No. 25-______

IN THE

Supreme Court of the United States

PRICE MONTGOMERY,
Petitioner,

v.

UNITED STATES,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

K. ANTHONY THOMAS
EVAN J. AUSTIN
Counsel of Record
ALISON BRILL
OFFICE OF THE FEDERAL PUBLIC DEFENDER
1002 Broad Street
Newark, New Jersey 07102
(973) 282-8658
Evan_Austin@fd.org

QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 1512(a)(1)(C), which criminalizes killing a person with intent to prevent them from telling authorities about a federal crime, necessarily involves murder, as the Third Circuit found, or whether it can also be committed through manslaughter, as the statute explicitly contemplates.

2. Even if § 1512(a)(1)(C) necessarily involves murder, whether charging and convicting someone of second-degree murder—which carries no mandatory minimum—but then sentencing them for first-degree murder—which carries mandatory life imprisonment—violates *Alleyne v. United States*, 570 U.S. 99 (2013).

3. Whether a state or local jurisdiction's chief prosecutor may delegate authority to apply for wiretaps under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 2510 *et seq.* (**Incorporated from petition for a writ of certiorari in *James Perrin v. United States*, No. 25A935, permanent case number pending)**

PARTIES TO THE PROCEEDING

Petitioner is Price Montgomery, an inmate at United States Penitentiary, Coleman I in Sumterville, Florida.

Respondent is the United States of America.

There are no corporate parties involved in this case.

RELATED PROCEEDINGS

Proceedings below

United States Court of Appeals for the Third Circuit:

- *United States v. Price Montgomery*, No. 22-2368 (3d Cir. 2022)

United States District Court for the Western District of Pennsylvania:

- *United States v. Price Montgomery*, 2:14-cr-00205-001 (W.D. Pa. 2014)

Related proceedings

United States Court of Appeals for the Third Circuit:

- *United States v. Price Montgomery*, No. 20-1865 (3d Cir. 2020)
- *United States v. Price Montgomery*, No. 20-1659 (3d Cir. 2020)
- *United States v. James Perrin*, No. 22-2196 (3d Cir. 2022)
- *United States v. James Perrin*, No. 20-1874 (3d Cir. 2020)
- *United States v. James Perrin*, No. 20-1683 (3d Cir. 2020)

United States District Court for the Western District of Pennsylvania:

- *United States v. Price Montgomery*, 2:16-cr-00063 (W.D. Pa. 2016)

TABLE OF CONTENTS

QUESTIONS PRESENTED i
PARTIES TO THE PROCEEDING ii
RELATED PROCEEDINGS ii
TABLE OF CONTENTS iii
TABLE OF AUTHORITIES iv
PETITION FOR A WRIT OF CERTIORARI 1
OPINIONS BELOW 1
JURISDICTION 1
STATUTORY PROVISIONS INVOLVED 1
INTRODUCTION 2
STATEMENT OF THE CASE 4
REASONS FOR GRANTING THE PETITION 10
- A. The Decision Below is Wrong. 11
- B. The Questions Presented Are Critically Important. 17
- C. This Case is the Right Vehicle to Decide the Questions Presented. 19
- D. Certiorari Should Be Granted to Decide Whether Title III Permits a State's Chief Prosecutor to Delegate Authority to Apply for Wiretaps (Issue Raised in James Perrin's Petition for a Writ of Certiorari). 20

CONCLUSION 21

TABLE OF AUTHORITIES

Cases

Alleyne v. United States, 570 U.S. 99 (2013) .... i, 2, 6
Apprendi v. New Jersey, 530 U.S. 466 (2000) 2, 6
Lora v. United States, 599 U.S. 453 (2023) 18
Loughrin v. United States, 573 U.S. 351 (2014) 12
Sebelius v. Cloer, 569 U.S. 369 (2013) 11
United States v. Bell, 819 F.3d 310 (7th Cir. 2016) 15
United States v. Hicks, 389 F.3d 514 (5th Cir. 2004) 14
United States v. Houlihan, 937 F. Supp. 75 (D. Mass. 1996) 13, 14, 17
United States v. Johnson, 239 F. Supp. 2d 897 (N.D. Iowa 2002) 13
United States v. Sineneng-Smith, 590 U.S. 371 (2020) 14
United States v. Sockey, 157 F.4th 1282 (10th Cir. 2025) 14

