

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL ROGER CLEMONS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether any procedural sentencing error can be deemed harmless if the district court announces, without further explanation, that it would have imposed the same sentence regardless of any Guidelines error?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner, who was the Defendant-Appellant below, is Michael Roger Clemons. Respondent, who was the Plaintiff-Appellee below, is the United States of America.

CITATION OF PRIOR OPINION

The United States Court of Appeals for the Fourth Circuit decided this case in an unpublished per curiam opinion issued on 11 August 2021. *United States v. Clemons*, 855 F. App'x 171 (4th Cir. 2021) (per curiam). The Fourth Circuit affirmed Mr. Clemons's sentence. The opinion is included in Appendix A.

JURISDICTIONAL STATEMENT

This petition seeks review of an opinion affirming Petitioner's sentence following a conviction on a charge of felon in possession of a firearm. The petition is being filed within the time permitted by the Rules of this Court. This Court has jurisdiction to review the Fourth Circuit's opinion pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 3553(a) of Title 18 provides as follows:

- (a) Factors To Be Considered in Imposing a Sentence.— The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—
- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
 - (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
 - (3) the kinds of sentences available;
 - (4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994 (a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994 (p) of title 28); and

(ii) that, except as provided in section 3742 (g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994 (a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994 (p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994 (a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994 (p) of title 28); and

(B) that, except as provided in section 3742 (g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

STATEMENT OF THE CASE

Charges and Conviction

Mr. Clemons was charged by indictment with two counts of possession of a firearm after having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924 (Counts 1 and 2); and one count of transferring a firearm to another person, knowing that the other person had been convicted of a felony, in violation of 18 U.S.C. §§ 922(d) and 924 (Count 3). J.A. 17-18. Mr. Clemons pleaded not guilty to all charges and proceeded to trial. J.A. 11-12, 50. At trial, a jury found Mr. Clemons guilty of the felon in possession charge in Count 1, but could not reach a verdict on Counts 2 or 3. J.A. 12. After trial, the court dismissed Counts 2 and 3 on the Government's motion. J.A. 13.

The Presentence Investigation Report

The Probation Office prepared a presentence investigation report. J.A. 308-23. The Probation Office determined that Mr. Clemons's criminal history score was 12, placing him in Criminal History Category V. J.A. 315. In determining the offense level, the Probation Office found that Mr. Clemons's base offense level was 20 under U.S.S.G. § 2K2.1(a)(4)(A), because he committed the felon in possession offense subsequent to sustaining a felony conviction for a crime of violence. J.A. 319. The Probation Office then applied a four-point enhancement under U.S.S.G. § 2K2.1(b)(6)(B), concluding that Mr. Clemons possessed a handgun, found in the apartment Mr. Clemons occupied with three other adults, in connection with

another felony offense, specifically, the offense of possession with intent to manufacture, sell, or distribute marijuana. J.A. 316, 319. Based on Criminal History Category V and a total offense level of 24, the Probation Office determined that Mr. Clemons's Guidelines sentencing range was 92 to 115 months. J.A. 320.

Mr. Clemons objected to the enhancement under U.S.S.G. § 2K2.1(b)(6)(B), arguing that there was no evidence that he possessed the handgun in connection with another felony offense. J.A. 322. The Government had presented no evidence that Mr. Clemons was selling drugs and no physical evidence tying Mr. Clemons to the marijuana found in the apartment. *See* J.A. 322, 328-29. Three other adults were staying at the apartment, including Karen Griggs, who admitted she was a convicted felon and a drug addict. J.A. 120, 123; *see* J.A. 328-29. Mr. Clemons argued that the properly calculated Guidelines range was 63 to 78 months. J.A. 322, 330.

The district court held a sentencing hearing on 19 June 2020. J.A. 14. The court overruled Mr. Clemons's objection to the enhancement for possessing the handgun in connection with another felony offense. J.A. 283. The court noted that the police found the handgun on the kitchen counter and found 52.2 grams of marijuana underneath the counter, what it called "close proximity of the drugs and guns." J.A. 282-83; *see* J.A. 312.¹ The court said "at a minimum there's joint possession and that it is, even without someone testifying [Mr. Clemons] was

¹ The police found only one gun, a Smith & Wesson handgun, in the apartment. J.A. 106-07.

dealing drugs.” J.A. 283. The court ruled that 52.2 grams was “a trafficking amount” of marijuana. J.A. 283; *see* J.A. 312. Concluding that the Probation Office had correctly determined Mr. Clemons’s Guidelines sentencing range, the court found that Mr. Clemons’s Guidelines range was 92 to 115 months. J.A. 283.

