

No. 26-_____

IN THE
Supreme Court of the United States

SEAN JARRED DAVIS

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

**On Petition for Writ of Certiorari from the
United States Court of Appeals for the
Fourth Circuit**

PETITION FOR A WRIT OF CERTIORARI

DALLAS F. KRATZER III

Counsel of Record

BENNETT Z. TULEJA

STEPTOE & JOHNSON PLLC

41 S. High Street, Suite 2200

Columbus, OH 43215

614.458.9889

dallas.kratzer@steptoe-johnson.com

bennett.tuleja@steptoe-johnson.com

Counsel for Petitioner Sean Jarred Davis

QUESTION PRESENTED

The Government charged Sean Jarred Davis in a four-count superseding indictment that related to the distribution of heroin and fentanyl. Davis subsequently pleaded guilty to a charge of conspiring to possess with intent to distribute and for distributing those illicit substances. In the resulting plea agreement, Davis preserved his right to appeal a firearm enhancement and a leadership enhancement. And the Government agreed that it would not seek additional enhancements.

Davis's pre-sentence investigation report nevertheless included a livelihood enhancement that Davis and the Government had not discussed before they struck their deal. At Davis's sentencing hearing, the Government said nothing when the district court adopted the livelihood enhancement, even after the district court solicited feedback about Davis's sentence.

Thus, the question presented is whether Due Process requires district courts to assess if the Government has committed an implied breach through the totality of its conduct at sentencing when a criminal defendant alleges Government breach of a plea agreement or whether district courts should confine their assessment to the four corners of a plea agreement.

PARTIES TO PROCEEDINGS

Petitioner is Sean Jarred Davis, petitioner on review, was the appellant below.

The United States of America, respondent on review was the appellee below.

These are the only parties to this proceeding and the proceedings before the U.S. Court of Appeals for the Fourth Circuit.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Fourth Circuit:

- *United States v. Davis*, No. 24-4652 (4th Cir. Mar. 27, 2026) (unpublished)

U.S. District Court for the Northern District of West Virginia:

- *United States v. Davis*, No. 3:22-cr-00003-1 (N.D. W. Va. Dec. 5, 2024)

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
PARTIES TO PROCEEDINGS.....	ii
RELATED PROCEEDINGS.....	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES.....	v
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
GUIDELINES PROVISIONS INVOLVED.....	1
INTRODUCTION.....	1
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION.....	5
I. The circuits are split over the approach used to determine whether the Government breached a plea agreement.	5
A. Four circuits look only to the language of a plea agreement to determine whether the Government breached the agreement.	5
B. Eight circuits review the totality of the circumstances when reviewing whether the Government breached a plea agreement.	7
II. Because plea agreements are so widely used, this case presents an issue of exceptional importance.....	10
III. This case is an excellent vehicle for resolving the circuit split.	11
CONCLUSION.....	12
CERTIFICATE OF SERVICE.....	13

TABLE OF AUTHORITIES

Cases

<i>Lafler v. Cooper</i> , 566 U.S. 156 (2012).....	11
<i>Santobello v. New York</i> , 404 U.S. 257 (1971).....	10
<i>United States v. Barnes</i> , 278 F.3d 644 (6th Cir. 2002).....	10
<i>United States v. Canada</i> , 960 F.2d 263 (1st Cir. 1992)	8
<i>United States v. Casillas</i> , 853 F.3d 215 (5th Cir. 2017).....	6
<i>United States v. Cortés-López</i> , 101 F.4th 120 (1st Cir. 2024).....	2, 8
<i>United States v. Davenport</i> , 775 F.3d 605 (3d Cir. 2015)	6
<i>United States v. Davis</i> , 923 F.3d 228 (1st Cir. 2019)	9
<i>United States v. Edgell</i> , 914 F.3d 281 (4th Cir. 2019).....	1, 6
<i>United States v. Heredia</i> , 768 F.3d 1220 (9th Cir. 2014).....	2, 8, 10
<i>United States v. Honesty</i> , 2026 WL 1729820 (D.C. Cir. June 16, 2026)	8
<i>United States v. Hunter</i> , 835 F.3d 1320 (11th Cir. 2016).....	7, 9
<i>United States v. James</i> , 800 F. App'x 290 (5th Cir. 2020)	2, 6
<i>United States v. Jennings</i> , 127 F.4th 1145 (8th Cir. 2025)	7, 9
<i>United States v. Karagianis</i> , 142 F.4th 980 (7th Cir. 2025)	6
<i>United States v. Ligon</i> , 937 F.3d 714 (6th Cir. 2019).....	7, 9
<i>United States v. Murray</i> , 897 F.3d 298 (D.C. Cir. 2018).....	8, 9
<i>United States v. Myers</i> , 32 F.3d 411 (9th Cir. 1994).....	8
<i>United States v. Ruiz</i> , 125 F.4th 1342 (10th Cir. 2025)	7, 9
<i>United States v. Tate</i> , 845 F.3d 571 (4th Cir. 2017).....	2
<i>United States v. Van Thournout</i> , 100 F.3d 590 (8th Cir. 1996).....	11

