No. 25-_____

SUPREME COURT OF THE UNITED STATES

Walston Owen,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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I. Question Presented

A person is guilty of violating the Racketeer Influenced and Corrupt Organizations Act ("RICO") if they violate any of subsections (a)-(d) under 18 USC § 1962. Pursuant to 18 USC § 1963(a), a RICO violation carries a sentence to a term of imprisonment of "not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment)...."

Where a racketeering act amounts to a substantive crime that carries a maximum penalty of life imprisonment, but a racketeering act that amounts to a conspiracy to commit that substantive crime does not, whether a defendant convicted of RICO conspiracy under 18 USC § 1962(d) is subject to enhanced sentencing under § 1963(a) based merely on jury finding that defendant agreed to join the RICO enterprise knowing that that members were conspiring to commit the racketeering act, or whether enhanced sentencing is permissible only upon a jury finding that includes a determination that the substantive racketeering act was actually committed?

II. Parties to the Proceedings in the Court of Appeals

: The parties to the proceedings of this case before the U.S. Court of Appeals for the Second Circuit were the United States of America, Randy Torres, Walston Owen, and Charles Ventura.

III. The Proceedings Below

The proceedings in this case at the trial level were conducted in the U.S. District Court for the Southern District of New York. The caption of the case was United States of America v. RICHARD FELIZ, a/k/a Dirt, SHAQUILLE BAILEY, a/k/a Shag, LEWIS TURNBULL, a/k/a Jay, a/k/a Lou, JOSE AYALA, a/k/a L, STEVEN GUZMAN, a/k/a Millz, WALSTON OWEN, a/k/a "Purpose", a/k/a "Purp", MIGUEL CABA, NATHANIEL RODRIGUEZ, CHARLES VENTURA, a/k/a Gutta, RANDY TORRES, a/k/a Rico, DERRICK RICHARDSON, a/k/a J Rock, EARL BANKS, a/k/a EJ, and EMIL MATUTE, a/k/a Silly, The proceedings were conducted under docket number 16–cr–00809–VM. A judgment of conviction and sentence entered against petitioner at the district court on September 23, 2022.

The proceedings in this case at the appellate level were conducted in the U.S. Court of Appeals for the Second Circuit under docket numbers 22-2527-cr (L), 22-2652-cr (CON), and 22-2976 (CON). The court of appeals affirmed the judgment of conviction and sentence entered against petitioner in an Opinion entered December 20, 2024m, and judgment entered that same day. Petitioner's motion for rehearing was denied by order entered March 11, 2025.

IV. Table of Contents

V. Table of Authorities

SUPREME COURT OF
THE UNITED STATES

Walston Owen,	:	
Petitioner,	:	
	:	
vs.	:	No. 25-_____
	:	
United States of America,	:	
Respondent.	:	

VI. Petition for a Writ of Certiorari

Walston Owen ("Petitioner"), a federal inmate incarcerated at FCI Ray Brook, by and through his undersigned counsel, Andrew H. Freifeld, respectfully petitions this court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Second Circuit entered December 20, 2024, in *United States v. Owen*, # 22-2652 (2d Cir.).

Petitioner respectfully seeks leave to join the petition for certiorari filed by Randy Torres, his co-defendant before the district court and co-appellant before the court of appeals, in *United Staes v. Torres*, # 22-2527 (2d Cir.), which we expect will be filed on or about June 9, 2025.

VII. Opinions Below

The district court's decision with respect to motions *in limine* is reported at *United States v. Torres*, 435 F. Supp. 3d 526 (SDNY 2020). The district court's decision with respect to defendants' objections to the presentence report is reported at *United States v. Torres*, 629 F. Supp. 3d 86 (SDNY 2022). The opinion of the court of appeals is reported at *United States v. Torres*, 124 F. 4th 84 (2d Cir. 2024).

VIII. Jurisdiction

The judgment sought to be reviewed entered on December 20, 2024. (2d Cir. ECF No. 166)[1] Petitioner's motion for rehearing was denied by order entered March 11, 2025. (2d Cir. ECF No. 181) This Court's jurisdiction to review the judgment entered by the court of appeals on a writ of certiorari arises under 28 USC § 1254(1).

