No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES PERRIN,
PETITIONER,

- VS. -

UNITED STATES OF AMERICA,
RESPONDENT.

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

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QUESTION PRESENTED

Congress designed the federal wiretap law, enacted as Title III of a 1968 crime bill, to restrain law enforcement's interception of private communications to listen for evidence of crime. Among the law's central safeguards is the limitation of authority to apply for a wiretap order to a select group of high-ranking officials in the Department of Justice or, in state cases, to a jurisdiction's "principal prosecuting attorney." The circuits and state high courts have split as to whether Title III permits a state or county's top prosecutor to delegate this power.

The question presented is:

Whether the "principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof," 18 U.S.C. § 2516(2), may delegate responsibility for determining that a wiretap will abide constitutional and statutory limitations and is warranted in the interest of sound law enforcement.

RELATED PROCEEDINGS

Proceedings below

United States Court of Appeals for the Third Circuit:

- *United States v. James Perrin*, No. 22-2196 (judgment entered August 25, 2025)

United States District Court for the Western District of Pennsylvania:

- *United States v. James Perrin*, No. 2:14-cr-00205-MRH-2 (judgment entered June 28, 2022)

Additional related proceedings

United States Court of Appeals for the Third Circuit:

- *United States v. Price Montgomery*, No. 22-2368
- *United States v. James Perrin*, No. 20-1874
- *United States v. James Perrin*, No. 20-1683
- *United States v. Price Montgomery*, No. 20-1865
- *United States v. Price Montgomery*, No. 20-1659

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

FEDERAL CASES **PAGE(s)**

STATE CASES

TABLE OF AUTHORITIES - continued

PAGE(s)

FEDERAL STATUTES

STATE STATUTES

OTHER AUTHORITIES

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES PERRIN,
PETITIONER

v.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

Petitioner James Perrin respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in this case on August 25, 2025.

OPINIONS BELOW

The opinion of the court of appeals affirming petitioner's judgment of conviction and sentence is reported at 149 F.4th 267 and attached at Appendix ("Pet. App.") A. The opinion of the district court denying petitioner's motion to suppress intercepted communications is reported at 290 F. Supp. 3d 396 and attached as Pet. App. B. The order of the court of appeals denying rehearing is at Pet. App. C. The judgment of the district court is at Pet. App. D.

JURISDICTION

The court of appeals entered judgment on August 25, 2025. It denied a petition for panel rehearing and rehearing en banc on December 2, 2025. This Court has certiorari jurisdiction under 28 U.S.C. § 1254(1) pursuant to the instant petition, which is timely filed per the granting at No. 25A935 of petitioner's application for an extension of time.

PARTIES TO THE PROCEEDING

Petitioner is James Perrin and respondent is the United States. There are no corporate parties.

STATUTORY PROVISION INVOLVED

Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 211–223, *codified as amended at* 18 U.S.C. § 2510 *et seq*., provides:

> (1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications***
>
> (2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications***

18 U.S.C. § 2516.

STATEMENT

Petitioner James Perrin was arrested along with a codefendant, Price Montgomery, after a lengthy investigation of Mr. Montgomery by the office of the Attorney General for the Commonwealth of Pennsylvania. The case was later adopted by federal indictment. Before trial, petitioner and Montgomery moved to suppress evidence derived from a series of wiretaps obtained by the attorney general's office. The district court denied the motion. Mr. Perrin was thereafter found guilty of conspiring to distribute heroin, possessing a firearm in furtherance of drug trafficking, and related offenses, and ultimately sentenced to more than 25 years in prison. On appeal, he and Montgomery challenged the denial of their motions to suppress. The court of appeals affirmed.

A. Legal background

In enacting the federal wiretap law commonly known as Title III, Congress intended "to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device." *United States v. Giordano*, 416 U.S. 505, 527 (1974). The law sets out a detailed series of preconditions for issuance of a court order authorizing the surreptitious interception of private communications. Among other things, authorities seeking an order must demonstrate both probable cause and a necessity of resort to electronic surveillance because other investigative procedures have proven ineffective or are too dangerous or doubtful of success to try. *See* 18 U.S.C. § 2518(1)(c), (3)(c).