<i>United States v. Whitney</i> , 673 F.3d 965 (9th Cir. 2012).....	2, 8
<i>United States v. Wilson</i> , 149 F.4th 448 (4th Cir. 2025)	2, 6
<i>United States v. Wilson</i> , 920 F.3d 155 (2d Cir. 2019)	7, 9
Statutes	
21 U.S.C. § 841(b)(1)(C).....	3, 4
21 U.S.C. § 846	3
28 U.S.C. § 1254(1)	1
Other Authorities	
ABA, <i>Plea Bargain Task Force Report</i> (2023)	11
U.S. Dept. of Justice, Bureau of Justice Statistics, <i>Federal Justice Statistics, 2023</i> (Mar. 2025)	11

PETITION FOR A WRIT OF CERTIORARI

Sean Jarred Davis petitions this Court for a writ of certiorari to review the judgment of the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's unpublished opinion is electronically available at 2026 WL 851969. The district court's final judgment is neither published nor electronically available.

JURISDICTION

The Fourth Circuit issued its decision on March 27, 2026. This Court's jurisdiction is thus timely invoked under 28 U.S.C. § 1254(1).

GUIDELINES PROVISIONS INVOLVED

At the time of Davis's sentencing, section 2D1.1(b)(16) of the U.S. Sentencing Guidelines provided for a livelihood enhancement if the defendant committed his offense as part of a pattern of criminal conduct engaged in as a livelihood. Additionally, section 3B1.1(a) of the U.S. Sentencing Guidelines provided for a leadership enhancement if the defendant was an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive.

INTRODUCTION

The Government must walk a fine line during a sentencing hearing involving a plea agreement. The Government owes a duty of candor to the district court, and at the same time, it must fulfill promises made in the plea agreement with the criminal defendant. *See United States v. Edgell*, 914 F.3d 281, 288 (4th Cir. 2019) ("The government must carefully balance its duty of candor to the sentencing court with the sometimes competing—but

equally solemn—duty to honor its commitments under a plea agreement.” (cleaned up)).

But courts of appeals disagree about how to assess whether the Government failed to fulfill its promises. While few—like the Fourth Circuit here—confine the assessment to the four corners of the plea agreement, the majority also account for the totality of the circumstances and consider the Government’s conduct and soft influence at sentencing hearings.

On one side of the circuit split are the courts that assess a breach of a plea agreement through the lens of contract law. According to those courts, the Government breaches a plea agreement only “when a promise it made to induce the plea goes unfulfilled” and is held “only to those promises” actually made in the plea agreement. *United States v. Tate*, 845 F.3d 571, 575 (4th Cir. 2017). And they “will not look beyond the agreement’s four corners if it is unambiguous.” *See United States v. James*, 800 F. App’x 290, 291 (5th Cir. 2020) (cleaned up) (unpublished); *see also United States v. Wilson*, 149 F.4th 448, 453–454 (4th Cir. 2025) (reading “plea agreement’s plain language in its ordinary sense” (cleaned up)).

On the other side of the circuit split are the courts that broaden the considerations and give weight to the totality of the circumstances. Those courts consider whether the Government’s “overall conduct” is reasonably consistent with making the promised recommendation. *United States v. Cortés-López*, 101 F.4th 120, 128 (1st Cir. 2024) (cleaned up). As a result, the Government may breach a plea agreement by “implicitly arguing for a sentence greater than the terms of the plea agreement specified that the prosecution would recommend.” *United States v. Whitney*, 673 F.3d 965, 971 (9th Cir. 2012). Or it may breach an agreement “if it purports to make the promised recommendation while winking at the district court to impliedly request a different outcome.” *United States v. Heredia*, 768 F.3d 1220, 1231 (9th Cir. 2014) (cleaned up).

