No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DONALD ALFRED BUSCH

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED.

The Motor Vehicle Theft Law Enforcement Act of 1984 provided a definition for "motor vehicle" to mean "a vehicle driven or drawn by mechanical powers and manufactured primarily for use on public streets, roads or highways." This definition was the same as that found in other federal vehicle legislation such as the National Traffic and Motor Vehicle Safety Act of 1966. Eight years after the 1984 legislation, Congress amended the law with the Anti-Car Theft Act of 1992, which Congress said was "to prevent and deter auto theft." The crime covered by the statute is commonly referred to as "carjacking." The 1992 legislation prohibited a person, with intent to cause death or serious bodily harm, from taking a "motor vehicle" from the person or presence of another by force and violence or by intimidation. Does the definition of a "motor vehicle" in the 1984 legislation apply to the 1992 law to preclude a prosecution for "carjacking" of a dirt bike that the government's expert testified was designed to travel "strictly off-road?"

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petitioner, Donald Alfred Busch, was a defendant in the district court and was the appellant in the Tenth Circuit. Mr. Busch is an individual. Thus, there are no disclosures to be made by him pursuant to Supreme Court Rule 29.6.

The Respondent is the United States of America.

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PETITION FOR WRIT OF CERTIORARI

Donald Alfred Busch respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals of the Tenth Circuit.

OPINIONS BELOW

The Tenth Circuit's controlling decision is reported at *United States v. Busch*, No. 22-2161, 2024 WL 3580452 (10th Cir. July 30, 2024).

JURISDICTION

The Tenth Circuit entered its opinion on July 30, 2024, App., *infra,* 3-51. Mandate was issued in the case on August 21, 2024. This Court has jurisdiction under 28 U.S.C. Sect. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Motor Vehicle Theft Law Enforcement Act of 1984 provided a definition for "motor vehicle" at 18 U.S.C. 511 (a)(2) and 49 U.S.C. 32101(7) to mean "a vehicle driven or drawn by mechanical powers and manufactured primarily for use on public roads and highways, but does not include a vehicle operated only on a rail line."

The Anti-Car Theft Act of 1992 found at 18 U.S.C. 2119, reads:

> Whoever, with intent to cause death or serious bodily harm, takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, shall –
>
> (1) be fined under this title or imprisoned not more than 15 years or both,
>
> (2) if serious bodily injury (as defined in section 1365 of this title, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of the title) results, be fined under this title or imprisoned not more than 25 years, or both, and
>
> (3) if death results, be fined under this title or imprisoned for any number of years up to life, or both, or sentenced to death.

Title 18, Section 2119 has no separate definition for the term "motor vehicle."

STATEMENT OF THE CASE

Following a 12-day jury trial in the United States District Court for New Mexico (Las Cruces), Petitioner was convicted of (1) count one: conspiracy to violate 18 U.S.C. 2119 under 18 U.S.C. 371; (2) count two: carjacking resulting in death under 18 U.S.C. 2119(3); (3) count four: using, carrying and brandishing a firearm

during and in relation to a crime of violence (the carjacking offense charged) and possession and brandishing a firearm in furtherance of such crime under 18 U.S.C. 924(c)(1)(A)(ii); and (4) count seven: felon in possession of a firearm under 18 U.S.C. 922(g) and 18 U.S.C. 924. The district court sentenced Petitioner to 60 months on count one, 396 months on count two, and 120 months on count seven, all to run concurrently, and another 84 months on count four, which was to run consecutively. This resulted in a total imprisonment sentence of 480 months, which was to be followed by a total term of 5 years of supervised release. App, *infra,* 4. The court of appeals affirmed.

STATEMENT OF FACTS

1. The underlying facts of this case are both bizarre and tragic. The victim, J. S., died following an exchange of gunfire initiated by the victim not long after midnight on May 28, 2021. The incident took place at the victim's small farmhouse located a few miles northeast of Loving, New Mexico. The house stood alone off a farm road surrounded by barren land and brush filled with rattlesnakes (CA10, Record on Appeal, Volume III at page 1342).

