Nos. 25-7146 and 25-7165

IN THE SUPREME COURT OF THE UNITED STATES

JAMES PERRIN, PETITIONER

v.

UNITED STATES OF AMERICA

PRICE MONTGOMERY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly denied plain-error relief on petitioners' claim that a wiretap application, made by the First Deputy Attorney General of Pennsylvania while the Attorney General was out of the country, did not substantially comply with 18 U.S.C. 2516(2).

2. Whether the court of appeals correctly determined that the district court committed no reversible error in sentencing petitioner Price Montgomery to a mandatory life term of imprisonment for killing a witness with intent to prevent communication of information to law enforcement, in violation of 18 U.S.C. 1512(a)(1)(C).

PARTIES TO THE PROCEEDINGS

Petitioner in No. 25-7146 (defendant-appellant below) is James Perrin. Petitioner in No. 25-7165 (defendant-appellant below) is Price Montgomery. Respondent (plaintiff-appellee below) is the United States of America.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A33[1]) is reported at 149 F.4th 267. The opinion of the district court (Pet. App. B1-B33) is reported at 290 F. Supp. 3d 396.

JURISDICTION

The judgment of the court of appeals was entered on August 25, 2025. Petitions for rehearing were denied on December 2, 2025 (Pet. App. C1-C2; 25-7165 Pet. App. 1a-2a). On February 22 and

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[1] All references to "Pet. App." are to the appendix to the petition for a writ of certiorari in No. 25-7146 unless otherwise noted.

23, 2026, Justice Alito extended the time within which to file petitions for writs of certiorari to and including April 1, 2026, and the petitions were filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Pennsylvania, petitioner James Perrin was convicted on one count of conspiring to distribute and possess with intent to distribute heroin, in violation of 21 U.S.C. 846; one count of possessing heroin with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A)(i); one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(e); and one count of possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i). 25-7146 Judgment 1-2. Petitioner Price Montgomery was convicted on one count of conspiring to distribute and possess with intent to distribute heroin, in violation of 21 U.S.C. 846; one count of possessing heroin with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A)(i); one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1); one count of possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i); one count of killing a witness with intent to prevent communication of information to law enforcement,

in violation of 18 U.S.C. 1512(a)(1)(C); one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(h); one count of using and discharging a firearm in relation to a crime of violence resulting in death, in violation of 18 U.S.C. 924(c)(1)(A)(i), (c)(1)(C)(i) (2012), and (j)(1); one count of attempting to kill a witness with intent to prevent communication of information to law enforcement, in violation of 18 U.S.C. 1512(a)(1)(C); and one count of using and discharging a firearm in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii) and (c)(1)(C)(i) (2012). 25-7165 Judgment 1-2. The district court sentenced Perrin to 380 months of imprisonment, to be followed by ten years of supervised release. 25-7146 Judgment 3-4. The court sentenced Montgomery to life imprisonment, to be followed by ten years of supervised release. 25-7165 Judgment 3-4. The court of appeals affirmed Perrin's convictions and sentence, and it affirmed Montgomery's convictions and sentence except that it vacated the 300-month sentence on his Section 924(j)(1) count and remanded for resentencing on that count. Pet. App. A1-A33.

1. a. In 2013, an informant disclosed heroin trafficking activities by Montgomery to the Pennsylvania Attorney General's Office, which opened an investigation. Pet. App. A3. In early 2014, the Attorney General expressed support for pursuing a wiretap in the investigation. Ibid. Agents prepared an application to

tap Montgomery's cellphone for the Attorney General's signature on April 14, 2014, but the Attorney General was traveling outside the country that day. Ibid. Before departing, the Attorney General directed her assistant to prepare a letter designating the First Deputy Attorney General as acting Attorney General in her absence. Ibid. The Attorney General reviewed the letter but did not sign it, instead instructing the assistant to call and get her permission before signing her name. Ibid. The Attorney General also spoke with the First Deputy Attorney General and verbally authorized him to sign the wiretap application in her absence. Ibid.

On the morning of April 14, the First Deputy Attorney General informed the Attorney General's assistant that the designation letter needed to be signed before the application could be submitted. Pet. App. A3. After making numerous attempts to reach the Attorney General, who was then on a flight to Haiti, the assistant signed the Attorney General's name at the First Deputy's direction. Id. at A3, B5. Shortly thereafter, upon learning of the letter's signing, the Attorney General expressed displeasure but made no attempt to rescind the letter or withdraw the application. Id. at A3. A Pennsylvania state judge approved the application on April 16. Ibid.

