NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 28, 2024*
Decided March 29, 2024

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-1502

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

FERNANDO DE LA TORRE,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 03-cr-90-1

Steven C. Seeger,
Judge.

ORDER

Fernando de la Torre, a federal prisoner, appeals the denial of his combined motion for sentence modification under the First Step Act and for compassionate release. Because the district judge reasonably denied the motion, we affirm.

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* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

In 2008, a jury convicted de la Torre of crimes connected to his membership in a street gang. These included two counts that involved distribution of crack cocaine and three counts of murder in aid of racketeering. For the drug convictions, de la Torre faced a minimum of 10 years and a maximum of life in prison. *See* 21 U.S.C. § 841(b)(1)(A)(iii) (2009). His three murder convictions carried mandatory life sentences. *See* 18 U.S.C. § 1959(a)(1) (2009). The remaining three charges (including assault with a dangerous weapon in aid of racketeering) carried maximum penalties of 5 years, 20 years, and life. *See* 18 U.S.C. §§ 922(k), 924(a)(1)(B), 1959(a)(3), 1962(d), 1963(a) (2009).

De la Torre was sentenced to six concurrent life terms (three for the murder convictions, two for the crack-cocaine convictions, and one for racketeering conspiracy), a concurrent 20-year sentence, and a concurrent 5-year sentence. We affirmed de la Torre's convictions and sentence, and we affirmed the denial of a post-conviction motion. *See United States v. Benabe*, 654 F.3d 753 (7th Cir. 2011); *United States v. Benabe*, 436 F. App'x 639 (7th Cir. Aug. 18, 2011); *Delatorre v. United States*, 847 F.3d 837 (7th Cir. 2017).

About 15 years into his life sentence, de la Torre moved to modify his sentence under the First Step Act and for compassionate release. *See* First Step Act of 2018, Pub. L. No. 115-391, § 404, 132 Stat. 5194; 18 U.S.C. § 3582(c)(1)(A)(i). First, he argued that relief under § 404 was appropriate because his aggregate sentence included offenses covered by the Act. Second, he argued that his age when he offended (before and at 18), traumatic childhood, and "tremendous rehabilitation" were extraordinary and compelling reasons for compassionate release, and that the sentencing factors in 18 U.S.C. § 3553(a) warranted release. The government countered that de la Torre's murder convictions yielded mandatory life sentences that the Act did not cover, leaving "no room" for the judge to reduce the aggregate sentence under § 404. The government further argued that de la Torre offered no extraordinary and compelling reasons for release and, highlighting the seriousness of his "organized and systematic killings," that the § 3553(a) factors also did not support relief.

The district judge denied de la Torre's motion. First, the judge explained, he had no authority to reduce de la Torre's sentence under § 404 of the First Step Act: Even though de la Torre was eligible for relief based on his crack-cocaine convictions, the Act does not cover his murder convictions, which carry mandatory life sentences. Second, the judge concluded that relief under § 3582(c)(1)(A)(i) was not appropriate because de la Torre's young age at the time of the offenses, his childhood trauma, and his rehabilitation efforts in prison were not extraordinary and compelling reasons for

release. In any event, the judge reasoned, the factors outlined in § 3553(a)—namely, the seriousness of de la Torre's conduct, the need to promote respect for the law, and the need to deter similar conduct—did not warrant release.

On appeal, de la Torre first argues that the district judge erred in concluding that he had no discretion to grant relief under § 404 of the First Step Act, but the judge was correct. It is true that § 404 permits a judge to revise the "entire sentencing package" when a defendant has been sentenced for some offenses that are affected by the Act and some that are not. *United States v. Hible*, 13 F.4th 647, 652 (7th Cir. 2021). But de la Torre's sentence includes at least one statutory minimum penalty (a mandatory life sentence), which judges have no discretion to alter. *See id.*

De la Torre responds that he was not—as the district judge stated—subject to three mandatory life sentences, only one. He contends that one life term is vulnerable under *Miller v. Alabama*, 567 U.S. 460, 465 (2012), because he committed the murder before he turned 18, and a second is undermined by *United States v. Harris*, 51 F.4th 705, 720 (7th Cir. 2022), because of a discrepancy between the written judgment (life in prison) and the oral pronouncement (five years of supervised release).

