NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

2024

MARTIN WILLIAM LUTHER HAMILTON

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Where a state's highest court endorses two versions of the elements of a state crime and neither version has been overruled or abrogated, whether a court of appeals must defer to a state's highest appellate court's "least culpable" interpretation of that state's law, and whether a federal court must follow this Court's directions in *United States v. Taylor*, 596 U.S. 845 (2022), when conducting a categorical analysis to determine if that state crime is a violent crime under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(1).

RELATED PROCEEDINGS

United States v. Hamilton, 1:20CR00310-1 (M.D.N.C.)
United States v. Hamilton, 95 F.4th 171 (4th Cir. 2024)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Martin William Luther Hamilton ("Petitioner") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals was filed on March 6, 2024, recorded at 95 F.4th 171 and reprinted in the Appendix to the Petition ("Pet. App."), 1a-17a. On March 20, 2024, the court's mandate was stayed pending a timely filed petition for rehearing *en banc*. Pet. App. 29a. The order denying rehearing *en banc* was issued on April 2, 2024, Pet. App. 28a, and the court's mandate issued on April 10, 2024. Pet App. 27a. The sentencing decision from the Middle District of North Carolina sought to be reversed was made from the bench on July 30, 2021. Pet App. 18a-26a. The Middle District of North Carolina issued its final judgment on August 19, 2021. Pet App.30a-37a.

JURISDICTION

The court of appeals issued its decision on March 6, 2024, Pet App.1a, stayed its mandate on March 20, 2024, Pet App. 29a, and entered an order denying rehearing *en banc* on April 2, 2024. Pet App. 28a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The relevant statutory provisions, Section 924(e) of Title 18 of the U.S. Code and N.C. Gen. Stat. § 14-87,[1] are reproduced at Pet. App. 38a and 39a, respectively.

INTRODUCTION

This case presents a critically important question addressing the principle of federalism. It directly addresses a question of federal courts' deference to a state court's interpretation of that state's law. Additionally, it addresses the court of appeals' deference to this Court's unambiguous statement of law.

The issue before the lower courts was whether the North Carolina state crime of attempted robbery with a dangerous weapon is a "violent crime" under the Armed Career Criminal Act. **However**, Petitioner is not asking this Court to resolve that question directly. The issue here is whether a court of appeals must defer to a state court's interpretation of state law.

The North Carolina Supreme Court endorses two versions of the elements of the North Carolina crime of attempted robbery with a dangerous weapon. For conviction under one version, the state must prove, as an element, the use, attempted use, or threatened use of physical force against the person of another. Under the other version, though, the state can (and has) obtain a conviction *without* proving, as an element, the use, attempted use, or threatened use of physical force against the person of another. Under this version, the state must prove intent to commit robbery with a dangerous

1 Petitioner received the relevant state conviction, attempted robbery with a dangerous weapon, on August 4, 2011. The version of Section 14-87 effective on that date is reproduced in the appendix.

weapon and a substantial step in furtherance of that intent. Both versions of the elements are in current use and neither has been overruled or abrogated.

The question presented, then, is where a state's highest court endorses two versions of the elements of a state crime and neither version has been overruled or abrogated, whether a federal court must defer to a state's highest appellate court's "least culpable" interpretation of that state's law.

Additionally, because the court of appeals ignored state precedent under which the state can convict a person of attempted robbery with a dangerous weapon without proving the use, attempted use, or threatened use of physical force against the person of another, the court of appeals also ignored, and created a conflict with, this Court's holding in *United States v. Taylor*, 596 U.S. 845 (2022).

STATEMENT

A. Legal Framework

1. Under the Armed Career Criminal Act of 1984 ("ACCA"), a defendant convicted of unlawful possession of a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g)(1), faces an increased penalty if he or she has three or more previous convictions for a violent felony or a serious drug offense. 18 U.S.C. § 924(e)(1). In Petitioner's case, violation of Section 922(g)(1) carried a maximum term of imprisonment of ten years and no minimum sentence. *See* former 18 U.S.C. § 924(a)(2).[2] Under the ACCA, that penalty increases to a minimum of fifteen years in prison and a maximum of life. 18 U.S.C. § 924(e)(1).