Photos presented at trial showed a large metal roof extended south of the house where underneath were kept some two dozen motorcycles, dirt bikes and broken-down cars (Supplemental Record on Appeal, items 2 and 34, government exhibits 531, 90).

2. Petitioner had been good friends with the victim. The two frequently rode motorcycles or dirt bikes around the area (III: 919). They commonly shared motorized bikes between each other (I:139). The victim trusted Petitioner enough to loan him his red truck (III: 921, 1416). Petitioner and the victim were often seen together at the victim's house (III: 924).

3. Just before midnight on May 28, 2020, Petitioner knocked on the door of the victim's house because he needed gas for his car, but no one answered (I: 131). Petitioner had once dated a girl whose car was parked at the house that night, but Petitioner told the victim he was "cool" with his friend's new relationship (I:130). Petitioner did not stay at the victim's house but for just a few minutes (I: 1365-67) and later said he was a little annoyed no one came to the door (I: 143). He then looked at the dirt bikes and motorcycles and decided to take a dirt bike he was familiar with to

try to get it to run (I:136). He knew enough about the bike to know that it likely would not run and that he might need help from some friends to get the dirt bike to his place.

4. The dirt bike Petitioner was interested in was nothing special (III:738-9). Little was known about it. Its ownership was listed with someone in Pennsylvania, but the dirt bike was not reported as stolen (III:1190). Its value was estimated to be only $600-$700 (I:143).

5. Petitioner left the victim's house and went to the house trailer of Tyson Terrell (I:149). There he found Terrell with Jehra Hedgecock and Stetson Barnes. Petitioner told the other three he wanted to get a dirt bike at J.S.'s and needed help loading it if it did not run (III:1415). The four then got into Hedgecock's truck and drove back to J. S.'s house so Petitioner could get the bike. The four riders all knew the victim well. Hedgecock testified they hung out and partied together (I:146).

6. The topic of causing J. S.'s death or serious bodily harm never came up. Hedgecock recalled nothing suggesting any violent action against J. S., much less any discussion about

intending to kill their friend or harm him seriously, or even point a gun at him (III:128). When Deputy Sheriff Tim Satterfield tried to insinuate as much when Petitioner agreed to waive his Miranda rights and give an interview, Petitioner responded quickly, "You're trying to say I wanted to hurt him." Satterfield replied, "Hell, nobody is saying anybody intended on killing him" (I:154-155). In fact, the subject of firearms never came up and no one knew whether the other might have a gun (I: 128, III: 1240, 1296).

7. Hedgecock drove her F-250 and parked it right in front of J. S.'s front door. As the others stayed in the car, Hedgecock walked up to the front door and rang the doorbell to let J. S. know they were there (III:1311). She had no firearm with her on the front porch (III: 1311). When no one answered, Hedgecock walked back to the truck and the others got out. Petitioner went with Terrell over to the dirt bike he was interested in and took it out to the drive in front of the covered area. As Hedgecock and Barnes waited by the F-250, the victim walked out on the front porch. Surveillance camera footage the jury saw showed the entire incident. A toxicology report indicated J. S.'s

methamphetamine blood level as almost seven times the amount commonly used to show the presence of methamphetamine in a person's blood (III:2134). "(J. S.) came to the door," Barnes testified, and "has a gun in his hand, starts to point it at us" (III:1424). Barnes had a gun in his waistband he kept handy doing work in the dangerous fields around Loving to ward off rattlesnakes (III:1432). He instinctively drew it in response to J. S. pointing the gun at the group. Hedgecock kept a gun in her console she drew as well in response (III:1237). Video footage showed Petitioner reach behind his back and point a black speck of some object toward the porch as well (III:726). Barnes told J. S. to put his gun down (III:1324). "We'll leave," he said. Hedgecock, in her fourth or fifth interview with agents, first remembered Petitioner saying, "Get back in the house, pussy" (III:1238). No mention was made about the dirt bike during the entire exchange. J. S. went back inside and closed the front door. All of the guns were put away. Petitioner went back to try to start the dirt bike, but never succeeded. After a while, he walked the dirt bike off the property into the distant fields south of the house (III: 1379,

1449). The other three got back in Hedgecock's truck and proceeded to drive off (III:1020, 1428).

