No. 25A____

25A1305

IN THE

SUPREME COURT OF THE UNITED STATES

LAVON PARKS and JAMES C. PARKS,

Applicants,

— v. —

UNITED STATES OF AMERICA,

Respondent.

On Application from the United States Court of Appeals
for the Second Circuit

EMERGENCY APPLICATION TO JUSTICE SOTOMAYOR FOR RELEASE PENDING APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AND REQUEST FOR ADMINISTRATIVE STAY

Lavon Parks
Reg. No. 28668-055
James C. Parks
Reg. No. 28670-055
Northeast Ohio Correctional Center
2240 Hubbard Road
Youngstown, Ohio 44505

Applicants, *Pro Se*

QUESTIONS PRESENTED

1. Whether continued detention of a father and son is lawful where they remain convicted under 18 U.S.C. §§ 924(c) and (j) for a single act, in direct conflict with this Court's unanimous holding in *Barrett v. United States*, 146 S. Ct. 482 (2026) — a holding the District Court itself reached on the multiplicity question one day before *Barrett* issued.

2. Whether the government may use a mid-sentencing Rule 48(a) reversal to dismiss the greater § 924(j) offense rather than the lesser-included § 924(c) offense, preserving a mandatory consecutive minimum that *Lora v. United States*, 599 U.S. 453 (2023), strips from the greater offense, where the trial judge himself stated on the record that absent the government's strategic reversal he would have imposed a lower sentence.

3. Whether convictions can stand under *Glossip v. Oklahoma* (2025) — a decision your Honor authored — and *Napue v. Illinois*, 360 U.S. 264 (1959), where the government's case rested on a single cooperating witness whose categorical denials of mental-health diagnoses contradicted records the government possessed and whose September 3, 2022 drug-impaired-driving arrest the government concealed from the defense for almost three years.

4. Whether procedural mechanisms may be used to preserve convictions that this Court's intervening decisions have rendered legally invalid, contrary to *Bowe v. United States*, 607 U.S. ___ (Jan. 9, 2026), authored by your Honor.

5. Whether the same district court's grant of bail pending appeal from the bench on March 26, 2026 to a former DEA Special Agent convicted of corruption tied to the same office that opened the Parks investigation, exactly eight days after that same court denied bail to the Parks defendants on essentially identical substantial-question showings, is constitutionally tolerable.

6. Whether a one-sentence appellate denial of release pending appeal, issued without findings, without record engagement, and without addressing intervening Supreme Court precedent, satisfies the process due under *Mathews v. Eldridge*, 424 U.S. 319 (1976), and the reviewing standards this Court reaffirmed in *United States v. Friedman*, 837 F.2d 48 (2d Cir. 1988), and *United States v. Abuhamra*, 389 F.3d 309 (2d Cir. 2004).

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Applicants are Lavon Parks (Reg. No. 28668-055) and his father James C. Parks (Reg. No. 28670-055), who proceed pro se and in forma pauperis. Respondent is the United States of America.

The proceedings below are *United States v. Parks*, No. 19-cr-87 (W.D.N.Y.) (Vilardo, J.); and *United States v. Parks*, Nos. 26-460-cr(L), 26-475-cr(con) (2d Cir.). On February 6, 2026, the District Court sentenced Lavon Parks to 30 years and James Parks to 20 years of imprisonment. On March 18, 2026, the District Court denied bail pending appeal. Dkt. 1324. On April 30, 2026, a panel of the Second Circuit (Lynch, Bianco, Menashi, JJ.) denied Applicants' motion for bail pending appeal in a one-sentence summary order.

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APPLICATION IN SUPPORT OF RELEASE PENDING APPEAL

ON BEHALF OF LAVON PARKS AND JAMES C. PARKS

To the Honorable Sonia Sotomayor, Associate Justice of the United States and Circuit Justice for the Second Circuit:

Lavon Parks and James C. Parks — a thirty-five-year-old son and his sixty-two-year-old father — respectfully submit this Application to your Honor as Circuit Justice, pursuant to Supreme Court Rules 22 and 23 and 28 U.S.C. § 2101(f), seeking release pending appeal in the United States Court of Appeals for the Second Circuit, Nos. 26-460-cr(L), 26-475-cr(con). Lavon Parks is currently serving a 30-year sentence; his father, James, who is 62 years old and a thirty-year combat veteran of the New York Army National Guard, is serving 20 years. Both proceed pro se and in forma pauperis from the Northeast Ohio Correctional Center. Applicants respectfully request that this application be expedited.

This Application is made following the Second Circuit's April 30, 2026 one-sentence summary order denying release pending appeal. The order, in its entirety, decided nothing because it engaged nothing. It cited only 18 U.S.C. § 3143(b) and *United States v. Randell*, 761 F.2d 122, 125 (2d Cir. 1985). It made no findings. It addressed none of the post-judgment Supreme Court decisions on which Applicants' motion turned — not *Barrett v. United States*, 146 S. Ct. 482 (2026), decided three months earlier; not *Bowe v. United States*, 607 U.S. ___ (Jan. 9, 2026), authored by your Honor; not *Glossip v. Oklahoma*, 604 U.S. 226 (2025), also authored by your Honor. It did not engage Magistrate Judge Schroeder's October 25, 2019 finding that the government's detention argument was "disingenuous." It did not engage Judge Vilardo's December 15, 2022 finding that "the government has not met its burden of showing me that there are no condition or combination of conditions that warrant the defendant's release." It did not engage the District Court's own post-trial findings, in two separate written decisions, of a sustained pattern of government suppression that the District Court itself called "troubling" and a "long-standing problem in the U.S. Attorney's Office." Dkts. 966, 972.

The result is that two men — a father and a son — remain incarcerated under convictions that, after *Barrett*, cannot all stand — on a record the District Court itself called troubling — while the same District Court has granted bail pending appeal from the bench, on March 26, 2026, to a former federal Drug Enforcement Administration Special Agent convicted of corruption tied to the very office that opened the Parks investigation. The Parks defendants' bail-pending-appeal motion was denied on March 18, 2026. Eight days later, the

same judge granted the relief he had just refused. The disparity is constitutionally untenable. As your Honor wrote for the Court in *Bowe* just months ago, procedural mechanisms cannot be used to "close our doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent." *Bowe v. United States*, slip op. at 10 (quoting *Castro v. United States*, 540 U.S. 375, 381 (2003)). This Application asks that the same principle govern release pending direct appeal.

JURISDICTION AND APPLICABLE RULES

This Court has jurisdiction under 28 U.S.C. § 1254(1), § 1651(a), and § 2101(f). The Second Circuit's order denying bail pending appeal issued on April 30, 2026. This application is timely. It is addressed to Justice Sotomayor as Circuit Justice for the Second Circuit pursuant to Supreme Court Rule 22.3, and is presented in compliance with Supreme Court Rules 33.2 and 39 governing in forma pauperis filings.

No further exhaustion is required. Supreme Court Rule 22.3 requires only that relief be "first sought in the appropriate court" — here, the Second Circuit panel that denied bail on April 30, 2026. Panel rehearing under Federal Rule of Appellate Procedure 40 would be futile where the panel issued no findings to reconsider. En banc review under Rule 40 "is not favored" and is not a required exhaustion step for an interlocutory bail-pending-appeal application. *See Harris v. United States*, 404 U.S. 1232 (1971) (Douglas, J., in chambers); *Truong Dinh Hung v. United States*, 439 U.S. 1326 (1978) (Brennan, J., in chambers). Applicants have therefore exhausted the remedies Rule 22.3 contemplates.

This Court has required that pro se submissions be "held to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The Second Circuit construes pro se filings "liberally and interpreted to raise the strongest arguments they suggest." *Bertin v. United States*, 478 F.3d 489, 491 (2d Cir. 2007). Applicants respectfully ask that this Application be reviewed consistent with those standards while noting that they have endeavored to meet the substantive standards applicable to any applicant appearing before this Court.

THE STANDARD GOVERNING THIS APPLICATION

Release pending appeal should be granted where the defendant is not likely to flee and does not pose a danger to any person or the community, and the appeal raises a substantial question of law or fact likely to result in reversal, a new trial, or a sentence less than the time

already served plus the expected duration of the appeal. 18 U.S.C. § 3143(b); *Hilton v. Braunskill*, 481 U.S. 770 (1987).

The District Court itself found that defendants "have preserved and will raise substantial legal issues on appeal." Dkt. 1324, at 4. The District Court declined to make a danger finding. Dkt. 1324, at 5 n.3. It rested its denial on flight risk alone — which it derived from sentence length, a per se rule the Second Circuit foreclosed in *United States v. Friedman*, 837 F.2d 48, 50 (2d Cir. 1988) ("we have required more than evidence of the commission of a serious crime and the fact of a potentially long sentence to support a finding of risk of flight"). At oral argument before the Second Circuit, the government conceded on the record that reliance on sentence length alone would be "error" in the pretrial bail context (Tr. at 9), and conceded further that sentence length was "undoubtedly . . . one of the primary considerations in Judge Vilardo's decision. No doubt about it." (Tr. at 12). Under *Friedman*, those concessions are dispositive.

A Circuit Justice considering a release application has "a nondelegable responsibility to make an independent determination on the merits." *Truong Dinh Hung v. United States*, 439 U.S. 1326, 1328 (1978) (Brennan, J., in chambers). The Eighth Amendment "at the very least obligates judges passing upon the right to bail to deny such relief only for the strongest of reasons." *Harris v. United States*, 404 U.S. 1232, 1233 (1971) (Douglas, J., in chambers) (quoting *Sellers v. United States*, 89 S. Ct. 36, 38 (1968) (Black, J., in chambers)). "Doubts whether the person's constitutional and statutory rights have been respected" should be resolved in favor of the defendant. *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985); *see also Truong Dinh Hung*, 439 U.S. at 1328–1329.

