

BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 24-CO-667

AARON DIXON,

v.

UNITED STATES OF AMERICA,

Appellant,

Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

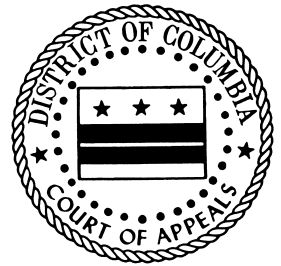
JEANINE FERRIS PIRRO
United States Attorney

CHRISELLEN R. KOLB
KAMILAH HOUSE

* KATHERINE M. KELLY
D.C. Bar #447112
Assistant United States Attorneys

* Counsel for Oral Argument
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Katherine.Kelly@usdoj.gov
(202) 252-6829

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ISSUE PRESENTED

Whether the trial court erred in denying appellant Dixon's motion to seal the criminal record of his conviction for carrying a pistol without a license (CPWL) and his arrest for possession of an unregistered firearm (UF), where the trial court: (1) properly used a fact-based, rather than a categorical, approach to determine whether Dixon's criminal record was eligible for partial sealing under D.C. Code § 16-803.02(a); (2) correctly concluded that CPWL and UF had not been decriminalized or legalized after the date of arrest, thus making the record of those offenses ineligible for sealing; and (3) reasonably exercised its discretion in finding that Dixon had not shown that the D.C. Code § 16-803.02(a)(2)(A) interest-of-justice factors warranted sealing his CPWL and UF records.

COUNTERSTATEMENT OF THE CASE

On August 7, 2013, appellant Aaron Dixon was charged by indictment with: (1) carrying a pistol without a license outside his home or place of business (CPWL) (D.C. Code § 22-4504(a)(1)); (2) possession of an unregistered firearm (UF) (D.C. Code § 7-2502.01(a)); (3) unlawful possession of ammunition (UA) (D.C. Code § 7-2506.01(3)); and (4) possession of an open container of alcohol (POCA) (D.C. Code § 25-1001(a)(1), (d)) (Record on Appeal (R.) 20-21 (indictment)).¹ On September 17, 2013, before the Honorable Michael Ryan, Dixon entered a guilty plea to CPWL and the government agreed to dismiss the other charges (R.7-8 (docket pp.7-8); R.33 (plea agmt.)). On November 19, 2013, Judge Ryan sentenced Dixon to six months of incarceration and one day of supervised release, suspended the execution of that sentence, and placed Dixon on six months of supervised probation (R.36 (judgment)).

On December 16, 2021, Dixon moved under D.C. Code § 16-803.02(a)(2) to seal the publicly available portions of his case record regarding his CPWL and UF charges on grounds that they pertained to

¹ Citations to the record on appeal are to the PDF page numbers.

now-decriminalized or legalized conduct (R.38-52 (sealing mtn.)). The government opposed this motion on June 1, 2022 (R.77-101 (gov't opp.)). Judge Ryan held a hearing on March 22, 2024 (R.10 (docket p.10)), and on June 27, 2024, denied the motion (R.111-18 (denial order)). Dixon noted a timely appeal (R.119-20 (appeal notice)).

The Trial Court Proceedings

The Facts of Dixon's Criminal Case

As set forth in the *Gerstein*² affidavit in Dixon's case, at approximately 11:50 p.m. on July 20, 2013, while walking through the Eagle Crossing apartment complex, an area known for violent crime, Metropolitan Police Department Officer McEachern saw a group of people in front of 137 Irvington Street, SW (R.47 (sealing mtn. Exh.1)). Officer McEachern approached the group and saw an open 12-ounce Budweiser can by Dixon's foot (*id.*). The can was "full and cool to the touch," and Officer McEachern smelled the scent of an "alcoholic beverage" emanating from Dixon (*id.*). Officer McEachern arrested Dixon for POCA (*id.*).

² *Gerstein v. Pugh*, 420 U.S. 103 (1975).

During a search incident to arrest, Officer McEachern recovered a pistol from Dixon's right cargo-pants pocket (R.47 (sealing mtn. Exh.1)). The pistol was loaded with five .25-caliber rounds of ammunition in the magazine and one round in the chamber (*id.*). Dixon was then charged with the additional offenses of CPWL, UF, and UA (*id.*).

Dixon used his Maryland driver's license to identify himself to the police (R.47 (sealing mtn. Exh.1)). The criminal complaint filed against Dixon on July 22, 2013, listed a home address in Temple Hills, Maryland (R.49 (sealing mtn. Exh.2)).

Dixon's Motion to Seal Portions of His Criminal Case Record

In 2021, Dixon moved under D.C. Code § 16-803.02(a)(2) to seal the publicly available records concerning his CPWL and UF charges on grounds that they "pertain[ed] to now-decriminalized or legalized conduct" (R.38 (sealing mtn. p.1) (citing (*Antonin*) *Washington v. United States*, 206 A.3d 864, 869 (D.C. 2019))).³ Dixon asserted that sealing those portions of his case record was warranted because the CPWL and

³ Dixon did not move to seal records regarding his UA and POCA charges. Dixon acknowledged that "[a]t minimum," POCA remained a criminal offense (R.41 (sealing mtn. p.4)). He did not argue in the trial court, nor does he claim on appeal, that UA was decriminalized after his arrest.

UF charges were based on “District of Columbia laws and practices later found to violate the Second Amendment in *Palmer v. District of Columbia*, 59 F. Supp. 3d 173 (D.D.C. 2014), *Wrenn v. District of Columbia*, 107 F. Supp. 3d 1 (D.D.C. 2015),⁴ and *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017)” (R.38 (sealing mtn. p.1)).

Dixon asserted that at the time of his arrest and guilty plea, the District of Columbia required gun-registration applicants to submit proof of District residency and refused to consider applications by non-residents (R.39 (sealing mtn. p.2) (citing *Palmer*, 59 F. Supp. 3d at 176)). He asserted that after his guilty plea, certain provisions of the District’s gun laws were deemed facially unconstitutional and their enforcement was enjoined, specifically, D.C. Code § 7-2502.02(a)(4) – which banned the registration of handguns to be carried in public for self-defense by law-abiding citizens; and D.C. Code § 22-4504(a) – insofar as, inter alia, it barred non-residents of the District from carrying handguns in public for self-defense solely on the basis of their non-resident status (R.40

⁴ This decision was vacated by *Wrenn v. District of Columbia*, 808 F.3d 81 (D.C. Cir. 2015).