This Court should grant Davis’s petition to resolve this circuit split. Only this Court can clarify whether a court’s analysis is confined to a plea agreement as written or whether it must also consider the totality of the circumstances. By accepting this case for review, this Court can confirm that the Government cannot avoid its agreement by sitting idly by as a district court applies enhancements that the Government itself could not seek.

STATEMENT OF THE CASE

Davis’s Plea Agreement. After being charged with four counts relating to the distribution of heroin and fentanyl, Davis pleaded guilty to violations of 21 U.S.C. §§ 841(b)(1)(C) and 846 for conspiring to possess with intent to distribute and for distributing heroin and fentanyl. Pet. App. 18a. In exchange, the Government agreed that it would argue only for two sentencing enhancements at sentencing—a leadership enhancement under section 3B1.1(a) of the Guidelines *and* a firearm enhancement under section 2D1.1(b)(1) of the Guidelines. Pet. App. 20a.

The plea agreement further provided that the parties would “not argue for any additional enhancements or adjustments.” *Id.* Davis also reserved the right to appeal the leadership and firearm enhancements. Pet. App. 21a (“Notwithstanding the appellate waiver ... the parties retain their appellate rights as to the applicability of enhancements under U.S.S.G. § 3B1.1(a) and 2D1.1(b)(1).”).

Although the Government agreed not to seek additional enhancements, Davis’s pre-sentence investigation report included a third sentencing enhancement that was not in his plea agreement—a livelihood enhancement under section 2D1.1(b)(16) of the Guidelines.

Davis’s Sentencing Hearing. During the sentencing hearing, the district court heard arguments from the Government and Davis. The court decided to apply both the

firearm and leadership enhancements, increasing Davis's base offense level by 2 points and 4 points, respectively. Pet. App. 56a. The court also applied the livelihood enhancement that was not contemplated by the plea agreement. *Id.*

After adopting the pre-sentence investigation report's recommendations, the district court opened the floor for any objections from counsel. The Government simply replied, "Not from the United States." Pet. App. 57a. During the hearing, the Government also requested a sentence of 248 months, which exceeded the agreed-upon maximum penalty. Pet. App. 105a; *see also* Pet. App. 18a (limiting to "imprisonment for a period of not more than twenty years"). The Government also influenced Davis's sentence by adding that Davis was receiving a "significant break by not being convicted of a count that has" a higher offense because "his guideline range is 360 to life." Pet. App. 105a. It further explained that it was seeking a higher sentence because "this was a very serious offense." Pet. App. 105a–106a.

Based on the offense level of 38 and Davis's criminal history, the district court calculated a Guidelines range of 360 months to life. Pet. App. 57a. It further concluded that it could sentence Davis to no more than 240 months based on the cap provided by 21 U.S.C. § 841(b)(1)(C). *Id.* Accordingly, the court sentenced Davis to 240 months in prison followed by 3 years of supervised release. Pet. App. 112a.

The Government never explained that it had agreed to seek only the firearm and leadership enhancements and no other enhancements. It instead sat idle while the district court applied the livelihood enhancement.

Davis's Appeal. Davis's appeal to the Fourth Circuit hinged on whether the district court erred in applying the livelihood and leadership enhancements, considering Davis's plea agreement. Among other arguments, Davis

raised the issue of whether the Government breached the plea agreement with the Fourth Circuit.

The Fourth Circuit affirmed. In doing so, the Fourth Circuit assessed whether the plea agreement was breached. In its Opinion, the Fourth Circuit assessed that “plea agreements are grounded in contract law, and as with any contract” Davis was “entitled to receive the benefit of his bargain.” Pet. App. 2a. In determining that there was no breach, the Fourth Circuit only assessed whether the Government actively argued for the district court’s application of the livelihood enhancement. Pet. App. 2a–3a.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. The circuits are split over the approach used to determine whether the Government breached a plea agreement.