We need not evaluate the merits of this argument because de la Torre still faces the mandatory life sentence for the third murder conviction. The presence of an intact life sentence obviates any need to evaluate other concurrent life terms. *See Ruiz v. United States*, 990 F.3d 1025, 1033 (7th Cir. 2021). And de la Torre does not contest that the third murder conviction carries a mandatory life sentence. Still, he insists that the district judge had discretion to lower that mandatory life term. He cites out-of-circuit, district-level cases in which judges reduced mandatory life sentences through motions for compassionate release, and he asserts that the district judge had to address these cases. But motions for compassionate release come under § 3582(c)(1)(A)(i), and that statute involves factors different from those under § 404 of the First Step Act. *Compare United States v. Peoples*, 41 F.4th 837, 840 (7th Cir. 2022) (evaluating compassionate-release motion), *with United States v. McSwain*, 25 F.4th 533, 537 (7th Cir. 2022) (evaluating § 404 motion). Thus, the cases he cited were not those that the judge was required to discuss or apply under § 404. *See Concepcion v. United States*, 142 S. Ct. 2389, 2404 (2022).

That brings us to de la Torre's challenge to the denial of his motion for compassionate release, which we review for an abuse of discretion. *United States v. Williams*, 65 F.4th 343, 346 (7th Cir. 2023). We can bypass discussing whether de la Torre

presents an extraordinary and compelling reason for release because the district judge properly denied the motion for an independent reason: The judge did not abuse his discretion in deciding that the § 3553(a) factors weighed against release. "[J]ust one good reason" for denying a compassionate-release motion is enough. *United States v. Rucker*, 27 F.4th 560, 563 (7th Cir. 2022). The judge considered de la Torre's "tragic upbringing," his age at the time of the offenses, his "large and meaningful support group," and his "commendable" rehabilitation efforts in prison. But the judge reasonably concluded that a life sentence was nonetheless necessary because of ample counterbalancing factors. These included the seriousness of murder, racketeering, and extensive drug distribution; de la Torre's lack of respect for the law as reflected in his extensive participation in organized, illegal gang activity; and the need to deter him and others from similar misconduct.

AFFIRMED

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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FINAL JUDGMENT

March 29, 2024

Before
DIANE S. SYKES, *Chief Judge*
DAVID F. HAMILTON, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-1502	UNITED STATES OF AMERICA, Plaintiff - Appellee v. FERNANDO DE LA TORRE, Defendant - Appellant

Originating Case Information:

District Court No: 1:03-cr-00090-1
Northern District of Illinois, Eastern Division
District Judge Steven Charles Seeger

The judgment of the District Court is AFFIRMED in accordance with the decision of this court entered on this date.

Clerk of Court

form name: **c7_FinalJudgment** (form ID: **132**)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Case No. 03-cr-90-1
	)	
FERNANDO DELATORRE.	)	Hon. Steven C. Seeger
	)	

ORDER

Fernando Delatorre was sentenced to life in prison on January 29, 2009. He now moves for resentencing and/or compassionate release under the First Step Act. For the following reasons, the Court denies his motion.

Background

In May 2006, Fernando Delatorre was charged with eight crimes, all relating to his membership in the Insane Deuces street gang in Aurora, Illinois. Specifically, Delatorre was charged with:

- one count of racketeering conspiracy (Count One);
- three counts of murder in aid of racketeering (Counts Two, Six, and Seven);
- one count of assault with a deadly weapon in aid of racketeering (Count Five);
- one count of conspiracy to distribute and possession with intent to distribute controlled substances – specifically, more than 5 kilograms of cocaine, more than 50 grams of crack cocaine, and more than 1,000 kilograms of marijuana (Count Nine);
- one count of distribution of a controlled substance – specifically, more than 50 grams of crack cocaine (Count Twelve); and
- one count of possession of a firearm (Count Thirteen).