(sealing mtn. p.3) (citing *Palmer*, 59 F. Supp. 3d at 184)).⁵

Dixon claimed that, although CPWL and UF remained criminal offenses in the District, “convictions under unconstitutional statutes are as no conviction at all” (R.41 (sealing mtn. at 4) (quoting *In re Monschke*, 482 P.3d 276, 279 (Wash. 2021) (en banc))). He asserted that the firearms-registration and concealed-carry-licensing statutes in effect at the time of his arrest and guilty plea, which were later deemed unconstitutional, prevented him from registering and carrying the firearm which led to his conviction (R.41 (sealing mtn. at p.4))). He asserted that nothing in a constitutional version of those statutes would have prevented him from registering and obtaining a license to carry the firearm (*id.*). Thus, he claimed, “his conduct at the time of the offense was effectively legalized; i.e., but for unconstitutional statutes and practices, his conviction for CPWL could not stand” (*id.*).

Dixon argued that sealing the CPWL and UF portions of his case

⁵ Dixon also asserted that the District was barred from enforcing D.C. Code § 22-4506, which restricted licenses for carrying concealed handguns to those with a good/proper reason to do so (R.40 (sealing mtn. p.3) (citing *Wrenn*, 864 F.3d at 667)). The good/proper reason provision was not enacted until 2014, after Dixon’s arrest and guilty plea to CPWL, and thus it had no effect on his case (R.84-87 (gov’t opp. pp.8-11)).

records was in the interests of justice because he: (1) had no other criminal convictions and was a father of three children; (2) carried the firearm in this case after being shot in 2004; (3) was not alleged to have threatened anyone with the firearm; (4) successfully completed probation; (5) lost his job at a law firm due to his conviction; (6) was terminated from four subsequent jobs due to his conviction; (7) lost job opportunities because of the conviction; (8) suffered from underemployment” due to his conviction; (9) had not obtained relief under any provision of the District’s record-sealing laws; (10) federal courts had found the law under which he was convicted to be unconstitutional; (11) his conviction was more than eight years old; and (12) “only one conviction” was the subject of his sealing motion (R.42-43 (sealing mtn. pp.5-6)).

The Government’s Opposition

In opposition, the government noted that Dixon had not asserted, or proffered any evidence, that he: (1) legally possessed the firearm found on his person; (2) was licensed to carry that firearm in Maryland; or (3) had been issued a Maryland permit to carry the firearm outside his home (R.79, R.96-97 (gov’t opp. pp.3, 20-21)). The government explained that

“[t]he ability to carry a handgun lawfully in Maryland presumes that the individual lawfully possesses the firearm,” and Dixon had not asserted, let alone shown, that he held, or even qualified for, a Maryland permit for the firearm he carried in the District (R.97 (gov’t opp. p.21)). The government argued that without meeting the possession and licensing requirements in Maryland, Dixon could not have obtained a license and registration for the firearm in the District, either at the time of his arrest or the time of his sealing motion (R.96-97 (gov’t opp. pp.20-21)).

Furthermore, the government asserted that Dixon’s sealing motion lacked merit because he had conceded that CPWL and UF “remain[ed] criminal offenses in the District” (R.95-96 (gov’t opp. pp.19-20) (quoting R.41 (sealing mtn. at 4))). Although Dixon claimed that his conduct had been “effectively legalized” given that certain provisions of the CPWL and UF statutes were later deemed unconstitutional, the government argued that such changes in the law were not what the record-sealing statute was meant to address (R.96 (gov’t opp. p.20)).

At the time of Dixon’s 2013 offense, the CPWL statute, D.C. Code § 22-4504(a), provided that “[n]o person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, or

any deadly or dangerous weapon capable of being so concealed” (R.84 (gov’t opp. p.8)).⁶ The gun-registration statute at that time, D.C. Code § 7-2502.01(a), provided that “no person . . . in the District shall possess or control any firearm, unless the person . . . holds a valid registration certificate for the firearm,” and D.C. Code § 7-2502.02(a)(4) provided that a person may register a handgun “for use in self-defense within that person’s home” (R.81 (gov’t opp. p.5)). The registrant was required to keep the registration certificate with him whenever he was in possession of the gun and was required to produce it upon demand by a law-enforcement officer (R.81-82 (gov’t opp. pp.5-6) (citing D.C. Code § 7-2502.08(c))).⁷

The government acknowledged that, in 2014, the District’s total ban on carrying handguns outside the home was deemed unconstitutional by *Palmer*, 59 F. Supp. 3d at 183, and therefore, the

⁶ There was no licensing apparatus at the time, following the repeal of D.C. Code § 22-4506, which had previously allowed the Chief of Police to issue licenses to carry pistols under certain circumstances (R.83 (gov’t opp. p.7)).

⁷ A statutory exception to the gun-registration requirement existed for non-residents of the District who were “participating in lawful recreational firearm-related activity” so long as their possession or control of the firearm was lawful in the jurisdiction where they resided, and they transported the firearm “in accordance with D.C. Code § 22-4504.02” (R.82 (gov’t opp. p.6) (citing D.C. Code § 7-2502.01(b)(3))).

District was enjoined “from enforcing the home limitations of D.C. Code § 7-2502.02(a)(4) and enforcing D.C. Code § 22-4504(a) unless and until such time as the District of Columbia adopt[ed] a licensing mechanism consistent with constitutional standards” (R.84-85 (gov’t opp. pp.8-9)). In response, in 2014, the D.C. Council amended § 7-2502.02(a)(4)(C) to enable a person to register a pistol for self-defense in their home or place of business, and as part of the application procedure for obtaining a license to carry a concealed weapon (R.85 (gov’t opp. p.9)). Also, the D.C. Council revived § 22-4506 so that the Chief of Police could (“may”) issue a license to an applicant who had “a bona fide residence or place of business with in the District,” or who had “a bona fide residence or place of business within the United States and a license to carry pistol concealed upon his or her person issued by the lawful authorities of any State” (*id.*).