Statutes

18 U.S.C. § 1111 .... 1, 4, 5, 6, 12, 15, 16, 17
18 U.S.C. § 1112 .... 1, 4, 5, 12
18 U.S.C. § 1112(b) 17
18 U.S.C. § 1512 .... 1, 2, 3, 4, 7, 10, 11, 12, 16, 17, 19
18 U.S.C. § 1512(a)(1)(C) .... i, 2, 3, 4, 5, 6, 9, 10, 11, 14, 15
18 U.S.C. § 1512(a)(3)(A) 4, 12, 13, 14, 16
18 U.S.C. § 1513 .... 13, 17
18 U.S.C. § 2510 .... i, 3
18 U.S.C. § 2516(2) 8, 9
18 U.S.C. § 924(j) 18
18 U.S.C. § 924(j)(1) 6
18 U.S.C. §§ 113(a) 17
28 U.S.C. § 1254(1) 1

Rules

Federal Rule of Criminal Procedure 10 18

PETITION FOR A WRIT OF CERTIORARI

Petitioner Price Montgomery respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. B, 3a–35a) is reported at 149 F.4th 267. The order denying Mr. Montgomery's petition for panel or *en banc* rehearing was not reported but is included in the appendix (Pet. App. A, 1a–2a).

JURISDICTION

The Court of Appeals denied Mr. Montgomery's petition for rehearing on December 2, 2025. Justice Samuel A. Alito, Jr., extended the time to file this petition until April 1, 2026, on Mr. Montgomery's application. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions, 18 U.S.C. §§ 1111, 1112, and 1512, are reproduced in the appendix. Pet. App. C, 36a–37a.

INTRODUCTION

This case presents two important questions of federal criminal law: the proper interpretation of the federal witness tampering statute, 18 U.S.C. § 1512, and what the Constitution requires before someone can be sentenced to mandatory life imprisonment, a penalty second only to death in its seriousness. Petitioner Price Montgomery was charged with killing a federal witness, specifically under 18 U.S.C. § 1512(a)(1)(C), after a woman who was planning to provide information about him to law enforcement was fatally shot outside her mother's home in Pittsburgh. Although the government characterized the killing as a murder at Mr. Montgomery's trial, the indictment only charged it as a manslaughter because it failed to allege the essential element of murder—malice aforethought—in the operative count. Mr. Montgomery accordingly argued at sentencing that he was not subject to mandatory life imprisonment and asked for a term of years. Wrongly believing its hands were tied, the District Court rejected Mr. Montgomery's plea for mercy and sentenced him to mandatory life.

On appeal, Mr. Montgomery argued his sentence violated the Fifth and Sixth Amendments under *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Alleyne v. United States*, 570 U.S. 99 (2013), because he was charged with and convicted of manslaughter but then sentenced for first-degree murder. In response, the government conceded the relevant count did not charge the killing as a murder but argued the mandatory life sentence was authorized by the jury's findings on another count (an argument Mr. Montgomery vehemently opposed). After deliberating for

over a year, the Third Circuit settled on a third position neither party had advanced: that Mr. Montgomery *was* charged with murder on the relevant count because killing a federal witness in violation of 18 U.S.C. § 1512(a)(1)(C) necessarily involves malice aforethought and, therefore, murder.

That precedential holding, which the Third Circuit reached *sua sponte* without the benefit of the parties' arguments or briefing on the issue, is profoundly wrong and warrants this Court's review. By explicitly cross-referencing both the federal murder and manslaughter statutes, 18 U.S.C. § 1512 criminalizes a broad range of situations in which a federal witness is killed, including killings without malice aforethought. In reading the manslaughter cross-reference out of the statute, the Third Circuit eliminated an entire category of witness tampering killings from the United States Code. And even if the Third Circuit's atextual reading of § 1512 is correct, it would mean Mr. Montgomery was convicted of, at most, second-degree murder, which still does not authorize the mandatory life sentence he received.

