No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2020

LANTREL DEKEITH WILSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

6th Circuit Case No. 19-1367

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QUESTIONS PRESENTED

I.

Whether the decision of the Sixth Circuit Court of Appeals in affirming the District Court's denial of Lantrel Wilson's Motion to Suppress conflicts with this Court's long-standing precedent in Terry v. Ohio?

II.

Whether the decision of the Sixth Circuit Court of Appeals misapplied this Court's precedent on consent to search?

III.

Whether the decision of the Sixth Circuit Court of Appeals misapplied this Court's precedent on Inevitable Discovery?

PARTIES TO THE PROCEEDING

Pursuant to United States Supreme Court Rule 14(1)(b), your Petitioner states that the parties to this petition are:

Petitioner: Lantrel DeKeith Wilson

Respondent: United States of America

The opinion of the United States Court of Appeals for the Sixth Circuit that is the subject of this appeal was only to Lantrel DeKeith Wilson as he was the only defendant. Wilson is not aware of any separate petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit also seeking review of the Sixth Circuit opinion that is the subject of this appeal.

LIST OF PROCEEDINGS IN STATE AND FEDERAL COURTS THAT ARE DIRECTLY RELATED TO THIS CASE

There are no cases in either State or Federal Court that are directly related to this case.

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IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

OCTOBER 2020 TERM

LANTREL DEKEITH WILSON,

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

The Petitioner Lantrel DeKeith Wilson respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit entered in the above-styled proceeding on April 3, 2020, and an Order denying Petition for Rehearing with Suggestion of Rehearing En Banc entered on May 6, 2020.

OPINIONS BELOW

(1) Judgment in a Criminal Case, United States of America v. Lantrel DeKeith Wilson, Case No. 1:18-cr-173, United States District Court for the Western District of Michigan on March 21, 2019. (Appendix 1).

(2) Opinion, United States of America v. Lantrel DeKeith Wilson, No. 19-1367, United States Court of Appeals for the Sixth Circuit, April 3, 2020. (Appendix 2).

(3) Order Denying Petition for Rehearing with Suggestion of Rehearing En Banc, United States Court of Appeals for the Sixth Circuit, May 6, 2020. (Appendix 3).

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals for the Sixth (6th) Circuit was entered on April 3, 2020 affirming the denial of Wilson's Motion to Suppress filed in the United States District Court for the Western District of Michigan. Wilson was sentenced to fifty (50) months in Federal Prison after conditionally pleading guilty to a charge of Felon in Possession of a Firearm under 18 U.S.C. §§922(g)(1), 921(a), and 924(a)(2).

A Final Judgment was entered by the United States District Court for the Western District of Michigan on May 21, 2019. A Petition for Rehearing with Suggestion of Rehearing En Banc was denied by an Order entered by the Sixth (6th) Circuit Court of Appeals on May 6, 2020.

The United States Court of Appeals for the Sixth (6th) Circuit had jurisdiction over Wilson's appeal pursuant to 28 U.S.C. §1291, which confers on the United States Court of Appeals jurisdiction from all final decisions from District Courts of the United States. (28 U.S.C. §1291 (West 2020)).

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1), which provides that cases in the Court of Appeals may be reviewed by the Supreme Court by Writ of Certiorari granted upon the petition of any party (28 U.S.C. §1254(1) (West 2020)). Jurisdiction is also invoked by United States Supreme Court Rules 10 and 13. (U.S. Sup Ct. R. 10, 13).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth (4th) Amendment to the United States Constitution provides that: "[T]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized" (U.S. CONST., amend IV).

STATUTORY PROVISIONS INVOLVED

None are at issue in this case.

STATEMENT OF THE CASE

A.

1. Wilson was indicted by a Grand Jury in the Western District of Michigan on August 8, 2018. He was charged in two (2) counts: Count one (1) charged Wilson with being a Felon in Possession of a Firearm in violation of 18 U.S.C. §§922(g)(1), 921(a) and 924(a)(2). Count two (2) charged Wilson with Possession of a Controlled Substance in violation of 21 U.S.C. §§844(a) and 844(c).

2. Wilson entered a Conditional Plea Agreement with the Government on December 12, 2018. Wilson pled guilty to Count one (1) of being a Felon in Possession of a Firearm. Count two (2) was dismissed. Wilson retained the right to appeal the denial of his motion to suppress the firearm discovered during a search on June 24, 2018.

3. Wilson was arrested on June 24, 2018. On September 7, 2018 Wilson through his appointed counsel, filed a Motion to Suppress the firearm discovered during his arrest. The Court held a hearing on Wilson's Motion to Suppress on November 16, 2018.