The government explained that, under the 2014 legislation, obtaining a concealed-carry license required the applicant to: (1) show “good reason to fear injury to his or her person or property” or some “other proper reason for carrying a pistol”; and (2) meet “all of the requirements for a person registering a firearm” and possess a pistol registered

pursuant to D.C. Code § 7-2501.01 et seq. (R.85-87 (gov't opp. pp.9-11)). The government acknowledged that, in 2017, *Wrenn*, 864 F.3d at 666, concluded that the good/proper reason provisions of the concealed-carry licensing scheme violated the Second Amendment (R.87-88 (gov't opp. pp.11-12)). The government explained, however, that *Wrenn* had not completely invalidated the District's licensing provisions and that the District's more general licensing requirements, including the registration requirements of D.C. Code §§ 7-2502.03 and 7-2509.02(a)(2) and the suitability requirements of §§ 7-2509.02 and 22-4506, remained intact (R.89, R.91-93 (gov't opp. pp.13, 15-17)). Indeed, the D.C. Council had adopted severability provisions for "the firearms statutory scheme" (R.90 (gov't opp. p.14 (citing D.C Code §§ 7-2507.10, 22-4516))). Thus, the CPWL statute had not been invalidated in its entirety; the CPWL, UF, and UA statutes remained "on the books"; and the district still required its residents to register their firearms (R.91 (gov't opp. p.15)). Moreover, despite the elimination of the good/proper reason requirement, the District still required a person to obtain a license before carrying a concealed handgun outside their home or business and to certify that they met "all of the requirements for registering a firearm" and had

“obtained a registration certificate for the pistol that the person is applying to carry concealed” (R.91-92 (gov’t opp. pp.15-16) (quoting D.C. Code § 7-2509.02(a)(2))). Thus, despite the constitutional challenges, the District continues to criminalize carrying a pistol without a license and registration.

Finally, because Dixon was not charged or convicted of conduct that was later decriminalized, the government asserted that the court did not need to weigh the factors of D.C. Code § 16-803.02(a)(2)(A) to determine whether partial sealing of the records in this case was in the interest of justice (R.95 (gov’t opp. p.19)).

The Trial Court Hearing

The trial court noted at the beginning of the hearing that it saw no evidence that Dixon had attempted to register his gun or obtain a license to support his claim that he would have done so if he could have in 2013 (3/22/24 Tr. 7). The court further noted that Dixon’s conduct—possessing a gun without- a license and registration—was “still illegal today,” which was a markedly different scenario than, for instance, possessing an amount of marijuana that was no longer illegal (*id.*).

Dixon’s counsel asserted that the laws in place at the time of Dixon’s offense in 2013 provided, in effect, that no person shall carry a pistol (3/22/24 Tr. 11-12). Thus, whether Dixon tried to register and/or obtain a license to carry a pistol did not matter because any attempt would have been unsuccessful, and he still would have been prosecuted for his conduct (*id.* at 11-14).

Dixon’s counsel asserted that the first question for the court to address was whether “[t]he statute that was in place at the time of the offense” had been decriminalized or legalized (3/22/24 Tr. 9). Counsel suggested that decriminalization or legalization could occur due to a statute’s constitutional infirmity (*id.*). Because the statutes in effect at the time of Dixon’s arrest were unconstitutional, Dixon could no longer be prosecuted under them (*id.* at 9, 12, 33). Defense counsel asserted that Dixon’s conduct did not matter to the analysis; the only point that mattered was that Dixon was prosecuted “under a statute subsequently found to be unconstitutional” (*id.* at 16-18).

Citing *Larracuenta v. United States*, 211 A.3d 1140 (D.C. 2019), the trial court intended to look at Dixon’s conduct as opposed to the statutes (3/22/24 Tr. 13). However, Dixon’s counsel argued that *Larracuenta* was

irrelevant because, unlike the movant in *Larracuente* who sought to seal his records under § 16-803.02(a)(1), Dixon was moving to do so under § 16-803.02(a)(2), which did not require the court to examine Dixon's conduct (*id.* at 20-21). Counsel also argued that *Larracuente* was irrelevant because in that case the movant's conduct was legalized by a "[p]urely legislative judgment," not due to the former statute's unconstitutionality (*id.* at 22). Counsel asserted that it was "dispositive" that Dixon could not have done anything to make his conduct conform to the unconstitutional statutes under which he was prosecuted (as opposed to the movant in *Larracuente*, who could have chosen to possess less marijuana), and that he could not have challenged the constitutionality of the statutes (*id.* at 22-24). The court indicated its disagreement that Dixon had been powerless to challenge the CPWL and UF statutes on constitutional grounds during his prosecution (*id.* at 23).

The government stressed that Dixon could request the court to seal records under D.C. Code § 16-803.02 only with respect to an offense that had been decriminalized or legalized (3/22/24 Tr. 28). The government argued that this case was unlike those involving the decriminalization of marijuana possession, where the D.C. Council had deemed that certain

marijuana-possession offenses were no longer illegal (*id.* at 32). Dixon’s conduct remained illegal under the current CPWL and UF statutes, and thus, the government argued, there was no basis to seal Dixon’s records (*id.*).

The government argued that both the statutes and Dixon’s conduct were important to the record-sealing analysis (3/22/24 Tr. 29). Here, both the CPWL and UF statutes were “still on the books” and they had not been deemed unconstitutional in their entirety (*id.* at 29-32). The government argued that there was no reason to reach the interest-of-justice analysis because Dixon had not met the threshold of showing his offenses had been decriminalized or legalized (*id.* at 29-30).

The Trial Court’s Ruling

The trial court denied Dixon’s record-sealing motion (R.111 (order p.1)). D.C. Code § 16-803.02(a) provided that a person arrested for, charged with, or convicted of a criminal offense under a District law or regulation “that was decriminalized or legalized after the date of the arrest, charge, or conviction may file a motion to seal the record . . . at any time” (R.111 (order p.1 (quoting D.C. Code § 16-803.02(a))). Pursuant to § 16-803.02(a)(1)(A)(i), the court was required to grant a sealing

motion where “a person was arrested for, charged with, or convicted of a decriminalized or legalized offense, but not where the arrest was made ‘in connection with or [resulted] in any other District of Columbia . . . charges or convictions against the person’” (R.112 (order p.2 (quoting D.C. Code § 16-803.02(a)(1)(A)(i))). Where sealing is sought under § 16-803.02(a)(1)(A), it is the prosecutor’s burden to show by a preponderance of the evidence that the record is ineligible for sealing “because the conduct was not decriminalized or legalized” (R.112 (order p.2 (quoting D.C. Code § 16-803.02(a)(1)(B))).