Because the Third Circuit's erroneous decision in this case has implications not just for Mr. Montgomery, but for criminal defendants, victims, and prosecutors across the country, this Court should grant review.

Finally, for the reasons set forth in codefendant James Perrin's petition for a writ of certiorari, this Court should also grant review to decide whether a state or local jurisdiction's chief prosecutor may delegate authority to apply for wiretaps under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 2510 *et seq.*

STATEMENT OF THE CASE

A. Legal Background

1. This case involves the federal witness tampering statute, 18 U.S.C. § 1512. In relevant part, that statute makes it a crime to "kill[] or attempt[] to kill another person, with intent to . . . prevent any communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense." § 1512(a)(1)(C). Violations "shall be punished as provided in paragraph (3)." *Id.* Section 1512(a)(3) provides, in turn, that "[t]he punishment for an offense under this subsection is . . . in the case of a killing, the punishment provided in sections 1111 and 1112." § 1512(a)(3)(A). Sections 1111 and 1112 of Title 18 are the federal murder and manslaughter statutes, respectively. *See* 18 U.S.C. §§ 1111 and 1112. Together, they create four distinct homicide offenses, each with different penalties:

Offense	Minimum Sentence	Maximum Sentence	Statute
First-Degree Murder	Life	Death	18 U.S.C. § 1111
Second-Degree Murder	N/A	Life	18 U.S.C. § 1111
Voluntary Manslaughter	N/A	15 years	18 U.S.C. § 1112
Involuntary Manslaughter	N/A	8 years	18 U.S.C. § 1112

Id. By incorporating these penalties by reference, § 1512(a)(3)(A) creates four distinct witness tampering offenses "in the case of a killing": (1) Witness Tampering Murder in the First Degree; (2) Witness Tampering Murder in the Second Degree; (3) Witness Tampering Voluntary Manslaughter; and (4) Witness Tampering Involuntary Manslaughter.

2. To obtain an aggravated sentence for a violation of § 1512(a)(1), the government must charge and prove additional elements. To obtain a sentence of life imprisonment, for example, the government must prove the killing was a murder, which requires proof of malice aforethought. *Compare* 18 U.S.C. § 1111(a) ("Murder is the unlawful killing of a human being with malice aforethought"), *with* 18 U.S.C. § 1112(a) ("Manslaughter is the unlawful killing of a human being without malice"). And to obtain a *mandatory* sentence of life imprisonment, the government must prove the killing was a *first-degree* murder, which, in addition to malice aforethought, requires proof of premeditation or another aggravating factor such as poison or lying-in-wait. *See* § 1111(a). These elements are frequently charged in cases involving witness tampering killings under § 1512(a)(1). *See, e.g., United States v. Paul Bergrin*, Crim. No. 09-369, Dkt. No. 536 at 92 (D.N.J. Mar. 14, 2013) (charging defendant with killing a person with intent to prevent their testimony in an official proceeding, "which killing [was] a murder as defined in Title 18, United States Code, Section 1111(a), in that such killing was done unlawfully, willfully, deliberately, maliciously, and with premeditation."); *United States v. Matthew Farwell*, Crim. No. 24-10259, Dkt. No. 1 at 3 (D. Mass. Aug. 27, 2024) (charging defendant with killing the victim "with malice aforethought, willfully, deliberately, maliciously, and with premeditation" in count alleging violation of 18 U.S.C. § 1512(a)(1)(C)).

3. The requirement that these aggravating elements be charged by a grand jury and found by a petit jury flows from the Fifth and Sixth Amendments. In *Apprendi*, this Court held that "[o]ther than the fact of a prior conviction, any fact

that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490. Later, in *Alleyne*, this Court held the same to be true of "facts that increase mandatory *minimum* sentences." 570 U.S. at 116 (emphasis added). These holdings were based on the understanding that "a finding of fact [that] alters the legally prescribed punishment so as to aggravate it" is "an element of a distinct and aggravated crime . . . [that] must be submitted to the jury and found beyond a reasonable doubt." *Id.* at 115–16.

