

**In the
Supreme Court of the United States**

JUAN MARTINEZ,

Petitioner,

v.

UNITED STATES,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit**

**BRIEF OF AMICI CURIAE
QUATTRONE WRONGFUL CONVICTIONS AND APPELLATE CLINIC,
PROJECT FOR THE INNOCENT AT LOYOLA LAW SCHOOL,
ROCKY MOUNTAIN INNOCENCE CENTER, THE INNOCENCE CENTER,
PRO BONO LITIGATION CLINIC AT THE UNIVERSITY OF
ILLINOIS CHICAGO SCHOOL OF LAW, AND IMRAN J. SYED,
IN SUPPORT OF PETITIONER**

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INTEREST OF THE AMICI CURIAE¹

Amici curiae are wrongful conviction clinics, innocence organizations, and practitioner-scholars dedicated to rectifying legal errors and preventing wrongful convictions across the United States.

QUATTRONE WRONGFUL CONVICTIONS AND APPELLATE CLINIC (“Clinic”) is a clinical program within the Ken Starr Institute for Faith, Law, and Public Service at the Pepperdine Caruso School of Law. In conjunction with attorneys of the law firm Dykema Gossett LLP, the Clinic provides Caruso Law students with hands-on experience in appellate and amicus advocacy while addressing legal errors and systemic injustices that contribute to wrongful convictions. The Clinic’s advocacy is informed by its unique position at the intersection of legal education, appellate litigation, and public interest.

PROJECT FOR THE INNOCENT AT LOYOLA LAW SCHOOL is a non-profit clinical program dedicated to exonerating wrongfully convicted individuals and reforming the criminal justice system through student-driven litigation and advocacy.

ROCKY MOUNTAIN INNOCENCE CENTER is a non-profit organization dedicated to identifying, investigating, and exonerating wrongfully convicted individ-

¹ Pursuant to Supreme Court Rule 37.6, counsel for amici curiae states that no counsel for a party authored this brief in whole or in part, and no person or entity other than amici, their members, students, or counsel made a monetary contribution intended to fund the preparation or submission of this brief.

uals in Utah, Wyoming, and Nevada, and advocating for systemic reforms to prevent wrongful convictions.

THE INNOCENCE CENTER is an independent, non-profit organization dedicated to rectifying wrongful convictions in California and advocating for policy changes that improve the integrity of the criminal justice system.

THE PRO BONO LITIGATION CLINIC AT THE UNIVERSITY OF ILLINOIS CHICAGO SCHOOL OF LAW provides hands-on legal education while representing indigent clients in trial and appellate courts, with a focus on protecting constitutional rights and challenging systemic flaws in the criminal justice system.

IMRAN J. SYED is a Clinical Professor of Law at the University of Michigan Law School and Co-Director of the Michigan Innocence Clinic, appearing in his individual capacity as a practitioner in the wrongful conviction field.²

This case presents an important question concerning the objective limits of federal criminal liability and the safeguards against wrongful convictions. The decision below holds that legal impossibility is unavailable unless the defendant knew of the circumstance he contended rendered his contemplated conduct lawful, thereby permitting criminal liability to turn on a defendant's mistaken belief that his conduct was unlawful, rather than on whether the agreed-upon conduct was objectively criminal. Because objective legal limits are

² Institutional affiliations are provided for identification purposes only. Amicus Imran J. Syed appears in his individual capacity, and his views do not necessarily reflect those of the University of Michigan Law School or the Michigan Innocence Clinic.

essential to preventing wrongful convictions, preserving public confidence in the criminal justice system, and protecting ordinary individuals from overcriminalization, amici have a substantial interest in the Court’s resolution of the question presented.