4. On June 24, 2018 two (2) Lansing, Michigan police officers – Officer Spratt and Officer Bricker - were dispatched to check on the welfare of a person who was either sleeping or passed out in a vehicle. The area was a high-crime area. The dispatch was the result of a 911 call made to the Lansing Police Department.

5. Spratt testified at the motion hearing that when he arrived, he observed Wilson unresponsive behind the wheel of a dark Cadillac Escalade. Spratt noted that the vehicle was parked legally, music was playing loudly, and that upon checking the vehicle records, he learned

it was registered to a female, and the registered address was nowhere near the car's current location.

6. The officers attempted to wake Wilson without entering the vehicle by using a strobe flashlight. When that didn't work, Spratt opened the passenger side door, attempted to get Wilson to respond, turned down the music and removed the keys from the car.

7. Spratt testified that each time he touched Wilson on his arm, Wilson's arm drifted back toward his waistband. Spratt testified that he instructed Wilson to keep his hands up as a safety precaution.

8. Spratt asked Wilson to get out of the car, and he complied. After a brief exchange, Spratt asked Wilson to "do him a favor" and requested that Wilson allow him to check for weapons. Spratt testified that Wilson gave consent with a nod of his head.

9. During what Spratt testified was a "Terry" pat he discovered a weapon and placed Wilson under arrest. Spratt further testified that he believed there to be alcohol in a container in the center console and investigated Wilson for operating a vehicle while intoxicated under Michigan State law. Spratt also ran Wilson's name through the Lansing Emergency Information Network and discovered that Wilson was on Federal Supervised Release.

10. Once Spratt found the firearm, Wilson was detained. Initially, another officer called for medical care for Wilson, but the call was cancelled once Wilson was awake.

11. Officer Bricker also testified at the suppression hearing. He testified that he had no suspicions at any time that Wilson had possession of a firearm. Likewise, Bricker testified that Wilson would not have been searched if a ticket was written to him for a noise violation; he never investigated an offense of being under the influence; and was there only for a welfare check. Bricker also testified that he would not have patted Wilson down.

B.

1. At the conclusion of the November 16, 2018 motion hearing, the District Court Judge announced his findings of fact and conclusions of law and denied Wilson's Motion to Suppress.

2. The District Court first concluded that Wilson consented to the search when the firearm was discovered:

> "Now here considering the totality of the circumstances, the defendant's age, prior experience with the criminal justice system, which we know, involved at least one federal felony, his actions in nodding, perceptively nodding as it is seen on the video to Office Spratt's request, do me a favor or I'm asking a favor, whatever the specific language was, the defendant nodded and put his hands behind his back as requested by the officer. The officer, Officer Spratt, did not engage in any coercive action that is evidenced on the video, that is evident from his tone of voice, and that is evident I think really by the defendant's own actions in nodding and putting his hands behind his back. I think that the government here has borne its burden of demonstrating that Mr. Wilson voluntarily and knowingly consented to the pat down."

3. The District Court also held that the inevitable discovery doctrine would support the search as an exception to the warrant requirement:

> "Now, it's my strong view that the government in this case has shown that the officers had plenty of probable cause to investigate and arrest the defendant for the state offense of operating a vehicle intoxicated under MCL 257.6251. There were also some potential municipal misdemeanor offenses that creating a noise disturbance and the open intoxicants in the car. But the - - again, the fact that we have a person either asleep or passed out in a parked car at 4:54 in the morning, the fact that there is an open bottle which appears to be alcohol, the fact that the driver of the vehicle is very difficult to rouse, all in my view, and in my long experience with cases like this, clearly suggest that there is a very high probability of an offense of driving under the influence of intoxicating alcohol…" "…the gun in the waistband would have inevitably been discovered in a search incident to arrest for either the OUIL, or if the officers had chosen to pursue it, the state misdemeanor offenses."

4. The District Court also concluded that officers had reasonable suspicion to conduct a limited protective search:

> "Now again, we look at this totality of the circumstances here. The totality of relevant circumstances here: The time of day 4:54 in the morning, the poorly lit location, the

> defendant's presence in a vehicle not registered to him, the reasonable conclusion that there is an open alcohol container in the car, the defendant's slow responses and to some the extent the defendant's placing of his hands in an area where a weapon is often concealed support the conclusion that a reasonably prudent person, a reasonably prudent police officer would be warranted in believing that his safety or that of others was in danger. The decision by Officer Spratt to search under those circumstances for his own safety and others who were present at the scene was reasonable."