IX. Statutory Provisions Involved

The principal statutes involved in this case are 18 USC § 1962(a)-(d) and 18 USC § 1963(a). 18 USC 1962(a)-(d) provides in pertinent part:

> Prohibited Activities.
>
> (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce....
>
> (b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.
>
> **(c)** It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> **(d)** It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

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[1] As used herein, a number following (i) "2d Cir. ECF No." refers to the number of an entry of the Second Circuit's docket in this case, *United States v. Owen*, Dkt. # 22-2652 (2d Cir.), (i) "A:" refers to the page number of the appendix that Owen filed with the Second Circuit on appeal, *see*, 2d Cir. ECF No. 62, and (ii) "DC Dkt" refers to the number of an entry on this district court's docket sheet on this case. *United States v. Owen*, Dkt. # 16-00809-VM (S.D.N.Y.). .

18 USC § 1963(a) provides in pertinent part:

> Criminal penalties
>
> **(a)** Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both....

X. Preliminary Statement

Under 18 USC § 1963(a), a violation of any of subsections (a)-(d) under 18 USC § 1962 carries a sentence to a term of imprisonment of "not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment)...."

In February 2020, a jury convicted petitioner here of racketeering conspiracy (Count One), assault and attempted murder in aid of racketeering (Count Two), possession of a firearm in relation to Count Two (Count Three), and assault in aid of racketeering (Count Four). With respect to Count One, the jury also found that the government had proven beyond a reasonable doubt that "the pattern of racketeering activity to which Mr. Owen agreed would be committed included the murder of Victor Chafla".

Sentence was imposed on September 22, 2022, Relying on the jury's finding that "the pattern of racketeering activity to which Mr. Owen agreed would be committed included the murder of Victor Chafla", the district court imposed an enhanced sentence under § 1963(a), principally a term of imprisonment of 355 months. The sentences on each Counts Two and Four, principally a term of imprisonment of 240 months, were ordered to run concurrent to the sentence imposed on Count One, and the sentence imposed on Count Three, principally a term of imprisonment of 120 months, was ordered to run consecutive to the term of imprisonment imposed

on Count One, making for an aggregate sentence of 475 months' imprisonment. Judgment entered on September 23, 2022. (2d Cir. ECF No. 2)

In keeping with his arguments below, Owen argued to the court of appeals, *inter alia*, that the jury's finding with respect to the Count One sentencing factor was insufficient to authorize a sentence under Count One above 240 months' imprisonment. Rejecting the argument, the court of appeals affirmed in an opinion dated December 20, 2024, and entered judgment that same day.

If this Court grants the instant petition, then we would urge vacatur of the sentence under Count One, and a remand for trial anew on the special sentencing factor charged under Count One.

XI. Statement of the Case

Petitioner was charged by indictment with racketeering conspiracy [18 USC § 1962(d)] (Count One") and related charges. (A:67-84) The alleged racketeering enterprise is a street gang known as the Rollin' 30s Crips, that operated principally in Bronx County, New York, in and around 2009-2017. (A:70-71)

A person is guilty of violating the Racketeer Influenced and Corrupt Organizations Act (RICO") if they violate any of subsections (a)-(d) under 18 USC § 1962. Pursuant to 18 USC § 1963(a), a RICO violation carries a sentence to a term of imprisonment of "not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment)...."

The indictment set forth notice of a "Special Sentencing Factor" relating to Count One, that provides in pertinent part as follows:

> On or about March 26, 2015, in the Southern District of New York, WALSTON OWEN ... intentionally and knowingly murdered and aided and abetted the murder of Victor Chafla in the vicinity of 1250 Morrison Avenue, in the Bronx, New York, in violation of New York Penal Law, Sections 20.00 and 125.25, in that OWEN, with the intent to cause the death of a member of an Opposing

> Crew, did cause the death of Victor Chafla ... and did aid and abet the same, to wit, OWEN aided and abetted other members and associates of the Rollin' 30s who shot at a member of an Opposing Crew and thereby killed Victor Chafla, an innocent bystander.