A "central safeguard" of Title III requires that wiretap applications be vetted at the highest levels of law enforcement. *United States v. Chavez*, 416 U.S. 562, 571 (1974). In federal matters, authorization to apply for a wiretap must be obtained from the Attorney General or one of a small number of other specified Justice Department officials, such as the Assistant Attorney General for the criminal division. *See* 18 U.S.C. § 2516(1). In state cases, it is a jurisdiction's "principal prosecuting attorney"—the attorney general or district attorney—who may apply for a wiretap. 18 U.S.C. § 2516(2). In addition, Title III provides that state wiretap orders may only issue pursuant to statutory authority provided by a state enactment affording at least as much protection from unlawful surveillance as federal law. *Id*.; *see United States v. Tortorello*, 480 F.2d 764, 772 (2d Cir. 1973).

To ensure compliance with its own strictures and uphold the Fourth Amendment's shield against unreasonable searches and seizures, Title III provides that an "aggrieved person in any trial" may move to suppress "unlawfully intercepted" communications, 18 U.S.C. § 2518(10)(a), as well as "evidence derived therefrom," *id*. § 2515. In *Giordano* and *Chavez*, a pair of decisions issued on the same day, this Court defined the basic parameters of Title III's suppression remedy. *Giordano* held that communications are "unlawfully intercepted" within the meaning of the statute when there is a "failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to

those situations clearly calling for [its] employment[.]" 416 U.S. at 527. *Chavez* made clear that not "every failure to comply fully with any requirement provided in Title III" will "render the interception of wire or oral communications 'unlawful,'" however. *Chavez*, 416 U.S. at 574-75 (misidentification of authorizing Justice Department official did not require suppression because such identification not shown to occupy a "central, or even functional, role in guarding against unwarranted use of wiretapping or electronic surveillance"). Instead, "substantial compliance with Title III requirements" may sometimes save wiretap evidence from suppression. *Id*. at 568 n.2.

B. Factual and procedural background

On April 16, 2014, a judge of the Pennsylvania Superior Court granted an application signed by First Deputy Attorney General Adrian King for an order authorizing the interception of communications over a phone associated with Price Montgomery. In the ensuing months, the Superior Court approved applications to extend the original wiretap as well as wiretap Mr. Perrin's phone and a second phone belonging to Montgomery. Ultimately, more than five dozen intercepted phone calls and text messages would be admitted at the two men's joint trial in late 2018.

1. Shortly after submission of the first wiretap application, a controversy emerged as to its submission by First Deputy King rather than the Attorney General herself, then Kathleen G. Kane. The facts were later surfaced at a three-day hearing on petitioner's motion to suppress. At the time of making the application, Mr. King was General Kane's next in command. The application had been prepared by a team working under the chief of the office's criminal division, Lawrence Cherba. Mr. Cherba advised General Kane of the planned wiretap in her meetings with top executive staff in the weeks before the application, though as Cherba recalled at the suppression hearing, these briefings "didn't get too into the weeds." C.A. App. 314. While he had expected to present the application to General Kane for her signature the week of April 14, on that day she was scheduled to travel outside the country. The district court found that the evening before her departure, in a roughly 15-minute telephone call touching on a range of

subjects, General Kane authorized First Deputy King to sign and submit the application while she was abroad. It is undisputed that General Kane did not personally review the application or otherwise familiarize herself with its particulars to confirm probable cause and necessity.

In support of the motion to suppress, the defendants' attorneys argued that the communications were unlawfully intercepted because First Deputy King had not been designated in writing by Attorney General Kane to act during her absence or incapacity, as required by Pennsylvania's own wiretap statute. *See* 18 Pa. Cons. Stat. § 5708. They did not raise any claim directly under § 2516(2)'s provision for wiretap applications to be made in state cases by a State or political subdivision's "principal prosecuting attorney." The district court denied the motion, reasoning that "requiring a *written* designation does not directly and substantially address the core concerns of Title III, which are to protect the privacy of individuals and create a uniform basis for authorizing wiretaps." Pet. App. B at 20. It held the procedure followed to have satisfied "the core concern of Title III that a high-ranking executive law enforcement official approve any application." *Id.* at 21.