B. Proceedings Below

1. On April 4, 2016, Mr. Montgomery and codefendant James Perrin were charged in a 10-count second superseding indictment in the Western District of Pennsylvania. Joint Appendix on Appeal ("JA") at 178–97. The government accused Mr. Montgomery of leading a Pittsburgh-area drug-trafficking operation for several years as well as being involved in a shooting on August 22, 2014, that resulted in the death of Tina Crawford, who had transported drugs for Mr. Montgomery and then decided to cooperate with law enforcement, and serious injuries to Patsy Crawford, her mother. Mr. Montgomery was charged with two offenses in connection with Tina Crawford's death. Count 7 charged him with killing a federal witness in violation of 18 U.S.C. § 1512(a)(1)(C). JA188. Count 8 charged him with causing death through the use of a firearm in violation of 18 U.S.C. § 924(j)(1). JA189. Although Count 8 charged the killing as a murder as defined in 18 U.S.C. § 1111, Count 7 did not; it

simply stated that Mr. Montgomery "did kill Tina Crawford and cause the killing of Tina Crawford." JA188.

2. After an eight-day trial, a jury convicted Mr. Montgomery on all counts. In the lead-up to sentencing, both probation and the government argued Mr. Montgomery's conviction on Count 7 carried a mandatory term of life imprisonment. JA2985, 2989–90. Mr. Montgomery objected, explaining that § 1512 "does not, by itself, demand a sentence of life" and that he was "not charged with or convicted of murder." JA2996. He accordingly asked the District Court to sentence him to "a term of months or years" as opposed to life imprisonment. JA2518. The Court overruled the objection and found there was a "mandatory life sentence at Count Seven." JA2553–54. And although the Court recognized that Mr. Montgomery was requesting a term of years, it believed it was "not authorized to do that as to Count Seven." JA2562. The Court ultimately sentenced Mr. Montgomery to life imprisonment on Count 7 and various concurrent and consecutive terms on other counts, for a total term of life imprisonment plus 80 years. JA2563.

3. Mr. Montgomery appealed and argued, *inter alia*, that the mandatory life sentence on Count 7 violated his Sixth Amendment rights because he was charged with and convicted of a manslaughter offense—killing a federal witness without malice aforethought—but then sentenced for first-degree murder. Montgomery Opening Brief ("Montgomery Br.") at 29–42. In response, the government conceded that Count 7 did not charge the killing as a murder, stating: "True enough. The murder allegation could have been so included." Government Response Brief ("Gov't

Resp.") at 102. It nevertheless argued that the mandatory life sentence on Count 7 did not violate Mr. Montgomery's Sixth Amendment rights because he was charged with and convicted of first-degree murder on *Count 8*—an argument Mr. Montgomery vehemently opposed in reply because Count 8 did not carry any mandatory minimum and Count 7 did not incorporate the relevant allegations by reference as the federal rules required. Gov't Resp. at 101–04.

4. The Third Circuit affirmed Mr. Montgomery's life sentence in a precedential opinion. First, adopting a position neither party advanced, the Court found that Count 7 *did* charge Mr. Montgomery with murder because killing a federal witness in violation of 18 U.S.C. § 1512(a)(1)(C) "encompasses an unlawful killing with malice aforethought, in other words, murder." Pet. App. 23a. As a result, the Court found that Mr. Montgomery "was not therefore sentenced for a different crime than he was charged and convicted [sic]." *Id.* The Third Circuit additionally found there was no notice problem because "Count 7 provided Montgomery with notice that he faced a potential life sentence." Pet. App. 26a.

5. The Third Circuit also affirmed Mr. Montgomery's and his codefendant James Perrin's convictions on Counts One and Two, conspiracy to distribute and possession with intent to distribute heroin. The Court rejected their challenge that evidence of drug trafficking should have been suppressed because the wiretap was not issued by the state's principal prosecuting attorney. *See* Pet. App. 12a–17a; 18 U.S.C. § 2516(2).