8. As the car pulled away, J. S. fired bullets through the closed front door of the house in the direction of the F-250 as it was leaving (III: 968, 971, 972). The first bullet shattered the rear passenger window (III: 1428) and both Hedgecock and Barnes described the glass shards hitting and cutting their faces as they sat in the driver's seat and right rear passenger seat, respectively (III: 1296, 1428). Hedgecock described how she sensed a bullet passing close to her head from the heat it generated (III:1333, 1489). A second shot came through the rear passenger compartment and grazed the back of Barnes' neck as he bent down (III:1429). As Hedgecock floored the accelerator and turned around the corner of the property at a fence post on the northwest side of the house, she saw the three holes from the shots fired by J. S. in the front door (III:1318).

9. Barnes reacted instinctively to the shots fired into the car by J. S. He removed his gun from its waistband and began firing

toward the house as the pickup sped away around the corner. He emptied his gun of its 12 bullets. The entire exchange with both J. S. and Barnes lasted only five seconds (III:1428). At the time, Petitioner was hundreds of feet away in the fields on the other side of the house with the dirt bike (I: 166). Barnes' last shot entered J. S.'s house nine inches above the floor, but in line with where J. S. had just lay down in front of a refrigerator. The bullet passed through J. S.'s head and killed him (II: 1136, 1142).

10. The dirt bike that spawned this horrific incident was described in detail by the government's witness, Raymond Gutierrez, who was the general manager of Motorsports New Mexico in Las Cruces. App., *infra,* 52. Guttierez described the bike as "a Yamaha dirt bike." App., *infra,* 59. He described the difference between a dirt bike and a motorcycle or other on-road bike. "An on-road bike would be street legal, as opposed to a dirt bike, which (was) strictly off-road," he testified. *Id.* He was asked about the bike Petitioner took, which was present in the courtroom. "So that is not a legal bike?" Gutierrez replied, "Correct." *Id.* Then Gutierrez was asked, "And what makes that

bike not street legal?" He answered, "It doesn't have everything you would need on a street-legal bike, as far as two signals, metal gas tank, anything that would be required for that." *Id.* "What about a headlight?" he was asked. "No," he answered. *Id.* "Brake light?" he then was asked. "No," he answered again. *Id.* "You mentioned turn signals, correct?" Petitioner's attorney inquired. Gutierrez answered, "Correct." *Id.* He then was asked, "Those are all – all those components are missing on this type of bike?" Gutierrez answered, "Correct." *Id.* "And that's from birth?" he was asked. "Is that correct?" Gutierrez again answered, "Correct." App., *infra,* 60. His interrogator then said, "It's not like someone took them off. From birth, that bike never had lights." Gutierrez answered, "Correct." *Id.* Finally, he was asked, "In fact, that type of a bike doesn't even have a battery, correct?" Gutierrez replied, "That one, no." *Id.*

11. Gutierrez explained that a dirt bike like the one Petitioner took was not designed to travel on streets or highways. Being "light weight" is an advantage going over terrain. "If it crashes," he was asked, "then there's less chance of injury to the rider. Is

that correct?" Gutierrez answered, "That can also come into play as well." *Id.* Gutierrez told the jurors that the dirt bike before them was missing "all the plastics," which included "the side fairings, rear fairings…" App., *infra,* 61.

12. Despite this questioning of Gutierrez during cross-examination, Petitioner's trial counsel did not argue the issue that the dirt bike Petitioner took on May 28, 2020 was neither a "car" contemplated by the Anti-Car Theft Act of 1992 nor a "motor vehicle" as defined by its predecessor statute, the Motor Vehicle Act of 1984. Certainly, the dirt bike was not a car under 18 U.S.C. 2119, but, in addition, it was not "a vehicle driven or drawn by mechanical powers and manufactured primarily for use on public streets, roads and highways," as required by 18 U.S.C. 511(c)(2).