At trial, the intercepted communications evidenced Mr. Montgomery's trafficking in Pennsylvania of heroin sourced from Newark, New Jersey. Some of the intercepted communications also tied Mr. Perrin to Montgomery's activities. The government's evidence otherwise included more than a kilogram of heroin and numerous guns recovered from Montgomery's home on the day of the men's arrest. The jury found both men guilty on all counts. The court sentenced Perrin to a total of 320 months' imprisonment, with ten years of supervised release to follow.

2. On appeal, petitioner renewed his challenge to the wiretap order based on the absence of any written designation authorizing First Deputy King to apply for a wiretap in Attorney General Kane's absence. Petitioner also contended more directly that the office had circumvented Title III's lodging of application-making authority in a jurisdiction's "principal prosecuting attorney." In support he cited *Giordano*, which held Title III's companion provision at 18 U.S.C. § 2516(1), empowering the Attorney General and a select group of assistants to

authorize wiretap applications, to prohibit any broader delegation by exercise of the Attorney General's general power under 28 U.S.C. § 510 to charge assistants with statutory functions. In view of Section 2516(2)'s parallel structure, Mr. Perrin argued that Title III requires that a state or political subdivision's principal prosecuting attorney review the specifics of the investigation, ensure satisfaction of Title III's conditions, sign the application, and be available to the judge should a personal appearance prove necessary. Alternatively, Mr. Perrin submitted that to the extent "substantial compliance" with Title III's strictures is enough to save a wiretap, the principal prosecuting attorney must at the very least personally review the specifics of the wiretap application to confirm it satisfies Title III's requisites and accords with sound policy.

The court of appeals disagreed, holding that "whether delegation is permitted is dictated by state law, not by Title III," Pet. App. A at 11, and affirmed the district court's conclusion that here "'authorization in fact occurred' under Pennsylvania law," *id*. at 16 (quoting district court). The court of appeals further declined the "invitation to hold that AG Kane violated Title III by not 'personally reviewing' the wiretap application." *Id*. at 14. While formally reviewing for plain error, the court based its decision on its construction of § 2516(2) to leave the "issue of delegation by the principal prosecutor to state law." *Id*. at 13.

REASONS FOR GRANTING THE PETITION

The decision below both deepens and broadens an entrenched split of authority. Review should be granted to resolve the split and reinforce the structural safeguards by which Congress aimed to ensure wiretapping is used with appropriate restraint.

This case is the first in which an appellate court has construed Title III's provision vesting wiretap authority in a state or county's "principal prosecuting attorney" to fix no limitation on delegation beyond compliance with state law. The Ninth Circuit and the Oregon Supreme Court have held to the contrary, construing Title III to require that the district attorney or attorney general herself decide whether to apply for a wiretap based on some personal review of the facts showing need and warrant for this uniquely intrusive form of surveillance. *Villa v. Maricopa County*, 865 F.3d 1224, 1234 (9th Cir. 2017), *cert. denied*, 584 U.S. 961 (2018); *State*

v. Harris, 509 P.3d 83, 92-93 (Ore.), *cert. denied*, 143 S. Ct. 485 (2022). The First and Second Circuits have adopted the same approach, upholding wiretaps where the principal prosecutor reviewed an application's specifics before going forward but delegated to an assistant the application's signing and presentation. *United States v. Smith*, 726 F.2d 852, 857-59 (1st Cir. 1984); *United States v. Tortorello*, 480 F.2d 764, 776-77 (2d Cir. 1973). At least one state high court, meanwhile, has construed Title III to prohibit delegation altogether. *State v. Bruce*, 287 P.3d 919, 924-25 (Kan. 2012).

