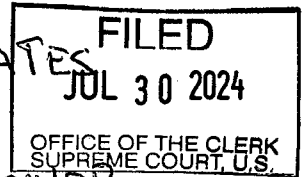


No. 24-5219

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



BOBBY RAY EDWARDS, PETITIONER

VS

UNITED STATES OF AMERICA, RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

PRO- SE

BOBBY RAY EDWARDS

Reg. # 10497007

USP HAZELTON

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26525



QUESTIONS PRESENTED

1. Whether the District Court's denial for lack of Jurisdiction and denial of COA of defendants' timely filed 2255(f)(3) motion after sua sponte Recharacterization of defendants' motions as a "second and successive" motion under 2255(h) was erroneous and improper absent agreement or opportunity to withdraw motion?
2. Whether "Borden Claim" involving 922(g)(1) for enhancement under the Armed Career Criminal Act (ACCA) has constitutional features for COA purposes under 2253(c)(2)?
3. Whether there is a vehicle that a pro-se litigant can seek relief if he is illegally punished under the Armed Career Criminal Act (ACCA) Statute, beyond the State's power to punish if he is not under collateral review, in the interest of Justice?

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1. The District court has Jurisdiction To grant or deny a timely filed 2255(f)(3) motion pursuant to the Antiterrorism and Effective Death Penalty Act.
2. The "Borden claim" involving 922(g)(1) for enhancement under The Armed Career Criminal Act (ACCA) has Constitutional features for COA purposes under 2253(c)(2).

3. There exists no vehicle that a pro-se litigant can seek relief if he illegally punished under the Armed Career Criminal Statute beyond the states power to punish if he is not under collateral review pursuant to "Borden's" statutory interpretation.

IV

APPENDIX

1. Opinion United States Court of Appeals for the Fourth Circuit, United States of America v. Bobby Ray Edwards, Court of Appeals No. 23-7256 (4:11-cr-00055-AWA-DEM) (4:22-cv-00057-AWA) Affirmed February 27, 2024 Appx A
2. Judgment United States District Court for the Eastern District of Virginia, Newport News Division United States v. Bobby Ray Edwards, District Court case Number 4:11 CR-00055-10 US Number 79023-083, sentencing Edwards under ACPA October 19, 2012 Appx B
3. Motion from Edwards under 2255(f)(3) pursuant to Borden v. United States Supreme Court 141 S Ct 1817 decided June 10, 2021 Edwards motion for relief filed May 3, 2022, timely Appx C
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7. Response of United State to Defendant's
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28 USC 2255 (f)(3)

28 USC 2255 (h)

28 USC 2255 (e)

28 USC 2253 (c)(2)

924 (e)

924 (e)(2)(B)(i)

922 (g)(i)

D.C. Code 22502-22-402

28 USC para (b) 1

28 USC para (b) 3

OPINIONS BELOW

1. Court of Appeals for the Fourth Circuit
United States BOBBY RAY EDWARDS
Denying Reconsideration and
on leave May 10, 2024 affirmed
denial by the District Court
February 27, 2024

2. Judgment, United States District
Court for the Eastern District of
Virginia November 8, 2023

Jurisdictional Statement

Edwards was sentenced under the Armed Career Criminal Act (the "ACCA", 18 USC 924(e), 8)(B)(i) on October 9th, 2012 with the judgement issuing October 9, 2012. He challenged the application of its ACCA life sentence May 3, 2022 pursuant to the Supreme Court's holding in Borden v United States 141 S. Ct 1817.

This court's jurisdiction is invoked under Title 28 United States Code Section 1254(1) Rule 13(1) of the court allows ninety days within which to petition for a writ of Certiorari, after entry of the court of appeals. Accordingly this petition is timely filed.

Pursuant to Rule 29.4(b) appropriate service is made to the Solicitor General of the United States.

