No. 22-5982

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD ALLEN JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

(CAPITAL CASE)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

BRIAN H. FLETCHER
Acting Solicitor General
Counsel of Record

KENNETH A. POLITE, JR.
Assistant Attorney General

JOHN-ALEX ROMANO
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

CAPITAL CASE

QUESTION PRESENTED

Whether federal first-degree premeditated murder, in violation of 18 U.S.C. 1111(a), qualifies as a "crime of violence" under 18 U.S.C. 924(c)(3)(A).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B1-B6) is reported at 32 F.4th 278. The memorandum decision and order of the district court (Pet. App. C1-C5) is unreported but is available at 2020 WL 1542348.

JURISDICTION

The judgment of the court of appeals was entered on April 20, 2022. A petition for rehearing en banc was denied on June 17, 2022 (Pet. App. A1). On September 8, 2022, the Chief Justice extended the time within which to file a petition for a writ of

certiorari to and including October 31, 2022, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of North Carolina, petitioner was convicted of using a firearm during and in relation to a crime of violence, thereby causing the death of a person, in violation of 18 U.S.C. 924(c) and (j). The jury recommended, and the district court imposed, a capital sentence. The court of appeals affirmed, 327 F.3d 273, and this Court denied review, 540 U.S. 1019. In 2004, petitioner filed a motion for collateral relief under 28 U.S.C. 2255, which the district court denied. Pet. App. B2; see 638 F. Supp. 514. The district court and the court of appeals denied petitioner a certificate of appealability (COA). Pet. App. B2. This Court denied review. 568 U.S. 826. In 2016, petitioner filed a second motion for collateral relief under Section 2255, as authorized by the court of appeals. Pet. App. B2, C2. The district court dismissed petitioner's motion and denied him a COA. Id. at C1-C5. The court of appeals granted a COA and affirmed. Id. at B3-B6.

1. On October 31, 1994, 22-year-old Karen Styles went for a run in the Pisgah National Forest in North Carolina. Pet. App. C1. Petitioner, who was armed with a gun, confronted her on the

trail and forced her to walk deep into the forest, where he duct-taped her to a tree, removed her clothing, and raped her. Ibid.

Petitioner then shocked Styles with a stun gun above her left breast and several times in the pubic area. 327 F.3d at 280. After that, he placed duct tape over Styles's mouth and masturbated while looking at a pornographic magazine. Ibid. When the duct tape over her mouth loosened, Styles began to scream. Ibid.

Petitioner then shot Styles once in the head, killing her. 327 F.3d at 280. A hunter later discovered Styles's nude body, still duct-taped to the tree. Id. at 279. Investigators found a duct-tape wrapper, pornographic magazine, and spent rifle casing near her body, all of which tied back to petitioner. Id. at 279-280. Petitioner subsequently confessed to the murder. Id. at 280; Pet. App. B1, C1.

2. Petitioner was charged in North Carolina state court with first-degree murder, first-degree kidnapping, and first-degree rape. Petitioner was convicted on all charges, the jury recommended a capital sentence, and the state court imposed that sentence. Pet. App. B2. The North Carolina Supreme Court reversed petitioner's convictions based on its conclusion that officers improperly obtained petitioner's confession by interrogating him

after petitioner invoked his right to counsel. State v. Jackson, 497 S.E.2d 409, cert. denied, 525 U.S. 943 (1998).[1]

In March 2000, petitioner pleaded guilty in state court to second-degree murder, second-degree kidnapping, and first-degree rape, pursuant to a plea agreement with the State. Pet. App. B2; 327 F.3d at 281. Under the agreement, petitioner received a state prison sentence of no more than 31 years, with five years credit for the time he had already served. Ibid.

3. In November 2000, a federal grand jury returned a superseding indictment charging petitioner with one count of using a firearm during and in relation to a crime of violence, thereby causing the death of a person, in violation of 18 U.S.C. 924(c) and (j). Pet. App. B2. The indictment alleged three underlying crimes of violence: first-degree murder, in violation of 18 U.S.C. 1111(a); kidnapping, in violation of 18 U.S.C. 1201(a)(2); and aggravated sexual abuse, in violation of 18 U.S.C. 2241(a)(1) and (2). Pet. App. B2; C.A. App. 158-159.