Over the summer, the Attorney General approved a continuation of the wiretap of Montgomery's phone and submitted additional applications to wiretap Perrin's phone and a second phone of Mont-

gomery's. Pet. App. A3-A4. A Pennsylvania state judge approved those applications. Id. at A4.

b. The investigation uncovered a drug trafficking conspiracy involving Montgomery, Perrin, and others. Pet. App. A4. Their operation sourced hundreds of thousands of dollars' worth of heroin from New Jersey and sold it in Pittsburgh. Id. at A2, A4. A courier, Tina Crawford, drove the heroin to Pittsburgh. Id. at A4.

As part of the investigation, agents searched Crawford's home. Pet. App. A5. During the search, Crawford admitted her role in the drug-trafficking operation. Ibid. Crawford later told Montgomery that she shared no information with the agents. Ibid. But she also confided to a mutual friend that she told the agents she transported bags for Montgomery but did not know what they contained, and that she had to meet with an attorney. Ibid. And the friend, in turn, relayed those conversations to Montgomery. Ibid.

After the search of her home, Crawford moved in with her mother. Pet. App. A5. About two months after the search, Crawford exchanged text messages with her friend. Ibid. About 35 minutes after that, Crawford left the house with her mother, who had agreed to drive her to a meeting with federal prosecutors. Ibid. The women were ambushed in their driveway by two or three masked assailants, who opened fire and then fled. Ibid. Crawford was shot

eight times and died on the garage floor; her mother was shot multiple times. Ibid.

Law enforcement recovered a cellphone near the scene. Pet. App. A5. Investigators tied the phone to Montgomery by comparing its contact lists, call logs, and frequently used cell towers to another one of his cell phones. Ibid. They also identified Montgomery as a possible match for DNA found on the phone. Ibid. And they linked shell casings at the scene to a rare handgun that Perrin had purchased. Ibid.

At the time of the shooting, Montgomery was free on bond awaiting state charges. Pet. App. A6. Immediately after the killing, he violated his bond terms and fled to Ohio, where he was later found living under a false name. Ibid.

2. A federal grand jury in the Western District of Pennsylvania indicted Perrin on one count of conspiring to distribute and possess with intent to distribute heroin, in violation of 21 U.S.C. 846; one count of possessing heroin with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A)(i); one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(e); and one count of possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i). Second Superseding Indictment 1-4, 7-8. The grand jury indicted Montgomery on one count of conspiring to distribute and possess with intent to dis-

tribute heroin, in violation of 21 U.S.C. 846; one count of possessing heroin with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A)(i); one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1); one count of possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i); one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(h); one count of killing a witness with intent to prevent communication of information to law enforcement, in violation of 18 U.S.C. 1512(a)(1)(C); one count of using and discharging a firearm in relation to a crime of violence resulting in death, in violation of 18 U.S.C. 924(c)(1)(A), (c)(1)(C)(i) (2012), and (j)(1); one count of attempting to kill a witness with intent to prevent communication of information to law enforcement, in violation of 18 U.S.C. 1512(a)(1)(C); and one count of using and discharging a firearm in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii) and (c)(1)(C)(i) (2012). Second Superseding Indictment 1-2, 5-14.

Petitioners moved to suppress the evidence derived from the April 14 wiretap, contending that the wiretap violated Pennsylvania law because the Attorney General had not designated the First Deputy Attorney General in writing to act during her absence. Pet. App. B1, B7-B8. They did not contend that the wiretap independently violated federal law. Id. at B16. The district court

denied the motions, finding that the wiretap complied with state law. Id. at B8-B16, B33. A jury found petitioners guilty on all counts. Id. at A7.

Before sentencing, the Probation Office and the government informed the court that Montgomery faced a mandatory life sentence for killing Crawford with intent to prevent communication of information to law enforcement under the punishment provision in 18 U.S.C. 1512(a)(3)(A). See D. Ct. Doc. 740, at 2-3 (Nov. 1, 2019). That provision authorizes "the punishment provided in sections 1111 and 1112." 18 U.S.C. 1512(a)(3)(A). Section 1111, in turn, provides that a defendant found guilty of first-degree murder shall be punished by life imprisonment or death, and a defendant found guilty of second-degree murder shall be punished by a term of years or life imprisonment. 18 U.S.C. 1111(b). Montgomery objected that Section 1512 does not require a life sentence and that he was not charged with or convicted of murder. D. Ct. Doc. 886, at 2 (June 1, 2022). The district court overruled the objection to the applicability of a mandatory life term. Sent. Tr. 65-66.