Reflecting the recurrent character of this split, the question of whether Title III permits delegation of state wiretap authority now reaches this Court for at least the third time in nine years. *See Maricopa County, et al. v. Villa*, No. 17-862; *State of Oregon v. Harris*, No 22-85. When the two earlier petitions were denied, however, a split had yet to emerge among the federal courts of appeals. The long-percolating issue is now amply ripe for consideration, and this Court's intervention is required to settle a conflict that presently makes protection from unduly intrusive governmental surveillance a matter of geographic happenstance.

A. The question presented has produced a stubborn split in authority.

The decision below breaks with what had been a consensus requiring personal involvement in any wiretap application on the part of a jurisdiction's chief prosecutor. The court of appeals held that notwithstanding the attorney general's lack of familiarity with the facts and circumstances put forward as probable cause and necessity for a wiretap, the verbal go-ahead she gave her first deputy to review and sign the application substantially complied with the centralization provision at § 2516(2). In doing so, the Third Circuit squarely split with the Ninth Circuit's decision in *Villa v. Maricopa County*, 865 F.3d 1224 (2017), which held the centralization provision to require personal review of an application's specifics by the chief prosecutor in advance of presentation.

In *Villa*, the Ninth Circuit considered an Arizona statute extending wiretap authority to any "prosecuting attorney whom a county attorney or the attorney general designates in writing." 865 F.3d at 1232 (quoting Ariz. Rev. Stat. § 13-3010). In accordance with the statute, an

assistant district attorney prepared a wiretap application and submitted it to a judge along with a signed statement from the district attorney authorizing the assistant to make the application. The court of appeals found this procedure not to comport with Title III. Instead, substantial compliance with § 2516(2) requires the chief prosecutor to confirm in the application that "he or she is personally familiar with all of the 'facts and circumstances' justifying his or her 'belief that an order should be issued.'" 865 F.3d at 1234 (quoting 18 U.S.C. § 2518(1)(b)). The court explained that while state enactments need not "perfectly mimic the provisions of Title III," *id*. at 1231, any provision for the delegation of wiretap authority must not undermine Section 2516's concern to ensure "that a publicly responsible official subject to the political process personally approves a wiretap application," *id*. at 1232.

The First Circuit has adopted an analysis in accord with *Villa*, holding that local authorities substantially comply with Title III's "principal prosecuting attorney" provision so long as the chief prosecutor personally reviews and authorizes the application. In *United States v. Smith*, 726 F.2d 852 (1984), the First Circuit considered a challenge to a Massachusetts statute authorizing application by "any assistant district attorney specially designated by the district attorney." 726 F.2d at 857. The court observed that "[i]f this were the complete statutory framework," the challenge "would have formidable force" because the statute on its face appeared to run "counter both to § 2516(2), reposing application responsibility in one state official, and to the ample legislative history underscoring the need for centralization of policy relating to electronic surveillance in one top prosecutor at county and state levels." *Id.* The court went on to reason, however, that the statutory text did not represent the complete statutory framework because a decision of the state supreme court had construed it to require that the chief prosecutor "determine whether a particular proposed use of electronic surveillance would be consistent with the overall policy" by making "not a cursory but full examination … of the application." *Id*. (quoting *Commonwealth v. Vitello*, 327 N.E.2d 819, 838 n.16 (Mass. 1975)). The First Circuit held such a full examination to comport with § 2516(2)'s "principal prosecuting attorney" provision. *Smith*, 726 F.2d at 859.

In an earlier case cited in *Smith* and *Villa*, the Second Circuit likewise held § 2516(2) to permit an assistant's presentation of an application where the district attorney affirmed he had "read the [supporting] affidavit, that based on it he believed there was probable cause for the electronic surveillance sought, and that no practical alternative means of obtaining the evidence existed." *United States v. Tortorello*, 480 F.2d 764, 776 (1973). The court reasoned that Congress's intent to centralize wiretap authority "can be effectively attained by having the chief prosecuting officer pass on applications which his assistants prepare and, after he has approved them, having them presented to the issuing judge." *Id.* at 777.