A federal jury found petitioner guilty and recommended a capital sentence. Pet. App. B2. During the trial's guilt phase, the government presented 22 witnesses and extensive physical and

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[1] In 2001, the North Carolina Supreme Court abrogated its Miranda ruling in petitioner's case to the extent that its determination of whether a defendant was "in custody" for Miranda purposes followed "a standard other than the 'ultimate inquiry' of whether there is a 'formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'" State v. Buchanan, 543 S.E.2d 823, 828 (citation omitted).

testimonial evidence, including petitioner's confession, which the district court admitted without objection. 327 F.3d at 281. The verdict sheet reported the jury's unanimous findings that petitioner committed all three crimes of violence charged in the superseding indictment, including first-degree murder. Pet. App. B2. The verdict sheet further specified the jury's individualized findings that petitioner "committed the murder of Karen Styles" (1) "with malice aforethought, willfully, deliberately, maliciously and with premeditation"; (2) "during the perpetration of kidnap[p]ing"; and (3) "during the perpetration of aggravated sexual abuse." Ibid. (brackets in original).

In accordance with the jury's unanimous recommendation at the trial's sentencing phase, the district court imposed a capital sentence. Pet. App. B2; 327 F.3d at 281. On direct appeal, the court of appeals affirmed petitioner's conviction and sentence. Pet. App. B2; 327 F.3d at 279. In 2006, petitioner filed a motion to vacate his conviction and sentence under 28 U.S.C. 2255, raising a variety of claims including ineffective assistance of counsel, prosecutorial misconduct, and challenges to the death penalty's constitutionality. In 2009, the district court denied petitioner's motion. 638 F. Supp. 2d 514. The district court and court of appeals subsequently denied petitioner's request for a COA, Pet. App. B2, and this Court denied review, 568 U.S. 826.

4. In 2016, petitioner obtained authorization from the court of appeals to file a second motion for collateral relief under 28 U.S.C. 2255. C.A. App. 11.

a. Petitioner's motion was based on Johnson v. United States, 576 U.S. 591 (2015), in which this Court held that the definition of a "violent felony" in the residual clause of the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), is unconstitutionally vague. See C.A. App. 5-7, 14-38; see also Welch v. United States, 578 U.S. 120, 135 (2016) (holding that Johnson applies retroactively to cases on collateral review). Petitioner contended that the similarly-worded definition of a "crime of violence" in 18 U.S.C. 924(c)(3)(B), was unconstitutionally vague in light of Johnson, C.A. App. 6, 19-25, a contention that this Court subsequently adopted during the pendency of petitioner's motion, see United States v. Davis, 139 S. Ct. 2319, 2336 (2019).

Petitioner further contended that none of his three predicate offenses (first-degree murder, kidnapping, and aggravated sexual abuse) qualified as a crime of violence under the alternative definition in 18 U.S.C. 924(c)(3)(A). C.A. App. 6, 25-37. Section 924(c)(3)(A), sometimes referred to as the "elements" or "force" clause, defines a "crime of violence" to include a federal offense that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another."

b. The district court denied petitioner's motion. Pet. App. C1-C5. The court did not address the issue of whether petitioner had procedurally defaulted his current claim by failing to challenge the application of the crime-of-violence definition on direct review, see 16-cv-212 D. Ct. Doc. 17, at 5-7 (Jan. 15, 2020) (raising that point), but instead rejected petitioner's claim on the merits. In doing so, it relied on circuit precedent finding that "murder is a crime of violence under the force clause because unlawfully killing another human being requires the use of force capable of causing physical pain or injury to another person." Pet. App. C3 (quoting In re Irby, 858 F.3d 231, 236 (4th Cir. 2017)) (internal quotation marks omitted); see ibid. (additionally citing United States v. Mathis, 932 F.3d 242, 265 (4th Cir.), cert. denied, 140 S. Ct. 639, and 140 S. Ct. 640 (2019), which reached a similar result for Virginia's "mirror[ing]" first-degree murder offense).

The district court emphasized that "[t]o hold otherwise would be to exclude the 'most morally repugnant crime' from the ambit of the force clause, while permitting less serious offenses, such as robbery, to remain." Pet. App. C4 (quoting In re Irby, 858 F.3d at 237). And the court added that petitioner's "crimes against Karen Styles involved some of the worst and most violent conduct that any human being can inflict on another"; petitioner "not only

took the life of Karen Styles: he terrorized, tortured, and raped her before executing her with a single bullet to the head." Ibid.