SUMMARY OF ARGUMENT

This petition presents a question of exceptional importance to the administration of federal criminal law: may the Government obtain a conspiracy conviction when the agreed-upon conduct was objectively lawful because the defendant believed it was unlawful? The Eleventh Circuit held that it may, reasoning that legal impossibility is unavailable to a defendant who misunderstands the legal circumstances. Pet.App.A (*United States v. Martinez*, No. 24-10533, 2026 WL 184361 at *3–5, 2026 U.S. App. LEXIS 1743 at *17–18 (11th Cir. Jan. 23, 2026)). The court concluded that legal impossibility was unavailable because Petitioner Juan Martinez (“Petitioner”) did not know of the circumstance he contended rendered his conduct lawful, thereby making the availability of the defense depend upon the defendant’s subjective understanding rather than the objective legality of the agreed-upon conduct. *Id.* That rule departs from the text of the Economic Espionage Act, conflicts with the decisions of numerous courts of appeals, and erodes a fundamental safeguard against wrongful convictions. *See generally* 18 U.S.C. §§ 1831–39.

First, the decision below untethers criminal liability from objective criminality. Section 1832(a)(5) punishes conspiracies to commit an “offense” described elsewhere in the statute. The object of the conspiracy therefore must itself be criminal. Yet the Eleventh Circuit’s rule makes conspiracy liability turn not on whether the agreed-upon conduct was unlawful, but on whether the defendant knew of the circumstance alleged to render it lawful. Conduct that the law does not forbid cannot become a federal offense solely because a defendant mistakenly believed otherwise. By allowing subjective belief to substitute for objective unlawfulness, the Eleventh Circuit transformed legal impossibility into a subjective inquiry and relieved the Government from proving an unlawful object.

Second, that departure carries consequences beyond this case. Legal impossibility is not a procedural technicality; it reflects the requirement that the Government prove an unlawful object. That requirement provides an important safeguard against wrongful convictions where no offense has occurred. History demonstrates that innocent people have been convicted when courts have permitted appearances, assumptions, or mistaken beliefs to substitute for objective proof that every element of a criminal offense has been established.³ The decision below embraces precisely that error by conditioning the availability of legal impossibility on a defendant’s mistaken understanding of contractual authority, thereby allowing subjective belief to supply the unlawful object the Government otherwise must prove.

³ See *infra* Part I.B.

Third, the Eleventh Circuit’s reasoning threatens substantial spillover effects throughout federal criminal jurisprudence. It conflicts with this Court’s objective approach to authorization in *Van Buren v. United States*, 593 U.S. 374 (2021), and would expose millions of workers to potential criminal liability based not on objectively unlawful conduct, but on mistaken interpretations of private employment agreements, proprietary-information policies, and other contractual restrictions. Criminal liability should not hinge on legal judgments that ordinary employees are neither expected nor equipped to make.

Finally, this case presents the correct vehicle for review. The courts of appeals are irreconcilably divided over whether legal impossibility defeats conspiracy liability when the contemplated conduct is lawful. Compare *United States v. Carter*, 15 F.4th 26, 36 (1st Cir. 2021), with *United States v. Hsu*, 155 F.3d 189, 203 (3d Cir. 1998). The Eleventh Circuit deepened that divide by holding that legal impossibility turns on the defendant’s knowledge of the circumstance allegedly bearing on the lawfulness of the contemplated conduct. That legal rule was expressly adopted below and was outcome-determinative under the panel’s own analysis. This Court’s review is therefore warranted to restore uniformity and reaffirm that federal criminal liability must remain tethered to objective legal reality. Certiorari should be granted.