(A:73)[2]

The government included the Count One special sentencing factor in the indictment in order to open the way to enhanced sentencing under § 1963(a) in the event the jury determined that the allegations set out in the special sentencing factor were proven.

In a light most favorable to the government, the evidence at trial showed that Owen was a member of the Rollin' 30s with a supervisory role, including over members Christopher Domena and Richard Feliz. Domena testified that on March 26, 2015, in Bronx County, Feliz told him that Owen had ordered them to shoot a member of a rival gang. In carrying out the order minutes later, Feliz alone shot at and missed the intended target, but struck a bystander, Victor Chafla, who was killed. Owen was not present.

The government proposed the following instruction related to the Count One special sentencing factor charging Owen, one with allegations that are completely different from the allegations in the special sentencing factor in the indictment:

> If, and only if, you find defendant Mr. Owen guilty of [racketeering conspiracy under] Count One, you must then answer an additional question about the scope of that defendant's agreement to violate the racketeering laws.
>
> The government has alleged that the pattern of racketeering activity to which Mr. Owen agreed would be committed included the murder of Victor Chafla. If you are unable to conclude unanimously that the government has proven

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[2] A co-defendant, Randy Torres, also charged under Count One, was likewise charged with a special sentencing factor, which related to the murder of Nestor Suazo on September 19, 2015. The jury convicted both defendants under Count One, and found that the respective special sentencing factor relating to each defendant, as charged, had been proven; both were sentenced under Count One to more than 240 months' imprisonment. Throughout the proceedings, Owen and Torres each adopted the objections that the other lodged with respect to the Count One special sentencing factors.

beyond a reasonable doubt that the murder of Victor Chafla was within the scope of that defendant's agreement, check "Not Proven" in response to that question in the verdict form.

If, however, you conclude unanimously that the pattern of racketeering activity that Mr. Owen agreed would be committed included the murder of Victor Chafla, check "Proven" in response to that question on the verdict form.

Your fining (sic) on this additional question as to Mr. Owen must be unanimous.

(emphasis added).

Owen objected, and proposed the following instruction instead:

If, and only if, you find defendant Owen guilty of Count One, you must then answer an additional question about the scope of that defendant's agreement to violate the racketeering laws.

The Government has alleged that the pattern of racketeering activity to which defendant Owen agreed would be committed included acts involving murder which included the murder of Victor Chafla. Therefore, you must determine whether Victor Chafla was murdered, that Defendant Owen acted with the necessary mental state to have acted in concert in murder if you find that he was murdered and that the murder was within the scope of defendant's agreement. If you are unable to conclude unanimously, that the Government has proven these facts beyond a reasonable doubt, you must check "Not Proven" in response to that question on the verdict form.

If you conclude, unanimously, beyond a reasonable doubt that the pattern of racketeering activity that defendant Owen agreed would be committed included acts involving murder, which included the facts that Victor Chafla was murdered, that Defendant Owen acted with the necessary mental state to have acted in concert in murder, and that the murder was within the scope of defendant's agreement, then you may check "Proven" in response to that question on the verdict form.

Your finding on this additional question must be unanimous.

(A:165-66) (emphasis added)

Over Owens's objection, the district court delivered the government's proposed instruction to the jury, who found that the government had proven that "the pattern of racketeering activity to which Mr. Owen agreed would be committed included the murder of Victor Chafla". The district

court relied on the finding when it sentenced Owen on Count One to a term of imprisonment above 240 months on Count One.

On appeal, Owen, in keeping with his arguments below, urged, *inter alia*, that the jury finding with respect to the Count One special sentencing factor was insufficient to sustain a sentence over 240 months, because the jury merely found that that Owen had conspired to commit murder, an offense that, unlike murder, does not carry a maximum penalty of imprisonment for life under New York.[3]

Determining that review was *de novo* based on Owen's objection to the jury instruction, the court of appeals rejected Owen's argument:

