

CASE NO. \_\_\_\_  
IN THE SUPREME COURT OF THE UNITED STATES

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EDWARD TROUP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

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ON PETITION FOR WRIT OF *CERTIORARITO*  
THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Does a federal antiracketeering statute, conviction for which is predicated on the commission of a murder “in violation of the laws of any State,” reach murders committed outside a state’s statute of limitations, murders for which the defendant could not be adjudicated guilty under state law?

## LIST OF PARTIES AND DIRECTLY RELATED PROCEEDINGS

In the District Court for the District of New Mexico, in case number 2:15-CR-04268, the United States indicted multiple defendants in a single proceeding, of whom the petitioner here was one such indicted defendant. He and six codefendants were jointly tried. The jury acquitted two defendants and convicted five, including the petitioner. The five convicted defendants took separate direct appeals to the Tenth Circuit, which assigned separate case numbers to each appeal but procedurally consolidated the five cases. The Tenth Circuit later issued a single opinion adjudicating the claims raised by all five appellants, though it issued individualized judgments. The caption and case numbers of these directly related appeals at the Tenth Circuit are:

1. United States v. Arturo Garcia (Tenth Cir. No. 19-2148)
2. United States v. Billy Garcia (Tenth Cir. No. 19-2152)
3. United States v. Edward Troup (Tenth Cir. No. 19-2188)
4. United States v. Andrew Gallegos (Tenth Cir. No. 20-2056)
5. United States v. Joe Gallegos (Tenth Cir. No. 20-2058).

The circuit court issued separate judgments on these five cases on one day, July 5, 2023.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner Edward Troup seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

### OPINIONS BELOW

The opinion of the Tenth Circuit Court of Appeals is reported at \_\_\_ F.4th \_\_\_ 2023 WL 4341599, July 5, 2023), and is reproduced at Appendix A. The ruling of the district court is unreported, and is reproduced at Appendix B.

### JURISDICTION

In a procedurally consolidated appeal involving five codefendants, including the petitioner here, the Tenth Circuit issued its final judgment denying relief to petitioner July 5, 2023 (*See App. D.*) On that same day, the circuit rejected timely petitions for rehearing submitted by two of petitioner's codefendants, each of which petitioner joined. (*See App. C.*) Besides denying rehearing on July 5, 2023, the circuit court also released an amended version of a prior opinion issued in the case, making minor changes to a ruling that originally issued April 17, 2023. The Tenth Circuit's amended, final opinion, which addressed the appeals of all five codefendants in a single document, is found in the appendix (*See App. A.*)

Mr. Troup's petition for a writ of certiorari is due October 3, 2023, 90 days after entry of his judgment on July 5, 2023.

The United States District Court for the District of New Mexico had jurisdiction under 18 U.S.C. § 3231. The Tenth Circuit Court of Appeals had jurisdiction under 18 U.S.C. § 1291. This Court has jurisdiction under 28 U.S.C. § 1254(1).

#### STATUTORY PROVISION INVOLVED

Title 18 U.S.C. § 1959(a) states:

(a) 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;

## STATEMENT OF THE CASE

In the early 1980s, overcrowding and violence at the Penitentiary of New Mexico, near Santa Fe, led to an uprising among the inmates. Thirty-three prisoners died in the ensuing melee and its forceful suppression; about 200 inmates suffered injuries. Emerging from the maelstrom, a group of surviving inmates formed Syndicato de Nuevo Mexico or SNM, an organization dedicated to protecting Hispanic inmates and advocating for their interests. Over time SNM shed its roots in lawful advocacy and became what federal prosecutors later called a criminal enterprise.

By the 1990s, state officials became convinced SNM exerted influence over New Mexico's prison system through violence, extortion, and collaboration with prison staff, the combined effect of which, among other things, yielded control of the carceral drug trade to the gang. Determined to reacquire power, state authorities formed what they called a "security threat group," a special unit designed specifically to deal with prison gangs." The state's efforts had little effect, however, as "violence raged on over the decades," as one official put it. Meanwhile, federal officials showed little interest in SNM. In March of 2015, for example, the U.S. Attorney for the District of New Mexico refused to prosecute a 2001 double murder inside the Southern New Mexico Correctional Facility,

crimes believed to have been orchestrated by senior SNM leaders as reprisals against disloyal members of the gang.

