NO. 26-10504-C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,
***Plaintiff/appellee*,**

v.

RYAN ROUTH,
***Defendant/appellant*.**

On Appeal from the United States District Court
for the Southern District of Florida

APPELLANT'S MOTION TO EXCEED WORD LIMIT FOR INITIAL BRIEF

MARTIN ROTH
Attorney for Appellant
980 North Federal Highway
Suite 110
Boca Raton, FL 33432
Ofc: (954) 745-7697
Mobile: (954) 815-9966

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

United States v. Ryan Routh
Case No. 26-10504-C

Appellant Ryan Routh files this Certificate of Interested Persons and Corporate Disclosure Statement, listing the parties and entities interested in this appeal under 11th Cir. R. 26.1.

Alexander, Ajay

Bai, Sue

Bharathi, Sowmya

Browne, Christopher Barrett

Cannon, Hon. Aileen M.

Cella, John D.

Dispoto, Mark

Donnelly, James M.

Dopico, Hector A.

Doty, George

Lapointe, Markenzy

Luce, Jennifer

McCabe, Hon. Ryon M.

United States v. Ryan Routh, Case No. 26-10504-C
Certificate of Interested Persons (Cont'd)

McMichael, Adam C.

Medetis Long, Maria Kostantina

Militello, Kristy

O'Byrne, Hayden P.

Olsen, Matthew G.

Reding Quiñones, Jason A.

Reid, Hon. Lisette M.

Reinhart, Hon. Bruce E.

Roth, Martin

Routh, Ryan

Shipley Jr., John Charlton

Sihvola, Renee Michelle

Smith, David C.

Trump, Donald J.

United States of America

Waxman, Abbie D.

APPELLANT RYAN ROUTH'S MOTION TO EXCEED WORD LIMIT FOR INITIAL BRIEF

Appellant Ryan Routh, through undersigned counsel, pursuant to 11th Cir. R. 32-4, respectfully requests leave to exceed the word limit for his initial brief, in this case to a total of 30,156 words, and in support thereof states as follows:

1. This appeal arises out of a prosecution in the Southern District of Florida in which Mr. Routh was charged with attempting to kill then-presidential candidate Donald Trump under 18 U.S.C. § 351(c), one count of possessing a firearm in furtherance of a crime of violence under 18 U.S.C. § 924(c)(1)(A)(ii), one count of assaulting a federal officer under 18 U.S.C. § 111(a)(1) and (b), one count of felon in possession of a firearm and ammunition under 18 U.S.C. § 922(g)(1), and one count of possession of a firearm with an obliterated serial number under 18 U.S.C. § 922(k). Mr. Routh proceeded to trial *pro se* and was convicted on all counts. The district court sentenced him to life imprisonment.

2. Extraordinary and compelling reasons exist warranting exceeding the word limit. This case involves several uncommon and complicated issues. First, this case includes several issues of first impression in this Circuit: whether 18 U.S.C. § 922(k) violates the Second

Amendment, whether 18 U.S.C. § 351(c) is a crime of violence for purposes of 18 U.S.C. § 924(c), and whether the crime of attempting to kill or kidnap a major presidential candidate is a federal crime of terrorism for purposes of the sentencing enhancement in U.S.S.G. § 3A1.4. Each of these issues requires thorough briefing.

3. Second, this case also involved government filings under the Classified Information Procedures Act ("CIPA"), which Mr. Routh maintains the district court erred in granting. The government's motion was litigated *ex parte*, and the defense has never seen the classified information the government withheld. Mr. Routh therefore must ask this Court to review the sealed classified filings and the transcripts of the *ex parte* hearings itself, and must explain the governing standards in enough detail to frame that review.

4. Third, this case involved prosecution under 18 U.S.C. § 351, a rarely used statute, with no pattern jury instruction, leading to issues related to how the court instructed the jury and whether it omitted an essential element. The court's departure from the pattern instruction for Count 3 is also at issue.

5. Additionally, this case included numerous substantive pretrial

motions, which in large part were decided against Mr. Routh and which Mr. Routh now raises as error in his brief (e.g., a motion to allow his expert access to the recovered firearm to test its range and accuracy).

6. Also, prior to and during trial, the court excluded nearly all of Mr. Routh's defense evidence, including multiple witnesses and all his exhibits, issues which Mr. Routh now raises in his brief.

7. Additionally, the trial in this case was lengthy and complicated. Mr. Routh proceeded *pro se*. The government called 38 witnesses, seven of them as experts. The government admitted over 370 exhibits and Mr. Routh filed approximately 170 exhibits for admission that were excluded. The record includes nearly 4,000 pages of transcript alone, not including all the filings and orders.

8. Nor can counsel responsibly shorten the brief by omitting issues. An issue not raised in an appellant's initial brief is forfeited. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680–81 (11th Cir. 2014); *United States v. Campbell*, 26 F.4th 860, 873 (11th Cir. 2022) (en banc). The brief contains fourteen issues, reflecting errors arising from pretrial motion rulings on constitutional and evidentiary issues, CIPA rulings, jury selection, opening statement and closing argument, trial testimony, jury

instructions, and sentencing. Mr. Routh's cumulative-error argument also depends on the Court considering all the errors together. Mr. Routh is serving a sentence of life imprisonment; thus, each issue must be fully presented.

9. Counsel has already cut the brief substantially. The initial draft of the brief exceeded 42,000 words. Counsel cut it by roughly 30 percent. The brief now contains approximately 30,156 words. As the following breakdown shows, no single issue is disproportionately long, and the longest section, on the denial of a complete defense, addresses five distinct evidentiary rulings, each requiring its own analysis:

Section	**Issue**	**Words**
I.	Motion to recuse	1,205
II.	CIPA motions	749
III.	Striking Juror 102	1,104
IV.	Sixth Amendment right to counsel	998
V.	Due process right to present a complete defense (with five subsections)	6,560
VI.	Opening statement and closing argument	1,241
VII.	Government expert testimony on intent	751
VIII.	Jury Instruction on § 351(c)	1,144
IX.	Jury Instruction on Count 3	515
X.	Cumulative error (with four subsections)	3,378
XI.	Whether § 351(c) is a crime of violence	1,905
XII.	§ 3A1.4 terrorism enhancement	1,745
XIII.	Sentencing allocution	763
XIV.	Second Amendment (Counts 4 and 5)	628

10. Appellant's counsel has taken every step possible to abbreviate

the brief. But due to the volume of the record; the number of issues that must be raised covering pretrial rulings, trial, and sentencing; the multiple issues of first impression; the rarity of prosecutions under the main statute in this case; and the fact that Mr. Routh is serving a life sentence, he needs additional space to fully address the issues in this case.

11. Mr. Routh does not object to the government receiving a corresponding increase in the word limit for its response brief.

12. Mr. Routh is submitting the proposed initial brief as an attachment to this motion so that the Court may review the brief in its entirety when considering the requested relief.

13. Counsel conferred with Assistant United States Attorney George Doty, who stated the government takes no position on the motion.

WHEREFORE, the undersigned respectfully requests leave to file a brief in excess of the word limit, specifically 30,156 words.

Respectfully submitted,

By: */s/Martin L. Roth*

Martin L. Roth, Esq.
Florida Bar No.: 265004
980 North Federal Highway
Suite 110
Boca Raton, FL 33432

Ofc: (954) 745-7697
Email: mlrpa@msn.com

CERTIFICATE OF COMPLIANCE

I CERTIFY that this pleading complies with the type-volume limitation and typeface requirements of Fed. R. App. P. 27(d)(2)(A), because it contains 975 words, excluding the parts of the pleading exempted by Fed. R. App. P. 32(f).

This pleading also complies with the requirements of Fed. R. App. P. 32(a)(5) and (a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point, Century Schoolbook font.

s/Martin Roth
Martin Roth

NO. 26-10504-C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,
***Plaintiff/appellee*,**

v.

RYAN ROUTH,
***Defendant/appellant*.**

On Appeal from the United States District Court
for the Southern District of Florida

BRIEF OF APPELLANT RYAN ROUTH

MARTIN ROTH
Attorney for Appellant
980 North Federal Highway
Suite 110
Boca Raton, FL 33432
Ofc: (954) 745-7697
Mobile: (954) 815-9966

THIS CASE IS ENTITLED TO PREFERENCE
(CRIMINAL APPEAL)

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

United States v. Ryan Routh
Case No. 26-10504-C

Appellant Ryan Routh files this Certificate of Interested Persons and Corporate Disclosure Statement, listing the parties and entities interested in this appeal under 11th Cir. R. 26.1.

Alexander, Ajay

Bai, Sue

Bharathi, Sowmya

Browne, Christopher Barrett

Cannon, Hon. Aileen M.

Cella, John D.

Dispoto, Mark

Donnelly, James M.

Dopico, Hector A.

Doty, George

Lapointe, Markenzy

Luce, Jennifer

McCabe, Hon. Ryon M.

United States v. Ryan Routh, Case No. 26-10504

Certificate of Interested Persons (Cont'd)

McMichael, Adam C.

Medetis Long, Maria Kostantina

Militello, Kristy

O'Byrne, Hayden P.

Olsen, Matthew G.

Reding Quiñones, Jason A.

Reid, Hon. Lisette M.

Reinhart, Hon. Bruce E.

Roth, Martin

Routh, Ryan

Shipley Jr., John Charlton

Sihvola, Renee Michelle

Smith, David C.

Trump, Donald J.

United States of America

Waxman, Abbie D.

STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully submits that oral argument is necessary to the just resolution of this appeal and will significantly enhance the decision-making process. Further, the issues related to 18 U.S.C. § 351 and 18 U.S.C. § 922(k) are issues of first impression and will benefit greatly from oral argument.

TABLE OF CONTENTS

Page

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT C-1

STATEMENT REGARDING ORAL ARGUMENT i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES vi

STATEMENT OF JURISDICTION 1

STATEMENT OF THE ISSUES 2

STATEMENT OF THE CASE 8

Introduction 8

Course of proceedings and disposition below 9

Statement of facts 11

STANDARDS OF REVIEW 27

SUMMARY OF THE ARGUMENT 30

ARGUMENT AND CITATIONS OF AUTHORITY 40

I. The district court erred by denying Mr. Routh's motion to recuse. 40

II. The district court erred by allowing the government to withhold discoverable information under CIPA based on the sensitive nature of the information and not on whether it was helpful to the defense. 45

III. The district court abused its discretion in striking Juror 102 for cause. 49

IV. The district court violated Mr. Routh's Sixth Amendment right to counsel by refusing without further inquiry to reappoint standby counsel to finish the closing argument after Mr. Routh asked if he could relinquish his pro se status..... 54

V. The district court violated Mr. Routh's due process rights to present a complete defense..... 59

A. Prohibiting Mr. Routh's expert from testing the range and accuracy of the rifle recovered at the scene while allowing the government's expert to testify to the same issue..... 60

B. Excluding Mr. Routh's defense exhibits..... 65

C. Refusing to subpoena and excluding defense witnesses..... 71

D. Excluding portions of the "Dear World" letter that gave context to the portion admitted by the government and negated an intent to kill..... 81

E. Denying Mr. Routh's proposed voir dire questions that tested the jurors' views on his defense. 85

VI. The district court violated Mr. Routh's due process right to a fair trial when it cut off his opening statement and closing argument..... 89

A. The court's unwarranted wholesale termination of Mr. Routh's opening statement was an abuse of discretion and violated due process..... 90

B. The court violated Mr. Routh's due process right when it limited his closing argument. 93

VII. The government improperly elicited from expert witnesses testimony as to Mr. Routh's intent in being outside the golf course on September 15, the primary issue in debate. 95

VIII. The district court erred in refusing to instruct the jury that Mr. Routh had to have the intent to kill when he took the substantial step required for an attempt..... 99

IX. Count 3 must be vacated because the court failed to instruct the jury on an essential element of the crime. 104

X. The cumulative effect of the errors at trial requires reversal of all counts..... 107

A. The case agent gave improper expert and lay testimony, substituting her own opinion for that of the jury and giving the government's closing argument from the witness stand..... 1088

B. Witnesses repeatedly made improper legal conclusions, telling the jury that Mr. Routh's conduct or other facts constituted the crimes charged..... 116

C. The government constructively amended the indictment by arguing that the purpose of the substantial step in Count 1 was stalking, a separate federal crime with which Mr. Routh was not charged. 118

D. The government shifted the burden and improperly commented on Mr. Routh's silence during closing argument. 121

E. Taken together, these errors require a new trial. 123

XI. Count 2 must be dismissed because Count 1 is not a crime of violence. 123

A. Attempting to kill or kidnap an enumerated official in violation of 18 U.S.C. § 351(c) is not a crime of violence. 123

B. The fact that § 351(c) is not a qualifying § 924(c) predicate is an unwaivable jurisdictional defect. 131

XII. Mr. Routh's sentence is procedurally unreasonable because the district court improperly applied the enhancement under U.S.S.G. § 3A1.4. 132

A. A presidential candidate is not "government." 133

B. Attempted killing or kidnapping of a presidential candidate is not among the violations enumerated in § 2332b(g)(5)(B). 135

XIII. The district court erred in cutting off Mr. Routh's allocution at sentencing, requiring vacating the sentence and remanding for a new sentencing. 141

XIV. 18 U.S.C. § 922(g) and (k) are unconstitutional under the Second Amendment, and the convictions on Counts 4 and 5 should be vacated and the counts dismissed. 144

A. 18 U.S.C. § 922(k) is unconstitutional. 145

B. Section 922(g)(1) is unconstitutional facially and as applied to Mr. Routh. 147

CONCLUSION 147

CERTIFICATE OF COMPLIANCE 149

TABLE OF AUTHORITIES

Cases **Page(s)**

Almendarez-Torres v. United States, 523 U.S. 224 (1998) 136

Alston v. West, 340 F.2d 856 (7th Cir. 1965)..... 90

Bearden v. United States, 320 F.2d 99 (5th Cir. 1963)..... 99

Bell v. United States, 351 F. App'x 357 (11th Cir. 2009)..... 51

Bhd. of R.R. Trainmen v. Balt. & Ohio R.R. Co., 331 U.S. 519 (1947) 136

Borden v. United States, 593 U.S. 420 (2021)..... 124, 128

California v. Trombetta, 467 U.S. 479 (1984)..... 59

Campbell v. Keystone Aerial Survs., Inc., 138 F.3d 996 (5th Cir. 1998) 80

CANVS Corp. v. Nivisys, LLC, No. 2:14-CV-99-FTM-38DNF, 2014 WL 6883123 (M.D. Fla. Dec. 5, 2014) 80

Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009) 44

Chambers v. Mississippi, 410 U.S. 284 (1973)..... 59, 107

Chapman v. California, 386 U.S. 18 (1967)..... 57

Dennis v. United States, 384 U.S. 855 (1966) 47

Descamps v. United States, 570 U.S. 254 (2013) 124, 125

Diaz v. United States, 602 U.S. 526 (2024)..... 96

District of Columbia v. Heller, 554 U.S. 570 (2008) 145

Dorman v. Wainwright, 798 F.2d 1358 (11th Cir. 1986)..... 56

Duncan v. Walker, 533 U.S. 167 (2001) 139

Faretta v. California, 422 U.S. 806 (1975)..... 57

Geders v. United States, 425 U.S. 80 (1976) 58

GJR Invs., Inc. v. Cnty. of Escambia, Fla., 132 F.3d 1359 (11th Cir. 1998) 91

Gomez v. United States, 490 U.S. 858 (1989) 85

Grandison v. Maryland, 479 U.S. 873 (1986) 55, 56

Green v. United States, 365 U.S. 301 (1961) 141

Greenwell v. United States, 317 F.2d 108 (D.C. Cir. 1963) 71

Hamilton v. Alabama, 368 U.S. 52 (1961) 58

Herring v. New York, 422 U.S. 853 (1975) 58, 93

Holloway v. Arkansas, 435 U.S. 475 (1978) 57

Horton v. Dugger, 895 F.2d 714 (11th Cir. 1990) 54

Hunter v. Moore, 304 F.3d 1066 (11th Cir. 2002) 58

Illinois v. Allen, 397 U.S. 337 (1970) 92

In re Moody, 755 F.3d 891 (11th Cir. 2014) 41, 43

In re Murchison, 349 U.S. 133 (1955) 8, 40

Irvin v. Dowd, 366 U.S. 717 (1961) 53

Klay v. United Healthgroup, Inc., 376 F.3d 1092 (11th Cir. 2004) 27

Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988) 40

Liteky v. United States, 510 U.S. 540 (1994) 40

Loughan v. Firestone Tire & Rubber Co., 749 F.2d 1519 (11th Cir. 1985) 70

McKaskle v. Wiggins, 465 U.S. 168 (1984) 92, 95

Montgomery v. Aetna Cas. & Sur. Co., 898 F.2d 1537 (11th Cir. 1990) 116

Morissette v. United States, 342 U.S. 246 (1952) 99

New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022) 7, 39, 144, 145

NRA v. Bondi, 133 F.4th 1108 (11th Cir. 2025) 147

Owen v. Kerr-McGee Corp., 698 F.2d 236 (5th Cir. 1983) 118

Patton v. Yount, 467 U.S. 1025 (1984) 49

Perrin v. United States, 444 U.S. 37 (1979) 133

Potashnick v. Port City Constr. Co., 609 F.2d 1101 (5th Cir. 1980) 41

Ristaino v. Ross, 424 U.S. 589 (1976) 86

Rogers v. McMullen, 673 F.2d 1185 (11th Cir. 1982) 49

Russello v. United States, 464 U.S. 16 (1983) 139

Shepard v. United States, 544 U.S. 13 (2005) 125

Stirone v. United States, 361 U.S. 212 (1960) 118

Tannenbaum v. United States, 148 F.3d 1262 (11th Cir. 1998) 91

Trump v. United States, 54 F.4th 689 (11th Cir. 2022) 42

Trump v. United States, 2022 WL 4366684 (11th Cir. 2022) 42

TRW Inc. v. Andrews, 534 U.S. 19 (2001) 139

United States v. Aboumoussallem, 726 F.2d 906 (2d Cir. 1984) 69

United States v. Abu-Jihaad, 630 F.3d 102 (2d Cir. 2010) 46

United States v. Agurs, 427 U.S. 97 (1976) 49

United States v. Alahmedalabdaloklah, 94 F.4th 782 (9th Cir. 2024), cert. denied, 145 S. Ct. 770 (2024) 46

United States v. Amawi, 695 F.3d 457 (6th Cir. 2012) 47

United States v. Anderson, 872 F.2d 1508 (11th Cir. 1989) 47

United States v. Arbolaez, 450 F.3d 1283 (11th Cir. 2006) 93

United States v. Archer, 70 F.3d 1149 (10th Cir. 1995) 142

United States v. Bagley, 473 U.S. 667 (1985) 49

United States v. Bailey, 175 F.3d 966 (11th Cir. 1999) 27

United States v. Baker, 432 F.3d 1189 (11th Cir. 2005) 107, 123

United States v. Baptista-Rodriguez, 17 F.3d 1354 (11th Cir. 1994) 46

United States v. Bates, 590 F. App'x 882 (11th Cir. 2014) 85

United States v. Benally, 843 F.3d 350 (9th Cir. 2016) 128

United States v. Bonavia, 927 F.2d 565 (11th Cir. 1991) 104

United States v. Breedlove, 576 F.2d 57 (5th Cir. 1978) 90

United States v. Brown, 752 F.3d 1344 (11th Cir. 2014) 132

United States v. Brown, 125 F.4th 1186 (D.C. Cir. 2025) 125, 126

United States v. Burkhalter, 735 F.2d 1327 (11th Cir. 1984) 78

United States v. Cameron, 907 F.2d 1051 (11th Cir. 1990) 76

United States v. Cavallo, 790 F.3d 1202 (11th Cir. 2015) 27

United States v. Chandler, 996 F.2d 1073 (11th Cir. 1993) 28, 50

United States v. Chirinos, 112 F.3d 1089 (11th Cir. 1997) 103, 104

United States v. Clegg, 740 F.2d 16 (9th Cir. 1984) 47

United States v. Cohen, 888 F.2d 770 (11th Cir. 1989) 69

United States v. Cohen, 510 F.3d 1114 (9th Cir. 2007) 64

United States v. Columbia Broadcasting Sys., 497 F.2d 107 (5th Cir. 1974) 40

United States v. Cronic, 466 U.S. 648 (1984) 57

United States v. Cruz, 805 F.2d 1464 (11th Cir. 1986) 135

United States v. Delval, 600 F.2d 1098 (5th Cir. 1979) 85

United States v. Diallo, 40 F.3d 32 (2d Cir. 1994) 64

United States v. Diaz-Lizaraza, 981 F.2d 1216 (11th Cir. 1993) 68

United States v. Dixon, 201 F. App'x 674 (11th Cir. 2006) 52

United States v. Dohan, 508 F.3d 989 (11th Cir. 2007) 29

United States v. Donald Trump, No. 23-cr-80101-AMC, DE 672 (S.D. Fla. July 15, 2024) 42

United States v. Dubois, 139 F.4th 887 (11th Cir. 2025) 39, 147

United States v. Euceda-Hernandez, 768 F.2d 1307 (11th Cir. 1985) 78

United States v. Eyster, 948 F.2d 1196 (11th Cir. 1991) 114

United States v. Fox, 95 U.S. 670 (1877) 99

United States v. Frazier, 387 F.3d 1244 (11th Cir. 2004) 98

United States v. Garber, 607 F.2d 92 (5th Cir. 1979) (en banc) 63

United States v. Garvin, 565 F.2d 519 (8th Cir. 1977) 68

United States v. Gillis, 938 F.3d 1181 (11th Cir. 2019) 125, 127

United States v. Goolsby, 908 F.2d 861 (11th Cir. 1990) 29

United States v. Graham, 123 F.4th 1197 (11th Cir. 2024) 62, 63, 64

United States v. Hall, 77 F.3d 398 (11th Cir. 1996) 93

United States v. Hawkins, 934 F.3d 1251 (11th Cir. 2019) ... 29, 108, 109, 111, 115