13. On appeal before the Tenth Circuit Court, Petitioner argued the district court should not have had jurisdiction of the case because the dirt bike involved in the incident was not the type of "motor vehicle" covered by 18 U.S.C. 2119. Petitioner argued plain error should justify reversal because the case should never have been brought. The Tenth Circuit Court, however,

noting that the term "motor vehicle" was not defined in 18 U.S.C. 2119, held that the error was not so plain. App., *infra,* 16. Instead, it rejected the definition advanced by Petitioner that applied in 18 U.S.C. 511(c) and which was consistent with the definition of a "motor vehicle" found at page 1476 in Webster's Third New International Dictionary ("an automotive vehicle not operated on rails; esp: one with rubber tires for use on highways") and instead held that a more expansive definition found in Black's Law Dictionary should apply ("a wheeled conveyance that does not run on rails and is self-propelled, esp. one powered by an internal combustion engine, a battery or fuel cell, or a combination of them"). App., *infra,* 18. So long as the vehicle had wheels and an internal combustion engine, the Tenth Circuit Court seemed satisfied such a vehicle was covered under the federal carjacking statute. *Id.* Petitioner cited a bankruptcy court decision, *In re Race,* 159 B.R. 857 (Bankr. W.D. Mo. 1993), which relied heavily on this Court's decision in *United States v. Ron Pair Enterprises, Inc.,* 489 U.S. 235 (1989), that held such an expansive reading of the Anti-Car Theft Act of 1992 would mean Congress had

intended the statute to include riding lawn mowers and electric wheelchairs. The Tenth Circuit cited *Ron Pair Enterprises, Inc.*, but concluded that such "a literal application of (the) statute (would not) produce a result demonstrably at odds with the intention of the drafters." App., *infra,* 20.

Whether the Yamaha dirt bike described by Raymond Gutierrez as "strictly off-road…from birth" meets the definition Congress intended for a "motor vehicle" under 18 U.S.C. 2119 has immense consequences to Petitioner. He is in his mid-thirties and faces a 480-month sentence. The likelihood he will gain release in his lifetime is not good. The expansive definition of motor vehicle approved by the Tenth Circuit, moreover, suggests there are no limits to what might be included as a motor vehicle under 18 U.S.C. 2119, even though the vehicle involved may be far removed from a car or other motorized vehicle designed to travel on the nation's roads. Deputy Satterfield, near the end of his interview with Petitioner, viciously said, "It sucks to know you put a bullet in your friend's head." Petitioner recoiled, "That I did? I didn't do it. It never crossed my mind that would have happened."

Satterfield promised, "I can tell the prosecutor you didn't intend to kill." Petitioner retorted, "Right. I didn't" (I:147). This case illustrates the absurd lengths taken to create a federal case never contemplated by Congress over a non-descript off-road dirt bike.

REASON FOR GRANTING THE WRIT

THE TENTH CIRCUIT COURT'S DEFINITION OF THE TERM "MOTOR VEHICLE" ATTRIBUTED TO 18 U.S.C. 2119'S CARJACKING STATUTE IS AT ODDS WITH OVER FIVE DECADES OF STATUTORY PROVISIONS AND CASE LAW THAT HAVE LIMITED FEDERAL JURISDICTION TO MOTOR VEHICLES "DRIVEN OR DRAWN BY MECHANICAL POWERS AND MANUFACTURED PRIMARILY FOR USE ON PUBLIC STREETS, ROADS AND HIGHWAYS"

