

No. 23-7386

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IN THE SUPREME COURT OF THE UNITED STATES

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JOSE CABAN, PETITIONER

v.

UNITED STATES OF AMERICA

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

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MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 4-12) that attempted murder in aid of racketeering, in violation of 18 U.S.C. 1959(a), based on New York attempted murder, N.Y. Penal Law § 125.25(1), does not qualify as a “crime of violence” under 18 U.S.C. 924(c)(3) on the theory that the crime can be committed by an act of omission and therefore does not “ha[ve] as an element the use, attempted use, or threatened use of physical force against the person or property of another.” This Court recently granted certiorari in Delligatti v. United States, No. 23-825 (June 3, 2024), to consider whether that interpretation of Section 924(c)(3) is correct. Accordingly, the

petition for a writ of certiorari should be held pending the Court's resolution of Delligatti, and then disposed of as appropriate in light of the decision in that case.\*

ELIZABETH B. PRELOGAR  
Solicitor General

JULY 2024

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\* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.