ARGUMENT

I. Eroding the Doctrine of Legal Impossibility Untethers Criminal Liability from Objective Criminality.

The Eleventh Circuit’s rule conditions the availability of legal impossibility on a defendant’s knowledge of the circumstance he contended rendered the contemplated conduct lawful, thereby permitting conspiracy liability to turn on a defendant’s mistaken belief that lawful conduct was unlawful. *See* Pet.App.A at 9a–12a. But criminal law punishes objectively unlawful acts—not mistaken self-condemnation. *See Kelly v. United States*, 590 U.S. 391, 404 (2020) (affirming that “not every corrupt act . . . is a federal crime” and refusing to extend criminal liability to conduct that does not objectively violate statutory prohibitions). The Nation’s history of wrongful convictions demonstrates the danger of untethering criminal liability from objective legal reality. *See, e.g., Tice v. Johnson*, No. CIV.A. 3:08CV69, 2009 WL 2947380 at *17–18 (E.D. Va. Sept. 14, 2009) (granting habeas relief for counsel’s failure to suppress an unconstitutional confession later contradicted by DNA evidence identifying another perpetrator). A justice system committed to truth cannot permit subjective belief to substitute for proof that the law was violated.

A. The Criminal Code Punishes Legally Cognizable Harms, Not Bad Manners.

The Government’s case is saturated with the language of stealth: disguised email subject lines,

attachments labeled “Time Card” or “school test,” and what one witness described as “tradecraft.” Pet.App.A at 4a. But furtiveness is not a federal crime. Criminal law does not punish bad manners, sharp business practices, or the breach of a private contract; it punishes only *conduct* that Congress has made criminal. *See United States v. Davis*, 588 U.S. 445, 451 (2019) (“Only the people’s elected representatives . . . ‘make an *act* a crime.’”) (emphasis added) (citing *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812)); *see also* 4 William Blackstone, *Commentaries on the Laws of England* *21 (1765–1769) (“Indeed, to make a complete crime cognizable by human laws, there must be both a will and an act.”); *cf. Morissette v. United States*, 342 U.S. 246, 251–52 (1952) (“Crime, as a compound concept, generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand.”).

Evidence of deception may bear on a defendant’s state of mind, but it says nothing about whether an agreement’s object was unlawful. Even where a defendant believes a contract prohibited his conduct, federal criminal liability cannot arise unless the conduct itself violates federal law. In a conspiracy prosecution, the Government must prove more than an agreement pursued in secret; it must prove an agreement to accomplish an unlawful objective. *See* 18 U.S.C. § 1832 (a)(5). The incorporated offenses require conduct such as theft, obtaining information without authorization, or knowingly receiving stolen trade secrets. *Id.* § 1832 (a)(1)–(3). Those elements—not suspicion or appearance—constitute the crime.

Treating suspicious behavior as evidence that the agreement’s object was criminal collapses the distinction between *mens rea* and *actus reus* and relieves the

Government of its burden to prove that the conspiracy, if completed as agreed, would have violated federal law. This Court recognized that danger in *Van Buren v. United States*, warning that an overbroad understanding of “authorization” would “attach criminal penalties to a breathtaking amount of commonplace computer activity.” 593 U.S. at 393. The same danger exists here.

The Eleventh Circuit’s approach also departs from fundamental principles of criminal law. *Mens rea* is ordinarily a necessary element of criminal liability, but it has never been sufficient standing alone. A guilty mind attached to lawful conduct does not create a crime.

Consider two friends driving home together who agree to exceed what they mistakenly believe is the posted speed limit. Both believe the limit is fifty-five miles per hour and agree to drive sixty. Unknown to either of them, the actual posted limit is sixty-five. Their agreement reflects a willingness to violate the law, but it is not an agreement to commit the crime of speeding because the conduct they agreed to undertake was entirely lawful. Just as it would be absurd to ticket these friends for their mistaken belief, so too would it be improper to hold a defendant responsible for a legally impossible “crime.”

Criminal liability requires both a culpable mental state and unlawful conduct—not mistaken self-condemnation. Once subjective belief alone may substitute for an objectively unlawful act, criminal punishment becomes untethered from legal reality by punishing perceived wrongdoing rather than actual crime.