United States v. Hedges, 912 F.2d 1397 (11th Cir. 1990) 103

United States v. Hernandez, 182 F.4th 1372 (11th Cir. 2026) 90, 95

United States v. Hill, 643 F.3d 807 (11th Cir. 2011) 85

United States v. Hilton, 772 F.2d 783 (11th Cir. 1985) 114

United States v. Hipps, 857 F. App'x 1002 (11th Cir. 2021) 112

United States v. Holland, 655 F.2d 44 (5th Cir. 1981) 40

United States v. Hurn, 368 F.3d 1359 (11th Cir. 2004) .. 59, 60, 61, 64, 82

United States v. Jackson, 32 F.4th 278 (4th Cir. 2022) 129

United States v. Jeri, 869 F.3d 1247 (11th Cir. 2017) 27

United States v. Jernigan, 341 F.3d 1273 (11th Cir. 2003) 69

United States v. Johnson, 713 F.2d 633 (11th Cir. 1983) 28

United States v. Jordan, 49 F.3d 152 (5th Cir. 1995) 41

United States v. King, Nos. 18-2800, 18-2877 (8th Cir. Mar. 30, 2022) 129

United States v. Knight, 490 F.3d 1268 (11th Cir. 2007) 27

United States v. Lander, 668 F.3d 1289 (11th Cir. 2012) 84

United States v. Lankford, 955 F.2d 1545 (11th Cir. 1992) 63, 64

United States v. Lizon-Barias, 252 F. App'x 976 (11th Cir. 2007) 28

United States v. Lopez-Medina, 461 F.3d 724 (6th Cir. 2006) 115

United States v. Machado, 886 F.3d 1070 (11th Cir. 2018) 142

United States v. Madden, 733 F.3d 1314 (11th Cir. 2013) 119

United States v. Mal, 942 F.2d 682 (9th Cir. 1991) 125

United States v. Mandhai, 375 F.3d 1243 (11th Cir. 2004) 29

United States v. Marcus Freeman, 730 F.3d 590 (6th Cir. 2013) 109

United States v. Marlinga, 457 F. Supp. 2d 769 (E.D. Mich. 2006) 68

United States v. McGuire, 706 F.3d 1333 (11th Cir. 2013) 28

United States v. McLean, 138 F.3d 1398 (11th Cir. 1998) 67

United States v. McLeod, 53 F.3d 322 (11th Cir. 1995) 51

United States v. Munoz, 150 F.3d 401 (5th Cir. 1998) 107

United States v. Nash, 438 F.3d 1302 (11th Cir. 2006) 28

United States v. Ochoa-Vasquez, 428 F.3d 1015 (11th Cir. 2005) 86

United States v. Patti, 337 F.3d 1317 (11th Cir. 2003) 41

United States v. Pendas-Martinez, 845 F.2d 938 (11th Cir. 1988) 81, 116

United States v. Pendergrass, 995 F.3d 858 (11th Cir. 2021) 27

United States v. Perez, 661 F.3d 568 (11th Cir. 2011) 142

United States v. Perez-Oliveros, 479 F.3d 779 (11th Cir. 2007) 28

United States v. Pope, 561 F.2d 663 (6th Cir. 1977) 107

United States v. Prouty, 303 F.3d 1249 (11th Cir. 2002) 141

United States v. Quattrone, 441 F.3d 153 (2d Cir. 2006) 68

United States v. Rahimi, 602 U.S. 680 (2024) 145

United States v. Ray, 681 F. App'x 807 (11th Cir. 2017) 28

United States v. Redd, 85 F.4th 153 (4th Cir. 2023) 126

United States v. Rhodes, 177 F.3d 963 (11th Cir. 1999)..... 50, 51

United States v. Robinson, 475 F.2d 376 (D.C. Cir. 1973) 86

United States v. Romano, 482 F.2d 1183 (5th Cir. 1973)..... 71

United States v. Sarcinelli, 667 F.2d 5 (5th Cir. 1982) 77, 80

United States v. Sarras, 575 F.3d 1191 (11th Cir. 2009) 28

United States v. Schmitz, 634 F.3d 1247 (11th Cir. 2011) 113

United States v. Shavin, 287 F.2d 647 (7th Cir. 1961)..... 68

United States v. Shrake, 515 F.3d 743 (7th Cir. 2008)..... 62

United States v. Siler, 734 F.3d 1290 (11th Cir. 2013)..... 105

United States v. Simmons, 961 F.2d 183 (11th Cir. 1992) 49, 51

United States v. Simon, 964 F.2d 1082 (11th Cir. 1992)..... 121

United States v. St. Hubert, 909 F.3d 335 (11th Cir. 2018) 131, 131

United States v. Street, 66 F.3d 969 (8th Cir. 1995)..... 125

United States v. Taylor, 596 U.S. 845 (2022)..... 123, 130, 131

United States v. Tham, 118 F.3d 1501 (11th Cir. 1997)..... 128

United States v. Thomas, 134 F.3d 975 (9th Cir. 1998) 68

United States v. Trujillo, 376 F.3d 593 (6th Cir. 2004)..... 68

United States v. Yunis, 867 F.2d 617 (D.C. Cir. 1989) 46

Wainwright v. Witt, 469 U.S. 412 (1985) 49

Wardius v. Oregon, 412 U.S. 470 (1973)..... 62

White v. Maryland, 373 U.S. 59 (1963)..... 58

Constitutional Provisions

U.S. Const. amend. I 4, 16, 19, 32, 86, 88

U.S. Const. amend. II 7, 13, 39, 144, 144, 146, 147

U.S. Const. amend. V 3, 12, 32, 44, 59, 71, 74, 89, 107, 123

U.S. Const. amend. VI.....3, 27, 32, 54, 56, 58, 59, 71, 74, 107

Statutes

18 U.S.C. § 111 ..... 9, 105, 126

18 U.S.C. § 351 .. 6, 9, 37, 38, 117, 126, 129, 131, 133, 135, 136, 137, 138, 139, 139

18 U.S.C. § 922 .....7, 10, 39, 117, 118, 144, 146, 146

18 U.S.C. § 924 .....6, 9, 37, 123, 123, 128, 131

18 U.S.C. § 1111 127

18 U.S.C. § 1112 127

18 U.S.C. § 1113 ..... 99, 100

18 U.S.C. § 2261A..... 119

18 U.S.C. § 2332 128

18 U.S.C. § 2332b 28, 38, 132, 1323, 135, 137, 138, 139

18 U.S.C. § 3231 1

18 U.S.C. § 3742 1

18 U.S.C. app. 3 § 4 (Classified Information Procedures Act) .. 12, 30, 31, 45, 46, 46, 48

28 U.S.C. § 455 .....2, 12, 30, 40, 41, 43, 44, 45

28 U.S.C. § 1291 1

Pub. L. No. 99-646, § 62(1), 100 Stat. 3592 (1986) 138

Pub. L. No. 104-132, tit. VII, § 702(a) (1996) 138

Pub. L. No. 107-56, tit. VIII, § 808 (2001) 138

Rules

Fed. R. Crim. P. 16 77

Fed. R. Crim. P. 17 ..... 71, 80

Fed. R. Crim. P. 32 ..... 6, 38, 141

Fed. R. Evid. 106 ..... 33, 81, 84

Fed. R. Evid. 404 ..... 17, 67, 69, 70, 75, 76

Fed. R. Evid. 405 ..... 17, 75, 76

Fed. R. Evid. 406 ..... 67, 70

Fed. R. Evid. 602 112

Fed. R. Evid. 701 115

Fed. R. Evid. 702 115

Fed. R. Evid. 704 ..... 17, 34, 35, 75, 76, 95, 95, 98, 116, 118

Fed. R. Evid. 802 112

Sentencing Guidelines

U.S.S.G. § 3A1.4 ..... 6, 25, 29, 38, 132, 132, 140

Other Authorities

Black's Law Dictionary (12th ed. 2024) 133

Eleventh Circuit Pattern Jury Instructions (Criminal Cases) O1.1 ..... 105, 106

Eleventh Circuit Pattern Jury Instructions (Criminal Cases) O1.2 105

Eleventh Circuit Pattern Jury Instructions (Criminal Cases) O47 ..... 23, 24, 99, 100, 103

STATEMENT OF JURISDICTION

The district court had jurisdiction of this case pursuant to 18 U.S.C. § 3231 because the defendant was charged with an offense against the laws of the United States. The court of appeals has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which give the courts of appeals jurisdiction over all final decisions and sentences of the district courts of the United States. The appeal was timely filed on February 13, 2026 (DE 400) from the final judgment and commitment entered on February 5, 2026 (DE 397), disposing of all claims between the parties to this cause.

STATEMENT OF THE ISSUES

I. Whether the district judge was required to recuse herself under 28 U.S.C. § 455(a) where she was a friend of one of the prosecutors and had attended his wedding, she was appointed to the bench by the alleged victim in Count 1, had issued rulings in his favor in his earlier cases that this Court reversed, had been publicly praised by him by name for those rulings, and was already the subject of national media questioning her impartiality?

II. Whether the district court erred by allowing the government to withhold classified discovery after an *ex parte* hearing, with no input from the defense, based only on the information's classification and sensitivity, without ever deciding whether the information would have helped the defense; and whether the district court committed any other error in allowing the government to withhold the information?

III. Whether the district court abused its discretion by granting the government's for-cause challenge to a prospective juror where the juror never admitted bias and told the court multiple times that she

could be fair and impartial and decide the case on the evidence presented in court?

IV. Whether the district court violated Mr. Routh's Sixth Amendment right to counsel when it refused to allow him to revoke his *pro se* status and have standby counsel reappointed to finish closing argument?

V. Whether the district court violated Mr. Routh's Fifth and Sixth Amendment rights to present a complete defense on the central contested issue at trial, his intent, by:

(a) barring his firearms expert from testing the range and accuracy of the gun recovered from the scene that would go to whether Mr. Routh had a gun he *knew* could not hit the alleged target at the specific distance and thus whether he intended to kill, while letting the government's expert testify to that same issue;

(b) excluding defense exhibits showing Mr. Routh's nonviolent protests of and reaction to the war in Ukraine, the precise event the government itself put forward as his motive;

(c) refusing subpoenas for multiple relevant character witnesses and excluding his mental-health experts;

(d) excluding the parts of the "Dear World" letter that would have put the excerpt admitted by the government in context and negated an intent to kill; and

(e) refusing to ask prospective jurors about their views on the First Amendment and political protest, which went to the heart of Mr. Routh's defense?

VI. Whether the district court denied Mr. Routh a fair trial by giving the government its full opening and closing, while cutting off Mr. Routh's opening after six minutes without having sustained a single objection, and cutting his closing short partway through with fifty minutes of his allotted time remaining?

VII. Whether the district court erred by allowing the government to deliberately elicit from two expert witnesses an opinion on Mr. Routh's intent to kill, the primary issue in debate?

VIII. Whether the district court erred in failing to instruct the jury with respect to Count 1 on an essential element of the crime: that Mr.

Routh must have intended to kill at the time he took the substantial step?

IX. Whether the district court erred in failing to instruct the jury with respect to Count 3 on an essential element of the crime: that it must find beyond a reasonable doubt that Mr. Routh acted with the intent to commit another felony?

X. Whether the cumulative effect of trial errors denied Mr. Routh a fair trial, including:

(a) the case agent, who was the government's last and longest witness, telling the jury what conclusions to draw from the evidence, interpreting and speculating about the meaning of Mr. Routh's song lyrics, repeating what other witnesses had seen, giving expert opinions she was not qualified to give, and ultimately delivering the government's closing argument from the witness stand;

(b) witnesses giving legal conclusions that the conduct constituted the crimes charged in Counts 1 and 5;

(c) the government constructively amending Count 1 by arguing that stalking, an uncharged crime, was the purpose of the substantial steps; and

(d) the government in closing shifting the burden to Mr. Routh to prove an innocent reason for his actions and telling the jury to consider Mr. Routh's silence?

XI. Whether the conviction on Count 2 must be vacated because attempting to kill or kidnap a major presidential candidate under 18 U.S.C. § 351(c) is not categorically a "crime of violence" under 18 U.S.C. § 924(c)(3)(A)?

XII. Whether the district court erred by finding attempting to kill or kidnap a presidential candidate is a federal crime of terrorism and applying the terrorism enhancement under U.S.S.G. § 3A1.4, even though a presidential candidate is not government and is not enumerated in the definition of a federal crime of terrorism?

XIII. Whether the district court violated Federal Rule of Criminal Procedure 32(i)(4)(A)(ii) by cutting off Mr. Routh's allocution at sentencing?

XIV. Whether 18 U.S.C. § 922(k) and § 922(g) violate the Second Amendment under *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022)?

STATEMENT OF THE CASE

Introduction

"A fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955).

This was no ordinary trial. Mr. Routh was charged with attempting to assassinate then-presidential candidate Donald Trump, along with several other related charges. This was a case followed by the nation and one in which every right guaranteed Mr. Routh, a *pro se* criminal defendant, by the Constitution and the rules and laws of this Court should have been scrupulously guarded, not just to ensure Mr. Routh's rights were protected, but to ensure public confidence in our criminal justice system.

Instead, this case demonstrated the opposite. Here, the district court chipped away piece by piece at Mr. Routh's constitutional right to a fair trial until the scales of justice tilted so far off balance as to render the trial both perceptually and constitutionally unfair. The court prohibited Mr. Routh from subpoenaing witnesses, excluded his mental health experts going to *mens rea*, excluded all his proposed defense exhibits, and prohibited his firearm expert from gathering evidence that the government's expert was allowed to testify to. Then, at trial, it cut

Mr. Routh's opening statement off after six minutes and limited the time for his closing argument midway through. In contrast, it allowed the government's witnesses to testify to hearsay, give closing argument from the witness stand, make legal conclusions that the conduct constituted the offenses, tell the jury what conclusions to draw from the evidence, and testify to the primary issue in debate: Mr. Routh's intent.

The errors here abounded. For the numerous reasons described below, Mr. Routh's convictions must be vacated.

Course of proceedings and disposition below

In September 2024, a grand jury in the Southern District of Florida returned a five-count indictment against Mr. Routh. DE 21. Count 1 charged him with a violation of 18 U.S.C. § 351(c), which prohibits attempting to kill or kidnap a major presidential candidate, among other enumerated individuals. Count 2 charged possessing and brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A), alleging Count 1 as the predicate. Count 3 charged forcibly assaulting a Secret Service agent with the intent to commit another felony, in violation of 18 U.S.C. § 111(a)(1), further alleging under § 111(b) that Mr. Routh used a deadly and dangerous weapon. Count 4

charged possessing a firearm and ammunition as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Count 5 charged possessing a firearm with an obliterated serial number, in violation of 18 U.S.C. § 922(k). DE 21:1–3.

The Federal Public Defender's Office represented Mr. Routh from arrest until mid-July 2025. DE 7, 189. At that time, the Federal Defender requested to withdraw and Mr. Routh asked the court to proceed *pro se*. DE 189; DE 210:4. The court granted his request and directed the Assistant Federal Public Defenders to remain as standby counsel. DE 208. Mr. Routh proceeded to trial *pro se* and was convicted of all counts. DE 318.

After trial, Mr. Routh requested and was appointed counsel for sentencing. DE 359, 365. The court sentenced Mr. Routh to life imprisonment on Count 1, 240 months on Count 3, 180 months on Count 4, and 60 months on Count 5, all to run concurrently, and 84 months on Count 2 to run consecutively. DE 397. Mr. Routh filed a notice of appeal on February 13, 2026. DE 400.

Statement of facts

On September 15, 2024, then-presidential candidate Trump was playing golf. DE 328:59. Secret Service Agent Robert Fercano was conducting security from a golf cart when he saw Mr. Routh at the fence line with what he believed to be a firearm. DE 328:60. **Mr. Routh never fired the gun.** Agent Fercano fired his toward him. DE 328:71–72; DE 334:279.

Government witness Tommy McGee, a civilian driving nearby, testified that he heard the shots from Agent Fercano and saw Mr. Routh running from the bushes outside the golf course and across the street to a Nissan Xterra. DE 328:119–23. Mr. McGee followed the Nissan Xterra and recorded the license plate. *Id*. at 124. He gave that information to law enforcement who then stopped Mr. Routh in a Nissan Xterra on Interstate 95 in Martin County and arrested him. DE 328:140, 144, 190–96. At the fence line in the bushes, agents found a Norinco SKS rifle propped against the fence with a scope taped to it, along with several other items. DE 329:87, 110; DE 330:14. According to government witnesses, the rifle was loaded and the safety was off. DE 333:99.

The government filed an indictment and the case was assigned to Judge Aileen Cannon.

Pretrial motions

In October 2024, Mr. Routh moved to recuse Judge Cannon, pursuant to the Due Process Clause and 28 U.S.C. § 455(a). DE 48:3. Mr. Routh argued that Judge Cannon's impartiality could reasonably be questioned because of her relationships to Trump (the alleged victim in Count 1) and one of the prosecutors, Christopher Browne, and thus, recusal was required. DE 48, 62. Judge Cannon denied the motion, relying primarily on her self-analysis that she was not actually biased. DE 66.

In February 2025, the government moved *ex parte* for a protective order under Section 4 of the Classified Information Procedures Act ("CIPA") asking to withhold discoverable classified information from the defense. DE 116. The court held an *ex parte* hearing. It did not seek any input from the defense as to possible or planned defenses. The district court subsequently granted the government's motion allowing the government to withhold the information. DE 219.

Mr. Routh moved to dismiss Counts 4 and 5 under the Second Amendment. DE 121. The court denied the motion after a hearing. DE 160.

Government evidence

The government's theory was that Mr. Routh was motivated to kill Trump because Trump would be bad for the war in Ukraine. DE 336:30–31. At trial, the government called 38 witnesses, seven of whom were experts (in cell phone location analysis, fingerprints, DNA, ballistics, destructive device design and function, firearms, and sniper tradecraft). The government's evidence included the following:

In late March and early April 2024 (months before the golf course incident), Mr. Routh traveled from North Carolina to South Florida. DE 331:199–207. After a few days, Mr. Routh returned to North Carolina, where he dropped off a box at the home of a former employee. DE 332:213–14. The box included plumbing pipes, a 50-caliber bullet, and a 12-page letter, starting with:

> "Dear World,
>
> This was an assassination attempt on Donald Trump but I am so sorry I failed you. I tried my best and gave it all the gumption I could muster. It is up to you now to finish the job; and I will offer $150,000 to whomever can complete the job."

DE 332:217; DE 340-1. The government introduced only that first small portion. *Id*. The letter went on to say, "I hope the American voters wake up and realize that anyone is better than Trump." DE 303-10:4. On the last page it stated, "I have left trace DNA on this note as well as on the 1000 parts on my mechanisms to shred his airplane, but that needle is hard for one man to thread alone." *Id*. at 6. It was signed by "The Failure." *Id*. at 6.

In late August, Mr. Routh wrote to a man identified as Volodymyr Kravtsov, "Send me an RPG or stinger and I will see what we can do. He is not good for Ukraine," and later, "I need equipment so Trump cannot get elected and support." DE 334:221–23; GX 104. He messaged another person, "I think Trump will be a big problem for Ukraine. I need some help ensuring that he does not get elected." DE 334:223; GX 105. And he wrote to a third contact, "I think Trump will be a big problem for Ukraine," and "He needs to go away. He canceled the JCPOA for Iran. What a fucking idiot. I hate him." DE 334:224.

On August 2, 2024, Mr. Routh bought a Norinco SKS from Ronnie Oxendine in North Carolina. DE 332:66–111, 85. Based on cell-cite data records, Mr. Routh drove from North Carolina to South Florida in August

2024 and made repeated trips from a truck stop in South Bay to the Trump International Golf Club between mid-August and mid-September, before finally hiding himself in the bushes outside the golf course on September 15, 2024. DE 331:165–224.

The government introduced evidence that the distance from the position outside the fence where the gun was found to the sixth hole, the closest hole on the golf course, was 126 feet. DE 329:29. An FBI "sniper" expert testified that anyone could use the gun found at the fence to hit a target at 126 feet without a scope and without training. DE 333:84–85. He testified that Mr. Routh's time spent near the fence was "consistent with . . . mission planning." DE 333:90. Then to end his examination, the government asked him what the intent of the "user of the rifle" was, to which the expert answered, "Take shots to kill his target." DE 333:104–05. The government elicited similar mental state evidence from its firearm expert, asking whether "intentional thinking is required to fire this gun with that magazine" with the expert answering, "Yes. You have to have some plan on what you're going to do." DE 330:182.

The government's final witness was the case agent, FBI Agent Kimberly McGreevy, who testified over two days and roughly three

hundred transcript pages. DE 333:217–64; DE 334:8–276. She told the jury her conclusions about the evidence, including that Mr. Routh was "completely and singularly and excessively focused [on] stalking of the President" (DE 334:271), that he was "lying in wait" for Trump (DE 334:230), and that he was planning to flee to Mexico (DE 334:272). She interpreted song lyrics written by Mr. Routh, speculating on what the lyrics "appear[ed] to," "could," or could "potentially" mean. DE 334:227–30. She testified to things that she had not personally witnessed but had learned from other government witnesses. *See*, *e.g.*, DE 334:44–45.

Defense theory and evidence

Mr. Routh did not contest that he was the person outside the fence at the golf course; he contested his intent. He asserted that he never intended to kill Trump, but rather was using his First Amendment right to stage a performative protest on public land in order to bring attention to himself, the election, and a political issue he cared deeply about: the war in Ukraine. In support of this theory, he attempted to admit four groups of evidence: (1) evidence of the range and accuracy of the rifle, to show he chose a gun he knew could not hit a target 126 feet away, (2) character witnesses who would testify that he was nonviolent, (3)

exhibits showing him reacting to the war in Ukraine by protesting nonviolently, and (4) testimony from mental health experts who had diagnosed him with narcissism, a trait that makes people act in ways to seek attention.

First, Mr. Routh moved the court to allow his firearm expert to test the rifle recovered from outside the golf course for range and accuracy. DE 114. The court denied his motion, allowing his expert to test the gun only for operability. DE 128.

The district court further prohibited Mr. Routh from subpoenaing all but four of his proposed character witnesses, which the court itself selected out of the multiple Mr. Routh requested to subpoena, without asking Mr. Routh which ones he wanted to call if the number was to be limited. DE 243. Two of those four the court selected did not testify at trial. The court also precluded the two mental health experts Mr. Routh sought to call to testify to his narcissism, finding Mr. Routh's disclosure was untimely and the testimony was inadmissible under Fed. R. Evid. 404, 405, and 704(b). DE 249:10.

Mr. Routh proffered approximately 170 defense exhibits, many pertaining to his protesting the war in Ukraine. DE 300–303, 305–307, 309–313. The court excluded them all in bulk. DE 334:307–308.

