in advance that what he's agreeing to do is not a crime, then he's not conspiring to commit a crime in

> Circuit functionally joins the Second, Third, and Ninth Circuits in rejecting legal impossibility as a defense to conspiracy.

This Court has never addressed the above circuit split, and has never addressed the meaning and application of the doctrine of legal impossibility. This lacuna should be filled because the doctrine has significance in a wide variety of cases. Legal impossibility arises, for example, wherever federal law criminalizes "unauthorized" conduct and a defendant claims, based on a contract, statute, or regulation, that the conduct was actually "authorized."

In *Van Buren v. United States*, 593 U.S. 374 (2021), reversing the Eleventh Circuit on the meaning of "authorized access" in the Computer Fraud and Abuse Act, this Court expressly reserved whether authorization derived from "contracts, policies, or other sources of law" bears on the scope of criminal liability. *Id.* at 392 n.8. This case presents precisely the question this Court reserved: whether "authorization" sufficient to render the contemplated conduct "authorized" and thus not illegal, can be supplied by contract.

This case is the ideal vehicle for this Court to resolve and bring clarity to this important legal doctrine with

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the first place. Legal impossibility applies when the defendant *thinks* he's committing a crime and *does not know* that he's not in fact doing so. A ruling saying that it may only be argued by defendants who *already know* the reasons why the contemplated act is not illegal, is a ruling defining the doctrine out of existence. The hunter planning to hunt out of season who didn't realize the season had already started would, under the Eleventh Circuit's ruling, be precluded from arguing legal impossibility, and would be convicted.

wide-ranging modern ramifications, on which there is a deep and fully-percolated circuit split.

STATEMENT OF THE CASE

In 2017, APAC was developing a promising technology to prevent ice buildup on airplane wings, with potentially significant savings in weight, cost, and efficiency. Gulfstream took an interest. In October of that year, the two companies executed the PIA to govern the exchange of confidential technical information, and Gulfstream issued a formal Request for Information soliciting APAC's proposal for its aircraft. Pet. App. A at 2a-3a; Jt. Ex. 21; Jt. Ex. 22. A Gulfstream engineering group head confirmed internally that "APAC's PIA was modified and returned, enabling them to review G650 leading edge engineering as requested." Def. Ex. 107.

The PIA defined the scope of that exchange. Section 1 identified the "Permitted Purpose" as "exchanging technical information and proposals related to the wing leading edge components and Installation for power consumption for potential use on the G650 aircraft." Jt. Ex. 21 § 1. Section 4A provided for permissible disclosure to "employees, contract personnel and consultants who are bound by and have been made aware of the restrictions contained herein." Jt. Ex. 21 § 4A. Section 6A provided that the agreement "shall terminate on 31 December 2022 unless sooner terminated by a Party by giving thirty (30) days written notice to the other Party." Jt. Ex. 21 § 6A. In short, the PIA created the legal framework for a lawful exchange of proprietary technical information between the companies and their authorized personnel.

Petitioner was not an officer, principal, or decision-maker at APAC. Tony Chee ('Chee') was APAC's founding president, and Chee and Joseph Pascua held the patent on the anti-icing technology. Jt. Ex. 7; Def. Ex. 116; Def. Ex. 117. APAC hired Petitioner as a consultant for a single project: to determine what measurements would need to be taken on the Gulfstream wing during a wind-tunnel test and to design a test plan. Pet. App. A at 3a-4a. His work was technical, not strategic — he had no involvement in APAC's business decisions, marketing plans, or negotiations with Gulfstream or any other company. Gulfstream itself had vetted Petitioner through its background check procedures, which he passed twice, including shortly before he began working with APAC. Def. Ex. 118.

To carry out this work, Petitioner received Gulfstream technical documents from Gilbert Basaldua ('Basaldua'), a Gulfstream contractor who was also working for APAC. Pet. App. A at 2a, 4a. Basaldua emailed Gulfstream documents from his company email to his personal email and then forwarded them to Petitioner, at times using subject lines such as "Time Card" to disguise the contents. *Id.* at 4a. Petitioner acknowledged receiving such emails "on a fairly routine basis" and conceded that he and Basaldua used methods to disguise proprietary information when transmitting it. *Id.* Petitioner also acknowledged that he knew Basaldua had not disclosed his financial interest in APAC to Gulfstream. *Id.* None of this is in dispute. What is in dispute is whether it matters — whether Petitioner's subjective belief about the propriety of his conduct can sustain a conspiracy conviction when the PIA objectively authorized the very possession the government called theft.

In January 2018, Gulfstream notified APAC that it would not be pursuing APAC's anti-icing technology on the G650 aircraft. Jt. Ex. 24; Pet. App. A at 3a. Petitioner was not informed. His text messages with Basaldua in the weeks following the declination contain no reference to Gulfstream's decision and reflect only ongoing technical work: determining the dimensions of the wind-tunnel test article, evaluating testing facilities, and coordinating schedules. Def. Ex. 113. Neither Gulfstream nor APAC gave written notice of termination pursuant to Section 6A. Jt. Ex. 21 § 6A. The PIA, by its own terms, remained in effect until December 31, 2022 — more than four years after the conduct at issue. One week after the declination, a Gulfstream aerodynamics specialist proposed a cooperative wind-tunnel test to APAC, offering to provide Gulfstream's wing model, test matrix, and onsite consultation. Def. Ex. 111. In December 2018, Petitioner sent a completed wind tunnel test plan to Tony Chee at APAC, which APAC submitted to the Federal Aviation Administration. Pet. App. A at 5a.