Things changed shortly after the U.S. Attorney declined to prosecute the double murders. Federal investigators learned of a reported assassination plot against two high-ranking officials at the New Mexico Department of Corrections, a scheme allegedly devised by a faction of SNM. Reopening the recently closed investigation, the U.S. Attorney in New Mexico released an indictment in late 2015. Built around the conspiracy to kill state officials – never prosecuted in the state courts – plus five murders likewise spurned by the State of New Mexico, including the 2001 double murders, the indictment named over two dozen past and present SNM members as defendants. One was petitioner Edward Troup, who had been released from custody several years earlier, charged in Counts 1 and 3, both murders of inmates at the Southern New Mexico Correctional Facility, in Las Cruces.

The government twice superseded the original indictment, expanding its scope to eventually reach sixteen counts. The charges against Mr. Troup arose under the Violent Crimes in Aid of Racketeering statute, 18 U.S.C. § 1959(a). The statute, dubbed VICAR, punishes racketeering activities (including certain forms of murders) that occur “in violation” of state law, thereby converting the state-

law offense into a predicate crime, without which a VICAR conviction cannot be sustained.

The district judge to whom the case was assigned, Judge Browning, severed the indictment into two blocks of defendants. His ruling resulted in one trial for defendants accused in Counts 6-12 of the superseded indictment, and another, later trial for those in Counts 1-5 and 13-16. Mr. Troup was allocated to the second trial, among a cohort of seven defendants brought before a jury in April and May of 2018. After nearly two months and scores of witnesses, he was convicted of VICAR-murder on both counts, sentenced to life in prison. Four of his codefendants were similarly convicted of VICAR-murder; they too were punished by life imprisonment. Two men were acquitted.

On appeal, Mr. Troup challenged Jury Instruction 31, which named two possible predicate offenses that could underpin his VICAR convictions. Mr. Troup objected, claiming one such predicate offense, second-degree murder under New Mexico law, suffered a lapsed statute of limitations. After the district court rejected Mr. Troup's position, and gave jurors the disputed instruction, Mr. Troup was convicted on two counts of VICAR murder. Neither the instruction nor the verdict form required jurors to identify the predicate crime.

On direct appeal, Mr. Troup renewed his challenge to Instruction 31. The Tenth Circuit, like the district judge, rebuffed his argument.

REASON FOR GRANTING THE PETITION:

**This Court should make clear that federal courts cannot convict defendants for racketeering crimes requiring a state predicate offense if the defendants could not be convicted of the predicate offense in state court.**

This case raises an important matter of statutory interpretation. It pits a functional interpretation of statutory text, bolstered by perceptions of congressional intent, against the plain language of the law. And because the plain language lost the battle in the courts below, this Court should grant review of the case, to vindicate the paramount importance of reading “a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020).

A.     Murders Punishable by VICAR Require a Predicate Crime

Known as VICAR, the Violent Crimes in Aid of Racketeering statute performs an act of legal alchemy. It transforms a murder “in violation” of state law into a federal crime *if* the murder occurred “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). The portion of VICAR under review

here differs from its better known sibling, the RICO statute. *See* 18 U.S.C. § 1961. VICAR concerns not income from, or control over, a racketeering enterprise, as RICO does. Rather it punishes a handful of enumerated violent crimes—including murder—that facilitate the operation of a criminal organization. The enumerated crimes are predicates, and failing to sustain the predicate offense is fatal to a VICAR prosecution.

The alleged predicates for the VICAR charges in this case comprised four murders, all but one committed against inmates imprisoned at the Southern New Mexico Correctional Facility. Two of the in-prison murders occurred on the same day, in March of 2001, in adjacent pods of the prison. These are Counts 1 and 2 of the final and second-superseding indictment; Mr. Troup was convicted on Count 1. He was also convicted for the third predicate murder, charged in Count 3, a homicide that took place at the same prison several years later, in 2007. (The fourth predicate murder, which occurred outside prison walls, didn't involve Mr. Troup.)

According to prosecutors, the prison murders were integral to the operation of the Syndicato de Nuevo Mexico. SNM leaders, the indictment alleged, ordered the killings to silence suspected snitches, selecting teams of so-called soldiers from the ranks of imprisoned gang members to carry out their directives. Mr. Troup was described as being such a soldier, compelled to

commit the murders charged in Counts 1 and 3 to bolster or maintain his status in the gang.

