

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

*OCTOBER TERM, 2018*

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UNITED STATES OF AMERICA, *Respondent,*

-vs-

DEOUNTE USSURY, *Petitioner.*

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

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Petitioner Deounte Ussury respectfully requests this Honorable Court issue a Writ of Certiorari to review the decision issued by the United States Court of Appeals for the Sixth Circuit in *United States v. Ledbetter*, 929 F.3d 338 (6th Cir. 2019), affirming his criminal conviction.

Respectfully submitted,

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**QUESTION PRESENTED FOR REVIEW**

- I. Whether conviction under the Violent Crimes in Aid of Racketeering statute § 18 U.S.C. 1959(a), also known as VICAR, requires a special verdict form where the statute requires unanimity as to an element that can be satisfied by two alternative purposes or motivations?

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### **CITATION OF OPINIONS BELOW**

The decision of the United States Court of Appeals for the Sixth Circuit is set forth *United States v. Ledbetter*, 929 F.3d 338 (6th Cir. 2019). *See* Appendix A.

### **JURISDICTION**

The United States Court of Appeals for the Sixth Circuit entered its final judgment on July 3, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

### **FEDERAL STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED**

18 U.S.C. § 1959(a)(1) provides:

Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished—

(1) for murder, by death or life imprisonment, or a fine under this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine under this title, or both;

The Fifth Amendment to the United States Constitution provides:

No person shall be ... deprived of life, liberty, or property, without due process of law...

## STATEMENT OF THE CASE

In 2014, Deounte Ussury was named with nineteen other men in what the district court would describe as the largest federal murder indictment in Ohio history. The superseding indictment included a staggering thirty-eight criminal counts spanning a decade of time and charged violence in aid of a racketeering enterprise (VICAR) and related offenses. Mr. Ussury was named in only five of the counts covering just a four-year period of time – three of which alleged violations of VICAR. The government generally alleged that a criminal enterprise called the Short North Posse (SNP) had conspired to traffic in drugs and commit robberies and murders.

During the course of the trial, the district court concluded that a unanimous jury verdict would be required for the specific motivation or purpose underlying each VICAR charge. The district court found that “the government must prove, and the jury unanimously must find, that the defendant committed the murder in-question for either one of the motivational purposes described in 18 U.S.C. § 1959(a).” The district court then explained,

. . . a conviction for murder in aid of racketeering cannot stand if *some* jurors believe the defendant committed the offense under the ‘murder-for-hire’ prong while still *other* jurors believe the defendant committed the offense to gain entrance to the enterprise or to increase his position within in. Instead, the jury must be unanimous as to *which* motivational element the Government proved.

The jury was then provided with verdict forms to use in deliberations.

Despite the district court’s ruling, the verdict forms themselves did not comport with the court’s instructions. For the VICAR counts, the jury verdict forms

stated both purposes together but did not provide a place for the jury to select which purpose had supported their finding of guilt. The forms did not include an option for the jury to select either the murder-for-hire (pecuniary gain) or positional purpose. Mr. Ussury was subsequently convicted on all counts.

All three of the counts under VICAR carried life sentences. Mr. Ussury was sentenced to three concurrent life terms of incarceration under VICAR, as well as two consecutive life terms under 18 U.S.C. § 924(c). Subsequently, the Sixth Circuit Court of Appeals would vacate one of Mr. Ussury's convictions under VICAR for a lack of sufficient evidence. *United States v. Ledbetter*, 929 F.3d 338, 356-59 (6th Cir. 2019). But the Sixth Circuit affirmed the remaining convictions and held that the special verdict form was only required where “a finding of one alternative element over another is used to enhance a sentence beyond what would otherwise be the statutory maximum.” *Id.* at 365.

## REASONS FOR GRANTING THE WRIT OF CERTIORARI

### **I. This Court Should Address the Need for a Special Verdict Form Where a Statute Requires Unanimity as to an Element that Can Be Satisfied by Two Alternative Purposes or Motivations.**

#### **A. VICAR has an alternative element as to purpose or motivation.**

Mr. Ussury was convicted, in part, of three counts of VICAR, violations of 18 U.S.C. § 1959(a).<sup>1</sup> The statute criminalizes, “Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, **anything of pecuniary value from an enterprise** engage in racketeering activity, **or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise** engaged in racketeering activity. . .” 18 U.S.C. § 1959(a) (emphasis added). The statute then requires a specific kind of racketeering activity be identified.

As indicated by the bold text above, the statute provides for two alternative motives or purposes to satisfy the statute. The violent crime must have been committed for the purpose of either “pecuniary gain” or “gaining entrance to or maintaining or increasing position” in a racketeering enterprise. 18 U.S.C. § 1959(a). One of these two alternative elements are required to fully establish a violation of VICAR.

#### **B. Because VICAR includes an element with alternatives, it requires a special verdict form.**

This Court held that all statutory elements require jury unanimity. *Richardson v. United States*, 526 U.S. 813, 816 (1999). Because the motive or purpose component

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<sup>1</sup> One of those convictions was subsequently vacated on direct appeal due to insufficient evidence. *United States v. Ledbetter*, 929 F.3d 338, 356-59 (6th Cir. 2019).



of VICAR is an element with two alternatives, it too requires unanimity. Mr. Ussury is aware that special verdict forms are generally disfavored in criminal cases. However, the practical reality is that special verdicts in criminal cases have simply become verdict forms that provide “additional information that accompanies, but does not replace, the general verdict.” Kate H. Nepveu, *Note: Beyond “Guilty” or “Not Guilty”: Giving Special Verdicts in Criminal Jury Trials*, 21 Yale L. & Pol’y Rev. 263, 263-64 (2003).

Here, because VICAR has an alternative element, it is error for a district court to instruct a jury as to the need for unanimity but not provide special verdict forms requiring the jury to identify which of two alternative elements it has found beyond a reasonable doubt. To do otherwise violates the Fifth Amendment guarantee of due process. *See Richardson* at 835 (Kennedy, J., dissenting) (disagreeing with the majority’s reasoning by asserting there is no due process problem with interpreting a continuing series requirement as a single element).

The verdict forms in Mr. Ussury’s case were fundamentally flawed, because they did not require unanimity as to the purpose or motivation under VICAR. The forms do not include an option for the jury to select either the pecuniary gain or positional purpose. Because that deficit allowed jurors to convict Mr. Ussury without unanimity as to an element, his substantial rights were violated.

This Court should accept review of Mr. Ussury’s case, because without this Court’s guidance the Circuits will continue to try individuals under VICAR without requiring juries to identify which alternative element as to purpose or motive has

been proven beyond a reasonable doubt. Additionally, this Court will consider *Ramos v. Louisiana*, Case No. 18-5924, this term, which will decide whether state criminal defendants are entitled to unanimity in jury verdicts. Though not the same question presented, consideration of the role of unanimity in jury verdicts will nicely dove-tail with the issue raised in Mr. Ussury's petition for a writ of certiorari.

### **CONCLUSION**

Mr. Ussury respectfully petitions this Court to accept his case for a review of its merits.

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