At present, the circuits are divided when it comes to assessing the breach of a plea agreement. Four of the courts of appeals—the Third, Fourth, Fifth, and Seventh Circuits—have a restrictive approach that focuses on the language of the plea agreement. But the remaining eight—the First, Second, Sixth, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits—take a different approach. Those courts consider the totality of the circumstances. Since all twelve circuits have spoken on this issue, it is now time for this Court to resolve the split.

A. Four circuits look only to the language of a plea agreement to determine whether the Government breached the agreement.

Here, the Fourth Circuit considered only the plain language of the plea agreement to assess whether the Government breached that agreement. And the Third, Fifth, and Seventh Circuits take the same approach.

The Fourth Circuit employs “traditional principles of contract law” when enforcing a plea agreement. *United States v. Wilson*, 149 F.4th 448, 453 (4th Cir. 2025) (cleaned up). Because “a central tenet of contract law is that no party is obligated to provide more than is specified in the agreement itself,” it will hold the Government “only to those promises that it actually made to the defendant.” *Id.* at 454 (cleaned up).

Similarly, the Third Circuit focuses on “the plain meaning of the plea agreement.” *United States v. Davenport*, 775 F.3d 605, 609 (3d Cir. 2015) (cleaned up). It considers whether the Government’s conduct is inconsistent with the defendant’s understanding. And what the defendant “reasonably understood” is “a purely objective standard governed by the common law of contract.” *Id.* (cleaned up).

The Fifth and Seventh Circuits are no different. The Fifth Circuit applies general principles of contract law and “generally will not look beyond the agreement’s four corners if it is unambiguous.” *United States v. James*, 800 F. App’x. 290, 291 (5th Cir. 2020) (cleaned up) (unpublished). So too in the Seventh Circuit, where they “apply ordinary principles of contract law in interpreting the agreement.” *United States v. Karagianis*, 142 F.4th 980, 990 (7th Cir. 2025) (cleaned up).

In some instances, these circuits have touched on the Government’s conduct at sentencing. But they focus on active advocacy and thus fail to recognize that the Government may implicitly breach a plea agreement. *United States v. Edgell*, 914 F.3d 281, 288 (4th Cir. 2019) (explaining Government cannot “advocate a position that contradicts its promises in a plea agreement” (cleaned up)); *United States v. Casillas*, 853 F.3d 215, 217 (5th Cir. 2017) (finding breach “when the Government agrees to one thing in a plea but then *actively advocates* from something different at sentencing” (cleaned up)).

B. Eight circuits review the totality of the circumstances when reviewing whether the Government breached a plea agreement.

In contrast, every other circuit—the First, Second, Sixth, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits—use a more holistic, totality of the circumstances approach.

The Second Circuit, in addition to considering contract law principles, does “not hesitate to scrutinize the government’s conduct to ensure that it comports with the highest standard of fairness.” *United States v. Wilson*, 920 F.3d 155, 162 (2d Cir. 2019) (cleaned up). The Eighth Circuit similarly accounts for the Government’s conduct; the Government can “still breach the plea agreement when its conduct as a whole violates the spirit of the promise.” *United States v. Jennings*, 127 F.4th 1145, 1150 (8th Cir. 2025) (cleaned up). The same goes for the Eleventh Circuit, which applies an objective standard to “decide whether the government’s actions are inconsistent” with a defendant’s understanding of the plea agreement, rather than reading it in a hyper-technical or rigidly literal manner.” *United States v. Hunter*, 835 F.3d 1320, 1324 (11th Cir. 2016) (cleaned up).

This Sixth Circuit has a more granular analysis. In the Sixth Circuit, the Government “may not explicitly repudiate” plea agreements “or engage in an “end-run around” the promises” in them. *United States v. Ligon*, 937 F.3d 714, 718–719 (6th Cir. 2019) (cleaned up). The Government’s performance obligations surrounding plea agreements require “more than lip service on a prosecutor’s part.” *Id.* (cleaned up). The Tenth Circuit includes the latter sentiment in its analysis, too; the Government “owes the defendant a duty to pay more than lip service to a plea agreement.” *United States v. Ruiz*, 125 F.4th 1342, 1349 (10th Cir. 2025) (cleaned up).

The D.C. Circuit considers the “totality of the circumstances” and reviews not only for “explicit

repudiation of the Government’s assurances” but also “end-runs around” them. *United States v. Murray*, 897 F.3d 298, 309–310 (D.C. Cir. 2018) (cleaned up); *see also United States v. Honesty*, 2026 WL 1729820, at *5 (D.C. Cir. June 16, 2026) (cleaned up).