2 In the Bipartisan Safer Communities Act, Congress increased the maximum penalty for violation of Section 922(g)(1) to 15 years in prison for violations that occurred on or after June 25, 2022. 18 U.S.C. § 924(a)(8).

The ACCA defines a "violent crime" as being certain enumerated crimes or, at issue here, as a crime which "has as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. § 924(e)(2)(B)(i) ("force clause"). To determine whether a crime is a violent crime under the force clause, courts employ the categorical approach. That is, courts examine the elements of the crime for which a person was previously convicted and determine whether those elements require the state to prove a person used, attempted to use, or threatened to use physical force against the person of another. If the answer is yes, the crime is a violent crime. If the answer is no, the crime is not a violent crime.

This Court instructs that a court does not consider whether that crime "is *sometimes* or even *usually* associated with communicated threats of violence (or, for that matter, with the actual or attempted use of force)." *United States v. Taylor*, 596 U.S. 845, 857-58 (2022) (emphasis in the original). The only inquiry is "whether the government must prove, as an element of its case, the use, attempted use, or threatened use of force." *Id*. at 858.

2. This Court, and all federal courts, take as well-settled law that a federal court is bound by a state's highest court's interpretation of state law, "including its determination of the elements" of a crime. *Johnson v. United States*, 559 U.S. 133, 138 (2010). *See also United States v. Aparicio-Soria*, 740 F.3d 152 (4th Cir. 2014). When determining the elements of the state crime of attempted robbery with a dangerous weapon, the court of appeals was bound by North Carolina's highest court's interpretation of North Carolina state law. North Carolina's highest court determined

that the elements of attempted robbery with a dangerous weapon *do not* include an element that a person used, attempted to use, or threatened to use force against the person of another. The inquiry should end there. Instead, the court of appeals ignored North Carolina's analysis of its own law and thus undermines a core principle of federalism.

B. Proceedings Below

1. Petitioner was indicted by a grand jury for the Middle District of North Carolina, charging him in four counts. C.A. Dkt. 10 at 8-10,[3] He was charged in Count One with possessing with the intent to distribute 280 grams or more of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A); in Count Two, with possessing with the intent to distribute 400 grams or more of a mixture and substance containing a detectable amount of fentanyl, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A); in Count Three, with possessing a firearm in furtherance of a drug trafficking, in violation of 18 U.S.C. § 924(c)(1)(A)(i); and in Count Four, with possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). The indictment charged that the Armed Career Criminal Act penalty of fifteen years to life in prison, under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"), applied to Count Four. *Id*.

Petitioner pled guilty to Counts Two and Four of the indictment. C.A. Dkt. 10 at 11-22. The probation officer recommended that Petitioner be sentenced as an "armed career criminal" under the Armed Career Criminal Act. One of the prior convictions relied on by the probation officer was a 2011 conviction for the North Carolina crime of

3 "C.A. Dkt." refers to the Fourth Circuit docket.

attempted robbery with a dangerous weapon. C.A. Dkt. 11 at 16. This designation changed the penalty for Count Four from a maximum of ten years to a minimum of fifteen years in prison.

Petitioner objected to the designation as an armed career criminal, arguing that the North Carolina conviction for attempted robbery with a dangerous weapon is not a violent crime because the crime does not require proof that a person used, attempted to use, or threatened to use physical force against the person of another. C.A. Dkt. 10 at 65-68. In fact, Petitioner argued, there are North Carolina cases where a person was convicted of attempted robbery with a dangerous weapon without ever encountering the intended victim.

The district court overruled Petitioner's objection and sentenced him as an armed career criminal. In doing so, the district court did not address any interpretation by North Carolina state courts or that Petitioner's conviction was for *attempted* robbery with a dangerous weapon. It stated, "[T]here are two offenses that are outlined in that statute [N.C. Gen. Stat. § 14-87]; and that the elements of that statute require, in my conclusion, that armed robbery is a violent felony pursuant to the ACA [sic]." C.A. Dkt. 10 at 67.