> Torres and Owen next contend that the instruction related to the special sentencing factor contravened *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), which requires any fact—other than a prior conviction—"that increases the penalty for a crime beyond the prescribed statutory maximum ... be submitted to a jury, and proved beyond a reasonable doubt." *Id.* at 490, 120 S.Ct. 2348. Both Defendants argue that the instruction on the special sentencing factor failed to require the jury to conclude that each Defendant committed second-degree murder under New York law. They further argue that the instruction erroneously asked jurors whether each Defendant committed conspiracy to commit murder, an offense that does not qualify for an enhancement under § 1963(a) because it is not punishable by life imprisonment. We disagree.
>
> The jury found that Torres and Owen agreed to participate in the affairs of the Rollin' 30s enterprise through a pattern of racketeering activity, which included the murder of Suazo and Chafla, respectively; not that the Defendants conspired to commit either murder. Accordingly, neither the jury instructions nor the Defendants' sentences ran afoul of *Apprendi*.

(*See,* Appendix hereto, pp, 28, 31-32) Petitioner's motion for rehearing was denied by order entered March 11, 2025. (2d Cir. ECF No. 181).

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[3] Intentional murder in New York is a Class A-1 felony that carries a maximum sentence of life imprisonment. *See,* New York Penal Law §§ 125.25(1), 70.00(2)(a). Conspiracy to commit intentional murder in New York is a Class B felony that carries a maximum sentence of 25 years' imprisonment. *See,* New York Penal Law §§ 105.15 and 70.00(2)(b).

XII. Reasons for Granting The Writ

Our petition for certiorari should be granted because the decision of the court of appeals here (i) is "in conflict with the decision of another United States court of appeals on the same important matter", Rule 10(a), and (ii) "has decided an important question of federal law that has not been, but should be, settled by this Court". The important question is what the prosecution must prove in a RICO conspiracy case to open the way to enhanced sentencing under § 1963(a).

The holding of the Second Circuit here, that the prosecution need not prove the actual commission of the racketeering act that triggers enhanced sentencing under § 1963(a), cannot be squared with the holding of the Seventh Circuit in *United States v. Warneke*, 310 F.3d 542 (7th Cir. 2002). The spilt of authority also appears in the differences between the majority opinion and the opinion concurring in part and concurring in the judgment in *United States v. Simmons*, 999 F.3d 199 (4th Cir. 2020), *amended and superseded by United States v. Simmons*, 11 F. 4th 239 (4th Cir. 2021).[4]

In *Warneke*, a member of the Outlaws, a racketeering enterprise, killed a member of a rival gang, upon the order of defendant Warneke, a leader in the Outlaws. The sentencing enhancement relating to the charged RICO conspiracy count, as set out in the indictment, came in two parts: paragraph 20A charged conspiracy to commit the murder and paragraph 20B charged that the murder was premeditated. Under applicable Illinois law, premeditated murder carried a maximum sentence of life imprisonment, but conspiracy to murder did not. While the special verdict determined that paragraph 20 had been proven, the jury was not asked to distinguish between

[4] The fact that the issue was dropped in the superseding decision in *Simmons* does not render the fundamental differences between the majority and the concurrence on this issue any less substantial.

paragraphs 20A and 20B. The Seventh Circuit held that it was error to sentence Warneke to a term of imprisonment exceeding 20 years on the RICO conspiracy conviction, because the jury may have determined only that Warneke conspired to commit murder. 310 F.3d at 549-50.[5]

The *Warneke* jury clearly found that Warnke agreed to participate in the affairs of the enterprise through a pattern of racketeering activity which included the subject murder, exactly as the jury did here with respect to Owen regarding the Chafla murder, but the Seventh Circuit, unlike the Second Circuit here, nevertheless held that the verdict was inadequate to support the sentencing enhancement.

The Second Circuit's observation that Owen was wrong in arguing that the jury's finding showed only that Owen conspired to murder Chafla, because it in fact showed that Owen agreed to participate in the affairs of the racketeering enterprise through a pattern of racketeering activity which included the murder of Chafla, amounts to a distinction without a difference. In neither event does the conduct the jury found to have been committed carry a sentence of up to life imprisonment.