5. The District Court entered an Order on November 17, 2018 incorporating its Oral bench opinion.

6. Wilson was sentenced to fifty (50) months in prison on March 21, 2019, followed by three (3) years of Supervised Release.

7. Wilson timely filed a Notice of Appeal on April 8, 2019.

C.

1. On appeal to the Sixth Circuit, Wilson argued that none of three (3) permissible encounters between the public and the police were present in his case. Wilson argued that he did not consent and was in fact in custody at the time he supposedly gave consent.

2. Wilson also argued that officers did not have a basis to execute a valid arrest, and that any search incident to arrest was a violation of the Fourth Amendment.

3. Finally, Wilson argued that the circumstances were not appropriate for a Terry stop and frisk as the officers had no reasonable suspicion of criminal activity.

4. The Sixth Circuit affirmed the denial of Wilson's motion to suppress in a divided 2-1 decision. The Court of Appeals held (1) officers had reasonable suspicion to search Wilson; (2) that Wilson consented to a search; and (3) failing those two factors, the gun would have been inevitably discovered.

D.

1. The Petitioner now seeks review by the United States Supreme Court for the following reasons:

(1) The Sixth Circuit decided an important federal question in a way that conflicts with this Court's relevant decisions on the issue of reasonable suspicion;

(2) The Sixth Circuit also decided an important federal question in a way that conflicts with this Court's relevant decisions on the issue of consent to search; and

(3) The Sixth Circuit further decided an important federal question in a way that conflicts with this Court's relevant decisions on inevitable discovery.

REASONS FOR GRANTING THE WRIT

1. THE SIXTH CIRCUIT COURT OF APPEALS DECISION DIRECTLY CONFLICTS WITH THIS COURT'S HOLDING IN TERRY V. OHIO

In its opinion, the Sixth Circuit concluded:

> "A concern for officer safety permits a variety of police responses in differing circumstances, including ordering a driver . . . out of a car during a traffic stop, . . . and conducting pat-down searches upon reasonable suspicion that they may be armed and dangerous. *Bennett v. City of Eastpointe*, 410 F.3d 810, 822 (6th Cir. 2005) (citations omitted) (quoting *Knowles v. Iowa*, 525 U.S. 113, 118 (1998)). An officer may pat down a person in the course of a *Terry* stop if he can point to particular facts from which he reasonably inferred that the individual was armed and dangerous. *Sibron v. New York*, 392 U.S. 40, 64 (1968). Officer Spratt testified that defendant's hand went to his waistband at least twice while defendant was still in the car, and, in his experience, the waistband was a common place to keep a weapon. This movement led the officer to suspect that defendant might have a weapon…"

(Sixth Circuit Op. pp. 7-8).

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> "Furthermore, the car was not registered to defendant and the owner of the car did not live in the area. The circumstances under which the officers found defendant reasonably led them to believe he might be armed."

(Opinion, p. 8).

In affirming, the District Court, the Sixth Circuit grossly misapplied this Court's Terry v. Ohio decision. In Terry, this Court held:

> "…[W]here a police officer observes unusual conduct which leads him to reasonably conclude in light of his experience that criminal activity maybe afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own and others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable one under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from where they were taken."

Terry v. Ohio, 392 U.S. 1, 29, 88 S. Ct. 1860, 20 L.Ed.2d 889 (1968).

The only basis Officer Spratt had for concluding that Wilson was engaged in criminal activity is him moving his hand to his waistband a couple of times, along with his assumption that the waistband is a popular place for a weapon. As the dissent pointed out, reasonable suspicion requires more than a hunch, and that's all the officers in this case had. See, United States v. Arvizu, 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 889 (1968); United States v. Sokolow, 490 U.S. 1, 109 S.Ct. 1581, 104 L.Ed.2d (1989); and United States v. Cortez, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

Here Wilson's hands were resting on his lap while he was either sleeping or unconscious, and officers admitted after shaking him, Wilson's hands went back to where they were prior to officers attempting to wake him. The second officer on the scene that evening testified that he wasn't concerned about Wilson's movements. Officer Spratt had only a hunch and went on a fishing expedition without reasonable suspicion because a black man in a car that's not his and in a high crime area, must be breaking the law. The Fourth Amendment doesn't allow such profiling on the part of the police, this Court must respectfully undertake review of the Sixth Circuit's misapplication of Terry. As this Court stated in Terry:

> "Ever since its inception, the rule excluding evidence seized in violation of the Fourth Amendment has been recognized as discouraging lawless police conduct. Thus, its major thrust is a deterrent one, and experience has taught us that it is only effective deterrent to police misconduct in the criminal context, and that without it the constitutional guarantee against unreasonable searches and seizure would be a mere form of words."

