No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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JERMAINE EGGLESTON,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTION PRESENTED FOR REVIEW

Federal Rule of Evidence 704(b) states, "[i]n a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone. "

The question presented is whether the government may circumvent Federal Rule of Evidence 704(b) by eliciting an expert opinion on the mental state of a "hypothetical" person whose circumstances – including the receipt of a specific, unique text message – are a carbon copy of the defendant's, thereby having the expert functionally opine on the defendant's mental state.

PARTIES TO THE PROCEEDING

The parties to the proceeding whose judgment is sought to be reviewed are Petitioner Jermaine Eggleston and Respondent United States of America. There are no corporate parties or such interested entities.

STATEMENT OF RELATED PROCEEDINGS

The related proceedings were in federal court, and they are:

1. *United States v. Jermaine Eggleston*, No. 2:20-cr-00434-DSF-1, United States District Court for the Central District of California. Judgment entered on September 19, 2023.

2. *United States v. Jermaine Eggleston*, No. 23-2360, United States Court of Appeals for The Ninth Circuit. Judgment entered on December 17, 2025, rehearing denied on February 11, 2026.

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INTRODUCTION

Federal Rule of Evidence 704(b) serves as a critical safeguard in the American criminal justice system, expressly reserving the determination of a defendant's mental state for the trier of fact alone. But a conflict has emerged among the courts of appeals about whether the government may circumvent that prohibition by using fact-specific hypotheticals or generic terms when presenting expert testimony. In this case, the prosecutor elicited an expert opinion that a "courier" receiving the exact unique text message found on Petitioner Jermaine Eggleston's phone "knows he's transporting drugs." By tailoring the testimony to a pool of one, the government's expert functionally told the jurors that Eggleston possessed the requisite knowledge for conviction on the drug offense charged.

While the Tenth and D.C. Circuits recognize such carbon-copy hypotheticals as flagrant breaches of Rule 704(b), the Ninth Circuit – joining the Second, Fourth, and Sixth Circuits – has adopted a formalistic approach that permits such an opinion so long as the expert avoids explicitly stating the defendant's name.

Both sides to this circuit-split claim support in *Diaz v. United States*, 602 U.S. 526 (2024). There, the Court disapproved of an expert subverting Rule 704(b) by testifying that the defendant was part of a class of people who all have the offense's mens rea. *See id.* at 535. Consistent with this, the Tenth and D.C. Circuits prohibit expert testimony that is crafted to get around the Rule but nonetheless clearly conveys the expert's opinion about the defendant's mental state. Any other reading renders the Rule so easy to subvert that it is meaningless. But that is exactly what the Second, Fourth, Sixth, and Ninth Circuits allow. They seize on language in *Diaz* that says "an opinion is 'about' the ultimate issue of the defendant's mental state only if it includes a conclusion

on that precise topic," *Id.* at 537, and conclude that expert testimony only violates Rule 704(b) if the expert uses the defendant' name.

Certiorari is necessary to resolve the circuit-split and ensure that Rule 704(b) is not rendered meaningless through transparent question-framing that usurps the jury's role in determining the ultimate issue of intent. *See* S. Ct. R. 10(a) & (c).

OPINION BELOW

On December 17, 2025, the Ninth Circuit filed an opinion affirming Eggleston's conviction for possessing fentanyl with the intent to distribute, in violation of 21 U.S.C. § 841(a)(1). *See United States v. Eggleston*, 2025 WL 3653743 (9th Cir. 2025) (unpublished) (attached in appendix).

JURISDICTION

Eggleston filed a petition for rehearing that was denied on February 11, 2026. *See* 2/11/26 Order Denying Pet. for Reh'g (attached in appendix). This petition is timely under Supreme Court Rule 13, and this Court has jurisdiction under 28 U.S.C. §1254(1).

RELEVANT FEDERAL RULE OF EVIDENCE

Federal Rule of Evidence 704(b) states, "[i]n a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone. "

STATEMENT OF THE CASE

I. District Court Proceedings

Eggleston checked a bag at Los Angeles International Airport and then went to the departure gate to catch a flight to New Orleans. While screening the bag before the flight, officers found a

package hidden inside that they suspected contained drugs and Eggleston was arrested. The bag was later found to contain three kilograms of fentanyl and Eggleston was charged with possession with intent to distribute those drugs.