Mr. Clemons, through his counsel, argued for mitigation of Mr. Clemons’s sentence and a downward variance from the Guidelines range based on Mr. Clemons’s personal history and characteristics. J.A. 284-87; *see* 18 U.S.C. § 3553(a). First, Mr. Clemons is a talented musician, and counsel argued that Mr. Clemons could be expected to earn a living as a musician after serving his sentence. J.A. 285. Second, Mr. Clemons had family support from his mother, a successful businessperson who said she was willing to move from New York to North Carolina to ensure that Mr. Clemons stayed out of trouble. J.A. 285. Third, where the Probation Office had noted that Mr. Clemons suffers from severe mental health issues, Mr. Clemons’s counsel argued that with the treatment Mr. Clemons would receive while incarcerated, he could learn to function better after he was released from custody. J.A. 286. Finally, Mr. Clemons’s counsel argued that a sentence within the Guidelines range established by the court would create an unwarranted sentencing disparity when compared to the sentences the court imposed on related defendants. J.A. 286.

The Government argued that the court should impose a sentence within the Guidelines range. J.A. 288-90.

Prior to announcing the sentence, the court recited that it had considered the

statements of counsel and Mr. Clemons, and had considered and was applying all of the factors in 18 U.S.C. § 3553(a). J.A. 290-91. The court noted Mr. Clemons's criminal history and also his work history. J.A. 291-92. The court declined to vary downward from the Guidelines range, disagreeing with the balancing of the § 3553(a) factors proposed by Mr. Clemons's counsel, and rejecting the argument that the sentence created an unwarranted sentencing disparity. J.A. 293-94. The court sentenced Mr. Clemons to 96 months' imprisonment and three years of supervised release. J.A. 294.

The court then stated:

I do think I've properly calculated the advisory guideline range but, I announce, pursuant to *U.S. v. Gomez-Jimenez*, 750 F.3d 370 (4th Cir. 2014) and *U.S. v. Hargrove*, 701 F.3d 156 (4th Cir. 2012), that I'd impose the same sentence as an alternative variant sentence if I have in any way miscalculated the advisory guideline range.

This is the sentence sufficient but not greater than necessary for Mr. Clemons in light of all the 3553(a) factors I've discussed.

J.A. 294.

The district court entered judgment memorializing the sentence on 1 July 2020. J.A. 14; *see* J.A. 298-304. Mr. Clemons timely filed a notice of appeal on the same date. J.A. 305-07.

The Fourth Circuit's Opinion

Rather than address the merits of Mr. Clemons's objection to the enhancement in U.S.S.G. § 2K2.1(b)(6)(B) for use or possession of a firearm in connection with another felony offense, the Fourth Circuit applied a harmless error

analysis. The Fourth Circuit stated, “A Guidelines error is harmless—and, thus, does not warrant reversal—if the record shows that (1) the district court would have reached the same result even if it had decided the Guidelines issue the other way, and (2) the sentence would be reasonable even if the Guidelines issue had been decided in the defendant’s favor.” 855 F. App’x at 172 (quotation omitted).

The Fourth Circuit first found sufficient that the district court “announced that it would impose the same sentence as an alternative variant sentence even if it had miscalculated the Guidelines range.” *Id.* Thus, the court proceeded to the second part of its harmless error analysis—substantive reasonableness. *Id.* The court noted that it reviews substantive reasonableness by “considering ‘the totality of the circumstances.’” *Id.* (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007)). The court applied a “presumption of reasonableness” because Mr. Clemons’s sentence was “within or below a properly calculated guidelines range.” *Id.* (quotation omitted). The court said that Mr. Clemons could overcome the presumption of reasonableness only by showing that the sentence was unreasonable when measured against the factors in 18 U.S.C. § 3553(a), and it ruled that Mr. Clemons had “not overcome the presumption of reasonableness accorded his within-Guidelines sentence.” *Id.* The Fourth Circuit affirmed the district court’s judgment. *Id.* at 173.

**MANNER IN WHICH THE FEDERAL QUESTION
WAS RAISED AND DECIDED BELOW**

The question presented was argued and reviewed below. *See* Respondent's Br. 21 (Dkt. No. 28), *United States v. Clemons*, No. 20-4553 (4th Cir. Dec. 22, 2020); Appellant's Reply Br. 9-13 (Dkt. No. 32), *United States v. Clemons*, No. 20-4553 (4th Cir. Jan. 19, 2021). Mr. Clemons's claims are appropriate for this Court's consideration.