STATEMENT OF FACTS

Lavon Parks and James C. Parks are father and son. After a jury trial in November 2023 in the Western District of New York, both were convicted of conspiracy to distribute cocaine, fentanyl, and heroin (Count 1, 21 U.S.C. § 846); discharging a firearm in furtherance of a drug-trafficking crime (Count 4, 18 U.S.C. § 924(c)(1)(A)(iii)); and discharging a firearm causing death (Count 5, 18 U.S.C. § 924(j)). Lavon was also convicted of attempted possession with intent to distribute and of possessing a firearm in furtherance of a drug-trafficking crime (Count 3, 18 U.S.C. § 924(c)(1)(A)(i)). Dkt. 1057.

Counts 3, 4, and 5 share a single statutory predicate — Count 1, the § 846 conspiracy. They allege the same conduct, the same time period, and the same firearm. The government in

its opening told the jury this was a single transaction conducted "in two different ways" — "with cash and/or guns" — "to satisfy drug debts." Tr. Govt. Opening, Nov. 22, 2023, at 12–14.

Three weeks before trial, on November 1, 2023, the District Court conducted a Frye/Lafler hearing. The government's plea offer to Lavon — contingent on dismissal of the § 924(j) homicide count — was a Rule 11(c)(1)(C) range of ten-to-fifteen years on Count 1 alone; its offer to James was misprision of a felony with a guideline range of ten-to-sixteen months and no mandatory minimum. Frye/Lafler Tr. 14:11–18:25 (Nov. 1, 2023). The government described the trial-exposure stack on the record: ten years on the § 846 conspiracy, five years consecutive on § 924(c) possession, and ten years consecutive on the § 924(j) discharge-causing-death count, producing a 25-year mandatory minimum and a life maximum. Id. at 15:15–17:24. Lavon stated on the record what *Barrett* would later confirm as the structural problem: "I don't see why I take a plea from them for ten to 15 if I can get that at trial. That don't make no sense." Id. at 33:23–34:7. Judge Vilardo himself characterized the government's same-day plea deadline as "counterintuitive" to the meaningful inquiry Frye/Lafler requires. Id. at 10:20–11:15. Lavon rejected the offer; trial commenced three weeks later; the cumulative-stacking framework the government had used as plea leverage produced — after *Barrett* — a 30-year sentence on the very framework this Court has now invalidated.

On January 13, 2026, the District Court ruled on Applicants' supplemental motion to vacate Counts 3, 4, and 5 on Double Jeopardy grounds. The court found that Count 3 was a lesser-included offense of Count 5 — reaching the *Barrett* result on multiplicity 24 hours before *Barrett* was issued. One day later — on January 14, 2026 — this Court issued *Barrett v. United States*, 146 S. Ct. 482 (2026), holding unanimously that "Congress has not authorized convictions under both 18 U.S.C. §§ 924(c)(1)(A)(i) and (j) for one act that violates both provisions." *Barrett*, slip op. at 24.

The government's response was not vacatur but reorganization. For four years, the government had committed in its own filings to dismiss the lesser-included § 924(c)(1)(A)(iii) count (Count 4) at the close of trial. On the morning of sentencing, fourteen days after *Barrett* issued, the government reversed course. It moved under Federal Rule of Criminal Procedure 48(a) to dismiss the greater § 924(j) count (Count 5) instead. The reason was structural: under *Lora v. United States*, 599 U.S. 453 (2023), § 924(j) does not carry a mandatory consecutive minimum, while § 924(c)(1)(A)(iii) carries a 10-year mandatory consecutive minimum. By dismissing the greater offense and preserving the lesser, the government engineered a 10-year

mandatory consecutive sentence onto a defendant whose conviction *Barrett* had just rendered cumulative.

The DNA Evidence Excluded Both Defendants

Forensic Criminalist Keith Paul Meyers of the Niagara County Sheriff's laboratory tested the murder weapon for DNA. He testified that the testing revealed a four-person mixture, and that he "was able to exclude both [Lavon and James Parks] from contributing to the DNA in that sample," concluding that "their DNA was not found on this weapon." Tr. K. Paul Meyers, Dec. 2023, at 42. The government called no other forensic expert. The government did not dispute the exclusion. Meyers further testified that he was never given the shell casings to test for DNA, even though the lead detective had testified the casings had been swabbed. Id.

The DNA exclusion was uncontroverted. The government's response was speculative. When asked to explain the absence of either Parks's DNA on the weapon, Meyers stated only that DNA "could" have been rubbed off between the time the gun was handled and when it was recovered. Id. He was not asked, and did not opine, on whether such transfer was likely or supported by any evidence in the case.

Lavon Parks was sentenced to 30 years on February 6, 2026. James Parks was sentenced to 20 years. At James's sentencing, the District Court stated on the record:

> "I'll make it clear on the record for purposes of appeal that — I will not sentence to — to 20 years in this case. I would impose something less than that. It would be a significant sentence, but something less than 20 years." James Parks Sentencing Tr. 6:15–20.

And, after explaining that the higher floor was forced by the government's Rule 48(a) reversal:

> "[I]f it weren't the government's choice, I would have chosen something a bit less. Not a lot less. Not a lot less. Certainly — certainly more than 10 years, and maybe upward of 12 or 15. But — but I would have chosen something less to sentence you to because I do think your advanced age and your armed — your service in the armed forces says an awful lot about you." James Parks Sentencing Tr. 40:9–18.

At Lavon Parks's sentencing on February 6, 2026 — the most recent assessment of his character by the same judge who denied bail — Judge Vilardo found on the record that Lavon Parks "is smart" and "engaging," and that "there is a good chance of rehabilitation here." Lavon Parks Sentencing Tr. 37:17–24. Judge Vilardo expressly declined to impose life imprisonment, stating from the bench that a life sentence is appropriate "only where there's no

hope of rehabilitation or some other extraordinary circumstance." Lavon Parks Sentencing Tr. 37:17–24. These findings — made by Judge Vilardo on the current post-conviction record in February 2026, the same month he denied bail — are directly inconsistent with any determination of dangerousness or unmanageable flight risk requiring mandatory detention pending appeal.

The District Court's pretrial findings of prosecutorial misconduct were not new. In Dkt. 966 (July 6, 2023), the court found that "the government seems to approach its discovery obligations by finding ways not to disclose evidence," had "insisted that it was not required to disclose a government witness's statement because that statement was demonstrably false," and had taken the position that "because it has answers to defense arguments that certain evidence is exculpatory it need not disclose that evidence to the defense." Dkt. 966, at 27–28. The court called this approach "troubling." In Dkt. 972 (July 27, 2023), the court characterized the government's discovery practices as evidencing "a problem with the way the USAO-WDNY understands and handles its discovery obligations in this District — a problem that, based on the violations and arguments made here, the USAO-WDNY still has not addressed, let alone fixed." Dkt. 972, at 7–8.

The government's case at trial turned on one cooperating witness: Alphonso Diggs. Defense counsel addressed this directly in opening: "[Diggs] is the case. The government's theory rises and falls with him." Tr. Meyers-Buth Opening, Nov. 22, 2023, at 51. On cross-examination, Diggs categorically denied — under oath — diagnoses documented in his contemporaneous medical records: paranoid schizophrenia, schizoaffective disorder bipolar type, auditory and visual hallucinations, blackout spells, antisocial personality disorder, and severe memory impairment. Tr. Diggs/Cross-Redirect, Nov. 29, 2023, at 28–58, 73–76, 87–91, 157–164. The government possessed those records. It elicited from Diggs that he had been "clean" for five years — while concealing that on September 3, 2022, approximately fourteen months before Diggs took the stand, Diggs had been arrested for driving while impaired by drugs. DEA Task Force Officer Nathan Shumaker — who appeared on the government's witness list and worked the underlying investigation — called the Niagara County Jail and requested a "keep-away" between Diggs and Lavon Parks. The Niagara County charges were dismissed on May 4, 2023, six months before the Parks trial began. The defense did not learn of the arrest until June 2025 — eight months after trial.

On February 27, 2025, defense counsel submitted a letter memorandum to the District Court drawing its attention to this Court's decision in *Glossip v. Oklahoma*, 604 U.S. 226 (2025), authored by your Honor. Dkt. 1179. The District Court declined to apply *Glossip*,

finding Diggs "forgetful," not untruthful.

There was more. In November 2024, the District Court denied James's motion for reconsideration on the aiding-and-abetting counts, distinguishing *United States v. Anastasio*. Dkt. 1242. Three months later, at James's sentencing, the government conceded:

> "James Parks was not the shooter. James Parks was not with the shooter at the time of the shooting. James Parks did not drive the shooter to the shooting. James Parks did not assist the shooter in acquiring the firearm used in the shooting. James Parks did not assist the shooter in disposing of the weapon." James Parks Sentencing Tr. 21:1–22:14.

And: "I agree, your Honor, that in some respects he is less culpable than his son." James Parks Sentencing Tr. 18:3–4. The Probation Office concluded that James was a "minimal participant" under U.S.S.G. § 3B1.2.

On March 18, 2026, the District Court denied bail pending appeal. Dkt. 1324. The court declined to make a danger finding. Dkt. 1324, at 5 n.3. It rested its denial on sentence length alone.

Eight days later, on March 26, 2026, the same District Court — from the bench — granted bail pending appeal in *United States v. Bongiovanni*, No. 1:19-cr-227 (W.D.N.Y.), Dkt. 1706, to a former DEA Special Agent convicted of nine felony counts of corruption tied to the same Buffalo Resident Office of the DEA that opened the Parks investigation in 2017.