Mr. Routh also sought to introduce the rest of the "Dear World" letter to give the correct context to the portion the government was going to introduce. DE 223:44–46; DE 277:39–40. When the court told him the letter was hearsay, Mr. Routh limited his request to introducing the last page which "speaks about Trump's airplane." DE 277:45. Mr. Routh explained that page 12 was necessary for the context of page 1 because the government was "purporting that this letter pertains to the golf course when it plainly states on the last page that it pertains to the airport and his . . . airplane." DE 277:92. Mr. Routh also argued that the fact that it referred to the airplane and is signed by "The Failure" speaks to "state of mind" and intent of the writer to ever actually try to kill. DE 277:45. The court excluded all other portions of the letter other than what the government was admitting. DE 332:154–57.

At trial, Mr. Routh called three witnesses: Michael McClay, a former Marine Scout Sniper who had test-fired the rifle for operability,

and two character witnesses, Marshall Hinshaw and Atwill Milsun. DE 335:16–108. Mr. Routh did not testify. DE 335:109.

Voir dire

Prior to trial, given his defense was that he was staging a performative protest on public land, Mr. Routh proposed *voir dire* questions on the First Amendment, addressing potential biases related to freedom of speech and political protests. DE 177:10; DE 325:6. The court rejected these questions. DE 276 (juror questionnaire); DE 325:6–7. The court said it would incorporate "most but not all of the questions offered by the United States." DE 325:7.

During *voir dire*, a prospective juror disclosed that she had worked as a casino host at a Trump casino for about ten years and had met Trump many times during her employment. DE 327:49. The court followed up with her four times about whether she could be fair and impartial and base her verdict on the evidence presented, to which the juror unequivocally answered that she could. *Id.* at 49–51. The government moved to strike the juror for cause. DE 327:108–10. The court granted the challenge over Mr. Routh's objection. DE 327:110.

Opening statements

The court allowed both parties forty minutes for opening statements. DE 241:29. The government used the entirety of the time. DE 328:38. Within seconds of Mr. Routh beginning, the government objected to his statement that modern trials eliminate emotion. DE 328:39. The court did not sustain the objection, but told Mr. Routh to continue. Within a few minutes, the government objected again, to introductory statements about humanity learning to get along. DE 328:40. The court again did not sustain the objection, but instructed the jury that statements of counsel were not evidence. DE 328:40–41. Mr. Routh then began talking about Putin and Netanyahu. After only a few moments, *sua sponte*, the court took a break and excused the jury. There was no objection from the government pending. At that point Mr. Routh had been speaking for four minutes. The court told Mr. Routh that his "first five minutes" was not relevant. DE 328:42. Mr. Routh told the court he would "move forward" to discuss the Constitution, his peacefulness and nonviolent nature. When the jury returned, Mr. Routh began by discussing intent, the primary issue in the case. He stated, "This case hangs on intent. What is in one's heart? What fills one's brains on morals,

ethics, and human decency?" DE 328:44. Mr. Routh gave some (albeit uncommon) images of simple treasures and joys. He then attempted to connect those images to the issue of intent when the government objected, without stating a basis, and the district court terminated his opening statement: "All right. Thank you Mr. Routh. That will conclude your opening statement." DE 328:45. The jury was given no explanation. Mr. Routh asked if he could continue without the jury, and said he could move to what "the evidence will show." DE 328:46. The court denied his request. *Id*. Mr. Routh had a total of six minutes.

Closing arguments

The court gave each side one hour and forty-five minutes for closing argument. DE 334:310. To show intent, the government relied heavily on the "Dear World" letter, telling the jury, "[I]t's not every case where the defendant writes down his intent on a piece of paper, but that is the evidence in this case." DE 336:8. It argued repeatedly that Mr. Routh had "stalked" Trump and referred to a tranche of exhibits as "all about" stalking. DE 336:52. It went further to say that Mr. Routh was "charged with five crimes . . . which all relate to the defendant's plan, his stalking, and his attempt to kill." DE 336:13. And finally, the government told the

jury that this stalking, not killing, was the purpose of the substantial steps. DE 336:25 ("24/7 all hours of the night tracking, and stalking" were substantial steps with "only one purpose . . . to better surveil, to better track, and better stalk his intended victim.").

The government also told the jury that it had to answer the question of "why" Mr. Routh did certain things and said it could look to the absence of evidence Mr. Routh presented to answer that question. The government then explicitly told the jury to consider as evidence Mr. Routh's silence, stating, "I want you to think briefly about all of the things that the defendant did not say. Think about the defendant's silence." DE 336:33.

Mr. Routh struggled to make a closing argument without drawing objections. *See* DE 336:63. Recognizing his inability to understand how to make a closing argument, partway through his argument, after the court dismissed the jury to reprimand him, Mr. Routh asked the court if he would be allowed to rescind his *pro se* status and have standby counsel finish the closing argument with the remainder of the time allotted by the court. DE 336:64–66. The court stated, "No, sir. This was a choice

that you made knowingly and voluntarily after extensive colloquy . . . and that is the reality that you have elected for yourself." DE 336:66–67.

Later in Mr. Routh's closing, the court interrupted on its own, with no objection pending, excused the jury and asked, "How much longer, Mr. Routh, do you intend to speak?" DE 336:84. When he answered, "Not long," the court demanded a specific time, stating, "Can you answer my question?" Mr. Routh acquiesced and said, "Five minutes." The court then asked, "What do you intend to do with the five minutes you wish to speak additionally?" to which Mr. Routh responded he would speak about the evidence. *Id*. After the jury returned, Mr. Routh continued briefly and closed by saying, "I think I'm done with the time that I'm allotted." DE 336:89. He was allowed only 55 minutes. DE 336:89.

Jury instructions

Both Mr. Routh and the government submitted proposed jury instructions for Count 1. The government proposed an instruction it had drafted. Mr. Routh requested the instruction follow the pattern instruction for attempted murder, O47, and include that the government must prove as an element: "When the Defendatn [sic] took that step, (he)(she) intended to kill the victim." DE 231:1.

The court adopted the government's request without any additions proposed by Mr. Routh or contained in Pattern Jury Instruction O47. DE 295:16–17. The instruction did not state that the intent and the substantial step had to coexist.

On Count 3, the court instructed that Mr. Routh could be found guilty "only if all of the following facts are proved beyond a reasonable doubt": that he "forcibly assaulted, opposed, impeded, intimidated, or interfered with the person described in the indictment," and that "the person was a federal officer performing an official duty." DE 335:134. It then instructed: "If you find the defendant guilty of this offense, you must also answer two questions: First, did the defendant's acts involve the intent to commit another felony? And second, did the defendant use a deadly or dangerous weapon?" DE 335:135. The instruction did not tell the jury what standard of proof applied to those questions. DE 335:134–36.

The jury found Mr. Routh guilty on all counts. DE 318.

Sentencing

At sentencing, the district court, over defense objection, applied a 12-level enhancement and increased his criminal history category from I

to VI under U.S.S.G. § 3A1.4 for a felony offense "that involved, or was intended to promote, a federal crime of terrorism." DE 405:16–17. Mr. Routh, then represented by counsel, objected, arguing that the list of crimes that by statute could potentially constitute a federal crime of terrorism did not include attempting to kill or kidnap a major presidential candidate and that the government had not proven that the offense was calculated to influence or affect the conduct of government. DE 405:13–15. The court overruled the objection and applied the enhancement. DE 405:17. The enhancement produced a total offense level of 43, a criminal history category of VI, and an advisory guideline range of life. DE 405:18.

The district court initially allowed Mr. Routh to allocute but cut him off before he was done. After speaking about wanting to be exchanged for foreign hostages and political prisoners, the court interrupted, asking how many pages of his prepared statement remained. DE 405:44–46. Mr. Routh said twenty and that the entire statement "runs 30 minutes." DE 405:46. Mr. Routh asked the court if it wanted him to talk faster and told the court he would skip over additional content about prisoner exchange. DE 405:46. Mr. Routh then discussed his personal characteristics: his

sanity and character, honor, integrity, heart and a regard for human life and our fellow man. DE 405:47. The court then interrupted him again, imposing a blanket time limit of five minutes on everything that remained of his statement. DE 405:48. Mr. Routh moved on for a moment before the court then told him his five minutes were up and to "wrap up." DE 405:52. Mr. Routh tried to continue and the court cut him off mid-sentence. *Id*. at 53.

The court sentenced Mr. Routh to life imprisonment, followed by 84 months. DE 397. This appeal followed.

STANDARDS OF REVIEW

A district court's refusal to recuse is reviewed for an abuse of discretion. *United States v. Bailey*, 175 F.3d 966, 968 (11th Cir. 1999). *See also Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1096 (11th Cir. 2004) (abuse of discretion where district court "applies an incorrect legal standard, follows improper procedures in making the determination," "makes findings of fact that are clearly erroneous," or "appl[ies] the law in an unreasonable or incorrect manner").

The constitutionality of a criminal statute is reviewed de novo. *United States v. Knight*, 490 F.3d 1268, 1270 (11th Cir. 2007).

A district court's striking a juror for cause is reviewed for abuse of discretion. *United States v. Pendergrass*, 995 F.3d 858, 871 (11th Cir. 2021).

A defendant's claim that his Sixth Amendment rights were violated is reviewed *de novo*. *United States v. Cavallo*, 790 F.3d 1202, 1213 (11th Cir. 2015).

Evidentiary rulings are reviewed for abuse of discretion. *United States v. Jeri*, 869 F.3d 1247, 1259 (11th Cir. 2017). However, when an evidentiary ruling deprives a defendant of a constitutional right, it is

reviewed *de novo*. *United States v. Ray*, 681 F. App'x 807, 808 (11th Cir. 2017) (citing *United States v. Perez-Oliveros*, 479 F.3d 779, 783 (11th Cir. 2007), and *United States v. Nash*, 438 F.3d 1302, 1304 (11th Cir. 2006)).

This Court reviews a claim that the district court improperly limited a defendant's opening statement for abuse of discretion. *United States v. Lizon-Barias*, 252 F. App'x 976, 978 (11th Cir. 2007). Whether a trial ruling violated a constitutional guarantee is a legal question this Court reviews *de novo*. *United States v. Sarras*, 575 F.3d 1191, 1209 n.24 (11th Cir. 2009).

The legal correctness of a jury instruction is reviewed *de novo*. *United States v. Chandler,* 996 F.2d 1073, 1085 (11th Cir. 1993).

Whether an indictment has been constructively amended is a question of law reviewed *de novo*. *United States v. Johnson*, 713 F.2d 633, 643 (11th Cir. 1983). Such an error is per se reversible. *Id*.

The Court reviews whether an offense qualifies as a "crime of violence" *de novo*. *United States v. McGuire*, 706 F.3d 1333, 1336 (11th Cir. 2013).

Whether an offense qualifies as a "federal crime of terrorism" under 18 U.S.C. § 2332b(g)(5), for purposes of the twelve-level enhancement in

U.S.S.G. § 3A1.4, presents a question of statutory and guideline interpretation that this Court reviews *de novo*. *United States v. Mandhai*, 375 F.3d 1243, 1248 (11th Cir. 2004) ("Interpretation of the Sentencing Guidelines is similar to statutory interpretation and is subject to *de novo* review on appeal.") (citing *United States v. Goolsby*, 908 F.2d 861, 863 (11th Cir. 1990)).

In reviewing cumulative error, the total prejudicial effect of the trial errors, both preserved and plain, must be weighed *de novo*. *United States v. Dohan*, 508 F.3d 989, 993 (11th Cir. 2007).

If errors are not preserved, they are reviewed for plain error. *United States v. Hawkins*, 934 F.3d 1251, 1264 (11th Cir. 2019).

SUMMARY OF THE ARGUMENT

The result of the trial court's errors, both individually and combined, is that Mr. Routh was denied the fair trial guaranteed him by the Constitution.

Issue 1: The district court erred by denying Mr. Routh's motion to recuse. When a judge's impartiality can reasonably be questioned by an objective observer, the judge must recuse herself. Here, Judge Cannon's impartiality could reasonably be questioned from two angles. First, she was friends with one of the prosecutors, went to high school with him, and attended his wedding. Second, she was appointed by the alleged victim in Count 1, Trump; had presided over other cases involving him in this district in which she had ruled in his favor and was later reversed by this Court; was publicly praised by Trump for her rulings in his cases; and media was already questioning her impartiality and whether the cases were indeed randomly assigned. Recusal was required. She also erred by denying the motion in part on her own findings that she was not actually biased when actual bias is irrelevant under 28 U.S.C. § 455(a).

Issue 2: The district court erred in granting the government's motion under Section 4 of CIPA to withhold potentially discoverable

information from the defense. In deciding motions under Section 4 of CIPA, if the information is "helpful" to the defense, the court must order it disclosed. In allowing the government to withhold discovery, the district court erred in failing to consider whether the information would be helpful to the defense. Instead, the court granted the motion based only on findings that the government made a sufficient showing that the information was classified and that its disclosure could cause serious damage or exceptionally grave damage to the national security of the United States. Further, this Court should review the government CIPA filings and the transcript of all *ex parte* or in camera hearings to determine whether the district court made any additional errors in allowing the government to withhold information from the defense.

Issue 3: The district court erred by striking Juror 102 for cause over Mr. Routh's objection. In order to strike a juror for cause, the moving party must demonstrate through questioning that the juror lacks impartiality. Here, in response to the court's questioning, the juror assured the court four times that she would be fair and impartial and decide the case based on the evidence presented in court. There was no factual basis to support a strike for cause.

Issue 4: The district court violated Mr. Routh's Sixth Amendment right to counsel by refusing to allow him to rescind his *pro se* status and reappoint standby counsel to finish closing argument. A defendant has a right to counsel at all critical stages of the proceeding. Closing argument is a critical stage of the proceeding. Thus, Mr. Routh had a Sixth Amendment right to have counsel reappointed.

Issue 5: The district court committed reversible error when it unconstitutionally limited Mr. Routh's ability to present a complete defense, violating his Fifth and Sixth Amendment rights. A defendant has a constitutional right to present a complete defense. That necessarily includes the right to subpoena witnesses, to rebut the government's evidence, to have equal access to evidence, and to gather evidence helpful to the defense. Mr. Routh attempted to contest the government's evidence of intent with his own evidence that he did not intend to kill, but was a nonviolent person using his First Amendment right to protest on public land to bring attention to himself, the election, and the war in Ukraine. The district court improperly restricted this defense at every turn. The district court erred by (1) refusing to ask in *voir dire* Mr. Routh's questions on the jurors' views on the First Amendment right to protest

political causes, (2) refusing to allow Mr. Routh to subpoena and call certain character witnesses, (3) excluding expert witnesses who would testify to Mr. Routh's narcissism, from which Mr. Routh would argue that trait led him to engage in conduct to put himself in the spotlight over an important issue and never intended to fire the gun, (4) excluding all of Mr. Routh's proposed exhibits that would have shown him legally and nonviolently protesting the war in Ukraine, the very thing the government argued was his motive in this case, (5) refusing to allow Mr. Routh's expert in firearms to test the rifle recovered from the scene for range and accuracy to show Mr. Routh picked a gun he knew could not hit a target 126 feet away, while allowing the government's expert to testify that such a gun could hit a target 126 feet away, and (6) excluding portions of the "Dear World" letter that contradicted the government's reading of the letter and that were admissible under the Rule of Completeness. The court's rulings prevented Mr. Routh from introducing nearly any evidence in support of his theory of defense and violated his due process right to a fair trial.

Issue 6: After limiting Mr. Routh's defense, the district court then cut off Mr. Routh's opening statement and closing argument, while

allowing the government the full time for both. For opening statement, the government used the full 40 minutes allotted. In contrast, the district court cut Mr. Routh off after only six minutes, without having sustained a single objection by the government. While Mr. Routh's statement was less focused than a trained lawyer's would be, it did not warrant wholesale termination after only six minutes, when the court could have simply sustained any objections from the government where appropriate, or redirected Mr. Routh when he veered off topic. Such inequity violated Mr. Routh's due process right to a fair trial. Relatedly, the court violated Mr. Routh's due process right to a fair trial when it limited Mr. Routh's time for closing argument in the middle of his argument after allotting both sides one hour and 45 minutes. A criminal defendant has a constitutional right to present closing argument. Instead of redirecting Mr. Routh's *pro se* closing argument or sustaining any appropriate objection, the court limited Mr. Routh's time mid-argument, regardless of the content of what he had left.

Issue 7: The district court erred by allowing the government to deliberately elicit from two expert witnesses an opinion on Mr. Routh's intent to kill. Fed. R. Evid. 704(b) prohibits an expert witness from

testifying as to whether a defendant had a certain mental state that constitutes an element of a crime. But the government deliberately elicited from two expert witnesses this precise testimony about Mr. Routh's intent to kill. This violated Rule 704(b).

Issue 8: The district court erred by omitting essential elements of Count 1 in its jury instructions. A criminal defendant is entitled to a correct jury instruction on the elements the government must prove. In Count 1, the government had to prove that Mr. Routh had the intent to kill at the time he took the required substantial step for an attempt. The district court failed to instruct the jury on that element. This allowed the jury improperly to transfer an intent to kill at some other time to the conduct on September 15.

Issue 9: The charge in Count 3, assault on a federal officer with an intent to commit another felony, had three elements: that the defendant forcibly assaulted the person described in the indictment, the person assaulted was a federal officer performing an official duty, and the defendant's acts involved the intent to commit another felony. The court omitted the last element, instead framing the element as simply a question the jury must answer *after* it had already found Mr. Routh

guilty of the offense, without any reference to the burden of proof for determining such answer.

Issue 10: The cumulative error at trial caused substantial prejudice to Mr. Routh, warranting reversal. In addition to the errors described above, the government's case agent gave improper summary, expert, interpretation, and intent testimony, delivering sworn closing argument for the government. The government further elicited legal conclusions from multiple witnesses that the conduct on September 15 constituted an attempted assassination and that the serial number on the rifle recovered was indeed obliterated, questions meant for the jury. The government constructively amended Count 1 when it argued to the jury that Mr. Routh was stalking Trump, a different federal crime, and that that stalking could be the purpose of the substantial step in Count 1, when that purpose as charged was to attempt to kill Trump. The government shifted the burden in closing argument by telling the jury to look to Mr. Routh to provide an alternative reason for his conduct and that it could look to Mr. Routh's silence as evidence of his guilt. The cumulative effect of all these errors, when considered with the court already tilting the scales in favor of the government by preventing Mr.

Routh from presenting a full defense, requires reversing the conviction here.

Issue 11: The conviction on Count 2 must be vacated and the count dismissed because Count 1 is not a crime of violence. Under the categorical approach, 18 U.S.C. § 351(c) is not a crime of violence because it can be committed without the use, attempted use, or threatened use of force. This is so because § 351(c), prohibiting attempting to kill or kidnap an enumerated individual, is indivisible and both kidnapping and killing as used in this statute can be committed without force. First, this Court has previously held federal kidnapping is not a crime of violence. Second, "kill" is not defined in the statute, and thus encompasses multiple types of killing, including involuntary manslaughter and felony murder. Both of those can be committed with a *mens rea* only of recklessness, and thus, do not require the intentional use of force needed to be a crime of violence under § 924(c). Regardless, § 351(c) does not require force because it is an attempt, and an attempt can be committed without force even if the completed crime requires force.

Issue 12: At sentencing, for the conviction on Count 1, the court erroneously applied a 12-level enhancement and increased his criminal

history category from I to VI under U.S.S.G. § 3A1.4, finding attempting to kill or kidnap a presidential candidate was a "federal crime of terrorism." A "federal crime of terrorism" as used in § 3A1.4 is defined as (1) an offense calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, *and* (2) is one of the crimes specifically enumerated in 18 U.S.C. § 2332b(g)(5)(B). An offense under § 351(c) against a presidential candidate is not a "federal crime of terrorism" for purposes of the enhancement in § 3A1.4 because a candidate is not "government" and attempting to kill or kidnap a *candidate* is not among the violations enumerated in 18 U.S.C. § 2332b(g)(5)(B), which only enumerates crimes against members of Congress, the Cabinet and the Supreme Court.

Issue 13: The court committed reversible error when it cut off Mr. Routh's allocution at sentencing. Fed. R. Crim. P. 32 provides that before imposing sentence, a district court "must . . . address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence." Not allowing a defendant a full opportunity to allocute prior to sentencing or improperly restricting a defendant's ability to do so requires vacation of the sentence and a

remand for resentencing. Here, the court cut Mr. Routh off mid-sentence after imposing a content-blind and arbitrary time limit midway through his allocution. His sentence must be vacated.

Issue 14: The district court erred in denying Mr. Routh's motion to dismiss Counts 4 (Possession of a firearm by a convicted felon) and 5 (Possession of a firearm with an obliterated serial number) as unconstitutional under the Second Amendment, pursuant to *Bruen*, 597 U.S. at 1. Prohibiting possession of a firearm with an obliterated serial number, a violation of 18 U.S.C. § 922(k), has no historical equivalent. Neither the government nor the court identified one below. With respect to 18 U.S.C. § 922(g), Mr. Routh recognizes this Court's decision in *United States v. Dubois*, 139 F.4th 887 (11th Cir. 2025) holding § 922(g) constitutional but maintains it was wrongly decided and preserves the issue for further review.

Because the district court's impartiality can reasonably be questioned for reasons discussed in Issue 1, if the case is remanded, Mr. Routh requests the case be assigned to a different district court judge.

ARGUMENT AND CITATIONS OF AUTHORITY

I. The district court erred by denying Mr. Routh's motion to recuse.

"Justice must satisfy the appearance of justice." *In re Murchison,* 349 U.S. at 136. "The guarantee to the defendant of a totally fair and impartial tribunal, and the protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system." *United States v. Columbia Broadcasting Sys.*, 497 F.2d 107, 109 (5th Cir. 1974). This is the very purpose of 28 U.S.C. § 455(a). Section 455(a) provides that a judge *must* recuse herself from any proceeding in which her impartiality might reasonably be questioned. Actual bias is irrelevant and no showing is required. *Liteky v. United States*, 510 U.S. 540, 553 n.2 (1994); *see also United States v. Holland*, 655 F.2d 44, 47 n.5 (5th Cir. 1981) (rejecting government's argument that recusal was not required where judge did not exhibit bias because "Section 455 does not require such a showing"). Instead, the standard is only whether a reasonable and objective person, knowing all the facts, would harbor doubts concerning the judge's impartiality. *Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847, 860–61 (1988). "The goal of section 455(a) is to avoid even the appearance of

partiality" (*id.* at 860), which is as important in developing public confidence in the judicial system as avoiding impropriety itself. *United States v. Jordan*, 49 F.3d 152, 155–56 (5th Cir. 1995).

