CAPITAL CASE

No. 20-5375

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES MICHAEL HALL

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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ARGUMENT

DEATH PENALTY CASE

QUESTION ONE

UNDER THE FEDERAL DEATH ACT, "MUST" JURORS RETURN A DEATH SENTENCE IF PROVEN AGGRAVATING FACTORS SUFFICIENTLY OUTWEIGH PROVEN MITIGATING FACTORS, AS MANDATED BY THE EIGHTH CIRCUIT, AND AS INSTRUCTED IN THIS CASE, OR IS THE OPPOSITE TRUE, THAT JURORS ARE NEVER REQUIRED TO RECOMMEND A DEATH SENTENCE REGARDLESS OF FINDINGS WITH RESPECT TO AGGRAVATING AND MITIGATING FACTORS, AS PERSISTENTLY INSTRUCTED BY WELL OVER ONE HUNDRED DISTRICT COURTS OUTSIDE THE EIGHTH CIRCUIT, IN LANGUAGE CITED WITH APPROVAL BY THIS COURT?

REPLY ARGUMENT

1. Summary of Hall's challenge against the Eighth Circuit "must" instruction, and the travesty that where your Federal Capital case is tried determines whether your jury will be told they must, or never have to, return a sentence of death

For his Ground One, Mr. Hall has, like others before him, challenged the choice by the Eighth Circuit to instruct capital case juries, in mandatory fashion, that they "shall" or "must" return a death sentence if aggravating factors "sufficiently outweigh" mitigating factors so that "death is an appropriate sentence" (Petition, p. 10-11). And, like the others before him, Mr. Hall has insisted that the Federal Death Penalty Act should be read to the contrary, so that capital case juries would be instructed just the opposite, that "…regardless of your findings with respect to aggravating and mitigating factors, you are never required to recommend a death sentence." (Petition, p. 11-12). ***Jones v. United States***, 527 U.S. 373, 385 (1999).

Mr. Hall has, of course, revisited the arguments originally made in favor of the mandatory instruction regime, as originally conceived by a Panel of the Eighth Circuit in ***United States v. Allen***, 247 F.3d 741, 779-782 (8th Cir. 2001), *vacated on other grounds* 536 U.S. 953 (2002) (Petition, p. 14-15). Then, Mr. Hall brought to the fore something that was never

addressed in ***Allen***, nor in the decisions since on the subject. Undersigned counsel conducted a complete survey of the manners in which Federal Capital case juries have been instructed regarding the Federal Death Penalty Act in all of the 200 some cases since the inception of the FDPA (Petition, p. 19-21; Appendix 8).

As it turned out, the overwhelming majority of District Courts outside the Eighth Circuit, well over one hundred of them, have read the language in the Federal Death Penalty Act in a manner diametrically opposed to the interpretation made in ***Allen***, causing those Courts to shun the mandatory instruction language commanded in ***Allen***, and instruct their capital case juries that they "never" had to return a death sentence (Petition, p. 19-21; Appendix 8). As well, Mr. Hall posed the compelling arguments in opposition to the ***Allen*** approach, not in his own words, but as written by the person who has, in effect, become centurion of these hundred plus Judges, then District Judge, and now Sixth Circuit Judge, Bernice Donald in ***United States v. Haynes***, 265 F.Supp.2d 914 (W.D.Tn. 2003) (Petition, p. 15-19).

Mr. Hall went on to observe yet another point that was not considered in ***Allen*** or its progeny; that is that, regardless of who might be right or wrong in this standoff, this very parting-of-the-ways over the correct interpretation of the FDPA establishes, at the very least, that there is ambiguity about the meaning of the statute, and thus under the rule of lenity, such ambiguity must be resolved in favor of lenity, and against the practice of instructing juries that they "shall" or "must" return a death sentence (Petition, p. 22-23). Finally, Mr. Hall explained how the unique aspects of his case established that prejudice resulted from the penalty phase mis-instruction (Petition, p. 23-25).

2. In response, the government does not once mention Judge Donald or the hundred-plus others who have instructed their juries they never have to give death, but pretends as if there is but a single voice in opposition

One can do a word search of the government's brief in opposition for reference to "Donald" or "United States v. Haynes", or "rule of lenity" but will come up empty. Nowhere in the government's brief in opposition can there be found mention of the study by undersigned counsel of the hundred-plus District Court cases holding contrary to the government's positions all the way up to the present.