By contrast, for a defendant arrested for, charged with, or convicted of other offenses in addition to a decriminalized charge, under D.C. Code § 16-803.02(a)(2)(A), “the Superior Court may grant a motion to seal if it is in the interest of justice to do so” (R.112 (order p.2)). In such cases, it is the movant’s burden “to establish by a preponderance of the evidence [that] it is in the interest of justice to grant relief” (*id.* (quoting D.C. Code § 16-803.02(a)(2)(B))).

At the time of Dixon’s 2013 arrest, the CPWL statute—codified at D.C. Code § 22-4504(a)—provided that “[n]o person shall carry within the District of Columbia either openly or concealed on or about their person,

a pistol, or any deadly or dangerous weapon” (R.113 (order p.3)). The court noted that the 2013 statute was effectively “an absolute ban on carrying firearms outside the home,” and that *Palmer* later found this absolute ban to be unconstitutional (*id.* (citing *Palmer*, 59 F. Supp.3d at 183)). The court recognized that in response to *Palmer*, the D.C. Council amended the firearm licensing and registration laws (R.114 (order p.4)). In particular, the Council amended D.C. Code § 7-2502(a)(4) to allow the registration of firearms for use in self-defense in a person’s home or place of business, and, as a part of the registration-application process, allowed a person to apply for a license to carry a concealed weapon (*id.*). Also, the Council revived D.C. Code § 22-4506, allowing the Chief of Police to issue licenses to District residents (*id.*). The court noted that to obtain a license, an applicant had to show a “good reason to fear injury to person or property,” but *Wrenn* later struck down the “good reason” requirement (*id.* (citing *Wrenn*, 864 F.3d at 656-66)).

Although parts of the CPWL and UF statutes in effect in 2013 were later deemed unconstitutional, the court recognized that “the overall conduct of CPWL and UF remains a criminal offense” (R.115 (order p.5)). The court rejected Dixon’s argument that the threshold issue in assessing

the sealing motion was whether the statute under which Dixon was convicted was later found to be unconstitutional, not whether “the *conduct* itself was decriminalized or legalized” (*id.* (emphasis in original)). It also rejected Dixon’s argument that because the CPWL and UF statutes were later deemed unconstitutional “his conduct was effectively legalized” (R.114 (order p.4)).

The court found it “troubling” that the term “conduct,” which appeared in D.C. Code § 16-803.02(a)(1)(A), was absent from § 16-803.02(a)(2)(A) (R.112 (order p.2)). To confront that issue, the court examined the legislative history of the record-sealing statute and found no indication of an intent to limit the focus of § 16-803.02(a)(2)(A) “to consideration of the charge itself as opposed to the conduct at issue in the charge” (R.115 (order p.5)). The court found that “to give meaning to subsection (2)(A),” it was appropriate to read that subsection in the overall context of § 16-803.02 because “[t]he meaning—or ambiguity—of certain words or phrases may only become evident when placed in context” (*id.* (quoting *Wynn v. United States*, 48 A.3d 181, 188 (D.C. 2012))). Reading subsection (2)(A) in the context of the full record-sealing statute “to avoid absurd results and obvious injustice,” the court found

that “the conduct itself at issue ha[d] not been decriminalized or legalized” (R.115-16 (order pp.5-6 (citing *Clyburn v. United States*, 48 A.3d 147, 151 (D.C. 2012); *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 754-55 (D.C. 1983) (en banc))).

The court agreed with the government that it was unnecessary to weigh the interest-of-justice factors in § 16-803.02(a)(2)(A)(i)-(iv) because the criminal offenses at issue were not later decriminalized or legalized (R.116 (order p.6)). Nonetheless, the court examined those factors and found that they did “not weigh in favor of relief” (*id.*).

First, the court found that D.C. Code § 16-803.02(a)(2)(A)(i) — “[t]he interests of the movant in sealing the publicly available records of his or her arrest, charge, conviction, and related Superior Court proceedings”—weighed in favor of relief (R.116 (order p.6)). Dixon had a strong interest in sealing his records; due to his conviction, Dixon had lost jobs, been denied other jobs, and was ineligible for jobs requiring a security clearance (*id.*). Moreover, Dixon possessed the firearm in this case after being shot during a 2004 robbery and had successfully completed probation (R.116-17 (order pp.6-7)).

Second, the court found that “[t]he community’s interest in retaining access to those records,” D.C. Code § 16-803.02(a)(2)(A)(ii), to be “less clear” (R.117 (order p.7)). However, the community had “some interest in retaining access to records of a gun offense,” even a nearly 11-year-old, non-violent, possessory offense, because Dixon’s conduct was “the subject of repeated criminal statutes barring it” (*id.*).

Third, the court found that “[t]he community’s interest in furthering the movant’s rehabilitation and enhancing the movant’s employability” under D.C. Code § 16-803.02(a)(2)(A)(iii) was also “less clear,” but “weigh[ed] somewhat in favor” of sealing (R.117 (order p.7)). Dixon had successfully completed probation, had no subsequent convictions, and it was in the community’s interest to further his “rehabilitation and enhance his employability” (*id.*).

Fourth, in considering “[a]ny other information [the court] considers relevant” under D.C. Code § 16-803.02(a)(2)(A)(iv), the court did not find a basis to seal the records (R.117 (order p.7)). The court considered Dixon’s conduct in this case, “which remain[ed] a criminal offense in the District . . . a city awash with illegal firearms,” and concluded that “[t]he criminal conduct marginally outweighs the social

factors and impact of this conviction,” and that sealing would not be in the interest of justice “even given changes in the Second Amendment constitutional landscape” (*id.*).

SUMMARY OF ARGUMENT

The trial court properly denied Dixon’s motion to seal the criminal record of his CPWL conviction and related UF charge. The court appropriately used a fact-based, rather than a categorical, approach in determining that those portions of Dixon’s criminal record were ineligible for sealing under D.C. Code § 16-803.02(a)(2), because CPWL and UF had not been decriminalized or legalized after Dixon’s arrest. Furthermore, the trial court did not abuse its discretion in finding that Dixon had not shown that the § 16-803.02(a)(2)(A) interest-of-justice factors warranted sealing his CPWL and UF records.