The district court declined to issue a COA. Pet. App. C5.

5. The court of appeals, after issuing a COA, affirmed. Pet. App. B1-B6. Although it disagreed with the government's contention that petitioner's claim was procedurally defaulted, see id. at B2 & n.3, it explained that "premeditated murder in violation of § 1111(a) is categorically a 'crime of violence'" under Section 924(c)(3)(A) and thus "constitutes a valid underlying crime sufficient to support [petitioner's] conviction of violating §§ 924(c) and (j)," id. at B6.

The court of appeals observed that, when determining whether a felony qualifies as a crime of violence under Section 924(c)(3)(A) and similarly worded provisions, courts "generally use the categorical approach," which requires "'look[ing] to whether the statutory elements of the offense necessarily require the use, attempted use, or threatened use of physical force,'" while "consider[ing] only the elements of the crime as defined in the statute, not the facts particular to the case at hand." Pet. App. B3 (citation omitted). It further observed that courts apply a "'variant'" of this approach -- the "modified categorical approach" -- when the statute in question is "divisible." Ibid. (citation omitted). The court explained that a "divisible" statute is one that "set[s] forth 'multiple, alternative versions of the

crime' with distinct elements," as opposed to "merely set[ting] out different means of completing the crime." Ibid. (quoting Descamps v. United States, 570 U.S. 254, 262 (2013)).

The court of appeals then turned to the federal first-degree murder statute, 18 U.S.C. 1111(a), which defines the offense as

> [e]very murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed.

Ibid. (emphasis added). The court rejected petitioner's contention that Section 1111(a) "is a single indivisible statute" in which the disqualification of even a single variant from classification as a crime of violence is sufficient to disqualify all of them. See Pet. App. B4; see id. at B4-B6.

The court of appeals observed that Section 1111(a) "is phrased alternatively," setting forth multiple alternatives that are "separated by a semicolon followed by the word 'or.'" Pet. App. B4. The court accordingly found that each "requires the Government to prove a unique element that the jury must find unanimously," marking the statute as divisible. Ibid. The court explained that while the statute's use of the "disjunctive" to separate the alternative versions of first-degree murder was "not dispositive," such a formulation "'serves as a signal that it may well be

divisible,'" and additional "indicia of divisibility" further "support[ed]" its finding." Ibid. (citation omitted).

The court of appeals observed that, with respect to the first two alternatives, "the underlying conduct for premeditated murder differs significantly from the underlying conduct for felony murder"; the former requires proof "a person intended to kill the victim," whereas the latter requires "proof of the (attempted) perpetration of a listed crime." Pet. App. B5. And, noting that a "court may 'peek at the record documents . . . [to] determine[e] whether the listed items are elements of the offense,'" the court of appeals observed that the record in this case "reinforces" Section 1111(a)'s divisibility. Ibid. (quoting Mathis v. United States, 579 U.S. 500, 518 (2016)) (brackets in original).

In particular, the court of appeals noted that "[i]f premeditated murder and felony murder were merely means of committing a single crime," the jury would have been allowed to find petitioner "guilty of first-degree murder in the absence of unanimous agreement as to the type of murder he committed." Pet. App. B5-B6. It observed, however, that the indictment -- in accord with "indictments in other cases" -- alleged that petitioner "separately committed" premeditated murder and felony murder. Id. at B5 & n.9. And the jury instructions correspondingly required that the jury "'unanimously agree that the Government has proved beyond a reasonable doubt that the defendant committed murder in

one of the three manners alleged' and * * * 'unanimously agree on the same one'" in order to find guilt on the first-degree murder charge. Id. at B5 (quoting Trial Tr. 1255-1256).

The court of appeals also observed that the verdict form "exactly matche[d]" the jury instructions by directing the jury to find whether petitioner had "committed the murder of Karen Styles 1) 'with malice aforethought, willfully, deliberately, maliciously and with premeditation'; 2) during the perpetration of kidnap[p]ing'; and 3) 'during the perpetration of aggravated sexual abuse.'" Pet. App. B6 (quoting Verdict Sheet, D. Ct. Doc. 176, at 2 (May 7, 2001)) (brackets in original). By placing "check marks * * * next to all three of these crimes on the verdict form," the jury "clearly" "found [petitioner] guilty of all three." Ibid.