On April 30, 2026, the Second Circuit panel denied bail pending appeal. The order, in its entirety, reads:

> "Defendants-Appellants move for bail pending appeal pursuant to Federal Rule of Appellate Procedure 9(b). The government opposes the motions. Upon due consideration, it is hereby ORDERED that the motions for bail pending appeal are DENIED. *See* 18 U.S.C. § 3143(b); *United States v. Randell*, 761 F.2d 122, 125 (2d Cir. 1985)."

There are no findings. There is no engagement with *Barrett*, with *Glossip*, with *Bowe*, or with the District Court's own *Brady* record. The panel's denial resolves nothing because it confronts nothing.

HISTORY AND CHARACTERISTICS OF THE DEFENDANTS

You have said that what drives your jurisprudence is process — not outcomes you cannot control, but the fairness of the process itself. You have said you can live with any outcome if you believe the person received a fair chance within the legal system. *A*

Conversation with Justice Sotomayor, 123 Yale L.J. F. 375, 378 (2014).

James Parks and Lavon Parks did not receive that chance.

What follows is the record of who they are — not who the government said they were at trial, and not the abstraction the Second Circuit's one-sentence denial treated them as. It is the record of a father and a son, a family from Niagara Falls, and what seven years of living under the cloud of a federal indictment while released has revealed about their character, their relationships, and their readiness to come home.

James C. Parks: A Combat Veteran of Three Deployments. James Parks is 62 years old. He served thirty years in the New York Army National Guard, from 1984 through 2018. He deployed three times. In 2005 and 2006, he deployed to Iraq, where he conducted more than 300 combat patrols. A sergeant in his unit was killed by an improvised explosive device. He was involved in sustained combat under fire. He earned the Combat Infantryman Badge. In 2008, he deployed to Kandahar, Afghanistan, where his battalion's lieutenant colonel was killed on patrol. He earned the Bronze Commendation Medal. He served a third deployment to Bahrain. He earned the Meritorious Service Medal. He suffers from service-connected post-traumatic stress disorder. The Veterans Defense Program filed a letter with the District Court. Exhibit A to Dkt. 1300. The District Court itself, at sentencing, told him: "your service in the armed forces says an awful lot about you." James Parks Sentencing Tr. 40:9–18.

Lavon Parks: His Father's Son. Lavon is 35 years old. He grew up in Niagara Falls, the son of James and Doris Parks. When his father was activated to defend this country following September 11, 2001, Lavon was eleven years old. When James deployed to Iraq for over a year of combat operations, Lavon was fourteen to sixteen. When James deployed to Afghanistan, Lavon was seventeen to eighteen. These were repeated, extended absences during the developmental window when adolescent boys most need consistent paternal guidance. The Supreme Court has recognized in *Porter v. McCollum*, 558 U.S. 30, 43–44 (2009), that courts must weigh "the intense stress and mental and emotional toll that combat took." That toll is borne not only by veterans but by veterans' sons.

Before his arrest, Lavon built and operated a legitimate online reselling enterprise — sourcing overstocked goods and selling them on Amazon, eBay, Poshmark, and Facebook Marketplace. He still has merchandise to sell as well as his suppliers and plans to continue run his self employed business with a better business plan he authored while going through this whole process. When he was released Lavon was not able to work he lived in his parents house on home confinement as a alternative jail cell. Lavon was a father to children, and a son to

Doris and James. His mother attended every day of trial. Dkt. 1311, at 23.

Doris Parks: Wife, Mother, and the Anchor for Both. Doris Parks is James's wife and Lavon's mother. She has agreed to serve as third-party custodian for both of them at the family home at 552 18th Street, Niagara Falls, New York — the same home Lavon was previously released to in 2022. She executed a signature bond at Lavon's initial federal appearance in May 2019. Dkt. 36. For seven years, she has held the family together while her husband and her son have both been detained. She has attended every court proceeding. She has waited in the same house, on the same street, where she will receive them if your Honor grants this Application.

The Supreme Court in *Pepper v. United States*, 562 U.S. 476, 487–88 (2011), reaffirmed that a court must consider "every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." You wrote *Pepper*. Neither court below treated Lavon or James as individuals.

Lavon's Post-Conviction Trajectory. Lavon converted to Christianity at the Niagara County Jail. He was subsequently licensed as a Deacon at Grace Calvary Church. He has taught Bible studies, preached from the pulpit, and runs a prayer group at NEOCC — not as a participant, but as its leader. He has studied constitutional law and assisted other inmates in understanding their rights. The District Court itself acknowledged that defendants "have been involved in their own defense to an uncommon degree" and have "engaged with counsel multiple times per week to review their own independent research, request transcripts, discuss legal arguments and provide outlines or summaries of relevant cases." Dkt. 1324, at 7. He has been the victim of at least one assault at NEOCC. He did not retaliate. Dkt. 1311, at 14.

Seven Years. Zero Infractions. For Both. Since May 2019 — across the Niagara County Jail, through every facility of their pre-sentencing incarceration, and now at NEOCC in Youngstown — neither James Parks nor Lavon Parks has incurred a single disciplinary infraction. Not one write-up. Not one sanctioned violation under any institutional disciplinary regime. Seven years. Two defendants. One combined disciplinary record that is entirely clean. *United States v. Abuhamra*, 389 F.3d 309, 320–21 (2d Cir. 2004), reflects that past performance under supervision is the most probative indicator of future compliance. Seven years of clean conduct is the most probative evidence the Bail Reform Act recognizes.

You have said: "I can live with any outcome if I perceive the process to be fair. Has someone been given a fair chance within the legal system?" *A Conversation with Justice*

Sotomayor, 123 Yale L.J. F. at 378. The process here was not fair. It was a sentence long. The record exists. It is before you now.

THE HUMAN STAKES

What the courts below treated as a sentencing math problem is, for the Parks family, a wound that has been bleeding for seven years. The cost of continued detention pending appeal is not abstract. It accumulates daily. It does so along four dimensions, each of which independently establishes "exceptional reasons" under 18 U.S.C. § 3145(c).

The medical dimension. James Parks suffers from service-connected post-traumatic stress disorder. He earned that diagnosis in Iraq and Afghanistan, in service to this country. The Bureau of Prisons facility where he is currently designated — NEOCC, a private CoreCivic facility — is not equipped to provide the trauma-specific mental-health care his service-connected condition requires. He is sixty-two years old. He has served twenty-eight months of a twenty-year sentence. Each month of further detention pending an appeal that may take two or three years to resolve is a month extracted from a life expectancy he cannot recover.

The family dimension. Doris Parks has held the family together for seven years while her husband and her son have both been detained. She is the proposed custodian for both. There are grandchildren who do not know their grandfather. There are children who have grown up without their father. There is a wife who has waited alone, in the same house, on the same street, where she will receive them if your Honor grants this Application.

The community dimension. James's brother, Johnny Parks, is an elected Town of Niagara Council Member and a leadman at the Goodyear Niagara Falls Chemical Plant. James himself has confirmed employment at Saint-Gobain upon release, where he rose to the position of leadman before his pretrial detention. The Veterans Defense Program has filed a letter on his behalf. Lavon's congregation at Grace Calvary Church — including Bishop Jones, his pastor of two years, who has attested that Lavon "has never observed a single act of aggression, intimidation, or disrespect toward any person" — is ready to receive him. The community that produced these two defendants is also the community that will hold them accountable if released.

The appellate-process dimension. The First Step Act categorically excludes defendants convicted under § 924(c) from earning time credits. 18 U.S.C. § 3632(d)(4)(D)(xxii). Every month of detention pending appeal under a likely-invalid § 924(c)

conviction is a month of credits Lavon will never earn back. Every month is a month during which the BOP's custody-classification baselines are anchored to a § 924(c) conviction *Barrett* requires to be vacated. Every month is a month of impeded counsel-access claims accruing irreparable harms under *Benjamin v. Fraser*, 264 F.3d 175 (2d Cir. 2001).

These costs are real. They are ongoing. Both defendants face the cost of being designated to a maximum security facility where lockdowns are frequent due to violence, that cannot be undone by later appellate vindication. The only mechanism that preserves the remedy while the constitutional question moves through review is release pending appeal.

ARGUMENT

I. APPLICANTS' APPEAL RAISES THIRTEEN SUBSTANTIAL QUESTIONS, EACH INDEPENDENTLY SUFFICIENT AND CUMULATIVELY DECISIVE.

A "substantial question" under 18 U.S.C. § 3143(b)(1)(B) is "one of more substance than would be necessary to a finding that it was not frivolous"; it is "a close question or one that very well could be decided the other way." *United States v. Randell*, 761 F.2d 122, 125 (2d Cir. 1985). Each of the thirteen questions raised in this appeal satisfies that standard. The six developed below are structured the same way: the controlling legal standard, the Parks-record showing of the violation, the materiality and prejudice analysis, and the remedy the question commands.

The six questions addressed below are not the ceiling of this appeal — they are its foundation. In the District Court, Applicants' joint motion for release pending appeal, filed March 3, 2026 by counsel of record (Dkt. 1311), identified thirteen independent substantial questions, each separately satisfying the *Randell* standard. Those questions include: Sixth Amendment speedy trial dismissal arising from a four-and-a-half-year, government-caused delay during which two exculpatory witnesses died; constructive amendment of the drug conspiracy count on a question of first impression the Second Circuit has expressly left open; discriminatory immunity and witness intimidation as to a key defense witness on a circuit-split question the Second Circuit has not resolved in forty-six years; legal insufficiency of all counts of conviction against James Parks; sufficiency of the evidence regarding Lavon Parks's intent and the murder cross-reference application; prosecutorial misconduct in opening, closing, and rebuttal arguments; and cumulative *Brady* error warranting dismissal with prejudice. *See* Dkt. 1311, at 26–50. The Second Circuit's April 30, 2026 one-sentence order addressed none of them. This Application focuses on the six questions intervening Supreme Court authority has

brought to the fore — but Applicants preserve all thirteen for further review, and the full record is before this Court.