ARGUMENT

The Trial Court Properly Denied Dixon’s Motion to Seal His Records.

A. Standard of Review and Legal Principles

This Court reviews questions of statutory interpretation *de novo*. *Peterson v. United States*, 997 A.2d 682, 683 (D.C. 2010). This Court first

looks to a statute's plain language to determine whether it is clear and unambiguous. *Id.* at 684. If it is "clear and unambiguous and will not produce an absurd result, [this Court] will look no further." *Larracuente*, 211 A.3d at 1143 (citation omitted). If the Court finds ambiguity, its "task is to search for an interpretation that makes sense of the statute and related laws as a whole" and in doing so, it may "turn to legislative history to ensure that [its] interpretation is consistent with legislative intent." *Aboye v. United States*, 121 A.3d 1245, 1249 (D.C. 2015) (citations omitted).

Factual findings made in deciding a motion to seal are reviewed for clear error. *Sepulveda-Hambor v. District of Columbia*, 885 A.2d 303, 306-07 (D.C. 2005). Although this Court has not specifically ruled on the matter, it should review for abuse of discretion the trial court's application of the factors in D.C. Code § 16-803.02(a)(2)(i)-(iv) to the facts developed in the sealing-motion proceedings. In weighing the § 16-803.02(a)(2)(i)-(iv) factors, the trial court must engage in a quintessential exercise of discretion; it has "the ability to choose from a range of permissible conclusions" and can "rely largely upon [its] own judgment in choosing among the alternatives." *Johnson v. United States*, 398 A.2d

354, 361 (D.C. 1979). In reviewing the trial court’s exercise of discretion, this Court “examines the record and the trial court’s determination for those indicia of rationality and fairness that will assure it that the trial court’s action was proper.” *Id.* at 362. This Court “does not render its own decision of what judgment is most wise under the circumstances presented.” *Id.*

B. Statutory Background

Title 16, Chapter 8 of the D.C. Criminal Code governs “Criminal Record Sealing.” *See* D.C. Code § 16-801, et seq. This chapter of the Code, created by the Criminal Record Sealing Act of 2006 (2006 Act), “establish[ed] a process for sealing certain criminal records in cases of actual innocence, and for certain misdemeanors and felonies.” *See* D.C. Law 16-307, 54 D.C. Reg. 868 (2007). The criminal-record-sealing process was further amended by the Re-entry Facilitation Amendment Act of 2012 (2012 Act). *See* D.C. Law 19-319, 60 D.C. Reg. 2333 (2013).

In 2015, the D.C. Council enacted the Record Sealing for Decriminalized and Legalized Offenses Amendment Act of 2014 (2014 Act), which was passed in the wake of the decriminalization of the possession of small amounts of marijuana. *See (Robert E.) Washington v.*

United States, 111 A.3d 640, 644 (D.C. 2015) (noting Judiciary Committee recommended dealing with prior convictions for marijuana possession “in a separate bill, which was later enacted by the Council as the Record Sealing for Decriminalized and Legalized Offenses Amendment Act of 2014”). The 2014 Act was intended to “allow individuals to file a motion to seal the records of offenses that are decriminalized or legalized after the date of the arrest, charge, or conviction.” *See* D.C. Law 20-186, 91 D.C. Reg. 12108 (2015). The initial version of the bill applied only to “persons for whom non-violent misdemeanor and felony possession of marijuana [was] their only prior criminal history or conviction,” but the Council later amended the legislation to “apply to all decriminalized and legalized offenses, not just marijuana possession.” *See* The Report of the Council Committee on the Judiciary and Public Safety on Bill 20-467, the “Record Sealing for Decriminalized and Legalized Offenses [Amendment] Act of 2014,” at 4 (“Committee Report”).

The 2014 Act accordingly created D.C. Code § 16-803.02, which states, in pertinent part:

- (a) A person arrested for, charged with, or convicted of a criminal offense pursuant to the District of Columbia Official

Code or the District of Columbia Municipal Regulations that was decriminalized or legalized after the date of the arrest, charge, or conviction may file a motion to seal the record of the arrest, charge, conviction, and related Superior Court proceedings at any time.

(1)(A) The Superior Court shall grant a motion to seal if:

(i) The arrest was not made in connection with or did not result in any other District of Columbia Official Code or District of Columbia Municipal Regulations charges or convictions against the person; and

(ii) The arrest was not made in connection with or did not result in any other federal charges or convictions in the United States District Court for the District of Columbia against the person.

(B) In a motion filed under subparagraph (A) of this section, the burden shall be on the prosecutor to establish by a preponderance of the evidence that the record is not eligible for sealing pursuant to this section because the conduct was not decriminalized or legalized.

(2)(A) In cases that do not meet the requirements of paragraph (1) of this subsection, the Superior Court may grant a motion to seal if it is in the interest of justice to do so. In making this determination, the Court shall weigh:

(i) The interests of the movant in sealing the publicly available records of his or her arrest, charge, conviction, and related Superior Court proceedings;

(ii) The community's interest in retaining access to those records;

(iii) The community's interest in furthering the movant's rehabilitation and enhancing the movant's employability; and

(iv) Any other information it considers relevant.

(B) In a motion filed under this paragraph, the burden shall be on the movant to establish by a preponderance of the evidence that it is in the interest of justice to grant relief.

C. Discussion

1. The Trial Court Properly Focused on Dixon's Conduct Rather Than the Underlying Statutory Provisions.

Here, as the parties agreed, the trial court addressed Dixon's sealing motion under D.C. Code § 16-803.02(a)(2), because, at the very least, his POCA charge had not been decriminalized (R.41 (sealing mtn. p.4 & n.5); R.94-95 (gov't opp. pp.18-19)). *See Larracuente*, 211 A.3d at 1146 n.10; *see also (Antonin) Washington*, 206 A.3d at 867. The trial court correctly found, however, that it was not required to weigh the § 16-803.02(a)(2)(A)(i)-(iv) interest-of-justice factors because Dixon had not been arrested, charged with, or convicted of a criminal offense that was subsequently decriminalized or legalized (R.116 (order pp.5-6)). *See D.C. Code § 16-803.02(a)*. In concluding that CPWL and UF had not been decriminalized or legalized after Dixon's arrest and conviction, the trial

court correctly determined that the issue turned on whether Dixon’s “conduct” in this case had been decriminalized or legalized without regard to the various constitutional challenges to portions of the applicable statutes (R.112, R.115-16 (order pp.2, 5-6)).