The district court sentenced Perrin to 380 months of imprisonment, to be followed by ten years of supervised release. 25-7146 Judgment 3-4. The court sentenced Montgomery to life imprisonment on the witness-killing count and term-of-years sentences on the other counts, to be followed by ten years of supervised release. 25-7165 Judgment 3-4.

3. The court of appeals affirmed the convictions, and rejected certain sentencing claims, but vacated as to one aspect of Montgomery's sentence. Pet. App. A1-A33.

a. "[F]or the first time on appeal," petitioners contended that the April 14, 2014, wiretap did not "substantially comply" with Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510 et seq., because the wiretap application was not personally signed by "[t]he principal prosecuting attorney of [the] State," 18 U.S.C. 2516(2). Pet. App. A10-A11. Because petitioners failed to raise that claim in the district court, the court of appeals reviewed it for plain error. Id. at A11. To prevail under that standard, petitioners had to show "error" that is "plain"; that "affects substantial rights"; and that "seriously affects the fairness, integrity, or public reputation of judicial proceedings." Ibid. (quoting Johnson v. United States, 520 U.S. 461, 466-467 (1997)) (brackets omitted).

The court of appeals found no plain error, and "agree[d] with the District Court that suppression is not warranted" because "Title III's authorization requirements have been substantially complied with and the Act's statutory purpose has been satisfied." Pet. App. A9; see id. at A8-A16. The court observed that contrary to petitioners' new claim that Section 2516(2) "prohibits a state's principal prosecuting attorney from delegating their authority to approve and submit wiretap applications," the federal statute

"recognizes that whether such a delegation is permitted is dictated by state law, not by Title III." Id. at A11. The court explained that petitioners' reading would contravene the federal statute's "plain language," "be diametrically opposed to Congress's clear direction," and "unreasonabl[y]" require "all state wiretap applications to remain on hold" during an Attorney General's temporary absence or disability. Id. at A11-A12.

The court of appeals also rejected petitioners' assertion that the Attorney General "must remain actively involved and be personally familiar with the application," determining at minimum that "any error" on that ground "was not plain," and further observing that petitioners' contention would "run the risk of intruding into an area which Congress has deemed best left for state law" and lacked support in "Title III's plain language." Pet. App. A13-A14. And the court affirmed the district court's determination that wiretap application complied the "Pennsylvania law." Id. at A16.

b. The court of appeals separately rejected Montgomery's challenge to his life sentence on the witness-killing count, in which he claimed that he was charged and convicted only of manslaughter with respect to this count but sentenced for murder, in violation of Alleyne v. United States, 570 U.S. 99 (2013). See Pet. App. A20. The court explained that "a harmless trial error analysis is appropriate," and found that any error was harmless

because "a rational jury would have found Montgomery guilty of Tina Crawford's murder because the elements of first-degree murder were submitted to the jury under a different count." Id. at A21-A22; see id. at A20-A25.

The court of appeals observed that Montgomery was charged with killing Crawford with intent to prevent the communication of information to law enforcement, in violation of 18 U.S.C. 1512(a)(1)(C). Pet. App. A21. The court explained that the charged Section 1512 offense "encompasses an unlawful killing with malice aforethought, in other words, murder." Ibid. The court then observed that the Section 924(j)(1) charge, which alleged that Montgomery used and discharged a firearm in relation to the witness-killing crime resulting in Crawford's death, described the killing as "murder as defined in 18 U.S.C. § 1111." Id. at A22 (quoting Second Superseding Indictment 12). The court further observed that "the elements of first-degree murder were submitted to the jury under [the Section 924(j)(1)] count." Ibid. And the court observed that "[t]he jury found Montgomery guilty of [that count], thereby establishing that it found the killing of Tina Crawford constituted first-degree murder * * * beyond a reasonable doubt." Id. at A23.

c. While otherwise affirming petitioners' convictions and sentences, the court of appeals vacated the sentence on Montgomery's Section 924(j)(1) count and remanded for resentencing on

that count in light of this Court's intervening decision in Lora v. United States, 599 U.S. 453 (2023), which held that Section 924(j) does not require a minimum consecutive term of imprisonment. See Pet. App. A32-A33.

ARGUMENT

Petitioners contend (25-7146 Pet. 6-13; 25-7165 Pet. 20) that the initial wiretap application for Montgomery's phone violated 18 U.S.C. 2516(2) because it was not personally made by the Pennsylvania Attorney General. Montgomery further contends (25-7165 Pet. 10-20) that the district court reversibly erred in sentencing him to life imprisonment for killing Crawford with intent to prevent communication of information to law enforcement. The court of appeals correctly rejected those contentions, and its decision does not conflict with any decision of another court of appeals or a state court of last resort. Moreover, this case would be a poor vehicle given the application of plain-error review to the first question presented and harmless-error review to the second. Further review is unwarranted.