This Court has stressed that "any doubts must be resolved in favor of recusal." *In re Moody*, 755 F.3d 891, 895 (11th Cir. 2014) (quoting *United States v. Patti*, 337 F.3d 1317, 1321 (11th Cir. 2003)). This follows from the text of the recusal statute. In addition to the use of the word "shall," making recusal mandatory, "[t]he use of '*might* reasonably be questioned' in section 455(a) clearly mandates that it would be preferable for a judge to err on the side of caution and disqualify [herself] in a questionable case." *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1112 (5th Cir. 1980). The language of § 455(a) was specifically designed to "eliminate the so-called 'duty to sit'" that had governed the previous recusal statute. *Id.*

Here, Mr. Routh identified a unique combination of circumstances from which, together, a lay observer *may have reasonably* questioned Judge Cannon's impartiality. In denying Mr. Routh's motion asking her to recuse, she made a clear error of judgment and applied the wrong legal standard.

First, Judge Cannon was friends with one of the attorneys on the prosecution team, Christopher Browne; they went to high school together and Judge Cannon had attended Mr. Browne's wedding. DE 62 at 6. Second, Judge Cannon had been appointed to the bench by Trump, the alleged victim in the case, during his first term. She had presided over two prior cases in the district involving Trump. One of her rulings was stayed and then vacated on appeal. *See Trump v. United States*, 54 F.4th 689 (11th Cir. 2022); *Trump v. United States*, 2022 WL 4366684 (11th Cir. 2022). Other rulings were characterized by some in the media as unorthodox. And in July 2024, this Court dismissed the criminal case against Mr. Trump in its entirety. *United States v. Donald Trump*, 23-cr-80101-AMC, DE 672 (S.D. Fl. Jul. 15, 2024). Trump then made public comments in praise of the judge for the rulings. DE 48:7–8. By repeatedly and publicly praising Judge Cannon by name for her rulings in his case, Trump arguably bolstered the perception that the district court would be partial in his favor. And indeed, at the time Mr. Routh filed his motion, the district court's impartiality was already a topic of public interest: national media outlets including the New York Times and Newsweek had questioned whether cases involving Trump in the Southern District of

Florida were being randomly assigned or if they were being purposefully assigned to Judge Cannon because of her partiality. DE 48:9.

Mr. Routh relied on the combination of the above factors. But rather than conduct a totality analysis, the district court considered each individually, rebutting each on its own terms, often by addressing actual bias instead of perceived bias, and then disposed of the cumulative question with a single unreasoned sentence: "None warrants recusal, whether examined individually or together." DE 66:3. That bare assertion is not the weighing that Eleventh Circuit law requires. *See In re Moody*, 755 F.3d at 895. The district court's failure to genuinely grapple with the combination of extraordinary facts presented here was clear error.

Additionally, the district court erred by denying the motion in part by using the wrong legal standard, relying on actual bias instead of an objective person's reasonable view of potential bias. Although the court correctly recited that "what matters under § 455(a) 'is not the reality of bias or prejudice but its appearance,'" (DE 66:2), it did not apply that rule to the facts. With respect to Trump's praise of the court and her relationship with the prosecutor, the court instead ruled on actual bias,

finding she had none. DE 66:3–4, 6. And in a concluding footnote addressing the Due Process Clause, the court added that "the record contains no objective evidence of any actual bias or probability of actual bias." DE 66:7, n.3. This was the wrong standard; whether Judge Cannon was actually biased was irrelevant. The only issue that mattered was whether an objective person could reasonably question her impartiality given all the facts raised. By collapsing the § 455(a) appearance inquiry into a search for its own actual bias, the district court abused its discretion in denying Mr. Routh's motion, requiring reversal.

The Supreme Court's decision in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), is instructive. There, the judge had "conducted a probing search into his actual motives and inclinations; and he found none to be improper." *Id.* at 882. However, the Supreme Court found such a probe to be irrelevant. Instead, the Court held that a litigant's outsized financial support for the judge's election campaign and the timing of the contributions, the judge's election, and the case, regardless of whether the judge was actually biased, created an objective "probability of bias" requiring recusal under the Due Process Clause. *Id.* at 883–84. If a *constitutionally* intolerable probability of bias can arise from this

combination of facts without any showing of actual bias, then the more protective, prophylactic *appearance* standard of § 455(a) was easily satisfied by the combination of facts here, which include not a single relationship but multiple avenues of potential bias toward both a prosecutor, Mr. Brown and the alleged victim, Trump.

Scrutinizing even the appearance of impartiality is particularly important here where part of the proceedings were held *ex parte*. Here, the court heard government *ex parte* filings under CIPA, held *ex parte* hearings, and ultimately granted the government's motion to withhold information from the defense. DE 219. The doctrine of erring on the side of recusal should have even more weight in cases like this one where the case involves *ex parte* proceedings that determined whether the defendant has access to discoverable information that may be helpful to his defense.

For these reasons, the motion to recuse should have been granted.

II. The district court erred by allowing the government to withhold discoverable information under CIPA based on the sensitive nature of the information and not on whether it was helpful to the defense.

CIPA balances the need to protect sensitive classified materials against a criminal defendant's right to discovery for a fair trial. *United*

States v. Abu-Jihaad, 630 F.3d 102, 140 (2d Cir. 2010). If the government wishes to withhold discoverable information from a defendant under a claim of national security, it must file a motion pursuant to § 4 of CIPA, requesting an order allowing it to withhold such information. The district court may consider the request *ex parte*, and if the court grants such motion, the court can allow the government to remove the classified information from documents provided to defense, substitute a summary of the information, or substitute a statement admitting relevant facts the classified information would tend to prove. 18 U.S.C. § app. 3 § 4. When addressing discoverability of classified evidence, there is a three-part inquiry: (1) is the evidence relevant; (2) has there been a colorable assertion of privilege; and (3) is it "helpful" to the defense. *United States v. Yunis*, 867 F.2d 617, 623 (D.C. Cir. 1989). If the information is helpful, the court must order the government disclose it. *Id.*; *United States v. Alahmedalabdaloklah*, 94 F.4th 782, 811 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 770 (2024). In determining whether information is helpful to the defense, the district court may not take into account the fact the evidence is classified. *United States v. Baptista-Rodriguez*, 17 F.3d 1354, 1364 (11th Cir. 1994). Indeed, this Court has made clear that CIPA did not

create new substantive law or alter existing rules for relevancy or admissibility. *United States v. Anderson*, 872 F.2d 1508, 1514 (11th Cir. 1989). A court "must place [itself] in the shoes of defense counsel, the very ones that cannot see the classified record, and act with a view to their interests." *United States v. Amawi*, 695 F.3d 457, 471 (6th Cir. 2012). The evidence need not be admissible for the judge to order disclosure; it only need to be "helpful" to the defense. And the view must be taken pretrial, not taking into account the defense and evidence presented at trial, but whether it is helpful at the more expansive pretrial stage in choosing which defense to present, which evidence to present, and what other investigation the defense could have undertaken.

A court may seek defense input when evaluating CIPA motions. "In our adversary system, it is enough for judges to judge. The determination of what may be useful to the defense can properly and effectively be made only by an advocate." *Dennis v. United States,* 384 U.S. 855, 875 (1966). Some district courts thus wisely sought defense input regarding what its evidence or defenses could be, and what prosecution evidence it expects to challenge, to decide whether information is helpful to the defense. *See*, *e.g.*, *United States v. Clegg*, 740 F.2d 16, 17 (9th Cir. 1984).

Here, the court erred in granting the government's motion after an *ex parte* hearing, without seeking any input from defense on the theory of defense, and allowing the government to completely withhold information from the defense because it did not base its decision on whether the information was helpful to the defense. DE 219. Instead, it based its ruling only on its findings that "the information at issue was classified . . . and that its disclosure could cause serious damage or exceptionally grave damages to the national security of the United States." DE 219:1. The court ignored the primary consideration: the defendant's right to discovery for a fair trial. As such, the court erred and Mr. Routh's convictions should be vacated.

Further, this Court should review the government's CIPA motions and transcripts from the *ex parte* hearings to determine whether the district court made any additional error in allowing the government to withhold discoverable information. It should reverse the convictions if the district court erred in the *ex parte* analysis, for example, if the court should have ordered the government to provide a summary or substitute instead of allowing it to withhold the information altogether. If the Court finds individual errors that alone do not warrant reversal, it must add

them to an aggregate cumulative error analysis. *United States v. Agurs*, 427 U.S. 97, 112 (1976), holding modified by *United States v. Bagley*, 473 U.S. 667 (1985) (*Brady* errors are treated cumulatively).

III. The district court abused its discretion in striking Juror 102 for cause.

The district court abused its discretion in striking Juror 102 for cause over Mr. Routh's objection because the government failed to meet its burden of establishing that the juror was actually biased.

To exclude a prospective juror for cause, the moving party has to demonstrate through questioning that the juror lacks impartiality. *Wainwright v. Witt*, 469 U.S. 412, 423 (1985). "The constitutional standard for juror impartiality is whether the juror 'can lay aside his opinion and render a verdict based on the evidence presented in court.'" *United States v. Simmons*, 961 F.2d 183, 184 (11th Cir. 1992) (quoting *Patton v. Yount*, 467 U.S. 1025, 1037 n.12 (1984)). Actual bias exists if a juror is not "capable and willing to decide the case solely on the facts before him." *Rogers v. McMullen*, 673 F.2d 1185, 1190 (11th Cir. 1982). A party challenging a juror for cause must demonstrate that the juror in question exhibited actual bias by showing either an express admission of bias or facts demonstrating such a close connection to the present case

that bias must be presumed. *Chandler*, 996 F.2d at 1102. When the juror demonstrates that she can lay aside any opinion she might hold and render a judgment based solely on the evidence presented in court, dismissal is not appropriate. *United States v. Rhodes*, 177 F.3d 963, 965 (11th Cir. 1999) (holding court did not abuse its discretion by refusing to strike juror who had familial relationship with witness and whose statements indicated she was potentially biased against defendant, where further examination revealed she could lay aside her relationship to witness and judge defendant fairly and impartially).

Here, the government had the burden of proof to show bias. *Chandler*, 996 F.2d at 1102. But Juror 102 exhibited no bias, actual or presumed. The alleged basis of the bias was related to her prior employment by Trump at a casino in Indiana in 1996. DE 327:108–10. Juror 102 stated she had not worked for any entity or organization owned or operated by Trump or his businesses or interacted with him since at least 2006. DE 327:49. The court then asked her four times whether she would be biased or whether her employment would affect her impartiality. The juror answered each time unequivocally that she could

be fair and impartial and that her experience would not affect her ability to evaluate the case in any way. DE 327:49–52.

This Court has repeatedly found in cases in which a juror had expressed more of a basis to suspect impartiality that upon rehabilitation by the court, the record established a cause challenge was not warranted. *See Rhodes*, 177 F.3d at 965–66, (concluding that, despite initial statements indicating prospective juror was potentially biased, further examination established that juror could be impartial); *Simmons*, 961 F.2d at 186 (finding that "this final colloquy with the potential jurors established an indication of impartiality" supporting conclusion there was no basis for cause removal); *United States v. McLeod*, 53 F.3d 322, 326 (11th Cir. 1995) (holding no abuse of discretion for refusing to strike juror who had known family of victim for fifteen years but "repeatedly and unequivocally averred that she could be fair to both parties and could make a fair decision based on the evidence she heard") (cleaned up); *Bell v. United States*, 351 F. App'x 357, 359–60 (11th Cir. 2009) (finding where juror initially expressed uncertainty as to her ability to presume defendant innocent but later questions established juror could be impartial, totality of *voir dire* did not establish basis for cause challenge);

United States v. Dixon, 201 F. App'x. 674, 676 (11th Cir. 2006) (holding court did not err in denying strike for cause where juror, even though she worked for corporate victim, assured court she could be fair and impartial). Here, the juror never even equivocated. And her answers to the court's multiple follow-up questions that she would decide the case based on the evidence presented was more than sufficient to show no bias existed.

The court's stated reason for agreeing to the strike, that the juror "seems to have already come up with a conclusion about the facts in this case" also is not borne out by the record. *See* DE 327:110. Nothing in the juror's statement indicated she already had a conclusion about the case or that she would not listen to the evidence. And indeed, the court asked the juror specifically whether she had any hesitation about her ability to consider the evidence in the case based on what was presented in the courtroom, and the juror answered that she could be "very fair." DE 327:50. Nothing about her statement about seeing Trump as the target and the FBI agent as the victim meant the juror had made up her mind about guilt or innocence. Indeed, that was the government's theory, and simply having heard of the government's theory in advance of the case

does not mean a juror will not listen to the evidence presented. "It is not required . . . that the jurors be totally ignorant of the facts and issues involved . . . . **To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard.** It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court." *Irvin v. Dowd*, 366 U.S. 717, 723 (1961). That is, at most, what occurred here. Even if Juror 102's statements could be interpreted as a "preconceived notion as to the guilt or innocence" of Mr. Routh, which is already a stretch to conclude, her statement to the court that she could decide the case upon the evidence presented in court was sufficient to ensure her impartiality.

Neither the court nor the government followed up with additional questions, presumably because of the juror's repeated assurances to the judge that nothing would prevent her from being fair and impartial and that she would listen to the evidence presented in the courtroom. Any potential cause for a strike from such a statement was "just a matter of

semantics," the type of which this Court rejected as a basis for a cause challenge in *Dixon*.

There was simply no factual basis for the district court granting the government's cause challenge over Mr. Routh's objection. As such, it was an abuse of discretion, and Mr. Routh's convictions on all counts must be vacated.

IV. The district court violated Mr. Routh's Sixth Amendment right to counsel by refusing without further inquiry to reappoint standby counsel to finish the closing argument after Mr. Routh asked if he could relinquish his *pro se* status.

A defendant's earlier, valid waiver of counsel does not extinguish the right to counsel for the rest of trial. "The functional right of a defendant to withdraw his request to represent himself and reassert the right to counsel at any time immediately before, or perhaps even during trial, is, absent deliberate manipulation, virtually assured." *Horton v. Dugger*, 895 F.2d 714, 716 (11th Cir. 1990). "[I]n practice a trial judge is hard-pressed to deny the aid of counsel to a defendant who initially seeks to represent himself but later declares himself legally incompetent to proceed any further." *Id*. Indeed, "even at midtrial . . . a trial court's unexplained refusal to permit a defendant to revoke his assertion of the

right of self-representation would surely constitute an abuse of discretion." *Grandison v. Maryland*, 479 U.S. 873, 876 (1986) (Marshall, J., dissenting from denial of certiorari). "A trial court cannot insist that a defendant continue representing himself out of some punitive notion that that defendant, having made his bed, should be compelled to lie in it." *Id*.

Here, the district court did just that. The district court not only denied Mr. Routh this essential right that this Court has stated is "virtually assured" absent deliberate manipulation, but did so without any further inquiry simply because Mr. Routh had made his proverbial "*pro se* bed." When Mr. Routh, during closing argument, asked if he could relinquish his *pro se* rights and have standby counsel reappointed to finish closing argument, the court stated, "No, sir. This was a choice that you made knowingly and voluntarily after extensive colloquy . . . and that is the reality that you have elected for yourself." DE 336:66–67. Mr. Routh was not seeking to manipulate the proceedings: he did not ask for a continuance or any delay, and he did not ask the court to expand the time allotted for his closing argument. He asked merely that standby counsel be allowed to use whatever time he had remaining. The court

treated Mr. Routh's prior *Faretta* waiver as though it had permanently closed the door on the right to counsel for the balance of trial. This is exactly what Justice Marshall made clear a court cannot do. *See Grandison*, 479 U.S. at 876 (Marshall, J., dissenting from denial of certiorari). This violation was further compounded by the court then limiting Mr. Routh's time for closing midway through his argument. *See* Section VI, *supra*.

Further, this Court has held that a clear invocation of a Sixth Amendment right obligates the trial court to inquire, not simply wave the request aside. *See*, *e.g.*, *Dorman v. Wainwright*, 798 F.2d 1358, 1368–69 (11th Cir. 1986) (granting habeas corpus relief where trial court refused defendant's request to proceed *pro se* without even "bother[ing] to inquire" into request before rejecting it). That same principle applies with more force when the request runs the other way, from self-representation back to counsel, as it is the right to counsel that the Amendment exists to protect in the first place. *Faretta* itself anticipated exactly this contingency. It approved the appointment of standby counsel "even over objection by the accused," precisely so that counsel would be "available to represent the accused in the event that termination of the defendant's

self-representation is necessary." *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975).

Standby counsel's presence at the trial existed for the very moment Mr. Routh asked about, a moment when self-representation was no longer working and a lawyer needed to step in. And standby counsel could have stepped in without delay. They had represented Mr. Routh since his arraignment until approximately six weeks before trial, had until that time been actively preparing for trial, and had been present at all pretrial hearings and for the entirety of the trial. There would have been no delay or even interruption had the court granted Mr. Routh's request.

This error requires reversal. If a defendant is denied counsel at a critical stage of the trial, reversal is required. No prejudice is required and such violation cannot be harmless error. *Holloway v. Arkansas*, 435 U.S. 475, 489 (1978) (citing *Chapman v. California*, 386 U.S. 18, 23 (1967)) (assistance of counsel during trial is among those "constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error"); *United States v. Cronic*, 466 U.S. 648, 659 (1984) ("The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of

his trial and no prejudice is required."). The Court has repeatedly found constitutional error without any showing of prejudice when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding. *See*, *e.g.*, *Geders v. United States*, 425 U.S. 80 (1976) (reversing conviction where court denied defendant access to counsel overnight when defendant was in middle of testimony); *Herring v. New York*, 422 U.S. 853 (1975) (reversing conviction where court denied defendant closing summation by counsel); *Hamilton v. Alabama*, 368 U.S. 52, 55 (1961) (reversing conviction where defendant denied counsel at arraignment, even though no prejudice shown); *White v. Maryland*, 373 U.S. 59, 60 (1963) (per curiam) (reversing conviction where defendant denied counsel at preliminary hearing, a critical stage of proceeding without determining prejudice). Closing argument is a critical stage of trial at which the Sixth Amendment guarantees the assistance of counsel. *Hunter v. Moore*, 304 F.3d 1066, 1070 (11th Cir. 2002). Thus, denial of counsel at this critical stage requires reversal. *Herring*, 422 U.S. at 856–65 (denial of the opportunity for summation is not tested for prejudice because a court cannot know what a defendant's

closing argument might have accomplished had he been permitted to deliver it as intended).

V. The district court violated Mr. Routh's due process rights to present a complete defense.

The Due Process and Compulsory Process Clauses require "that criminal defendants must be afforded the opportunity to present" a complete defense. *United States v. Hurn*, 368 F.3d 1359, 1362 (11th Cir. 2004); *see also California v. Trombetta*, 467 U.S. 479, 485 (1984) (holding under Due Process Clause, criminal defendants must "be afforded a meaningful opportunity to present a complete defense."); *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) (due process right is in essence "the right to a fair opportunity to defend against the State's accusations"). A due process violation occurs when trial error renders a criminal defense "far less persuasive than it might [otherwise] have been." *Id.*

A trial in which the principal defense has been effectively barred, as it was here, cannot be reconciled with the Due Process Clause. A district court's exclusion of a defendant's evidence violates due process in four circumstances: (1) where it pertains to any of the actual elements of the charged offense or an affirmative defense; (2) where it pertains to collateral matters that, through a reasonable chain of inferences, could

make the existence of one or more of the elements of the charged offense or an affirmative defense more or less certain; (3) where it could have a substantial impact on the credibility of an important government witness; and (4) where it tends to place the story presented by the prosecution in a significantly different light, such that a reasonable jury might receive it differently. *Hurn*, 368 F.3d at 1363.

The district court denied Mr. Routh's constitutional right to present a complete defense when it excluded exculpatory evidence that had a direct bearing on a formal element of the charged offense: intent. The evidence was also of collateral matters that through a reasonable chain of inferences could make the element of intent less certain. And the evidence would have placed the story presented by the prosecution in a significantly different light. Intent was the primary issue in this case, and the only issue in debate with respect to Counts 1–3. The evidentiary exclusion completely crippled Mr. Routh's ability to meet the government's evidence of intent.

A. Prohibiting Mr. Routh's expert from testing the range and accuracy of the rifle recovered at the scene while allowing the government's expert to testify to the same issue

Mr. Routh sought to rebut the government's claim of intent to kill

by showing he chose a gun he knew could not hit a target 126 feet away. If Mr. Routh chose a gun he *knew* could not hit a target 126 feet away, he never could have intended to kill someone 126 feet away. DE 164:5–6. It makes it more likely it was intended to be used as a prop for protest and not as a tool for murder. The range and accuracy of the gun were essential to this part of his defense and went directly to the intent element. The court's ruling prohibiting Mr. Routh from testing the gun for range and accuracy unconstitutionally restricted his ability to present a complete defense. *Hurn*, 368 F.3d at 1363. This was particularly relevant here where the scope, presumably needed for such a far target, was taped to the barrel of the rifle and clearly not properly set for it to be helpful.

In precluding Mr. Routh's expert from testing the firearm, the court misconstrued Mr. Routh's argument for one of factual impossibility. It reasoned that Mr. Routh was attempting to argue that because the firearm did not have the range or accuracy sufficient to hit a target 126 feet away, it would have been impossible for Mr. Routh to commit the crime and therefore, he is not guilty. But that was not Mr. Routh's argument; his argument instead related to *knowledge* about range and accuracy.

Additionally, the court's ruling created an impermissible inequity by allowing the government to introduce expert testimony of the range and accuracy while preventing Mr. Routh's expert from even gathering such information about the specific rifle in this case. A defendant is entitled to rebut the government's theory with evidence of his own. *United States v. Graham*, 123 F.4th 1197, 1266 (11th Cir. 2024). "In the law, what's sauce for the goose is normally sauce for the gander," and this Court "has applied this commonsense principle of equal treatment in the context of expert witnesses." *Id.* It is "an abuse of discretion to exclude the otherwise admissible opinion of a party's expert on a critical issue, while allowing the opinion of his adversary's expert on the same issue." *Id.* (internal quotations omitted). Defense experts are entitled to "access on equal terms" to the government's evidence. *United States v. Shrake*, 515 F.3d 743, 747 (7th Cir. 2008) (citing *Wardius v. Oregon*, 412 U.S. 470 (1973)).