Instead, the government begins its argument by observing, narrowly but correctly, that challenges to the Eighth Circuit penalty phase "must" instructions have been brought to this Court before, as recently as 2012, with this Court on those occasions choosing to not grant review (Brief in Opposition, p. 13). ***Montgomery v. United States***, 565 U.S. 1263 (2012). But then the government goes on to incorrectly add that "(n)o reason exists for a different result in this case." (Brief in Opposition, p. 13). The government so contends only by completely ignoring most everything copiously detailed in the Petition for Certiorari, unique and powerful arguments brought to bear on the subject for the very first time by Mr. Hall.

The closest the government gets to acknowledging dissent about its way comes in a backhanded way. The government cites the truism that the decision of a single district judge "is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case." (Brief in Opposition, p. 16). ***Camreta v. Greene***, 563 U.S. 692, 709, fn. 7 (2011). However, the government does not flip to the other side of that same coin to acknowledge that even a solitary district court decision which is not appealed is "…presumptively correct and valuable to the legal community as a whole." ***U.S. Bancorp Mortgage Company v. Bonner Mall Partnership***, 513 U.S. 18, 26 (1994). That value inures because even a solitary district court decision has "…persuasive force as precedent that may save

other judges and litigants time in future cases." ***Matter of Mem'l Hosp.of Iowa Cty., Inc.***, 862 F.2d 1299, 1302 (7th Cir. 1988).

More importantly, the government does not and cannot explain how the principle it cites, applicable to a single, isolated district court decision, has any bearing where, as here, the decision at issue has been made, time and time again, all the way up to the present, in over a hundred different cases across the country, outside the Eighth Circuit. And the government thereby also ignores that there is power which comes from consistent rulings upon a subject by a "vast majority" or "overwhelming majority" of District Court Judges. ***Castagna v. Luceno***, 744 F.3d 254, 257 (2nd Cir. 2014); ***Jackson v. Barnes***, 749 F.3d 755, 766, fn. 5 (9th Cir. 2014).

The government seeks refuge in the argument that since no Circuit Courts, but only District Courts, have countered the Eighth Circuit, there is no true circuit split, and therefore, supposedly, the matter does not warrant review under this Court's Rule 10(a) (Brief in Opposition, p. 16-17). However, as Justice Thomas has so well put it, even if a Circuit decision does not conflict with the decision of a sister Circuit, so long as there are other compelling reasons to grant review, "…the lack of a circuit split…does not negate the compelling reasons to grant review." ***Noriega v. Pastrana***, 559 U.S. 917, 130 S.Ct. 1002, 1010, fn. 15 (2010), *Justice Thomas dissenting from the refusal to grant Certiorari*. Moreover, as Mr. Hall argued in his petition to this Court, since the government has persistently refused to appeal those hundred-plus District Court decisions to instruct that juries never have to return a sentence of death, the government has allowed those decisions in favor of the never instruction to become final, presumed correct, and thus the strength-in-numbers *de facto* precedent for those circuits (Petition, p. 21). ***U.S. Bancorp Mortgage Company v. Bonner Mall Partnership***, supra.

The government concedes, but attempts to minimize, that this Court, along with two other Circuits have cited with approval the very instructions advanced by Mr. Hall, Judge Donald, and the hundred-plus other Districts (Brief in Opposition, p. 17). ***Jones v. United States***, supra; ***United States v. Brown***, 441 F.3d 1330, 1355-1356 (11th Cir. 2006); ***United States v. Tsarnaev***, 968 F.3d 24, 93 (1st Cir. 2020). What the government does not acknowledge is that, at the very least, these three citations with approval demonstrate that the statutory interpretation giving rise to these instructions is within the mainstream of judicial thought on the subject.

3. Because the government ignores Judge Donald, they also ignore that Judge Donald has the better of the arguments

Unincumbered by Judge Donald's counterarguments, the government advances as gospel the verbatim ***Allen***-case interpretations advanced years ago by the Eighth Circuit Panel. If only the government would read and listen to the wise words from Judge Donald.

The government insists, as did the ***Allen*** Panel, that the weighing of aggravating and mitigating factors is the end all and be all of the jury's ultimate calculation about the justification for a death sentence (p. 14-15). ***United States v. Allen***, 781. And, the government employs the very same sky-is-falling, scolding words from ***Allen***, belittling that contrary arguments supposedly "contend that Section 3593(e) should be read by itself", and "fails to reconcile …with Congress' direction" in 18 U.S.C. 3591(a), and would have jurors "arbitrarily disregarding their unanimous determination that a sentence of death is justified" and would "effectively allow a jury to nullify the imposition of capital punishment even though it has unanimously determined that a capital sentence is appropriate" (Brief in Opposition, p. 14-16). ***United States v. Allen***, 781.

