BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 23-CO-645

RODNEY C. WILLIAMS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

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

MATTHEW M. GRAVES
United States Attorney

CHRISELLEN R. KOLB
JOHN P. MANNARINO
* ERIC HANSFORD
D.C. Bar #1017785
Assistant United States Attorneys

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

Cr. No. 1982-FEL-5231

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ISSUE PRESENTED

Whether the trial court correctly interpreted the Incarceration Reduction Amendment Act's requirement that a court entertain a second application no sooner than three years after the order denying the first application "becomes final," D.C. Code § 24-403.03(d), to mean three years after the litigation surrounding the first order concludes (including any appeal).

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INTRODUCTION

Appellant Rodney Williams was sentenced to a minimum of 57 years in prison for his role in a series of harrowing home-invasion rapes and robberies in the early 1980s. In 2019, the trial court denied his request for immediate release under the Incarceration Reduction Amendment Act (IRAA), concluding that he remained dangerous. Still, the court reduced appellant's sentence to make him immediately eligible for parole. This Court affirmed that decision in 2021, while clarifying that

the trial court should not have reduced the sentence, because the finding that appellant remained dangerous precluded IRAA relief.

The IRAA requires a defendant to wait three years after the prior order denying relief "becomes final" before applying for IRAA relief again. *See* D.C. Code § 24-403.03(d). Yet appellant sought to file a second IRAA application in early 2023, just over a year after this Court's affirmance. The trial court correctly concluded that appellant will not be eligible to file a second IRAA application until late 2024. The statutory text, context, and purpose all make clear that appellant must wait until three years after the first denial "became final" through this Court's affirmance.

COUNTERSTATEMENT OF THE CASE

On October 27, 1982, appellant and four co-defendants were indicted for eight counts of rape while armed (D.C. Code §§ 22-2801, -3202) (1981 ed.), eight counts of first-degree burglary while armed (D.C. Code §§ 22-1801(a), -3202) (1981 ed.), eight counts of sodomy (D.C. Code § 22-3502) (1981 ed.), twelve counts of robbery (D.C. Code §§ 22-2901, -3202) (1981 ed.), three counts of assault with the intent to commit rape while armed (D.C. Code §§ 22-501, -3202) (1981 ed.), and various other charges in connection with four separate home invasions that occurred in

Washington, D.C., in August and September 1982 (19-CO-809 Record (R.) A & B).[1] Appellant pleaded guilty to three counts of rape while armed, one count of armed robbery, and one count of sodomy (*id.*). On July 11, 1983, the Honorable Robert A. Shuker sentenced appellant to an aggregate term of 57 to 171 years: consecutive terms of imprisonment of 15 years to life for each of the three armed rape convictions; a consecutive term of 10 to 30 years for armed robbery; and a consecutive term of 2 to 6 years for sodomy (*id.*). This Court affirmed his convictions and sentence (19-CO-809 R. A). In the following decades, appellant filed multiple collateral motions for release or a reduced sentence, all of which were denied (19-CO-809 R. A & B).

On December 9, 2018, appellant filed a motion for a sentence reduction under the IRAA before the Honorable Michael K. O'Keefe (19-CO-809 R. 20). The government opposed (19-CO-809 Supp. R.). On June 24, 2019, following a hearing, Judge O'Keefe granted appellant's motion in part, reducing his sentence from a range of 57 to 171 years to a range of 54 to 162 years, such that he became immediately eligible for parole

[1] The government's fact section is largely taken from the prior IRAA appeal, No. 19-CO-809.

(19-CO-809 R. B & 30 & 31). On July 20, 2019, appellant moved for reconsideration, which the government opposed (19-CO-809 R. 32 & 33). The trial court denied reconsideration on September 3, 2019 (19-CO-809 R. 34). This Court affirmed in a memorandum opinion and judgment issued on September 14, 2021. *See Williams v. United States*, No. 19-CO-809 (D.C. Sept. 14, 2021) [hereinafter 2021 MOJ]. The mandate issued on October 6, 2021.