Terry, 392 U.S. at 12 (citing, Mapp v. Ohio, 367 U.S. 643, 655 (1961)).

Without review, the Sixth Circuit has given officers the authority to conduct a Terry search on nothing more than a "hunch," particularly when it blatantly appears the officer profiled Wilson. This goes contra to Terry and is a ground for this Court to accept review.

II. THE SIXTH CIRCUIT COURT OF APPEALS MISAPPLIED THIS COURT'S WELL-ESTABLISH LAW REGARDING CONSENT TO SEARCH

In its opinion on the issue of consent, the Sixth Circuit panel held:

> "In this case, Officer Spratt asked defendant, I just want to make sure you don't got no weapons or nothing. Can you do me a favor: Can you put your hands behind your back so we can make sure our safety is fine. Hr'g Tr. at 32. Defendant appeared to consent by first nodding his head, and then following the officer's request to put his hands behind his back. Despite the appearance of acquiescence, defendant argues that any consent was not voluntary due to the coercive nature of the encounter."

(Opinion, p. 5).

> ***

> "The district court properly considered the totality of the circumstances in concluding that defendant freely gave consent to the pat-down search for weapons. The court noted that, as seen in the video, defendant perceptively nodd[ed] his head and then put his hands behind his back at Officer Pratt's request. Hr'g Tr. at 72. The district court also concluded the officers' actions and tone of voice indicate that the officers did not engage in any coercive behavior towards defendant that would vitiate consent. Id. at 72-73. The district court did not clearly err in concluding that the government met its burden in demonstrating that defendant voluntarily and knowingly consented to the pat-down search."

(Opinion, p. 6).

The Sixth Circuit totally fumbled the ball on applying the law regarding consent in this case. At best, the evidence introduced at the suppression show acquiescence and this Court has long held that acquiescence to a lawful authority is not enough.

As this Court established in Bumper v. North Carolina, 391 U.S. 543, 548, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968), "[w]hen a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving the consent was, in fact, freely and voluntarily given." Id. at 548. "This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority." Id. at 548-549. "A search conducted in reliance upon a warrant cannot later be justified on the basis of consent if it turns out the warrant was invalid." Id. at 549. "The result

can be no different when it turns out that the State does not even attempt to rely on the validity of the warrant, or fails to show that there was, in fact, any warrant at all. Id. at 549-550.

The Sixth Circuit's misapplication of Bumper and other cases regarding consent is best illustrated by the dissenting opinion which noted numerous "factual misstatements" to support the majority opinion that Wilson consented to a search:

> "Officer Spratt asked [Wilson] if he could pat him down so we can make sure our safety is fine. Defendant nodded and complied with the officer's request to put his hands behind his back. Maj. Op. at 3. Video evidence directly contradicts this recitation of the facts in two critical ways. First, Wilson's nod was not in response to the request for him to put his hands behind his back. Spratt's bodycamera footage reveals that Spratt stated: Hey Duke, do me a favor. I just want to make sure you don't have no weapons or nothing, okay? Spratt Video at 3:46–3:48. At this moment—before the request—Wilson nodded. Id. Spratt then continued: So we can make sure our safety is fine, can you put your hands behind your back? It's just our policy. Id. at 3:49–3:52. The footage clearly shows that Wilson did not nod yes in response to Officer Spratt asking him to put his hands behind his back. Second, Officer Bricker's bodycamera footage unmistakably reveals that Wilson did not move his hands behind his back voluntarily. At the same moment that Officer Spratt says to Wilson, [C]an you put your hands behind your back? Spratt grabs Wilson's left wrist and moves it behind his back, before Wilson has an opportunity to act. Bricker Video at 4:18. Any suggestion that Wilson voluntarily moved his hands behind his back, signaling his consent, is thus utterly discredited by the record, and this court should not rel[y] on such visible fiction."

(Opinion, pp. 11-12)

> "Second, Wilson's ability to exit the scene was severely restricted…"
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> ***
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> "[B]y the time Wilson awoke, the officers had (1) opened the doors to the vehicle, (2) removed his keys from the ignition, preventing his exit by car, and (3) positioned themselves at the driver-and-passenger side doors, preventing his exit by foot."

(Opinion, p. 13) (contrasting this Court's opinion, United States v. Drayton, 536 U.S. 194, 204 (2002)).

