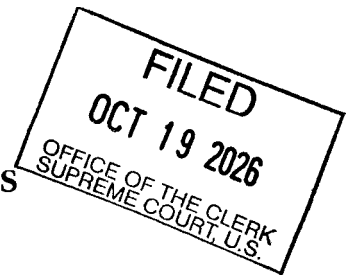


No. 26-5018



IN THE SUPREME COURT OF THE UNITED STATES

RASHAUN ANTONIO TAYLOR,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in an ineffective-assistance proceeding under 28 U.S.C. § 2255, the availability of discretionary consecutive sentences and a sentencing explanation given under a disputed statutory-maximum premise suffice to defeat *Strickland*'s reasonable-probability showing without a hearing, when the court of appeals assumes that counsel deficiently failed to assert a lower count-specific maximum and the district court never evaluated the sentence under that lower maximum.

PARTIES AND CORPORATE DISCLOSURE

The parties are Rashaun Antonio Taylor, petitioner, and the United States of America, respondent. Both were parties below. No corporate disclosure statement is required under Rule 29.6.

RELATED PROCEEDINGS

United States v. Taylor, No. 2:19-cr-00036-RAJ-RJK-1 (E.D. Va.): original judgment July 22, 2020; amended judgment January 25, 2024.

Taylor v. United States, No. 2:23-cv-00487-RAJ (E.D. Va.): partial § 2255 relief January 22, 2024; amended opinion and order January 25, 2024.

United States v. Taylor, No. 24-6117 (4th Cir.): judgment March 3, 2026; rehearing denied July 28, 2026; mandate August 5, 2026; recall and counsel motions denied September 4, 2026.

United States v. Taylor, No. 20-4395 (4th Cir.): original direct appeal decided August 18, 2021; rehearing denied December 14, 2021.

Taylor v. United States, 143 S. Ct. 167 (2022): certiorari from the original direct appeal denied October 3, 2022.

United States v. Taylor, No. 25-6353 (4th Cir.): discovery appeal dismissed March 3, 2026; mandate April 27, 2026.

In re Rashaun Antonio Taylor, No. 24-167 (4th Cir.): authorization application denied May 14, 2024.

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OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Fourth Circuit, entered March 3, 2026, in No. 24-6117, is reproduced at App. 1a–5a. The judgment and notice appear at App. 6a–8a, and the July 28, 2026 order denying rehearing en banc at App. 9a. The district court’s January 25, 2024 amended memorandum opinion and order, ECF No. 259, appears at App. 10a–42a; its amended criminal judgment, ECF No. 261, appears at App. 43a–49a. The September 4, 2026 order denying recall of the mandate and appointment of counsel appears at App. 50a as subsequent procedural history, not as the merits judgment principally challenged here.

JURISDICTION

The court of appeals entered judgment on March 3, 2026. After granting a thirty-day extension for seeking rehearing, that court received Taylor’s rehearing petition on May 4, 2026 and denied rehearing en banc on July 28, 2026. App. 6a–9a; Fourth Cir. Dkt. 42–48. The ninety-day period under this Court’s Rule 13.3 therefore expires October 26, 2026. Jurisdiction is invoked under 28 U.S.C. § 1254(1). Taylor does not rely on issuance of the mandate or the September 4 post-mandate order to extend the time for seeking review of the March 3 judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This petition concerns the Sixth Amendment right to the effective assistance of counsel; the jury-authorized maximum in 18 U.S.C. § 1963(a); the concurrent-or-consecutive sentencing authority in 18 U.S.C. § 3584(a)–(b); and the hearing and remedial provisions of 28 U.S.C. § 2255(b). Pertinent text, together with § 1254(1), is reproduced at App. 51a–54a. Section 1963(a) ordinarily authorizes no more than twenty years, with life imprisonment available if the RICO

violation is based on racketeering activity punishable by life. Section 2255(b) distinguishes determining entitlement to relief from selecting an appropriate remedy.