The district court sentenced Petitioner to fifteen years in prison. Pet. App.31a.

2. Petitioner appealed the ACCA enhancement, arguing that the district court ignored North Carolina courts' determination of the North Carolina law.[4] The

4 Between when briefing was complete and when the case was heard by the court of appeal, this Court issued its opinion in *United States v. Taylor*, 596 U.S. 845 (2022). The *Taylor* decision further supports that the district court and court of appeals wrongly subjected Petitioner to the ACCA mandatory-minimum fifteen years in prison.

court of appeals affirmed the district court. Pet App. 2a. First, it acknowledged that when applying the categorical approach to determine whether a state crime is a violent crime, it is bound by the state court's interpretation of that offense. Pet App. 4a. But curiously, it went on to state, "We may nonetheless disregard the decisions of an intermediate court if we are 'convinced by other persuasive data that the highest court of the state would decide otherwise.'" Pet App. 4a-5a. (quoting *Castillo v. Holder*, 776 F.3d 262, 268 n.3 (4th Cir. 2015) (internal citations omitted in opinion).

The second statement is nonsensical because the panel acknowledged the North Carolina Supreme Court, that state's highest court, has interpreted the elements of the statutory crime of attempted robbery with a dangerous weapon. It has found the elements of the North Carolina crime of attempted robbery with a dangerous weapon are (1) the intent to unlawfully deprive another of personal property by endangering or threatening their life with a dangerous weapon, and (2) doing some overt act calculated to bring about that result. *See State v. White*, 369 S.E.2d 813, 818 (N.C. 1988); other North Carolina cases *infra* pages 9-13. And because North Carolina courts uphold convictions for attempted robbery with a dangerous weapon where the defendant did not even encounter the intended victim, the categorical inquiry should end there. A conviction does not require the state to prove the use, attempted use, or threatened use of physical force.

The court of appeals ignored this Court's instructions in its decision in *United States v. Taylor*. In that case, this Court instructed lower courts that the only inquiry to be made to determine whether a crime is categorically a violent crime is "whether

the government must prove, as an element of its case, the use, attempted use, or threatened use of force." *Taylor*, 596 U.S. at 858. The court of appeals ignored that approach and rested its decision on a "contradiction" it perceived between the North Carolina Supreme Court's determination of the elements required to prove attempted robbery with a dangerous weapon and the statutory language defining that offense, N.C. Gen. Stat. § 14-87(a), and substituted its own interpretation. Pet App. 9a-11a.

The court of appeals stated that the North Carolina Supreme Court's own interpretation of the North Carolina statute confused or confounded the statutory and common law elements. "While the North Carolina courts' occasional commingling of the statutory elements and the standard elements of a common-law attempt offense can be confusing, we believe those references must be understood as a sort of shorthand summary of what is generally required in cases involving attempts rather than a fully developed and articulated list of the elements of the offense created by § 14-87(a)." Pet App. 11a. That statement is false.

The court of appeals simply ignored the North Carolina courts' determination and substituted its own. The North Carolina Supreme Court is well-experienced in interpreting statutes. Its decisions determining the elements of attempted robbery with a dangerous weapon all specifically cite to the state statute, sec. 14-87. Simply put, the court of appeals did not agree with the North Carolina Supreme Court's interpretation of North Carolina law, so the court of appeals ignored it.

REASONS FOR GRANTING THE PETITION

The court of appeals decision conflicts with this Court's, and other federal courts', well-settled law that a federal court is bound by a state's highest court's interpretation of state law, specifically "including its determination of the elements" of a crime. *Johnson*, 559 U.S. at 138. The court of appeals discarded the North Carolina Supreme Court's determination of the elements of the North Carolina crime of attempted robbery with a dangerous weapon and substituted its own construction of that law. The panel then uses its own interpretation of North Carolina law to skirt this Court's instruction for how to determine whether a crime is a violent crime, as set out in *United States v. Taylor*.