REASONS FOR GRANTING THE WRIT

Mr. Clemons respectfully contends that the Fourth Circuit's opinion sanctions such a departure by the district court from this Court's jurisprudence as to call for this Court's exercise of its supervisory power. *See* S. Ct. R. 10(a). The Fourth Circuit's opinion also conflicts with the Tenth Circuit's opinion in *United States v. Pena-Hermosillo*, 522 F.3d 1108 (10th Cir. 2008). *See* S. Ct. R. 10(a).

DISCUSSION

The district court erred when it sentenced Mr. Clemons based on the enhancement for possession of a firearm in connection with another felony offense in U.S.S.G. § 2K2.1(b)(6)(B). The Fourth Circuit was able to affirm the district court's sentence only by abandoning fundamental sentencing law principles dictated by statute and this Court's case law. Harmless error law does not displace appellate review, but that is the effect of the Fourth Circuit's ruling. Mr. Clemons respectfully urges the Court to grant his petition and reaffirm a defendant's right to meaningful appellate review and correction of errors at sentencing.

I. COURTS REVIEWING A DISTRICT COURT'S SENTENCE FIRST REVIEW FOR PROCEDURAL REASONABLENESS AND THEN REVIEW FOR SUBSTANTIVE REASONABLENESS.

When sentencing a defendant, district courts “shall consider,” among other factors, the United States Sentencing Guidelines. 18 U.S.C. § 3553(a)(4), (5); *see United States v. Booker*, 543 U.S. 220, 259-60, 264 (2005). The Guidelines are the “essential framework” for federal sentencing. *See Molina-Martinez v. United States*, 136 S. Ct. 1338, 1345 (2016). The district court’s sentencing decisions must be “anchored by the Guidelines,” and the Guidelines “remain a meaningful benchmark through the process of appellate review.” *See Peugh v. United States*, 569 U.S. 530, 541 (2013). Thus, the district court “should begin all sentencing proceedings by correctly calculating the applicable Guidelines range.” *Gall v. United States*, 552 U.S. at 49; *see Molina-Martinez v. United States*, 136 S. Ct. at 1346 (“[T]he Guidelines are not only the starting point for most federal sentencing proceedings but also the lodestar.”); *Peugh v. United States*, 569 U.S. at 544 (Guidelines are “the lodestone of sentencing”).

The Sentencing Reform Act of 1984 permits a defendant to appeal a sentence “imposed as a result of an incorrect application of the sentencing guidelines,” and dictates that a court of appeals “shall remand the case for further sentencing proceedings” if the appellate court determines that the sentence was imposed as a result of an incorrect application of the Guidelines. 18 U.S.C. § 3742(a)(2), (f)(1). Based on the statutory dictates, this Court set out a two-step process for procedural

and substantive review of a sentence imposed by a district court. *See Gall v. United States*, 552 U.S. at 51. The first step is to “ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range.” *Id.* If the sentencing decision is “procedurally sound,” the appellate court “should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard.” *Id.*

II. THE FOURTH CIRCUIT ABANDONED SETTLED SENTENCING LAW PRINCIPLES WHEN IT AFFIRMED A SENTENCE IMPOSED REGARDLESS OF THE GUIDELINES.

The Fourth Circuit affirmed Mr. Clemons’s sentence because it found the sentence was substantively reasonable. 855 F. App’x at 173. The Fourth Circuit could reach that decision only by abandoning settled sentencing law principles.

First, the Fourth Circuit abandoned the two-step procedure for procedural and substantive review of sentences this Court established in *Gall* in favor of a single-step review for substantive reasonableness. *See Gall v. United States*, 552 U.S. at 51. Nothing in *Gall* or this Court’s other cases gives district courts license to cut the two-step review process to one step. *See id.* at 56 (“Since the District Court committed no procedural error, the only question for the Court of Appeals was whether the sentence was reasonable”); *Rosales-Mireles v. United States*,

138 S. Ct. 1897, 1910 (2018) (“Before a court of appeals can consider the substantive reasonableness of a sentence, [i]t must first ensure that the district court committed no significant procedural error, such as failing to consider (or improperly calculating) the Guidelines range.” (quoting *Gall v. United States*, 552 U.S. at 51)).