STATEMENT OF THE CASE

A. The jury found Virginia murder without identifying its degree.

Rashaun Antonio Taylor was tried in the Eastern District of Virginia in February 2020. The jury convicted him of RICO conspiracy under 18 U.S.C. § 1962(d) (Count One), use of a firearm resulting in death (Count Three), felon in possession (Count Five), and heroin distribution (Count Six). It acquitted him of murder in aid of racketeering under § 1959(a)(1) (Count Two); the court separately granted acquittal on Count Four. App. 11a–12a.

The Count One verdict was not silent about murder. As the district court recorded, the jury found that Taylor committed the murder of Delante Eley in violation of Virginia law as explained by the court. But the instructions expressly included both first-degree and second-degree murder under Virginia Code § 18.2-32. The verdict did not identify the degree. App. 25a. The question is therefore not whether the jury found any murder, but whether it necessarily found the life-punishable degree required to raise Count One's maximum above twenty years.

The Fourth Circuit described Taylor's argument as uncertainty whether the jury found first-degree rather than second-degree murder. It cited *United States v. Huskey*, 90 F.4th 651, 674 (4th Cir. 2024), and noted that Virginia second-degree murder carries a maximum of forty years, not life. App. 3a–4a. The Count Two acquittal is part of the procedural history; Taylor does not treat it as establishing that the jury rejected every form of murder or as alone resolving the Count One sentencing question.

B. Counsel challenged the murder guideline, not the statutory ceiling.

At the July 21, 2020 sentencing, defense counsel argued for the second-degree-murder guideline rather than the first-degree-murder cross-reference. Judge Raymond A. Jackson found an intentional, premeditated killing and applied the first-degree guideline. The district court's later opinion distinguishes that Guidelines objection from the *Apprendi* objection Taylor says should have limited the statutory ceiling. App. 25a–26a. Correcting the ceiling would not, by itself, erase the judge's factual findings or automatically require the second-degree guideline.

The original sentence was 420 months on Count One, concurrent terms of 120 months on Count Five and 240 months on Count Six, and an additional 120 months consecutively on Count Three: 540 months altogether. App. 2a, 11a–12a. Taylor's direct appeal was unsuccessful, and this Court denied certiorari on October 3, 2022. App. 12a.

The sentencing remarks favoring a lengthy sentence must be confronted. The Government's appellate brief quotes the sentencing transcript as rejecting Taylor's proposed 360-month sentence as inadequate, emphasizing public protection and deterrence, and noting that substantial penalties on the different counts could run consecutively. That same account records repeated references to life imprisonment plus the additional 120-month term. Gov't Br. 12–15, Fourth Cir. Dkt. 26 (citing Sent'g Tr. 13, 55–63, ECF No. 173), reproduced at App. 55a–58a. These are the Government's filed excerpts and account of the transcript, not a newly supplied transcript or new evidence.

C. Section 2255 relief removed Count Three but retained the life-maximum premise.

Taylor timely filed his first § 2255 motion on September 29, 2023. His original Ground Five challenged counsel's failure to prevent an above-twenty-year RICO sentence; his reply invoked *Apprendi*. Later motions to amend and supplement focused more specifically on the

degree-of-murder defect. The district court denied those amendments on timeliness, relation-back, and procedural-default grounds. App. 12a, 23a–26a, 38a–41a. This petition addresses the ineffective-assistance issue that the Fourth Circuit subsequently certified and decided on prejudice, not the separately rejected amendments.

The Government conceded that Count Three lacked a valid predicate crime of violence following *United States v. Simmons*, 11 F.4th 239 (4th Cir. 2021), and requested resentencing on the surviving counts. The district court granted relief on Count Three. App. 16a–17a. Applying *United States v. Hadden*, 475 F.3d 652, 669 (4th Cir. 2007), it chose a sentence correction rather than a full resentencing. App. 17a–18a.