A. The Decision Below Ignores the Principle of Federalism

A federal court is bound by a state's highest court's determination of the elements of a state crime. *See Johnson*, 559 U.S. at 138 ("We are, however, bound by the Florida Supreme Court's interpretation of state law, including its determination of the elements of" a Florida statute").

Mr. Hamilton has a prior conviction for the North Carolina crime of attempted robbery with a dangerous weapon. The North Carolina Supreme Court has determined the elements of that crime:

> Defendants were charged with attempted robbery with a dangerous weapon in violation of N.C.G.S. § 14–87. The two elements of attempted robbery with a dangerous weapon are: (1) an intent to commit the substantive offense, and (2) an overt act done for that purpose which goes beyond mere preparation but falls short of the completed offense.

State v. Davis, 455 S.E.2d 627, 632 (N.C. 1995) (citing *State v. Smith,* 265 S.E.2d 164

(N.C. 1980)). *See also State v. Lawrence*, 723 S.E.2d 326, 329 (N.C. 2012) (considering the sufficiency of conspiracy jury instructions, and stating in *dicta* the instructions on the substantive offense of attempted robbery with a dangerous weapon were correct: "That instruction included the elements that defendant possessed a firearm and intended to use it to 'endanger or threaten the life of [the victim].'"); *State v. Allison*, 352 S.E.2d 420, 423 (N.C. 1987) (citing *State v. Irwin,* 282 S.E.2d 439 (N.C. 1981)) (defendant was charged with attempted robbery with a dangerous weapon in violation of N.C. Gen. Stat. § 14-87 and "[a]n attempted robbery with a dangerous weapon occurs when a person, with the specific intent to unlawfully deprive another of personal property by endangering or threatening his life with a dangerous weapon, does some overt act calculated to bring about this result"); *State v. May,* 235 S.E.2d 178 (N.C. 1977) ("An attempted robbery with a dangerous weapon occurs when a person, with the specific intent to unlawfully deprive another of personal property by endangering or threatening his life with a dangerous weapon, does some overt act calculated to bring about this result.").

In *State v. White*, 369 S.E.2d 813, 818 (N.C. 1988), the North Carolina Supreme Court explicitly considered what elements are required to prove attempted robbery with a dangerous weapon under sec. 14-87 and determined that the traditional elements of an attempt crime apply to the statutory crime:

> Attempted armed robbery, although defined in N.C.G.S. § 14–87 along with armed robbery, is clearly a separate offense. 'One of the elements of an attempt to commit a crime is that defendant have the intent to commit the substantive offense. An attempted robbery with a dangerous weapon occurs when a person, with the specific intent to unlawfully deprive another of personal property by endangering or threatening his

> life with a dangerous weapon, does some overt act calculated to bring about this result.'

Id. at 818 (quoting *Allison*, 352 S.E.2d at 423) (citations omitted in the original).

The court of appeals ignored this settled interpretation by the North Carolina Supreme Court and stated that in all those cases, including *White*, the North Carolina courts did not understand the difference between the statutory crime of attempted robbery with a dangerous weapon and the common law crime and were simply confused. Pet. App. 9a-11a. The plain text of those decisions citing to sec. 14-87 shows that is false.

The crux of the issue is that North Carolina courts are not consistent. Petitioner is aware of three North Carolina Supreme Court cases which included a different recitation of the elements of the statutory crime of attempted robbery with a dangerous weapon.[5] *See State v. Oldroyd*, 869 S.E.2d 193, 197 (N.C. 2022) (quoting N.C. Gen. Stat. §14-87(a)) ("A person is guilty of the offense of robbery with a dangerous weapon, or an attempt to commit the crime, if he or she (1) 'takes or attempts to take personal property from another,' (2) while possessing, using, or threatening to use a firearm or other dangerous weapon, (3) whereby 'the life of a person is endangered or