Eggleston's defense was that he had checked the bag for his traveling companion and was unaware it contained drugs. *See* 2-ER-189-91.[1] Thus the only issue was whether Eggleston knew there were drugs hidden in the bag.

At trial, the government called DEA Agent Steve Paris to testify about the *modus operandi* of drug couriers. *See* 2-ER-128. Paris began by stating that he had investigated "thousands" of "drug couriers," 3-ER-360-61, which he described as people who transport "drugs or drug proceeds" for a "drug-trafficking organization." 3-ER-362. Paris then testified at length about drug couriers who work for drug-trafficking organizations, telling jurors that such couriers commonly: (1) travel by airplane, and with luggage that contains clothing; (2) travel with other people who serve as look-outs; (3) carry drugs packaged like the fentanyl seized in this case; (4) have their travel costs paid by the drug-trafficking organization for which they work; and (5) communicate with other members of the drug-trafficking organization by using code. *See* 3-ER-369-80. This testimony was tailored to make Eggleston fit within the mold of a drug courier.

After Paris testified that "drug couriers often communicate" with the organizations for which they work "using coded language," the prosecutor turned to Eggleston's cell phone that was seized when he was arrested. During prior testimony, the lead investigator on the case, Detective Woodard, testified that he had searched through the phone and found nothing incriminating. 3-ER-353-55.

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[1] ER denotes the excerpts of record filed in Ninth Circuit case number 23-2360, at docket #34.

Nonetheless, during Paris's testimony the prosecutor focused on a text Eggelston received at 1:04 p.m. on the day of his arrest, which showed an electrical plug emoji followed by, "Moma said call when you get there." 3-ER-542. At the prosecutor's prompting, Paris testified that the plug emoji "is commonly used by drug traffickers" to indicate a "source" or "supplier" of drugs. 3-ER-390. The following exchange then ensured:

> QUESTION [PROSECUTOR]: While *a courier* is transporting drugs, is it common that the plug would call to confirm that they reached the gate?
>
> ANSWER [PARIS]: Is it common that the plug would call? I'm sorry.
>
> QUESTION: Call *the courier* to confirm that they reached the gate or the commercial aircraft?
>
> ANSWER: *I would say that it's common that the courier might have to report in, yes*.
>
> QUESTION: *So the plug would check in with the courier?*
>
> ANSWER: Yeah.
>
> QUESTION: While he or she is transporting the drugs?
>
> ANSWER: Yeah. That would not be uncommon, yes.

3-ER-392 (emphasis added). The prosecutor mis-stated Paris's testimony that a "courier might have to report," making it, "[s]o the plug would check in with the courier." Paris went along, though there is no evident reason a supplier, having made a sale, would take the senseless risk of calling to "check in" on the person to whom he'd sold drugs.

It is evident, however, that Paris struggled to keep up with the prosecutor's misleading questioning because moments later, when the prosecutor asked, "[s]o would a courier get a text that says: let me know when you arrive with the fentanyl," Paris replied, "[n]ot typically, no." 3-ER-

393. That wasn't what the prosecutor wanted to hear so she pressed the issue and the following exchange occurred:

> QUESTION: So, Special Agent Paris, in your opinion what is the meaning of "Moma said call when you get there?"
>
> ANSWER: The meaning is the source is telling *the courier* to call when you get there.
>
> QUESTION: And so if *a courier* is receiving *that kind of text*, in your opinion does he know he's transporting drugs?
>
> ANSWER: Well, I would say because of *the plug and the context of the whole general thing that, I believe that the courier knows that he's transporting drugs, yes*.

3-ER-394 (emphasis added).

Of course, "the courier" – the person who received the text and was involved in "the context of the whole general thing" – is Eggleston. Thus, although the prosecutor and Paris referred to "the courier," and didn't use Eggleston's name, they conjured a "pool" of one. In doing so, Paris effectively testified that Eggleston "kn[ew] that he[was] transporting drugs."