If only the government would have taken the good time and trouble to read what Judge Donald wrote on these subjects in ***United States v. Haynes***, at 916-921, and as recounted in Mr. Hall's Petition at pages 15-18.

Judge Donald identified the fatal flaw in the ***Allen*** Panel argument, now advanced by the government. The ***Allen*** Panel, and now the government, read 3591(a) and 3593(e) as creating the all-encompasing means of deciding the justification for a death sentence, that being the weighing of aggravators against mitigators. However, as Judge Donald so eloquently stated it, the clear language of the separate statutes, 3591(a) and 3593(e), creates two stages, with the weighing of aggravators and mitigators possibly providing a justification, but leaving the overarching justification determination as a separate one which includes, but is not limited to, the weighing of aggravators versus mitigators. ***United States v. Haynes***, 916-917. Thus, it is the ***Allen*** Panel, and now the government, who fail to read and give effect to the wording in both 3591(a) and 3593(e). Judge Donald put the matter perfectly.

> When these two sections are read together, it is evident that Congress intended for jury discretion to apply throughout the selection phase of the sentencing hearing, even after deciding whether any mitigating factors exist and after balancing these mitigating factors against the aggravating factors. ***United States v. Haynes***, 916.

As Judge Donald summed up, the Eighth Circuit Panel offered "little more than a tautology; once the jury has made a decision, the jury is no longer entitled to exercise discretion with regard to that decision." ***United States v. Haynes***, 923. Where Judge Donald expressed that she "respectfully disagrees" is with the Eighth Circuit Panel insistence to not give effect to both 3591(a) and 3593(e), and instead concentrate strictly upon the single matter of weighing of aggravating and mitigating factors. ***United States v. Haynes***, supra.

Finally, the government insists, as the ***Allen*** Panel did years before, that Congress leaving out "never" language from the FDPA should be read as some sort of prohibition against use of

the word in jury instructions (Brief in Opposition, p. 16). ***United States v. Allen***, 781. Once again, the government does not trouble to note, much less respond to, Judge Donald's explanation, set forth in Mr. Hall's Petition at pages 17-18, that omission of the language was more likely done to remove language deemed redundant of other language in the law expressing the same intent (Petition, p. 17-18). ***United States v. Haynes***, 919-920.

4. The government offers no counter to Mr. Hall's arguments that the rule of lenity should operate here and that prejudice was suffered from mis-instruction

As Mr. Hall explained in his Petition at pages 22-23, since at the very least there are two possible, reasonable interpretations of 18 U.S.C. 3591(a) and 3593(e), there arises an ambiguity which must be resolved "in favor of the defendant" and ultimately "in favor of lenity". ***United States v. Bass***, 404 U.S. 336, 347-348 (1971); ***United States v. Santos***, 553 U.S. 507, 513-514 (2008); ***United States v. R.L.C.***, 915 F.2d 320, 325 (8th Cir. 1990). The government makes no argument to the contrary, likely because there is none such which would be well-taken.

Similarly, there is no argument made, or which could be made, against Mr. Hall's powerful presentation of prejudice inuring from the misinstruction. First, as mentioned at page 23-24 of the Petition, prejudice should be presumed per the teaching of this Court in ***Sullivan v. Louisiana***, 508 U.S. 275, 282 (1993). But even if such a presumption was not afforded, the closeness of this case on the issue of punishment is evinced in the record about jury deliberations, especially when coupled with the fact that evidence in aggravation was not overwhelming; thus, prejudice from the mis-instruction is clearly established (Petition, p. 24-25).

QUESTION TWO

IN LIGHT OF THIS COURT'S HOLDING IN ***STRINGER v. BLACK***, COUPLED WITH THE DICTATES OF THE FEDERAL DEATH PENALTY ACT AND THE PENALTY PHASE JURY CHARGE GIVEN IN THIS CASE, DID THE JURY'S REPORT OF "100% CERTAINTY" ABOUT INABILITY TO MAKE A UNANIMOUS DECISION ABOUT PUNISHMENT FOR MR. HALL AMOUNT TO A DETERMINATION THAT THE DEATH

PENALTY WAS NOT JUSTIFIED, AND DID THE DISTRICT COURT'S SUPPLEMENTAL INSTRUCTION AFTER THAT JURY REPORT UNLAWFULLY COERCE THE JURY INTO RETURNING A DEATH SENTENCE?