The government had expert witnesses testify not only that the gun found at the fence was operable but that that type of gun had a "max effective range [of] approximately 350 meters" and that one need not be a trained marksman to hit a target 126 feet away, even without the use

of a scope. DE 333:84–85. The government introduced this evidence to show that Mr. Routh had the intent to kill, and that he chose a gun with the needed range and accuracy to hit his target.

The district court's ruling denied Mr. Routh the ability to respond to this evidence and violated this principle of equal treatment. *See Graham*, 123 F.4th at 1266 (reversing conviction where district court excluded defense expert witness who would have testified regarding whether defendants had formed criminal enterprise); *United States v. Lankford*, 955 F.2d 1545, 1552 (11th Cir. 1992); *United States v. Garber*, 607 F.2d 92, 95–97 (5th Cir. 1979) (en banc) (holding that it was error to prevent a defense expert from testifying on willful intent to violate the tax law where a government expert witness was permitted to testify on the same issue).

That the government's expert did not test the gun in this case does not change the analysis. The government used the manufacturer evidence the same way Mr. Routh intended to use the expert testing: to argue that Mr. Routh selected a gun that he *knew* had a range and accuracy that meant he, a person untrained in marksmanship, could hit a target 126 feet away. Mr. Routh's evidence would have countered that

precise argument.

The evidence the court excluded bore directly on an element of the offense—intent. It also, if admitted, would have placed the story presented by the prosecution in a significantly different light, as described above. Consequently, excluding it violated Mr. Routh's due process right to a fair trial. *Hurn*, 368 F.3d at 1363; *Graham*, 123 F.4th at 1272–73; *Lankford*, 955 F.2d at 1552–53; *United States v. Diallo*, 40 F.3d 32, 35 (2d Cir. 1994) ("Having allowed the government to call as an expert a DEA agent . . . the district court should have accorded the defendant the same right. Turnabout is fair play, even in the federal courts."); *United States v. Cohen*, 510 F.3d 1114, 1127 (9th Cir. 2007) (holding it was prejudicial error to exclude the defendant's expert, who was to explain that the defendant's mental disorder may have affected "his ability to form the requisite *mens rea*").

Even if not rising to the level of a constitutional violation, it was an abuse of discretion because the court made an erroneous assessment of Mr. Routh's proffered evidence and applied the law in an erroneous manner. *See Graham*, 123 F.4th at 1197 (a district court abuses its discretion if it bases its evidentiary ruling on an erroneous view of the

law or on a clearly erroneous assessment of the evidence).

B. Excluding Mr. Routh's defense exhibits

In support of his defense and to rebut the government's motive theory, Mr. Routh sought to introduce photographs showing him engaging in various protests related to the war in Ukraine. DE 301-23–25, 27, 29, 30; 302-5, 22, 24; 303-5; 307-10, 11, 16, 17, 18, 21, 24, 28; 309-2, 3, 11; 311-8. The photographs show him with face paint, wearing American flags, putting up protest banners, wearing a shirt saying "SEND ALL MILITARY", wearing a bulletproof vest in front of a wall of flags, wrapped in a fabric banner with statements on it about defending Ukraine, setting up a large structure made of sandbags and a crowd protesting in front of it with signs and flags. One photograph shows him with an American flag bandana around his neck and holding a Ukrainian flag and a sign that starts with "Please World", reminiscent of the government's main exhibit—the "Dear World" letter. The district court excluded them as improper character evidence and irrelevant. DE 334:308.

The exclusion was improper. First, the evidence was not character evidence but directly addressed the government's evidence of Mr. Routh's

motive for assassination. The government argued that Mr. Routh's motive for attempting to kill Trump was the war in Ukraine. It introduced numerous text messages from Mr. Routh in which he complained of Trump not being good for Ukraine. *See*, *e.g.*, GX 105 ("I think Trump will be a big problem for Ukraine"); GX 600-195 ("I think Trump will be a big problem for Ukraine."); GX 104 ("Do you think Trump will be good for Ukraine?????"). The government then argued this was Mr. Routh's motive, stating in closing argument, "But you've got evidence of motive; right? 'I think Trump will be a big problem for Ukraine.'" DE 336:29.

Having built its motive theory on the premise that Mr. Routh was concerned about the war in Ukraine and that he believed Trump would be bad for Ukraine, the government necessarily put at issue Mr. Routh's conduct in response to his concern about the war in Ukraine. The excluded exhibits, showing Mr. Routh's participation in public protests against the war and his efforts to recruit soldiers for Ukraine's military, were direct evidence of how he was responding to his concern for Ukraine. With their exclusion, the jury was misled into believing that how Mr. Routh was attempting to help Ukraine was by assassinating Trump. Mr.

Routh's proposed defense exhibits would have completed the picture and allowed him to rebut the government's claim as to his motive.

As such, the exhibits were not extrinsic and should have been admitted as inextricably intertwined evidence. *United States v. McLean*, 138 F.3d 1398, 1403 (11th Cir. 1998) (evidence of conduct other than the charged offense is not extrinsic under Rule 404(b) if it is "(1) an uncharged offense which arose out of the same transaction or series of transactions as the charged offense, (2) necessary to complete the story of the crime, or (3) inextricably intertwined with the evidence regarding the charged offense").

Second, even if the exhibits were not inextricably intertwined, they were admissible as habit evidence under Fed. R. Evid. 406 or evidence of prior acts to show intent or modus operandi under Fed. R. Evid. 404(b). Although prior acts are inadmissible to show character, Federal Rule of Evidence 404(b) allows the admission of prior acts for another purpose, such as proving intent or modus operandi. Fed. R. Evid. 404(b)(2). Although Rule 404(b) is typically used by the government against a defendant to introduce prior bad acts by the defendant, reverse 404(b) may be invoked by a defendant under proper circumstances to introduce

prior "good" acts as exculpatory evidence. *United States v. Trujillo,* 376 F.3d 593, 605 (6th Cir. 2004); *see also United States v. Shavin,* 287 F.2d 647, 654 (7th Cir. 1961); *United States v. Garvin,* 565 F.2d 519, 521–22 (8th Cir. 1977); *United States v. Thomas,* 134 F.3d 975, 979 (9th Cir. 1998); *United States v. Quattrone,* 441 F.3d 153, 191 (2d Cir. 2006). In such cases, the same three-part test for admission applies. *United States v. Marlinga*, 457 F. Supp. 2d 769, 773–74 (E.D. Mich. 2006). Thus, for it to be admissible, first, the evidence must be relevant to an issue other than the defendant's character. Second, as part of the relevance analysis, the evidence must be sufficient to support a finding that the defendant actually committed the extrinsic act. Third, the probative value of the evidence must not be substantially outweighed by unfair prejudice. *United States v. Diaz-Lizaraza*, 981 F.2d 1216, 1224 (11th Cir. 1993).

Here, Mr. Routh's exhibits met the three-pronged test. First, the evidence is relevant to an issue other than his character. Specifically, the evidence of his prior protesting is relevant to his intent. That Mr. Routh has previously protested political events against leaders with whom he has disagreed, and attempted to thrust himself into the spotlight while doing so, is relevant to whether he was doing the same thing in this case,

or whether he intended to assassinate Trump. Indeed, that he had previously had the intent to only protest and lawfully help in the military recruitment effort when faced with the *same issue as the government used as motive here*—the war in Ukraine—speaks to his lack of intent to kill on September 15, 2024.

The second prong is easily met as the photographs are sufficient evidence that Mr. Routh committed the acts he wished to introduce. And third, the probative value of the evidence was not substantially outweighed by unfair prejudice. Rule 404(b) is a rule of inclusion. *United States v. Jernigan*, 341 F.3d 1273, 1280 (11th Cir. 2003). Moreover, in *United States v. Cohen*, 888 F.2d 770 (11th Cir. 1989), this Court recognized that this already inclusive rule must be applied even more permissively on a defense request for admission: the "standard for admission is relaxed when the [proposed 404(b)] evidence is offered by a defendant." *Id.* at 776. This makes sense given that the admission of the proposed evidence by a defendant does not threaten any prejudice to another individual at trial. *See United States v. Aboumoussallem*, 726 F.2d 906, 911–12 (2d Cir. 1984) ("[R]isks of prejudice are normally absent when the defendant offers similar acts evidence of a third party to prove

some fact pertinent to the defense. . . . In such cases the only issue arising under Rule 404(b) is whether the evidence is relevant to the existence or non-existence of some fact pertinent to the defense."). Consequently, his exhibits were admissible under Fed. R. Evid. 404(b) as evidence of his intent and modus operandi.

Mr. Routh's exhibits were also admissible as habit evidence under Fed. R. Evid. 406. Rule 406 provides: Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. A habit "is the person's regular practice of meeting a particular kind of situation with a specific type of conduct . . . ." *Loughan v. Firestone Tire & Rubber Co.*, 749 F.2d 1519, 1524 (11th Cir. 1985).

Here, the proposed defense exhibits showed Mr. Routh's "regular practice of meeting a particular kind of situation with a specific type of conduct." *Loughan*, 749 F.2d at 1524. The exhibits showed that when Mr. Routh faced a situation in which he opposed a certain action taken by a political figure, his response was to protest and attempt to gain media attention and international support.

The exhibits went directly to Mr. Routh's intent and would have tended to place the story the government painted about Mr. Routh's response to the war in Ukraine in a different light. The district court improperly excluding them infringed on Mr. Routh's Fifth and Sixth Amendment rights to present a complete defense.

C. Refusing to subpoena and excluding defense witnesses

In accord with the constitutional mandate of the Sixth Amendment, the courts should display "a liberal attitude in application of Rule 17(b)." *Greenwell v. United States*, 317 F.2d 108, 110 (D.C. Cir. 1963). As the court noted in *United States v. Romano*, 482 F.2d 1183 (5th Cir. 1973), "If the accused avers facts which, if true, would be relevant to any issue in the case, the requests for subpoenas must be granted" absent incredibility or falsehoods. *Id*. at 1195.

Here, the district court violated Mr. Routh's due process right to present a complete defense and to have compulsory process when it refused to issue subpoenas for many of Mr. Routh's witnesses, specifically character witnesses Reid Burton Smith, John Hatfield, Raymond Carrera, and expert witnesses Dr. Rodolfo Buigas and Dr. Heather Holmes.

Character witnesses. The proffered testimony of Smith, Hatfield, and Carrera was relevant and admissible. Mr. Routh averred that they knew him from different times of his life and in different ways and each would have testified to his nonviolent nature, which in turn would have rebutted the government's claim that Mr. Routh intended to kill Trump. Reid Burton Smith was Mr. Routh's high school English teacher, had known him since he was 17 years old and "knows every iota of everything that I have ever done and knows who I am better than anyone." DE 418:46–47. He subsequently trained him in roofing and construction and they worked together for a number of years. Mr. Routh said he had last spoken to him about six months prior to his arrest. *Id*. Of John Hatfield, Mr. Routh explained that he was his attorney for 20 years. He proffered that Mr. Hatfield "knows best every intricate dealings of who I am and what makes me tick. So he knows every case and every situation and every iota of my entire life. So—I roofed many houses for him and did countless projects for him. So he knows intimately, you know, who I am as a far as not being dangerous and not being harmful, and the fact that I'm just seeking to fluff my ego." DE 418:53.

Nor was the testimony improperly cumulative. As an initial matter,

the district court improperly *sua sponte* determined which character witnesses Mr. Routh was allowed to subpoena, without input from Mr. Routh as to which, if he could only call some of those listed to avoid cumulative witnesses, he would prioritize. And the witnesses the district court allowed Mr. Routh to subpoena, Erick Zuniga, Atwill Milsun, Marshall Hinshaw, and Mr. Routh's son, were subpar character witnesses. Mr. Routh had only worked with Zuniga for seven to eight years at Mr. Routh's business and had not communicated with him for five years at the time of the trial. DE 418:42. Milsun was the friend of Mr. Routh's son who lived with Mr. Routh and his family when he was in school. DE 418:44. Mr. Routh considered himself Milsun's stepfather. *Id.* at 45. Mr. Routh and Hinshaw were coworkers for a decade and their sons were in Scouts together. *Id.* at 51. While Mr. Routh stated he had been in contact with Hinshaw recently prior to his arrest, Hinshaw himself had been arrested, convicted of a drug offense and served a five-year sentence. *Id.* at 52. One of the four witnesses the court allowed Mr. Routh to subpoena was ultimately unavailable. *See* DE 325:10 (witness Zuniga was not available because of risk of deportation). After learning of the unavailability, the district court did not allow Mr. Routh to

subpoena different character witnesses. In contrast, the district court excluded the two character witnesses who knew Mr. Routh the best: Smith and Hatfield, who had known Mr. Routh since he was a teenager and for over 20 years, respectively. Neither had a criminal conviction, Mr. Routh had more recent contact with them, and they knew him from different parts of his life.[1]

While the district court does indeed have the ability to exclude witnesses because their testimony is needlessly cumulative, it must do so within the bounds of the Fifth and Sixth Amendments. It is without question that two witnesses are better than one when assessing reliability; one person attesting to a defendant's nonviolent nature may simply be mistaken, biased, or lying. Two witnesses testifying to the same nonviolent nature makes the testimony more reliable; three even more so. Further, the two he did call were short, comprising less than thirty pages of transcript total. *See* DE 335:81–107. The district court improperly limited Mr. Routh's character witnesses to subpar witnesses: his own son, a convicted felon, his "stepson," and someone Mr. Routh had

[1] Of Raymond Carrera, Mr. Routh began to proffer that Mr. Carrera was his neighbor in Hawaii, that he was a mechanic who worked on Mr. Routh's vehicle, and that they built a dock together. The court then cut him off. DE 277:84.

not communicated with in five years and who ultimately could not testify.

Mental health experts. The testimony of Drs. Buigas and Holmes went directly to the element of intent. It also painted the government's narrative in a different light. At the very least, the testimony was about a collateral matter that through a series of inferences went to the element of intent.

Mr. Routh sought to call both doctors to speak to his narcissism. DE 418:30–31, 39; DE 334:304. From that, Mr. Routh would argue that he was next to the golf course on September 15, 2024, not to hurt anyone but in performative protest to "fluff his ego", raise the alarm about the election, and get media attention to the situation. DE 334:305.

The court excluded the two doctors because (1) Mr. Routh's listing them was untimely, and thus, allowing them to testify would effectively deprive the government of a fair opportunity to respond to his evidence, and (2) the testimony was inadmissible under Fed. R. Evid. 404, 405, and 704(b). DE 249:10. The district court erred.

First, the evidence was admissible. Psychiatric evidence is not barred by the rules of evidence. On the contrary, "evidence offered as 'psychiatric evidence to negate specific intent' is admissible [] when such

evidence focuses on the defendant's specific state of mind at the time of the charged offense." *United States v. Cameron*, 907 F.2d 1051, 1067 (11th Cir. 1990). Specifically, for a specific intent crime, such as Count 1 here, psychological evidence can be used simply to negate *mens rea*. *Id*. And psychiatric evidence negating intent is not restricted to reputation and opinion evidence under Rules 404 and 405 as the district court analyzed it. *See id*.

Nor was the evidence barred by Rule 704's prohibition on an expert testifying to whether a defendant had a mental state that constitutes an element of the crime charged or a defense. *See* Fed. R. Evid. 704(b). Rule 704 does not prohibit testimony about a psychological condition that negates *mens rea*. *See, e.g.*, *Cameron*, 907 F.2d at 1067. Mr. Routh did not seek to have the experts testify that he did not intend to kill Trump on September 15. He only sought to have them testify to his trait of narcissism and what that entails. He could then use that to argue to the jury how such a trait played into his staging a provocative protest outside the golf course on September 15. Consequently, the evidence was not barred by Fed. R. Evid. 704(b).

Mr. Routh sought to admit evidence of his narcissism to do precisely

what it is allowed for: negate intent. His narcissism would help the jury understand why a person would stage such a protest: because he sought out opportunities to thrust himself into the spotlight and "fluff his ego." The district court also erred by excluding the evidence as untimely. Although Mr. Routh disclosed the witnesses after the court's imposed deadline, he still disclosed them *one month* before trial. DE 229. When a party in a criminal case fails to comply with a Fed. R. Crim. P. 16 discovery order, the district court "may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances . . . ." Fed. R. Crim. P. 16(d)(2). In exercising its discretion related to late disclosures, the district court must consider several factors: "the reasons why disclosure was not made, the extent of the prejudice, if any, to the opposing party, the feasibility of rectifying that prejudice by a continuance, and any other relevant circumstances." *United States v. Sarcinelli*, 667 F.2d 5, 6–7 (5th Cir. 1982). After consideration of these factors, if it determines a sanction is necessary, "the court should impose the least severe sanction that will accomplish the desired result—prompt and full compliance with the

court's discovery orders." *United States v. Euceda-Hernandez*, 768 F.2d 1307, 1311–12 (11th Cir. 1985). "The presence of a clear violation of a discovery order does not excuse a trial judge from weighing the factors cited above and imposing the least severe, but effective, sanction." *Id.* (holding court abused discretion and reversing order suppressing evidence as sanction for late discovery when continuance would have cured prejudice); *United States v. Burkhalter*, 735 F.2d 1327, 1330 (11th Cir. 1984) (same). "By suppressing [] evidence rather than granting a continuance or recess, a trial judge may achieve a speedier resolution to a criminal case and reduce his docket, but he does so at the expense of sacrificing the fair administration of justice and the accurate determination of guilt and innocence." *Euceda-Hernandez*, 768 F.2d at 1312.

Here, in excluding Mr. Routh's witnesses, the district court failed to consider these factors and then impose the least severe sanction: a continuance. First, the court failed to consider the reason for the late filing. Initially, in December 2024, Mr. Routh, through counsel, requested a continuance, asking for a status in approximately June 2025 to determine an appropriate trial date, or alternatively, to continue the trial

to December 2025. DE 82:15. In Mr. Routh's motion, counsel specified that additional time was needed to retain defense experts. DE 82:13. The court denied it and set a deadline for defense disclosure of mental health experts of February 3, 2025. DE 249:7. Then, at the time of the deadline, Mr. Routh was represented by counsel who ultimately did not represent him at trial. Further, by the deadline, although Dr. Holmes had completed several visits with Mr. Routh, she had not completed her report, and it was only completed July 23. DE 241:32. It was soon after that that Mr. Routh, as his own attorney for the first time, alerted the court and government on August 8, 2025, *one month* before the trial date, that he wanted to present expert testimony as to his diagnosed narcissism. But the court considered none of the reasons behind the late disclosure.

Further, and more importantly, the trial court failed to consider the least severe sanction: a continuance. Neither the government nor the court articulated any prejudice from a continuance other than the delay itself. *See* DE 236:2. The district court stated that "prejudice resulting from the untimeliness of the Motion is significant," but thereafter only cited to the fact that it came after the deadline. DE 249:8. The delay itself

without further findings as to prejudice resulting from the delay, is insufficient to establish prejudice to the government. *See CANVS Corp. v. Nivisys, LLC*, No. 2:14-CV-99-FTM, 2014 WL 6883123, at *5 (M.D. Fla. Dec. 5, 2014) ("It is well settled that [m]ere delay in the litigation does not establish undue prejudice.") (internal quotations omitted).

At the time Mr. Routh disclosed the witnesses, there was still one month before trial and the government identified no prejudice that would have resulted had a continuance been granted. Consequently, the district court's failing to grant the less severe sanction of a continuance was error.[2] *See Campbell v. Keystone Aerial Surys., Inc.*, 138 F.3d 996, 1001 (5th Cir. 1998) (reversing where court failed to consider whether continuance could cure potential prejudice after party's late disclosure of expert witness); *Sarcinelli*, 667 F.2d at 6–7 (reversing order suppressing evidence that was disclosed late where "other less severe sanctions could have been imposed" and court did not consider continuance or articulate why any prejudice could not be solved by a continuance).

The court's refusal to issue subpoenas and exclusion of the witnesses violated Rule 17 and Mr. Routh's due process rights.

[2] Notably, at the same time, the court denied Mr. Routh's motion to exclude late-disclosed government evidence. DE 277:88.

D. Excluding portions of the "Dear World" letter that gave context to the portion admitted by the government and negated an intent to kill

Rule 106 provides that if "a party introduces all or part of a statement, an adverse party may require the introduction, at that time, of any other part—or any other statement—that in fairness ought to be considered at the same time." Fed. R. Evid. 106. The rule thus requires the court to allow the adverse party to introduce other portions of the same or other statements that "qualify, explain, or place into context the portion already introduced." *United States v. Pendas-Martinez*, 845 F.2d 938, 944 (11th Cir. 1988).

The portion of the letter Mr. Routh sought to introduce was relevant and necessary to "qualify, explain, or place into context the portion already introduced." *Id.* The government used the portion it admitted, which read, "This was an assassination attempt on Donald Trump but I am so sorry I failed you" as evidence that Mr. Routh had the intent to assassinate Trump on September 15, 2024. As the government stated in closing argument, "it's not every case where the defendant writes down his intent on a piece of paper, but that is the evidence in this case." DE 336:8. The portions of the letter Mr. Routh sought to introduce gave

context to what the government's portion was referring to and rebutted the government's argument that those words established his intent to kill on September 15, 2024.

First, the portion on page 12 about mechanisms to "shred his airplane" was what the page 1 "assassination attempt" was referring to, and thus showed that the "assassination attempt" on page 1 had nothing to do with what happened near the golf course on September 15, 2024. DE 277:96. Additionally, the letter referred to voters "doing the right thing," which necessarily means Trump was standing for election and thus, refutes an intent to kill. *See* DE 303-10:4. Finally, the signature of "The Failure" was important. If in fact the sentence about an assassination attempt was speaking of his intent on September 15, as the government argued, then his signature as "The Failure" is just as telling: if he intended to "fail" at an assassination, then he never had the intent to actually kill.

The district court's ruling did not just violate a rule of evidence, but rose to the level of a due process violation given the significance of the letter in the government's case and that the evidence had a direct bearing on a formal element of the charged offenses. *See Hurn*, 368 F.3d at 1363.