“In its discretion, the Court declines to impose a higher total sentence on Counts One, Five, and Six than 420 months, and the Court shall instead correct Petitioner’s sentence without conducting a formal resentencing.” App. 18a.

That statement did not reject a different allocation of a 420-month sentence under a twenty-year Count One ceiling. The court continued to hold that the jury’s finding authorized the life maximum and that a contrary objection would have been meritless. App. 25a–26a. Its corrective order therefore was not an alternative sentencing determination made on an accepted twenty-year maximum. The amended judgment retained 420 months on Count One and concurrent terms on Counts Five and Six. App. 44a.

D. The Fourth Circuit assumed deficient performance and denied prejudice.

Taylor filed his notice of appeal on February 6, 2024, twelve days after the amended judgment. E.D. Va. Dkt. 262. The Fourth Circuit granted a partial certificate of appealability on whether counsel rendered ineffective assistance by failing, under *Apprendi*, to argue that Count One could not exceed twenty years. App. 2a–3a. Taylor litigated that appeal pro se.

The Government argued that the surviving counts had a combined maximum of 600 months and that the same 420-month term could have been obtained through consecutive sentences. It relied on *United States v. Angle*, 254 F.3d 514 (4th Cir. 2001) (en banc), later circuit decisions, and Judge Jackson's sentencing remarks. It also argued that Taylor had identified no collateral consequence and invoked *Lockhart v. Fretwell*, 506 U.S. 364 (1993). Gov't Br. 21–28, App. 59a–66a.

The Government proposed an alternative disposition: if prejudice could not be resolved against Taylor on the existing record, the court should remand for an evidentiary hearing concerning counsel's performance and allow the district court to address prejudice as well. Gov't Br. 29–30, App. 67a–68a. This was a conditional alternative, not a concession that relief or a hearing was required.

On March 3, 2026, the panel assumed deficient performance and applied the twenty-year Count One ceiling for purposes of its prejudice analysis. It first reasoned that the district court could have imposed the same total within the combined maximum by shortening Count One and making other terms consecutive. App. 4a. It then gave an additional, record-based reason:

“[N]othing about the court's assessment of those factors suggests that it would have imposed a different sentence had counsel argued that *Apprendi* limited the statutory maximum on the racketeering offense to 20 years.” App. 4a.

The panel concluded that the record demonstrated the court would have imposed the same sentence through consecutive terms. *Id.* Thus, the decision did not rest solely on abstract legal availability. Taylor challenges the sufficiency of both steps under *Strickland*: statutory capacity and the sentencing explanation given under the challenged premise. The panel did not definitively resolve deficient performance or the underlying statutory-maximum claim; it assumed the former and used the ordinary maximum to decide the latter claim's prejudice component.

Rehearing en banc was denied July 28, 2026. App. 9a. The mandate issued August 5. The court later denied Taylor's motions to recall the mandate and appoint counsel on September 4. App. 50a. That order was issued by direction of the court, although signed by the Clerk. This petition seeks review of the March 3 merits disposition and does not present recall of the mandate as a prerequisite to certiorari.

REASONS FOR GRANTING THE WRIT

I. *Strickland* requires an outcome inquiry under the correct law, not a comparison of aggregate statutory capacity.

Taylor's certified claim concerns the effect of counsel's failure to assert a twenty-year ceiling on the count that received 420 months. The difference between that sentence and 240 months is 180 months on Count One; it is not automatically a 180-month reduction in total imprisonment. A lawful total above twenty years remained possible. The decisive question is whether counsel's omission left a reasonable probability of less aggregate punishment, not whether the court possessed enough statutory authority to reproduce the same total.

Strickland v. Washington, 466 U.S. 668, 693–96 (1984), places the burden of establishing prejudice on the defendant. A conceivable effect is insufficient, but the defendant need not show that counsel's error more likely than not changed the result. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.* at 693–94. A reviewing court therefore cannot resolve the claim merely by identifying one permissible route to the same sentence; it must evaluate the probability of the relevant alternative outcome.