Dixon claims (at 24-29) that the trial court erred by considering his “conduct” in determining whether his sealing motion should be granted under § 16-803.02(a)(2) because the term “conduct” appears only in § 16-803.02(a)(1)(B). This claim lacks merit. The prerequisite for record sealing under either § 16-803.02(a)(1) or § 16-803.02(a)(2) is the decriminalization or legalization of the movant’s criminal offense. *See* D.C. Code § 16-803.02(a). Subsection 16-803.02(a)(1)(B) makes clear that whether a movant’s record is eligible for sealing turns on the *conduct* underlying the arrest, charge, or conviction: “the burden shall be on the prosecutor to establish by a preponderance of the evidence that the record is not eligible for sealing pursuant to this section because the *conduct* was not decriminalized or legalized.” D.C. Code § 16-803.02(a)(1)(B) (emphasis added). Although this reference to “conduct” in § 16-803.02(a)(1)(B) is not duplicated in § 16-803.02(a)(2), the trial court appropriately looked to § 16-803.02 as a whole to assess whether a

criminal offense has been decriminalized or legalized. This approach is logical, and consistent with accepted principles of statutory construction, in light of § 16-803.02(a)'s overarching prerequisite that the movant's criminal offense has been decriminalized or legalized to potentially obtain record sealing. Indeed, this Court "must construe [statutory provisions] not in isolation, but together with other related provisions, and derive their meaning not from the reading of a single sentence or section, but from consideration of [the] entire enactment against the backdrop of its policies and objectives." *O'Rourke v. D.C. Police & Firefighters' Retirement & Relief Bd.*, 46 A.3d 378, 383-84 (D.C. 2012) (internal quotation marks and citations omitted); *see also Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 1245 (D.C. 2002) (internal quotation marks and citations omitted). *See (Antonin) Washington*, 206 A.3d at 867 (noting that interpreting § 16-803.02, like other statutes, "is a holistic endeavor, and a provision in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is

compatible with the rest of the law” (cleaned up)).⁸

Application of a fact-based approach to record-sealing motions under subsection (a)(2) comports with the overall statutory scheme governing the consideration of motions to seal. D.C. Code § 16-805(a), for example, permits the trial court to dismiss or deny a motion to seal based on a review of “the motion, any accompanying exhibits, affidavits, and documents, and the record of any prior proceedings in the case.” Additionally, D.C. Code § 16-805(e) provides that, at a hearing, “the movant and the prosecutor may present witnesses and information by proffer or otherwise,” and that “[h]earsay evidence shall be admissible.” If, as Dixon contends, a categorical approach is required, these fact-based considerations would be irrelevant.

Moreover, it is also appropriate, as the trial court did (R.115 (order p.5)), to examine the legislative history of the record-sealing statute to

⁸ Dixon cites (at 28) *In re J.B.S.*, 237 A.3d 131, 147 (D.C. 2020) (quoting *In re Te.L.*, 844 A.2d 333, 339 (D.C. 2004)) for the proposition that “[i]t is not within the judicial function . . . to rewrite [a] statute, or to supply omissions in it, in order to make it more fair.” However, the trial court did not exceed the judicial function here. Rather, the court employed common tools of statutory construction to read the provision as a coherent whole.

confront the absence of the word “conduct” in § 16-803.02(a)(2). Because § 16-803.02(a)(2) does not use the term “conduct,” the court must “search for an interpretation that makes sense of the statute and related laws as a whole” and may “turn to legislative history to ensure that [its] interpretation is consistent with legislative intent.” (*Antonin*) *Washington*, 206 A.3d at 868 (quoting *Aboye*, 121 A.3d at 1249). Here, the trial court accurately found “no indication in the legislative history of § 16-803.02(a)(2)(A) of an intent to limit the focus of this section of the statute to consideration of the charge itself as opposed to the conduct at issue in the charge” (R.115 (order p.5)).

Indeed, the legislative history of § 16-803.02 shows that the D.C. Council did not differentiate between records which “shall” be sealed under § 16-803.02(a)(1) and records that “may” be sealed § 16-803.02(a)(2) based on any distinction between the movant’s “conduct” and the elements of the statutory offense underlying his arrest, charge, or conviction. Instead, the Judiciary Committee distinguished between cases where a defendant had been arrested for, charged with, or convicted of only a single offense that had since been decriminalized or legalized (which would be considered under § 16-803.02(a)(1) and generally “shall”

be granted) and cases where a defendant had been arrested for, charged with, or convicted of additional offenses that had not been decriminalized (which would be considered under § 16-803.02(a)(2) and “may” be granted “if it is in the interest of justice to do so”). *See* Committee Report at 4-5. The Committee provided an example of how a movant’s record for “marijuana possession” might be ineligible for sealing even though the Marijuana Decriminalization Act had decriminalized the possession of one ounce or less of marijuana. *Id.* at 5. It explained that an arrest for “marijuana possession” might have been “for conduct that was not actually decriminalized,” such as possessing more than one ounce of marijuana or public consumption of marijuana. *Id.* In such cases, the government would bear the burden to show by a preponderance of the evidence that the record was ineligible for sealing. *Id.* Thus, the movant’s conduct is important.

Dixon nonetheless claims (at 17-24) that to determine whether a “criminal offense” under § 16-803.02(a) has been “legalized” or “decriminalized” requires a court solely to assess whether the elements of the offense as they existed at the time of the movant’s arrest, charge, or conviction remain punishable by criminal penalties at the time of the

record-sealing motion. He claims (at 23) that if the elements of the offense at the time of the arrest, charge, or conviction would not be criminally punishable at the time of the sealing motion, then the offense has been “legalized.” Dixon’s argument lacks merit because it applies a categorical approach to the evaluation of a § 16-803.02 record-sealing motion. *See, e.g., Johnson v. United States*, 576 U.S. 591, 596 (2015) (under “categorical approach,” a court assesses a crime “in terms of how the law defines the offense and not in terms of how an individual offender might have committed it on a particular occasion” (citations omitted)); *Larracuente*, 211 A.3d at 1143 n.2 (under “categorical approach,” court “look[s] not to the facts of the particular prior case, but instead to’ what facts were ‘necessarily involved’ for conviction under the state statute defining the crime of conviction” (quoting *Moncrieffe v. Holder*, 569 U.S. 184, 190-91 (2013))).