More than four years later, on November 2, 2022, Petitioner was indicted on one count of conspiracy to steal trade secrets in violation of 18 U.S.C. § 1832(a)(5). *Id.* At trial, Petitioner moved for a judgment of acquittal, arguing that the PIA authorized his possession and use of Gulfstream documents, making the charged conspiracy legally impossible. *Id.* The District Court denied the motion. *Id.*

Then, moments before closing argument, the Government moved to preclude Petitioner's counsel from arguing legal impossibility in closing. *Id.* The District Court granted the motion. *Id.* The Court ordered that "defense counsel may not argue to the jury that if the jury finds that the PIA authorized the members of APAC to access the documents, then the jury must find the defendant not guilty, or any similar argument." *Id.* The Court ruled that Petitioner could argue that the PIA affected Petitioner's mens rea (an argument Petitioner obviously could not make, because Petitioner had never seen the PIA), but that Petitioner was *forbidden* to argue that the PIA created a legal right to his possession of the documents, thus negating an element of the offense. *Id.*

Petitioner was convicted in August 2023. *Id.* He filed a motion for new trial, again raising the legal impossibility argument, which the district court denied. *Id.* Petitioner was sentenced to sixty-three months imprisonment. Pet. App. A at 8a.

Petitioner appealed to the Eleventh Circuit. Pet. App. A at 1a. The Eleventh Circuit affirmed on January 23, 2026. *Id.* at 16a. The panel recognized that "in certain cases, the doctrine of legal impossibility can be a defense to the charge of conspiracy," citing *Johnson v. United States*, 158 F. 69 (5th Cir. 1907). *Id.* at 9a-10a. Yet it affirmed the conviction on three grounds. First, the panel held that Petitioner could not assert legal impossibility because Petitioner "was not aware of the PIA." *Id.* at 11a. Second, the panel found that Petitioner and APAC used Gulfstream documents "for purposes beyond those permitted by the PIA." *Id.* at 11a-12a. Third, the panel found that the documents were transmitted through Basaldua rather than through the designated "point of contact" identified in the PIA. *Id.* at 12a.

Each of these grounds turned not on whether the PIA objectively authorized Petitioner's possession of the documents, but on whether Petitioner personally knew of, or complied with, specific contractual provisions – the very inquiry that legal impossibility renders irrelevant.

At oral argument, the Government conceded that legal impossibility is a valid defense to conspiracy, withdrawing its earlier argument to the contrary in light of *Johnson*. Tr. of Oral Arg. 16:30-17:00. The Government argued instead that the objective legality or illegality of the conduct is irrelevant, and that the only relevant inquiry for a conspiracy charge is whether the defendant subjectively believed his conduct was unauthorized. *Id*. at 22:00-22:30. The presiding circuit judge responded as follows: "You're conflating legal impossibility with intent and you think intent swallows legal impossibility." *Id.* at 21:45-22:00. Yet the panel affirmed. Pet. App. A at 16a.

Rehearing en banc was denied on March 24, 2026. Pet. App. B at 17a. This Court granted an extension for the filing of this Petition through and including July 22, 2026.

REASONS FOR GRANTING THE WRIT

A. THE CIRCUITS ARE DEEPLY DIVIDED ON WHETHER LEGAL IMPOSSIBILITY NEGATES AN ELEMENT OF AN INCHOATE OFFENSE

The federal courts of appeals are divided on whether legal impossibility is a defense to inchoate offenses. A majority hold that it *is* a defense: If the defendant's intended conduct, even if fully carried out, would not constitute a crime, these circuits hold, the inchoate charge fails for want of an essential element.

A minority hold that it is *not* a defense: Because inchoate offenses focus on the defendant's subjective intent, and it is blameworthy to form the intent to do something the defendant believes is a crime, these Circuits hold the objective legality of the completed act is irrelevant.

The Eleventh Circuit opinion below nominally recognized the defense, but expressly defined it as applying only when the defendant knew the contemplated act was not illegal. Thus the Eleventh Circuit joins the circuits that reject legal impossibility as a defense to conspiracy. The circuit split is entrenched, acknowledged, and irreconcilable without this Court's intervention.

1. A Majority of Circuits Hold That Legal Impossibility Negates an Element of the Inchoate Offense

The majority position is that legal impossibility negates the criminal object of a conspiracy. If the defendant's intended conduct, even if fully carried out, would not violate any law, then no criminal object exists, and the conspiracy charge fails for want of an essential element. The defendant's subjective belief that his conduct was unlawful cannot supply the element that objective law withholds. Seven circuits have adopted this framework, four in the conspiracy context and three in the attempt context, where the same analytical principle applies.

First Circuit:

In *United States v. Carter*, 15 F.4th 26 (1st Cir. 2021), the court held that "[p]ure legal impossibility is always a defense," expressly "including where . . . the defendants were charged and convicted of the inchoate crime of conspiracy." *Id.* at 36. The defendants, pharmacy executives convicted of conspiring to defraud the FDA, argued that the agency lacked regulatory authority over their operations, making the conspiracy legally impossible. *Id.* at 47. The court reversed post-verdict acquittals entered on legal impossibility grounds, not because the defense was unavailable, but because the defendants had not established that the completed act would have been lawful. *Id.* at 52. The doctrine's validity was unquestioned. *See id.* at 36.

Fourth Circuit:

In *Ventimiglia v. United States*, 242 F.2d 620 (4th Cir. 1957), the court reversed a conspiracy conviction under the Taft-Hartley Act where the defendants made what they thought were illegal payments to a person they believed was a union representative of their employees. *Id.* at 627. Because the recipient was not in fact a representative, the completed act would not have violated the statute. The court held that "there can be no conviction for conspiracy to commit an offense against the United States if the act that the alleged conspirators agree to do has not been made unlawful, and is not planned to be accomplished in an unlawful manner." *Id.* at 622. The defendants' mistaken belief about the recipient's status "cannot sufficiently negative the impossibility of committing the substantive offense so as to provide the basis for a conspiracy conviction." *Id.* at 626.