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> "Furthermore, after Wilson exited the vehicle, Spratt communicated to him-both verbally and physically- that he could not leave the scene."

(Opinion, p. 13).

> "Third, immediately prior to the search, Spratt had asked Wilson to step out of the car. It is clear from the bodycamera footage that this first ask of Wilson—for him to step out of the car—was more of a direction than a request."

(Opinion, p. 13).

There is no question that Wilson was stuck in an extremely coercive environment from which he could not leave. The Sixth Circuit has ignored the fundamental concepts set forth by this Court regarding consent, and Wilson respectfully requests this Court grant a Writ of Certiorari and undertake review.

III. THE SIXTH CIRCUIT MISAPPLIED THIS COURT'S ESTABLISHED LAW REGARDING THE DOCTRINE OF INEVITABLE DISCOVERY

Finally, the Sixth Circuit concluded that regardless of whether Wilson consented, or whether officers had reasonable suspicion, the firearm would have been found under the doctrine of inevitable discovery. In its opinion, the Sixth Circuit held:

> "The hearing transcript demonstrates that the officers had probable cause to arrest defendant for (1) operating a vehicle while under the influence of alcohol in violation of Mich. Comp. Laws §257.625(1); (2) possessing an open container of alcohol in his car, in violation of Mich. Comp. Laws §257.624a and of the terms of his supervised release; and (3) violating the municipal noise ordinance. As defendant points out, the officers did not in fact arrest defendant on any of these charges. But Officer Spratt testified that he would have placed defendant under arrest for the violations had the gun not been found, noting particularly that driving under the influence and violating the terms of supervised release are serious crimes that would have prevented the officers from releasing defendant. Hr'g Tr. at 21-23."

(Opinion, p. 7).

"The inevitable discovery doctrine, an exception to the exclusionary rule, allows unlawfully obtained evidence to be admitted at trial if the government can prove by a preponderance that the evidence inevitably would have been acquired through lawful means." United States v. Kennedy, 61 F.3d 494, 497 (6th Cir. 1995)(citing, Nix v. Williams, 467 U.S. 431,

444, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984)). This Court's cases have made it "very clear" that "inevitable discovery involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment and does not require a departure from the usual burden of proof at suppression hearings." Nix v. Williams, 467 U.S. 431, 444-445 n.5, 104 S.Ct. 2501, 81 L.Ed.2d. (1984).

The Sixth Circuit's misapplication of the Inevitable Discovery doctrine becomes apparent when it is considered that officers here were not conducting an on-going criminal investigation but encountered Wilson for the purpose of a welfare check. Officers had been called to the scene after a 911 call from someone not reporting a crime, but due to concern over a person either sleeping or passing out in a car. (See, Opinion p. 15). This raises a key issue for this Court's review. Can what initially purports to be a welfare check be the impetus for the use of inevitable discovery?

The dissenting opinion also points out the misapplication of the inevitable discovery doctrine by making these points:

> "Second, there is uncertainty as to whether an arrest would routinely occur in this context. Spratt did not testify or otherwise demonstrate that it was routine—let alone inevitable—for the police to make arrests of intoxicated individuals sleeping or passed out in vehicles, when no investigation into an alcohol-related offense was ongoing."

(Opinion, p. 16)

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> "Third, contrary to Spratt's testimony that he would have executed an arrest, much of the contemporaneous evidence indicates the opposite. Spratt had called for an ambulance, id. at 15, and asked Wilson to step out of the vehicle out of concern for officer safety, not to investigate an offense, id. at 16. Most significantly, Officers Spratt and Bricker repeatedly told Wilson that he was not in trouble or under arrest or anything like that. Spratt Video at 2:47, 3:55. It is far from clear that an arrest was inevitable when the officers themselves assured Wilson that he was neither in trouble nor under arrest."

(Opinion, p. 16)

The Sixth Circuit opinion takes the doctrine of inevitable discovery and twists it in a direction this Court's holdings do not allow. Wilson respectfully submits that is another reason to grant a Writ of Certiorari and undertake review.

CONCLUSION

For reasons set forth herein, the Petitioner Lantrel DeKeith Wilson respectfully requests that this Court grant a Writ of Certiorari and undertake review of this case.

Respectfully submitted this 14th day of July 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July 2020, a true and exact copy of this document has been filed via this Court's electronic filing system with service on the OFFICE OF THE SOLICITOR GENERAL, DEPARTMENT OF JUSTICE, Room 5614, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001 by placing the same in the United States Mail, first class postage pre-paid.

/s/ Mark E. Brown
Mark E. Brown