Dixon acknowledges (at 19 n.22) that this Court has already rejected the argument that a record-sealing motion under § 16-803.02(a) should be assessed using a “categorical approach.” *Larracuente*, 211 A.3d at 1142-45 & n.2. He claims (at 19 & n.23), however, that *Larracuente*’s rejection of the categorical approach applied only to record-sealing

motions under § 16-803.02(a)(1). This distinction makes no difference.

Although this Court rejected the categorical approach for evaluating record-sealing motions under § 16-803.02(a) by examining the language and legislative history of § 16-803.02(a)(1), it did so only because the movant had a single conviction—possession with intent to distribute marijuana (PWID marijuana)—under a D.C. Code provision which was later amended to decriminalize the possession or PWID of small amounts of marijuana. *See Larracuente*, 211 A.3d at 1142 & n.1, 1144-45. There is no principled basis to treat a § 16-803.02(a)(2) motion differently because the only reason that a motion must be analyzed under subsection (a)(2) is because the movant’s arrest was made in connection with or resulted in additional charges and/or convictions for other District of Columbia or federal offenses. *See Larracuente*, 211 A.3d at 1146 n.10 (interest-of-justice claims only apply when another charge or conviction bars sealing of otherwise eligible criminal record of decriminalized or legalized offense).

Dixon also argues (at 18-21) that the term “criminal offense,” which

is undefined in § 16-803.02(a), is clarified by legislative history⁹ and case law to refer to “the specific statute in place at the time of the offense,” not an identically named or codified statutory provision. Dixon’s reliance on *Larracuenta* as support for this claim is misplaced. *Larracuenta* rejected a categorical approach to evaluating record-sealing motions under § 16-803.02(a). Indeed, *Larracuenta* held that PWID marijuana had been decriminalized in some instances based on the movant’s case-specific conduct, not based on a comparison of the elements of the offense at the time of the movant’s arrest and at the time of his sealing motion. 211 A.3d at 1144-45.

Dixon also errs in relying on D.C. Code § 16-802 to claim (at 21-22) that record sealing under D.C. Code § 16-803.02(a) should focus solely on whether the movant is innocent of a “criminal offense” as it was codified at the time of his arrest or charge. Section 16-802 focuses only on the criminal offense at the time of the movant was arrested or charged because that statutory provision addresses prosecutions which have “been terminated without conviction” where the movant seeks to seal the

⁹ Dixon does not explain what legislative history he is relying on in making this statement.

prosecution records “on grounds of actual innocence.” D.C. Code § 16-802(a). In contrast, § 16-803.02 necessarily involves consideration of the relevant statutes at both the time of the movant’s arrest, charge, and/or conviction and the time of the sealing motion. In fact, the legislative history of § 16-803.02 makes clear that it is unlike § 16-802. *See* Committee Report at 3-4 & n.8 (explaining that Bill 20-467, which was later codified as D.C. Code § 16-803.02, “only addresses criminal records relating to offenses that have been decriminalized or legalized after the date of the arrest or conviction,” and thus it “does not require the same balancing underlying the 2006 [Act, D.C. Law 16-307],” the source of D.C. Code § 16-802).

Accepting Dixon’s assertion that courts may not consider a movant’s “conduct” under § 16-803.02(a)(2) because that subsection of the statute does not expressly mention it would produce an absurd result. Under Dixon’s view, a court would conduct a more searching review, looking at both the statute and conduct, before sealing a defendant’s record for only a single conviction while the court would conduct a narrower review, limited to the statute itself without regard for the underlying conduct, where a defendant has multiple convictions. Put

differently, in determining whether a criminal offense had been decriminalized or legalized, a court would scrutinize the conduct of a movant who had been arrested for a single offense under § 16-803.02(a)(1) but could not consider the conduct of a movant who had been convicted of multiple offenses under § 16-803.02(a)(2). Applying a tougher standard to the less culpable defendant makes no sense. This could lead to persons who were arrested for a single offense not having their records sealed, yet sealing the records of persons convicted of multiple later-decriminalized offenses despite their commission of multiple crimes.

2. Dixon's 2013 Conduct Has Not Been Legalized and Still Violates the CPWL and UF Provisions.

The trial court correctly found that Dixon's conduct remained criminal under the current CPWL and UF statutes (R.115-16 (order pp. 5-6)).

Although portions of the 2013 CPWL and UF provisions were later amended due to successful constitutional challenges, these decisions did not decriminalize or legalize carrying guns without a license or the possession of unregistered guns. *See, e.g., Wrenn*, 864 F.3d at 667-68

(“The District has understandably sought to fight this scourge [of handgun violence] with every legal tool at its disposal. . . We are bound to leave the District as much space to regulate as the Constitution allows—but no more.”); *Hooks v. United States*, 191 A.3d 1141, 1145 (D.C. 2018) (noting that two district court permanent injunctions after Circuit’s *Wrenn* decision “did not bar enforcement of § 22-4504 and “[a]ny statutory language not encompassed by *Wrenn*’s definition of ‘good-reason law’ remains undisturbed”). Indeed, the D.C. Council’s adoption of severability provisions for the firearms statutory schemes, D.C. Code §§ 7-2507.10, 22-4516, reflects the Council’s strong desire to preserve its gun laws to the extent possible in light of court decisions that might chip away at them.

Here, Dixon has never asserted that he lawfully possessed the firearm in 2013. Dixon was a Maryland resident, but he did not claim that he had the required permits to possess the gun lawfully in Maryland before he carried that gun into the District of Columbia (R.79, R.96-97 (gov’t opp. pp.3, 20-21); 3/22/24 Tr. 36-37). Given the absence of evidence that Dixon ever had lawful possession of the gun, the subsequent amendments to the District’s gun laws do not entitle him to any relief.

