No.

IN THE SUPREME COURT OF THE UNITED STATES

TYLER JAY MULLINS,
PETITIONER,
V.

UNITED STATES OF AMERICA,
RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

Katayoun A. Donnelly
Azizpour Donnelly LLC
2373 Central Park Blvd.,
Suite 100
Denver, Colorado 80238
(720) 675-8584
katy@kdonnellylaw.com

Member of the Tenth Circuit's CJA Appellate Panel
Counsel for Petitioner

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QUESTIONS PRESENTED

1. Whether the protection for statements "made during plea discussions with an attorney for the prosecuting authority" under Federal Rule of Evidence 410(a)(4) excludes statements made to law enforcement acting under the prosecuting authority's express or implied authorization.

2. Whether the Jury Selection and Service Act's procedural time bar applies where a district court summarily denies a motion to stay proceedings under 28 U.S.C. § 1867, without requesting a sworn statement or affording counsel an opportunity to attest to the truth of the motion's factual assertions.

PARTIES TO THE PROCEEDINGS

Petitioner is the defendant, Tyler Jay Mullins. Respondent is the United States of America.

RELATED PROCEEDINGS

United States District Court (E.D. Okla.):

United States v. Mullins, No. CR-21-60-CBG (Sept. 28, 2023).

United States Court of Appeals (10th Cir.):

United States v. Mullins, No. 24-7003 (Jan. 16, 2026).

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Mr. Mullins respectfully petitions for a writ of certiorari to review the judgment of the Tenth Circuit Court of Appeals in this case.

OPINIONS BELOW

The opinion of the Tenth Circuit Court of Appeals is in Appendix A (*United States v. Mullins,* 164 F.4th 1179 (10th Cir. 2026). The opinions of the trial court are in Appendix B (*United States v. Mullins*, No. CR-21-60, 2022 U.S. Dist. LEXIS 112844, 2022 WL 2306819, at *1 (E.D. Okla. June 27, 2022) (denial of the motion to suppress)), Appendix C (transcript of the district court's denial of the oral Jury Act motion), and Appendix D (*United States v. Mullins*, 2023 U.S. Dist. LEXIS 173930, 2023 WL 6323079 (E.D. Okla., Sept. 28, 2023) (denial of the renewed written Jury Act motion)).

JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The Tenth Circuit Court of Appeals entered its judgment on January 16, 2026. This Court's April 6, 2026 order extended the deadline to file the petition for writ of certiorari to May 18, 2026.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

Federal Rule of Evidence 410(a)(4) prevents the government from using against a defendant any "statement made during plea discussions with an attorney for the prosecuting authority if the discussions . . . resulted in a later-withdrawn guilty plea."

The Jury Selection and Service Act, 28 U.S.C. §§ 1861-78, gives federal defendants entitled to a jury trial "the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes." 28 U.S.C. § 1861.

STATEMENT OF THE CASE

This case provides the Court with an opportunity to resolve two independent questions of federal law on which the circuits are in acknowledged conflict.

The first split between circuits concerns the scope of the protection our criminal justice system affords defendants participating in plea negotiations. The second split addresses the Jury Act's guarantee of access to juries selected at random from a fair cross section of the community.

A. Background

In 2002, Mr. Mullins pleaded guilty in Oklahoma state court to murdering his ex-girlfriend. *Mullins*, 164 F.4th at 1183. Following the Court's decision in *McGirt v. Oklahoma*, 591 U.S. 894 (2020), the state court vacated Mr. Mullins' conviction for lack of jurisdiction. *Id.* In 2021, a federal grand jury charged him and a jury convicted him. *Id.*

B. Motion to Suppress under Federal Rule of Evidence 410(a)(4)

I. District court proceedings

Before trial, Mr. Mullins moved to suppress his statements directing law-enforcement officers to the victim's body. *Id.* at 1184. He argued that because he made those statements during plea negotiations, they were inadmissible under Rule 410. *Id.* The district court held a hearing, during which the former county Assistant

District Attorney, Mr. Mullins, and his former counsel appeared as witnesses. *Id.*