6. Following the Third Circuit's decision, Mr. Montgomery filed a petition for rehearing by the panel or the *en banc* Court. He explained that the Third Circuit's *sua sponte* conclusion that § 1512(a)(1)(C) necessarily involves malice aforethought overlooked the statute's plain text, the legislative history, and the caselaw, as well as the government's concession that murder was not charged in the operative count. Montgomery Petition for Rehearing at 8–13. And he explained that even if the Third Circuit's conclusion about malice aforethought was correct, that still did not authorize the District Court to sentence him to mandatory life imprisonment due to the additional elements required to convict him of first-degree murder. *Id.* at 14–16. The Third Circuit denied the petition without an opinion or any noted dissents. Pet. App. 1a–2a.

7. Mr. Perrin, joined by Mr. Montgomery, also petitioned for rehearing on the wiretap issue. They argued that the Court erred in finding that § 2516(2)'s did not, *inter alia*, prohibit delegation of the principal prosecuting attorney's authority to line prosecutors to the extent authorized by state law. *See* Pet. App. 13a. The Third Circuit denied the petition without an opinion or any noted dissents.

REASONS FOR GRANTING THE PETITION

This Court should grant review. Mr. Montgomery argued below that his Fifth and Sixth Amendment rights were violated because he was convicted of manslaughter but then sentenced for first-degree murder. The government had every opportunity to argue in response that he was mistaken because killing a federal witness under 18 U.S.C. § 1512(a)(1)(C) always involves murder. But the government did not make that argument, and in fact conceded the opposite, for good reason: the statutory text, legislative history, and caselaw all make clear that § 1512 criminalizes a broad range of witness tampering killings both with and without malice aforethought—in other words, both murders and manslaughters. In nevertheless concluding, on its own initiative, that § 1512(a)(1)(C) necessarily involves murder, the Third Circuit erred. And the Third Circuit then compounded that error when it held that the malice aforethought it read into the statute was sufficient to authorize not only a life sentence on the § 1512 count, but a *mandatory* one, a conclusion that overlooked the difference between first and second-degree murder and ran afoul of this Court's decision in *Alleyne*.

The questions presented are also critically important. By holding that § 1512(a)(1)(C) requires a showing of malice aforethought, the Third Circuit read manslaughter out of the statute and narrowed the types of witness tampering killings that are prohibited by federal law. And by holding that the government was allowed to charge Mr. Montgomery with an offense that carried no mandatory minimum, but

then secure a sentence of mandatory life, the Third Circuit upended the expectations of due process and fair notice upon which the criminal justice system depend.

This case is also a good vehicle to address these important issues. The questions presented are purely legal and the Third Circuit decided them cleanly in a precedential opinion. And given the specificity of the statutory issue and the government's charging practices, it may be a long time before this Court gets another opportunity to correct the Third Circuit's misreading of § 1512.

Finally, for all the reasons articulated in codefendant James Perrin's petition, this Court should also grant review to address whether a state or local jurisdiction's chief prosecutor may delegate authority to apply for wiretaps under Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

A. The Decision Below is Wrong.

First, this Court should grant review because the decision below is wrong.

1. The Third Circuit recognized there would have been a constitutional problem had Mr. Montgomery been "charged [with] and convicted of manslaughter but sentenced for murder." Pet. App. 23a. But the Court found no such error because, in its view, killing a federal witness under 18 U.S.C. § 1512(a)(1)(C) inherently involves "malice aforethought" and therefore "murder." *Id*. That holding, which conflicts with the parties' positions in this case, the text and history of § 1512, and the caselaw, is wrong.

2. "As in any statutory construction case," this Court should "start, of course, with the statutory text." *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013) (internal

quotation marks and citations omitted). Several aspects of the statutory text make clear that § 1512 criminalizes witness tampering killings both with and without malice aforethought. Most obviously, the statute cross-references both the federal murder *and* manslaughter statutes in setting the applicable penalties. *See* § 1512(a)(3)(A). If killing a federal witness under § 1512 always involved murder, the cross-reference to the manslaughter statute would be meaningless. The Third Circuit's reading thus "runs afoul of the cardinal principal that courts must give effect, if possible, to every clause and word of a statute." *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (internal quotation marks and citations omitted). Congress also conspicuously used the word "killing" rather than "murder," signaling its intent to criminalize a broader range of conduct than just killings with malice aforethought. *See, e.g.,* § 1512(a)(3)(A) (creating different penalties for "the case of a killing" and "the case of . . . an attempt to murder").