Having determined that Section 1111(a) is divisible, the court of appeals applied the modified categorical approach. Pet. App. B6. And it recognized that "federal premeditated first-degree murder is a 'crime of violence'" because it requires "an intentional mens rea" and "the use of 'violent force -- that is, force capable of causing physical pain or injury to another person.'" Ibid. (quoting Johnson v. United States, 559 U.S. 133, 140 (2010)).

ARGUMENT

Petitioner contends (Pet. 6-22) that federal first-degree murder is not categorically a crime of violence because 18 U.S.C. 1111(a) is not divisible and includes a crime, felony murder, "that can be committed accidentally or recklessly." Pet. 7. The court of appeals, however, correctly determined that 18 U.S.C. 1111(a) is divisible into separate first-degree murder crimes, and petitioner does not dispute that first-degree premeditated murder qualifies as a crime of violence. The court of appeals' decision does not conflict with the decisions of this Court or that of any other court of appeals. Moreover, this case is a poor vehicle for reviewing the question presented because petitioner's claim is procedurally defaulted and even if it were not, petitioner would not be entitled to the relief he seeks. No further review is warranted.

1. As the court of appeals correctly recognized, Section 1111(a) contains multiple separate definitions of a complete offense. It states that "[m]urder," whether in the first or second degree, "is the unlawful killing of a human being with malice aforethought," and then sets forth alternative definitions of first-degree murder, each of which is separated by a semi-colon and the disjunctive term "or." 18 U.S.C. 1111(a); see Pet. App. B4. That, in itself, is highly probative of the separateness of the different variants. See, e.g., United States v. Allred, 942

F.3d 641, 649 (4th Cir. 2019), cert. denied, 140 S. Ct. 1235 (2020).

Furthermore, as this Court explained in Chambers v. United States, 555 U.S. 122 (2009), "[t]he nature of the behavior that likely underlies a statutory phrase matters" to the analysis of a statute's divisibility; where one statutory phrase covers behavior that differs "significantly" from behavior underlying another, the statutory phrases should be treated as "different crimes." Id. at 126. Here, each alternative definition of first-degree murder involves "significantly" different conduct. Pet. App. B4. For example, the first "requires proof of premeditation, and the second requires proof of the accomplishment (or attempted accomplishment) of a listed felony." Id. at B4-B5. Indeed, petitioner's own argument hinges on the mens rea requirement for one of the listed felonies (kidnapping) being lower than the mens rea (premeditation) for the first variant.[2]

Record materials confirm that Section 1111(a) is divisible. This Court has instructed that the divisibility inquiry may include a "peek at the record documents," Mathis v. United States, 579 U.S. 500, 518 (2016) (brackets and citation omitted), and that an "indictment, jury instructions, plea colloquy, and plea agreement"

[2] Because the conduct underlying each of the predicate felonies is itself significantly different, the definition is likewise divisible based on the particular one that was proved to the jury.

will often "reflect the crime's elements" and thereby reveal whether a statutory list contains elements or means, Descamps v. United States, 570 U.S. 254, 264 n.2 (2013); see Mathis, 579 U.S. at 519 (explaining that "an indictment and jury instructions could indicate, by referencing one alternative term to the exclusion of all others, that the statute contains a list of elements, each one of which goes toward a separate crime"). They do so here.

As the court of appeals observed, the indictment -- in accord with indictments in other cases -- charged that petitioner separately committed premeditated murder (as well as felony murder). Pet. App. B5 & n.9. And in accord with the federal model jury instructions on Section 1111(a), the jury was correspondingly instructed that it had to agree unanimously about the variant of first-degree murder that petitioner committed in order to rely on that variant as a predicate crime of violence. Id. at B5-B6; see 5th Cir. Pattern Crim. Jury Instr. 2.52A (2019); 7th Cir. Pattern Crim. Jury Instr. 7th Cir. 1111, at 591-595 (2022); 8th Cir. Model Crim. Jury Instr. 6.18.1111A (2021); 9th Cir. Model Crim. Jury Instr. 16.1 (2022); 10th Cir. Crim. Pattern Jury Instr. 2.52 & 2.52.1 (2021); 11th Cir. Crim. Pattern Jury Instr. 045.1 & 045.2 (rev. Mar. 2022). The verdict sheet indicates that the jury unanimously found that petitioner committed premeditated murder (as well as felony murder). Pet. App. B6.