A. The Convictions Are Legally Invalid Under Barrett v. United States.

1. The Legal Standard.

On January 14, 2026 — one day after the District Court's multiplicity ruling — this Court held unanimously that "Congress has not authorized convictions under both 18 U.S.C. §§ 924(c)(1)(A)(i) and (j) for one act that violates both provisions." *Barrett v. United States*, 146 S. Ct. 482 (2026), slip op. at 24. The decision was rooted in the *Blockburger* presumption: where one statute necessarily proves the elements of another, Congress is presumed not to have authorized cumulative punishment unless it has said so. *Blockburger v. United States*, 284 U.S. 299 (1932). Justice Gorsuch's concurrence underscored the constitutional dimension: "Mr. Barrett really was charged twice for one offense. He really was convicted twice. Before our intervention, he really was set to be criminally punished twice. And whatever Congress might or might not intend, that is double jeopardy." *Barrett*, slip op. at 12 (Gorsuch, J., concurring).

Under *Ball v. United States*, 470 U.S. 856, 864–65 (1985), a separate conviction "even if it results in no greater sentence, is an impermissible punishment." "Punishment" under the Double Jeopardy Clause includes the conviction itself. *Brown v. Ohio*, 432 U.S. 161, 168 (1977); *Rutledge v. United States*, 517 U.S. 292 (1996). And under *United States v. Rosenthal*, 454 F.2d 1252 (2d Cir. 1972), the Second Circuit held that the conviction on the lesser included offense must be vacated when there has been a conviction for the greater offense. Id. at 1254–55.

2. The Parks Record.

Lavon Parks was convicted on Counts 3, 4, and 5 — all premised on the same firearm and the same conduct. James Parks was convicted on Counts 1, 4, and 5 on aiding-and-abetting theory. The January 13, 2026 multiplicity ruling found Count 3 to be a lesser-included offense of Count 5. Twenty-four hours later, *Barrett* reversed the Second Circuit on the same question. The Second Circuit, on remand in *Barrett* itself, has directed that "the district court should 'exercise its discretion to vacate one of the convictions.' *Ball*, 470 U.S. at 865." *United States v. Barrett*, No. 21-1379, slip op. at 2 (2d Cir. Apr. 9, 2026). That decision issued after the government's April 20, 2026 opposition to bail in this case.

3. Materiality and Prejudice.

The government's mid-stream Rule 48(a) reversal — addressed in detail in Section I.B below — converted the *Barrett* violation into a 10-year mandatory consecutive sentence Vilardo himself said he would not have imposed. James Parks Sentencing Tr. 6:15–20, 40:9–18. The materiality is dispositive: vacatur of the cumulative § 924(c) conviction removes the floor on which the entire 20- and 30-year sentencing structure rests. Under *Lora v. United States*, 599 U.S. 453, 459 (2023), § 924(j) carries no mandatory consecutive minimum. Without the § 924(c) cumulative count, the District Court's discretion is restored.

4. Remedy: Reversal Has Already Begun.

The Fifth Circuit in *United States v. Brown*, 2025 WL 2318686 (5th Cir. Aug. 12, 2025), confronted the identical government tactic and rejected it. *Brown* held that the district court — not the prosecutor — must exercise independent discretion in choosing which multiplicitous conviction to vacate. The Parks case is stronger than *Brown* on the facts: the government here reversed its own four-year stipulation only after *Barrett* revealed that § 924(j) lacks the mandatory minimum. The Second Circuit's April 9, 2026 decision in *Barrett* on remand confirms vacatur is required. Reversal is not merely likely — it has already begun in the trial court's own multiplicity ruling and in the Second Circuit's remand decision.

B. The Government's Rule 48(a) Reversal Preserved the Very Blockburger Violation Barrett Condemns.

1. The Legal Standard.

Rule 48(a) requires "leave of court." Leave is not a rubber stamp. The principal object of Rule 48(a) "is apparently to protect a defendant against prosecutorial harassment . . . when the Government moves to dismiss an indictment over the defendant's objection." *Rinaldi v. United States*, 434 U.S. 22, 29 n.15 (1977). A district court "will not be content with a mere conclusory statement by the prosecutor that dismissal is in the public interest, but will require a statement of reasons and underlying factual basis." *United States v. Ammidown*, 497 F.2d 615, 620 (D.C. Cir. 1973). The Fifth Circuit in *Brown* made clear that post-conviction Rule 48(a) manipulation to engineer mandatory minima exceeds the rule's permissible scope.

2. The Parks Record.

For four years — from 2022 onward — the government stipulated in its own filings that Count 4 (the lesser § 924(c) offense) would merge into Count 5 (the greater § 924(j) offense) if both were convicted. On January 28, 2026 — the morning of sentencing, fourteen days after *Barrett* issued — the government reversed course. It moved under Rule 48(a) to dismiss Count 5, the greater offense. The District Court granted the motion. Sentencing

proceeded on Counts 1 and 4. Dkt. 1324, at 2.

3. Materiality and Prejudice.

The 20-year mandatory minimum that drives this entire bail dispute is the direct product of the Rule 48(a) reversal. Vilardo himself said he would have gone lower for James absent that mandatory floor. James Parks Sentencing Tr. 6:15–20, 40:9–18. All three multiplicitous counts (3, 4, and 5) were presented to the jury. Justice Gorsuch expressly identified the trial-stage prejudice from multiplicitous charging as a constitutional injury Rule 48(a) cannot cure. *Barrett*, slip op. at 12 (Gorsuch, J., concurring).

4. Remedy.

This question is one of first impression in the Second Circuit post-*Barrett*. The Fifth Circuit's *Brown* decision rejects the identical tactic. Reversal of the Rule 48(a) ruling, combined with vacatur of the duplicative § 924(c) conviction under *Barrett*, restores the District Court's sentencing discretion — the discretion the trial judge expressly said he would have exercised in James's favor.

C. Bowe v. United States Guarantees a Path to Relief.

1. The Legal Standard.

Five days before *Barrett* — on January 9, 2026 — this Court decided *Bowe v. United States*, 607 U.S. ___ (2026). Justice Sotomayor, writing for the Court, held that procedural mechanisms cannot be construed to close the Court's doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent. *Bowe*, slip op. at 10 (quoting *Castro v. United States*, 540 U.S. 375, 381 (2003)). The District Court itself acknowledged the principle at footnote 4 of Dkt. 1324: "a change in binding precedent that occurred after the district court entered judgment might constitute an exceptional circumstance." Dkt. 1324, at 6 n.4.

2. The Parks Record.

The Parks defendants' appeal involves at least two intervening Supreme Court decisions issued after the District Court's judgment: *Glossip v. Oklahoma*, 604 U.S. 226 (June 13, 2025), and *Barrett v. United States*, 146 S. Ct. 482 (Jan. 14, 2026). Both go to the heart of the convictions. *Bowe* supplies the doctrinal architecture that prevents procedural mechanisms from insulating those errors.

3. Materiality and Prejudice.

Without *Bowe*, the government could argue that any procedural-default rule bars review of the *Barrett* error or the *Glossip* error. With *Bowe*, those arguments are foreclosed. The materiality is therefore architectural: *Bowe* ensures the substantive errors can be corrected.

4. Remedy.

Bowe is your Honor's opinion, recently issued, and directly applicable. Continued incarceration of either Lavon or James Parks in the face of legally invalid convictions is not deference to process — it is defiance of law. Together, *Barrett*, *Glossip*, and *Bowe* establish three halves of the constitutional command: *Barrett* defines one illegality, *Glossip* defines a second, and *Bowe* ensures both can be corrected.

D. The Convictions Rest on Uncorrected False Testimony in Violation of Glossip and Napue.

1. The Legal Standard.

On June 13, 2025, this Court decided *Glossip v. Oklahoma*, 604 U.S. 226 (2025). Your Honor wrote the majority opinion. *Glossip* held that "[a] lie is a lie, no matter what its subject." *Glossip*, slip op. at 19 (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)). The *Napue* rule is foundational: a conviction "obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment . . . . The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Napue*, 360 U.S. at 269. *Giglio v. United States*, 405 U.S. 150, 154 (1972), reaffirmed that this includes testimony bearing on credibility. *Glossip* further held that the *Napue* duty extends to testimony that "goes only to the credibility of the witness," and that "[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence." *Glossip*, slip op. at 19 (quoting *Napue*, 360 U.S. at 269).

The government's own closing arguments confirm the materiality of the *Glossip* violation. During his closing argument on December 27, 2023, AUSA Antoine explicitly acknowledged Diggs's mental health history to the jury, stating: "you're gonna hear, oh, no, he had mental health issues and he can't be trusted" — then immediately deflected by arguing that Diggs was corroborated by other witnesses. Gov't Closing (Antoine), 12/27/23, Tr. at 60. Rather than correcting the false testimony Diggs gave about his mental health and medication, the government used its closing argument to inoculate the jury against the very challenge that the withheld records would have supported. Antoine then dismissed the defense's credibility attack entirely, telling the jury: "She's lying, Diggs is lying, everybody's lying, apparently." Id. The following day, AUSA Violanti reinforced that framing in rebuttal, acknowledging

Diggs's compromised character before urging the jury to credit his account: "I'm not putting angel wings on the guy. But it makes sense what he said happened." Gov't Rebuttal (Violanti), 12/28/23, Tr. at 20–21. Together, these closing arguments did not merely fail to correct Diggs's false testimony — they affirmatively weaponized it, asking the jury to convict on the account of a witness whose mental health, medication history, and a subsequent drug-impaired driving arrest the government had never disclosed. Under *Glossip v. Oklahoma*, 604 U.S. 226 (2025), this pattern — false testimony, government silence, and active credibility rehabilitation in closing — raises a substantial question of law that this Court must address before continued detention is permitted.