When the victim, Mr. Mullins' former girlfriend, disappeared, Mr. Mullins' uncle retained counsel to represent Mr. Mullins. *Id.* Mr. Mullins' counsel met with the DA on that same day. Mr. Mullins' counsel testified that the DA told him that he would not seek the death penalty if Mr. Mullins revealed the location of the victim's body. *Id.* at 1185. Mr. Mullins' counsel also testified that after his conversation with the DA he told the police that Mr. Mullins would take them to the body. *Id.* Officers from various agencies formed a "caravan" of cars and drove to the body's location. *Id.* Mr. Mullins, his counsel, and some law-enforcement officers rode together in a bus, while the DA drove in his own car at the end of the caravan. *Id.* Based on Mullins' directions, law-enforcement officers found the body. *Id.*

After hearing the witnesses' testimony, the district court expressly stated that it assumed the version of events recounted by Mr. Mullins' counsel was true. *Id.* But it denied the motion to suppress, holding that Rule 410(a)(4) did not apply because Mr. Mullins directed law-enforcement officers—not the prosecutor, who was at the end of the same "caravan"—to the body. *Id.*

II. Appellate court proceedings

The Tenth Circuit affirmed, joining the First Circuit's narrow interpretation of Rule 410 and disapproving of the broader approach adopted by the Eighth and Second Circuits, which includes the statements made to law enforcement with express or implied authorization by the prosecution. *Id.* at 1193.

C. Jury Act motion under 28 U.S.C. § 1867

I. District court proceedings

On the first day of trial, prior to jury selection, Mr. Mullins moved to stay the proceedings and dismiss the indictment for substantial failure to comply with the provisions of the Jury Act and requested a hearing.

> So in accordance with 28, United States Code, 1867, and this is before the voir dire examination begins, we would move to dismiss the indictment or stay proceedings because – on the grounds of a substantial failure to comply with the provisions of this title in selecting the grand or the petite [sic] jury. And we believe that, if given some time and the opportunity to hire a statistician, that we could make a real strong case that that's not possible, that it was a fair cross section of the community based upon this draw.

Vol. III. (Tr. Jun. 27, 2022) 10:10-18 (Appendix C). The district court denied his motion.

> The Court denies the defendant's objection. The group of potential jurors here was selected through an established process for the Eastern District of Oklahoma based on a cross section of persons in that district eligible to serve on juries. The mere fact that the process may have resulted in a higher-than-average number of potential jurors from a certain area does not mean that a particular area was purposely favored or disfavored. Random selection can result in clusters, and that may have been the case here. Therefore, the defendant's objection to the pool of potential jurors is denied.

Id. 14:1-12 (Appendix C).

Mr. Mullins renewed his motion in writing, less than seven days after he discovered the noncompliance. *Mullins*, 164 F.4th at 1189. The written motion included a sworn statement of facts and renewed his request for a hearing. *Id.; see also* ROA, Vol. I, at 609, 612 ("the moving party shall be entitled to present in support of such motion the testimony of the jury commission or clerk, if available,

any relevant records and papers not public or otherwise available used by the jury commissioner or clerk, and any other relevant evidence.").

The district court found the written motion untimely but Mr. Mullins' pre-voir dire oral motion was timely. *Mullins*, 2023 U.S. Dist. LEXIS 173930, *4-5 ("Defendant's first Jury Act challenge may have been timely made, as Defendant's counsel raised his objection to the composition of the petit jury panel prior to voir dire and immediately after he received the list of potential jurors. Defendant's renewed Motion to Dismiss, made three days after his conviction, however, is untimely and procedurally barred." (cleaned up)). It denied his motion after reaching the merits of his argument, without a hearing. *Id.* *5-10.

II. Appellate court proceedings

Despite the district court's finding that Mr. Mullins' pre-voir dire oral motion was timely, *Mullins*, 2023 U.S. Dist. LEXIS 173930, *4-5, and even though the Government had not filed a cross petition to appeal this district court's holding, the Tenth Circuit held that the oral motion was procedurally barred.

REASONS FOR GRANTING THE PETITION

This case presents two recurring questions of extraordinary importance to the criminal justice system, on each of which the circuits are split. Only this Court can resolve these issues and bring the certainty required in the criminal justice system — certainty that defendants everywhere, regardless of the circuit in which they are prosecuted, enjoy the same protections when they negotiate with the

government and the same right to be judged by a jury drawn fairly from their community.

A. The protection for statements "made during plea discussions with an attorney for the prosecuting authority" under Federal Rule of Evidence 410(a)(4) includes statements made to law enforcement acting under the prosecuting authority's express or implied authorization.