II. Ninth Circuit Opinion

The Ninth Circuit disagreed, stating that "[w]hile testifying about the meaning of a text message found on Eggleston's phone, Detective Woodard [sic] did not clearly or obviously state an opinion about whether Eggleston knew he was transporting drugs. In addition, the text message alone was highly probative of knowledge . . . ."[2] *Eggleston*, 2025 WL 3653743, *3.

The text message itself was not especially probative, but Paris's testimony that it showed Eggelston knew there were drugs in the bag – the only contested issue at trial – was highly

[2] The panel mistakenly said "Detective Woodard," who was the lead investigator and did not give any expert testimony. As discussed above, Agent Paris gave the expert testimony at issue here.

prejudicial, especially because it "carrie[d] . . . the imprimatur of the [g]overnment" and thus may have "induce[d] the jury to trust [the witness's] judgment rather than its own view of the evidence." *United States v. Young*, 470 U.S. 1, 18-19 (1985). That testimony was also a blatant end-run around Rule 704(b).

REASONS FOR ALLOWING THE WRIT

I. Introduction

In *Diaz*, this Court addressed the reach of Rule 704(b). Consistent with that opinion, the Tenth and D.C. Circuits preclude using hypotheticals, or other similar devices, to blatantly subvert the Rule, while other circuits rely on a formalistic reading of some of the language in Diaz to hold that anything goes so long as the expert doesn't explicitly use the defendant's name. The Court should resolve this circuit-split and in doing so prevent the government from framing their expert's testimony in a manner that renders Rule 704(b) meaningless.

II. The Opinion In *Diaz v. United States*

In *Diaz*, 602 U.S. at 528, the defendant was charged with drug-smuggling after methamphetamine was found hidden in door panels of the car she drove from Mexico into the United States. Her defense was that she did not know there were drugs hidden in the car, which was an element the government was required to prove. During trial, the government presented testimony from Department of Homeland Security Investigations Agent Flood, who "opined that most drug couriers know that they are transporting drugs." *Id.* at 528, 530.

On appeal, the Ninth Circuit held that Rule 704(b) precludes only "an explicit opinion on the defendant's state of mind," and Flood's testimony didn't qualify because he "did not opine about whether Diaz knowingly transported methamphetamine . . . ." *Id.* at 531 (cleaned up).

This Court affirmed, stating that because Flood "did not state an opinion about whether petitioner herself had a particular mental state, we conclude that the testimony did not violate Rule 704(b)." *Id.* at 528 (emphasis added). The Court explained that "Rule 704(b) . . . proscribes only expert opinions in a criminal case that are about a particular person ('the defendant') and a particular ultimate issue (whether the defendant has 'a mental state or condition' that is 'an element of the crime charged or of a defense')." *Id.* at 534 (emphasis added).

The majority opinion in *Diaz* also addressed the dissent's argument that Flood "functionally stated an opinion about whether Diaz knowingly transported drugs when he opined that couriers generally transport drugs knowingly." 602 U.S. at 535 (cleaned up). The majority responded, "that argument mistakenly conflates an opinion about most couriers with one about all couriers," and stated that "[a] hypothetical helps explain why this distinction matters under Rule 704(b):"

> Take for example an expert who testifies at an arson trial that all people in the defendant's shoes set fires maliciously (the mental state required for common-law arson). Although the expert never spoke the defendant's name, the expert nonetheless violated Rule 704(b). That is because the expert concluded that the defendant was part of a group of people that all have a particular mental state. The phrase 'all people in the defendant's shoes' includes, of course, the defendant himself. So, when the expert testified that all people in the defendant's shoes always set fires with malicious intent, the expert also opined that the defendant had that mental state. The expert thus stated an opinion on the defendant's mental state, an ultimate issue reserved for the jury, in violation of Rule 704(b).

Id. at 535. This indicates disapproval of expert testimony that delivers the punch prohibited by the Rule, but uses rhetorical devices, such as hypotheticals, to avoid explicitly stating the defendant's name.