B. Mr. Troup Challenged the Critical Jury Instruction

There is no dispute to the elements of VICAR-murder – they are spelled out in the statute. To sustain Mr. Troup’s two convictions for the offense, the government had to prove: (1) SNM was an enterprise (2) whose racketeering activities (3) affected interstate commerce and (4) that Mr. Troup committed either first- or second-degree murder in violation of New Mexico law, and did so (5) to gain entrance to SNM or to preserve or increase his position in the gang. At trial, Mr. Troup challenged only the fourth element, which required the predicate murders to have been committed “in violation of the laws of any State,” as VICAR puts it. *See 18 U.S.C. § 1959(a).* Specifically, he attacked the jury instruction that enabled jurors to find he violated New Mexico’s second-degree murder law.

Instruction 31 granted two ways to prove a murder was “in violation” of New Mexico law. This abundance of means was no accident. The prosecutors wanted the instruction to authorize what they called a “step-down” option, an effort to widen the net of culpability into which the government could cast Troup and the other defendants charged in Counts 1, 2, and 3. The proposed instruction, the prosecution told Judge Browning, commanded “the jury to

consider and deliberate on first-degree murder, and if they're not unanimous on first-degree murder, they're instructed to consider the elements of second-degree murder."

Instruction 31 featured an obvious advantage for the government. It furnished a lesser, easier-to-establish predicate offense on which to secure convictions for VICAR murder. But while the instruction represented a "step down" under New Mexico law, it was scarcely that under federal law. For if the defendants were found "guilty on any theory of murder, they're therefore guilty of VICAR murder," explained the lead prosecutor.

The defendants collectively filed a written objection to Instruction 31. They called on Judge Browning to withdraw second-degree murder from consideration, observing that the conduct comprising Counts 1-3 occurred at least eight years before December of 2015, when federal prosecutors first indicted the defendants. And December of 2015, they pointed out, was two years *past* the six-year statute of limitations governing second-degree murder in New Mexico. *See* N.M. Stat. Ann. § 30-1-8(A) and § 30-2-1(B). So because the limitations statute had expired, the defendants argued that the indictment arrived too late for the jury to find they committed second-degree murder "in violation" of New Mexico law — hence there could be no step-down instruction. To convict the defendants

for VICAR murder, the government would have to prove the elements of New Mexico's first-degree-murder statute, said the defense.

Judge Browning disagreed. "New Mexico's statute of limitations does not apply to a federal VICAR prosecution," he ruled in a twelve-page order. (See App. B.) Finding no clear precedent to follow, he reasoned that only federal law could supply a limitations period, and there was no federal time bar here because VICAR-murder carries a potential penalty of death. "An offense punishable by death may be found at any time without limitation," wrote Judge Browning, quoting 18 U.S.C. § 3281. He added that Congress's decision to federalize a class of murders committed "in violation" of state law didn't mean that VICAR also adopted time-bar defenses embedded in state law.

Judge Browning gave the step-down charge sought by the prosecution. Instruction 31 told jurors they could find the government proved either first- or second-degree murder "under New Mexico law." It then listed the factual elements New Mexico required before guilty verdicts on one form of murder or the other could issue. "You must consider each of these crimes," said the instruction, "mov[ing] to a discussion of murder in the second degree" only if "you do not agree that [the named defendant] is guilty of murder in the first degree."

On direct appeal, following his conviction on two counts of VICAR-murder, Mr. Troup attacked Instruction 31, reprising his limitations arguments and bolstering them with the rule of lenity. He argued that it is at least ambiguous whether the statutory phrase “the laws of any State” includes a state’s statutes of limitations. (He also attacked Instruction 31 on a ground unrelated to the limitations issue, an argument he developed in post-trial motions before the district court. That argument is not relevant here.) The Tenth Circuit rejected Mr. Troup’s position, critical of what it called his “implicit argument: [that] to be charged under VICAR, he must be chargeable under state law.” (App. A at 87.) “Accepting that argument requires reading additional language into the statute, which we decline to do.” The court further pointed to other statutes that predicate a federal conviction of state-law violations, chiefly the Travel Act, 18 U.S.C. 1955(b)(1)(i), and concluded that violations of state limitations laws have never been regarded as an impediment to federal conviction. (*Id.* at 87-88.)