Second, the Fourth Circuit misapplied the principle that “a court of appeals may apply a presumption of reasonableness to a district court sentence that reflects a proper application of the Sentencing Guidelines.” *See Rita v. United States*, 551 U.S. 338, 347 (2007). The Fourth Circuit recited this principle, 855 F. App’x at 172, and ruled that “Clemons has not overcome the presumption of reasonableness accorded his within-Guidelines sentence,” *id.* at 172-73. Mr. Clemons argued that the district court erred in applying U.S.S.G. § 2K2.1(b)(6)(B), and the sentence that the court imposed was above the properly calculated Guidelines range. *See supra* pp. 6-7. Where the Fourth Circuit did not address Mr. Clemons’s Guidelines argument, the court could not then apply a presumption of reasonableness to the sentence the district court imposed. *See Rosales-Mireles v. United States*, 138 S. Ct. at 1910 (“If the district court is unable properly to undertake that inquiry because of an error in the Guidelines range, the resulting sentence no longer bears the reliability that would support a presumption of reasonableness on review.” (quotation omitted)); *Rita v. United States*, 551 U.S. at 347 (presumption of reasonableness applies if district court’s sentence “reflects a proper application of the Sentencing Guidelines”).

Third, the effect of the Fourth Circuit’s decision is to deny a defendant like Mr. Clemons any meaningful appellate review. The Sentencing Reform Act gives Mr. Clemons the right to appeal on the ground that the district court erred in sentencing him under the Guidelines. 18 U.S.C. § 3742(a)(2), (f)(1). As the *Gall* Court explained, “[a]fter settling on the appropriate sentence, [the district judge] must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Gall v. United States*, 552 U.S. at 50. That is especially the case here, where the effect of the district court’s decision to sentence Mr. Clemons to the same term regardless of the Guidelines was to impose a sentence above the correct Guidelines range. “A district court contemplating a non-Guidelines sentence ‘must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of variance.’” *Peugh v. United States*, 569 U.S. at 541 (quoting *Gall v. United States*, 552 U.S. at 50); see *Gall v. United States*, 552 U.S. at 46 (“It is also clear that a district judge must give serious consideration to the extent of any departure from the Guidelines and must explain his conclusion that an unusually lenient or unusually harsh sentence is appropriate in a particular case with sufficient justifications.”). However, the district court in this case justified its “alternative variant sentence” for Mr. Clemons only by cursory reference to its consideration of the factors in section 3553(a), the same factors it decided would support a within-Guidelines sentence. See J.A. 294. The district court could not and did not abide by the dictates of the Act to consider the Guidelines sentencing range when two

different Guidelines ranges nevertheless yielded the same sentence that is “sufficient, but not greater than necessary,” to comply with the purposes of sentencing. *See* 18 U.S.C. § 3553(a).

The Fourth Circuit’s validation of alternative sentences where the district court stated that it would impose the same sentence regardless of the Guidelines portends more than just the denial of Mr. Clemons’s right to meaningful appellate review in his case. As this Court has recognized, “Congress’ initial and basic sentencing intent” was to “provide certainty and fairness in meeting the purposes of sentencing, [while] avoiding unwarranted sentencing disparities . . . [and] maintaining sufficient flexibility to permit individualized sentences when warranted.” *United States v. Booker*, 543 U.S. at 264 (quoting 28 U.S.C. § 991(b)(1)(B)) (alterations in *Booker*). Sentencing regardless of the Guidelines eliminates the effect of the Guidelines to avoid unwarranted sentencing disparities. *See Gall v. United States*, 552 U.S. at 54. In short, differences between defendants that would support different sentences are disregarded when the Guidelines that take into account those differences are disregarded.

III. THE DISTRICT COURT’S IMPOSITION OF AN “ALTERNATIVE VARIANT SENTENCE” WAS NOT HARMLESS ERROR.

Procedural sentencing errors are subject to harmless error review. *See Puckett v. United States*, 556 U.S. 129, 141 (2009). If the court of appeals determines that the district court misapplied the Guidelines, “a remand is appropriate unless the reviewing court concludes, on the record as a whole,

that . . . the error did not affect the district court’s selection of the sentence imposed.” *Williams v. United States*, 503 U.S. 193, 203 (1992) (citing Fed. R. Crim. P. 52(a)). The district court’s error in applying the Guidelines enhancement was not harmless because it affected Mr. Clemons’s “substantial rights.” *See* Fed. R. Crim. P. 52(a).

The district court’s alternative variant sentence was an above-Guidelines sentence erroneously based on the U.S.S.G. § 2K2.1(b)(6)(B) enhancement for use or possession of a firearm in connection with another felony offense. The district compounded its Guidelines error with another procedural error: justifying the above-Guidelines sentence with only the section 3553(a) factors it found would support a within-Guidelines sentence. *See Gall v. United States*, 552 U.S. at 51. In short, Mr. Clemons’s sentence was procedurally unreasonable as defined by this Court. *See id.* (procedural errors include “failing to calculate (or improperly calculating) the Guidelines range” and “failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range”).