And the First and Ninth Circuits employ perhaps the most robust analyses. Like the circuits focused on a contract-based analysis, the Ninth Circuit considers principles of contract law and holds the Government to “the literal terms of the agreement.” *United States v. Myers*, 32 F.3d 411, 413 (9th Cir. 1994) (cleaned up). But the Ninth Circuit also recognizes that the Government can explicitly or implicitly break a promise to recommend a particular disposition. *See United States v. Whitney*, 673 F.3d 965, 971 (9th Cir. 2012).

The Ninth Circuit also provides criteria for assessing implicit breaches. For one, the Government may not “superficially abide by its promise to recommend a particular sentence” while also making statements “that serve no practical purpose but to advocate for a harsher” sentence. *United States v. Heredia*, 768 F.3d 1220, 1231 (9th Cir. 2014) (cleaned up). Nor can the Government make “the promised recommendation while winking at the district court to impliedly request a different outcome.” *Id.* (cleaned up). It also cannot make “inflammatory comments” about a defendant’s past offenses that do not provide “new information or correct factual inaccuracies.” *Whitney*, 673 F.3d at 971 (cleaned up).

The First Circuit takes a similar approach. In no uncertain terms, the First Circuit “prohibits not only explicit repudiation of the government’s assurances” but also “end runs around them.” *United States v. Cortés-López*, 101 F.4th 120, 128–129 (1st Cir. 2024) (cleaned up). It also specifies that it is improper for the Government “to inject material reservations about” plea agreements it has entered. *United States v. Canada*, 960 F.2d 263, 270 (1st Cir. 1992) (cleaned up). Even more, “certain factual

omissions, helpful to the defendant, may be an implicit part of the bargain in a plea agreement.” *United States v. Davis*, 923 F.3d 228, 237 (1st Cir. 2019) (cleaned up).

The Second, Sixth, Eighth, Tenth, Eleventh, and D.C. circuits also consider the totality of the circumstances. For example, the Second Circuit does “not hesitate to scrutinize the government’s conduct to ensure that it comports with the highest standard of fairness.” *United States v. Wilson*, 920 F.3d 155, 162 (2d Cir. 2019) (cleaned up). And the Sixth Circuit acknowledges that the Government “may not explicitly repudiate the agreement or engage in an end-run around the promises contained in the agreement.” *United States v. Ligon*, 937 F.3d 714, 718–719 (6th Cir. 2019) (cleaned up). The Eighth Circuit agrees, providing that even when the Government “technically adheres to the plea agreement, it could still breach the plea agreement when its conduct as a whole violates the spirit of the promise.” *United States v. Jennings*, 127 F.4th 1145, 1150 (8th Cir. 2025) (cleaned up).

The Tenth, Eleventh, and D.C. Circuits similarly include a qualitative assessment of the Government’s conduct at sentencing hearings when determining whether the Government breached a plea agreement. *United States v. Ruiz*, 125 F.4th 1342, 1349 (10th Cir. 2025) (forbidding Government from relying on “rigidly literal construction of the agreement” because it “owes the defendant a duty to pay more than lip service to a plea agreement” (cleaned up)); *United States v. Hunter*, 835 F.3d 1320, 1325 (11th Cir. 2016) (applying “objective standard to decide whether the government’s actions are inconsistent with the defendant’s understanding of a plea agreement, rather than reading the agreement in a hyper-technical or rigidly literal manner” (cleaned up)); *United States v. Murray*, 897 F.3d 298, 309–310 (D.C. Cir. 2018) (prohibiting “not only explicit repudiation of the government’s assurances,” but also end-runs around them (cleaned up)).

A majority of the circuits consider the conduct of the Government in addition to the language of a plea agreement, recognizing that an implicit breach is just as wrong as an explicit breach of a plea agreement. Considering the Government's conduct as part of the analysis adds a much-needed check to the Government's conduct at sentencing hearings. It increases the likelihood that the Government will fulfill its promises. Granting this petition to resolve the circuit split would serve to add consistency in the administration of justice that is presently absent across the circuits on this issue.