B. The Objective Requirement of Criminality Safeguards Against Wrongful Convictions.

The requirement that criminal liability rest upon objectively unlawful conduct is more than a doctrinal formality. It is a fundamental protection against convictions where no crimes have occurred. History repeatedly demonstrates what happens when legal systems permit subjective indicators of guilt to substitute for objective proof that a crime actually occurred: innocent people are wrongfully convicted.⁴

Perhaps the clearest modern example comes from Harris County, Texas. For years, defendants routinely pleaded guilty to possessing controlled substances based solely on presumptive roadside field tests.⁵ Subsequent laboratory testing established that hundreds of those supposed narcotics were nothing more than soap, cat litter, or other lawful household substances.⁶ The Harris County Conviction Review Unit ultimately identified more than 300 cases in which defendants admitted guilt

⁴ See Nat'l Reg. of Exonerations, *2022 Annual Report*, May 8, 2023, at 10, <https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/NRE%20Annual%20Report%202022.pdf> (59% of the 233 exonerations recorded that year were convictions for conduct that was no crime).

⁵ See John Schuppe, *How One Texas County Drove a Record Rise in Exonerations*, NBC NEWS (Mar. 8, 2017), <https://www.nbcnews.com/news/us-news/how-one-texas-county-drove-record-rise-exonerations-n730161> (recounting that a newspaper reporter identified a pattern of drug convictions being reversed after laboratory results arrived post-plea, prompting the county's conviction-review unit to investigate).

⁶ See *id.* (faulty field tests identified household items such as soap and cat litter as illegal drugs).

even though no controlled substance existed,⁷ producing one of the largest waves of “no-crime” exonerations in American history.⁸ More specifically, many of these defendants pleaded guilty, admitting both the intent to possess what they believed was a controlled substance and the physical act of possession. Yet those admissions could not change the fact that the substances at issue were not controlled substances at all. Their convictions were vacated because even a defendant’s sworn admission of guilt cannot supply an offense where the conduct—or object of the offense—was not criminal.

Harris County was not an isolated failure. Courts have vacated convictions in numerous other cases where no actual crime occurred. These include situations where deaths attributed to abuse were shown to be natural, alleged arson was proven accidental, or defendants who pleaded guilty to trespass were in fact lawfully present.⁹ Although these cases arose in different factual settings, they share a common feature: the Government’s suspicions, mistaken beliefs, or even a defendant’s admission of mistaken unlawful conduct could not

⁷ See generally Ross Miller, Paul Heaton, Haley Sturges, *Guilty Until Proven Innocent: Field Drug Tests and Wrongful Convictions*, U. PENN QUATTRONE CTR. FOR THE FAIR ADMIN. OF JUSTICE (December 2023) <https://www.law.upenn.edu/institutes/quattronecenter/reports/field-drug-test-study/field-drug-tests-and-wrongful-convictions/site/#/>.

⁸ Christopher Zoukis, *Texas Leads the Nation in Exonerations, Costing More than \$93 Million*, PRISON LEGAL NEWS, 52 (June 9, 2017) <https://www.prisonlegalnews.org/news/2017/jun/9/texas-leads-nation-exonerations-costing-more-93-million/>.

⁹ Jessica S. Henry, *Smoke but No Fire: When Innocent People Are Wrongly Convicted of Crimes That Never Happened*, 55 AM. CRIM. L. REV. 665 (2018).

transform lawful conduct or nonexistent crimes into criminal offenses.¹⁰

The same pattern has played out in federal prosecutions. In *Kelly*, 590 U.S. at 391, this Court unanimously reversed fraud convictions of officials whose scheme involved undeniable deception and corruption—but whose conduct did not satisfy the objective statutory requirement of obtaining money or property. *Id.* at 400, 404. And in *Van Buren*, 593 U.S. at 374, the Court reversed a conviction under the Computer Fraud and Abuse Act because the defendant was objectively authorized to access the database he misused, regardless of his improper motive. *Id.* at 385–86. In both cases, subjective bad faith—however clear—could not substitute for the objective element the statute required the Government to prove.