Fifth Circuit:

The Fifth Circuit has addressed legal impossibility in the conspiracy context. In *Johnson v. United States*, 158 F. 69 (5th Cir. 1907), a bankruptcy trustee was charged with conspiring with the bankruptcy petitioner to conceal assets "from his trustee." *Id.* at 71. The court reversed: because the trustee was the very person from whom the assets were allegedly concealed, the completed act could not constitute a crime, and no conspiracy could lie. *Id.* at 71–74. The panel below expressly relied on *Johnson* in acknowledging the doctrine's validity. Pet. App. A at 9a–10a.

Sixth Circuit:

In *United States v. Peete*, 919 F.2d 1168 (6th Cir. 1990), the court recognized the traditional rule that "legal impossibility but not factual impossibility is a defense to a charge of attempt," defining legal impossibility as "the case in which the defendant did everything he intended to do but yet had not committed the completed crime." *Id.* at 1175–76. The court affirmed the defendant's conviction for attempted extortion on the facts, but the validity of the defense itself was not questioned. *See id.* at 1181.

Seventh Circuit:

The Seventh Circuit has endorsed the element-negation interpretation of legal impossibility in inchoate offenses in two cases. In *United States v. Coffman*, 94 F.3d 330 (7th Cir. 1996) (Posner, J.), the Court held as follows: "If [the scheme] could not succeed because the completed act at which the defendant aimed is not criminal . . . then a defense of impossibility will lie; it is not a criminal attempt to try to do what the criminal law does not forbid you to do." *Id.* at 333.

In *United States v. Lange*, 312 F.3d 263 (7th Cir. 2002) (Easterbrook, J.), a prosecution for attempted theft of trade secrets, the Court held that a "defendant's belief alone cannot support a conviction" and that "[a]ll attempt prosecutions depend on demonstrating that the defendant took a substantial step toward completion of the offense, which could have been carried out unless thwarted." *Id.* at 268.

Eighth Circuit:

In *United States v. Frazier*, 560 F.2d 884 (8th Cir. 1977), the court drew the same distinction, recognizing that "legal impossibility," which "refers to those situations in which the intended acts, even if successfully carried out, would not amount to a crime," is a defense to attempt, while "factual impossibility," which arises from "a circumstance or condition, unknown to the defendant," that prevents consummation, is not. *Id.* at 888. The court affirmed the defendant's conviction for attempted extortion, finding factual impossibility, but recognized the defense of legal impossibility as valid in principle. *See id.* at 889.

Tenth Circuit:

In *United States v. Chavez*, 29 F.4th 1223 (10th Cir. 2022), the court recognized that legal impossibility applies "when the actions which the defendant performs or sets in motion, even if fully carried out as he desires, would not constitute a crime." *Id.* at 1227-28. The court reversed a district court's dismissal of an attempted bank robbery charge, holding that the intended act would in fact have been criminal, and the defense therefore did not apply. *See id.* at 1230.

D.C. Circuit:

In *In re Sealed Case*, 223 F.3d 775 (D.C. Cir. 2000), the government sought to compel prooduction of documents through the crime-fraud exception, arguing that the underlying transactions constituted a conspiracy to violate federal election law. *Id.* at 776. The court rejected that theory, holding that "[p]ure legal impossibility is always a defense" and that, because "the transaction described by the government does not violate FECA, there can be no finding of conspiracy." *Id.* at 779. If the completed act is not a crime, the agreement to commit it is not a conspiracy.

2. A Minority Treat the Defense as Categorically Unavailable to Conspiracy Defendants

Three circuits reject the defense entirely. These circuits hold that legal impossibility is categorically unavailable to inchoate offenses, reasoning that conspiracy focuses on the defendant's subjective intent to commit a crime, not on whether the completed act would objectively violate the law.

Second Circuit:

In *United States v. Trapilo*, 130 F.3d 547 (2d Cir. 1997), the court held that "[w]here . . . an indictment alleges conspiracy, legal impossibility affords a conspirator no defense," reasoning that "[t]he impossibility that the defendants' conduct would result in consummation of the contemplated substantive crime is not persuasive or controlling." *Id.* at 552 n.9.

Third Circuit:

United States v. Hsu, 155 F.3d 189 (3d Cir. 1998), is the most developed statement of the minority position. *Hsu* involved a prosecution for conspiracy to steal trade secrets in violation of 18 U.S.C. § 1832(a)(5). *Id.* at 193. The court held that "the impossibility of achieving the goal of a conspiracy is irrelevant to the crime itself," reasoning that "the law of conspiracy is much more preventive, aiming to nip criminal conduct in the bud." *Id.* at 203. A defendant's culpability, the court held, depends on "the circumstances as he believes them to be," not as they actually are. *Id.* The court held the government need not prove the existence of an actual trade secret to sustain a conspiracy charge. *Id.*

Ninth Circuit:

In *United States v. Everett*, 692 F.2d 596 (9th Cir. 1982), the court squarely rejected the defense: "The doctrine of legal impossibility is not available as a defense to a charge of conspiracy in this circuit." *Id.* at 599. The court held that the crime of conspiracy "is complete upon the agreement to violate the law, as implemented by one or more overt acts," and "is not at all dependent upon the ultimate success or failure of the planned scheme." *Id.* at 600.

3. The Eleventh Circuit, in the Decision Below, Joins the Circuits Rejecting Application of the Doctrine to Conspiracy

Finally, the Eleventh Circuit, in the case at bar, joined the circuits rejecting application of legal impossibility to conspiracy, but did so by defining the doctrine as applying only to mens rea. *See* Pet. App. A at 16a. The panel began by stating that "in certain cases, the doctrine of legal impossibility can be a defense to the charge of conspiracy." *Id.* at 9a. Yet it then held the defense inapplicable on three grounds, each of which conditioned the defense on the defendant's subjective knowledge of, or personal compliance with, specific contractual provisions: (1) Petitioner "was not aware of the PIA," *id.* at 11a; (2) Petitioner and APAC used documents "for purposes beyond those permitted by the PIA," *id.* at 11a–12a; (3) the documents were transmitted to Petitioner through Basaldua rather than Meghan Wright, the PIA's designated point of contact, *id.* at 12a.