1. The April 14, 2014, wiretap application complied with Section 2516(2). That provision authorizes the filing of a wiretap application by "[t]he 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 jurisdic-

tion for an order authorizing or approving the interception of wire, oral, or electronic communications." 18 U.S.C. 2516(2). In this case, the wiretap application was filed by Pennsylvania's First Deputy Attorney General while the Attorney General was out of the country. See Pet. App. A3. And as the district court explained, Pennsylvania law vested the First Deputy Attorney General to exercise authority in her absence. Id. at B9-B16. Accordingly, because the First Deputy Attorney General was acting as the "principal prosecuting attorney" and was "authorized by a statute of th[e] State" to file a wiretap application, 18 U.S.C. 2516(2), that application was lawful.

Petitioners no longer contend that the wiretap application violated Pennsylvania law, and instead challenge only the premise that "state law" permits delegation of a state Attorney General's duties, 25-7146 Pet. 12. As the court of appeals explained, however, "[t]he 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 when implementing Title III's statutory mandates," making petitioners' claim "diametrically opposed to Congress's clear direction." Pet. App. A11. And as the court of appeals also correctly observed, petitioners' argument would both divest States of the ability to initiate wiretaps during any absence of a specific official, and raise substantial federalism concerns. See id. at A12, A14.

Moreover, the court of appeals found that, at a minimum, the wiretap application "substantially complied" with Title III's requirements and "statutory purpose," which is all that is required to affirm the denial of petitioners' suppression motions. Pet. App. A9. As petitioners acknowledge, under this Court's precedents construing Title III, "not every failure to comply fully with any requirement provided in Title III will render the interception of wire or oral communications unlawful." 25-7146 Pet. 4 (quoting United States v. Chavez, 416 U.S. 562, 574-575 (1974)) (internal quotation marks omitted); see 25-7165 Pet. 11 (incorporating Perrin's discussion of the issue). Suppression is warranted only for violations of "those statutory requirements that directly and substantially implement" Congress's purposes. Pet. App. A10 (quoting United States v. Giordano, 416 U.S. 505, 527 (1974)).

The court of appeals correctly rejected petitioners' contention that the Attorney General's "alleged failure to personally review the Montgomery wiretap application signed by [the] First Deputy" meant that the application did not "substantially comply with the [statutory] purpose" of "'centralizing responsibility in top level state and county prosecutors who can be held accountable.'" Pet. App. A10-A11 (quoting United States v. Smith, 726 F.2d 852, 856 (1st Cir.) (en banc), cert. denied, 469 U.S. 841 (1984)). And contrary to petitioners' suggestion (25-7146 Pet. 12), the decision below did not indicate that "any assistant dis-

trict attorney in any county may be given blanket authority to apply for wiretaps," an issue neither presented nor resolved in this case involving a particular application signed by a duly authorized First Deputy Attorney General temporarily serving as acting Attorney General.

Petitioners do not identify any court of appeals or state court of last resort that would have reached a different result on the facts of this case. While petitioners assert (25-7146 Pet. 7-10) that the lower courts are divided over the application of 18 U.S.C. 2516(2), most of the decisions that they cite involve a scenario not presented here: wiretap applications by designated subordinates while the principal prosecuting attorney continues to carry out the other functions of the office.[2] The only two decisions that they identify (25-7146 Pet. 10) involving wiretap applications by officials serving in an acting capacity in the absence of the jurisdiction's usual principal prosecuting attorney found, in accord with the decision below, that Section 2516(2) permits such applications. See United States v. Perez-Valencia, 727 F.3d 852, 855 (9th Cir. 2013), cert. denied, 574 U.S. 853

[2] See Villa v. Maricopa County, 865 F.3d 1224, 1227-1228 (9th Cir. 2017), cert. denied, 584 U.S. 961 (2018); Smith, 726 F.2d at 856-859; United States v. Tortorello, 480 F.2d 764, 776-778 (2d Cir.), cert. denied, 414 U.S. 866 (1973); State v. Harris, 509 P.3d 83, 88 (Or.), cert. denied, 143 S. Ct. 485 (2022); O'Hara v. People, 271 P.3d 503, 509-510 (Colo. 2012) (en banc); State v. Bruce, 287 P.3d 919, 921-925 (Kan. 2012); State v. Marine, 464 A.2d 872, 876-878 (Del. 1983); State v. Frink, 206 N.W.2d 664, 669, 673-674 (Minn. 1973) (en banc).