REPLY ARGUMENT

1. Summary of Hall's challenge against the District Court's failure to accept the jury's determination against the death penalty

For his ground two, Mr. Hall has challenged that the District Court, through a supplemental instruction, countermanded the jury's instructions-driven report of a determination of Hall's ineligibility for a death sentence, and thereby unlawfully coerced a death sentence from that jury (Petition, p. 25-27).

Mr. Hall detailed for this Court the circumstances presented at trial, that after deliberating for about eight total hours on the issue of punishment, the jury announced through their foreperson's note that, though they had reached a penalty phase verdict for jointly-tried Co-Defendant Coonce, there was "100% certainty that we are unable to reach a unanimous decision in regards to Defendant Hall" (Petition, p. 25-26; Appendix 11, p. 10). Over Hall's objections that the note expressed a jury determination and should be accepted, the District Court responded instead with a supplemental instruction that the jury "should continue your deliberations and try to reach unanimous verdicts" (Petition, p. 26; Tr. 5359-60; Appendix 11, p. 10). Less than an hour later, the jury reported having reached verdicts, and thereafter a death recommendation was announced against Mr. Hall (Petition, p. 26; Tr. 5361; Appendix 11, p. 3).

Mr. Hall observed to this Court that, though the Eighth Circuit claimed that "context matters" in upholding the District Court's actions, the Eighth Circuit did not mention, much less account for, the most critical element of that context, the District Court's instructions to the jury (Petition, p. 30-34). ***United States v. Hall***, 945 F.3d 1035, 1047 (8th Cir. 2019). Mr. Hall went on to meticulously detail how, in the context of the FDPA-mandated weighing process, as

explained to the jury in a step-by-step manner through the District Court's instructions, the jury note could be interpreted as nothing less than the jury's report of their determination rejecting the death penalty (Petition, p. 32-33). Mr. Hall then highlighted the fact which confirmed the nature of the note; in keeping with the dictates of the District Court's instructions, the jury had accounted the very same anti-death determination in the form of verdict supplied to them, only to have later crossed-out that determination in obvious response to, and coercion by, the District Court's supplemental instruction (Petition, p. 33-34). Mr. Hall noted the Eighth Circuit's claim that there was supposedly "no way of knowing when [this "no" entry regarding death on the verdict form and the cross-out] happened or why"; Mr. Hall responded, with reference to particular of the District Court's instructions, to make crystal clear that the "no" response had to have happened as the appropriate step in response to the District Court's Instruction No. 18 (Appendix 9, p. A-91; Petition, p. 29, 33-34).

Mr. Hall then addressed the solace taken by the District Court, and then by the Eighth Circuit, that use of a capital case penalty phase deadlock instruction, very much like the one used by the District Court, was approved by this Court in ***Lowenfield v. Phelps***, 484 U.S. 231, 238 (1988) (Petition, p. 34). Mr. Hall countered this notion by recounting for this Court how, in keeping with the teaching of this Court's in ***Stringer v. Black***, 503 U.S. 222, 231-232 (1992), it had been had explained to the lower courts, to no avail, how the subject instruction, though proper when used in the context of jury deliberations under Louisiana's non-weighing penalty phase scheme, was unlawfully coercive when used, at the juncture it was, during the substantively different FDPA weighing process in this case (Petition, p. 34-35).

Mr. Hall went on to note the other circumstances which bespoke coerciveness of the instruction: first, that the jury had already spent a total of eight hours over two days deliberating

upon punishment, time which had been plenty to reach a punishment determination for Co-Defendant Coonce, and second, that the jury messaged back concerning a verdict only about an hour after they had received the instruction from the District Court (Petition, p. 35). ***United States v. Hall***, 1047-1048. Mr. Hall also highlighted that, while the Eighth Circuit inferred that a request for exhibits by the jury somehow showed the jury did not feel pressured to impose a death sentence, such a conclusion about the significance of the request could not be drawn since it could not be known whether the exhibits were requested by those who needed to be convinced, or by those who were already convinced (Petition, p. 35-36). Finally, Mr. Hall explained that, because the case was so close on the issue of punishment, the error could not be passed off as harmless (Petition, p. 37).

2. Despite rejection by the Eighth Circuit, and despite having no law or facts in support, the government asks this Court to discount the note as the unsupported opinion by a single juror

The government begins its argument on this question by inviting this Court to do what the Eighth Circuit would not, find that this critical note "conveys only the foreperson's personal assessment" (Brief in Opposition, p. 18).[1] Neither the District Court's Instructions nor the jury's practice in fact allow such a narrow reading of the note.