Petitioner Edwards respectfully prays that a writ of Certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Fourth Circuit. In that opinion, the Fourth Circuit affirmed the

district court's erroneous sua sponte "Recharacterization" of Petitioner's timely filed as a second and successive motion without notifying Petitioner of any intended "Recharacterization" and its consequences and provided Petitioner the opportunity to withdraw the motion, thus the district court denied Petitioner's motion stating lack of jurisdiction to grant or deny Petitioner's timely filed motion under 2255 (f) (3) and cleared COA.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process clause, Fifth Amendment
UNITED STATES CONSTITUTION

No person shall be . . . deprived of life, or property without due process of law

18 U.S.C. § 922(g)

It shall be unlawful for any person (g) who has been convicted of a misdemeanor crime of violence

18 U.S.C. § 924(e)(1)

In the case of a person who violates Section 922(g) of this title and has three previous convictions by a court referred to in Section 922(g)(1) of this title for a violent felony or a serious drug offense or both committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than five years.

ADW (Assault with a Dangerous
Weapon) District of Columbia D.C.
Code 22-502 now 22-402

STATEMENT OF THE CASE AND FACTS

The circuits are split on "Whether the statute of limitations provision of 2255 allows district courts and Courts of Appeal to make retroactivity decisions?", the decision in Dodd v United States 385 F.3d 1273, 1278 (11th Cir 2004) held "that the decision to make a new rule retroactive for purposes of this section (2255(f)(3)) can be made by any lower court" rather than only by the Supreme Court".

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) establishes a one year limitation period to 28 USC 2255 motions, generally running from the date of Judgment in conviction becomes final. 28 USC para (6)1. But the AEDPA establishes alternative limitations period including one for new rights the Supreme Court recognize after a prisoners conviction becomes final. A one year period of limitation shall apply to motion under 2255.

(6)

The limitation period shall run from the latest of the date on which the right asserted was initially recognized by the Supreme Court, if that has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review. The court of Appeals in Wiegand v United States 380 F.3d 890, 892 (6th Cir. 2004) put in context 2255 para(3) any federal court can make the retroactivity decision. The Fourth Circuit Court of Appeals in United States of America v. Thomas 627 F.3d 534 held "We now join those Circuits that have considered the issue and hold that 2255(f)(3) does not require the initial retroactivity question to be decided in the affirmative only by the Supreme Court. See Wiegand v United States 380 F.3d 890, 892 (6th Cir. 2004) (holding that any federal court can make the retroactivity decision) purposes of (627 F.3d 537) 2255(f)(3).

Dodd v United 385 F.3d 1278 (11th Cir 2004) (Noting that every circuit that has considered this issue has held that a court other than the Supreme Court can make the retro activity decision on for purposes of 2255 §1(3) "Aff'd" 545 U.S. 35; United States v Swinton 333 F.3d 486, 487 (3rd Cir 2003) (Concluding that the statute of limitation provision of 2255 allows district court and Courts of Appeal to make retro activity decisions" and this "may be essential to put the question before (2010 LEV's App. 8) the Supreme Court for final resolution); Fisher v United States 285 F.3d 596, 599-600 (7th Cir 2002) (Noting that "district and appellate court, no less than the Supreme Court may issue opinions holding that a decision applies retroactively to cases on collateral review" (internal quotation marks and alteration omitted)).

United States v Lopez 248 F3d 427, 432 (5th Cir 2001) holding that "Section 2255 (b) (3) does not require that retroactivity determinations be made by The Supreme Court."

Petitioner, Edwards was sentenced on count # 24, 922 (g)(1) (possession of a fire arm by a convicted felon) and enhanced under The Armed Career Criminal Act (ACCA), sentenced to life based on three prior felony convictions. See Appendix B, October 19, 2012. On May 3, 2022 Edwards filed in The District Court for the Eastern District of Virginia, Newport News Division, a timely 2255 (b) motion seeking relief pursuant to the holding by The Supreme Court in Borden v United States 141 Sct 1877. One of Edwards prior offense was ADW (Assault with a Dangerous Weapon) in violation of The District of Columbia D.C. Code 22-502 now 22-402 of August 24, 1971. The Fourth Circuit Court of Appeals in United States v Banks (9)

855 Fed App 893, August 21, 2021
agreed with the Supreme Court
in Borden Id., and held that a
criminal offense [2021 US App
LEWIS 3]... [that] that requires only
a mens rea of recklessness cannot
qualify under the ACCA force
clause Borden Id. It is well established
that convictions for assault with
a dangerous weapon in the District
of Columbia have been... sustained
based on reckless conduct VINES
v. United States 70 A3d 1170, 1180
(DC, 2013). Therefore after Borden
the offense does not categorically
qualify as a violent felony under
the Armed Career Criminal Act (ACCA)
Accordingly we grant certificate of
Appealability and vacate.