2. Petitioner does not dispute that, if Section 1111(a) is divisible, he was validly charged and convicted of using a firearm, thereby causing death, during the commission of an offense that qualifies as a crime of violence. Indeed, as the court of appeals recognized, premeditated first-degree murder "[u]ndoubtedly" qualifies as a crime of violence under the elements clause because to commit the offense "is to intentionally inflict the greatest injury imaginable -- death." Pet. App. B6. And petitioner acknowledges (Pet. 7) that the sole claim that he presents in this Court -- that Section 1111(a) is indivisible -- is "one of first impression" in the courts of appeals, and cites no other case deciding the question of Section 1111(a)'s divisibility. The absence of a developed body of law on this question, let alone a circuit conflict, counsels against review by this Court. And petitioner's argument (Pet. 11-18) that the decision below conflicts with this Court's precedents is mistaken.

In Schad v. Arizona, 501 U.S. 624 (1991), this Court held that a first-degree murder conviction obtained in Arizona state court under jury instructions that did not require agreement on whether the defendant was guilty of premeditated murder or felony murder did not violate the Constitution. Id. at 627, 630-645 (plurality opinion); id. at 648-652 (Scalia, J., concurring in part and concurring in the judgment). But as the court of appeals in this case explained, Schad "expressly disclaimed any opinion on

whether the Arizona statute was divisible; the Supreme Court of Arizona had already held that it was not." Pet. App. B5 n.7; see Schad, 501 U.S. at 636-637 (plurality opinion) (noting the Arizona Supreme Court had "authoritatively determined that the State has chosen not to treat" statutory alternatives as independent elements of the crime and the Court was "not at liberty to ignore that determination").

Thus, although the constitutional analysis of the plurality and concurring opinions in Schad relied on the treatment of murder as a single offense at common law, with "[t]he intent to kill and the intent to commit a felony [as] alternative aspects of the single concept of 'malice aforethought,'" 501 U.S. at 640 (plurality opinion); see id. at 649-651 (Scalia, J., concurring in part and concurring in the judgment), the appropriate interpretation of Arizona law was not at issue in that case. Much less did the Court in Schad have any occasion to directly consider whether the federal first-degree murder statute is divisible in light of the statute's text and structure, relevant record documents, and model federal jury instructions, as is appropriate under this Court's subsequent decisions on divisibility, including Mathis v. United States.[3]

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[3] Petitioner's reliance on two circuit cases that cited Schad is similarly misplaced. See Pet. 14 (citing United States v. Nguyen, 155 F.3d 1219, 1229 (10th Cir. 1998), cert. denied, 525 U.S. 1167 (1999); United States v. Thomas, 34 F.3d 44 (2d Cir.), cert. denied, 513 U.S. 1007, and 513 U.S. 1065 (1994), and 513

Petitioner's assertion of a conflict with Mathis likewise lacks merit. The court of appeals precisely followed the procedure that Mathis sets forth for determining whether a statute is divisible into multiple offenses. Compare Pet. App. B5-B6, with Mathis, 579 U.S. at 517-519. And it correctly found that the text of Section 1111(a), as well clear indicia from the statute's application in both this case and others, illustrated that the statute was divisible. Pet. App. B5-B6 & n.9; see pp. 12-14, supra.

Petitioner errs in suggesting (Pet. 16-17) that Mathis precludes a court from considering the disjunctive phrasing of a statute, along with the punctuation used to separate the disjunctive components, as a factor relevant to the potential divisibility of the statute. Instead, the Court in Mathis recognized that statutes might "list[] multiple elements disjunctively." 579 U.S. at 506. And petitioner's further contention (Pet. 17) that the court of appeals "depart[ed] from precedent" by considering the different conduct involved in premeditated murder and felony murder disregards the Court's recognition in Chambers v. United States, 555 U.S. at 126, that

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U.S. 1101 (1995)). Those cases addressed whether felony murder requires proof of mens rea separate from proof of the underlying felony, and cited Schad when rejecting such a requirement. Neither case decided whether premeditation and felony murder are distinct offenses under Section 1111(a). See Nguyen, 155 F.3d at 1229; Thomas, 34 F.3d at 48-49.

such differences are relevant to divisibility, and would impose unwarranted restraints on the scope of the inquiry.