The result is a nominal recognition that provides no actual protection. A defendant in the Eleventh Circuit may invoke legal impossibility in theory, but the defense is available only to a defendant who can demonstrate *subjective awareness* of the authorizing instrument. This ruling functionally eliminates legal impossibility as a defense entirely. The essence of the doctrine is that it protects defendants who do *not* know that their action is actually legal, and who do *not* know the reasons why. The panel's approach is functionally identical to *Hsu*, *Trapilo*, and *Everett*, whatever label it carries.

B. THIS PETITION PRESENTS AN EXCELLENT VEHICLE TO ADDRESS A RECURRING QUESTION OF TREMENDOUS IMPORTANCE

The majority position, that legal impossibility is an element-negation defense that is applicable in conspiracy cases, is the most natural, coherent, and historically grounded interpretation of the doctrine. And it fits the text of the applicable conspiracy statute. Section 1832(a)(5) requires proof that the defendant conspired "to commit any **offense** described in paragraphs (1) through (3)." 18 U.S.C. § 1832(a)(5) (emphasis added) If the act the defendant conspired to commit would not constitute an "offense" described in those paragraphs, the conspiracy has no criminal *object*, and an essential element is missing. The question is objective: would the completed act have violated the law? The defendant's subjective belief about the legality of his conduct is irrelevant: regardless of what the defendant thought he was doing or conspiring to do, the objective "offense" element is missing.

The minority circuits, by contrast, treat conspiracy as a pure thought crime, a crime in which the intent to do something one *thinks* is criminal is sufficient to create its own crime. On this model, a person's intent or agreement to do something he thinks is a crime will, on its own and irrespective of the objective criminality of the intended act, bootstrap the person into criminality. If my co-conspirators and I mistakenly think that reading *1984* is criminal, and we conspire to form a reading group to read and discuss it, then, on this model, we are guilty of conspiracy because we think we are committing a crime.

This model of a defendant's culpability depends on "the circumstances as he believes them to be," *Hsu*, 155 F.3d at 203, and the objective legality of the completed act drops out of the analysis entirely. That reading writes the object-offense element out of the statute. Congress did not criminalize agreements to do lawful things people mistakenly thought were offenses; it criminalized agreements to commit *actual* offenses.

The Eleventh Circuit's decision below illustrates where subjective intent bootstrapping reasoning leads. The Eleventh Circuit conditions a putative "legal impossibility" defense on the defendant's subjective *knowledge* of the PIA. This approach converts an objective legal question (does the PIA authorize this conduct as a matter of law?) into a subjective inquiry about the defendant's knowledge and belief. Thus the Eleventh Circuit lands squarely in the minority position of denying application of legal impossibility to conspiracy cases,

A rule that conditions the legal impossibility defense on the defendant's subjective knowledge of the authorizing instrument, contract, statute, etc., simply makes no sense. A defendant who forms an agreement to hunt deer during what he knows is the actual hunting season has no need of a legal impossibility doctrine. The doctrine exists for people who intend, conspire, or attempt to do something they *think is criminal*—but they're wrong.

The Eleventh Circuit's approach eliminates the defense in every case where the defendant was unaware of the precise legal basis for the legality of his conduct, which is precisely the context when it is needed, and for which the doctrine initially arose. Thus the Eleventh Circuit eliminates legal impossibility as a defense in conspiracy and attempt cases, along with the Second, Third, and Ninth Circuits.

C. THIS COURT RECENTLY IDENTIFIED ONE OF THE ISSUES IN THIS CASE AS AN IMPORTANT QUESTION TO BE DECIDED

This Court recently identified one of the issues presented by this case as one which the Court should decide. In *Van Buren v. United States*, 593 U.S. 374 (2021), this Court reversed the Eleventh Circuit on the meaning of "authorized access" in the Computer Fraud and Abuse Act. *Id.* at 377. The Court expressly reserved the question—which is now squarely presented here—of what kinds of documents can create "authorization," and specifically whether "contracts," create legal authorization sufficient to negate criminality as a matter of law. *Id.* at 392 n.8. That question is squarely presented by this case; indeed, it arrives from the same Circuit.

Van Buren held that a person does not exceed authorized access to a computer by accessing information for an improper purpose when he is otherwise authorized to retrieve it. *Id.* at 378. The Court rejected the Eleventh Circuit's interpretation of the statute, because it would have criminalized any access undertaken for purposes the employer had not sanctioned, reasoning that such a reading would "attach criminal penalties to a breathtaking amount of commonplace computer activity." *Id.* at 393.

Footnote 8 identified but did not resolve the next question: when authorization comes from a *contract*, does that authorization negate the criminality of the possession or access? *Id.* at 392 n.8.

This case presents that question and requires an answer. The PIA is a contract that authorized the exchange of proprietary technical information between Gulfstream and APAC's personnel. The Eleventh Circuit held, inter alia, that possession of proprietary information that would otherwise have been authorized, became "unauthorized" and thus criminal if used "outside the purposes" specified by the contract. The overbreadth concern this Court identified in *Van Buren* is equally present here. As this Court has recognized, the wholesale conversion of breach-of-contract claims into criminal prosecutions is terrain not to be travelled lightly. Here, Petitioner sought to argue that the PIA rendered his possession of the documents authorized, and thus non-criminal—regardless of whether he knew or believed that it did. Here, Petitioner argues, the *contract* negates an element of the charged conspiracy as a mattere of law, independently and irrespective of the defendant's subjective beliefs. That is precisely the issue this Court reserved in *Van Buren*, and should take up and decide now.