### C. The Tenth Circuit’s Approach

The Tenth Circuit slighted the plain meaning of VICAR, substituting its own wisdom for the text of the law. Instruction 31 was wrong not because Mr. Troup was factually innocent of second-degree murder. It was wrong because he possessed an undisputed, complete defense to the crime under New Mexico

law—the statute of limitations had lapsed. New Mexico calls such a limitations bar a “substantive right” to defeat conviction, less a “defect in the initiation of the prosecution” than an “affirmative defense” canceling legal responsibility. *State v. Kirby*, 156 P.3d 704, 708-09 (N.M. 2007).

The Tenth Circuit never questioned the merits of Troup’s defense. It accepted that in the courts of New Mexico, neither Mr. Troup nor the other defendants could ever be adjudicated guilty or “in violation” of the state’s second-degree murder statute. It simply said this legal immunity under state law was irrelevant under federal law, that their time-bar defense was ineffective against a VICAR-murder charge, even though a conviction on the offense is predicated on establishing in federal court what he acknowledged could not be established in state court. “Congress did not intend to incorporate state statutes of limitations in VICAR,” ruled the Tenth Circuit panel. (App. A at 91.)

#### D. A State’s Laws Include Its Limitations Laws

The Tenth Circuit ignored the statutory text. Recall that VICAR required, as a predicate offense, that the jury find his conduct to have been “in violation” of the laws of New Mexico. Only then could it convict him of VICAR murder. But Mr. Troup could not have been adjudged “in violation” of New Mexico’s second-degree murder statute because of his uncontested statute-of-limitations

defense. A “violation” means “a breach *of the law.*” Black’s Law Dictionary (11th ed. 2019) (emphasis added). It entails more than committing a bad act; it requires “breaking or dishonoring the law.” *Id.* And “breaking the law” requires an adjudication, a process that remains incomplete until all asserted defenses are resolved against the accused.

Factual guilt, in short, isn’t enough to declare a law “violated.” Legal guilt must also be established, guilt that includes the absence of an asserted defense. Armed with an unassailable defense, Mr. Troup was not “in violation” of New Mexico’s second-degree murder statute, as VICAR demanded, neither when indicted nor when convicted by the jury. Yet Instruction 31 told the jury it could ignore his defense. It was not just error; it was a repudiation of this Court’s command to interpret a statute based on its plain meaning, for the “laws of any State,” as VICAR puts it, includes its limitations laws.

Instead of bowing to the plain-meaning rule, the Tenth Circuit subjected the text of VICAR, which requires a predicate crime “in violation of the laws of any State,” to what this Court has condemned as a “functionalist assessment,” a prudential gloss on the meaning of the text. *See Ramos v. Louisiana*, 140 S. Ct. 1390, 1401–02 (2020). Or, worse, it peered into Congress’s mind and concluded that “Congress did not intend VICAR’s ‘violation of the laws’ language to

incorporate various states' . . . limitations rules." (App. A at 89.) When Congress enacted VICAR, however, legislators were making law by crafting visible, tangible text. Their invisible, ethereal, and hardly uniform intent were not part of the law, and "it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed," said this Court in *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998). "After all, only the words on the page constitute the law adopted by Congress and approved by the President." *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. at 1738.

At the very least, the Tenth Circuit should have seen ambiguity in the statute. Reasonable people might disagree whether limitations laws fall within "the laws of any State." The court of appeals should have allowed the rule of lenity to guide his interpretation of the text, a doctrine instructing that statutory ambiguities must be resolved for the defense. The appropriate conditions for applying the rule were present here: VICAR is a criminal statute, and it suffers insufficient clarity. *Cf. United States v. Introcaso*, 506 F.3d 260, 270 (3d Cir. 2007) (reversing conviction in non-VICAR case and describing conditions for the rule). This Court should enforce the rule now. A time-barred state offense cannot serve as a predicate for VICAR because it is unclear whether the word "laws" in the federal statute excludes limitations laws.

## CONCLUSION

For the reasons above, the petition for writ of certiorari should be granted.

Respectfully Submitted,

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