"The reality is that criminal justice today is for the most part a system of pleas, not a system of trials. Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas." *Lafler v. Cooper*, 566 U.S. 156, 169-170 (2012) (cleaned up). In this reality, it is essential to the integrity of the system that all statements made during plea discussions to those expressly or impliedly authorized by the prosecuting authority equally enjoy Rule 410's protections.

Under Federal Rule of Evidence 410(a)(4): "a statement made during plea discussions with an attorney for the prosecuting authority" is inadmissible against a criminal defendant "if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea." Fed. R. Evid. 410(a)(4). Rule 410's exclusionary rule furthers the purpose of encouraging plea negotiations by shielding plea-seeking defendants from the risk that their statements will later be used against them.

The Tenth Circuit's opinion in this case expressly acknowledges the percolating circuit split on whether Rule 410(a)(4)'s protection applies only to statements made directly to the prosecuting attorney or also extends to statements

made to law-enforcement agents expressly or impliedly authorized by the prosecuting attorney.

> Relying on its plain language, ***some circuits*** *have held that Rule 410(a)(4) applies only to statements made to prosecuting attorneys.* See, e.g., *United States v. Bauzó-Santiago*, 867 F.3d 13, 19-20 (1st Cir. 2017); *United States v. Bernal*, 719 F.2d 1475, 1478 (9th Cir. 1983), abrogated on other grounds by, *Crawford v. Washington*, 541 U.S. 36, 68-69, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). ***Other circuits*** *have read Rule 410(a)(4) more broadly to cover conversations with government agents expressly or impliedly authorized to negotiate a plea. See, e.g., United States v. McCauley*, 715 F.3d 1119, 1125-26 (8th Cir. 2013); *cf. United States v. Serna*, 799 F.2d 842, 848-49 (2d Cir. 1986) (interpreting Rule 11(e)(6)(D)), *abrogated on other grounds* by, *United States v. DiNapoli*, 8 F.3d 909, 914 n.5 (2d Cir. 1993) (en banc).

Mullins, 164 F.4th at 1191 (emphasis added). The Tenth Circuit followed the narrow interpretation adopted by the First Circuit and a panel of the Ninth Circuit, *id.* at 1193, instead of the "totality of the circumstances" test adopted by the Second Circuit, Eighth Circuit, and another panel of the Ninth Circuit. *Serna*, 799 F.2d at 849 (Rule 410(a)(4) "require[s] the *participation* of a Government attorney in the plea discussions, but *not necessarily his physical presence* when a particular statement is made." (emphasis added)); *McCauley*, 715 F.3d at 1125-1126 (looking to the specific facts and totality of the circumstances in deciding whether a statement is made during the course of plea discussions); *United States v. Pantohan*, 602 F.2d 855, 857 (9th Cir. 1979) ("A statement was made in the course of plea discussions if: (1) the suspect exhibited an actual subjective expectation that he was negotiating a plea at the time of the discussion; and (2) the suspect's expectation was reasonable given the totality of the circumstances."); *see also*

United States v. Robertson, 582 F.2d 1356, 1366 (5th Cir. 1978) (adopting a tiered totality of circumstances test).

This case presents a question of enormous legal and practical importance. It is an excellent vehicle to resolve the circuit split on this recurring issue of great importance in our system of plea bargaining.

B. The Jury Selection and Service Act's procedural time bar does not apply where a district court summarily denies a motion to stay proceedings under 28 U.S.C. § 1867, without requesting a sworn statement or affording counsel an opportunity to attest to the truth of the motion's factual assertions.

The Jury Act gives defendants "the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes." 28 U.S.C. § 1861. Accordingly, all federal district courts must implement "a written plan for random selection" of jurors that is "designed to achieve" the Act's objectives. *Id.* § 1863(a).

Pursuant to Section 1867(a):

> In criminal cases, before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

And, pursuant to Section 1867(d):

> Upon motion filed under subsection (a) . . . of this section, containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this title, the moving party shall be entitled to present in support of such motion the testimony of the jury commission or clerk, if available, any relevant records and

> papers not public or otherwise available used by the jury commissioner or clerk, and any other relevant evidence. If the court determines that there has been a *substantial failure* to comply with the provisions of [the Jury Act] in selecting the grand jury, the court *shall stay* the proceedings pending the selection of a grand jury in conformity with this title or dismiss the indictment, whichever is appropriate. If the court determines that there has been a *substantial failure* to comply with the provisions of [the Jury Act] in selecting the petit jury, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title.