In early 2023, appellant indicated that he planned to file a second IRAA application and filed a motion to establish its timeliness (see Limited Appendix (App'x) A). On July 7, 2023, Judge O'Keefe denied appellant's motion, concluding that he would not be eligible to file a second IRAA motion until October 2024 (App'x C). Appellant noticed an appeal on August 1, 2023.

Underlying Offenses

August 17, 1982

At approximately 4:30 a.m., co-defendant Darryl Plater climbed through a bedroom window of the residence of D.V. and M.T. Armed with a handgun, Plater entered the couple's bedroom, forced M.T. to perform oral sex on him, and then raped her. He then led the couple downstairs

where he opened a door and let appellant and co-defendant Ray McLamore inside. Appellant, armed with a gun, ordered M.T. to perform oral sex on him, and taunted her during this act by asking if it gave her "a thrill," and "if it felt good." Appellant then forced her to crawl on her hands and knees while he anally raped her.

The defendants proceeded to tie up the victims and ransack the house. Over the course of more than an hour, the defendants forced the victims to refer to them as "Sir," asked for food from the kitchen, and ordered the victims to make coffee, which they did. Before the defendants left, Plater again forced M.T. to perform oral sex on him, while appellant and McLamore watched. The defendants then openly discussed whether they would kidnap or kill the victims, before deciding to leave them tied up in the home. The defendants took jewelry, clothing, stereo equipment, and other items belonging to the couple.

August 22, 1982

At approximately 5:45 a.m., appellant, Plater, and McLamore entered an apartment, which was shared by six women in their early twenties. Plater and McLamore came into J.A.'s upstairs bedroom and woke her up. While one defendant raped her, another forced her to

perform oral sex. McLamore then entered a second bedroom, awoke M.B., and attempted to rape her as well. After tying the wrists of J.A., M.B., and a third woman, Plater and McLamore went downstairs to the basement, where they found the remaining three women and appellant, who was wielding a six-inch kitchen knife.

Appellant attempted to rape one of these women, K.K. Appellant pushed K.K. to the floor, telling her to get down if she did not want to get hurt. He then lowered his pants, pulled her nightgown up, and forcibly spread her legs. K.K. told appellant she was having her period, but he responded, "prove it." He felt between her legs and found her sanitary protection, and then ordered her to crawl to the stairs. After also tying up the remaining women, the defendants left, taking numerous items of the victims' personal property.

September 1, 1982

At approximately 11:00 p.m., appellant, McLamore, Plater, and co-defendant Thomas Smith, armed with handguns, entered a home and accosted K.M. and J.P. McLamore and Plater forced K.M. upstairs, where she was repeatedly raped and made to perform oral sex. Meanwhile, appellant bound J.P.'s wrists and legs with a telephone cord pulled from

the wall, before stealing his watch and wallet. When J.P. told appellant that there was no jewelry in the house, appellant threatened to murder him if he discovered otherwise. The defendants stole a number of personal items belonging to the victims before leaving.

September 8, 1982

Around 9:00 p.m., Plater and McLamore accosted E.Y. just outside her home. The defendants forced her inside the house at gunpoint, where McLamore raped her and Plater simultaneously forced her to perform oral sex. They then led her through the house while gathering up various items of the family's property. Meanwhile, appellant, Smith, and another co-defendant entered the house and assisted the others in seizing the property. E.Y.'s husband, T.Y., returned home in the meantime, and he was met at a side door by two of the defendants armed with guns. They forced T.Y. inside, tied him up, and brought him into a room where the defendants again raped his wife. The couple's daughter, nine-year-old H.Y., was sleeping in a second-floor bedroom when McLamore climbed on top of her. He attempted to rape her, but stopped when she screamed and exclaimed that "it hurt." Appellant and another assailant came into H.Y.'s bedroom but did nothing to stop the sexual assault. The defendants

then left the house, taking the family's jewelry, stereo, television equipment, and other personal effects.