A number of state high courts have also construed Section 2516(2) to permit delegation of an application's signing and presentation provided it remains the attorney general or district attorney who makes the call on the statute's probable cause, necessity, and justification requirements. *See*., *e.g*., *People v. Gonzalez*, 499 P.3d 282, 298 (Cal. 2021), *cert. denied*, 142 S. Ct. 2719 (2022) (denying motion to suppress where acting chief attested he had reviewed supporting affidavit and concluded "the wiretaps were both necessary and likely to intercept [pertinent] communications"); *O'Hara v. People*, 271 P.3d 503, 505 (Colo. 2012) (construing state statute to require that principal prosecutor personally authorize wiretap application, but not to personally prepare or submit application); *State v. Marine*, 464 A.2d 872, 878 (Del. 1983) (denying motion to suppress where despite "omission of [his] signature from the application form," Attorney General had "discussed the matter in a long distance telephone conversation with his deputy" and "rendered a personal decision"). None of the state cases, however, approve blanket delegations by which the principal prosecuting attorney cedes active involvement entirely. *See State v. Harris*, 509 P.3d 83, 92-93 (Ore.), *cert. denied*, 143 S. Ct. 485 (2022) (upholding suppression where assistant submitted application based on district attorney's "generic" delegation, as other jurisdictions uniformly require principal prosecutor to maintain "some active involvement" by "authorizing the particular application, reviewing the merits of the particular application, or both"); *State v. Frink*, 206 N.W.2d 664, 674 (Minn. 1973) (suppressing where principal prosecutor "took no part" in application). At least one state high court,

moreover, has prohibited delegation entirely, holding it insufficient for the chief prosecutor "to have authorized and approved the application before it was submitted to the court." *State v. Bruce*, 287 P.3d 919, 923 (Kan. 2012). While the Kansas Supreme Court "appreciate[d] that not every court confronting this issue would agree with our resolution," it hewed to its conclusion that "the plain language of 18 U.S.C. § 2516(2)" forbids delegation of the application function. *Id*. at 925.

The circuits otherwise agree that application may be made by an "acting" attorney general or district attorney, as distinct from the duly elected or appointed one, provided the acting chief was at the pertinent time "functioning as the principal prosecuting attorney for all regular decisions the office made, without exception." *United States v. Perez-Valencia*, 744 F.3d 600, 604 (9th Cir. 2014); *see United States v. Fury*, 554 F.2d 522, 527 n.4 (2d Cir. 1977) (rejecting § 2516(2) challenge where delegation made to acting district attorney, as in this circumstance "[t]here is still only one person who has the authority and he is at the top"). For such time as the assistant thus acts in the capacity of "principal prosecuting attorney," it is he or she who must personally review any wiretap application to determine whether it shows probable cause, necessity, and justification for resort to electronic surveillance. *See Fury*, 554 F.2d at 527 n.4 (explaining that "'should abuses occur, the lines of authority lead to an identifiable person,' the *acting* district attorney") (quoting S. Rep. No. 1097 at 96-97) (emphasis added). Whether the principal prosecuting attorney be elected, appointed, or "acting," he or she must personally review the specifics of the wiretap application to confirm it satisfies Title III's prerequisites and accords with sound policy.

B. The question presented is of surpassing importance.

Congress enacted Title III to uphold the Fourth Amendment's shield against unreasonable searches in a new era of wire and electronic communications. *See Dalia v. United States*, 441 U.S. 238, 256 n.18 (1979) (reviewing origins of Title III); *see also Berger v. New York*, 388 U.S. 41, 57 (1967) (Fourth Amendment imposes necessity condition on interception of private communications). The legislation carried forward the framers' resolve, in adopting the

Fourth Amendment, "to place obstacles in the way of a too permeating police surveillance." *United States v. Di Re*, 332 U.S. 581, 595 (1948). Toward that end, Congress enacted a "uniquely rigorous bifurcated system of authorization involving review and approval by both the executive and judicial branches." *United States v. Staffeldt*, 415 F.3d 578, 589 (9th Cir. 2006). By requiring not only a judicial order but top-level executive approval, Congress aimed to make "doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications." *Giordano*, 416 U.S. at 515. It knew this condition "would inevitably foreclose resort to wiretapping where investigative personnel would otherwise seek intercept authority from the court and the court would very likely authorize its use." *Id*. at 528.