Warneke proves it. The jury there clearly found that defendant agreed to participate in the affairs of the enterprise through a pattern of racketeering activity which included the subject murder, just as the jury did here with respect to Owen and the Chafla murder, but the Seventh Circuit nevertheless held that the verdict was inadequate to support the sentencing enhancement. In sum, the holdings in *Owen* and *Warneke* are irreconcilable.

It is true that in a prosecution for RICO conspiracy under 18 USC § 1962(d), the government need not prove that any overt act was ever actually committed. *Salinas v. United*

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[5] Still, the Seventh Circuit, reviewing for plain error, declined to grant relief, determining that an affirmance would not "threaten an injustice", as there was "detail[ed]" evidence establishing Warneke's involvement in the murder. 310 F. 3d at 550.

States, 522 U.S. 52, 63 (1997). Rather, "partners in the criminal plan must [only] agree to pursue the same criminal objective" regardless of whether any step is actually taken to carry out the criminal objective. *Id. See also United States v. Yannotti,* 541 F.3d 112, 129 (2d Cir. 2008) (to obtain a RICO conspiracy conviction, "the government was not required to prove the actual commission of a single predicate act by [the defendant] or any other conspirator."); *United States v. Browne,* 505 F.3d 1229, 1263–64 (11th Cir. 2007) (RICO Conspiracy charges do not require proof of an overt act); *United States v. Corrado,* 286 F.3d 934, 937 (6th Cir. 2002) ("Unlike the general conspiracy statute, § 1962(d) requires no 'overt or specific act' in carrying the RICO enterprise forward.").

However, merely because the government need not prove that any racketeering act was actually committed in order to make out a violation of 18 USC § 1962(d) does not mean the government need not prove that any racketeering act was actually committed in order to invoke enhanced sentencing under § 1963(a); after all, while the language of § 1962(d) contemplates the mere commission of a conspiracy, the language of § 1963(a) contemplates the actual commission of a racketeering act. *See, Simmons*, *supra,* 999 F.3d at 218, n. 9 (defendants' involvement in planning certain murders, standing alone, is insufficient to trigger enhanced sentencing for a RICO conspiracy conviction; the murders must have been "completed") (*dicta*) (emphasis in original); *see also, id.* at 215. *United States v. Solís-Vásquez*, 10 F.4th 59, 66 (1st Cir. 2021) (in *United States v. Nguyen*, 255 F. 3d 1335, 1343 (11th Cir. 2001), "the Eleventh Circuit found that, in order for a life sentence to be imposed under 18 U.S.C. § 1963(a), the jury must find beyond a reasonable doubt that the defendant completed the predicate crime") (emphasis added).[6]

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[6] In *Nguyen,* defendants were sentenced for RICO conspiracy convictions to terms exceeding twenty years based on a jury finding that the racketeering acts they committed included kidnapping under Georgia law. However, kidnapping under Georgia law only carries a life sentence if a

Although the majority and concurrence in the original opinion in *Simmons, supra*, agreed that RICO conspiracy is not a violent offense for purposes of a conviction under 18 USC § 924(c)(1)(A), which makes it a crime to use, carry, or possess a firearm "during and in relation to any crime of violence.", they disagreed in *dicta* as to whether the government must show that the racketeering act carrying a potential life sentence was committed if enhanced sentencing under § 1963(a) is to apply. Thus , the majority stated:

> Our concurring colleague suggests that § 1963(a)'s enhancement "would also apply if the defendants had merely *agreed* to commit the [charged] murders, without later carrying out that agreement by killing someone." Concurring Op. 238. But that conclusion does not seem to accord with § 1963(a), which makes plain that a life sentence is only available for RICO violations that are "based on a racketeering activity for which the maximum penalty includes life imprisonment." RICO conspiracies can be "based on" several types of murder, such as first-degree murder, second-degree murder, and even conspiracy to commit murder. *See* 18 U.S.C. § 1961(1)(A); *United States v. Fernandez*, 388 F.3d 1199, 1259 (9th Cir. 2004) ("It is a well-established principle of RICO law that ... predicate racketeering acts that are themselves conspiracies may form the basis for a ... § 1962(d) [conviction]."). But in Virginia, for instance, only first-degree murder is punishable by life imprisonment. Va. Code Ann. § 18.2-32. Attempted first-degree murder, any form of second-degree murder, and conspiracies to commit murder cannot be so punished. *Id.* §§ 18.2-10(d)–(e), -22, -26, -32.
>
> Thus, *Apprendi* would require the jury to determine what type of murder was *completed* in order to determine whether the § 1963(a) sentencing enhancement can apply to a RICO offense. In fact, that is the Government's view on the issue, *see* Gov't Opening Br. 39–40 (conceding that it had to prove the substantive murders that Simmons and Mitchell committed to obtain the § 1963(a) enhancement), and the apparent consensus view among the circuits, *see United States v. Nguyen*, 255 F.3d 1335, 1343–44 (11th Cir. 2001); *United States v. Warneke*, 310 F.3d 542, 549–50 (7th Cir. 2002); *see also Fernandez*, 388 F.3d at 1259–60 & n.46. As Virginia law shows, our colleague's approach would seem to permit a life sentence for a group of RICO co-defendants who plan, but do not commit, first-degree murder, even though the maximum penalty for that

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ransom is demanded or if bodily injury results. The Eleventh Circuit vacated the sentences on the ground that the absence of a jury finding that a ransom was demanded, or bodily injury resulted, left the record bereft of a basis to sentence defendants to imprisonment exceeding 20 years. 255 F.3d at pp. 1343-44 and n. 12.

> racketeering activity under Virginia law does not include life imprisonment. *See* 18 U.S.C. §§ 1961(1)(A), 1963.

999 F. 3d at 218, n. 9.

By contrast, the concurrence maintained that enhanced sentencing under § 1963(a) is permissible even if the prosecution doesn't prove a completed racketeering act:

> My colleagues in the majority suggest—without deciding —that a racketeering conspiracy may be "based on" a racketeering activity only if the conspiracy results in a completed racketeering activity. *Maj. Op.* at 218 n.9. But the plain text of § 1963(a) permits the enhanced penalty whenever a racketeering conspiracy is "based on" a racketeering activity that carries a life sentence. There is no "causal language in § 1963(a)'s sentencing enhancement." *Maj. Op.* at 217. So the plain text does not require that the agreement "result in" the completion of the charged racketeering activity. The agreement must only be "based on" its object, the charged racketeering activity. Nothing in § 1963(a)'s enhancement changes the Supreme Court's directive that the object of a racketeering conspiracy need not be completed. *See Salinas*, 522 U.S. at 63, 118 S.Ct. 469.
>
> Certainly, the increased maximum penalty would apply if the defendants committed the charged murders as part of their agreement. B ut it would also apply if the defendants had merely agreed to commit the murders, without later carrying out that agreement by killing someone....

Id. at 237-38. And in a footnote at the end of the first quoted paragraph the concurring opinion states:

> I do not read the cases my colleagues cite to expressly address or foreclose this argument (and if they did, they would be wrong). *See United States v. Nguyen*, 255 F.3d 1335, 1343–44 (11th Cir. 2001); *United States v. Warneke*, 310 F.3d 542, 549–50 (7th Cir. 2002); *United States v. Fernandez*, 388 F.3d 1199, 1259–60 & n.46 (9th Cir. 2004). The government must prove that the agreed-to racketeering activity was subject to a life sentence if completed. So an allegation that the object of the agreement was somehow limited to "attempted murder" instead of an agreement to commit murder would not subject the Defendants to the increased statutory maximum. Nor would it be enough for the government to allege that the racketeering activity agreed to was circularly limited to a "conspiracy to commit murder." *See Warneke*, 310 F.3d at 549–50. But where the charged object of the conspiracy was first-degree murder, then the conspiracy is "based on" first-degree murder, which carries a life sentence under state law, and the increased statutory penalty would apply even if the murder was not completed.

Id.

The foregoing establishes that there is a split of authority on the important question is what the prosecution must prove in a RICO conspiracy case to open the way to enhanced sentencing under § 1963(a).

XIII. Conclusion

For the foregoing reasons, Mr. Owen respectfully requests that this Court issue a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Second Circuit.

Respectfully submitted,

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