The Incarceration Reduction Amendment Act

In response to recent Supreme Court precedent limiting lengthy sentences for crimes committed by juveniles, the D.C. Council passed the Incarceration Reduction Amendment Act. *See Williams v. United States*, 205 A.3d 837, 846 (D.C. 2019). While the original IRAA was limited to offenders who were under the age of 18 when they committed their crimes, *id.*, the IRAA has since been repeatedly amended to expand eligibility. Under the amended IRAA, a trial court should reduce a term of imprisonment for an offense committed before the defendant's 25th birthday if the defendant shows that (1) he has served at least 15 years in prison and (2) "[t]he court finds, after considering the factors set forth in subsection (c) of this section, that the defendant is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification." D.C. Code § 24-403.03(a). Subsection (c) specifies 11 factors to consider in assessing dangerousness and the interests of justice. *See id.* § 24-403.03(c).

Procedurally, to seek IRAA relief, a defendant is required to submit "an application for a sentence modification" "in the form of a motion to reduce the sentence." D.C. Code § 24-403.03(b)(1). In ruling on the application, "[t]he court shall issue an opinion in writing stating the reasons for granting or denying the application under this section, but the court may proceed to sentencing immediately after granting the application." *Id.* § 24-403.03(b)(4).

In the key statutory language at issue in this appeal, the IRAA allows three chances for a defendant to seek a reduced sentence:

> If the court denies or grants only in part the defendant's 1st application under this section, a court shall entertain a 2nd application under this section no sooner than 3 years *after the date that the order on the initial application becomes final*. If the court denies or grants only in part the defendant's 2nd application under this section, a court shall entertain a 3rd and final application under this section no sooner than 3 years *following the date that the order on the 2nd application becomes final*. No court shall entertain a 4th or successive application under this section.

D.C. Code § 24-403.03(d) (emphasis added).

Litigation on First IRAA Application

Appellant had been eight months shy of his 18th birthday at the time of his crimes. In December 2018, he moved for immediate release

under the IRAA (19-CO-809 R. 20). The government opposed, contending that appellant was still a danger to the community, and that "the interests of justice" did not warrant a reduced sentence (19-CO-809 Supp. R.). The government emphasized that appellant had failed to acknowledge (and take responsibility for) his concerning disciplinary history while incarcerated, which included numerous positive drug tests, threatening and sexually explicit remarks to corrections officers, and relatively recent sanctions for hiding metal shanks (*id.* at 20-24). Also troubling were appellant's false suggestions that his crimes were "somehow connected to violence among feuding drug dealers," and his repeated "attempts to minimize and trivialize his offenses" (*id.* at 2, 18-19). In fact, the victims were wholly innocent strangers to appellant and his accomplices, and he was "a full, active, willing participant in the series of horrors that he and his cohorts inflicted" (*id.* at 30).

During the April 2019 motions hearing, the court heard argument from both parties, a statement from victim M.T., and a statement from appellant (4/26/19 Transcript (Tr.) 5-26). M.T. described how appellant had raped her "with a gun pressed to [her] head, more than once," and explained that the sexual assault and home invasion had "profoundly and

forever changed" her (*id.* at 12). Appellant apologized generally to the "victims" and said he had "learned [his] lesson as result of" his "mistakes and . . . poor decisions" (*id.* at 22-26).

The court granted appellant's motion in part, reducing his sentence from a range of 57 to 171 years to a range of 54 to 162 years, such that he became immediately eligible for parole (rather than in 2022) (19-CO-809 R. 30). The court's opinion included a detailed consideration of each of the IRAA factors.

While noting that appellant's age at the time of the offense (17 years and 4 months) made him somewhat younger than the other participants (ranging in age from 18 to 20 years), the court concluded that the minor age difference did not "detract from the fact that [appellant] was a willing participant who repeatedly engaged in depraved behavior, even when out of the co-conspirators' presence" (19-CO-809 R. 30 at 2, 8-9). Turning to appellant's background, the court acknowledged that he "grew up in an unstable environment, which included drugs, violence, abuse, and dropping out of school" (*id.* at 2, 7–8). At the same time, that difficult upbringing failed to "explain or mitigate [his] brutal and degrading

sexual assaults of multiple women, and his psychological torment of all of the victims" (*id.* at 8).