Federal jurisdiction for motor vehicles, Congress has said many times, is not limitless. The legislative history of the Anti-Car Theft Act of 1992, which became 18 U.S.C. 2119, the statute used against Petitioner, was directed at *cars*. "The Committee on the Judiciary, to whom was referred the bill (H. R. 4542), *to prevent and deter auto theft,* having considered the same, report favorably thereon with an amendment and recommendation that the bill as amended do pass." 1999 House Report No. 102-851, 1992 U.S.S.C.A.N. 2829, at 2829 (italics added). The Committee explained the purpose of the legislation:

> *Automobile theft* in the United States is a major crime problem. Sophisticated theft rings are reaping enormous profits and costing American *car owners* billions of dollars each year. H. R. 4542, the Anti Car Theft Act of 1992, is designated to reduce *auto theft* significantly by taking the profit away from *car thieves*. *Id.* (italics added)

The legislative history additionally reports the comments of the Committee on Energy and Commerce. *Id.,* at 2844. "The purpose of H.R. 4542 as reported to the Committee on Energy and Commerce is to take effective measures to thwart all motor vehicle theft, not just related to 'chop shops;' *to amend the Motor Vehicle Theft Law Enforcement Act of 1984,* which originated in this Committee, to provide for greater parts marking of not only passenger cars, but also multi-purpose vehicles and light-duty trucks" (italics added). The Motor Vehicle Act of 1984 provided a definition of "motor vehicles" to mean "a vehicle driven or drawn by mechanical powers and manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated only on a rail line." 18 U.S.C. 511(c)(2). (italics added)

This definition of the term "motor vehicle" had been the commonly-accepted definition for federal jurisdiction for decades.

The National Traffic and Motor Vehicle Safety Act of 1966 found at 15 U.S.C. Sect. 1391(1) and 1901 (15) (1992) used the identical definition. The Roberts Act found at 40 U.S.C. Sect. 703 (1)(1992) similarly used the same terminology to limit federal jurisdiction in matters involving motor vehicles. The government provided no federal statute where a more expansive definition of the term "motor vehicle" was ever used. The government cited no legislative history for the Anti-Car Theft Act of 1992 to suggest that a more expansive definition was ever considered by Congress. Motorboats, riding lawn mowers, electrical wheelchairs and strictly off-road dirt bikes were all vehicles with motors, but none of them were manufactured primarily for use on public streets, roads and highways. Congress gave no indication whatsoever that it intended to expand the longstanding legal definition of a "motor vehicle" applicable to federal cases to include such vehicles.

The Anti-Car Theft Act of 1992 was designed to stop armed thefts of cars that people drove on the streets. The President of the United States at the time of the enactment of the Anti-Car Theft Act of 1992, George H. W. Bush, wrote when he signed the

bill: "It is my sincere hope that this legislation will reduce the level of *auto thefts* and carjackings. Thugs and criminals will now have to think twice about stealing a *car*. *Id.* 1992 U.S.S.C.A.N. at 2903 (italics added).

Federal cases abound that limit the definition of the term "motor vehicle" to vehicles that are "manufactured primarily for use on public streets, roads and highways." *United Financial Cas. Co. v. Nelson*, 109 F. Supp.3d 1085 (D. Minn. 2015) (snowmobile not a motor vehicle); *Progressive Specialty Ins. Co. v. Burke*, 91 F. App'x 415 (6th Cir. 2004) (all-terrain vehicle (ATV) not a motor vehicle); *Country Mutual Ins. Co. v. Leffler*, 189 F. Supp.3d 914 (D. Alas. 2016) (ATV not a motor vehicle); *Harlan v. United Fire & Cas. Co.*, 208 F. Supp.3d 1168 (D. Kan. 2016) (small construction vehicle not provided with equipment necessary to drive legally on Kansas roads not a motor vehicle); *United States v. Four Units All Terrain Vehicles*, 778 F. Supp.2d 220 (D. Puerto Rico 2011) (four ATV's manufactured primarily for off road use rather than for use on public streets, roads or highways exempted from DOT certificate requirement); *In re Bosworth*, 449 B. R. 104 (Bankr. D.

Ida. 2011) (ATV which lacked essential safety mechanisms such as lights, horn and reflectors did not qualify as a motor vehicle).