3. The legislative history of § 1512 supports this reading. A Congressional analysis of the National Drug Control Strategy Implementation Act, introduced in the Senate in 1990, said this about the penalty provision of § 1512: "18 U.S.C. 1512 further authorizes imprisonment for up to twenty years in the case of an attempted killing, and incorporates by reference the penalties for *murder and manslaughter* under 18 U.S.C. 1111 and 18 U.S.C. 1112 for cases where death results." 136 Cong. Rec. S6586-01 (May 18, 1990) (emphasis added). Later, the report continues: "Under section 1512, a killing is punishable by the penalties prescribed *for murder and manslaughter* in 18 U.S.C. 1111 and 1112—including death or life imprisonment in

cases of first degree murder." *Id.* (emphasis added). And, from 1994 to 2008, the penalty provision in § 1512(a)(3)(A) stated that the punishment for a witness tampering killing was: "in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and *in the case of any other killing*, the punishment provided in section 1112." § 1512(a)(3)(A) (2002) (emphasis added). This language made explicit what is still implicit in the statute today: § 1512 criminalizes both murders and "other killing[s]," i.e., manslaughters.[1]

4. The limited caselaw in this area is also in accord. In analyzing the identically worded cross-reference to the murder and manslaughter statutes in 18 U.S.C. § 1513, the federal witness retaliation statute, one prominent federal judge found that "Congress plainly intended to criminalize a range of situations in which there was a killing for the purpose of obstructing judicial processes and efforts to cooperate with the government." *United States v. Houlihan*, 937 F. Supp. 75, 76 (D. Mass. 1996) (Gertner, J.). Such a killing could qualify as voluntary manslaughter, for example, if there was "a sudden quarrel, provoked by any number of issues . . . including the accusation that one side or another cooperated with a federal investigation." *Id.* at 77.

---

[1] Although Congress amended the language of § 1512(a)(3)(A) in 2008 to bring it to its present form, the legislative history indicates it did so to remove mandatory life imprisonment or death as the applicable penalty for witness tampering murders in the second degree, not to remove manslaughter from the scope of the statute. *See United States v. Johnson*, 239 F. Supp. 2d 897, 902 (N.D. Iowa 2002) (explaining the statute's legislative history).

5. The Third Circuit's opinion does not grapple with any of this or even mention the cross-reference to the manslaughter statute in § 1512(a)(3)(A).[2] Instead, the opinion concludes in two short sentences that because § 1512(a)(1)(C) requires the intent to prevent a witness from talking to law enforcement, it "encompasses an unlawful killing with malice aforethought, in other words, murder." Pet. App. 23a. But this brisk analysis conflates the intent to prevent someone from talking to law enforcement, as required by § 1512(a)(1)(C), with the *intent to kill* required for malice aforethought. *See United States v. Hicks*, 389 F.3d 514, 530 (5th Cir. 2004). Critically, nowhere does § 1512 require the killing itself to be intentional: the statute would be satisfied if a person, intending to prevent a witness from providing information to law enforcement, goes to scare or intimidate the witness but accidentally kills them. Or, as Judge Gertner explained in *Houlihan*, it would be satisfied if a defendant learns about a witness's cooperation and kills them in the heat of passion, a voluntary manslaughter without malice aforethought but a witness tampering killing nonetheless. 937 F. Supp. 75; *United States v. Sockey*, 157 F.4th 1282, 1285 (10th Cir. 2025) ("Heat of passion is a mitigating factor which negates malice aforethought such that a defendant who kills in the heat of passion is guilty

---

[2] Because the parties agreed that Tina Crawford's killing was not charged as a murder in the relevant count, neither had reason to further brief or analyze the manslaughter provision of § 1512. By reaching out for an argument neither party made, the Third Circuit not only violated the party presentation principle but wandered into an erroneous interpretation of the statute. *See United States v. Sineneng-Smith*, 590 U.S. 371 (2020).

of voluntary manslaughter, not murder." (internal quotation marks and citations omitted)).