II. Because plea agreements are so widely used, this case presents an issue of exceptional importance.

Plea bargaining is “an essential component of the administration of justice.” *Santobello v. New York*, 404 U.S. 257, 260 (1971). The Government must therefore act fairly and follow through on its promises.

This value is rooted in the due process clause of the Fifth Amendment. And this Court and other circuits have recognized the paramount importance of fairness in plea bargaining on more than one occasion. *See Santobello v. New York*, 404 U.S. 257, 261 (1971) (“All of these considerations presuppose fairness in securing agreement between an accused and a prosecutor.” (cleaned up)); *see also, e.g., United States v. Barnes*, 278 F.3d 644, 648 (6th Cir. 2002) (“When entering into a plea agreement with the government, it is essential that fairness on the part of the prosecutor is presupposed.” (cleaned up)); *United States v. Heredia*, 768 F.3d 1220, 1230 (9th Cir. 2014) (“The integrity of the criminal justice system depends upon the government's strict compliance with the terms of plea agreements into which it freely enters.” (cleaned up)).

Not only is fairness constitutionally important, but it is also relevant for practical reasons. As this Court has acknowledged, the “criminal justice system today is for the

most part a system of pleas, not a system of trials.” *Lafler v. Cooper*, 566 U.S. 156, 169–170 (2012) (cleaned up). Contemporary statistics support that notion. As of 2023, nearly 90% of convictions nationwide come from guilty pleas. See ABA, *Plea Bargain Task Force Report*, at 6 (2023) (cleaned up). In 2023 alone, 65,482 people were convicted in federal courts across the country. See U.S. Dept. of Justice, Bureau of Justice Statistics, *Federal Justice Statistics, 2023*, at 13 (Mar. 2025). Consequently, nearly every individual facing criminal charges—which can number in the tens of thousands each year—has an interest in fairness in plea bargaining.

Fairness in plea bargaining also affects public opinion of the administration of justice. The breach of a plea agreement not only deprives a defendant of their bargain, but it also affects “the honor of the government, public confidence in the fair administration of justice, and the effective administration of justice in a federal scheme of government.” *United States v. Van Thournout*, 100 F.3d 590, 594 (8th Cir. 1996) (cleaned up).

III. This case is an excellent vehicle for resolving the circuit split.

Not only does this case concern a circuit split ripe for resolution and issues of exceptional importance, but it is also an ideal vehicle for resolving the circuit split for three reasons. *First*, Davis preserved his concerns about the Government’s breach of the plea agreement by raising them with the Fourth Circuit. Pet. App. 2a–3a. *Second*, the Fourth Circuit only looked to the terms of the plea agreement and whether the Government actively argued for the livelihood exception, reaffirming its minority position on the issue. *Id.* *Third*, the record is clear that the Government agreed not to pursue the livelihood enhancement, as the plea agreement specifically contemplated only the firearm and leadership enhancements. Pet. App. 20a. And the record is equally

clear that the Government sat in silence as the district court applied that enhancement. Pet. App. 57a.

This case presents an opportunity for this Court to ensure fairness in plea bargaining. Here, the Government did nothing when the district court applied a livelihood enhancement that the Government knew it could not request. And the Fourth Circuit approved under its narrow review that fails to account for an implicit breach of a plea agreement. This Court can clarify that the Fourth Circuit—along with the Third, Fifth, and Seventh Circuits—must consider more than the terms of a plea agreement and must look at the totality of the circumstances.

CONCLUSION

This Court should grant the petition for writ of certiorari and reverse the decision below.

Respectfully submitted,

/s/ Dallas F. Kratzer III

DALLAS F. KRATZER III

Counsel of Record

BENNETT Z. TULEJA

STEPTOE & JOHNSON PLLC

41 S. High Street, Suite 2200

Columbus, OH 43215

614.458.9889

dallas.kratzer@steptoe-johnson.com

bennett.tuleja@steptoe-johnson.com

Counsel for Petitioner Sean Jarred Davis

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on June 25, 2026, the foregoing was served via e-mail upon the following:

Lara K. Ompps-Botteicher
OFFICE OF THE U.S. ATTORNEY
217 West King Street, Suite 400
Martinsburg, West Virginia 25401
Lara.Omps-Botteicher@usdoj.gov

Counsel for Appellee

/s/ Dallas F. Kratzer III
DALLAS F. KRATZER III
Counsel for Petitioner Sean Jarred Davis