In the final first phase instruction, jurors were told to "select one (1) of your members as your foreperson" who would then "preside over your discussions and speak for you here in court" and to "communicate" with the District Court by way of a "note…signed by one (1) or

[1] The government wrongly relies for its proposition upon ***Blueford v. Arkansas***, 566 U.S. 599, 605-606 (2012). Contrary to the government's contentions, in ***Blueford v. Arkansas***, supra, this Court fully embraced that all representations by the Foreperson in that case accurately reflected the state of the jury's deliberations at the time made; Blueford's problem was that the specifics upon which he critically relied were made in an earlier statement by the Foreperson, and not reaffirmed by the Foreperson after further deliberations by the jury.

more jurors" (Doc.[2] 886, p. 24). The final penalty phase instruction similarly said that that "(i)f you want to communicate with me at any time during your deliberations, please write down your message or question, and pass the note to Ms. Moore who will bring it to my attention" (Appendix 9, p. A-96). Ultimately, all of the communications from the jury to the District Court, during both phases of trial, came from the Foreperson (Doc. 756; Appendix 13). Putting things a little differently, though every other juror was empowered to express any dissent he or she might have had against the Foreperson's communications, none did. These case-specific factors combine with universal acceptance that, when a jury foreperson speaks, that is done on behalf of the jury as a whole. ***Commonwealth v. Gains***, 556 A.2d 870, 876 fn. 8 (Pa.App. 1989). Therefore, the only fair conclusion to be drawn was that the jury note was a communication from the Foreperson on behalf of the entire jury. The Eighth Circuit rightly decided this factual issue precisely that way, characterizing that, in the note, the Foreperson was "…announcing that the jury had reached a decision on Coonce, but 'with 100% certainty' could not reach one on Hall." ***United States v. Hall***, 1047. The government says nothing new to justify changing that decision.

3. The government relies upon this Court's decision in Lowenfield, but when questioned about that reliance, tries to turn the tables, wrongly claiming it is Hall's duty to present authority that the reliance is misplaced

First the District Court, and then the Eighth Circuit, claimed that the propriety of the District Court's instruction was assured by this Court's approval of virtually the same instruction in ***Lowenfield v. Phelps***, supra. Now, the government boldly goes even further, that "even in capital cases" ***Lowenfield*** "…incontestably" gives district courts "authority to insist that a jury deliberate further…" (Brief in Opposition, p. 20).

[2] "Doc." refers to an entry on the District Court's Docket Sheet, and the item can be found on CM-ECF at that point.

In response, Mr. Hall has patiently, repeatedly, but firmly explained the contrary lessons taught by this Court in ***Stringer v. Black***, supra; to wit, whereas the instruction in the ***Lowenfield*** case was proper because that jury was only debating the question of life versus death under the Louisiana non-weighing penalty phase regime, the instruction was improper, nay coercive, when the jury, under the FDPA and the District Court's instructions, was charged with the weighing of aggravating factors versus mitigating factors, and had actually provided indication of reaching an anti-death determination (Petition, p. 29-31).

Rather than face the power of that logic head on, the government suggests, *sans* authority, that somehow it is incumbent upon Mr. Hall to prove a negative (Brief in Opposition, p. 28). Investing four briefing pages, the government tries to cabin the holding in ***Stringer*** to the issue decided pursuant to ***Teague v. Lane***, 489 U.S. 288 (1989), intuiting that the broad logic and explanations about weighing and nonweighing schemes set forth in ***Stringer*** cannot be applied here because no ***Teague v. Lane*** issue is in play in this case (Brief in Opposition, p. 24-28).

In so arguing, the government conveniently forgets that it is the District Court, and then the Eighth Circuit, and now the government, who have critically relied upon ***Lowenfield*** as justification for the District Court's supplemental instruction. It is incumbent upon a party relying upon decisions by this Court to demonstrate that those decisions actually pertain to the issue being addressed by the Court. ***Gross v. FBL Financial Services, Inc.***, 557 U.S. 167, 173-174 (2009). Moreover, this Court has resolved that it "…must be careful not to apply rules applicable under one statute to a different statute without careful and critical examination." ***Gross v. FBL Financial Services, Inc.***, 174. The government has tried the switcheroo because it could not withstand Mr. Hall's "careful and critical examination" of how the rules for dealing with a non-weighing scheme could not be applied to a fundamentally different weighing scheme.