The question presented in this case is, it goes without saying, not confined to trade secrets cases. Legal impossibility arises wherever a federal statute criminalizes "unauthorized" conduct and a defendant claims authorization from an external legal source.

For example, the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, criminalizes "unauthorized" access to computer systems or networks. The Economic Espionage Act, 18 U.S.C. § 1832, criminalizes the "unauthorized" taking of trade secrets. The National Defense Information statutes, 18 U.S.C. §§ 793–798, criminalize the "unauthorized" retention or disclosure of classified information. In each context, "authorization" may derive from a contract, a regulation, a policy, or a statute. And in each context, a person may conspire or attempt to do something he thinks is unauthorized but that actually isn't—for reasons unknown to him, such as a contract he has never seen.

The question whether that authorization negates an element of the offense, or, by contrast, is only relevant if subjectively known to the defendant, remains unresolved. President Trump, indicted for unauthorized retention of classified documents pursuant to 18 U.S.C. § 793(e), asserted that the Presidential Records Act authorized his retention, and/or that he could have declassified the documents by a mental act prior to leaving office.

His two co-defendants, who did not have Presidential immunity, and who faced significant evidence establishing mens rea, had only one argument to make: that some one or other of the President's prior legal actions, of which they were unaware, had altered the legal status of the boxes of documents, negating the "unauthorized" element that the government was required to prove. Their question is Petitioner's question: do such legal alterations in a document's status (whether the PIA for Petitioner, or a mental declassification by the President), negate the element of wrongful possession, or conspiracy to wrongfully possess, even when the defendant was unaware of them?

As set forth herein, in eight Circuits the answer is "Yes," and the defendant is acquitted. In four Circuits the answer is "No," and the defendant is convicted.

The answer to that question—and the outcome of identical cases with identical facts and identical mens rea—should not depend on accidents of geography. A defendant charged in the First, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, or D.C. Circuit *may* present objective authorization as negating an element of the offense, regardless of the defendant's mens rea. A defendant charged in the Second, Third, Ninth, and Eleventh Circuits may *not*. That disparity is the kind of entrenched, acknowledged conflict that this Court's certiorari jurisdiction exists to resolve.

This case presents a clean vehicle for this Court to provide clarity and restore harmony to the Circuits. Petitioner was convicted of a single count of conspiracy to steal trade secrets. His defense was legal impossibility. The district court precluded it. The Eleventh Circuit affirmed. The question presented is the only question in the case.

And neither the Eleventh Circuit nor the other Circuits will resolve this matter on their own. When the Government argued at oral argument before the Eleventh Circuit that the relevant inquiry in a legal impossibility analysis should be the defendant's subjective belief, Trans., *infra*, at 22:00–22:30, the presiding judge rejected that reframing: "You're conflating legal impossibility with intent and you think intent swallows legal impossibility." *Id.* at 21:45–22:00. Yet the panel affirmed. When a circuit judge on the deciding panel identifies the precise doctrinal error the Petition asks this Court to correct, and the panel still affirms, the conflict is not one the lower courts will resolve on their own.

This Court has corrected the Eleventh Circuit on the meaning of authorization before. *Van Buren* reversed the Eleventh Circuit's reading of "authorized access" in the CFAA. The Eleventh Circuit has now produced the same category of error in a different, contractual context, conditioning a defendant's right to assert "authorization" on his *subjective* knowledge of the authorizing instrument rather than on the *objective* authorization created by the instrument itself.

In sum: For generations, law students, when introduced to the concept of inchoate crimes in their first-year Criminal Law classes, have raised their hands and asked a simple question: "What if a person conspires to do something that he *thinks* is a crime, but that actually isn't?" As things stand, the professor would have to answer, "Well, depending on where you happen to be located, there are completely different and contradictory answers to that question, yielding completely different and contradictory case outcomes."

A reasonable follow-up question would be: "But why? Why can't we have a uniform rule?" And the professor would answer: "Because the Supreme Court has not yet taken the right case to resolve the split."

This is that case.

The split is pronounced, well developed, and persistent. The Court cannot allow two conflicting rules to govern this core principle of common-law criminal liability. Certiorari should be granted.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED JANUARY 23, 2026

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-10533

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 4:22-cr-00170-RSB-CLR-1

Before JORDAN and LAGOA, Circuit Judges, and COVINGTON,* District Judge.

COVINGTON, District Judge.

Juan Martinez appeals his conviction and sentence for conspiracy to steal trade secrets, in violation of 18

* Honorable Virginia M. Covington, United States District Judge for the Middle District of Florida, sitting by designation.

U.S.C. § 1832(a)(5). He contends that the district court erred in prohibiting him from raising legal impossibility in his closing argument. Martinez also argues that the court erred at sentencing by considering intended loss in enhancing his offense level, and estimating the intended loss amount based on insufficient evidence. After careful review, we affirm.

I.

In 2017, Martinez became involved with APAC Airplane Design Consulting, LLC ("APAC"), a start-up company developing a new technology to prevent ice from forming on airplane wings. In October 2017, Gilbert Basaldua, then a contractor of Gulfstream Aerospace Corporation ("Gulfstream"), arranged a meeting between APAC and Gulfstream to explore potential collaboration between the companies. Unbeknownst to Gulfstream, Basaldua had personal involvement and financial interests in APAC.

Following that meeting, Gulfstream and APAC executed a Proprietary Information Agreement (the "PIA") governing the exchange of confidential information between the companies. Section 4A of the PIA provided:

> The Receiving Party will: (i) use PROPRIETARY INFORMATION solely in furtherance of the Permitted Purpose with the Disclosing Party; (ii)limit disclosure of PROPRIETARY INFORMATION to its' [sic] employees, contract personnel and consultants who are

> bound by and have been made aware of the restrictions contained herein concerning the use of the PROPRIETARY INFORMATION and who have a "need to know" in order to carry out their respective functions in connection with the Permitted Purpose.