The government used the small portion of the letter taken out of context as one of its primary pieces of evidence to show that what Mr. Routh did on September 15 was an assassination attempt. Indeed, it was the first thing the government mentioned in closing. DE 336:8. In its response to Mr. Routh's motion for judgment of acquittal, the government pointed to this letter as one of the primary pieces of evidence that Mr. Routh intended to assassinate Trump on September 15, 2024. *See* DE 334:280 (pointing only to two government exhibits of Mr. Routh's text messages and the "Dear World" letter as evidence of intent in response to defense argument for judgment of acquittal). Mr. Routh had a due process right to answer that claim. And in this case, the answer was within the letter itself, a statement showing the portion introduced by the government had nothing to do with what occurred on September 15, that he anticipated voters having a choice on election day, and that he envisioned himself as "The Failure." The jury could have disbelieved Mr. Routh's argument, but due process demands that he should have been allowed to make it.

The due process violation went even further. In the government's rebuttal closing argument, the government argued that Mr. Routh's failure to defend against the letter in his closing argument was itself

evidence of his intent to kill. DE 336:93–94 ("But where have we seen 'sorry' in the evidence? Well, of course, *we know it's in this letter that the defendant did not address in his speech just now*, talking about an assassination on Donald Trump, clearly contemplating it, clearly encouraging it and wanting it.") (emphasis added). To allow the government to insinuate that Mr. Routh had no defense to the government's interpretation of the "Dear World" letter after his response to it had been excluded is fundamentally unfair and a violation of due process.

The district court's exclusion violated Fed. R. Evid. 106, was an abuse of discretion, and violated Mr. Routh's due process right to a fair trial.

Finally, the admission of the government's portion of the letter while excluding the section Mr. Routh sought to admit that explained it was a different scheme to assassinate Trump resulted in an improper variance. A variance occurs "when the evidence at trial establishes facts materially different from those alleged in the indictment." *United States v. Lander*, 668 F.3d 1289, 1295 (11th Cir. 2012) (internal quotations omitted). The indictment alleged that Mr. Routh attempted to kill Trump

on September 15, 2024. The evidence of the "assassination attempt" in the letter was from at least five months before that. Hence, by arguing the assassination attempt in the letter was the assassination attempt sufficient to establish the crime, the government sought to prove the charged crime on September 15 with evidence of a different incident. Such a variance requires reversal.

E. Denying Mr. Routh's proposed *voir dire* questions that tested the jurors' views on his defense.

Jury selection is the primary means by which our judicial system enforces a defendant's constitutional right to be tried by a jury free from prejudices which might unfairly influence its determination of his guilt or innocence. *United States v. Bates*, 590 F. App'x 882, 885 (11th Cir. 2014) (citing *Gomez v. United States,* 490 U.S. 858, 873 (1989)). At a minimum, the court's *voir dire* must "provide reasonable assurance that prejudice will be discovered if present." *United States v. Hill,* 643 F.3d 807, 836 (11th Cir. 2011). When deciding whether a defendant's conviction should be reversed, "the central inquiry is whether the district judge's overall examination, coupled with his charge to the jury, affords a party the protection sought." *United States v. Delval,* 600 F.2d 1098, 1102–03 (5th Cir. 1979) (quotation marks omitted).

To decide whether the court is required to ask questions about a specific, potentially prejudicial topic, this Court must consider whether "juror prejudices are reasonably suspected." *United States v. Ochoa–Vasquez,* 428 F.3d 1015, 1037 (11th Cir. 2005). To answer this question, the Court must look to all of the circumstances of the case to see if there is "a constitutionally significant likelihood that, absent questioning about [the potential] prejudice, the jurors would not be indifferent as they stand unsworne." *Ristaino v. Ross,* 424 U.S. 589, 596 (1976) (alteration marks omitted) (quotation marks omitted). This depends on whether the evidence is (1) in fact a potential source of prejudice, and (2) "inextricably bound up" with the evidence to be presented at trial. *Id.* at 597. A need for a "searching *voir dire* examination" exists where the "case involves matters concerning which either the local community or the population at large is commonly known to harbor strong feelings that may stop short of presumptive bias in law yet significantly skew deliberations in fact." *United States v. Robinson,* 475 F.2d 376, 381 (D.C. Cir. 1973) (footnotes omitted).

Mr. Routh proposed two questions about the First Amendment for the juror questionnaire: (1) Do you have any opinions concerning the

First Amendment or the laws governing the freedom to engage in political speech that would affect your ability to be fair and impartial in any criminal case that might involve protected political expression? If yes, please explain; and (2) Do you believe that the protections afforded to political expression/political speech pursuant to the First Amendment should be repealed? DE 177:10 questions 38 and 39. He also asked the court to include in *voir dire* the question: "Can students supporting Palestinians be able to protest/tent city in designated neutral space?" DE 221. The court rejected all three. DE 276; DE 325:7. By contrast, the court announced it would be "incorporating most but not all of the questions offered by the United States." DE 325:7. The court rejected the last question Mr. Routh proposed for *voir dire* because it did not have any "relevance whatsoever to the essential elements." DE 325:7.

Political speech about Trump, the First Amendment's guaranteed protection of even unpopular speech, and the right to protest political and potentially unpopular causes are certainly matters on which the community is commonly known to harbor strong feelings. And this evidence was inextricably bound up with the evidence presented at trial. The government introduced political speech from Mr. Routh against

Trump. And Mr. Routh's theory of defense was that he was rightfully on public land, protesting for a political cause. Consequently, the district court had an obligation to inquire of the potential jurors about their views on the First Amendment and a person's right to protest a political cause. That is precisely what Mr. Routh asked the court to do with the above three questions. Instead, the court's *voir dire* made no attempt to uncover prejudices related to a person's right to political speech and to protest.

The court's instruction on the First Amendment did not cure this miscarriage of justice. If anything, it only heightened it by telling jurors that the First Amendment was *not* a defense to the crimes charged. *See* DE 327:150. While it is true that the First Amendment does not give a person the right to attempt to kill someone or commit an aggravated assault against another, to say that it was not a defense at all to the crimes charged missed the nuance that Mr. Routh was attempting to highlight: the First Amendment does give a person a right to protest a political candidate on public land, even with a firearm. The court never instructed the jury as to that.

The test is not, as the district court considered it, whether a question relates to "the essential elements." It is whether jurors harbor

biases that would prevent them from fairly considering the evidence in the case, including a defense. A juror who believes that political protest is not legitimate activity, or who would not credit that a person could lawfully stand at a public fence line to protest, could not fairly evaluate Mr. Routh's evidence. The court's blanket refusal left that bias unexplored. And because the government then argued that Mr. Routh had no explanation for being there (DE 336:24), the jury was never screened for the very bias the government's argument exploited.

* * *

The primary issue in this case was whether Mr. Routh, when he was outside the golf course, had the intent to kill Trump. The district court annihilated his ability to present a complete defense by excluding nearly every piece of defense evidence, evidence that was relevant and admissible. These errors individually and together resulted in a constitutionally unfair trial.

VI. The district court violated Mr. Routh's due process right to a fair trial when it cut off his opening statement and closing argument.

Inherent in the Due Process Clause's guarantee to a fair trial is that district courts treat the parties fairly. *See United States v. Hernandez*,

182 F.4th 1372, 1378 (11th Cir. 2026) (district court abused its discretion in granting government more time for closing argument than it granted defendant); *Alston v. West*, 340 F.2d 856, 858 (7th Cir. 1965) ("It is our view that a trial judge in the federal judicial system has wide discretion in such matters as length of counsel's argument as long as he treats both sides substantially alike, and does not give one side a preference or advantage over the other.").

A. The court's unwarranted wholesale termination of Mr. Routh's opening statement was an abuse of discretion and violated due process.

While courts have discretion to limit opening statements or not allow them altogether, that discretion is abused when a court improperly cuts off a party. *United States v. Breedlove*, 576 F.2d 57, 60 (5th Cir. 1978) (finding error where district court improperly limited defense's opening statement, although harmless in that case). That is precisely what happened here.

The court cut Mr. Routh off completely after six minutes without having sustained a single government objection. DE 328:39–45. Mr. Routh's statements, although at times confusing and unfocused, were not prejudicial to the government, nor were did they violate a specific court

order with respect to excluded evidence. *See id*. He was not being unruly or combative. Nor was *everything* confusing and unfocused. Mr. Routh had begun discussing intent and told the court he planned to move to his nonviolent nature and the Constitution. *Id*. The court then cut him off mid-sentence.

Moving to the most extreme remedy—wholesale termination—was not warranted when the court could have simply sustained the government's objections, if appropriate. This is even more the case given Mr. Routh was *pro se*, as courts do and should show a leniency to *pro se* litigants not enjoyed by those with the benefit of a legal education. *GJR Invs., Inc. v. Cnty. of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998); *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998) ("*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys.").

Even in instances in which a defendant is being disruptive in the trial process, trial courts are required to exhaust graduated measures before resorting to more severe tools. For example, confronted with a defendant who disrupts the orderly conduct of a trial, the Supreme Court has cautioned that the most severe of those options should be used only

"as a last resort." *Illinois v. Allen*, 397 U.S. 337, 343–44 (1970). The same logic applies here. But unlike the defendant in *Allen*, Mr. Routh was not disrupting the trial; he was, however imperfectly, attempting to deliver the very opening statement the court had granted him.

Once the district court had already granted the government the full forty minutes, and Mr. Routh was several minutes into delivering his own, due process required that he be allowed to use the time allotted him absent something extraordinary, and that any remedy for improper content be proportionate to the transgression. It forbade the district court from terminating the entire remainder of his statement, in front of the jury and without explanation, when narrower tools remained available.

Additionally, because Mr. Routh was representing himself, the court's termination of his opening statement implicated his right to control the content of his defense, underscoring why due process demanded a narrower remedy. A defendant who elects to proceed *pro se* retains the right to "control the organization and content of his own defense." *McKaskle v. Wiggins*, 465 U.S. 168, 174 (1984). Among the activities *McKaskle* identifies as central to that right is the ability to "address the court and the jury at appropriate points in the trial." *Id.* at

174. Cutting off Mr. Routh's opening statement after six minutes when the court had allotted him forty prevented him from addressing the jury at the appropriate point in the trial.

B. The court violated Mr. Routh's due process right when it limited his closing argument.

Unlike an opening statement, a closing argument is constitutionally guaranteed, for "[i]n a criminal trial, which is in the end basically a factfinding process, no aspect of such advocacy could be more important than the opportunity finally to marshal the evidence for each side before submission of the case to judgment." *Herring*, 422 U.S. at 862–64. While the district court generally has broad discretion over closing arguments, "[d]enial of the opportunity to make a final argument to the trier of fact, is a denial of the basic [constitutional] right of the accused to make his defense." *United States v. Arbolaez*, 450 F.3d 1283, 1294–95 (11th Cir. 2006) (overturned on other grounds) (quoting *Herring*, 422 U.S. at 859, 865). A court commits reversible error when it improperly limits the argument of defense counsel. *United States v. Hall*, 77 F.3d 398, 401 (11th Cir. 1996) (remanding for new trial where defense was prevented from making argument regarding reasonable doubt in closing).

Here, the court improperly cut short Mr. Routh's closing argument. The court allotted both sides one hour and 45 minutes. DE 334:310. The court allowed the government the full one hour and 45 minutes it was promised. Then, in the middle of Mr. Routh's closing argument, the court, without any objection made by the government, sent the jury out and asked Mr. Routh how much longer he intended to speak for his closing argument, despite having already told him he had one hour and 45 minutes. As such, Mr. Routh first resisted giving a specific time limit. But the court demanded he give a specific time limit. It was only then that Mr. Routh gave a number of "five minutes." DE 336:84. The court then communicated to Mr. Routh that he could not take any longer than those five minutes by asking him, "What do you intend to do with the five minutes you wish to speak additionally?" *Id*. With this, the court put a limitation on Mr. Routh's time for his closing argument, as shown by Mr. Routh, after continuing for only a few minutes longer, stating, "But with that, I think I'm done with the time that I'm allotted." DE 336:89. But Mr. Routh should have had 50 minutes remaining. DE 336:89.

The court's improper limitation of Mr. Routh's closing argument impeded Mr. Routh's constitutional right to due process and right to

"control the organization and content of his own defense." *Hernandez*, 182 F.4th at 1378; *McKaskle*, 465 U.S. at 174. This is not to say that closing arguments in a criminal case must be uncontrolled or even unrestrained. The court may limit counsel to a reasonable time, may sustain objections and redirect the speaker. But interrupting Mr. Routh, requiring him to set a time limit and then communicating to him that he would be all the time he was allowed after initially telling him he had one hour and 45 minutes, while allowing the government the full time and to comment on things Mr. Routh did not say in his truncated closing argument, was an improper and inequitable limitation.

The court improperly cut off Mr. Routh's opening statement and then impeded his constitutionally protected right to give a closing argument. Both require reversal.

VII. The government improperly elicited from expert witnesses testimony as to Mr. Routh's intent in being outside the golf course on September 15, the primary issue in debate.

Fed. R. Evid. 704(b) provides: "In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone." Fed.

R. Evid. 704(b). The Supreme Court in recent years confirmed the line: an expert may describe what "most people" in a group know or intend, but may not give an opinion about what *all* people in a specific group intend. *Diaz v. United States*, 602 U.S. 526 (2024). In such case, it is the same as saying the defendant her- or himself must have had the same intent. The Court explained that an expert testifying that "all people in the defendant's shoes" share a mental state violates the rule. *Id*. at 536.

The government's expert witnesses Nicholas Schnelle and Erich Smith did just that. The government presented Agent Nicholas Schnelle as an expert "in sniper tradecraft, to include positioning, concealment, and marksmanship." DE 333:65. Yet the government used him to opine on precisely the factor the rules and due process forbid: Mr. Routh's mental state with respect to Counts 1–3.

The government deliberately elicited the following:

> Q. Sir, let me ask you: With a rifle positioned as it was in the hide, in those photographs that we saw at Government's Exhibit 176—if I told you that the safety was off—as we saw in the photograph, the safety was off on this rifle, there was a chambered round in this rifle, positioned as it is here, and there was a camera pointed toward the 6th hole flag, in your opinion, what is the user of the rifle intending to do?

A. He is intending to engage his target.

Q. And when you say "engage his target," what do you mean by that?

A. Take shots to kill his target.

DE 333:104–05. The government ended its direct on that answer. *Id.* at 105.

This was not the type of general testimony permitted by *Diaz*, testimony about what some, or even most, snipers do. The question was specifically about the facts of this case, and the person with the rifle in this case. In the government's question, "the user of the rifle" is only Mr. Routh. And the opinion was the element itself: that the person holding that rifle, Mr. Routh, had an intent to kill. It is even more direct than the "all people in the defendant's shoes" testimony that *Diaz* said would violate the rule.

This was not the only time the government elicited expert testimony on intent. The government elicited from its firearms expert, with respect to the SKS rifle recovered from the scene:

Q. Do you have an opinion as to whether intentional thinking is required to fire this gun with that magazine?

> A. Yes. You have to have some plan on what you're going to do.

DE 330:182.

The error was plain: Rule 704(b) prohibits an expert witness from testifying that a defendant had the requisite mental state to commit a crime. The Supreme Court made clear the difference between a hypothetical in which a witness discusses whether "most" people in that situation would have a certain mental state (which is permissible) and testimony about a hypothetical that necessarily includes the defendant (which is prohibited) long before the trial in this case. And Mr. Routh's intent was the primary disputed issue in the trial. Given that the gun was never fired and that intent was the only element Mr. Routh contested with respect to Counts 1–3, the government eliciting testimony from multiple experts that Mr. Routh—or the "user of the rifle" who was only Mr. Routh—had the intent to kill and intent to fire the gun undoubtedly affected Mr. Routh's substantial rights and the fairness and public reputation of judicial proceedings. This Court has recognized the power of expert witnesses and the weight behind their opinions and testimony. *See*, *e.g.*, *United States v. Frazier*, 387 F.3d 1244, 1263 (11th Cir. 2004) (recognizing the "powerful and potentially misleading effect of expert

evidence" and that it "may be assigned talismanic significance in the eyes of lay jurors"). The government deliberately put that persuasive weight of expert testimony behind the prohibited question and answer that should have been left to the jury.

VIII. The district court erred in refusing to instruct the jury that Mr. Routh had to have the intent to kill when he took the substantial step required for an attempt.

A criminal defendant is entitled to a correct jury instruction on the elements the government must prove. *Bearden v. United States*, 320 F.2d 99, 103 (5th Cir. 1963). An essential element for an attempt is that the defendant had the requisite intent at the time he took the substantial step an attempt requires. *See* Eleventh Circuit Pattern Jury Instruction O47, Attempted Murder, 18 U.S.C. § 1113 (listing as element of crime that "when Defendant took that [substantial] step, he intended to kill the victim"); *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, was congenial to an intense individualism and took deep and early root in American soil.") (emphasis added); *United States v. Fox*, 95 U.S. 670, 671 (1877) ("The criminal intent essential to the commission of a public

offence must exist when the act complained of is done: it cannot be imputed to a party from a subsequent independent transaction.").

Here, the court misinstructed the jury on the elements of Count 1 by failing to instruct it that the government had to prove beyond a reasonable doubt that Mr. Routh had the intent to kill *at the time* he took the substantial step. For Count 1, the court adopted the instruction drafted by the government that told the jury that the government had to prove two elements: that Mr. Routh intended to kill Trump, and that the intent "was strongly corroborated by his taking a substantial step toward committing the crime." DE 295:16; DE 335:131. The court refused to incorporate Mr. Routh's request to add the element from this Circuit's pattern instruction for attempted murder, O47, that states that the government must prove that (1) "the Defendant did something that was a substantial step toward killing the victim;" and (2) "when the Defendant took that step, he intended to kill the victim." Eleventh Circuit Pattern Jury Instruction, O47 – Attempted Murder, 18 U.S.C. § 1113; DE 231.

This omission was particularly problematic here where the government's evidence spanned different events separated in time. The

government's proof on Count 1 rested on two distinct categories of evidence: evidence of Mr. Routh's statement that this was an "assassination attempt" from the "Dear World" letter about events that occurred at least five months before the charged conduct, and evidence of his conduct in the weeks leading up to and at the golf club on September 15, 2024, the latter of which the government argued constituted the substantial step. *See* DE 336:91–92 (government in closing telling the jury it "can find substantial steps taken by this defendant starting on August 2nd, long before September 15th"); DE 336:21–27 (government in closing walking jury through list of potential substantial steps starting with buying the rifle on August 2 and moving forward in time). Thus, there was a significant risk that the jury believed it could, and in fact did, find that an intent to kill that Mr. Routh had when he wrote the "Dear World" letter itself was the intent sufficient for Count 1, regardless of whether Mr. Routh carried that intent forward when he took the required substantial step related to the incident on September 15, the incident with which he was charged. An intent related to a prior act is not the intent required to convict on a different act. Nowhere did the court make that clear to the jury.

On the contrary, the other jury instructions the court gave further confused the issue. For example, with respect to 404(b) evidence, the district court instructed the jury that it could consider evidence of the defendant's *conduct* "on other occasions" "for the limited purpose of . . . determining whether the Defendant had the *state of mind or intent necessary to commit the crime charged*." DE 317:11. In other words, for this particular issue where the court failed to tell the jury that the intent must coexist with the substantial step, the 404(b) instruction suggested that a state of mind that Mr. Routh had at a prior time is sufficient intent necessary for Count 1, regardless of whether that intent existed at the time Mr. Routh took the substantial step connected to the crime with which he was charged.

A district court's failure to instruct on the factual question dividing the parties is not a harmless omission; it goes to the heart of the defense. A defendant who once expressed, or even genuinely held, a wish to kill someone, but who did not possess that intent at the moment he engaged in the conduct the government points to as the substantial step, has not committed an attempted killing. He has, at most, thought about one. The

court's failure to instruct the jury on an essential element of Count 1 renders the conviction invalid.

The court's refusal to include this element was also error because it was an improper denial of a defense-requested instruction. A defendant is entitled to a requested jury instruction that has a foundation in the evidence and the law. *United States v. Hedges*, 912 F.2d 1397, 1405 (11th Cir. 1990). A district court's refusal to give a defendant's requested instruction is reversible error when: (1) the requested instruction was substantially correct; (2) the instruction actually given did not substantially cover the requested instruction; and (3) the failure to give the requested instruction seriously impaired the defendant's ability to present an effective defense. *United States v. Chirinos*, 112 F.3d 1089, 1101 (11th Cir. 1997). Each of these three requirements is satisfied here.

First, Mr. Routh's requested instruction was substantially correct, as noted above. Even more, the language requested by Mr. Routh came from this Circuit's pattern jury instruction for attempted murder, instruction O47, meaning this Circuit has already determined that this is an essential element of the crime of attempt that it should be specifically stated to the jury.

Second, the instruction was not covered in the rest of the instructions. The passive construction of the given instruction, intent "was strongly corroborated by" a step, never told the jury when the required intent had to exist. Read literally, a juror could conclude the element was satisfied by finding only that Mr. Routh, at some point, intended to kill the victim, and that he, at some point, took a substantial step, without ever being told the two had to coincide. No other instruction filled that gap.

Third, the court's refusal to give it "seriously impaired the defendant's ability to present an effective defense." *Chirinos*, 112 F.3d at 1095, Here, the concurrence of intent and act was not a peripheral issue at trial, but the primary issue as described above.

IX. Count 3 must be vacated because the court failed to instruct the jury on an essential element of the crime.

As stated above, a criminal defendant is entitled to a correct jury instruction on the elements the government must prove and the failure to instruct the jury on an essential element of a crime has been held to be plain error. *United States v. Bonavia*, 927 F.2d 565, 571 (11th Cir. 1991).

Here, the court failed to instruct the jury on an essential element of Count 3: that the government had to prove beyond a reasonable doubt that Mr. Routh committed the assault on the federal officer with the intent to commit another felony.

Count 3 charged Mr. Routh with assaulting a federal officer in violation of 18 U.S.C. § 111(a)(1) and (b). Section 111 creates three separate crimes: (1) simple assault, (2) felony assault where it involves physical contact or the intent to commit another felony, and (3) assault with a deadly or dangerous weapon. *United States v. Siler*, 734 F.3d 1290, 1296 (11th Cir. 2013). This Circuit's pattern jury instructions list the elements the government is required to prove to convict for the latter two. *See* Eleventh Circuit Pattern Instructions O1.1 and O1.2. Accordingly, the elements for assaulting a federal officer with the intent to commit another felony, the charge in Count 3, that the government had to prove beyond a reasonable doubt were:

> 1) The defendant forcibly assaulted the person described in the indictment;
>
> 2) The person assaulted was a federal officer performing an official duty; and
>
> 3) The defendant's acts involved the intent to commit another felony.