2. The Parks Record.

Defense counsel told the jury — in opening and in closing — that the government's theory "rises and falls" with Alphonso Diggs. The government has not contested this characterization. Without Diggs, there is no conviction — not against Lavon, and not against James.

On cross-examination, Diggs categorically denied — under oath — diagnoses documented in his contemporaneous medical records: paranoid schizophrenia, schizoaffective disorder bipolar type, auditory and visual hallucinations, blackout spells, antisocial personality disorder, and severe memory impairment. Each denial was demonstrably false. The government possessed the records that confirmed each diagnosis. The government did not correct a single denial.

Beyond the medical-records perjury, the government concealed Diggs's September 3, 2022 arrest for driving while impaired by drugs. DEA Task Force Officer Nathan Shumaker — on the government's witness list — called the Niagara County Jail to request a keep-away between Diggs and Lavon Parks. His knowledge is imputed to the prosecution under *Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *United States v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1998); and *Giglio*, 405 U.S. at 154. The government nonetheless elicited from Diggs that he had been "clean" for five years. The Niagara County charges were dismissed on May 4, 2023, six months before the Parks trial. The defense did not learn of the arrest until June 2025 — eight months after the verdict.

The credibility problem is compounded by the temporal overlap between Diggs's admitted drug use and the events about which he testified. On cross-examination, Diggs admitted under oath that he snorted heroin daily — three to four grams per day — from December 16, 2017 through July 31, 2018. Tr. Diggs/Cross, Nov. 29, 2023, at 49–52. That

period sits squarely inside the Count 1 conspiracy period charged in the indictment, which ran from February 2017 through May 2019. The government nonetheless elicited from Diggs on redirect that he had been "clean" since July 31, 2018, framing his testimony as the recollection of a recovered witness. Id. at 157–159. The framing was incomplete in two respects: the September 3, 2022 drug-impaired-driving arrest that fell within the supposed clean period, and the eight-month heroin-addiction window that fell inside the very conspiracy the witness was testifying about.

The bias evidence is equally direct. On August 14, 2018 — less than two weeks after his arrest on the Class B felony drug charge — Diggs requested a meeting with Niagara County Sheriff's Office liaison Paul Curcione, the jail's intelligence officer. Tr. Diggs/Cross, Nov. 29, 2023, at 87–91. Diggs offered information about narcotics and criminal activity in Western New York in exchange for assistance on his pending state charges. The Niagara County District Attorney's Office held the felony drug charge against him at the time. The witness's incentive to deliver inculpatory testimony against Lavon Parks was therefore not abstract; it was a live consideration on August 14, 2018, in the same window of time that produced the cooperation framework on which the government would later build its case. None of this was addressed during the government's case, and none of it was corrected on redirect.

The trial court itself recognized — on the contemporaneous record, at a sidebar held during Diggs's cross-examination — that the mental health evidence was material not only to veracity but to capacity. The court stated: "[T]he mental health issues are not just in terms of veracity, they're also in terms of the witness's ability to recall and the witness's ability to appreciate what was happening at the time. And, so, this is relatively close in time to the period that he testified about Mr. Parks. And, so, if he is suffering from hallucinations and the like at about that period of time, tell me why that is not relevant?" Tr. Diggs/Cross, Nov. 29, 2023, at 39–40 (sidebar). The government heard that observation and continued to elicit, and decline to correct, the very testimony the court had identified as going to capacity to perceive.

3. Materiality and Prejudice.

The Parks record is more egregious than *Glossip*. *Glossip* involved one false statement about one prescription. Parks involves dozens of false or misleading answers spanning multiple psychiatric diagnoses, years of documented treatment, active hallucinations, memory loss — and a concealed drug-impaired-driving arrest fourteen months before Diggs took the stand. All from the witness who provided the core factual premise of the government's case. *Glossip* vacated a death sentence on a single false answer about psychiatric medication. The materiality calculus here is manifestly stronger.

On March 30, 2026 — exactly one month before the panel below issued its one-sentence denial — your Honor, joined by Justice Jackson, dissented from the denial of certiorari in *Skinner v. Louisiana*, 607 U.S. ___ (2026): "Equal justice under law . . . requires that two codefendants, convicted of the same crime, who raised essentially the same constitutional claims, receive the same answer from the courts." *Skinner*, slip op. at 1–2 (Sotomayor, J., dissenting). The *Skinner* dissent maps onto this case directly — here, against a father and a son.

4. Remedy.

Glossip vacated a death sentence. The Parks case calls for vacatur of the convictions and a new trial. The government cannot prove harmlessness beyond a reasonable doubt. *Glossip*, 604 U.S. at 244; *Chapman v. California*, 386 U.S. 18, 24 (1967). Standard Second Circuit *Brady* remedy is a new trial. *United States v. Maldonado-Rivera*, 922 F.2d 934, 968 (2d Cir. 1990). This case presents a convergence of constitutional issues — speedy trial, constructive amendment, improper closing arguments, and a Sixth Amendment Compulsory Process violation (defense witness blocked) not raised in this application but argued in previous briefs for bail pending appeal.

E. The District Court's Own Brady Findings, the Suppressed Phones, and the Dead Witnesses Establish the Substantial-Question Prong.

1. The Legal Standard.

Under *Brady v. Maryland*, 373 U.S. 83 (1963), *Kyles v. Whitley*, 514 U.S. 419, 437–38 (1995), and *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999), the suppression of favorable, material evidence violates due process. Materiality is cumulative. *Kyles*, 514 U.S. at 437. The Ninth Circuit's three-part test for cumulative-*Brady* dismissal under *United States v. Bundy*, No. 18-10287 (9th Cir. 2020) — (1) substantial prejudice; (2) flagrant misconduct; (3) no lesser remedy — provides the analytical frame.

2. The Parks Record.

The *Brady* arguments raised in this appeal are not contested allegations. They are court-acknowledged. Judge Vilardo has already said, on the record in this case, that the government's discovery practices reflect "a problem with the way the USAO-WDNY understands and handles its discovery obligations in this District — a problem that, based on the violations and arguments made here, the USAO-WDNY still has not addressed, let alone fixed." Dkt. 972, at 7–8. He has said the government "approach[es] its discovery obligations by finding ways not to disclose evidence," Dkt. 966, at 27. He has used the word "troubling."

Id. He suppressed approximately 71,000 pages of iPhone evidence as a *Brady* remedy.

The cell-phone record exemplifies the violation. The government seized phones from William Putman III in 2017, whose testimony anchored the firearm theory. Six phones were seized from Milton Williams, a witness the government blocked from giving favorable testimony for the defense, who was forced to plead the fifth outside the presence of the jury. Both witnesses testified at trial. The phones contained the only objective record capable of contradicting Diggs's narrative. None of the phones was preserved. None was extracted. None was produced. A government affidavit attesting that all discovery had been produced was demonstrated post-trial to be false.

Two key exculpatory witnesses died during the government-caused delay. Rhonda Howard told police immediately after the Turner shooting that she saw James's truck parked at his house — alibi-supportive evidence the government never disclosed. Howard died before defense could use it. Daniel Wilson denied that the seized package was Lavon's and identified by name a different Niagara Falls drug dealer who had paid him to pick it up. Wilson died before defense had the report. The District Court adjourned the October 2022 trial when it recognized DEA reports submitted in camera contained exculpatory information. Dkt. 1311, at 6–7.

For James Parks specifically, the suppression compounds an additional issue: the government conceded at sentencing that James was not the shooter, was not present, did not drive the shooter, did not provide the weapon, and did not assist in disposing of it. James Parks Sentencing Tr. 21:1–22:14. The advance-knowledge element required by *Rosemond v. United States*, 572 U.S. 65 (2014), was never established. The cell-phone evidence — had it been preserved — would have borne directly on what James knew and when. The District Court's subsequent denial of James's motion for reconsideration on the aiding-and-abetting counts, Dkt. 1242 (Nov. 24, 2025), distinguished *United States v. Anastasio*, 972 F.3d 41 (2d Cir. 2020), on facts the government's own sentencing concessions now contradict. That tension is itself a substantial appellate question.

3. Materiality and Prejudice.

Two key exculpatory witnesses dead. Eight phones never preserved. A false sworn affidavit from the government. A Diggs DUI concealed for almost three years. A District Court that found the discovery violations evidenced "a problem . . . the USAO-WDNY still has not addressed, let alone fixed." Cumulative materiality is manifest.

4. Remedy.

United States v. Pizarro, 19-2391, 19-2419 (2d Cir. May 10, 2023) is distinguishable: in Parks, *Brady* material was disclosed late or never; investigative value was destroyed by witness deaths; the pattern (not isolated) of misconduct is documented in the District Court's own written decisions. *Bundy* is satisfied: substantial prejudice (dead witnesses); flagrant misconduct (false sworn affidavit, undisclosed DWI, undisclosed phones); no lesser remedy possible. The remedy is a new trial or, cumulatively, dismissal with prejudice in an extreme case.

F. The Process Below Failed Every Standard This Court's Precedents Impose.

1. The Legal Standard.

Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the process due is calibrated to three factors: the private interest at stake, the risk of erroneous deprivation under the procedures used, and the government's interest. Bail-pending-appeal review proceeds in two layers under *United States v. Ferranti*, 66 F.3d 540, 542–43 (2d Cir. 1995): clear-error review of historical facts, but a "slightly broader" review of the "ultimate determination" of dangerousness or flight risk.