These cases expose a fundamental principle of criminal law: when objective facts disprove the occurrence of a crime, no amount of subjective belief—or even a sworn confession—can transform lawful or non-criminal conduct into a felony. See *Magill v. Dugger*, 824 F.2d 879, 886 n.11 (11th Cir. 1987) (“The accused’s belief that he or she is guilty may not coincide with the elements that must be proved in order to establish guilt in law.”). Once objective legal reality replaces assumption, appearance, or mistaken belief, convictions unsupported by an actual crime cannot stand.

That principle controls here. Just as a presumptive field test cannot transform dish soap into cocaine, a defendant’s mistaken belief cannot transform conduct that federal law does not prohibit into a federal crime.

¹⁰ *Id.*

The laboratory report in Harris County served the same function that an objectively authorizing legal instrument serves in a legal-impossibility analysis: it supplied the objective fact against which subjective belief had to be measured. If the conduct was lawful, a defendant’s mistaken belief that he acted unlawfully could not supply the criminality federal law requires.

But the Eleventh Circuit’s rule reverses this long-standing principle. Rather than asking whether the object of the alleged conspiracy was objectively unlawful, it asks whether Mr. Martinez believed it was. That is precisely the doctrinal error the legal impossibility doctrine exists to prevent.

The Eleventh Circuit’s rule also runs against the trajectory of this Court’s recent decisions, which have repeatedly refused to extend federal criminal statutes beyond their terms. *See, e.g., Van Buren*, 593 U.S. at 396 (narrowing the Computer Fraud and Abuse Act); *Dubin v. United States*, 599 U.S. 110, 131–32 (2023) (narrowing aggravated identity theft); *Ciminelli v. United States*, 598 U.S. 306, 316–17 (2023) (rejecting the “right to control” theory of wire fraud); *Kelly*, 590 U.S. at 404 (object of fraud must be money or property); *Marinello v. United States*, 584 U.S. 1, 13–14 (2018) (narrowing the tax-obstruction statute); *McDonnell v. United States*, 579 U.S. 550, 581 (2016) (narrowing “official act”); *Yates v. United States*, 574 U.S. 528, 548–49 (2015) (declining to read “tangible object” to reach a fish); *Cleveland v. United States*, 531 U.S. 12, 26–27 (2000) (determining a video poker license is not “property” within the meaning of mail fraud). The Eleventh Circuit’s rule is the mirror image of that principle: it permits a defendant’s mistaken belief to supply criminality even where the contemplated conduct

is objectively lawful. As this Court has consistently held, “ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.” *Rewis v. United States*, 401 U.S. 808, 812 (1971) (quoting *Bell v. United States*, 349 U.S. 81, 83 (1955)).

Legal impossibility enforces this boundary by requiring the Government to prove that the object of the alleged agreement was objectively criminal. Where an agreement’s object is conduct the law does not forbid, no amount of subjective apprehension, secrecy, or mistaken self-condemnation can supply the missing element of criminality. The Eleventh Circuit’s rule inverts that safeguard and warrants this Court’s review.

II. The Spillover Effects of the Eleventh Circuit’s Rule Across Federal Criminal Law.

A. *Van Buren* Requires an Objective Rule of Authorization.

In *Van Buren*, this Court held that an improper purpose does not negate lawful authorization to access information. 593 U.S. at 390. Although the Court expressly reserved the role that private agreements may play in defining authorization, *id.* at 390 n.8, the Eleventh Circuit’s reasoning implicates that unresolved issue and illustrates why authorization must remain objective.

Van Buren adopted a straightforward “gates-up-or-down” rule, recognizing that authorization is an objective inquiry: “one either can or cannot access a computer system, and one either can or cannot access certain areas within the system.” *Id.* at 390. That rule promotes uniformity of criminal law because the scope of authorization is an objective fact. Subjective intent,

however, may be characterized differently by different prosecutors, juries, and courts.