According to the dissenting opinion, that disapproval was shared by all of the justices, and the government conceded that such subterfuge was impermissible:

> [T]the Rule does more than bar an expert from testifying "explicitly" that the defendant had the mental state required for conviction. Tr. of Oral Arg. 72–73, 76. The Rule also bars an expert from testifying that a class of persons (say, all people carrying drugs over the border) has the legally proscribed mental state when that class includes the defendant. Brief for United States 36; *ante*, at 1734 - 1735. Likewise, the Rule bars an expert from opining that a *hypothetical person* who matches the defendant's description (say, a *hypothetical woman* who drives a car full of drugs across the border) will have the mental state required for conviction. Tr. of Oral Arg. 67. All those opinions, the government now acknowledges, are "about" the defendant's mental state and cannot be offered consistent with Rule 704(b). On this, the Court, too, agrees. *Ante*, at 1734 - 1735.

Diaz, 602 U.S. at 547-48 (Gorsuch, J., dissenting) (emphasis added). As the discussion below shows, the government has not lived up to its concession and several of the courts of appeals have allowed that to go unchecked.

III. The Circuit Split – The Tenth And D.C. Circuits Versus The Second, Fourth, Sixth, And Ninth Circuits

A. The Tenth And D.C. Circuits

The Tenth and D.C. Circuits prohibit exactly the kind of blatant subversion of Rule 704(b) that the majority in *Diaz* rejected, and that the dissent explicitly said the government had conceded was impermissible.

In *United States v. Maryboy*, 138 F.4th 1274 (10th Cir. 2025), the defendant was charged with second-degree murder. To convict, the government had to show the defendant acted with malice aforethought, which required showing he acted with extremely reckless disregard for human life. *See id.* at 1282. After setting up a "hypothetical" situation that mirrored the facts involved in the case, the prosecutor asked the government's gun-safety witness to "describe how reckless the shooter in the hypothetical would be." *Id.* at 1286. The expert responded that the shooter's conduct amounted to "the ultimate expression of recklessness" because "[a]ny time you handle a weapon in

an unsafe manner it could take another human life." *Id.* The Tenth Circuit held that the "jury could rightfully consider the words 'ultimate expression of recklessness' as establishing 'extreme recklessness.' And that the conduct 'could take another human life' shows a 'disregard for human life.' That is malice aforethought." *Id.* Accordingly, the expert's testimony violated Rule 704(b).

The court explained that couching the expert's testimony in the guise of a "'hypothetical' person does not make the statement permissible," *id.* at 1286, and it supported that conclusion with citations to its pre-*Diaz* case law and *Diaz* itself. With respect to the former, the court cited *United States v. Dennison*, 937 F.2d 559, 565 (10th Cir. 1991), in which it held that "[a]lthough [the expert's] testimony was premised on a hypothetical person . . . the necessary inference was that the instant defendant did not have the capacity to form specific intent." The court in *Maryboy* also relied on the portion of *Diaz* that said Rule 704(b) precludes an expert from stating that the defendant is part of a group of people who all have the requisite *mens rea*. *See Maryboy*, 138 F.4th at 1286 (citing *Diaz*, 602 U.S. at 535–36). In light of this case law, the Tenth Circuit found that admission of the expert testimony was plainly erroneous. *See id.* at 1284-85, 1287.

In *United States v. Boyd*, 55 F.3d 667 (D.C. Cir. 1995), the D.C. Circuit came to the same conclusion. There, the prosecutor "recited 'hypothetical' facts exactly mirroring the alleged facts surrounding Boyd's arrest" on drug charges, then had its expert opine that those facts showed "possession with intent to distribute" drugs. *See id.* at 669. The court held that this was a "flagrant breach" of Rule 704(b)," and stressed that "it is no answer that the government indulged the subterfuge of a 'hypothetical' question to avoid the Rule. Here, the Rule was violated because the expert was allowed to address a hypothetical that was a carbon copy of the matter before the jury, thus effectively giving a forbidden opinion on the case at hand." *Id.* The court noted that it had

"never held that the government may simply recite a list of 'hypothetical' facts that exactly mirror the case at hand and then ask an expert to give an opinion as to whether such facts prove an intention to distribute narcotics. Indeed, we would have been remiss even to suggest such an approach, because it flies in the face of Rule 704(b)." *Id.* at 672.