See Second Superseding Indictment (Dckt. No. 227).

The case proceeded to trial, which lasted several months. In the end, a jury convicted Delatorre on all counts. *See* Delatorre Jury Verdict (Dckt. No. 927); 4/21/08 Order (Dckt. No. 942). The jury also returned a special verdict holding that Delatorre was responsible for multiple murders related to the RICO conspiracy count (Count I). *See* Delatorre Special Verdict (Dckt. No. 930).

Each conviction came with hefty prison time. Counts Two, Six, and Seven – the Violent Crimes in Aid of Racketeering (VICAR) murder charges – each came with mandatory life sentences. *See* PSR, at 31 (Dckt. No. 1314); 18 U.S.C. § 1959(a)(1). **And based on the jury's** special verdict findings, Delatorre also faced up to life in prison for Count One (the RICO conspiracy). *See* PSR, at 31; 18 U.S.C. § 1962(d). **And that wasn't all.**

For Counts Nine and Twelve – the drug charges – Delatorre faced a mandatory minimum of 10 years in prison and a maximum of life. *See* PSR, at 31; 21 U.S.C. § 841(b)(1)(A)(ii). Finally, Count Five brought a maximum of 20 years of imprisonment, and Count Thirteen came with a maximum of five years. *See* PSR, at 31; 21 U.S.C. § 1959(a)(3); 18 U.S.C. § 822(k).

On January 29, 2009, Judge Castillo gave Delatorre six concurrent life sentences for Counts One, Two, Six, Seven, Nine, and Twelve. *See* Judgment, at 3 (Dckt. No. 1285). The Court also imposed concurrent sentences of 240 months for Count Five, and 60 months for Count Thirteen. *Id.*

Delatorre now moves for a sentence reduction under section 404 of the First Step Act and/or compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). *See* **Def.'s Mtn. (Dckt.** No. 2038).

Analysis

I. First Step Act

Section 404(b) of the First Step Act allows "[a] court that imposed a sentence for a covered offense" to "impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the covered offense was committed." *See* First Step Act, Pub. L. 115-391, 132 Stat. 5194, 5222 (2018).

The Fair Sentencing Act, in turn, "increased the drug amounts triggering mandatory minimums for crack trafficking offenses from 5 grams to 28 grams in respect to the 5-year minimum and from 50 grams to 280 grams in respect to the 10-year minimum." *See Dorsey v. United States*, 567 U.S. 260, 269 (2012).

Putting those two statutory pieces together, Congress empowered district courts to change sentences for crack cocaine offenses in certain instances. Based on the changes in the Fair Sentencing Act, the First Step Act "allows district courts to reduce the sentences of criminal defendants who have been convicted of" specific crack cocaine offenses. *See United States v. Hudson*, 967 F.3d 605, 607 (7th Cir. 2020).

Right off the bat, Delatorre's motion runs into a significant roadblock. He received six concurrent life sentences for Counts One, Two, Six, Seven, Nine, and Twelve. *See* Judgment, at 3 (Dckt. No. 1285). The drug offenses (Counts Nine and Twelve) involved only two of the six crimes.

If Delatorre had been convicted of (and therefore sentenced for) only Counts Nine and Twelve – the two offenses involving crack cocaine – his request for relief under the First Step Act might be within the realm of possibility. Theoretically speaking, this Court could exercise its discretion to reduce his sentence for the crack-related offenses.

But Delatorre was not merely convicted of crack offenses. He received four other life sentences. And most importantly, he received three mandatory life sentences because of his three convictions for murder (Counts Two, Six, and Seven). *See* Judgment, at 3 (Dckt. No. 1285).

Congress didn't alter those convictions through the Fair Sentencing Act. They're uncovered offenses. The Court cannot use the First Step Act to reduce the mandatory life sentences. They're mandatory.