6. For all these reasons, the Third Circuit erred when it held that killing a federal witness in violation of § 1512(a)(1)(C) necessarily involves malice aforethought, and, therefore, murder.

7. Moreover, even if killing a federal witness under § 1512(a)(1)(C) necessarily involves malice aforethought, that only makes Mr. Montgomery's conviction a *second-degree* murder that still did not authorize the mandatory life sentence he received. First-degree murder requires malice aforethought plus an additional, aggravating element such as premeditation, poison, or lying in wait. *See* 18 U.S.C. § 1111. The Third Circuit did not find killing a federal witness necessarily involves those additional elements. Nor could it have, because someone can intentionally kill a witness with the intent to prevent them from providing information to law enforcement without the use of poison, lying in wait, or "an appreciable elapse of time between the formation of a design and the fatal act," *i.e.,* premeditation. *United States v. Bell*, 819 F.3d 310, 319 (7th Cir. 2016).

8. Thus, even under the Third Circuit's reading of § 1512, Mr. Montgomery was still charged with and convicted of one offense (witness tampering murder in the second degree) but then sentenced for another (witness tampering murder in the first degree). And that is a problem of constitutional dimension when one considers the statutory penalties for the two offenses. Witness tampering murder in the second degree is punishable for any term of years up to life, but has no mandatory minimum.

See 18 U.S.C. §§ 1111(b) and 1512(a)(3)(A). Witness tampering murder in the first degree mandates life imprisonment. *See id*.

9. The Third Circuit's opinion overlooks this critical difference. It states that life imprisonment is a "legal sentence for either first- or second-degree murder" and Mr. Montgomery was on notice that "he faced a *potential* life sentence" because both first and second-degree murder "carry potential life sentences." Pet. App. 23a n.13, 24a n.14 (emphasis added). But these comments ignore the stark difference between potential and mandatory life imprisonment. Under this Court's decision in *Alleyne*, any fact that increases the mandatory minimum sentence must be charged by the grand jury and found by a petit jury beyond a reasonable doubt, a constitutional requirement that ensures, among other things, that defendants are able to "predict the legally applicable penalty from the face of the indictment." 570 U.S. at 113–114. The Fifth and Sixth Amendments therefore entitled Mr. Montgomery to notice through the indictment that he was facing not only a *potential* life sentence, but a *mandatory* one—a fact the Third Circuit entirely overlooked.

10. Accordingly, even if the Third Circuit's atextual interpretation of § 1512 is correct, it erred in affirming Mr. Montgomery's mandatory life sentence. At best, Mr. Montgomery was charged with and convicted of second-degree murder based on the malice aforethought inherent in his § 1512 charge. But that still did not authorize the District Court to sentence him to *mandatory* life imprisonment, the uniquely severe sentence reserved for first-degree murders committed with premeditation or another aggravating factor beyond malice aforethought.

B. The Questions Presented Are Critically Important.

This Court should also grant review because the questions presented are critically important.

1. Because the federal murder, manslaughter, and assault statutes are limited to crimes committed within "the special maritime and territorial jurisdiction of the United States," *see* 18 U.S.C. §§ 113(a), 1111(b) and 1112(b), Section 1512 is the primary means by which Congress sought to protect federal witnesses by criminalizing conduct that does them harm. And by criminalizing not only murders committed with malice aforethought, but also manslaughters, Congress sought to prohibit—and empower the government to prosecute—a wide variety of scenarios in which a federal witness is unlawfully killed.

2. By reading manslaughter out of the statute, the Court of Appeals frustrated Congress's protective purpose and narrowed the statutory protection afforded federal witnesses throughout the Third Circuit, a part of the country that includes over 20 million people. If the decision below is left to stand, witness tampering killings under § 1512(a)(1) will be harder to prosecute in the Third Circuit because the lack of malice aforethought will go from a lesser included offense to a complete defense. *Contra Houlihan*, 937 F. Supp. 75 (instructing jury on voluntary manslaughter as a lesser-included version of witness retaliation killing under 18 U.S.C. § 1513). And certain scenarios, including situations in which federal witnesses are killed accidentally or in the heat of passion, will be out of reach of federal prosecutors entirely.