The delegation question also carries ample practical significance on the ground. For the most recent reporting year pursuant to 18 U.S.C. § 2519, the United States Courts reported more than 100 intercepts authorized by state court judges in New Jersey and Pennsylvania. *See* U.S. Courts, *Wiretap Reports*, https://www.uscourts.gov/data-news/reports/statistical-reports/wiretap-reports (last visited Mar. 31, 2026). "Few protections are as essential to individual liberty as the right to be free from unreasonable searches and seizures," *Byrd v. United States*, 584 U.S. 395, 402 (2018), and Title III exists to assure exactly that protection against one of the most intrusive forms of governmental surveillance. The question is one of surpassing importance.

C. The court of appeals' decision is wrong.

As *Giordano* explained, Congress chose to interpose the "mature judgment" of a seasoned officeholder "as a critical precondition to any judicial order." 416 U.S. at 515-16. It "wanted each application passed upon by one of the highest law enforcement officials in the government." *Villa*, 865 F.3d at 1234. By centralizing responsibility in top-level officials "responsive to the political process," *Giordano*, 416 U.S. at 520 & n.9, Tittle III promotes public accountability and the establishment of "uniform standards not only on a federal level but in a state or county governing the authorization of interceptions," *Smith*, 726 F.2d at 856.

Under the rule adopted by the court of appeals in this case, however, that protection disappears. So long as state law approves, any assistant district attorney in any county may be given blanket authority to apply for wiretaps—or, for that matter, might manage to inveigle such authority from a somnolent, apathetic, or preoccupied chief. The court did not put forward any compelling basis for this interpretation of the statute. It stated first that "the plain language of subsection 2516(2) defers to state statutes three times to illustrate Congress's intention to keep procedures for authorizing wiretaps under a state's purview." Pet. App. A at 11. Yet this confuses the subsection's requirement of a state statute empowering authorities to seek a wiretap with a non-existent deference to state procedures. By the terms of § 2516(2), state wiretaps must be issued not only in accordance with state law, but "with section 2518 of this chapter." As the courts of appeals have thus recognized, Title III "provides uniform minimum protections," such that states may "grant greater, but not lesser, protection than available under federal law." *Popa v. Harriet Carter Gifts, Inc*., 52 F.4th 121, 125-26 (3d Cir. 2022) (internal quotation marks omitted); *see*, *e.g.*, *Tortorello*, 480 F.2d at 772.

Beyond that, the court of appeals viewed Title III's legislative history to support the conclusion that Congress intended to leave delegation of wiretap authority to state law. But the stray "snippet[s] of analysis" it cited from the legislative record—a sponsor's floor statement and a sentence in a committee report, *see* Pet. App. A at 11, 14—hardly express the will of Congress. *Blanchard v. Bergeron*, 489 U.S. 87, 99 (1989) (Scalia, J., concurring in part and in judgment). At bottom, the Third Circuit's construction cannot be reconciled with *Giordano*'s construction of § 2516(1) to forbid delegation beyond the high-level Justice Department officials named in that provision. Construing § 2516(2) to permit any delegation provided by state law defeats Congress's purpose of making "doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications." *Giordano*, 416 U.S. at 515.

D. This case is an appropriate vehicle.

It is of course never ideal for a question to present in a plain error posture. But so far as the merits are concerned, the question here is not one of first view because the Third Circuit, like many courts before it, set down in full its construction of § 2516(2). In addition, the record is fully developed thanks to the overlapping challenge put forward by trial counsel under the Pennsylvania wiretap statute's provision for any delegation of signatory or presentation authority to be made by written designation. If this Court were to hold that compliance with state delegation laws does not preempt § 2516(2)'s "principal prosecuting attorney" limitation, it may (consistently with its practice) reverse the judgment and remand to the court of appeals to consider the effect of counsel's advancement of a related but different argument in the district court. *See Tapia v. United States*, 564 U.S. 319, 335 (2010).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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April 1, 2026