The Court lacks the discretion to reduce Delatorre's sentence under the First Step Act because other crimes requires a life sentence. Those mandatory life sentences are immovable, so there is nothing that this Court can do. Reducing six sentences to four life sentences is still a life sentence. *See* Judgment, at 3 (Dckt. No. 1285).

By way of analogy, imagine if someone jumped out of an airplane without a parachute, chained to piano and an anvil. Cutting the connection to the piano won't do that person much good. It will end the same way.

That's the situation here. Even if this Court hypothetically vacated his sentences for crack cocaine, it would do Delatorre no good. He received convictions for other crimes that require life sentences. He'll spend the rest of his life in prison either way.

Delatorre nevertheless argues that this Court can reduce the sentences attached to his other, uncovered convictions because those sentences – plus the sentences for the covered crack-related offenses – make up one aggregate sentence. *See* Def.'s Mtn., at 16 (Dckt. No. 2038). And, as Delatorre points out, a court may review a prisoner's sentence for a non-covered offense under the Act, so long as the non-covered offense combine with the covered offense to create "'an aggregate penalty.'" *Id.* at 16–18 (quoting *Hudson*, 967 F.3d at 611).

But Delatorre disregards the fact that the First Step Act is a *discretionary* tool for judges. And when part of a defendant's sentence involves an unchanged mandatory minimum, the court simply has *no discretion* to alter it through the Act. There is no discretion to change a mandatory sentence.

The Seventh Circuit cemented the point in *United States v. Hible*, 13 F.4th 647 (7th Cir. 2021). The Court of Appeals affirmed a district court's decision to deny a sentence reduction under the First Step Act in part because the defendant's sentence involved a non-covered mandatory life sentence. The Court of Appeals built upon its decision in *Hudson*, which explained what to do when there is a sentence for more than one crime:

> [W]hen a defendant has been sentenced for two crimes, one covered by the First Step Act and the other not, a district judge has discretion to revise the entire sentencing package. That does not help [the defendant], however, because *Hudson* concerns the exercise of discretion. It does not change any statutory penalty. [The defendant's] statutory minimum penalty was and remains life in prison.

Id.

So too here. This Court lacks the discretion to alter Delatorre's sentence under the First Step Act, because the statutory minimum for his non-covered murder convictions was, and still is, life in prison. *See United States v. Mason*, 855 F. App'x 298, 300 (7th Cir. 2021) (finding that the district court lacked discretion to reduce a sentence under the Act because of a mandatory minimum for a non-covered offense); *United States v. Johnson*, 803 F. App'x 772, 773 (7th Cir. 2020) (same).

II. Compassionate Release

Delatorre also seeks compassionate release. Based on the record at hand, this Court declines the invitation to reduce his sentence.

Congress established a "default rule that the district court 'may not modify a term of imprisonment once it has been imposed.'" *United States v. Sanford*, 986 F.3d 779, 781 (7th Cir. 2021) (quoting 18 U.S.C. § 3582(c)(1)(A)(i)). But the First Step Act carved out a few "limited exceptions." *Id.* Perhaps the most prominent exception is the compassionate release provision, which empowers – but does not require – district courts to shorten a sentence based on "extraordinary and compelling reasons." *See* 18 U.S.C. § 3582(c)(1)(A)(i).

A district court may grant a motion to reduce a term of imprisonment after the defendant "has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf," or after 30 days have passed "from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." *See* 18 U.S.C. § 3582(c)(1)(A).

After exhaustion, a motion for compassionate release involves two steps. *See United States v. Peoples*, 41 F.4th 837, 840 (7th Cir. 2022). First, the defendant must present an "extraordinary and compelling" reason warranting a sentence reduction. *Id.*; 18 U.S.C. § 3582(c)(1)(A)(i). Second, the district court must weigh any applicable sentencing factors from 18 U.S.C. § 3553(a) to determine whether a reduction is appropriate. *See Peoples*, 41 F.4th at 840; 18 U.S.C. § 3582(c)(1)(A)(i).