The counterfactual inquiry is legitimate. Taylor does not contend that courts are forbidden to ask what a competent objection would have changed. Nor does he propose an automatic presumption of prejudice from a count-specific error. Instead, the counterfactual must remove the challenged legal premise before assessing how the actual record supports the result.

Strickland directs courts to assume a decisionmaker conscientiously applying the governing law and distinguishes that inquiry from reliance on unusual personal propensities toward harshness or leniency. *Id.* at 695. A judge's stated, lawful sentencing reasons remain relevant; an assumed preference for severity cannot replace analysis of the legal correction.

The panel quoted *Strickland* correctly, but its application raises the important question presented. It joined the arithmetic possibility of 600 months to the absence of a statement suggesting that Judge Jackson would impose less after an objection he believed meritless. App. 4a, 25a. Taylor submits that a record developed under that premise cannot be treated as conclusively resolving its own correction without examining how the statutory ceiling affected the available choices, advocacy, and resulting allocation.

Apprendi v. New Jersey, 530 U.S. 466, 474, 490 (2000), supplies the underlying entitlement, not an automatic collateral remedy. *Apprendi* rejected the availability of consecutive sentences on other counts as an answer to whether the sentence on the challenged count exceeded the jury-authorized maximum. *Id.* at 474. *Strickland* separately requires prejudice. Read together, the cases require a lawful count-specific baseline followed by a record-based assessment of a reasonable probability of a different result. They do not turn the sum of other statutory maximums into a substitute for that assessment.

II. The sentencing remarks are substantial contrary evidence, but they were not an alternative determination under a twenty-year ceiling.

The Government's strongest evidence is the sentencing court's rejection of 360 months and express awareness that different counts could run consecutively. App. 57a–58a. Those observations make Taylor's prejudice showing more difficult. He does not characterize the record as silent about consecutive sentences, and he does not ask this Court to disregard the judge's concerns about the offense, deterrence, public protection, or criminal history.

The relevant limitation is what those observations answered. The court was selecting punishment while treating Count One as life-eligible and repeatedly referencing the life-plus-120-month Guidelines recommendation. Gov't Br. 12, 15, App. 55a, 58a. Rejecting 360 months under that framework is evidence supporting the Government; it is not a finding that a successful objection to Count One's ceiling could have no reasonable probability of producing any lower total. Likewise, knowing that consecutive terms were available is not the same as determining their appropriate extent under the corrected ceiling.

The effect of a proper objection would have been concrete. Counsel would have separated the judicial finding of premeditation for advisory-Guidelines purposes from the jury finding required to permit life imprisonment on Count One. If that objection succeeded, 420 months could not have been placed on Count One. To preserve the same total, the court would have had to select additional consecutive time on one or both surviving counts rather than leave their terms concurrent. App. 25a–26a, 44a. Section 3584(b) requires consideration of § 3553(a) in choosing concurrent or consecutive terms. That exercise remains discretionary; the corrected ceiling neither dictates concurrency nor makes stacking compulsory.

This petition does not posit undisclosed mitigation, a promised sentence, or a new plea arrangement. It identifies an existing legal objection, the express sentence structure, and the distinction between the framework actually used and the one competent advocacy allegedly required. The Government can prevail if those circumstances, together with the sentencing explanation, foreclose a reasonable probability of less punishment. But its preferred inference should not become dispositive merely because the same total remains legally achievable.

The January 2024 correction has limited but relevant significance. Judge Jackson removed the consecutive Count Three term and retained the concurrency of the others. App. 18a,

44a. That shows the judgment actually in force; it does not prove he would reject consecutive terms if Count One were capped at twenty years. Because he still believed the life maximum proper, he never made that alternative decision. App. 25a. His discretion to choose correction does not resolve the separate question whether a properly asserted statutory ceiling would have affected the punishment.