Section 1 of the PIA defined the "Permitted Purpose" as:

> [T]he purpose of exchanging technical information and proposals related to the wing leading edge components and Installation for power consumption for potential use on the G650 aircraft.

Section 15 of the PIA further designated Meghan Wright on behalf of Gulfstream and Tony Chee, Craig German, and Joseph Pascua on behalf of APAC as "the specific points of contact for disclosing and / or receiving written PROPRIETARY INFORMATION transmitted between the Parties."

After executing the PIA, Gulfstream and APAC exchanged proprietary information. Ultimately, in January 2018, Gulfstream notified APAC that Gulfstream would not be pursuing APAC's anti-icing technology on the G650 aircraft.

Martinez became involved with APAC as the company was pitching its anti-ice technology to various aircraft companies. Eventually, APAC decided that it needed to obtain certification for its anti-ice system from the Federal

Aviation Administration ("FAA"). To that end, APAC sought to test its anti-ice technology in a wind tunnel. APAC asked Martinez to develop a plan for a wind tunnel test of an airplane wing that APAC would obtain and equip with APAC's technology. APAC eventually found a Gulfstream wing to use as the test article.

To develop the wind tunnel test plan, Martinez requested various Gulfstream documents from Basaldua. Basaldua emailed Gulfstream's documents from his Gulfstream email account to his own personal email account and then emailed the documents from his personal account to Martinez's personal email account. On at least one occasion, Basaldua emailed Martinez a Gulfstream document from his personal email account and said, "guard this, my job depends on it." On multiple occasions, Basaldua named the subject matter of the emails and the attachments containing Gulfstream's proprietary documents as "Time Card" even though the emails and attachments did not contain timecard information.

Martinez admitted that he received such emails "on a fairly routine basis," acknowledged the attachments contained Gulfstream's trade secrets, and conceded that he and Basaldua used "tradecraft" methods to disguise proprietary information when emailing it. Martinez also admitted that he knew Basaldua had a financial interest in APAC, and that Basaldua had not disclosed that interest to Gulfstream.

Martinez further admitted that APAC intended to use the wind tunnel test as a proof of concept of APAC's technology so that APAC could market the technology to various aircraft manufacturers, including Gulfstream's competitors. Indeed, Martinez later told law enforcement agents that "the reason APAC wanted this Gulfstream data was simply to get its FAA-certified data so it could market the anti-ice project to numerous aircraft companies." He conceded that if APAC had successfully developed a proof of concept, Gulfstream's competitors might have bought the technology. Martinez also admitted that he sent Gulfstream's proprietary data to numerous people who he knew had no right to view or use that data. For instance, Martinez sent APAC's test plan to a friend and asked him to "wordsmith" the plan so that it did not look as though it contained Gulfstream information.

After Gulfstream received an anonymous complaint, law enforcement confronted Basaldua about APAC's activities. On November 30, 2018, agents arranged for Basaldua to make a recorded phone call to Martinez. During and after that phone call, Martinez and Basaldua agreed to remove the evidence of APAC's use of Gulfstream's proprietary information. However, removing all of Gulfstream's proprietary information was impossible. Martinez knowingly left certain Gulfstream trade secret information in the FAA test plan even though "at that point [he] knew something was wrong and that [Basaldua] might have stolen it." In December 2018, Martinez sent Tony Chee a wind test plan that contained Gulfstream's proprietary data, which APAC submitted to the FAA.

Martinez was indicted on November 2, 2022, for one count of conspiracy to steal trade secrets. At trial, Martinez moved for a judgment of acquittal, arguing that he could not have conspired to steal Gulfstream's trade secrets. According to Martinez, the PIA authorized him, through his affiliation with APAC, to use Gulfstream documents to develop a wind-tunnel test plan for APAC's anti-ice system. Martinez framed this argument as "legal impossibility," stating that even if the conspirators had achieved their objective, no crime could have resulted. The court denied the motion, characterizing Martinez's argument as one of "factual impossibility." Later, the government moved to preclude Martinez's counsel from arguing the legal impossibility defense in closing, which the court granted. Specifically, the court ruled that Martinez could argue in closing "that he believes the PIA authorized defendant and his alleged co-conspirators to access the documents," but that "defense counsel may not argue to the jury that if the jury finds that the PIA authorized the members of APAC to access the documents, then the jury must find the defendant not guilty, or any similar argument."

Martinez was found guilty by a jury in August 2023. Martinez filed a motion for new trial, again raising the legal impossibility argument, which was denied by the court.

At sentencing, Martinez objected to a sentence enhancement proposed in the probation officer's presentence investigation report, claiming that the enhancement was based on an "intended loss" amount that was unsupported by sufficient evidence. The court heard arguments on the calculation of the loss amount itself and whether the court could rely on an intended loss calculation for sentencing purposes.

During the sentencing hearing, the government called Gulfstream's senior financial manager, Tara Rothermel, as an expert witness. Rothermel testified that APAC claimed its technology would reduce aircraft weight by 550 pounds, and that such a reduction would be a "huge competitive advantage" to Gulfstream's competitors. Rothermel further testified that such an advantage would reasonably result in Gulfstream selling at least three fewer aircraft. Rothermel also testified that the average sale price of a Gulfstream plane was about $65 million, and that Gulfstream's profit margin on such a sale would be about 20 to 25 percent.