3. In addition, this case provides a poor vehicle for deciding the question presented. Because petitioner did not challenge the application of the "crime of violence" definition in his original proceedings, that challenge has been procedurally defaulted. Massaro v. United States, 538 U.S. 500, 504 (2003); see, e.g., Wainwright v. Sykes, 433 U.S. 72, 85-86 (1977) (no contemporaneous objection lodged at trial); Murray v. Carrier, 477 U.S. 478, 490-492 (1986) (claim not raised on direct appeal); see also Gov't C.A. Br. 8-12. And even if he overcame that obstacle, petitioner would not be entitled to vacatur and a new trial, the remedy he requested below (Pet. C.A. Br. 33, 35).

In Section 2255, Congress authorized courts of appeals to "affirm, modify, vacate, set aside or reverse any judgment * * * and direct the entry of such appropriate judgment * * * as may be just under the circumstances." 28 U.S.C. 2106. As this Court has approvingly recognized, courts of appeals "may direct the entry of judgment of a lesser included offense when a conviction for a greater offense is reversed on grounds that affect only the greater offense." Rutledge v. United States, 517 U.S. 292, 306 (1996). Because petitioner's Section 924(c) and (j) conviction required, inter alia, a jury finding (or factual admission) that he "committed all the acts necessary to be subject to punishment for"

a separately proscribed crime of violence, United States v. Rodriguez-Moreno, 526 U.S. 275, 280 (1999), both first-degree murder and kidnapping are lesser included offenses.

And because both are themselves capital offenses, see 18 U.S.C. 1111(a), 1201(a), the court of appeals would be permitted to enter judgment on those offenses regardless of the validity of petitioner's Section 924(c) and (j) conviction. Such a result effectively would render any error harmless. Cf. Brecht v. Abrahamson, 507 U.S. 619, 637 (1993) (recognizing that harmless error standard on collateral review asks only whether the error "had substantial and injurious effect or influence in determining the jury's verdict") (citation omitted).

In assessing whether it is appropriate to enter judgment on a lesser included offense, courts of appeals generally consider "whether the trial evidence fails to support one or more elements necessary to the conviction"; "whether the trial evidence is sufficient to sustain each and every element of a different offense"; "whether that different offense is a lesser included offense of the offense of conviction"; and "whether any injustice or unfair prejudice will inure to the defendant by directing the entry of a conviction for the lesser included offense." United States v. Sepúlveda-Hernández, 752 F.3d 22, 28-29 (1st Cir. 2014); see United States v. Rojas Alvarez, 451 F.3d 320, 328 (5th Cir. 2006), cert. denied, 552 U.S. 1244 (2008); United States v. Dhinsa,

243 F.3d 635, 674-675 (2d Cir.), cert. denied, 534 U.S. 897 (2001); United States v. Smith, 13 F.3d 380, 383 (10th Cir. 1993); Allison v. United States, 409 F.2d 445, 451 (D.C. Cir. 1969) (per curiam). Those considerations point decisively in favor of that course here.

The court of appeals recognized that the evidence in support of the jury's verdict was "overwhelming." 327 F.3d at 297. And petitioner cannot identify any injustice in directing the entry of a conviction for either or both of those offenses, which would reflect the heinous nature of his capture and murder of Karen Styles.[4]

[4] This Court has granted certiorari in Lora v. United States, 143 S. Ct. 521 (2022) (No. 22-49), to consider whether Section 924(c)'s requirement that a sentence be mandatory and consecutive to the sentence for any other term of imprisonment applies to an offense that satisfies the requirements of Section 924(j). Because petitioner was convicted of only the single crime, and received the maximum available capital sentence in accord with the jury's unanimous recommendation, this case does not implicate the question presented in Lora.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

BRIAN H. FLETCHER
Acting Solicitor General*

KENNETH A. POLITE, JR.
Assistant Attorney General

JOHN-ALEX ROMANO
Attorney

FEBRUARY 2023

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* The Solicitor General is recused in this case.