(2014); United States v. Fury, 554 F.2d 522, 527 n.4 (2nd Cir.), cert. denied, 433 U.S. 910 (1977), and 436 U.S. 931 (1978).[3]

At all events, the plain-error posture makes this case unsuitable for further review. At a minimum, petitioners cannot demonstrate that any error was "clear or obvious, rather than subject to reasonable dispute." Puckett v. United States, 556 U.S. 129, 135 (2009); see Pet. App. A13 (finding no plain error "[g]iven the absence of precedent in this Circuit"). Accordingly, even assuming that the Title III issue might otherwise warrant this Court's review, the Court should await a case in which the defendant adequately raised the issue below and cleanly presented it for de novo consideration.

2. The court of appeals also correctly determined that any error in the imposition of Montgomery's mandatory life sentence under 18 U.S.C. 1512(a)(3)(A) was harmless. Pet. App. A20-A25. In Alleyne v. United States, 570 U.S. 99 (2013), this Court held that facts (other than a prior conviction) that increase the minimum sentence to which a defendant is legally exposed must be alleged in the indictment and proved to a jury. Id. at 103. Under Alleyne, Montgomery's indictment should have alleged, and the jury instructions should have defined, the elements of first-degree

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[3] People v. Gonzalez, 499 P.3d 282 (Cal. 2021), cert. denied, 142 S. Ct. 2719 (2022), is inapposite because that decision rested on state law, not Section 2516(2), and in any event rejected the defendant's claim that the wiretap was unlawful. Id. at 298-304.

murder for purposes of triggering the mandatory life sentence authorized by 18 U.S.C. 1111(b) for killing with intent to prevent communication of information to law enforcement, in violation of 18 U.S.C. 1512(a)(1)(C). See p. 8, supra. But errors of that sort are not subject to automatic relief. See Neder v. United States, 527 U.S. 1, 8-15 (1999) (applying harmless-error analysis to failure to submit offense element to jury); Washington v. Recuenco, 548 U.S. 212, 221-222 (2006) (applying harmless-error analysis to failure to submit sentence-enhancing fact to jury). And, as the court of appeals found, relief is unwarranted here.

Under Rule 52(a) of the Federal Rules of Criminal Procedure, "[a]ny error, defect, irregularity, or variance that does not affect substantial rights must be disregarded." Fed. R. Crim. P. 52(a); see 28 U.S.C. 2111. The court of appeals accordingly conducted a harmless-error analysis and correctly found that any error was harmless. Pet. App. A21-A25. As the court explained (id. at A22), the indictment specifically alleged in connection with the Section 924(j)(1) count that Crawford's "killing was a murder as defined by 18 U.S.C. § 1111, in that defendant PRICE MONTGOMERY, with malice aforethought, did unlawfully kill Tina Crawford." Second Superseding Indictment 12. And the jury was instructed that to find guilt on the Section 924(j)(1) count -- which it did -- it needed to find that "killing a person as charged" in the witness-killing count "was a murder, that is, a willful, deliberate, ma-

licious, premeditated killing." Pet. App. A23 (citation omitted). Accordingly, omissions in the indictment and jury instructions were harmless: "[A] rational jury would have found Montgomery guilty of Tina Crawford's murder" on the witness-killing count "because the elements of first-degree murder were submitted to the jury under a different count," and "this jury found the necessary elements of first-degree murder beyond a reasonable doubt." Id. at A22-A23.

Montgomery does not meaningfully argue otherwise. Instead, he merely renews (25-7165 Pet. 11-16) his contention on the merits that an Alleyne error occurred. Montgomery acknowledges that the Section 924(j)(1) count in the indictment "charged the killing as a murder as defined in 18 U.S.C. § 1111." Id. at 6. And in the proceedings below, he "d[id] not refute that the elements of first-degree murder were before and found by the jury" via the Section 924(j)(1) offense. Pet. App. A24. He thus presents no reason to disturb the court of appeals' harmless-error finding. Nor does he identify any other court that would have granted him relief on this record. Indeed, he acknowledges that there is "limited caselaw" of relevance, 25-7165 Pet. 13, and suggests that analogous cases may not arise for "a long time" because the underlying error is uncommon, id. at 19, thereby reinforcing that further review is unwarranted. See, e.g., Sup. Ct. R. 10.

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

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