In *Thomas Id.* the Court's opinion that in general when the Supreme Court announces a "New rule" that applies to all criminal cases still pending or direct review. Schiro v. Summerlin 542 US 348 (2004) (citing *Griffith v. Kentucky* 479 U.S. 314, 328 (1987)); *Schiro Id.* at 351. New procedural rules apply retroactively to cases on collateral review.

"New substantive rules" In contrast generally apply retroactively. This includes decisions that narrow the scope of a criminal statute by interpreting its terms, as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the States power to punish *Id.* at 351-52 (citation omitted). See Saffie 494 US at 495) (noting that rules that decriminalize a class of conduct [or] prohibit the imposition of certain punishment on a

particular class of persons" are
"substantive in nature." A
rule is "substantive" rather
than (2010 US App LEXIS 10).

procedural if it allows, or
alters the range of conduct
or the class of persons that the law
punishes." Schiriro 542 US at
353 such rules apply retroactively
because they necessarily carry
a significant risk that a defendant
stands convicted of an act that
the law does not make criminal
or faces a punishment that the law
cannot impose upon them Id 352
(Internal quotations omitted.)

the district court should have
decided retroactivity in the first
instance if the District Court finds
Petitioner Edwards filed timely, then
it should address the merits of
the claim. This procedure will
produce a more efficient resolution
of retroactivity issues committing
the timeliness to a decision to

The District court rather than the circuit avoids a second round of proceeding or remand to consider the merits of Petitioner's claim.

Without any legal consideration of the above the District court's ~~sua sponte~~ Recharacterize of Petitioner's timely filed 2255 (f)(3) motion as a second and successive motion and denied Petitioner's motion for "Lack of Jurisdiction" to grant or deny his motion and denied COA. The Fourth Circuit of Appeals Affirmed and denied reconsideration and ~~reconsideration~~ en banc.

REASONS FOR GRANTING THE WRIT

- I The Supreme Court should resolve the issue where the circuits are split on "whether the statute of limitations provision of 2255 allow district courts and courts of Appeals to make retroactive decisions? "
- II The District court erroneously and improperly Recharacterized Petitioner's timely filed motion under 2255 (f)(3), filed based on a new substantive rule that "prohibit the imposition or punishment on a particular class of persons " within the scope of a criminal statute (ACCA). The District Court sua sponte Recharacterized Petitioner's motion as "second and successive" 2255. The District Court is aware or should be that a "second and successive" motion under 2244 does not allow a Petitioner to attack a non constitutional claim of a statutory change in law.
Jones v Hendrix 599 U. 465

Furthermore, the District Court never warned Petitioner of the consequences nor gave Petitioner the opportunity to withdraw after impeding Petitioner's one year window pursuant to the provisions of a timely filed 2253(f)(3) motion.

III Petitioner's Border claim is similar where Petitioner was enhanced under the Armed Career Criminal Act (ACCA) based on a 922(g)(1) conviction and received a life sentence beyond the move run and nationally a disparity in sentencing. However 922(g)(1) conviction for a fire arm is a violation of the Second Amendment right. Historically upheld in United States v. Bullock in the United States District Court for the Southern District of Mississippi 2023 DIST LEVTS 112397, June 28, 2023. Bullock motion to dismiss was granted. Furthermore (15)

Challenges has been made concerning the Second Amendment guarantees individuals rights to keep or bear arms in their home for self defense. District of Columbia v Heller 554 U.S. 570. (2008). Thus Petitioner's 922(g)(1) has constitutional features. (See Hohn v. United States 524 U.S. 236), and should be considered in granting COA pursuant to 2253(c)(2) denied by the District Court and affirmed by the Fourth Circuit court of Appeals. Petitioner made a substantial showing in his motion for reconsideration and en banc. Appx F.

iv. The Supreme Court should grant Petitioner's Writ to determine a vehicle that a pro-se litigant can use to seek relief if he is punished illegally under the Armed Career Criminal Statute if he is not under collateral Review.