2. The Parks Record.

The District Court's March 18, 2026 denial imported its November 25, 2024 § 3143(a) (bail pending sentencing) findings into a § 3143(b) (bail pending appeal) decision and added one variable: sentence length. The November 2024 findings predate *Glossip* (June 2025), *Bowe* (January 9, 2026), and *Barrett* (January 14, 2026). The District Court declined to make a danger finding at all. Dkt. 1324, at 5 n.3. Section 3143(b)(1)(A) requires findings on both flight risk and danger. The court cannot satisfy the statute by making one finding and skipping the other. The Second Circuit panel's April 30, 2026 denial then engaged with nothing — a one-sentence order that did not address *Barrett*, *Glossip*, *Bowe*, the District Court's *Brady* findings, or the government's on-record concessions at oral argument.

3. Materiality and Prejudice.

The risk of erroneous deprivation has been realized: the District Court ruled that Counts 3, 4, and 5 could stand cumulatively, and one day later this Court held in *Barrett* that they could not. The Second Circuit panel issued one sentence. Liberty was denied not through analysis, but through assumption.

4. Remedy.

Under *Ferranti*'s second layer, this Court reviews the "ultimate determination" that the Parks defendants pose a flight risk. On the verified record — Schroeder's 2019 "disingenuous" finding, McCarthy's November 2019 written decision finding compliance, Vilardo's December 2022 finding that the government had not met its burden, four years of perfect James-Parks compliance, one year of perfect zero-tolerance Lavon-Parks compliance facing life imprisonment, the Saint-Gobain employment, the Bishop-Jones-attested ministry, the Doris-Parks custodianship at the same address that worked in 2022 — the ultimate determination of flight risk cannot stand.

II. NEITHER LAVON NOR JAMES PARKS IS A FLIGHT RISK OR A DANGER TO THE COMMUNITY.

A. The Legal Standard Requires Individualized Assessment.

United States v. Friedman, 837 F.2d 48, 50 (2d Cir. 1988), requires "more than evidence of the commission of a serious crime and the fact of a potentially long sentence to support a finding of risk of flight." *Abuhamra*, 389 F.3d at 320–21: "Even though a guilty verdict greatly reduces a defendant's expectation in continued liberty, it does not extinguish that interest. The language of § 3143(a) confers a sufficient liberty interest in continued release (on satisfaction of the specified conditions) to warrant some measure of due process protection." *United States v. Abuhamra*, 389 F.3d 309, 320 (2d Cir. 2004). That standard requires individualized fact-finding and identifies past performance under supervision as the most probative indicator of future compliance. The Circuit Justice jurisprudence is to the same effect. In *Harris v. United States*, 404 U.S. 1232 (1971) (Douglas, J., in chambers), Justice Douglas granted bail pending appeal to a federal narcotics defendant, holding that "the Government has not met its burden of showing that bail should be denied," id. at 1233, and that "a far stronger showing of danger to the community must be made than is apparent from this record to justify a denial of bail on that ground." Id. at 1236. Decisive for Justice Douglas was that the applicant "ha[d] never failed to make a required court appearance while on bail" and had "voluntarily submitted to the authorities" when his post-sentencing stay expired. Id. From the record we have here today no finding can be made not was explicitly found by niether the district court or the 2nd circuit court of appeals, the Parks's release history justifies the record and permits release.

B. The Compliance Record Spans Seven Years — Confirmed by Three Magistrate Judges and One District Judge.

Tennessee 2017. Lavon and James Parks were arrested during a Tennessee traffic stop in November 2017. The Tennessee court released both defendants on bail. Both appeared at every required court appearance, traveling from Niagara Falls each time. Defense counsel confirmed at oral argument before the Second Circuit on April 28, 2026: "when our clients were arrested in 2017 in Tennessee and charged there, they made every court appearance in Tennessee despite living in Niagara Falls, New York."

May 2019: First Federal Release. On May 7, 2019, after the initial appearance, Magistrate Judge McCarthy released James Parks over the government's strong opposition. On May 14, 2019, the same magistrate released Lavon Parks after the government proffered the then-uncharged Kevin Turner homicide. Judge Vilardo — the same district judge whose later orders the government now invokes — denied the government's appeal of the magistrate's findings after oral argument on June 17, 2019. Reply Brief at 5; Tr. p. 5, Dkt. 57.

October 25, 2019: The Schroeder "Disingenuous" Finding. The day after the indictment was superseded to formally charge the January 2018 Turner homicide, Magistrate Judge Schroeder denied detention again. After AUSA Higgins admitted that the government had known about the homicide charges since January of 2018, Magistrate Schroeder ruled from the bench:

> "So since January of 2018 the government had this knowledge and now you dare say on this date, October the 25th, 2019, the government's going to be prejudiced if these people are allowed to be released when they've been released for well over a year? . . . That's a disingenuous argument, Ms. Higgins, I'm sorry. If the government had knowledge of these two individuals allegedly involved in a shooting and a death since January of 2018, I find it inconceivable that the government suffers a prejudice if these gentlemen are allowed to remain on bail for a matter of a few days until the government can take an appeal to Judge Vilardo." 10/25/19 Tr. at 18–19; Dkt. 136 at 19.

November 1, 2019: The McCarthy Written Finding. Magistrate Judge McCarthy presided over the renewed detention hearing on the superseding indictment and denied detention in a written decision:

> "Notwithstanding their awareness over the past five months that murder charges were likely imminent, defendants have neither fled nor violated any other condition of their release, which satisfies me that the current conditions of release are sufficient." Dkt. 149 at 2–3.

July 2022: The Single Pretrial Issue and the Court's Calibrated Response. In July 2022, after Lavon Parks made contact with witness Tanesha Williams, the District Court

remanded him pending review. Dkt. 624. As detailed below, Judge Vilardo restored release five months later on home incarceration with electronic monitoring after finding the government had not met its burden. The pretrial-supervision record for both Applicants reflects what *United States v. Abuhamra*, 389 F.3d 309, 320 (2d Cir. 2004), instructs courts to evaluate — a totality assessment of history and characteristics, not isolated incidents. James Parks's four-and-a-half-year pretrial supervision included two summonses for technical violations; the supervising court declined to revoke release in either instance, and James complied with conditions thereafter without further incident. ECF 414, 416, 808.

December 15, 2022: The Vilardo Release of Lavon. After the District Court found that the government's discovery violations had compromised the defendants' speedy-trial rights, Judge Vilardo released Lavon Parks on home incarceration with electronic monitoring. The court ruled from the bench:

> "So I find that the government has not met its burden of showing me that there are no condition or combination of conditions that warrant the defendant's release. I find that the defense has met its burden of showing me that. I think that, you know, the government makes the argument that Mr. Parks is a danger. Ms. Meyers-Buth does a good job of refuting that, I think, in her papers." 12/15/22 Tr. at 6; Dkt. 797 at 6.

December 2022 to December 2023: The Year of Zero-Tolerance Compliance Facing Life. Lavon Parks complied with every condition of his zero-tolerance home incarceration for over a year — no cell phone, no computer, no contact with witnesses, no co-residency with his father. He attended six weeks of trial while facing potential life imprisonment, appearing each day. He had zero violations. The government moved to revoke release in January 2023. The District Court denied that motion. Reply Brief at 2; Dkt. 1311 at 14, 23–24. At sentencing on February 6, 2026 — the most current assessment by the judge who denied bail — Judge Vilardo found on the record that Lavon Parks "is smart," is "engaging," and that "there is a good chance of rehabilitation here," expressly declining to impose life imprisonment on the ground that life is appropriate "only where there's no hope of rehabilitation or some other extraordinary circumstance." Lavon Parks Sentencing Tr. at 37:17–24. Those findings — made on the current post-conviction record, by the same court whose November 2024 findings the bail denial imported — are directly inconsistent with a determination of dangerousness or unmanageable flight risk.

James Parks: Four-and-a-Half Years of Perfect Pretrial Compliance. James maintained perfect compliance from May 2019 through December 2023. He appeared voluntarily at every court proceeding. He complied with every condition. He maintained

full-time employment, rising to leadman at Saint-Gobain. He has no prior criminal history. He has no passport. He has lived his entire adult life in the Niagara Falls area. Dkt. 1311 at 22.

C. The Comparative Analysis: Parks Stands Far Above the Typical § 3143(b) Denial.

Published Second Circuit and Supreme Court bail-pending-appeal denials rest on records dramatically less favorable than the Parks record on every metric the statute makes relevant. The comparison is not close.

In *United States v. Salome*, 870 F. Supp. 648, 653 (W.D. Pa. 1994), the court denied release where the appeal raised only "generic sufficiency of the evidence argument" and the defendant's record showed nothing "out of the ordinary" relative to other drug traffickers subject to mandatory detention. Parks raises thirteen substantial questions, two driven by intervening unanimous Supreme Court authority, on a record the District Court itself called troubling. In *United States v. Lea*, 360 F.3d 401 (2d Cir. 2004), the Second Circuit reversed a grant of bail where the district court had found "exceptional circumstances" based on the defendant's school enrollment and employment alone. The Second Circuit held that "purely personal" factors do not qualify. Parks does not rest on purely personal factors; Parks rests on intervening Supreme Court precedent and judicial findings of prosecutorial pattern. In *United States v. Ferranti*, 66 F.3d 540 (2d Cir. 1995), the court reversed a grant of bail to a defendant convicted of arson resulting in the death of a New York City firefighter; that defendant had documented multiple violent acts including the homicide and an attempted murder. Parks has no history of violence outside the conviction at issue, perfect compliance for years, and the District Court's own prior release findings.

In *United States v. El-Hage*, 213 F.3d 74 (2d Cir. 2000), the Second Circuit denied release where the defendant had documented foreign passports and overseas residence in a case involving the U.S. embassy bombings in East Africa. Parks have no passports, no foreign ties, and lifelong Niagara Falls residence. In *United States v. Shakur*, 817 F.2d 189 (2d Cir. 1987), the court reversed a grant of bail to a defendant who had previously failed to appear after the Brinks robbery, lived under a fictitious name, and was on the FBI's Ten Most Wanted Fugitives list. The Parks defendants made every Tennessee court appearance in 2017–2019 despite living in New York; have no history of avoidance or flight; and Lavon's December 2022 to December 2023 record is proven non-flight under stringent conditions while facing potential life imprisonment.