The same reasoning governs contractual authorization. A contract either confers legal authority or it does not. If criminal liability turns on whether a defendant subjectively understood the legal instrument defining his authority, authorization ceases to function as an objective limitation on the Government's ability to prove a crime. Conditioning legal impossibility on a defendant's contemporaneous awareness of that authority replaces *Van Buren*'s objective gates-up-or-down framework with a subjective inquiry that varies from defendant to defendant despite identical legal rights. The upshot is the uncertainty *Van Buren* sought to avoid.

B. The Rule Falls Most Heavily on Rank-and-File Employees.

Uncertainty about one's legal authority is not a crime. Yet the practical consequences of the Eleventh Circuit's rule will fall not on sophisticated corporations or the lawyers who draft employment and other commercial agreements, but on the approximately 143 million Americans who work outside of management and who make routine decisions about accessing, transferring, and using workplace information without the benefit of legal counsel.¹¹

Few employees can say every document they downloaded, database they searched, file they transferred, or workplace communication they shared complied

¹¹ U.S. Bureau of Labor Statistics, *Employed People by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity*, Current Population Survey, Annual Averages 2025, tbl. 11, <https://www.bls.gov/cps/cpsaat11.htm> (last visited Aug. 11, 2026).

with every proprietary-information agreement, NDA, handbook, or internal policy. Under an objective approach, that uncertainty is legally irrelevant because criminal liability turns on whether the conduct was objectively unauthorized. *See, e.g., WEC Carolina Energy Sols. LLC v. Miller*, 687 F.3d 199 (4th Cir. 2012); *United States v. John*, 597 F.3d 263 (5th Cir. 2010); *EF Cultural Travel BV v. Explorica, Inc.*, 274 F.3d 577 (1st Cir. 2001). The Eleventh Circuit’s rule points in a different direction. By making legal impossibility depend on a defendant’s knowledge of the circumstance allegedly bearing on the lawfulness of his conduct, the decision allows criminal liability to turn on an employee’s mistaken understanding of complex contractual provisions rather than on the authority those agreements confer. *See* Pet.App.A at 11a–12a.

That liability is especially unwarranted because employers already possess effective means to protect confidential information. Employers may discipline or terminate employees, revoke access privileges, pursue civil remedies, and revise internal policies.

By allowing conspiracy liability to depend on a defendant’s subjective understanding of the governing legal circumstances, the Eleventh Circuit’s rule transforms routine contractual misunderstandings into potential federal felonies and places the greatest burden on the rank-and-file workers least equipped to negotiate, interpret, or obtain legal advice about the agreements governing their employment. Sophisticated corporations and the executives who negotiate on their behalf have the resources and counsel to manage that risk; they will rarely fall into this trap. It is the line employee or consultant—handed a standard-form agreement they had no role in drafting or negotiating,

and no lawyer to consult about what it means—who bears the risk that an innocent misunderstanding of that agreement will be recast as a federal crime.

III. The Eleventh Circuit’s Knowledge Requirement Deepens an Acknowledged Circuit Split.

A. This Case Squarely Presents the Question.

This case squarely presents the legal question whether the availability of legal impossibility depends upon a defendant’s subjective knowledge of the circumstance allegedly rendering his conduct lawful or, instead, upon the objective legal status of the contemplated conduct itself. Although the Eleventh Circuit ultimately concluded that the record did not support Petitioner’s reliance on the Proprietary Information Agreement (“PIA”), the court expressly held that legal impossibility was unavailable because Petitioner “did not know about the PIA” and therefore could not rely upon it. Pet.App.A at 9a–12a. That legal rule—not merely that court’s assessment of the underlying facts—warrants this Court’s review.

Below, Mr. Martinez argued that legal impossibility established that the Government could not prove an essential element of conspiracy because the object of the alleged agreement would not have been criminal if the PIA objectively authorized the conduct. The Government responded that legal impossibility was unavailable under these circumstances. The Eleventh Circuit panel agreed that legal impossibility may, in some circumstances, defeat conspiracy liability, but held the doctrine unavailable because Mr. Martinez lacked knowledge of the circumstance he contended rendered the contemplated conduct lawful. Pet.App.A at 9a–12a.