ARGUMENT I

1. the District Court has Jurisdiction To grant or deny a timely filed 2255(f)(3) pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 para 6(B) AND Fourth Circuit Court of Appeals Precedent in United States v Thomas 627 F.3d 534.

On May 3, 2023 Petitioner filed a timely motion under 2255(f)(3) seeking relief under Borden v United States 141 Sct 1817 (2002) which held that crimes requiring only "recklessness" don't require the "use of force" id at 1814. Petitioner contends that Borden invalidated his prior convictions for Assault with a Dangerous Weapon, such that he should not have been sentenced to Life under the Armed Career Criminal Act. Petitioner ask that his case be remanded for further proceeding and that he

be appointed counsel ECF 1710 p 23.
Petitioner that Bordew set forth a
new substantive change in law as
agreed upon by the Fourth Circuit in
United States v Barnes 855 Fed
App. 892, August 21, 2021. Petitioner
also argued that his claim of
change in law was retroactive
and could be determined by any
District Court or Appeals Court
within the Fourth Circuit without
being affirmed by the Supreme Court
and under 2255 (f)(3) a district
court could make the determination.
Though the Circuits are split, the
Fourth Circuit joined the Circuits,
that a District court has jurisdiction
to make that determination.

United States v. Thomas 627 F.3d
534, 2010 U.S. App LEXIS 26298.

However, the government states
that "allowing Petitioner relief
pursuant to 28 USC 2255 (f)(3)
lacks merit. Appx 1093 para 1.

As a threshold matter the District court has jurisdiction to grant or deny relief under 2255 (f)(3) motion without "Recharacterization" as a "second and successive" motion limiting petitioner relief to none where a new substantive rule apply retroactively to decision made in Borden that narrow the scope of a criminal statute as the Armed Career Criminal Act (ACCA) by interpreting its terms that place particular conduct or persons covered by statute beyond the state's power to punish. Rules that decriminalize a class of conduct or prohibit the imposition of certain punishment on a particular class are substantive in nature. The Fourth Circuit Court of Appeals in United States v. Thomas 627 F.3d 534 held that a rule is substantive rather than procedural if it alters the range of conduct or the class of persons

the law punishes. Such rules apply retroactively because they necessarily carry a risk, significantly, that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him.

The District Court's erroneous "Recharacterization" of Petitioner's timely filed motion under 2255(f)(3) and denial of COA misapplied limited Recharacterization in Castro 540 US 375. As a result the District Court gave little regard to the exceptional nature of Recharacterization within the adversarial system that caused harm to Petitioner. Where spontaneous Recharacterization of Petitioner 2255(f)(3) motion was a mutilation of the principle that allegations of Petitioner complaint are to be held "to less stringent standards than formal pleading drafted by lawyers" Harves v Kerwer 404 US 519

"Liberal construction" of Petitioner's pleading is merely an embellishment of the notice pleading standard set forth in the Federal Rules of Civil Procedure, and thus consistent with the general principle of American Jurisprudence that "The party who brings a suit is master to decide what law he will rely upon" Fair v. Koler & Speciality Co, 228 US 22, 25

The adversary system is designed around the premise that parties know what is best for them and responsible for advancing the facts and arguments entitling them to relief. For the overriding rule of judicial intervention must be "First do no harm". The injustice caused by letting the Petitioner own mistake be regrettable, but incomparably less than the injustice through the courts intervention. See Separate Opinion in Castro. Justice Scalia with Justice Thomas

Furthermore such spontaneous Recharacterization
of Petitioners motion was improper
and erroneous absent agreement
or opportunity to withdraw motion
see Rebuttal Appx h

ARGUMENT 2

2. "Borden Claim" involving 922(g)(1) has constitutional features for COA purposes under 28 USC 2553(c)(2)

Petitioner's Borden claim similarly in case in point was enhanced based on 922(g)(1) conviction under the Armed Career Criminal Act and received a life sentence beyond the "nirve run" nationally a grave disparity. However Petitioner's 922(g)(1) conviction has constitutional features that a ban on possession of firearms by a convicted felon is a violation of the second amendment right to bear arms historically as held in the United States v. Bullock, in the District Court of Mississippi 2023 Dist LEXIS, dismissal granted in favor of Bullock. Also Dist of Columbia v. Heller 554 U.S. 57. Challenging the right to bear firearms in the home for self defense.