The pattern is unmistakable. The typical § 3143(b) denial case involves a defendant detained throughout pretrial, with at least one pretrial release violation, raising one substantial

question, with no prior magistrate or district-court findings of compliance, on a record consistent with flight risk. The Parks case is the categorical opposite. Two defendants. Three magistrate judges and one district judge across multiple decisions all finding compliance. Thirteen substantial questions. A "disingenuous" finding against the government from 2019 still standing, never appealed, and perfectly applicable today. A District Court finding the government had not met its burden as to Lavon in 2022 still standing, never appealed, and perfectly applicable today. Seven years of zero infractions. A trial judge's on-record sentencing language that he would not have imposed the 20-year sentence absent the government's Rule 48(a) reversal. The same trial judge granting bail pending appeal from the bench eight days after denying it here, to a former DEA agent convicted of corruption tied to the same DEA office that opened the Parks investigation.

D. The Proposed Release Plan Manages Any Residual Risk.

Release under the following conditions addresses any concern this Court might hold for both defendants: home incarceration at 552 18th Street, Niagara Falls, New York, with Doris Parks as third-party custodian; GPS electronic monitoring; no-contact orders with government witnesses and cooperators; surrender of any travel documents; reporting to pretrial services. Doris Parks's role as custodian is not a new proposal. She executed a signature bond at Lavon's initial appearance before Magistrate Judge McCarthy in May 2019. Dkt. 36. She is James's wife. She is Lavon's mother. She is the same person the federal magistrate judge accepted as custodian when this case began. James has confirmed employment at Saint-Gobain upon release. Lavon has the infrastructure of his reselling enterprise and the support of Bishop Jones, his pastor of two years, and the Grace Calvary Church congregation.

III. EXCEPTIONAL REASONS UNDER 18 U.S.C. § 3145(c).

Section 3145(c) authorizes release "if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate." "Exceptional reasons" exist where there is "a unique combination of circumstances giving rise to situations that are out of the ordinary." *United States v. DiSomma*, 951 F.2d 494, 497 (2d Cir. 1991).

The legislative history confirms exactly the categories the Parks defendants present. The principal piece of contemporaneous legislative history is the Crawford Letter to Senator Simon, July 26, 1989, reproduced in *DiSomma*, 769 F. Supp. 575, 577 (S.D.N.Y. 1991). It identified by name two paradigms: "an elderly man . . . who has lived in the community all his life without prior incident" and "a convicted drug dealer who, because of wounds incurred during his capture, was temporarily incapacitated and thus not likely to commit further crimes

or to flee, and whose appeal raised a novel and difficult search or seizure question." The Ninth Circuit in *United States v. Koon*, 6 F.3d 561, 563–64 (9th Cir. 1993), expressly read the Crawford Letter to encompass "ill health and infirmity from age."

James C. Parks fits the elderly-defendant paradigm exactly. He is 62 years old. He served the United States Army for thirty years. He carries a Combat Infantryman Badge from combat in Iraq and Afghanistan, the Meritorious Service Medal, and the Bronze Commendation Medal from his Afghanistan deployment. He suffers from service-connected PTSD — a medical condition formally adjudicated by the Department of Veterans Affairs and falling within the spirit of the "wounds incurred during capture" example Congress's Justice Department interlocutor identified. Congress, when it enacted § 3145(c), could not have hand-picked a more textbook recipient.

Lavon Parks satisfies the second Crawford paradigm. His appeal raises substantial questions of law on which the conviction will stand or fall — precisely the "novel and difficult" questions Congress contemplated. His post-conviction trajectory — deacon licensing, ministry leadership, constitutional study, non-retaliation to assault, zero infractions — is the antithesis of dangerousness.

Under *DiSomma*, "exceptional reasons" existed because "the very element of his conviction about which he raises a substantial issue makes him ineligible for release under § 3143(a)(1) and (b)(1)." 951 F.2d at 497. The same is true here. The very § 924(c)/(j) cumulative-conviction structure that triggers categorical detention under § 3143(b)(2) is the structure that *Barrett* invalidates. *DiSomma* requires release in exactly that scenario, for both Lavon and James Parks.

IV. THE SAME DISTRICT COURT'S DISPARATE TREATMENT OF A CORRUPT FEDERAL DRUG AGENT — EIGHT DAYS AFTER DENYING BAIL HERE — COMPELS THIS COURT'S INTERVENTION.

On October 10, 2024, a federal jury in the Western District of New York convicted retired DEA Special Agent Joseph Bongiovanni of conspiracy to defraud the United States, conspiracy to distribute a controlled substance, four counts of obstruction of justice, and false statement to law enforcement — nine felony counts in total. The trial was presided over by the same district judge who tried this case — the Honorable Lawrence J. Vilardo. The prosecution was conducted by the same United States Attorney's Office that prosecuted Lavon and James Parks, with AUSA Joseph Tripi as lead counsel.

On January 21, 2026, Judge Vilardo sentenced Bongiovanni to 60 months. At that hearing, the same judge who declined to make a dangerousness finding for the Parks defendants described Bongiovanni's case as presenting "two completely polar opposite versions of the facts and polar opposite versions of the defendant." The court stated on the record that it was "troubled" by some of the government's arguments and would have acquitted Bongiovanni of bribery if the decision were the court's to make.

The Parks defendants' bail-pending-appeal motion was denied on papers with no hearing on March 18, 2026. Eight days later, on Thursday, March 26, 2026, the same District Court — during oral arguments, from the bench — granted bail pending appeal in *United States v. Bongiovanni*, No. 1:19-cr-227 (W.D.N.Y.), Dkt. 1706. The government, through AUSA Tripi, opposed release, arguing that "there are not too many other defendants like that who are walking around free" and that no "substantial question" was raised. Judge Vilardo rejected that argument and ruled from the bench. The court explained:

> "Why shouldn't I be concerned by that? If [I] ordered Bongiovanni to prison now, and Bongiovanni were to be successful in his appeal, then Bongiovanni would have spent time in prison when he should not have."

And: "If Bongiovanni's conviction is upheld, he'll just be starting his sentence a year later."

The institutional overlap is direct. The Buffalo Resident Office of the Drug Enforcement Administration — the same office where Bongiovanni was assigned from 2001 until his retirement — is the same office that opened the Parks investigation in 2017. The conduct of corruption charged in the Bongiovanni case spanned the period from 1998 through February 1, 2019 — an interval that fully encompasses the opening of the Parks investigation. The same United States Attorney's Office whose discovery practices Judge Vilardo himself called "a problem . . . the USAO-WDNY still has not addressed, let alone fixed" in this case prosecuted both Bongiovanni and the Parks defendants.

The disparity is constitutionally untenable. The bail-pending-appeal standard under 18 U.S.C. § 3143(b) is the same standard for everyone. Where the same district judge applies that standard — with a hearing on the record, findings made on the record, individualized § 3143(b) analysis, engagement with the specific appellate issues, and a reasoned disposition granting release — to grant relief to a former federal agent convicted of nine felonies tied to the same DEA office and the same prosecutor's office that committed the *Brady* violations Judge Vilardo himself documented in the Parks case, but denies it to the Parks defendants whose appeal raises multiple constitutional substantial questions including a Supreme Court

reversal decided one day after the District Court itself reached the *Barrett* result on multiplicity, equal protection of the laws and the integrity of the bail-pending-appeal regime require this Court's intervention.

The same concern Judge Vilardo expressed for Bongiovanni — "Why shouldn't I be concerned by that?" — applies with greater force to two defendants whose appeal raises multiple substantial questions. The Parks defendants are not asking this Court to second-guess any factual finding. They are asking only that the same standard the District Judge applied to a corrupt former DEA agent be applied to them. The risk of erroneous deprivation under a one-sentence order that engages none of the controlling intervening precedent is not hypothetical — it is realized. The value of additional procedural safeguards (findings, engagement with the record, reasoned decision) is not "speculative" in *Mathews* terms; it is the basic judicial function. That disparity is not a close call. Under *Mathews*, the risk of erroneous deprivation is precisely what procedural due process is designed to prevent. Two defendants situated in the same courthouse, before the same judge, on motions raising substantial questions under § 3143(b), received categorically different process. The process Bongiovanni received is the process *Mathews* requires.

V. REVERSAL IS NOT MERELY LIKELY — IT HAS ALREADY BEGUN.

The substantial-question prong of 18 U.S.C. § 3143(b)(1)(B) does not require certainty. It requires only that the appeal raise "a substantial question of law or fact likely to result in" reversal, a new trial, a sentence not including imprisonment, or a reduced sentence. *Randell*, 761 F.2d at 125. Lavon and James Parks meet that standard six times over.