The proper inquiry also does not require testimony from Judge Jackson about his subjective thought process. *Strickland* explains that the prejudice assessment should not depend on a sentencing judge's testimony about the decisional process. 466 U.S. at 695. The issue is the objective legal effect of the record under the correct standard, supplemented by appropriate evidence about counsel's conduct if necessary—not an examination of the judge as a witness.

III. *Glover*, *Williams*, and *Molina-Martinez* reject substitutes for the ordinary prejudice inquiry.

Glover v. United States, 531 U.S. 198, 202–04 (2001), arose on § 2255 review after counsel failed to press an objection affecting the sentencing calculation. The lower courts rejected prejudice without resolving counsel's performance because the alleged increase was not considered sufficiently substantial. This Court rejected that extra threshold and required ordinary *Strickland* analysis. Id. at 203–05. For Taylor, *Glover* means that the question is a reasonable probability of some lower sentence; he need not establish entitlement to the full 180-month count-specific difference to have suffered cognizable sentencing prejudice.

Glover does not establish causation by itself. It expressly left the ultimate performance and prejudice issues for further consideration. 531 U.S. at 204–05. Taylor seeks the same disciplined separation: first apply the right test, then decide whether the record meets it. He does not equate the size of the statutory overage with proof that his total imprisonment necessarily would have been shorter.

correction; and decide whether the existing record conclusively resolves the claim. A genuine, adequately supported same-sentence determination may defeat relief. A legal capacity to impose that sentence, supplemented by reasons given under the uncorrected premise, does not dispense with that inquiry.

IV. The consecutive-sentence authorities do not resolve the post-*Booker* ineffective-assistance question.

The Government urged the Fourth Circuit to follow *Angle*, 254 F.3d at 518–19, a pre-*Booker* plain-error decision relying on mandatory § 5G1.2(d) to conclude that consecutive sentences would have produced the same total punishment. Gov’t Br. 21–23, App. 59a–61a. *United States v. Booker*, 543 U.S. 220, 245, 259–60 (2005), made the Guidelines advisory. The resulting discretion does not itself prove prejudice, but mandatory stacking cannot now supply the same inevitability it supplied in *Angle*.

Nor did *Booker* erase all later consecutive-sentence precedent. In *United States v. Hines*, 830 F. App’x 413, 415 (4th Cir. 2020), the Fourth Circuit rejected plain-error relief where the same aggregate sentence could have been reached through consecutive terms. That post-*Booker* decision is contrary persuasive authority. Its continued use of aggregate-capacity reasoning shows why clarification matters after the Guidelines became advisory, particularly when that reasoning is extended from plain-error review to *Strickland* and § 2255(b).

United States v. Rangel, 781 F.3d 736, 744–46 (4th Cir. 2015), which the Government also invoked, illustrates a properly record-specific same-sentence inquiry. *Rangel*’s 121-month sentence fit within the corrected twenty-year maximum without reallocating punishment to another count, and the sentencing court’s independent drug-quantity finding supported the unchanged range. Taylor’s 420-month Count One sentence does not fit the maximum assumed by the panel; preserving his total requires a different concurrent-or-consecutive arrangement.

Rangel establishes that counterfactual analysis is permissible, not that all available consecutive combinations defeat prejudice.

The Tenth Circuit's decisions likewise reflect the importance of the governing sentencing regime. *United States v. Lott*, 310 F.3d 1231, 1242–43 (10th Cir. 2002), clarified *United States v. Jones*, 235 F.3d 1231 (10th Cir. 2000), in light of the then-mandatory stacking rule. That history does not establish a present square conflict on this precise *Strickland* question. It instead underscores why the distinction between mandatory and discretionary aggregation requires examination under this Court's sentencing-prejudice decisions.