Despite the longstanding limitation placed on the term "motor vehicle" in federal statutes and the universal acceptance of the federal limitation of the term "motor vehicle" to those motorized vehicles "manufactured for use on public streets, roads and highways," the Tenth Circuit Court insisted the interpretation of the term "motor vehicle" in 18 U.S.C. 2119 could be broad enough to encompass the non-descript dirt bike Petitioner picked up at his friend's house on May 28, 2020. In doing so, the Tenth Circuit did not address an important holding by this Court that statutes applied to criminal defendants must be interpreted narrowly. *Dubin v. United States,* 599 U.S.110, 120 (2023). The Tenth Circuit similarly did not address this Court's holding in *United States v. Ron Pair Enterprises, Inc.,* 489 U.S. 235, 109 S. Ct. 1026, 1030 (1989) that courts should consider "the terminology used throughout the (United States) code" to ascertain the ordinary, customary meaning of a term for purposes of federal law. See also *Toibe v. Radloff,* 501 U.S. 157 (1991).

The Tenth Circuit noted, appropriately, that "we begin with the text." *Medellin v. Texas,* 552 U.S. 491, 501 (2008). The Tenth Circuit held "that 'motor vehicle' is not defined in Section 2119 or elsewhere in Chapter 103 of Title 18." App., *infra,* 17. Citing its own case in *United States v. Roberts,* 88 F.3d 872, 877 (10th Cir. 1996), the court held, "If Congress does not define (a) statutory term, its common and ordinary usage may be obtained by reference to a dictionary." The expansive definition of "motor vehicle" used, which was put forward by the government, was found in Black's Law Dictionary, which defined "motor vehicle" as "a wheeled conveyance that does not run on rails and is self-propelled, esp. one powered by an internal-combustion engine, a battery or fuel cell, or a combination of these." This definition was different from the more widely-accepted definition found in Webster's Third New International Dictionary (2002) at 1476 where "motor vehicle" is defined as "an automotive vehicle not operated on rails; esp. one with rubber tires for use on highways." With the definition from Black's Law Dictionary alone, citing no other federal statute or case law, the Tenth Circuit held that the

more expansive definition could be applied to interpret the term "motor vehicle" in 18 U.S.C. 2119. "There is no indication in Sect. 2119, for example, Congress meant to import a specialized definition from another section of another title, 49 U.S.C. Sect. 32101," the court held. App., *infra,* 19. "Mr. Busch has offered no authority to support that proposition, and we are aware of none." *Id.*

Petitioner disagrees with this finding by the Tenth Circuit. The legislative history cited by Petitioner for the Anti-Car Theft Act of 1992 stated that the measure was "to *amend* the Motor Vehicle Theft Law Enforcement Act of 1984." 1992 U.S.S.C.A.N. at 2844. The Motor Vehicle Act of 1984 provided the definition of a "motor vehicle," which was consistent with prior federal legislation defining the term, that Congress expected to apply to both the Motor Vehicle Act of 1984 and to the Anti-Car Theft Act of 1992. Congress had enacted legislation that defined the term "motor vehicle" just eight years before. The definition was the same as the definition of "motor vehicle" going back to at least 1966 when the Motor Vehicle Safety Act of 1966 was enacted.

Congress (and the President) expressly stated that the purpose of the Anti-Car Theft Act of 1992 was to prevent *auto theft.* The Tenth Circuit points out that the heading of a case may not define the scope of a statute, App., *infra,* 19, but in this case nothing in the legislative history indicates that Congress intended non-road vehicles to be covered by the carjacking statute found at 18 U.S.C. 2119. Congress never considered motorboats, airplanes, riding lawn mowers, electric wheelchairs or "strictly off road" dirt bikes when it enacted the statute. The common meaning of the term "motor vehicle" in 18 U.S.C. 2119 could be nothing other than a "vehicle driven or drawn by mechanical powers and manufactured primarily for use on public streets, roads and highways." The dirt bike involved in this case, which the Government's own expert described as "strictly off road," because it was designed with no turn signals, no brake lights, no battery, no metal gas tank all "from birth" – meaning it was never manufactured to travel on a "public street, road, or highway" -- could never have met the definition of "motor vehicle" intended by Congress when it enacted 18 U.S.C. 2119. The Petitioner's case should never have been

prosecuted because federal jurisdiction was never intended to extend to the dirt bike.