First, *Barrett* compels vacatur of the duplicative § 924(c) conviction. Three months ago, this Court unanimously held that 18 U.S.C. § 924(c)(1)(A)(i) is a lesser-included offense of § 924(j); that the two define the "same offense" under *Blockburger*; and that Congress did not clearly authorize cumulative convictions. *Barrett*, slip op. at 24. The decision reversed the Second Circuit. Both Lavon and James were convicted of both a § 924(c) count and a § 924(j) count arising from the same shooting. One day before *Barrett*, the District Court itself reached the *Barrett* result on the *Blockburger* question, finding Count 3 a lesser-included offense of Count 5. The Second Circuit on remand in *Barrett* issued April 9, 2026 confirms that vacatur of conviction is required. That is reversal, not "likelihood of reversal." It has already happened in the trial court and in the Second Circuit. Parks asked the district court to address what *Barrett* itself left for another day — being charged three times with the same offense and those counts being presented to a jury — which falls directly into what Justice Gorsuch wrote:

"These days, federal and state criminal codes have exploded, with scores of repetitive offenses on the books. Frequently, also, today's prosecutors bring as many overlapping felony charges as they can in a single case to see what will stick, and courts often tolerate the practice. But while today's decision is correct as far as it goes, sooner or later we will have to clear up the confusion — and to my eyes, this case serves as a poster child for how that confusion should be resolved." "Today, to be sure, the Court has no occasion to tangle with any of this. The parties have not asked us to address the tension in our case law." *Barrett*, slip op. at 5–6 (Gorsuch, J., concurring). The Parks case is that case, as all double jeopardy challenges were properly preserved pretrial. *See* Dkt. 426 (Parks pro se double jeopardy motion); Dkt. 582; Dkt. 671. And post-trial motions.

Second, *Lora* compels resentencing. Because § 924(c)(1)(D)(ii)'s consecutive-sentence mandate does not extend to § 924(j) sentences, *Lora*, 599 U.S. at 459, and because *Barrett* now requires that the duplicative § 924(c) conviction be vacated, the consecutive-sentence calculation that drove the 30-year and 20-year sentences imposed February 6, 2026 must be redone. The trial judge himself stated on the record that absent the government's Rule 48(a) reversal he would have sentenced James to something less than twenty years. James Parks Sentencing Tr. 6:15–20, 40:9–18. At minimum, this is a substantial question likely to result in a reduced sentence within § 3143(b)(1)(B)(iv).

The trial-penalty math confirms that this is not a marginal sentencing question. At the November 1, 2023 Frye/Lafler hearing, with the § 924(j) homicide count contingently dismissed, the government's offer was 120-to-180 months. Frye/Lafler Tr. 14:11–25 (Nov. 1, 2023). Lavon rejected; he was sentenced to 360 months on the very stacking framework *Barrett* has now invalidated. The fifteen-year delta is, to the day, the punishment *Barrett* tells us cannot stand.

Third, *Glossip* and *Napue* compel a new trial or dismissal as to the Diggs testimony. The Diggs medical records, the September 3, 2022 DEA-task-force-officer-involved arrest, and the prosecutor's failure to correct Diggs's under-oath denials present the textbook *Glossip* fact pattern. *Glossip*, decided last year, was authored by your Honor.

Fourth, the District Court's own *Brady* findings establish the substantial-question prong. Judge Vilardo has already said, on the record in this case, that the government's discovery practices reflect "a problem . . . the USAO-WDNY still has not addressed, let alone fixed," that he is "troubled," and that the prosecution "approach[es] its discovery obligations by finding ways not to disclose evidence." Dkts. 966, 972. He suppressed approximately 71,000 pages of iPhone evidence as a *Brady* remedy. Two key exculpatory witnesses died

during the government-caused delay. Eight phones from testifying witnesses were never preserved. A false sworn affidavit. Any one of these would be enough; together, they are devastating. The standard *Brady* remedy under *United States v. Maldonado-Rivera*, 922 F.2d 934, 968 (2d Cir. 1990), is a new trial. But a new trial presumes that the adversarial process can be reconstructed. On this record, it cannot. The evidence necessary to test Diggs's perjury has been lost by the government's own conduct: Milton Williams's six phones are no longer in ATF custody; Putman's phones are gone; the contemporaneous Putman chain-of-custody is broken; and seven years have passed since the relevant events. When the government's misconduct has permanently deprived the defendant of the ability to reconstruct a fair proceeding, a new trial cannot cure the constitutional injury. *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988); *California v. Trombetta*, 467 U.S. 479, 488 (1984).

Fifth, *Bowe* preserves the post-conviction pathway. Justice Sotomayor's January 9, 2026 majority opinion forecloses any procedural-mechanism argument the government might raise to insulate the *Barrett* error or the *Glossip* error from review.

Sixth, the Bongiovanni comparator is itself a substantial question. The same district judge, applying the same § 3143(b) standard, granted bail pending appeal — from the bench, eight days after denying it here — to a former federal DEA agent convicted of corruption tied to the same office that opened the Parks investigation. Equal application of law is itself a substantial question.

The double standard is the application's spine. The same concern Judge Vilardo expressed for Bongiovanni applies with greater force to two defendants whose appeal raises thirteen substantial questions. The Parks defendants are a father and a son. They have served seven years between them with zero disciplinary infractions. They have a stable home and a willing third-party custodian. They have done what every standard the law imposes asks them to do.

REASONS FOR GRANTING THIS APPLICATION

Dwayne Barrett was convicted in 2012. He was resentenced twice. He waited fourteen years for this Court to correct the § 924 multiplicity problem that *Barrett v. United States*, 146 S. Ct. 482 (2026), finally resolved on January 14, 2026. During those fourteen years, Mr. Barrett sat in federal custody under a cumulative conviction scheme this Court unanimously held Congress had not authorized and Justice Gorsuch held was flatly unconstitutional. That is not a model of due process — that is the consequence of a system that deprives liberty first and

corrects the error later. The Parks defendants' appeal begins where Mr. Barrett's ended. The violation is identified. The Supreme Court has already ruled. The Second Circuit, on remand in *Barrett* itself, has already directed vacatur. The question is whether Lavon and James Parks must sit through the same fourteen-year wait Mr. Barrett endured — or whether *United States v. DiSomma*, 951 F.2d 494, 497 (2d Cir. 1991), permits release now where "the very element that makes the defendant ineligible for ordinary bail" is the element the controlling Supreme Court precedent has rendered invalid. *DiSomma* answers the question directly: "a unique combination of circumstances, giving rise to situations that are out of the ordinary," id. at 497, constitutes exceptional reasons. The Parks record — a *Barrett* violation on the face of the judgment, a *Glossip* violation in the government's cooperating witness, a District Court *Brady* record the court itself called "troubling," and a disparate grant of bail to a corrupt former DEA agent eight days later — is exactly such a combination. This Application is unique. Two pro se federal prisoners — a father and a son — are detained under convictions that, after this Court's decision in *Barrett*, cannot all stand — and on a record the trial court itself called "troubling." Dkt. 966, at 27. Both conditions exist on the same record. Both were ignored by the panel below.

Lavon Parks and James Parks are neither flight risks nor dangers to the community. The District Court declined to make any dangerousness finding at all. Dkt. 1324, at 5 n.3. The December 15, 2022 release of Lavon Parks expressly found that "the government has not met its burden of showing me that there are no condition or combination of conditions that warrant the defendant's release." Dkt. 797, at 6. From December 2022 through December 2023, Lavon committed no violations under zero-tolerance conditions while facing potential life imprisonment. James worked full-time from his 2019 release through trial.

Each month of delay closes a window that cannot be reopened. Lavon Parks has served approximately 70 months on a 360-month sentence. James Parks — who is 62 years old — has served approximately 29 months on a 240-month sentence. For James, every year of appellate process consumed in detention is a year extracted from a life expectancy he does not control.

Beyond the sentence math, three categories of collateral consequence are accumulating in ways no later decision can undo. First, under 18 U.S.C. § 3632(d)(4)(D)(xxii), a federal prisoner whose conviction includes § 924(c) is statutorily disqualified from earning First Step Act time credits. Second, BOP Program Statement 5100.08 mandates that § 924(c) convictions trigger custody-classification baselines. Third, under *Benjamin v. Fraser*, 264 F.3d 175 (2d Cir. 2001), Sixth Amendment counsel-access claims accrue irreparable harms with each month of confinement.

The Parks defendants' appeal raises thirteen substantial questions. The trial court itself already reached the *Barrett* result on multiplicity one day before *Barrett* issued. The Second Circuit on remand in *Barrett* has directed vacatur. The trial court has already documented the USAO-WDNY's discovery pattern in unsealed written decisions. The trial court has already said, on the sentencing record, that absent the government's Rule 48(a) reversal he would have sentenced James to something less than twenty years. The same trial court has already granted bail pending appeal — from the bench, eight days after denying it here — to a former DEA agent. Three magistrate judges and one district judge across multiple decisions have already found the Parks defendants compliant. Doris Parks has already been the federally accepted third-party custodian at the same address Lavon was successfully released to in 2022.

What remains is for this Court — through your Honor, as Circuit Justice for the Second Circuit — to do what the panel below would not: engage the record. The record commands release.

CONCLUSION

For the foregoing reasons, this Court should: (1) grant this Application and order Applicants Lavon Parks and James C. Parks released pending appeal under 18 U.S.C. § 3143(b) and § 3145(c), with conditions including third-party custodianship of Doris Parks, home confinement at 552 18th Street, Niagara Falls, New York, GPS monitoring, and any other conditions this Court deems appropriate; (2) in the alternative, direct the Second Circuit to reconsider its April 30, 2026 summary order in light of *Barrett v. United States*, 146 S. Ct. 482 (2026), *Bowe v. United States*, 607 U.S. ___ (2026), and *Glossip v. Oklahoma*, 604 U.S. 226 (2025), none of which the panel addressed; (3) in the further alternative, refer this Application to the full Court pursuant to Supreme Court Rule 22.5; and (4) issue an immediate administrative stay of the Applicants' continued detention sufficient to permit full consideration of this Application.

Dated: May 13, 2026

Respectfully submitted,

Lavon Parks

Lavon Parks

Reg. No. 28668-055

James C. Parks

James C. Parks

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Applicants, *Pro Se*

I Declare that the foregoing is true under the Penalty of perjury 28 U.S.C 1746

Lavon Parks 5-13-2024

James C. Parks 5-13-2026

Additional material from this filing is available in the Clerk's Office.