V. Section 2255(b)'s hearing standard is distinct from the discretion to select a remedy.

Taylor agrees that the district court was not automatically required to resentence him fully after vacating Count Three. Section 2255(b) permits correction of a sentence, and *Hadden* recognizes that an appropriate correction may occur without formal resentencing. 475 F.3d at 667–69. The choice of correction rather than plenary resentencing is not an independent ground for granting this petition.

The separate question is whether the files and records conclusively establish no entitlement to relief on the certified ineffective-assistance claim. Section 2255(b) requires a hearing unless that condition is satisfied. The statutory threshold does not raise the merits burden above *Strickland*'s reasonable-probability standard, and it does not entitle a prisoner to a hearing based on speculation alone. Its operation turns on whether that standard can fairly be resolved on the actual record.

Here the district court upheld the life-maximum premise and did not evaluate the certified prejudice question assuming a twenty-year maximum. App. 25a–26a. The court of appeals supplied that assumption and the adverse same-sentence inference. App. 4a. A remand would

permit the lower courts to apply the correct analysis, decide whether the record is conclusive, and develop material facts about counsel's alleged omission if necessary. It would not predetermine counsel's performance, the merits of the statutory objection, or the final sentence.

The Government's own alternative request confirms that this is an available procedural disposition. It urged an evidentiary hearing concerning counsel's strategy if the claim could not be rejected on prejudice and proposed that prejudice also be addressed on remand. App. 67a–68a. Taylor relies on that as an identified alternative—not an admission that he wins or that every sentence correction requires a hearing.

VI. The certified issue presents an important and reviewable federal question.

The partial certificate of appealability expressly identified counsel's failure to assert the twenty-year maximum, and the panel resolved that claim on prejudice. App. 2a–4a. Taylor thus asks this Court to review an issue actually passed upon below. The district court's adverse amendment and procedural-default rulings on separate claims do not disappear; those claims are not the basis of the question presented.

The certified imprisonment-prejudice issue is the basis for review. This petition does not add Taylor's other trial and discovery claims, a new supervised-release claim, or an independent challenge to the classification of his appeal. The relief sought is confined to the March 3 disposition of the certified ineffective-assistance claim. App. 2a–5a.

The basis for review under Rule 10(c) is the recurring treatment of discretionary consecutive sentencing, not a request to reweigh isolated sentencing remarks. When aggregate maximums can accommodate the selected total, legal availability must be distinguished from a sufficiently grounded no-prejudice determination under *Strickland* and § 2255(b). The approach developed in *Angle*, applied after *Booker* in *Hines*, and used here in collateral review presents

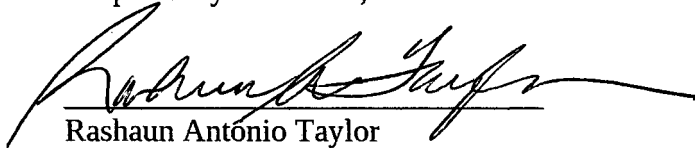
that methodological question. Without clarification, a count-specific limit may become practically unenforceable through ineffective-assistance review whenever unused maximums on other counts can absorb the excess.

Review would not require this Court to decide Taylor's guilt, select an appropriate term, or hold that every statutory-maximum error is prejudicial. It would establish the proper treatment of discretionary consecutive sentencing in a federal ineffective-assistance proceeding and return this certified claim for application of that standard. The assumptions made by the panel isolate the question while leaving performance and any necessary further proceedings to the lower courts.

CONCLUSION

The Court should grant the petition for a writ of certiorari. Upon review, it should vacate the judgment insofar as it affirms denial of Taylor's *Apprendi*-based ineffective-assistance claim and remand for application of *Strickland*'s reasonable-probability standard and § 2255(b), including any evidentiary proceedings that standard requires. The appropriate remedy should remain for determination under the corrected legal standard.

Respectfully submitted,



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Dated: 10/19/2026, 2026