Stretching the law to accommodate a tragic incident to make a case Congress never contemplated adversely affects both the defendant charged and the integrity of the judicial system. Petitioner's substantial rights were taken from him by the 40-year sentence he received. The fairness and public reputation of judicial proceedings were undermined because the prosecutor was forced to stuff a square case into a round hole. This Court in *United States v. Holloway,* 526 U.S. 1 (1999), identified the crime in 18 U.S.C. 2119 as "carjacking with intent to cause death or serious bodily harm." *Id.,* at 1. There is little reason to believe that the Petitioner and his three friends headed to J. S.'s house on the night of May 28, 2020 intending to do anything but pick up a non-descript dirt bike that Petitioner commonly road with his friend J. S, put it in the truck, and take it back to Petitioner's house so he could work on it to get it running again. Common sense does not suggest any of them had the intent to kill or cause serious bodily harm to their friend over the simple dirt bike worth at best only a

few hundred dollars. But following the death of J. S., which may well have been largely prompted by his own conduct, a government prosecution went into overdrive. Deputy Satterfield had little interest in Petitioner's version of events; instead, his purpose was to try to trap the Petitioner into admitting catch words and phrases put forth by Satterfield that might be used in a trial to make a case that otherwise had little to support it. Deputy Satterfield suggested Petitioner went to the house that night to "jack" the bike and "punk" his friend. Satterfield claimed Petitioner was embittered by his girlfriend staying with the victim and wanted revenge. The government's principal witness at the trial, Jehra Hedgecock, adopted Satterfield's words – "jack" and "punk" -- and claimed Petitioner had said them. She had not recalled any of these memorable terms, including "get back in the house, pussy," in four interviews with state law officers that preceded her meeting with the federal prosecutors (III:1304). The prosecutors had used Satterfield's words when they wrote the factual basis they required Hedgecock to adopt in the plea agreement they offered (III:1290). The Tenth Circuit

acknowledged that all these words were Satterfield's, not the Petitioner's, but chose to look the other way on the basis that Petitioner himself might have acquiesced to them. App., *infra,* 25.

Most startling, the prosecution used Satterfield's planted words to get the district court to instruct the jury that, because J. S.'s death was the but-for result of Petitioner's intent to commit the crime of carjacking of the dirt bike, the government no longer had to prove Petitioner even had the intent to cause death or serious bodily harm to J. S. when he went to pick up the dirt bike. This was the key element expressly set out in *Holloway* by this Court. "So we don't have to prove any defendant intended to kill (J. S.). It's called but-for causation," the prosecutor argued (III:1640). "Don't be confused that you have to find five elements of the substantive crime, the five elements of carjacking," the prosecutor added. "We don't have to prove the defendant had any premeditated design or intent to kill the victim" (III:1642).

The Petitioner argued that the propriety of these actions by the prosecution to build a case Congress never intended undermined the integrity of judicial proceedings. The Tenth Circuit

countenanced these actions in affirming Petitioner's conviction and sentence of forty years. None of these actions would have occurred had the government recognized that it did not need to stuff a square case into a round hole. This Court, nor any circuit court, has addressed the meaning of the term "motor vehicle" in 18 U.S.C. 2119. This Court should accept certiorari to clarify the meaning of the term and to consider whether federal jurisdiction under the statute was ever meant to extend to a "strictly off-road" dirt bike, or any other strictly off-road motorized vehicle.

CONCLUSION

For the reasons set forth above, Petitioner requests this Court to grant certiorari on the question submitted.

Respectfully submitted,

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