B. The Second, Fourth, Sixth, And Ninth Circuits

In post-*Diaz* cases several other circuits have approved exactly the kind of flagrant subversion of the Rule that the Tenth and D.C. Circuits prohibit. Eggleston begins with the Ninth Circuit.

Although the opinion in Eggleston's case is light on analysis, its outcome was ordained by longstanding Ninth Circuit case law, which is summarized in *United States v. Olivas*, 150 F.4th 1107 (9th Cir. 2025). In *Olivas*, the defendant was charged with a wide-ranging conspiracy based on her allegedly having been the "secretary" for a gang leader. *See id.* at 1111. During trial a government expert testified that "secretaries" for gang leaders are "trusted gang members who facilitate communication to and from incarcerated gang leaders," and they "know [e]verything about the gang's activities." *Id.* at 1110. The expert also "opined that Olivas was 'a secretary.'" *Id.* at 1110. The Ninth Circuit concluded that this testimony did not plainly violate Rule 704(b). *See id.* at 1110, 1113.

In doing so, it noted that since *United States v. Morales*, 108 F.3d 1031 (9th Cir. 1997) *(en banc*), the Ninth Circuit had consistently held that Rule 704(b) "prohibits only 'explicit' or 'direct' opinions about a criminal defendant's mental state." *Olivas*, 150 F.4th at 1114 (quoting *United States v. Murillo*, 255 F.3d 1169, 1178 (9th Cir. 2001)). Thus, according to the Ninth Circuit, expert testimony doesn't offend Rule 704(b) if the expert does not "directly and unequivocally testif[y] to

[the defendant's] mental state." *Olivas*, 150 F.4th at 1114 (quoting *United States v. Gonzales*, 307 F.3d 906, 911 (9th Cir. 2002)). Indeed, as the court noted in *Olivas*, that line of case law drove the result in the Ninth Circuit in the *Diaz* case, which this Court subsequently affirmed. *See Olivas*, 150 F.4th at 1114.

The Ninth Circuit in *Olivas* also summarized this Court's opinion in *Diaz* and highlighted similarities between its prior case law and *Diaz*. In doing so, the court in *Olivas* emphasized language in *Diaz* that says Rule 704(b) precludes only testimony about the "precise topic" of the defendant's mental state. In light of this language, and its pre-*Diaz* case law, the Ninth Circuit concluded that the expert testimony in *Olivas* was not plainly erroneous. 150 F.4th at 1115-16.

In sum, in the Ninth Circuit expert testimony does not violate Rule 704(b) unless the expert explicitly states the defendant's name. And because Agent Paris didn't do that in Eggleston's case – he instead testified about a generic "courier" – under Ninth Circuit case law his testimony was permissible.

The Sixth Circuit takes the same approach, as shown by *United States v. Xu*, 114 F.4th 829 (6th Cir. 2024). There the defendant was charged with conspiracy to commit espionage. *See id.* at 834. When framing the Rule 704(b) issue presented, the court took the same formalistic view as the Ninth Circuit, stating that the question was "whether the expert actually referred to the intent of [Xu], or, instead, simply described in general terms the common practices of those who clearly do possess the requisite intent, leaving unstated the inference that [Xu] . . . also possessed the requisite intent." *Id.* at 841 (quoting *United States v. Jaffal*, 79 F.4th 582, 603 (6th Cir. 2023)). Applying that framework, the court held that the expert did not violate the Rule when he testified that a sentence Xu wrote in an email indicated an "intelligence officer . . . who is pushing for additional

cooperation" from a "target" of his espionage efforts. *Id.* at 842. The expert also said the indicated "conversations and the actions . . . are those of an intelligence officer conducting espionage. I had no question about that at all." *Id.* The Sixth Circuit held this testimony did not violate Rule 704(b) because the expert referred generically to the intent of "an intelligence officer," rather than stating his explicit opinion about Xu's intent. *See id.* 841-42.