(23)

though Borden did not address
the constitutional right under
the second amendment, Petitioner's
922(g)(1) conviction does pose
questions of constitutional
magnitude with constitutional
features. U.S. v. Hohn 524 US
236 and should be considered
in granting COA where Petitioner
made a substantial showing
pursuant to 28 USC (C)(2) of
2253 and be granted COA.

ARGUMENT 3

3. There is no vehicle for litigants similarly situated as Petitioner, to seek relief if he or she is illegally punished under the Armed Career Criminal Act, if they are not on collateral review.

Where the Courts are split on the retroactivity of a criminal statute that narrow a criminal statute by interpreting its terms that place particular conduct beyond the state power to punish - leaves many litigants with an illegal sentence in limbo, as to the proper vehicle to address a claim for relief. Where there exist a mixed signal from the Supreme Court.

Petitioner is serving a federal sentence of life that was incorrect when it was imposed where can later be re-fashioned to maintain its correctiveness, it would be

strange to conclude than an incorrect sentence can never be correct. United States v. Bell 2013 US Dist LEXIS 168261.

In Borden, Ed. a case similar to Petitioner's that is convicted of 922(g)(1) and enhanced under 924(e) Armed Career Criminal Act (ACCA)

one of the predicate offense used was a prior conviction of ADW, Assault with a Dangerous Weapon in the District of Columbia (D.C. Code 22-502) which can be sustained based on reckless conduct alone.

Vines v. Columbia, 70 A3d 1170, 1180 (DC 2013); See also United States v. Jihad Barwes, United States Appeals for the Fourth Circuit 855 Fed Appx 893; 2021 US App. 24019.

Petitioner filed a timely motion under 2255 (f)(3) May 3, 2022 Appx C. The District Court "Recharacterized" Petitioner's Borden claim erroneously as a second and successive motion under 2244 and denied Petitioner (26)

COA AND IN THE COURT SUPPOSE
RE CHARACTERIZATION FAILED TO
IN THE LEAST (1) NOTIFY PETITIONER
OF INTENDED RECHARACTERIZATION
AND ITS CONSEQUENCES AND (2)
TO PROVIDE OPPORTUNITY TO WITHDRAW
OR AMEND HIS MOTION. Castro v United
States, 540 US 375.

ASSUMING ARGUABLE EVEN IF
PETITIONER FILED 2244 APPLICATION
IT WOULD HAVE BEEN FRIVOLOUS
ACCORDING TO THE HOLDING OF THE
SUPREME COURT IN JONES v Hendrix
599 US 465, THE COURT HELD THAT
"IN 1996 CONGRESS ENACTED
(AEDPA) MADE A SIGNIFICANT REFORM
TO THE PROCESS OF FEDERAL COURTS
POST CONVICTION FOR BOTH STATE
AND FEDERAL PRISONERS. THE AEDPA
STRICTLY LIMITED SECOND AND SUCCESSIVE
28 USC 2255 MOTIONS TO THOSE
THAT CONTAIN (1) NEWLY DISCOVERED
EVIDENCE THAT PROVEN ARE VIEWED
IN LIGHT OF THE EVIDENCE AS A
WHOLE WOULD BE SUFFICIENT TO
Q7)

establish by clear and convincing evidence as a whole would be sufficient to establish that no reasonable fact finder would have found the movant guilty of the offense or (2) a new constitutional law made retroactive to cases on collateral review by the United States Supreme Court. The court also held that the second and successive motion under 2244 does not allow a petitioner to attack a non constitutional claim of statutory change in law. *Id.* Justice Thomas, *J.W. Jones Id.* The court held 2255 (c)'s saving clause did not permit federal prisoners asserting a change in statutory interpretation to circumvent (AEDPA) restrictions on second or successive 2255 by filing Habeas Petitions under 28 USC 2241 AEDPA's new