Under the panel’s reasoning, the availability of legal impossibility turns not solely upon whether the contemplated conduct was objectively unlawful, but also upon whether the defendant knew of the legal circumstance bearing upon its lawfulness. Because the panel expressly adopted that rule and relied upon it in rejecting Mr. Martinez’s argument, this case presents an appropriate vehicle for resolving the proper scope of legal impossibility in federal conspiracy prosecutions.

B. The Circuits Are Split Over Whether Legal Impossibility Defeats Conspiracy Liability.

The courts of appeals have adopted fundamentally different answers to the same legal question. The majority hold that conspiracy requires an objectively criminal object and that legal impossibility defeats liability where the contemplated conduct is lawful. *See, e.g., United States v. Carter*, 15 F.4th 26, 36 (1st Cir. 2021); *Ventimiglia v. United States*, 242 F.2d 620, 622 (4th Cir. 1957); *Johnson v. United States*, 158 F. 69, 71–74 (5th Cir. 1907); *United States v. Oviedo*, 525 F.2d 881, 885 (5th Cir. 1976); *United States v. Peete*, 919 F.2d 1168, 1175–76 (6th Cir. 1990); *United States v. Lange*, 312 F.3d 263, 268 (7th Cir. 2002); *United States v. Chavez*, 29 F.4th 1223, 1227–28 (10th Cir. 2022); *In re Sealed Case*, 223 F.3d 775, 779 (D.C. Cir. 2000). Under that approach, a defendant’s mistaken belief cannot transform lawful conduct into a criminal conspiracy.

A minority of circuits have reached the opposite conclusion, holding that a defendant’s belief that the contemplated conduct was unlawful may suffice even where the conduct itself was not criminal. *See United States v. Trapilo*, 130 F.3d 547, 552 n.9 (2d Cir. 1997); *United States v. Hsu*, 155 F.3d 189, 203–04 (3d Cir.

1998); *United States v. Yang*, 281 F.3d 534, 544 (6th Cir. 2002); *United States v. Everett*, 692 F.2d 596, 599 (9th Cir. 1982).

Here, the Eleventh Circuit deepened that split by holding that the availability of legal impossibility depended upon Mr. Martinez's knowledge of the circumstance allegedly rendering his conduct lawful. Pet.App.A at 9a–12a. That approach converts an objective limitation on criminal liability into a subjective inquiry concerning the defendant's understanding of the law, effectively eliminating the doctrine in the very circumstances for which it exists.

C. This Court Should Resolve This Split.

The consequences of the conflict are profound. Where the contemplated conduct is objectively lawful, most circuits hold that the Government cannot prove an essential element of conspiracy. Other circuits permit liability to rest on the defendant's mistaken belief that the conduct was unlawful. Whether an agreement constitutes a federal crime should not depend upon the happenstance of geography.

The conflict is neither theoretical nor isolated. The Seventh Circuit requires an objectively criminal agreement. *Lange*, 312 F.3d at 268. The Third and Sixth Circuits permit liability to rest upon a defendant's mistaken belief. *Hsu*, 155 F.3d at 203–04; *Yang*, 281 F.3d at 544. The Sixth Circuit itself illustrates the instability of the doctrine, with its decision in *Peete*, 919 F.2d at 1175–76, requiring an objective criminal object while its decision in *Yang* reaches the opposite result without acknowledging the tension.

Continued percolation has yielded inconsistency rather than consensus. The conflict is mature, ack-

nowledged, and outcome-determinative. The circuits would benefit from this Court's guidance.



CONCLUSION

This case presents an important opportunity to reaffirm that federal criminal liability remains anchored to objective legal reality rather than a defendant's mistaken understanding of the law. By making legal impossibility depend on a defendant's subjective understanding of the legal circumstances, the decision below deepens an acknowledged conflict among the courts of appeals while eroding an important safeguard against wrongful convictions.

Certiorari should be granted.

Respectfully submitted,

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