The government concedes that Delatorre has exhausted the available administrative remedies. *See* Gov't Resp., at 16 (Dckt. No. 2076) ("Defendant has satisfied § 3582(c)(1)(A)'s exhaustion requirement."). The Court, therefore, moves to the merits of the motion.

A. Step One: Extraordinary and Compelling Reason for a Reduction

Delatorre offers three facts to support the notion that there is an extraordinary and compelling reason for his release.

First, Delatorre points to his young age at the time of his crimes and at the time of his sentencing. *See* Def.'s Mtn., at 23–26 (Dckt. No. 2038). He argues that the fact that he "is serving an extremely long – indeed life – sentence for conduct committed at an extremely young age" justifies his early release. *Id.* at 25.

Second, he claims that "his horrific and impoverished childhood that led him to crime" supports finding an extraordinary and compelling reason to grant compassionate release. *Id.* at 23, 26. According to Delatorre, the district court at the time of sentencing "did not know the full extent" of his childhood trauma. *See* Def.'s Reply, at 15 (Dckt. No. 2091). And "even if it did, the courts now have a greater appreciation for the adverse effects childhood trauma can have when it comes to committing crime." *Id.*

Third, Delatorre contends that his rehabilitation efforts while in prison support a finding of an extraordinary and compelling circumstance for release. *See* Def.'s Mtn., at 23, 29 (Dckt. No. 2038). Since his incarceration, Delatorre has completed several courses, and has even created a program for fellow prisoners in the hope that it would instill good habits. *See* Def.'s Reply, at 16 (Dckt. No. 2091). Additionally, a psychological evaluation stated that Delatorre "has matured substantially" and is low risk for future violence and reoffending. *Id.* at 16.

None of these factors, alone or in combination, is enough to constitute an extraordinary and compelling reason for release.

For starters, the Court does not view Delatorre's young age at the time of crimes or his tragic childhood as a basis for the extraordinary relief of compassionate release. "[N]either of these facts are extraordinary – unfortunately, many defendants are young when they commit their crimes, and many had traumatic childhoods." *United States v. Bigsby*, 2022 WL 1782274, at *3

(S.D. Ind. 2022). Unfortunately, young people commit their fair share of crimes, and then some. Youth is not extraordinary; it is all too common.

Even more, both factors – while notable and undoubtedly impactful in the life trajectory of Delatorre – were known to the sentencing judge in 2009. Indeed, the sentencing court noted that Delatorre's "age during this period and [his] upbringing are mitigating factors." *See* Sent'g Tr., at 36:3-5 (Dckt. No. 1427). Accordingly, those facts provide no reason to reduce his sentence today. *See United States v. Rimpson*, 2021 WL 6098440, at *1 (7th Cir. 2021) (concluding that because the district court knew of the defendants' young age at the time of the offenses, "that fact provides no reason – let alone an extraordinary and compelling one – to reduce those sentences now"); *United States v. Wrice*, 2021 WL 7209619, at *1 (7th Cir. 2021) ("[F]acts known at the original sentencing cannot justify a later reduction."); *see also United States v. Hunter*, 12 F.4th 555, 569 (6th Cir. 2021) (holding that facts known at the time of sentencing – which typically fall under the analysis of the section 3553(a) factors – cannot constitute "extraordinary and compelling" reasons for compassionate release).

Therefore, the Court concludes that Delatorre's youth and upbringing do not establish an extraordinary and compelling reason for his release.

That leaves his rehabilitation. But the case law is clear: "[S]tanding alone, [] rehabilitation efforts are not a ground for release under § 3582(c)(1)(A)." *Peoples*, 41 F.4th at 842. And even if the Court considered Delatorre's rehabilitation in conjunction with his other characteristics, it wouldn't come close to establishing extraordinary and compelling circumstances.

Delatorre's rehabilitation efforts – including completing his GED, enrolling in various self-improvement courses, and creating a chess program for fellow inmates – are commendable. They will improve his life, and the lives of others. But they are not extraordinary.