This Court’s opinion in *Molina-Martinez*, where the Court recognized that there could be a circumstance where a Guidelines error was not prejudicial, reaffirmed the principles in *Gall*, and did not sanction the district court’s practice of imposing an alternative variant sentence in this case. *See* 136 S. Ct. at 1345-46 (discussing *Gall*). The *Molina-Martinez* Court stated that, in most cases where the defendant shows a Guidelines error, the defendant also demonstrates a reasonable

probability of a different outcome but for the error. *Id.* at 1346. But the Court acknowledged that there could be an exception:

The record in a case may show, for example, that the district court thought the sentence it chose was appropriate irrespective of the Guidelines range. Judges may find that some cases merit a detailed explanation of the reasons the selected sentence is appropriate. And that explanation could make it clear that the judge based the sentence he or she selected on factors independent of the Guidelines.

Id. at 1346-47.

This case does not present the exception suggested in *Molina-Martinez*. The district court did not give a “detailed explanation” of why the selected sentence was appropriate independent of the Guidelines range. *See id.* Rather, the district court simply announced, in conclusory fashion, that it would have imposed the same sentence regardless of the Guidelines. J.A. 294. Accepting the district court’s statement that it would have imposed the same sentence regardless of the Guidelines, J.A. 294, would be to accept that the Guidelines error did not affect the sentence. But Mr. Clemons was sentenced to 96 months’ imprisonment on statutory facts and circumstances the district court agreed (initially) would support that sentence only where the Guidelines range (one of the statutory facts) contemplated that sentence. The same statutory facts and circumstances cannot support that same sentence when one of the required statutory facts—the Guidelines range—supports only a lower sentence.

The United States Court of Appeals for the Tenth Circuit considered an appeal where the district court, like the district court in this case, stated that “the

same sentence would be imposed even if the advisory guideline range was determined to be improperly calculated.” *United States v. Pena-Hermosillo*, 522 F.3d 1108, 1117 (10th Cir. 2008). The district court in *Pena-Hermosillo*, like the district court in this case, justified its alternative sentence by cursory reference to the section 3553(a) factors. *Id.* The Tenth Circuit found procedural error “even in the district court’s attempt to impose the same sentence under an alternative rationale.” *Id.* The Tenth Circuit held “that where the district court offers no more than a perfunctory explanation for its alternative holding, it does not satisfy the requirement of procedural reasonableness.” *Id.* at 118.

The United States Court of Appeals for the Second Circuit likewise has recognized that merely reciting that the district court would impose the same sentence regardless of the Guidelines range, as the district court did at Mr. Clemons’s sentencing hearing, would be error. *See United States v. Feldman*, 647 F.3d 450, 460 (2d Cir. 2011) (“Nor do we believe that criminal sentences may or should be exempted from procedural review with the use of a simple incantation: ‘I would impose the same sentence regardless of any errors calculating the applicable Guidelines range.’”)

The effect of the Fourth Circuit’s approach is not just the loss of “the perception of fair sentencing,” *Gall v. United States*, 552 U.S. at 50, but the loss in fact of fair sentencing for Mr. Clemons. “[T]he district court is charged in the first instance with determining whether, taking all sentencing factors into consideration,

including the correct Guidelines range, a sentence is ‘sufficient, but not greater than necessary.’” *Rosales-Mireles v. United States*, 138 S. Ct. at 1910 (quoting 18 U.S.C. § 3553(a)). “[A]ny amount of actual jail time’ is significant.” *Id.* (quoting *Glover v. United States*, 531 U.S. 198, 203 (2001) (alteration in *Rosales-Mireles*)). Imposition of the sentence of 96 months’ imprisonment affected Mr. Clemons’s substantial rights.

CONCLUSION

For the foregoing reasons, petitioner Michael Roger Clemons respectfully requests that the Court grant this petition and issue a writ of certiorari to review the opinion of the Fourth Circuit in this case.

This the 9th day of November, 2021.

/s/ Paul K. Sun, Jr.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Petition for Writ of Certiorari was served on the Respondent herein by depositing a copy thereof in the United States mail, postage prepaid, first class, addressed as follows:

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This the 9th day of November, 2021.

/s/ Paul K. Sun, Jr.
Paul K. Sun, Jr.