The court then issued its rulings. First, the court ruled that the term "loss" in Sentencing Guideline § 2B1.1(b) was ambiguous, and thus it could consider "intended loss" as described in the commentary. Second, the court turned to the calculation of the intended loss amount. The court explained that, although in another coconspirator's sentencing the court had found that profit from three planes was a reasonable intended loss amount, the court determined Martinez was less culpable. Still, the court found that "anyone in [Martinez's] position" could have foreseen Gulfstream selling at least one fewer plane. The court thus adopted Rothermel's testimony about the amount of lost profit on one plane, rather than three planes. Accordingly, the court calculated the intended loss to be more than $9.5 million but less than $25 million, which it deemed to be "conservative and somewhat lenient to the defendant." On that basis, the court applied a 20-level enhancement under U.S.S.G. § 2B1.1(b)(1)(k), resulting in a total offense level of 26 and an advisory guidelines range of 63 to 78 months.

Ultimately, the court sentenced Martinez to 63 months' imprisonment. In doing so, the court emphasized that it would impose the same sentence "regardless of what the guidelines said," and "regardless of the loss amount," because Martinez's conduct was "extremely serious." Still, the court acknowledged Martinez's remorse, history, characteristics, and low risk of recidivism in "landing at the bottom end of the guideline range."

II.

"[W]e review a restriction on closing argument for abuse of discretion." *United States v. Harris*, 916 F.3d 948, 954 (11th Cir. 2019). "'Absent a showing of an abuse of discretion the district court will not be reversed for limiting summation as long as the defendant has the opportunity to make all legally tenable arguments that are supported by the facts of the case.'" *Id.* (quoting *United States v. Gaines*, 690 F.2d 849, 858 (11th Cir. 1982)). "Although we review a restriction on closing argument for abuse of discretion, we review *de novo* constitutional questions." *Id.* (citing *United States v. Mitrovic*, 890 F.3d 1217, 1220 (11th Cir. 2018)).

"We review *de novo* the interpretation and application of the Sentencing Guidelines." *United States v. Cingari*, 952 F.3d 1301, 1305 (11th Cir. 2020).

"[W]e review the district court's loss determination only for clear error." *United States v. Moss*, 34 F.4th 1176, 1190 (11th Cir. 2022) (quoting *United States v. Bazantes*, 978 F.3d 1227, 1249 (11th Cir. 2020)). "A district court need not make a precise determination of loss amount, but only a reasonable estimate of it given the available information." *Id.* "The estimate must be based on 'reliable and specific' facts, and the court cannot 'speculate about the existence of facts that would result in a higher sentence.'" *Id.* (quoting *United States v. Moran*, 778 F.3d 942, 973 (11th Cir. 2015)). "Instead, it must make factual findings about the loss amount 'based on evidence heard during trial, undisputed statements in the PSI, or evidence presented during sentencing.'" *Id.* (quoting *Moran*, 778 F.3d at 973).

III.

A. Legal Impossibility

First, Martinez contends the district court erred by precluding defense counsel from arguing in closing that the PIA authorized Martinez's use of Gulfstream documents, rendering the charged crime legally impossible.

We recognize that, in certain cases, the doctrine of legal impossibility can be a defense to the charge of conspiracy. *See Johnson v. United States*, 158 F. 69, 71-74 (5th Cir. 1907) (reversing a conviction where a bankruptcy trustee was charged with conspiring with the bankrupt to conceal assets "from his trustee," holding that the charge was legally impossible because one cannot conceal property from oneself). Furthermore, pure legal impossibility can, in certain cases, negate the *mens rea* of the defendant charged with conspiracy. *See* Wayne R. LaFave, *Criminal Law* § 12.4, 687 (5th ed. 2010).

However, the district court may properly preclude a legal impossibility argument if the facts do not support it. *See Harris*, 916 F.3d at 954. Indeed, the court "may ensure that argument does not stray unduly from the mark, or otherwise impede the fair and orderly conduct of the trial." *Id.* at 959 (quoting *Herring v. New York*, 422 U.S. 853, 862 (1975)). Relatedly, a criminal defendant must make a "threshold showing" of evidence to assert a defense at the close of trial. *See United States v. Bailey*, 444 U.S. 394, 416 (1980). In other words, while a criminal defendant has the right to have a jury resolve disputed factual issues, where the evidence, even if believed, does not support the proposed defense theory, the trial court need not submit the defense to the jury. *See United States v. Middleton*, 690 F.2d 820, 826 (11th Cir. 1982) (holding that the judge "decides whether the facts constituting the defense framed by the proposed charge, if believed by the jury, are legally sufficient to render the accused innocent").

The crux of Martinez's legal impossibility argument is that the PIA supposedly authorized him to possess and use Gulfstream's trade secrets. The district court correctly found otherwise. In denying Martinez's motion for new trial, the court found that (1) the Gulfstream documents underlying the charges were not disclosed pursuant to the PIA, and (2) Martinez and his coconspirators agreed to use Gulfstream's documents for purposes not permitted by the PIA. Our review of the record and the PIA confirms these findings.

First, Martinez's possession and use of Gulfstream's documents were not authorized by the PIA because Martinez was unaware of the PIA. Martinez unpersuasively urges that "it does not matter whether [he] in fact relied on the PIA, or ever read it." Yet, Section 4A of the PIA specified that Gulfstream's proprietary data could only be disclosed to certain individuals "who are bound by and have been made aware of the restrictions contained herein." Because Martinez was not aware of the PIA, any disclosures to him could not have been authorized by the PIA. Further, any purported impossibility flowing from the PIA could not have been probative of Martinez's *mens rea*.

Second, Martinez and APAC used Gulfstream's trade secrets for purposes beyond those permitted by the PIA. Section 1 of the PIA limited the permitted purpose to evaluating APAC's system "for potential use on the G650 aircraft." Counsel for Martinez conceded that there was evidence that "APAC, as a company, [and] those who were entitled to act on behalf of APAC, contemplated and perhaps took steps towards using the documents for things other than just potential use on the G650." Further, Martinez knowingly left Gulfstream's trade secret information in the wind tunnel test plan that APAC submitted to the FAA, months after Gulfstream had ended its consideration of APAC's system. Because Martinez obtained and used Gulfstream trade secrets for purposes not permitted by the PIA, the disclosures to him from which he obtained and used Gulfstream trade secrets could not have been authorized by the PIA.