The Second Circuit has likewise concluded that so long as an expert does not explicitly say the defendant had the requisite *mens rea*, testimony that nonetheless packs that punch is permissible. *See United States v. Pollok*, 139 F.4th 126 (2d Cir. 2025). In *Pollok*, the defendant was charged with sex trafficking and he raised a Rule 704(b) challenge to expert testimony. Relying on its pre-*Diaz* case law, the Second Circuit held that expert testimony is permissible so long as the expert does not "expressly state" the defendant's name when giving an opinion, and thus "leave[s] the inference" that the opinion relates to the defendant, "however obvious, for the jury to draw." *Id.* at 143. "In other words, '[i]t is only as to the last step in the inferential process – a conclusion as to the defendant's actual mental state – that Rule 704(b) commands the expert to be silent." *Id.* (quoting *United States v. DiDomenico*, 985 F.2d 1159, 1164 (2d Cir. 1993)). The Second Circuit found support for this conclusion in *Diaz*, stating that this Court held that the Rule prohibits only testimony about the "particular" defendant's mental state. *Id.* at 143-44.

Applying that view of the Rule, the Second Circuit in *Pollok* held that it was permissible for the government's expert to testify that Pollok's conduct showed an intent to control and abuse the alleged victims. The court reasoned that testimony was permissible because the expert did not explicitly say Pollok had the intent to control and abuse the victims. *See id.* at 144. That is, even

though the inference from the expert's testimony was "obvious," the testimony didn't offend Rule 704(b) because the expert left that obvious inference "for the jury to draw." *Id.*

In *United States v. Palmer*, 159 F.4th 221 (4th Cir. 2025), the Fourth Circuit expressed the same view. There the defendant was charged with making a false statement on a naturalization application. *See id.* at 225. The court held that the district court erred by precluding testimony from a defense expert that (a) to understand the written question to which Palmer allegedly gave a false answer a person needs to read at an eighth-grade level, but (b) Palmer reads at a fourth-grade level. *See id.* at 228-29. The court concluded that although "there's little daylight between" the expert's proposed testimony and "an opinion on Palmer's state of mind, there is some. That's all *Diaz* requires." *Id.* at 229.

The "just a little daylight" approach taken by the courts discussed above makes it far too easy to subvert the Rule and usurp the jury's role, which the Court rejected, and the government disavowed, in *Diaz*. All an expert has to do to avoid violating the Rule is not say the defendant's name, even though the expert's opinion about the defendant's mental state will be as clear as broad daylight to the jurors. That renders the Rule a nullity, which can't be what Congress intended.

IV. This Case Is A Good Vehicle To Resolve The Circuit Conflict And Provide Helpful Guidance To The Courts Of Appeals On An Important And Recurring Issue

This case is a good vehicle for resolving the circuit-split on the important issue presented. Additional percolation will serve no purpose because, as the discussion above shows, the courts of appeals that have adopted an overly formalistic reading of the Rule are inclined to see in *Diaz* a confirmation of their approach and their pre-*Diaz* case law. That is evident from *Olivas*, which was vacated and remanded for further consideration in light of *Diaz*. *See Olivas*, 150 F.4th at 1110.

Furthermore, the issue is squarely presented, and although the Ninth Circuit panel questioned the prejudicial impact of Paris's testimony, in the same breath it acknowledged that "the text message alone was highly probative of knowledge." *Eggleston*, 2025 WL 3653743, *3. It wasn't the text message that was highly probative; instead, it was Paris's improper testimony about that text message that was highly prejudicial, particularly considering that knowledge was the only issue contested at trial. That prejudice was heightened by the fact that he is a DEA agent, and thus "carrie[d] with [him] the imprimatur of the [g]overnment." *Young*, 470 U.S. at 18. Such a witness "may induce the jury to trust [the witness's] judgment rather than its own view of the evidence." *Id.* at 18-19; *see also United States v. Scheffer*, 523 U.S. 303, 314 (1998) (plurality opinion) (experts like these may attain an "aura of infallibility"). That prejudice was compounded by the fact that expert opinions about a defendant's "state of mind at the crucial moment" when committing a criminal act may "easily mislead" the jury into "thinking the opinions show more than they do." *Clark v. Arizona*, 548 U.S. 735, 776 (2006).

CONCLUSION

Eggleston requests that the Court grant this petition for a writ of certiorari.

Respectfully submitted,

/s/ Todd W. Burns

Date: April 2, 2026

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