Eleventh Circuit Pattern Jury Instruction O1.1.

However, the district court did not instruct the jury that one of the elements the government had to prove beyond a reasonable doubt in order to convict Mr. Routh of Count 3 was that when he acted, he had the intent to commit another felony. Instead, at the government's request, the court instructed the jury that it could find Mr. Routh guilty of Count 3 if the government had proved beyond a reasonable doubt only two elements: (1) the Defendant forcibly assaulted, opposed, impeded, intimidated, or interfered with the person described in the indictment; and (2) the person was a federal officer performing an official duty. DE 215:24; DE 335:134. The jury was instructed that it was only after it had already found Mr. Routh guilty of Count 3 that it should simply "answer the question" of whether Mr. Routh's acts involved the intent to commit another felony and whether he used a deadly or dangerous weapon. Noticeably missing from the instructions regarding "answering the question" of whether Mr. Routh acted with the intent to commit another felony was an instruction that it was an element of the crime that the jury had to find beyond a reasonable doubt. This was error. *See, e.g.,*

United States v. Pope, 561 F.2d 663, 670 (6th Cir. 1977) (failure to instruct on one element of crime was plain error).

Because the court omitted an essential element of Count 3, the conviction must be vacated.

X. The cumulative effect of the errors at trial requires reversal of all counts.

In addition to each of the errors identified above, the trial was infected by a series of further errors. The Fifth and Sixth Amendments guarantee a fair trial, not a perfect one, but the cumulative error doctrine recognizes that "an aggregation of non-reversible errors (i.e., plain errors failing to necessitate reversal and harmless errors) can yield a denial of the constitutional right to a fair trial, which calls for reversal." *United States v. Baker*, 432 F.3d 1189, 1223 (11th Cir. 2005) (quoting *United States v. Munoz*, 150 F.3d 401, 418 (5th Cir. 1998)); *see also Chambers*, 410 U.S. at 290 n.3, 302–03. This Court considers the errors together, in light of the trial as a whole, and asks whether their combined effect so infected the proceedings that the verdict cannot be trusted. *Baker*, 432 F.3d at 1223.

A. The case agent gave improper expert and lay testimony, substituting her own opinion for that of the jury and giving the government's closing argument from the witness stand.

Case agent Kimberly McGreevy's testimony went far beyond permissible testimony when she told the jury what inferences to draw from the evidence, commented on and summarized the testimony of other witnesses, speculated on the meaning of Mr. Routh's song lyrics, interpreted uncoded and ordinary language, improperly summarized the entirety of the government's case, testified as an unnoticed and unqualified expert, and provided the government's closing argument from the witness stand.

This Court previously addressed a similar error in *Hawkins*, 934 F.3d 1251. In *Hawkins*, the government called an agent who was "both the lead case agent in the investigation and the Government's principal witness at the trial." *Id.* at 1261. The agent testified as both a lay and expert witness. The district court had ruled the agent could testify to certain coded "drug jargon" and information about how to cook crack. *Id.* However, at trial, the agent's testimony quickly "stray[ed] from its projected and permitted scope, going well beyond interpreting code and explaining drug trafficking practices." *Id.* at 1262. Ultimately, the agent

summarized evidence, speculated about what was transpiring in phone calls and messages, interpreted uncoded and ordinary language, and drew inferences from the evidence that the jury had to draw or not draw for itself. *Id*. This Court found the testimony was inadmissible as either expert or lay testimony. In doing so, this Court emphasized that even if the agent had been presented solely as a lay witness, "a case agent testifying as a lay witness may not explain to a jury what inferences to draw from recorded conversations involving ordinary language. At that point, his testimony is no longer evidence but becomes argument." *Id*. at 1265 (citing *United States v. Freeman*, 730 F.3d 590, 598 (6th Cir. 2013)). This Court found that the agent's testimony "strayed into speculation and unfettered, wholesale interpretation of the evidence. Allowance of this testimony constituted plain error." *Hawkins*, 934 F.3d at 1261.

Here, Agent McGreevy's testimony strayed into the same impermissible territory. The overwhelming majority of Agent McGreevy's testimony concerned matters she did not investigate herself. She was off duty on September 15, the date of the incident, and spent the investigation at the command post "overseeing operations," signing documents, and assigning leads. DE 333:218–21. She did not search the

Xterra, process the hide, execute the North Carolina or Hawaii searches, extract the phones, or analyze the cell-site data. From the stand she disclaimed any role in the forensic decisions (DE 334:251, 256) and admitted she had never seen some of the key physical evidence (DE 334:206). Yet her testimony dwarfed the length and content of any other government witness. Across nearly 300 pages of testimony, over twice that of the next longest witness, she mostly recounted what other agents had recovered, what other witnesses had already said, and what records other investigators had obtained. The purpose of her testimony was primarily an improper one: to give the government's closing argument from the witness stand.

Her testimony was also improper in that she repeatedly told the jury what inferences to draw from the evidence. For example, she told the jury that *from the evidence she had determined* that Mr. Routh was at one point "inside the fence, so inside the golf course" (DE 333:253–54), that he was "conducting physical and electronic surveillance" and "electronic and physical stalking [sic] the President" (DE 334:78), that he was "tr[ying] to hide himself" during the time from August 14 to September 15 (DE 334:163), that when he was at the tree line outside the

golf course he "was lying in wait" (DE 334:230), that he was "singularly and excessively focused" on the "stalking of the . . . President" (DE 334:271), and that he was "intending to flee to Mexico" (DE 334:272). All this testimony went to the primary issue in debate: intent.

She also improperly interpreted and speculated about the meaning of song lyrics the government attributed to Mr. Routh that were either simply ordinary language that needed no special expertise to interpret, or language for which Agent McGreevy had no basis to offer an interpretation. For example, she testified to the meaning of "put a cap in it," "bullets fly round and round," and "scope set and rifle steady," among many other phrases, in sum testifying that these were about intending to kill Trump. DE 334:227–230. At many points, her testimony revealed that many times she was speculating, using words like "potentially," "appears," "could mean," and "suggest," and giving potential alternative meanings. This testimony also went to Mr. Routh's intent. Such speculation and interpretation of ordinary language was improper. *Hawkins*, 934 F.3d at 1264–65 ("Nor was it proper for Agent Russell to speculate about what was transpiring in phone calls and messages or to 'interpret' uncoded, ordinary language.").

Agent McGreevy's testimony was also rife with claims for which she had no personal knowledge, and her only way of knowing such was from other witnesses' statements. For example, she testified that Mr. Routh bought the rifle from Ronnie Oxendine and was assisted in the transaction by Tina Cooper. DE 334:44–45. Yet Agent McGreevy had no personal knowledge of whether Mr. Routh purchased an SKS rifle from Ronnie Oxendine and was assisted by Tina Cooper. The only basis for such testimony from Agent McGreevy was from the testimony of Oxendine. She also testified to what Mr. McGee saw and did: that he saw Mr. Routh fleeing from the golf course, took a video and gave the video and license plate to law enforcement. DE 334:237–38.

This testimony violated Fed. R. Evid. 602 and 802 and improperly bolstered the testimony of other witnesses and the government's own investigatory conclusions. A witness may not comment on the credibility of another witness. *United States v. Hipps*, 857 F. App'x 1002, 1008 (11th Cir. 2021). The testimony and the conclusions and inferences that she made told the jury that she, and the government with her, believed the other evidence to be credible, improperly bolstering the other witnesses' testimony, and thereby, the government's theory. *See United States v.*

Schmitz, 634 F.3d 1247, 1269 (11th Cir. 2011) (explaining that "credibility determinations are to be made by the jury, not the testifying witness") (citations omitted).

This leads to an adjacent but equally troubling error with Agent McGreevy's testimony: throughout her two days of testimony she repeatedly told the jury that based on her investigation "there is evidence" of numerous key points the government sought to prove to the jury. For example, she testified that "there was evidence": establishing that certain cellphones belonged to Mr. Routh (DE 333:223–24, 226), tying Mr. Routh to the 6th hole of the Trump International Golf course (DE 333:250), "associating or linking the defendant to the contents of that box [left in North Carolina]" (DE 334:30), that "the defendant was using his various cell phones to research that SKS rifle" (DE 334:62–63), of Mr. Routh's surveillance of the Trump International Golf Club (DE 334:117) and Mar-a-Lago (DE 334:123), of "the defendant conducting electronic surveillance of the President" (DE 334:124), that "the defendant engage[d] in concealment or try to hide himself [] while he was in Palm Beach County from August 14th to September 15th" (DE 334:163), that there was "an escape plan" (DE 334:204), and that she was ultimately

"able to uncover evidence indicating what the defendant was doing in South Florida and West Palm Beach and Palm Beach County between August 14, 2024, and September 15, 2024" (DE 334:219).

It is improper for a lay witness to testify in a way that makes the jury think she had knowledge beyond what was before them. By repeatedly telling the jury "there was evidence" of nearly every important fact to the government, she did just that. It also improperly bolstered the government's own conclusions and the other witnesses' testimony and evidence in the case. *See United States v. Hilton*, 772 F.2d 783, 787 (11th Cir. 1985); *United States v. Eyster*, 948 F.2d 1196, 1206 (11th Cir. 1991). She imported the institutional credibility of law enforcement and its investigation as substantive evidence of guilt. By testifying that she had concluded "there was evidence" of all the essential points the government sought to make, she reasonably led the jury to believe that the government possessed extrinsic evidence that convinced her of each of those facts. And ultimately, that the government's narrative was correct: that Mr. Routh was intending to kill Trump.

Agent McGreevy also improperly testified as an expert witness without notice from the government or establishing admissibility of her

testimony under Fed. R. Evid. 702. She testified as to which surfaces and specific items in evidence would lend themselves to DNA testing. DE 334:269. She also matched a piece of metal to the chain-link fence on the border of the golf course. DE 333:258. These topics require specialized knowledge and a reliable basis for the conclusion before admission under Fed. R. Evid. 701 and 702. But the government never noticed this expert testimony, nor did it provide a reliable basis under Rule 702 for its admission.

Nearly the entirety of Agent McGreevy's testimony was improper. The government strategically saved her testimony for last in order for a witness with the gravitas of a federal agent to confirm every aspect of the government's narrative. Given the importance of her testimony, even if not under a cumulative error analysis, the error in allowing McGreevy's testimony was plain. *See Hawkins*, 934 F.3d at 1264 (finding plain error where agent gave similar closing argument testimony); *United States v. Lopez-Medina*, 461 F.3d 724, 745 (6th Cir. 2006) (finding officer's opinion testimony on significance and reliability of evidence she has collected, telling the jury what inferences to draw from the evidence "threatens the fairness, integrity, and public reputation of judicial proceedings,

regardless of whether the defendant is actually innocent."); *Pendas-Martinez*, 845 F.2d at 945 (where court allowed government to introduce reports containing a "neat condensation of the government's whole case against the defendants," such "error is not harmless even though there was overwhelming evidence properly received on the defendant's guilt.").

The effect of her giving the government's closing argument from the stand was even more problematic where the court limited Mr. Routh's closing argument. The government was able to give two closing arguments and Mr. Routh had half of one. Such result undoubtedly affected Mr. Routh's substantial rights.

B. Witnesses repeatedly made improper legal conclusions, telling the jury that Mr. Routh's conduct or other facts constituted the crimes charged.

A witness may not "testify to the legal implications of conduct; the court must be the jury's only source of law." *Montgomery v. Aetna Cas. & Sur. Co.*, 898 F.2d 1537, 1541 (11th Cir. 1990). Rule 704(a) permits an opinion that embraces an ultimate issue, but it does not permit a witness to tell the jury that the conduct satisfies the crime. That is exactly what happened here on Counts 1 and 5.

Count 1: Count 1 charged an attempt to kill a major presidential candidate under 18 U.S.C. § 351(c), and the court told the venire that "the term 'assassination' means killing or murder." DE 326:185. Witness after witness then stated that what happened that day was indeed the charged crime—an attempted assassination. *See* DE 328:189 (Agent Mayo); DE 328:177 (Agent Healey); DE 329:79 (Agent Rose); DE 332:113 (Agent Perry); DE 332:129 (Agent Foo).

None of these witnesses saw anything on September 15. Each simply announced to the jury what the jury itself was supposed to decide: that what happened on September 15 was an attempted assassination. This testimony went to the very fact at issue: whether Mr. Routh intended to kill Trump, for it would only be an attempted assassination if he had.

Count 5: Obliterated serial number. Count 5 charged possession of a firearm whose serial number had been "removed, obliterated, and altered" under 18 U.S.C. § 922(k). DE 21. Whether a serial number has been "obliterated or altered" is a question for the jury to decide. Yet the government's firearms expert was asked multiple times for his legal conclusion about whether the serial number in this case was

"obliterated." DE 330: 161, 176, 179. Case agent McGreevy repeated the conclusion, even though she conceded she could read the number. DE 334:254–55, 269–70. Whether a number that a lay witness can read with the naked eye is "obliterated" within the meaning of § 922(k) was the contested question on Count 5. But the witnesses told the jurors what conclusion to reach.

This was improper. *See Owen v. Kerr-McGee Corp.*, 698 F.2d 236, 239–40 (5th Cir. 1983) (Rule 704 "does not open the door to all opinions" and telling the jury "what result to reach" are not permitted; nor is the rule intended to allow a witness to give legal conclusions). The government knew this was improper. When Mr. Routh asked Agent Schnelle whether a number a civilian can read is "considered an obliterated serial number," the government objected: "Calls for a legal conclusion." DE 333:114. The rule the government invoked to protect its case should have applied equally to its own witnesses.

C. The government constructively amended the indictment by arguing that the purpose of the substantial step in Count 1 was stalking, a separate federal crime with which Mr. Routh was not charged.

A defendant may be convicted only of the offenses charged by the grand jury. *Stirone v. United States*, 361 U.S. 212, 215–17 (1960). A

constructive amendment "occurs when the essential elements of the offense contained in the indictment are altered to broaden the possible bases for conviction beyond what is contained in the indictment." *United States v. Madden*, 733 F.3d 1314, 1318 (11th Cir. 2013). An amendment need not come from the jury instructions. It can come from the evidence and argument the jury is invited to convict on.

Stalking is a separate federal crime (18 U.S.C. § 2261A) with which Mr. Routh was not charged. Yet the government so closely intertwined the crime of stalking with the crimes for which Mr. Routh was charged, suggesting to the jury that stalking was sufficient to find Mr. Routh guilty of Count 1. This was not a single instance, but the government made stalking a theme throughout. *See* DE 328:15 (in opening, Mr. Routh "spent a month of planning and tracking and stalking and reconnaissance"); DE 334:78, 271 (Agent McGreevy testifying that Mr. Routh engaged in "electronic and physical stalking the President," and his searches "exhibited to me stalking of the President").

In closing argument, the government argued to the jury that Mr. Routh "obsessively stalked and tracked his intended victim, not just on the internet, right, not just online, but through physical surveillance";

and "over 17 times the defendant conducted reconnaissance and physical surveillance and stalking and tracking at the President's personal golf course." DE 336:9. The government then intertwined this stalking with the other elements of the crime, telling the jury, Mr. Routh is "charged with five crimes, five crimes which all relate to the defendant's plan, his stalking, and his attempt to kill." DE 336:13. But most critically, the government then told the jury that the "stalking" was the purpose of the substantial step necessary to prove an attempt: "The 24/7 all hours of the night tracking, and stalking . . . . Those are substantial steps. There *is only one purpose in doing that . . . and that is to better surveil, to better track, and better stalk his intended victim*." DE 336:25 (emphasis added). The government did not merely use "stalking" itself as a substantial step toward the attempt in Count 1, but told the jury that stalking was the *purpose* of the substantial step. But that was not the crime. The purpose of the substantial step had to be intending to kill Trump. The government arguing it could be stalking, after repeatedly painting Mr. Routh's conduct as stalking, constructively amended Count 1, and by relation, Count 2.

D. The government shifted the burden and improperly commented on Mr. Routh's silence during closing argument.

A prosecutor may not argue in a way that shifts the burden to the defendant to prove his innocence or account for the evidence. *See United States v. Simon*, 964 F.2d 1082, 1086 (11th Cir. 1992). In closing, however, the government did precisely that. It first framed its argument by telling jurors they had to answer "why" Mr. Routh did certain things, for example, "Ask yourself, what was a man who lived by the beach in Honolulu—what was he doing for more than a month, living at a truck stop . . . ? What was he doing in the middle of the night more than 17 times at the President's golf course? Why did he leave the beach in Hawaii behind . . . ? What was he doing here? Ask yourself, why was he around the 14th hole?" DE 336:15; *see also* DE 336:16; DE 336:18; DE 336:24; DE 336:26; DE 336:49; DE 336:97–98; DE 336:101. Problematically, the government framed this theme by telling the jury to look to Mr. Routh for an explanation, stating, "Another substantial step is him traveling to Palm Beach on August 14, 2024. Ladies and gentlemen, *what have you heard during this case* that gives you any indication that he had anything else going on in Palm Beach, Florida?

Have you heard one piece of evidence that suggests that he had friends or family or business or anything else here? The answer to that is no. The only thing for this defendant in Palm Beach was his intended victim." DE 336:23 (emphasis added).

The government paired these questions with telling the jury to consider Mr. Routh's silence, in direct contravention of the Constitution. The government told the jury: "Now I want you to think briefly about all of the things that the defendant did not say. *Think about the defendant's silence*." DE 336:33 (emphasis added).

Although a rhetorical "why" can be fair comment on the evidence, here the government made clear its purpose of asking the questions, telling the jury to look to Mr. Routh for any alternative explanation. When Mr. Routh did not provide an innocent explanation, the government told the jury it should find him guilty. When coupled with the government telling the jury to "think about the defendant's silence," the argument the government was making was clear: that Mr. Routh had a burden to explain his presence in South Florida, that he had a burden to explain his actions and if he could not, then he was guilty. That inverts the burden on the only contested element. And it landed with particular

force on a *pro se* defendant whose own explanation of the "Dear World" letter and his purpose in being in South Florida and near the golf course had been excluded.

E. Taken together, these errors require a new trial.

These errors alone or together require a new trial. *See Baker*, 432 F.3d at 1223. Combined with the errors raised in the preceding sections, the additional errors here deprived Mr. Routh of the fair trial the Constitution guarantees, and violated his Fifth Amendment right to remain silent and to the presumption of innocence. His convictions should be reversed and the case remanded for a new trial.

XI. Count 2 must be dismissed because Count 1 is not a crime of violence.

A. Attempting to kill or kidnap an enumerated official in violation of 18 U.S.C. § 351(c) is not a crime of violence.

A "crime of violence" within the meaning of § 924(c) means that an offense is a felony and "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3). To determine whether a crime constitutes a crime of violence under § 924(c), a court must apply the "categorical approach." *United States v. Taylor*, 596 U.S. 845, 850 (2022).

Under the categorical approach, a crime cannot be a "crime of violence" if the statute of conviction punishes any conduct that does not require the use, attempted use, or threatened use of force. In other words, an offense does not qualify as a "crime of violence" unless the *least* serious conduct it covers requires the use, attempted use, or threatened use of force. *Borden v. United States*, 593 U.S. 420, 441 (2021). Under the categorical approach, the facts of any particular case are irrelevant. If the statute even potentially encompasses conduct that does not *require* use of physical force, the offense is not a § 924(c) predicate. *Descamps v. United States*, 570 U.S. 254, 261 (2013). Whether anyone has ever been prosecuted under the relevant federal statute for conduct that falls outside of the "crime of violence" definition is irrelevant; indeed, it does not matter whether there is a realistic probability that such a prosecution might ever be brought. *Taylor*, 596 U.S. at 858–59.

Only in instances where the statute is divisible—that is, the statute "comprises multiple, alternative versions of the crime"—can the court limitedly look beyond the elements of the crime. In such cases, courts apply the "modified categorical approach" in which they can look to a few limited documents to determine which version of the crime was charged.

The court then must determine whether that version of the crime has an element requiring the use, attempted use, or threatened use of force, again looking only to the elements of that particular crime charged in the section of the statute. *Descamps*, 570 U.S. at 261–62; *see also Shepard v. United States*, 544 U.S. 13, 19–20, 26 (2005). Under the modified categorical approach, the facts of the case are still irrelevant. *Id*.

Where a statute "lists all of the acts of violation in one sentence and imposes a single identical penalty for all of them," "that construction indicates that Congress did not mean to create more than one offense" and the statute is thus indivisible, requiring the categorical approach. *United States v. Brown*, 125 F.4th 1186, 1208 (D.C. Cir. 2025) (quoting *United States v. Street*, 66 F.3d 969, 974 (8th Cir. 1995) and *United States v. Mal*, 942 F.2d 682, 688 (9th Cir. 1991)). If, however, the statute provides for tiered punishments depending on particular statutory alternatives, the alternatives are elements and the statute is divisible. *United States v. Gillis*, 938 F.3d 1181, 1204 (11th Cir. 2019).

It is the government's burden to prove with certainty that a statute is divisible and sets out two or more offenses. If it is ultimately unclear whether a statute is divisible, then the court must assume that the

statute is indivisible. *See United States v. Redd,* 85 F.4th 153, 165 (4th Cir. 2023).

Here, while § 351 may be divisible among subsections (a), (b), (c), and (d), subsection (c), the subsection under which Mr. Routh was charged, is itself indivisible. Subsection (c) reads:

> (c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

It is not divided in structure, required elements, or sentence. Instead, it "lists all of the acts of violation in one sentence, and imposes a single identical penalty for all of them," indicating, just as the Court in *Brown* found of § 111, that "Congress did not mean to create more than one offense." *Brown*, 125 F.4th at 1208. Further, there is only one set of elements for the different means of committing the crime because it is an attempt statute: the government has to prove that (1) the defendant intended to kill or kidnap, (2) the defendant took a substantial step, and (3) when the defendant took the substantial step he had the intent to kill or kidnap.

In contrast to subsection (c), subsections (a) and (b) separate out different acts of violation and impose different penalties for the acts.

Subsection (a) prohibits killing any person of an identified list and designates that a violation is punishable under 18 U.S.C. §§ 1111 and 1112, sections that address general federal murder and manslaughter crimes. Subsection (b) makes it a crime to kidnap a person from that same list of individuals and gives a different punishment of up to life, or if death results, punishment by death. These subsections are examples of when Congress intended to create separate crimes.