5 The court of appeals wrongly cites to two additional cases in support of its position that North Carolina attempted robbery with a dangerous weapon is a violent crime: *State v. Kemmerlin*, 573 S.E.2d 870 (N.C. 2002) and *State v. Murrel*, 804 S.E.2d 504 (N.C. 2017). Pet. App. 9a-10a. However, and as surely the court of appeals was aware, neither of those cases involve the crime of *attempted* robbery with a dangerous weapon—instead, both involve robbery with a dangerous weapon, which completed crime is not at issue here. *See Kemmerlin*, 573 S.E.2d at 889 (internal citations omitted) (discussing defendant's motion to dismiss the charge of robbery with a dangerous weapon and the elements of that crime); *Murrel*, 804 S.E.2d at 505, 508 (discussing the sufficiency of an indictment charging robbery with a dangerous weapon and the elements of that crime).

threatened.'")[6]; *State v. Williams*, 438 S.E.2d 727, 728 (N.C. 1994) (considering whether the trial court correctly instructed the jury on a mandatory presumption that a dangerous weapon was used); *State v. McDowell*, 407 S.E.2d 200, 214-15 (N.C. 1991) ("Attempted armed robbery is the unlawful attempted taking of personal property from another by use of a firearm or other dangerous weapon.").

That the North Carolina Supreme Court appears to have endorsed two versions of the elements of attempted robbery with a dangerous weapon is of no matter here. A majority of the North Carolina Supreme Court decisions hold that the elements of the statutory crime of attempted robbery with a dangerous weapon are (1) an intent to commit the substantive offense, and (2) an overt act done for that purpose which goes beyond mere preparation but falls short of the completed offense. None of that court's holdings have been abrogated or overruled. If having two versions of the elements is a problem, it is a problem for the state alone to address.

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6 And these minority opinions are themselves inconsistent in their application of the elements. For example, even though the *Oldroyd* court endorsed the minority version of the elements, neither the defendant in that case, nor his co-conspirators, encountered any intended victim and they did not use, attempt to use, or threatened to use physical force or otherwise endanger life:

> Sica and Whitaker went to the Huddle House to commit the robbery, while defendant waited in the green Dodge pickup truck at a nearby meeting place where Sica and Whitaker would abandon the stolen red Dodge pickup truck and then enter the green Dodge pickup truck to execute their escape. Sica and Whitaker arrived at the Huddle House as planned and parked behind the business, armed with a 9mm Beretta handgun and a .357 revolver. The two men observed an open door at the back of the restaurant, but a group of Huddle House employees soon exited the establishment and closed the door behind them. Sica got out of the red Dodge pickup truck and approached the rear door of the restaurant but discovered that it was locked. Sica then returned to the stolen truck to discuss the next steps with Whitaker, when the pair saw Sergeant Greg Martin of the Jonesville Police Department drive by the location. Sica and Whitaker decided to leave the Huddle House, but Sergeant Martin quickly initiated a traffic stop on the stolen red Dodge pickup truck and called for backup officers.

State v. Oldroyd, 869 S.E.2d 193, 195 (N.C. 2022).

A federal court may not choose one current, unabrogated determination of the elements over another. According to North Carolina's highest appellate court, the least culpable conduct required for a conviction of the North Carolina crime attempted robbery with a dangerous weapon *does not* require the use, attempted use, or threatened use of physical force. A federal court simply cannot disregard reasoned decisions of the North Carolina Supreme Court to fit its own, different analysis of a North Carolina statute.

B. The Decision Below Ignores this Court's Opinion in *United States v. Taylor*

After the district court made its decision and after briefing was complete at the court of appeals, but before the court of appeals heard arguments in this case, this Court issued its opinion in *United States v. Taylor*. After the issuance of that opinion, there is a single question for a federal court to ask to determine whether an indivisible state crime is categorically a violent crime under the force clause of the ACCA: "[W]hether the government must prove, as an element of its case, the use, attempted use, or threatened use of force." *Taylor*, 596 U.S. at 858. This Court instructs that a federal court does not consider whether that crime "is *sometimes* or even *usually* associated with communicated threats of violence (or, for that matter, with the actual or attempted use of force)." *Id.* at 857-58 (emphasis in the original). Instead, the only inquiry is "whether the government *must* prove, as an element of its case, the use, attempted use, or threatened use of force." *Id.* at 858 (emphasis added).