In sum, Delatorre has offered no extraordinary and compelling reason for compassionate release.

B. Step Two: Section 3553(a) Factors

Delatorre has not offered an extraordinary and compelling reason for his release, so the Court need not conduct an analysis of the section 3553(a) factors. *See United States v. Ugbah*, 4 F.4th 595, 597 (7th Cir. 2021); *United States v. Thacker*, 4 F.4th 569, 576 (7th Cir. 2021). But in any event, the 3553(a) factors would weigh strongly against his release.

The statutory factors include the "nature and circumstances" of the offense and Delatorre's "history and characteristics." *See generally* 18 U.S.C. § 3553(a). In addition, the Court considers the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment. *Id.* Also, the Court takes into account the need for deterrence, the need to protect the public, and the need to provide appropriate care for the defendant. *Id.* Other factors weigh in the balance, too, such as the release plan and the amount of time remaining on his sentence.

As previously discussed, Delatorre has pointed to some mitigating factors that weigh in his favor. He had a tragic upbringing, and he was young at the time of his criminal activity. Additionally, he has a large and meaningful support group of family, friends, and even prison employees. *See* Def.'s Mtn., at 48–51 (Dckt. No. 2038). And his rehabilitation efforts in prison have been commendable.

But those positive factors don't come close to outweighing other factors that strongly weigh against compassionate release.

Most notably, the nature and circumstances of his offenses are undeniably abhorrent. Delatorre was a leader of a gang that engaged in serious criminal behavior involving murder, guns, and massive amounts of drugs. During sentencing, the district court pointed out that Delatorre had talked "about killing people like they were just flies," and "jok[ed] about putting guns on the street." *See* Sent'g Tr., at 30:10-13 (Dckt. No. 1427). Delatorre's mitigating characteristics and efforts at rehabilitation in prison cannot overcome the serious nature of his offenses and his role as a leader of a violent criminal enterprise. *See* 18 U.S.C. § 3553(a)(1); *see also United States v. Weaver*, 716 F.3d 439, 442 (7th Cir. 2013) (discussing the increased culpability of "an organizer or leader of a criminal activity").

A lengthy prison sentence – consistent with the statutory and Guidelines ranges – is necessary to reflect the seriousness of Delatorre's offenses and to promote respect for the law. *See* 18 U.S.C. § 3553(a)(2)(A). A sentence of life in prison fits the callous nature with which Delatorre wreaked havoc on his community. Granting Delatorre early release when he has served less than two decades of his life sentence would not comport with any sense of justice.

The sentence also deters similar conduct in the future. A jury convicted Delatorre of not one, not two, but three murders – including the murder of at least one innocent 17-year-old. When the district court imposed its sentence, it explained that "the message has to go out that this type of random gun violence needs to end. Innocent people were killed. [Delatorre] didn't care about that." Sent'g Tr., at 33:23-25 (Dckt. No. 1427).

In short, this Court agrees with the sentencing court fourteen years ago when it concluded that "the appropriate sentence to protect the community, after looking at all of the aggravating and mitigating factors, can only be life." *Id.* at 36:17-20.

Conclusion

For the foregoing reasons, Delatorre's motion for a reduced sentence under the First Step Act and/or 18 U.S.C. § 3582(c)(1)(A) is denied.

Date: March 6, 2023

Steven C. Seeger
United States District Judge

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

May 6, 2024

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-1502

UNITED STATES OF AMERICA,
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v.

FERNANDO DE LA TORRE,
Defendant-Appellant.

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No. 03-cr-90-1

Steven C. Seeger,
Judge.

ORDER

On consideration of the petition for rehearing and for rehearing en banc filed by Defendant-Appellant on April 16, 2024, no judge in active service has requested a vote on the petition for rehearing en banc, and the judges on the original panel have voted to deny rehearing.

Accordingly, the petition for rehearing is **DENIED**.

Additional material from this filing is available in the Clerk's Office.