Regarding appellant's record while in prison and rehabilitative efforts, the court noted that he had been sanctioned more than a dozen times, and that in 2013 a prison official had characterized his record as "abysmal" (19-CO-809 R. 30 at 3-4). It was also "concerning" that appellant had repeatedly attempted to "minimize his culpability and disclaim any personal responsibility for his own misconduct" (*id.* at 4). Furthermore, while he had "completed numerous educational, vocational, and other programs," it was "concerning that none of the programs" were "aimed at addressing [his] violent sexually assaultive conduct" (*id.*). This, too, suggested that appellant was "attempting to downplay his own involvement in these crimes rather than take responsibility" (*id.* at 5).

In sum, while appellant had attempted "to make amends and to better himself," the court was not convinced that he had truly reformed and was no longer dangerous (19-CO-809 R. 30 at 14). The court would "partially grant" appellant's motion to make him "eligible for parole immediately," so that the United States Parole Commission could make

a release determination in light of his "record of behavior over the past 36 years" and other factors (*id.* at 15).

Appellant moved for reconsideration, maintaining that "arguments regarding the nature of the offense are no longer relevant" under the amended IRAA statute; that the trial court had erroneously required a "perfect[ ]" prison record; and that "[a]ny sentence not resulting in [appellant's] release from confinement would frustrate the purpose of the" statute (19-CO-809 R. 32). The government opposed (19-CO-809 R. 33). The trial court denied the reconsideration motion, confirming that it had followed the amended IRAA, but rejecting appellant's attacks on the court's decision (19-CO-809 R. 34).

After appellant appealed, this Court affirmed in an 11-page MOJ, rejecting appellant's two challenges. First, this Court concluded, the trial court had appropriately considered whether the defendant had substantially complied with prison rules and whether he had demonstrated sufficient maturity and rehabilitation, permissibly finding that appellant failed to carry his burden of on those factors. 2021 MOJ at 7-8. This Court emphasized that the trial court's order denying reconsideration had suitably clarified those issues. *Id.* at 8.

Second, this Court rejected appellant's charge that the trial court had been overly focused on the underlying offenses. 2021 MOJ at 8-10. "[Appellant] had committed a series of sexual assaults against strangers and had failed to receive any sex offender treatment in prison, despite incurring a disciplinary infraction for sexual misconduct." *Id.* at 9. The trial court's finding that appellant had failed to meet the IRAA's requirement to show a lack of dangerousness "was grounded in the record, including the nature and seriousness of [appellant's] criminal conduct, his current attitude toward it, and his subsequent disciplinary history, all of which weighed against him on the question of his continuing dangerousness." *Id.* at 10. That continuing dangerousness alone "was a valid basis on which to deny [appellant's] request for release." *Id.*

Indeed, the Court noted, the trial court's finding that appellant remained dangerous meant that "it was not in fact authorized to grant any relief at all, including the partial relief it afforded [appellant] by making him immediately eligible for parole." 2021 MOJ at 10 n.6. But because the government had not appealed on that basis, the Court did not reverse that aspect of the trial court's order. *Id.*

Litigation on Second IRAA Application

After appellant filed an IRAA notice of intent in January 2023, the trial court expressed concern about appellant's eligibility to file a second IRAA application so soon (App'x C at 2). Appellant then filed a motion to establish timeliness of his second IRAA motion (App'x A), supported by a brief by amicus Public Defender Service (App'x B). The government was not asked to participate.

The court issued a 20-page written opinion denying appellant's motion to establish timeliness and vacating the previously issued briefing order (App'x C). The court concluded that the order denying in part appellant's first request for IRAA relief did not "become final" for purposes of § 24-403.03(d) until this Court issued its mandate on October 6, 2021, meaning that he would not be eligible to file a second IRAA motion until October 6, 2024.