More importantly, the record-sealing statute does not provide relief based on a claim that the statute under which the movant was arrested, charged, or convicted was unconstitutional at the time of the offense. It only provides for record sealing where an offense has been “decriminalized or legalized *after* the date of the arrest, charge, or conviction.” D.C. Code § 16-803.02(a) (emphasis added). Dixon’s motion to seal his records cannot serve as a constitutional challenge to the 2013 CPWL and UF statutes. A motion to seal records is an ancillary civil proceeding unrelated to the constitutional validity of the underlying criminal statute. *See Burns v. United States*, 880 A.2d 258, 260 (D.C. 2005) (the “[sealing] proceeding is ultimately civil in nature”).¹⁰

Moreover, the legislative history of D.C. Code § 16-803.02 envisioned that the decriminalization or legalization of an offense would

¹⁰ Thus, *In re Monschke*, 482 P.3d 276, 278-79 (Wash. 2021) (en banc), which involved an as-applied constitutional challenge to an aggravated-murder statute and stated that convictions under unconstitutional statutes “are as no conviction at all,” and *Conley v. United States*, 79 A.3d 270, 277 (D.C. 2013), which stated that this Court does not examine the conduct of a defendant who facially challenges the constitutionality of the statute under which he was convicted, which Dixon cites (at 30), do not advance his argument that courts may not examine a movant’s conduct under § 16-803.02(a)(2).

occur through the D.C. Council’s purposeful decision to take such action. See Committee Report at 4. In explaining how the bill would amend the District’s existing record-sealing laws, the Committee Report explained that the bill “only addresses criminal records relating to offenses that have been decriminalized or legalized after the date of the arrest or conviction,” and stated that the “community interest in public information” was “not as compelling for offenses that *the public, through their elected representatives in the Council, decides* are no longer worthy of criminal penalties.” *Id.* (emphasis added). The Committee Report noted as an example that the decision to decriminalize marijuana “reflect[ed] *the Council’s belief* that ‘regardless of what one thinks about marijuana use, the decision to use marijuana should not render someone a criminal for life.’” *Id.* (emphasis added). The legislative history did not cite judicial decisions finding statutes to be unconstitutional, in whole or in part, as a source of decriminalization or legalization. Thus, Dixon’s assertion that the judicial decisions that have altered the CPWL and UF statutes between the time of his arrest and his record-sealing motion have decriminalized those offenses stands at odds with the legislative history of § 16-803.02 and the firearms-regulation statutes.

3. The Trial Court Did Not Abuse Its Discretion in Weighing the Interest-of-Justice Factors.

Because Dixon had not been arrested for, charged with, or convicted of a criminal offense that was later decriminalized or legalized, the trial court correctly denied his sealing motion on that ground alone (R.116 (order p.6)). However, this Court may also affirm because the trial court reasonably found that the interests of justice did not warrant record-sealing.

Contrary to Dixon's claims (at 32-33), the trial court reasonably found that the community had some "interest in retaining access," § 16-803.02(a)(2)(A)(ii), to his CPWL and UF records because that "conduct ha[d] been the subject of repeated criminal statutes barring it" (R.117 (order p.7)). Carrying a pistol outside one's home or business without a license, which is the relevant conduct here, was criminal at the time of his arrest and remains so today. The fact that certain provisions of the CPWL and UF statutes, over time, were deemed unconstitutional does not make the offenses themselves unconstitutional, and any unconstitutional provisions were severable from the overall firearms statutory scheme. Thus, the community, through the D.C. Council,

continues to consider the illegal carrying of guns to be a serious concern (see *id.*).

However, Dixon contends (at 34-36) that the trial court abused its discretion in considering under § 16-803.02(a)(2)(A)(iv) that his conduct remained a criminal offense in 2024 “in a city awash in illegal firearms” because the court had considered the same information under § 16-803.02(a)(2)(A)(ii). Factor (iv) required the trial court to weigh “[a]ny *other* information it considers relevant.” D.C. Code § 16-803.02(a)(2)(A)(iv) (emphasis added). Only under factor (iv) did it consider the fact that the District was “awash in illegal firearms” at the time it denied Dixon’s record-sealing motion. The court’s statement shows that the information it considered in factors (ii) and (iv) was not identical.

Dixon further claims (at 36-37) that the trial court abused its discretion in weighing factor (iv) because there is no “rational relationship” between his CPWL conviction and the current prevalence of guns. There is nothing invalid about the court’s expressed belief that, given the prevalence of illegal guns in the District, it was not in the interest of justice to seal the criminal records of a person who had

previously carried a gun unlawfully. Insofar as Dixon contends that the court did not properly weigh that his gun offenses were based on a non-violent incident and represented his only criminal history, the court clearly took those facts into account in weighing factors (ii) and (iii).¹¹

Finally, Dixon claims (at 37-39), relying on *Johnson*, 398 A.2d at 365, that the trial court abused its discretion in denying his record-sealing motion because “the facts themselves [we]re so extreme” as to leave the court with only the option of granting his motion. This claim lacks merit. The trial court’s decision makes clear that it considered all the facts and legal arguments Dixon cites (at 38). See R.114-17 (order pp.4-7). The court evaluated Dixon’s legal claim that his CPWL and UF offenses were later decriminalized and legalized, and correctly rejected that argument (R.113-16 (order pp.3-6)). Because Dixon failed to establish the prerequisite for record sealing under § 16-803.02(a), the

¹¹ Dixon claims (at 36-37) that the cumulative effect of the trial court’s alleged errors in weighing the interest-of-justice factors warrants reversal of its decision. This claim must fail. Dixon has not shown that the court made any errors in weighing those factors. Even if the court had made errors, Dixon has failed to show that the impact of such errors requires reversal. *See Johnson*, 398 A.2d at 367 (only where trial court has erred in exercising its discretion and the impact is so extreme as to require reversal has trial court abused its discretion).

trial court could not legitimately seal his records. In any event, the trial court reasonably weighed the statutory factors, and Dixon can show no abuse of discretion in finding that the interests of justice did not favor sealing his criminal records.

CONCLUSION

WHEREFORE, the government respectfully submits that the decision of the Superior Court should be affirmed.

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

CHRISELLEN R. KOLB
KAMILAH HOUSE
Assistant United States Attorneys

_____/s/_____
KATHERINE M. KELLY
D.C. Bar #447112
Assistant United States Attorney
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Katherine.Kelly@usdoj.gov
(202) 252-6829

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing Brief for Appellee to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Adrian E. Madsen, Esq., on this 21st day of May, 2025.

_____/s/_____
KATHERINE M. KELLY
Assistant United States Attorney