As such, this Court must determine whether attempting to kill or kidnap a specific individual in *every instance* requires the use, attempted use, or threatened use of force. It does not. First, this Court has already decided that kidnapping is not a crime of violence. *See Gillis*, 938 F.3d 1181. Therefore, because subsection (c) can be violated by kidnapping or killing an enumerated person and kidnapping is not a crime of violence, subsection (c) is not a crime of violence.

Second, "attempt to kill" does not in all instances require force. The statute does not define "kill," nor does it limit "kill" to murder. Instead, "kill" encompasses any manner of taking the life of another person, including first degree premeditated murder, felony murder, second degree murder, voluntary manslaughter, involuntary manslaughter, or

killing in self-defense. *See*, *e.g.*, 18 U.S.C. § 2332(a). For example, 18 U.S.C. § 2332 provides criminal penalties for different types of "killing" of United States nationals, dividing penalties when a "killing is murder," a "killing is a voluntary manslaughter," or a "killing is an involuntary manslaughter."

From the group of different types of killing, neither involuntary manslaughter nor felony murder is a crime of violence. If an offense "requires only a *mens rea* of recklessness," then it categorically falls outside the "crime of violence" definition under 18 U.S.C. § 924(c). *Borden*, 593 U.S. at 423. Involuntary manslaughter can be committed with only a *mens rea* of recklessness and thus, under *Borden*, cannot be a crime of violence. *See United States v. Benally*, 843 F.3d 350, 354 (9th Cir. 2016) (government conceded and court held that involuntary manslaughter is not crime of violence because requires only gross negligence). Second, felony murder requires only the *mens rea* of the underlying felony. *United States v. Tham*, 118 F.3d 1501, 1508 (11th Cir. 1997) ("Accordingly, to be guilty of first-degree murder by virtue of the federal felony murder rule, the defendant need only have intended to commit the underlying felony; no other *mens rea* is required."). Thus, it

too can be committed with a minimum *mens rea* of recklessness. *United States v. Jackson*, 32 F.4th 278, 285 (4th Cir. 2022) ("Felony murder cannot qualify as a 'crime of violence' because it requires only the *mens rea* necessary to attempt or complete the underlying felony (i.e., arson, escape, etc."). The government has acknowledged this result of *Borden* in another case. *See* Supplemental Brief for the United States at 18, *United States v. King*, Nos. 18-2800, 18-2877 (8th Cir. Mar. 30, 2022) ("The Government's position here . . . acknowledges the consequence that some forms of federal first-degree murder, namely first-degree felony murders predicated on felonies that do not require the use of force against a person, are not crimes of violence."). Because "killing" can be committed without a *mens rea* greater than recklessness, "attempting to kill" an enumerated person, as criminalized by § 351(c) categorically is not a crime of violence.

With that, even if subsection (c) is divisible between attempting to kidnap and attempting to kill, because attempting to kill a specified individual is itself not a crime of violence, a charge of attempting to kill under § 351(c) is still not a crime of violence.

Finally, § 351(c) fails to qualify as a crime of violence for a further, independent reason: it is an attempt offense, and the elements of an attempted killing or kidnapping do not require the use, threatened use, or attempted use of force. To convict under § 351(c), the government had to prove two things: that Mr. Routh intended to kill or kidnap a covered person, and that he took a substantial step toward doing so. Neither element requires force. As the Supreme Court explained in *United States v. Taylor*, 596 U.S. 845 (2022), "an intention is just that, no more. And whatever a substantial step requires, it does not require the government to prove that the defendant used, attempted to use, or even threatened to use force against another person or his property." *Id.* at 851–52. Someone can take a substantial step toward a killing or a kidnapping without using, attempting, or threatening force against anyone.

Nor can the missing force element be borrowed from the completed offense. In *Taylor*, the government argued that because completed Hobbs Act robbery is a crime of violence, "it follows that attempted Hobbs Act robbery does too." *Id.* at 853. The Court rejected that reasoning, explaining that the elements clause "does not ask whether the defendant committed a crime of violence or attempted to commit one." *Id.* at 854.

Congress could have extended § 924(c)(3)(A) to offenses that "constitute an attempt to commit an offense that has such an element," but "that simply is not the law we have." *Id.* at 854. The *Taylor* Court therefore looked at the attempt offense on its own terms: "Whatever one might say about completed Hobbs Act robbery, attempted Hobbs Act robbery does not satisfy the elements clause." *Id.* at 851. The same analysis applies here. Section 351(c) punishes the attempt, so the elements of the attempt control. Because those elements can be met without any use, attempted use, or threatened use of force, § 351(c) is not a crime of violence, and the § 924(c) conviction on Count 2 cannot stand.

B. The fact that § 351(c) is not a qualifying § 924(c) predicate is an unwaivable jurisdictional defect.

This Court recognized in *United States v. St. Hubert*, 909 F.3d 335 (11th Cir. 2018) (abrogated by *Taylor*, 596 U.S. 845) that if a crime is not a crime of violence under § 924(c)(3)(A), then the § 924(c) counts of the indictment relying upon these priors as predicates would not charge "an offense against the laws of the United States." *St. Hubert*, 909 F.3d at 344. While multiple aspects of *St. Hubert* have now been abrogated by *Taylor*, this portion of *St. Hubert* remains good law and it is directly relevant here. An indictment alleging conduct that does not constitute a

crime, the Court noted, would be an unwaivable jurisdictional defect. *Id*. That jurisdictional error requires reversal of Mr. Routh's Count 2 conviction and sentence. *See also*, *United States v. Brown*, 752 F.3d 1344, 1352 (11th Cir. 2014) (finding jurisdictional defect when "the indictment affirmatively alleges conduct that does not constitute a crime at all because that conduct falls outside the sweep of the charging statute.").

XII. Mr. Routh's sentence is procedurally unreasonable because the district court improperly applied the enhancement under U.S.S.G. § 3A1.4.

At sentencing, the district court, over defense objection, applied a 12-level enhancement and increased Mr. Routh's criminal history category from I to VI under U.S.S.G. § 3A1.4 for the "terrorism" enhancement. However, this enhancement did not apply because Mr. Routh's offenses of conviction do not meet the definition of "federal crime of terrorism" under 18 U.S.C. § 2332b(g)(5).

The enhancement under § 3A1.4 applies if the offense of conviction "is a felony that involved, or was intended to promote, a federal crime of terrorism" as that term is defined in 18 U.S.C. § 2332b(g)(5). U.S.S.G. § 3A1.4(a), n.1. In turn, § 2332b(g)(5) defines "federal crime of terrorism" as an offense that "is calculated to influence or affect the conduct of

government by intimidation or coercion, or to retaliate against government conduct" *and* is a violation of certain enumerated portions of statutes, including "subsection (a), (b), (c), or (d) of section 351 (relating to congressional, cabinet, and Supreme Court assassination and kidnaping)." Both prongs must be met in order for an offense to meet the definition.

Mr. Routh's conviction on Count 1 does not meet that definition because (1) a presidential candidate is not "government" and thus the conduct charged cannot be calculated to influence or affect the conduct of government as required in subsection (A), and (2) the crime of attempting to kill or kidnap a major presidential candidate is not enumerated in subsection (B). Thus, the crime in Count 1 meets neither prong of the definition.

A. A presidential candidate is not "government."

"Government" is not defined in § 2332b, so it takes its "ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42 (1979). Black's Law Dictionary defines it as, in relevant part: "The sovereign power in a country or state; the political and administrative authority of a state" or **"**An organization through which a body of people

exercises political authority; the machinery by which sovereign power is expressed." Black's Law Dictionary, "Government" (12th ed. 2024). In other words, "government" refers to the body of officials and institutions that exercise sovereign authority. A candidate for president does not exercise sovereign authority. A candidate cannot and does not sign legislation, issue executive orders, run any government agency, or exercise any governmental authority. Unless and until the electorate decides otherwise, he remains a private citizen.

At sentencing, the district court relied on a message expressing a desire that then-candidate Trump "cannot get elected," to satisfy prong (A). DE 405:17. That reasoning conflates influencing the outcome of an election, a choice the Constitution commits to the electorate, with influencing "the conduct of government." The statute asks the latter question, and a private candidate who holds no office cannot him- or herself influence the conduct of government. Coercing "the conduct of government" means compelling some organ of government, a legislature, an agency, a court, or an official acting in an official capacity, to act or refrain from acting. Attempting to kill a candidate compels no sitting government actor to do anything; it deprives the electorate of a choice at

the ballot box. That is a grave harm indeed, but it is not the harm at which § 2332b(g)(5)(A) is directed.

At best, the statute is ambiguous. In such case, under the rule of lenity, the ambiguity must be resolved in favor of Mr. Routh. *United States v. Cruz*, 805 F.2d 1464, 1473 (11th Cir. 1986).

B. Attempted killing or kidnapping of a presidential candidate is not among the violations enumerated in § 2332b(g)(5)(B).

Even if a presidential candidate constituted "government" under the first prong, Count 1 still fails the second prong. Subsection (B) enumerates, in relevant part, specifically "subsection (a), (b), (c), or (d) of section 351 (relating to congressional, cabinet, and Supreme Court assassination and kidnaping)." § 2332b(g)(5)(B). Section 351 today protects at least four distinct categories of persons: (1) Members of Congress, (2) Cabinet-level officials, (3) Supreme Court Justices, and (4) major presidential and vice-presidential candidates. When § 2332b(g)(5)(B) cross-references § 351(a) through (d), its text names only three of those four categories, "congressional, cabinet, and Supreme Court," and says nothing about candidates. Therefore, by the plain text of § 2332b, a crime under § 351(c) of attempting to kill or kidnap a *major*

presidential candidate cannot be a federal crime of terrorism under the § 2332b definition.

At sentencing, the district court adopted the government's argument and read the cross-reference to "subsection (a), (b), (c), or (d) of section 351" to sweep in any violation of those subsections regardless of the victim, treating the accompanying parenthetical, "relating to congressional, cabinet, and Supreme Court assassination and kidnaping," as simply "an explanatory parenthetical that tracks the title of that section" and therefore incapable of narrowing the cross-reference. DE 405:16–17; *see also id.* at 11–12 (government's argument that a limiting reading would render the cross-reference "a nullity"). That was error.

That argument, as outlined by the government, rests on the line of cases holding that the title of a statute or the heading of a section "cannot limit the plain meaning of the text." *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R. Co.*, 331 U.S. 519, 529 (1947); *accord Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998). But those cases do not hold that headings are meaningless. They hold the opposite: headings and explanatory language "are of use . . . when they shed light on some

ambiguous word or phrase," and remain "tools available for the resolution of a doubt." *Bhd. of R.R. Trainmen*, 331 U.S. at 529; *Almendarez-Torres*, 523 U.S. at 234. What they forbid is using a caption to "undo or limit that which the text makes plain." *Bhd. of R.R. Trainmen*, 331 U.S. at 529.

Further, the parenthetical here is not a caption of § 2332b(g)(5)(B), nor is it the actual caption of § 351. The caption of § 351 is: "Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault; penalties." But the parenthetical leaves off "assault" and "penalties." This is so because the parenthetical is not just regurgitating the title of the statute but identifying the portions of § 351 that are considered a federal terrorism crime. The list of subsections identifies which subsections are included and then the parenthetical identifies which categories of victims are included. If Congress's purpose was to simply insert the title of the statute, it would have done so. But it did not. Leaving out "assault," for example, indicates that Congress did not intend for assault to be a crime of terrorism, the same way that leaving out "major presidential candidate" means Congress did not intend for specified acts against major presidential candidates to be crimes of

terrorism. When Congress did not want to include certain conduct, or conduct against certain victims, it left it out of the text of the statute.

That Congress did not mean for kidnapping or killing a major presidential candidate to be a federal terrorism crime is supported by the history of § 2332b and § 351. Section 351(a) did not always protect presidential and vice-presidential candidates. Congress added that category in 1986, extending § 351(a) to reach offenses against "a major Presidential or Vice Presidential candidate (as defined in section 3056 of this title)." Pub. L. No. 99-646, § 62(1), 100 Stat. 3592, 3607 (1986) (amending 18 U.S.C. § 351(a)). Section 2332b(g)(5)(B) was enacted long afterward, in 1996. Originally, the reference to § 351 read "351 (relating to congressional, cabinet, and Supreme Court assassination, kidnapping, and assault)". Pub.L. 104-132, Title VII, § 702(a), Apr. 24, 1996. In October 2001, it was amended to its current version, dropping the reference to assault. Pub.L. 107-56, Title VIII, § 808, Oct. 26, 2001. When it was enacted and subsequently amended, Congress could have written it to reach presidential and vice-presidential candidates, just as it initially wrote it to reach assault on any identified person but later dropped it, but it did not. That it included and later dropped "assault"

shows Congress was purposefully determining the reach into § 351 and not just including it wholly.

That is not surplusage; it is the parenthetical performing the very function the surplusage canon demands, giving independent meaning to language Congress chose to include. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[A] statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

The doctrine of *expressio unius* reinforces the same conclusion. Where Congress names three specific categories of government officials, congressional, cabinet, and Supreme Court, in the very clause explaining which § 351 violations qualify, its omission of a fourth category that § 351(a) also protects, presidential and vice-presidential candidates, is properly read as deliberate exclusion rather than oversight. *Russello v. United States*, 464 U.S. 16, 23 (1983).

Even if the Court were to conclude that § 2332b(g)(5)(B) is genuinely ambiguous as applied to a § 351 offense against a presidential candidate, that ambiguity must be resolved against the enhancement.

The terrorism enhancement functions, in substance, as a criminal penalty provision and the rule of lenity should apply.

No other count can support this enhancement. At sentencing, the district court stated that Counts 2 through 5 were "clearly part and parcel of the offense to kill then-candidate Trump." DE 405:17. That alternative rationale does not cure the error. Under the guidelines, an offense qualifies for the enhancement only if it "involved, or was intended to promote," a federal crime of terrorism. U.S.S.G. § 3A1.4 cmt. n.1. The only federal crime of terrorism the government or the district court ever identified as the object of that intent was Count 1. DE 405:17. If Count 1 itself is not a "federal crime of terrorism," then another non-qualifying offense cannot become a qualifying federal crime of terrorism merely by association with Count 1.

The twelve-level enhancement and the automatic increase to Criminal History Category VI produced the advisory guideline range of life imprisonment. DE 405:18. Without the enhancement, Mr. Routh's guideline range would have been a level 39, with a criminal history category I, resulting in a guideline range of 262–327 months. DE 405:59. Because the enhancement should not have applied, the guideline range

was miscalculated. The sentence should be vacated and the case remanded for resentencing under the correct advisory guideline range.

XIII. The district court erred in cutting off Mr. Routh's allocution at sentencing, requiring vacating the sentence and remanding for a new sentencing.

Before imposing sentence, a district court "must . . . address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence." Fed. R. Crim. P. 32(i)(4)(A)(ii). This is not an empty formality; it is an essential part of sentencing ensured defendants from as early as 1689. *Green v. United States*, 365 U.S. 301, 304 (1961) (plurality opinion). This is so because "[t]he most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself." *Green*, 365 U.S. at 304. Denying a defendant that opportunity is "tantamount to denying him his most persuasive and eloquent advocate." *United States v. Prouty*, 303 F.3d 1249, 1253 (11th Cir. 2002) (finding district court committed reversible error when it failed to allow defendant to allocute) (quotation marks and citation omitted). The obligation to "address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence .

. . is an integral part of the sentencing process which, if not fully afforded to the defendant, requires a reversal of the sentence imposed." *United States v. Archer*, 70 F.3d 1149, 1151 (10th Cir. 1995) (quotation marks omitted). A defendant's right to allocute is satisfied only when the record shows "clearly and convincingly that the defendant knew he had a right to speak on any subject of his choosing prior to the imposition of sentence." *United States v. Perez*, 661 F.3d 568, 585 (11th Cir. 2011) (finding plain error and vacating sentence where district court did not clearly direct question about allocution to defendant, even when after court's question, defendant had long discussion with attorney before attorney said defendant did not wish to speak); *United States v. Machado*, 886 F.3d 1070, 1087 (11th Cir. 2018) (vacating sentence where court directed question of whether defendant would allocute to defense counsel instead of defendant).

Here, the district court violated Mr. Routh's right to allocute by prematurely cutting off his allocution. Once the court decided Mr. Routh had spent too long on what it decided was an unrelated topic, his desire to be "traded" for foreign hostages, the court interrupted Mr. Routh, asking if he had "anything else to say other than a desire to be traded . .

. for other individuals?" Mr. Routh answered, "Yes, yes." DE 405:46. The court then asked him how many more pages of his prepared statement remained. Mr. Routh said twenty, and that the entire statement "runs 30 minutes." DE 405:46. Mr. Routh asked the court if it wanted him to talk faster. *Id*. Mr. Routh then told the court he would skip over additional content about being traded. DE 405:46. Mr. Routh then discussed his personal characteristics: his sanity and morals he sought to live by, such as character, honor, integrity, heart and a regard for human life and our fellow man. DE 405:47. The court then interrupted him again, imposing a blanket, content-blind time limit of five minutes on everything that remained of his statement. DE 405:48. That time limit was not based on relevance. The court did not ask what the remaining topics were.

Mr. Routh then moved on to discuss how he worked seven days a week from 5:00 a.m. until past dark, how he took responsibility for others' mistakes, traveled to Ukraine to try to help raise an army to fight Russia, his criminal record, how he never used drugs or smoked, and how he gave everything he had to give to America. DE 405:48–52. The court then told him his five minutes were up and to "wrap up." Mr. Routh tried to continue and the court cut him off mid-sentence. DE 405:52–53. The court

did not try to redirect Mr. Routh, tell him to move past his current topic, or identify something as repetitive. Indeed, the topics he was addressing were relevant to his sentence. It cut him off wholesale based on an imposed hard stop measured in minutes rather than content.

By Mr. Routh's own account, his entire allocution would have run only thirty minutes. DE 405:46. Thirty minutes is a modest amount of time to ask a court to spend listening to a defendant before deciding whether he will spend the rest of his life in prison.

Accordingly, Mr. Routh's sentence should be vacated and the case remanded in front of a different judge for resentencing.

XIV. 18 U.S.C. § 922(g) and (k) are unconstitutional under the Second Amendment, and the convictions on Counts 4 and 5 should be vacated and the counts dismissed.

The Supreme Court's seminal decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), provides the governing methodology for assessing whether modern firearm regulations comport with the Second Amendment. There, the Court explained that this analysis proceeds in two steps: First, the court asks whether "the Second Amendment's plain text covers an individual's conduct." *Bruen*, 597 U.S. at 24. If it does, "the Constitution presumptively protects that conduct,"

and the court proceeds to the second step. *Id.* At that point, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* To measure consistency with traditional firearm regulations, the court asks whether a modern regulation is "relevantly similar" to historical predecessors. *Id.* at 29 (quoting Cass Sunstein, On Analogical Reasoning, 106 Harv. L. Rev. 741, 773 (1993)). In this inquiry, the central considerations are "how" and "why" a law burdens the Second Amendment right. *Id.*; *see also United States v. Rahimi*, 602 U.S. 680, 682 (2024).

A. 18 U.S.C. § 922(k) is unconstitutional.

Under *Bruen*'s first step, the Second Amendment's plain text covers the conduct regulated by § 922(k). *Bruen,* 597 U.S. at 17, 24. A firearm with a removed, obliterated, or altered serial number is an "Arm" within the plain meaning of the term as used in the Constitution. *See District of Columbia v. Heller*, 554 U.S. 570, 582 (2008) (explaining that the term "Arms" "extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding"). Therefore, § 922(k) meets the first step under *Bruen*.

Because § 922(k) regulates protected conduct, the government must prove that it is consistent with the nation's historical tradition of firearm regulation. *Bruen*, 597 U.S. at 18. No such historical equivalent exists for § 922(k). The government failed to identify any such regulation below, as did the district court in its order denying the motion. *See* DE 136:17–19. The district court used faulty logic in denying the motion, without ever considering a historical analogue. In finding § 922(k) facially constitutional, the court reasoned that if a categorical ban on Mr. Routh's possession of a firearm as a convicted felon (prohibited by § 922(g)) does not offend the Second Amendment, then a prohibition on "a discrete subset of firearms—namely, firearms with obliterated serial numbers—would not violate the Second Amendment. DE 160:4.

But a statute cannot be made constitutional simply because a *different* constitutional statute happens to encompass the same conduct in some instances. Using the court's example, Mr. Routh is prohibited from possessing any firearm because he is a felon and thus, prohibited under § 922(g). In such case, § 922(k) is not being applied at all. It is entirely the work of § 922(g) that prevents Mr. Routh from possessing a firearm with an obliterated serial number.

In sum, the conduct prohibited by § 922(k) is protected by the Second Amendment and there is not a historical tradition of firearm regulation consistent with this statute. Thus, the subsection is unconstitutional and the conviction must be vacated.

B. Section 922(g)(1) is unconstitutional facially and as applied to Mr. Routh.

Mr. Routh recognizes this Court's decision in *Dubois*, 139 F.4th at 887. However, Mr. Routh preserves his argument made below that § 922(g) is both facially unconstitutional and unconstitutional as applied to him. He maintains *Dubois* is wrongly decided, contrary to this Court's earlier decision in *NRA v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc), and that *Bondi* should therefore govern. Mr. Routh preserves the issue for further review.

CONCLUSION

For the reasons above, Mr. Routh requests this Court vacate his convictions, dismiss Counts 2, 4, and 5, and remand for a new trial on the remaining counts. Given that the impartiality of the district judge can

reasonably questioned, Mr. Routh requests the case be assigned to a new district judge upon remand.

Respectfully submitted,

By: */s/Martin L. Roth*
Martin L. Roth, Esq.
Florida Bar No.: 265004
980 North Federal Highway
Suite 110
Boca Raton, FL 33432
Ofc: (954) 745-7697
Email: mlrpa@msn.com

CERTIFICATE OF COMPLIANCE

I CERTIFY that this pleading complies with the type-volume limitation and typeface requirements of Fed. R. App. P. 27(d)(2)(A), because it contains 30,156 words, excluding the parts of the pleading exempted by Fed. R. App. P. 32(f).

This pleading also complies with the requirements of Fed. R. App. P. 32(a)(5) and (a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point, Century Schoolbook font.

s/Martin Roth
Martin Roth