In North Carolina, a prosecutor need not *necessarily* prove, as an element of its case, the use, attempted use, or threatened use of physical force to convict a person of

committing attempted robbery with a dangerous weapon. While some North Carolina courts might require such proof, others will not. However, to invoke the drastically enhanced ACCA penalty under the force clause, the question is not "sometimes" or "usually"—the question is "must." A conviction for the North Carolina crime of attempted robbery with a dangerous weapon does not in all cases "require the government to prove that the defendant used, attempted to use, or even threatened to use force against another person or their property." *Id*. at 851; North Carolina elements *supra*. Under *Taylor*, the North Carolina crime of attempted robbery with a dangerous weapon is not, categorically, a violent crime.

C. The Question Presented is Critically Important

Because it is a published decision, the court of appeals' decision creates a precedential opinion in conflict with settled law that a federal court is bound by a state's highest appellate court's determination of the elements of a state crime. Where the state itself has conflict, resolution of that conflict remains with the state. This Court may only substitute its own analysis where the state's highest appellate court has not spoken. North Carolina's highest court has engaged in statutory interpretation regarding the elements of attempted robbery with a dangerous weapon. If the court of appeals' decision stands, it conflicts with the Supreme Court's decision in *Johnson* and with a core principle of federalism generally.

Furthermore, it is established, and the Government agrees, C.A. Dkt. 16 at 17, that a person may be (and people have been) convicted of the North Carolina crime of attempted robbery with a dangerous weapon without the state having to prove, as an

element, the use, threatened use, or attempted use of physical force against the person of another. According to this Court's opinion in *Taylor*, no other inquiry is required—or allowed. *See Taylor*, 596 U.S. at 858. To allow the court of appeals' published opinion to stand would mean that some persons charged with violations of 18 U.S.C. § 922(g) in the Fourth Circuit will face a mandatory minimum sentence of fifteen years in prison, where if they were charged in a circuit that accepts North Carolina's interpretation of its statute, they would face a statutory maximum sentence of fifteen years. When it ignored this Court's dictates in *Taylor*, the court of appeals created the possibility of vastly disparate sentences for persons with this North Carolina conviction, and it created the possibility that it will ignore state courts' interpretations of their state laws in the future.

D. This Case is a Clean Vehicle for Addressing the Question Presented

The Court should resolve the question presented in this case. The legal issue was preserved in the district court and is cleanly presented in a published opinion. A petition for rehearing *en banc* was presented and rejected. Pet. App. 28a. The question presented is outcome-determinative. If the North Carolina crime of attempted robbery with a dangerous weapon is not a violent crime under the ACCA, Petitioner cannot be subjected to the ACCA enhancement.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, this the 26th day of June 2024.

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MARTIN WILLIAM LUTHER HAMILTON,

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UNITED STATES OF AMERICA,

Respondent.

ENTRY OF APPEARANCE AND CERTIFICATE OF SERVICE

I, Kathleen A. Gleason, Assistant Federal Public Defender, Middle District of North Carolina, having been admitted to practice before the state and federal courts situated in North Carolina and before this Court, and the Office of the Federal Public Defender for the Middle District of North Carolina having been appointed to represent the Petitioner, Martin William Luther Hamilton, in the United States Court of Appeals for the Fourth Circuit, pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A, hereby enter my appearance in this Court with respect to this Petition for A Writ of Certiorari.

I further certify that today, as counsel for Petitioner, I have served one copy of the Petition for Writ of Certiorari (complete with Appendix) and Petitioner's Request

to Proceed *in Forma Pauperis* in the above-entitled case upon Craig M. Principe, AUSA, and the Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D. C. 20530–0001, as well as all others required to be served.

This the 26th day of June 2024.

LOUIS C. ALLEN
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