28 U.S.C. § 1867(d) (emphasis added). The meaning of the word "shall" is not ambiguous. It is a "word of command," Black's Law Dictionary (5th ed. 1979), that "normally creates an obligation impervious to judicial discretion," *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach,* 523 U.S. 26, 35 (1998). It is a basic canon of statutory construction that use of the word "shall" indicates a mandatory intent. *See, e.g., United States v. Myers*, 106 F.3d 936, 941 (10th Cir. 1997) (citing Norman J. Singer, 1A Sutherland Statutory Construction § 25.04 (5th ed. 1992) and *Association of Civilian Technicians v. Federal Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994) (noting that the word "shall" in a statute "generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive" (emphasis added))).

On appeal, Mr. Mullins argued that the district court's failure to hold a hearing to allow Mr. Mullins "to present in support of such motion the testimony of the jury commission or clerk, if available, any relevant records and papers not public or otherwise available used by the jury commissioner or clerk, and any other relevant evidence," 28 U.S.C. § 1867(d), was a reversible error.

The Tenth Circuit held that Mr. Mullins' oral motion was procedurally barred and, as a result, did not reach the merits of this question. It reasoned that strict compliance with the Jury Act's procedural requirements is essential because the Act's procedural requirements were "designed to give the district court an opportunity to evaluate the alleged noncompliance and to correct such noncompliance before precious judicial resources are invested in a trial." *Mullins*, 164 F.4th at 1189 (cleaned up).

Strict compliance, however, presupposes that compliance is possible. The Tenth Circuit's decision disregards the exceptional nature of the district court's finding that Mr. Mullins' pre-voir dire oral motion was timely, *Mullins*, 2023 U.S. Dist. LEXIS 173930, *4-5. In doing so, the Tenth Circuit also ignores the crucial point that the district court reached the merits of Mr. Mullins' oral motion without asking for a sworn statement—and therefore never afforded him an opportunity to offer one at the time the pre-voir dire motion was made.

Where the district court's own conduct prevents the defendant from satisfying the Act's procedural requirements, the rationale for inflexible compliance disappears entirely.

The Tenth Circuit's approach splits from the Third Circuit's, which established a procedural compliance exception to address this problem. In *United States v. Calabrese*, 942 F.2d 218 (3d Cir. 1991), the Third Circuit held that the requirements of 28 U.S.C. § 1867(a) and (d) are satisfied when the district court has

a sufficient basis to decide the merits without defense counsel's sworn statement. *Calabrese*, 942 F.2d at 222.

> In this case, appellants timely objected, but did not file the sworn statement of facts required by the Act. Rather, they relied primarily on the sworn testimony of the clerk who had granted the allegedly unwarranted exclusions. This testimony was elicited immediately after the defendants objected to the exclusions. Furthermore, it contained undisputed facts, sufficient to provide the district court with a basis for making a decision. We believe that this is sufficient compliance with the statute's procedural requirements. *See United States v. Maldonado,* 849 F.2d 522, 523 (11th Cir. 1988) (suggesting an exception for undisputed facts, sufficient to provide a basis for the district court's decision, but finding it inapplicable to the case then before the court). Therefore, defendants have properly raised the issue.

Id. The Second Circuit's decision in *United States v. Jackman*, 46 F.3d 1240 (2d Cir. 1995) (holding that the Sixth Amendment requires jury panels to be drawn from a fair cross section of the community) further supports this approach.

This principle extends to cases where the court itself forecloses compliance by finding the sworn statement unnecessary or denying the motion before the defendant has been given a meaningful opportunity to satisfy the Act's requirements.

This case provides an effective vehicle to resolve this split and address this critical issue.

CONCLUSION

The arguments on both sides of the questions presented have been fully ventilated. Petitioner respectfully urges the Court to grant this writ of certiorari.

Respectfully submitted,

Katayoun A. Donnelly
Azizpour Donnelly, LLC
2373 Central Park Blvd.,
Suite 100
Denver, Colorado 80238
(720) 675-8584
katy@kdonnellylaw.com

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