4. The Eighth Circuit and the government miss the import of the facts by examining each in isolation, not in the context of the District Court's instructions

The government criticizes Mr. Hall for his "factbound attempts" to make critical points (Brief in Opposition, p. 22). Oddly, that criticism comes smack dab in the middle of the government's own teasing-out and dissecting each such fact (Brief in Opposition, p. 19-23). But neither side can be faulted for carefully examining the facts since, as the Eighth Circuit rightly observed, in resolving this particular issue, "context matters". ***United States v. Hall***, 1047.

Trouble is that the Eighth Circuit and the government fail to account for the "context" which really "matters", the District Court's instructions given to the jury. The government niggles that the foreperson's note "did not disclose whether the jury had yet voted", did not inform the District Court that they were "deadlocked", and "did not state that death was off the table" (Brief in Opposition, p. 21-22). However, as Mr. Hall detailed in his Petition at pages 29 and 32-33, the affirmative answers to those questions were supplied by the context of the District Court's explicit instructions directions. The instructions made clear that the jury could reach the point in their deliberations reported in their note only if they had voted and thereby decided that death was off the table because they could not unanimously agree that death was justified (Brief in Opposition, p. 32-33; Appendix 9, p. A-91-A-92).

The government trumpets that, through the note, the jury "was not trying to return a final verdict (Brief in Opposition, p. 21). Of course the note was not a verdict; however it was, under the District Court's instructions, a definitive result that "death was off the table" because the jury was not unanimous that death was justified. That the jury had made that very anti-death determination was confirmed in their form of verdict when they entered "no". Despite the Eighth Circuit's and government claims to the contrary (Brief in Opposition, p. 23, fn. 2), this entry of "no" on the verdict form had to have happened as the jury made its anti-death

determination as directed in Instruction 18 (Appendix 9, p. A-91). Then the note had to have been prepared in keeping with the directions in Instruction 18 and Instruction 19 (Appendix 9, p. A-91-A-92). The government cries that the District Court did not know until later about the entry on the verdict form (Brief in Opposition, p. 23, fn 2). But for purposes here, the verdict form entry is just confirmatory evidence that the jury followed to a T the very instructions which the District Court gave and therefore should have known well about.

The government niggles that the Eighth Circuit "did not…concede there were earmarks of coercion" despite the Eighth Circuit's clear admissions about two critical indicia of coercion, lengthy pre-note deliberations and short turnaround time from the supplemental instruction to the jury verdict (Brief in Opposition, p. 22). ***United States v. Hall***, 1047. The government repeats the Eighth Circuit's characterization of the jury's eight hours of deliberations over two days as comprising "less than one full day", and contrasts that "nearly a month" of time was taken for the penalty phase presentation for Coonce and Hall (Brief in Opposiion, p. 21). However, the government has never once suggested that the Coonce verdict, which came even earlier, was too quick, thereby making plain the insignificance of this contrast of times when applied to Hall.

Finally, as already noted above, Mr. Hall has made extensive arguments that the significance of the post-supplemental-instruction request for exhibits is unknowable without identification of which juror or group of jurors sought the instructions (Petition, p. 37). Without addressing Mr. Hall's counterpoints, the government joins the Eighth Circuit in concluding that the request suggests proper deliberations occurred (Brief in Opposition, p. 22). Mr. Hall would simply add one more thought, that it is interesting that the Eighth Circuit and the government found this aspect of jury deliberations knowable based on so little available information, but

found the aspect about the timing of the entry of “no” on the verdict form unknowable despite so much available information.

CONCLUSION

WHEREFORE, based upon the foregoing, and based upon the premises set forth in his Original Petition on these subjects, Mr. Hall prays that this Honorable Court enter its Order in this case granting to Mr. Hall its Writ of Certiorari to the Eighth Circuit Court of Appeals, and granting any further relief which this Court deems just and proper under the circumstances.

Respectfully submitted

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CERTIFICATE OF SERVICE AND COMPLIANCE

It is hereby certified

- that required privacy act redactions have been made to the foregoing,
- that this document complies with the typeface requirements of Supreme Court Rule 34.1(g) because the document was prepared in Microsoft Word using Times New Roman 12 font style and typesize,
- that, the portions of this document countable under Supreme Court Rule 33.2(b) contains 15 pages, and therefore this Reply complies with the dictates of Rule 33.2(b),
- that, this item was converted to pdf format for electronic filing and was properly scanned for viruses, with none being found, and
- that, copies of this Reply were e-mailed and mailed to the following on this 22nd day of February, 2021

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