

No. 24-7463

IN THE SUPREME COURT OF THE UNITED STATES

MARK CHRISTIAN WROBLEWSKI,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DEVIN BURSTEIN
Warren & Burstein
501 W. Broadway, Suite 240
San Diego, California 92101
Telephone: (619) 234-4433
Facsimile: (619) 234-4433

Attorney for Petitioner

Pursuant to Supreme Court Rule 15.8, petitioner Mark Christian Wroblewski respectfully submits this supplemental brief in support of his petition for a writ of certiorari.

A new decision from the Court of Appeals for the District of Columbia is relevant to the petition. In *United States v. Thorpe*, --- F.4th ---, No. 23-3027 (Published Aug. 26, 2025), the court of appeals again rejected a government motion to dismiss.¹ There, like here, the government moved under Federal Rule of Criminal Procedure 48(a) to dismiss certain charges for which the defendant had been convicted. APP at 1-4. The district judge denied the motion. APP at 3-4.

The court of appeals affirmed, concluding that because the defendant's appeal was already final, under Rule 48(a), the government had no power to dismiss the charges. APP at 4, 11. It held that the Executive's dismissal authority ends with the direct appeal. APP at 11. In support of this unprecedented determination, the court of appeals concluded, "[c]onstitutional separation of powers [] support[] reading Rule 48(a) to preclude the government from using its 'dismissal' authority to vacate final judgments." APP at 9.

¹ A copy of the decision is attached as the Appendix.

Respectfully, this is backwards. The People of the United States, through the elected Executive, have the power to prosecute federal crimes. If the Executive decides that a prosecution is no longer appropriate, the judiciary should not overrule that decision just to ensure the person remains in jail. Judges are charged with setting sentences, but only for individuals that the Executive elects to prosecute on behalf of the People.

When the Executive changes its mind – even after the appeal – that should be the end of the story. To put it colloquially, the judiciary should have no dog in the fight. Indeed, it impugns the critical impartiality of the judicial branch when a judge insists that someone remain in prison even when his or her prosecutors ask for dismissal.

So, what does all this have to do with Mr. Wroblewski's pending petition? The *Thorpe* opinion is another example showing that the D.C. Circuit is consistently getting it wrong when it comes to Rule 48(a). It was wrong to allow the district court to deny the government's Rule 48(a) motion dismiss with prejudice in Mr. Wroblewski's case. And it was wrong again in *Thorpe*.

To right these wrongs and bring clarity to the law, this Court should intervene. It should confirm that Rule 48(a) is not a tool for the judiciary to usurp prosecutorial discretion. When the government's dismissal decisions are made with the defendant's consent *and* to his or her benefit, individual

judges should not be in the practice of overruling those decisions.

In our system, every time a prosecutor stands up in court and says, “The United States moves to dismiss,” that decision represents the will of the People. Unfortunately, the D.C. Circuit seems to have forgotten that point and confused its role. The Court should grant the petition for a writ of certiorari reverse the judgment, and order the charges dismissed with prejudice.

Respectfully,

Dated: September 1, 2025

s/ Devin Burstein
DEVIN BURSTEIN
Warren & Burstein
501 West Broadway, Suite 240
San Diego, CA 92101
(619) 234-4433