(28)

restrictions were best understood
as restrictions in 2255 and
not expositions of 2241's
applicability *Id.* Where there is
no vehicle to address and seek
relief from a criminal statute
interpreted by the Supreme Court
that place as, Petitioners and
those similarly situated conduct
beyond the state's power to
punish leave many litigants with
an illegally sentence in limbo as
to the proper vehicle to seek relief.
Again it appears to be mixed signals
from the Supreme Court. It appears
that the Supreme Court has held
that a statutory interpretation
where a state is prohibited to
punish now melts out an illegal
sentence cannot be challenged
by 2241 nor a second and successive
motion unless he or she is on
a collateral review, it would be
a miscarriage of justice if
petitioner and those similarly
has no vehicle to seek relief
(29)

because they are not under collateral review as many litigants are not.

As a result of no avenue nor vehicle to correct a life sentence placed upon Petitioner beyond the state power to punish where in *Borden* the Supreme court interpretation of the ARCA narrowed the Armed Career Criminal statute. There should be no procedural bar to what exist now hinges on a miscarriage of justice. Petitioner's motion under 2255(f)(3) should be granted to be considered under the proper framework Cutler v. Wilkinson 544 U.S. 709, 718. Petitioner is legally innocent of the Armed Career Criminal Act Statute.

CONCLUSION

The circuit Courts of Appeal are divided on "whether the statute of limitation provision of 2255 allow District Courts and Courts of Appeals to make retroactive decisions?" The Fourth Circuit has joined other circuits that have considered the issue of Retroactivity and held that 2255(f)(3) does not require that the initial retroactivity question be decided in the affirmative only by the Supreme Court. Wiegand v. United States 380 F.3d 890, 892 (6th Cir 2004); Dodd v. United States, 365 F.3d 1273 (11th Cir 2004); United States v. Swintow, 333 F.3d 481, 486-487 (3rd Cir 2003); Fischer v. United States, 285 F.3d 596, 599-600 (7th Cir 2002); United States v. Lopez 248 F.3d 427, 432 (5th Cir 2001) and also United States v. Thomas, 627 F.3d 634 (4th Cir. 2010),

However, the District Court in the instant case sua sponte Recharacterized Petitioner's timely filed motion under 2255 (f)(3) erroneously, for lack of Jurisdiction without following Fourth Circuit precedents and giving any legal consideration to Petitioner's Borden claim. The district court's sua sponte Recharacterization was improper absent agreement or opportunity to withdraw, though the court impeded timely consideration, furthermore denied Petitioner COA.

The District Court on remand should consider whether Petitioner's Borden claim is retroactive according to the Fourth Circuit in Thomas 1d. If the District Court decides that Borden claim by Petitioner is Retroactive then it should consider the merits.

Where the Supreme Court interpreting the Armed Career Criminal Act in light of Borden, Terms covered by Statute, the state's Lack of power to punish and Petitioner is punished with a

Life sentence but there exist no relief if he is not on collateral review hinges on a miscarriage of Justice and there should be no procedural bar to deny him relief from a sentence that has become illegal as a result of the aforementioned reasons for any defendant similarly situated.

In consideration of the foregoing Petitioners and for all those under such circumstances the Court is urged to grant Certiorari review in order to resolve the important questions. Petitioner respectfully Submits that the Petition for Certiorari be granted, the judgement of the Fourth Circuit Court of Appeals be vacated and the case be remanded for further consideration.

Respectfully Submitted

PRO-Se

by Bobby Ray Edwards

BOBBY RAY EDWARDS #10497007

U.S. D. HAZELTON

P.O. Box 2000

BRUCETON MILLS, WV 26525

(33)

Pursuant To 28 USC 1746, I Bobby Ray Edwards
declare under the penalty of perjury That
The forgoing is True and correct.

Respectfully Submitted
s. Bobby R Edwards
BOBBY RAY EDWARDS
month 7 / 24 / 2024

CERTIFICATE OF SERVICE

I certify That on 7, of 24 2024 The
forgoing was mailed to The Supreme
Court of of The United States 1 First
Street, N.E Washington D.C. 20543 And
That an additional copy by U.S. mail TO:

The Solicitor General of The
United States
Department of Justice
Room 5616

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Washington, D.C. 20530-0001