Third, Martinez himself admits that Gulfstream did not disclose to APAC the trade secrets underlying the charges. Instead, Basaldua took that information from Gulfstream and shared it with Martinez. Though Basaldua was a contractor of Gulfstream, Basaldua was not operating under the authority of Gulfstream or the PIA when he sent Gulfstream's trade secrets to Martinez. Section 15 of the PIA specifies that Meghan Wright was the only party authorized to disclose proprietary information to APAC on behalf of Gulfstream. Accordingly, the documents that Martinez received from Basaldua could not have been authorized by the PIA.

In short, the facts do not support Martinez's argument. The PIA did not authorize the disclosures to Martinez, and Martinez used Gulfstream trade secrets for purposes not permitted by the PIA. Thus, under either an abuse of discretion or *de novo* standard of review, the district court did not err by precluding defense counsel from arguing legal impossibility in closing.

B. Sentencing

Next, Martinez challenges his sentence on two grounds. First, he argues that actual loss, not intended loss, is the applicable standard for calculating the loss amount under the Sentencing Guidelines. Second, he contends that the district court erred by calculating his intended loss based on supposedly insufficient evidence. Both arguments fail.

1.

First, Martinez challenges the court's use of intended loss to calculate his loss under U.S.S.G. § 2B1.1(b)(1).

On November 1, 2024, the Sentencing Commission adopted Amendment 827 to U.S.S.G. § 2B1.1(b)(1), moving Application Note (3)(A), which states that "loss" under the guideline "is the greater of actual loss or intended loss," from the Commentary to the main text. U.S.S.G. App. C, Amend. 827 (2024). Recently, this Court held that Amendment 827 applies to cases pending on direct appeal because it "is a clarifying amendment." *United States v. Horn*, 129 F.4th 1275, 1300 (11th Cir. 2025). We reasoned that the Amendment simply "maintains the same longstanding approach for calculating loss used in this Circuit's case precedent." *Id.* at 1301. "[T]he Guidelines already unambiguously say that loss is the greater of actual or intended loss, and Amendment 827, a clarifying amendment [], makes that conclusion even clearer." *Id.*

Under this precedent, we conclude that the district court correctly included intended loss, not merely actual loss, in its calculation.

2.

Second, Martinez contends that the district court's loss calculations lacked a sufficient evidentiary basis. Martinez argues that the court's intended loss calculation was based on a "chain of assumptions" that never occurred, and that no evidence supported the court's calculation of intended loss as Gulfstream's lost profit from the sale of one plane.

As an initial matter, Martinez criticizes the court's intended loss calculation as depending on a series of "counterfactual" assumptions. But the Sentencing Guidelines at the time of sentencing specified that intended loss "includes intended pecuniary harm that would have been impossible or unlikely to occur." U.S.S.G. § 2B1.1(b)(1) cmt. n.3(A). Accordingly, the court did not err in its intended loss calculation on this basis.

Upon review, we find that the district court made a reasonable estimate of intended loss based on evidence presented at trial and at sentencing.

First, based on Martinez's own testimony at trial, the court determined that Martinez entered the conspiracy with the intention to reduce Gulfstream's market share. Specifically, Martinez testified on cross-examination that APAC planned to use Gulfstream's proprietary information in developing APAC's wind tunnel test so that APAC could obtain FAA certification for its anti-ice technology and market that technology to Gulfstream's competitors.

Second, the court estimated that, had Martinez's conspiracy succeeded, the reduction in Gulfstream's market share would have been the loss of the sale of at least one plane. The court based that estimate on the testimony of the government's expert witness, Rothermel, at sentencing. Specifically, Rothermel testified that, if APAC developed technology that reduced aircraft weight by 550 pounds, such technology would have given Gulfstream's competitors a "huge competitive advantage." Rothermel testified that it would be reasonable to assume that Gulfstream would have sold at least three fewer planes had the conspiracy succeeded. The court used a more "lenient" estimate of one plane, rather than three. Rothermel further testified that in 2018 the average sale price of a Gulfstream plane was about $65 million.

Third, the court estimated that Gulfstream's profit margin on the sale of one plane would have been between $9.5 million and $25 million. Again, the court based that estimate on Rothermel's testimony. Rothermel testified that, on the sale of a $65 million aircraft, Gulfstream's profit margin is approximately 20 to 25 percent. Moreover, Martinez did not object to the court's finding, based on Rothermel's testimony, that the estimated lost profit from the sale of one fewer plane would have been between $9.5 million and $25 million. Furthermore, the court's finding on lost profit aligns with Rothermel's testimony (i.e., 20 percent of $65 million is $13 million, which falls within the range found by the court).

Accordingly, the district court did not clearly err in calculating Martinez's intended loss. The court made a reasonable estimate of Martinez's intended loss "given the available information," and based that estimate on "evidence heard during trial . . . [and] evidence presented during sentencing.'" *Moss*, 34 F.4th at 1190 (citation omitted).

IV.

For the foregoing reasons, we affirm Martinez's conviction and sentence.

AFFIRMED.

APPENDIX B — DENIAL OF REHEARING EN BANC OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED MARCH 24, 2026

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 24-10533

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Georgia D.C. Docket No. 4:22-cr-00170-RSB-CLR-1

Before JORDAN and LAGOA, Circuit Judges, and COVINGTON,* District Judge.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having

* Honorable Virginia M. Covington, United States District Judge for the Middle District of Florida, sitting by designation.

requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.