3. The second question presented is equally important. The criminal justice system cannot function unless defendants receive timely and accurate information about the crimes with which they are charged and the statutory penalties to which they are exposed. Indeed, every federal defendant is advised of these critical facts at their arraignment, their first appearance in court after indictment. *See* Fed. R. Crim. P. 10. Defendants and their counsel then rely on this information to make the life-altering decisions the criminal process requires, including how to litigate the case, whether to cooperate with the government, and whether to plead guilty or proceed to trial.

4. In this case, for example, Mr. Montgomery was entitled to rely on the fact that he was not facing a mandatory sentence of life imprisonment on any count because he was charged, at most, with second-degree murder on Count 7 and was charged with a § 924(j) offense in Count 8 that did not carry any mandatory minimum. *See Lora v. United States*, 599 U.S. 453 (2023). Had Mr. Montgomery received notice through the indictment that he was facing mandatory life if convicted at trial, he might have pled guilty or litigated the case differently.

5. The Third Circuit's decision in this case threatens to upend these bedrock principles. By affirming Mr. Montgomery's sentence notwithstanding this glaring notice problem, the Third Circuit endorsed the unconstitutional bait-and-switch that took place at his sentencing hearing. Unless this Court intervenes, defendants throughout the Third Circuit will no longer be able to "predict the legally applicable penalty from the face of the indictment" and will have to make critical

decisions in their cases without knowing what statutory penalties will ultimately apply at sentencing, an untenable situation this Court should remedy.

C. This Case is the Right Vehicle to Decide the Questions Presented.

This case is also the right vehicle to address the questions presented.

1. The issues raised are purely legal, and the Third Circuit decided them cleanly in a precedential opinion that did not rely on any disputed issues of fact.

2. This may also be this Court's last opportunity in a long time to correct the Third Circuit's clear and consequential misreading of § 1512 given the specificity of the statutory issue and the fact that the government usually charges the elements of murder when it charges someone with killing a federal witness under § 1512(a)(1). *See supra at* 5.

3. Finally, because of the difficulty of prevailing in postconviction review, this may be Mr. Montgomery's last best chance to obtain relief from his unlawful life sentence. Given the seriousness of the offenses in this case, the number of convictions, and the statutory maximums on the various counts, the District Court may well sentence Mr. Montgomery to life imprisonment once again if the case is sent back for resentencing. But because Mr. Montgomery was not charged with or convicted of a crime that carries a mandatory life sentence, it will be within the Court's discretion to sentence him to life imprisonment or find that a lengthy term of years is a sentence sufficient but not greater than necessary to meet the goals of sentencing. The District Court failed to grapple with that weighty decision at Mr. Montgomery's first sentencing hearing because it wrongly believed its hands were

tied. This Court should remand the case for resentencing so the District Court can sentence Mr. Montgomery properly apprised of its statutory options.

D. Certiorari Should Be Granted to Decide Whether Title III Permits a State's Chief Prosecutor to Delegate Authority to Apply for Wiretaps (Issue Raised in James Perrin's Petition for a Writ of Certiorari).

The third and final question presented is raised in the petition for a writ of certiorari filed by Petitioner James Perrin, Mr. Montgomery's co-defendant and co-appellant (Supreme Court Docket Number pending; No. 25A935 assigned to Mr. Perrin's request for an extension of time to file petition for a writ of certiorari). This Court should grant review of that question for all the reasons stated in Mr. Perrin's petition. Because Mr. Perrin's petition for certiorari comprehensively addresses the relevant legal issues, nothing further needs to be added.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

K. ANTHONY THOMAS
FEDERAL PUBLIC DEFENDER

s/Evan J. Austin
EVAN J. AUSTIN
Counsel of Record
ALISON BRILL
OFFICE OF THE FEDERAL PUBLIC DEFENDER
1002 Broad Street
Newark, New Jersey 07102
(973) 282-8658
Evan_Austin@fd.org