The court recognized that a "final" order can mean either (a) an order that is ready to be appealed or (b) an order that takes definitive effect upon the completion of any appellate process (App'x C at 7). In § 24-403.03(d), the phrase "becomes final" was better understood to adopt the latter meaning. The trial court explained that § 24-403.03(b)(4)

already requires a trial court to issue a written opinion stating the reasons for granting or denying an IRAA application, which would be "final" in the sense of appealable (App'x C at 7-10). That opinion was the "order on the initial application" that "denies or grants only in part the defendant's 1st application" referred to in § 24-403.03(d) (*id.* at 8). And since it was already appealable, interpreting "becomes final" to merely require appealability would be duplicative, rending the phrase "becomes final" "superfluous, redundant, and meaningless" (*id.*). The court rejected PDS's labors to evade that redundancy (*id.* at 9). Instead, "[i]ncluding 'becomes final' appears to add another step to the process following the 'order on the initial application'" (*id.* at 9).

The court also rejected appellant's and PDS's other arguments for a contrary interpretation. After an extensive review of the legislative history, the court concluded that the legislative materials "d[id] little, if anything, to clarify when an order on an IRAA application becomes final" (App'x C at 10-15). The committee reports did not address the meaning of "becomes final" and offered far simpler alternative formulations for how the Council could have started the waiting period upon issuance of an appealable order (*id.*). The passing dicta in *Williams* summarizing

§ 24-403.03(d) similarly did not interpret the phrase "becomes final" (*id.* at 15-17). And it was not absurd to delay the start of the waiting period until the prior appeal had concluded (*id.* at 17-18).

SUMMARY OF ARGUMENT

The trial court correctly concluded that the order denying appellant's first IRAA application did not "become final" under § 24-403.03(d) until this Court issued its mandate in October 2021, so he cannot file a second application until October 2024. While in isolation the word "final" can bear the "appealably final" meaning that appellant advocates for, in context all of the tools of statutory interpretation support the "decisively final" meaning that the trial court adopted, requiring the resolution of reconsideration motions, appeals, and remands. The phrase "*becomes* final" usually signals the end of the appellate process, not just appealability—especially here, where an IRAA order will already be appealably final. Moreover, the Supreme Court has explained that the word "final" in a postconviction context like this usually refers to the end of an appeal. Statutory purpose and common sense likewise support the trial court's interpretation.

By contrast, appellant's proposed interpretation ignores the possibility of multiple appealably final IRAA orders, even though the text of § 24-403.03(d) contemplates only one order that "becomes final." His interpretation also renders a significant portion of § 24-403.03(d) surplusage. And none of the other arguments he offers justify departing from the statute's plain meaning.

ARGUMENT

The Trial Court Correctly Defined When an Order "Becomes Final."

A. Standard of Review and Applicable Legal Principles

The IRAA mandates waiting periods following an unsuccessful (or only partially successful) IRAA application:

> If the court denies or grants only in part the defendant's 1st application under this section, a court shall entertain a 2nd application under this section no sooner than 3 years *after the date that the order on the initial application becomes final*. If the court denies or grants only in part the defendant's 2nd application under this section, a court shall entertain a 3rd and final application under this section no sooner than 3 years *following the date that the order on the 2nd application becomes final*.

D.C. Code § 24-403.03(d) (emphasis added).

The proper interpretation of a statute is a question that this Court decides de novo. *United States v. Facon*, 288 A.3d 317, 328 (D.C. 2023).

B. The Tools of Statutory Construction Support the Trial Court's Interpretation.

1. Multiple Meanings of "Final"

"Finality is variously defined; like many legal terms, its precise meaning depends on context." *Clay v. United States*, 537 U.S. 522, 527 (2003). In the abstract, a trial court's decision could be called "final" for one of two conceivable reasons here.

First, a decision may be called "final" because it is ripe for appeal. Generally, this Court's appellate jurisdiction—mirroring federal appellate jurisdiction—extends to "'all final orders and judgments of the Superior Court of the District of Columbia.'" *Facon*, 288 A.3d at 332 (quoting D.C. Code § 11-721(a)(1) and citing 28 U.S.C. § 1291). So a trial court's decision may be appealed when it is a "'final' order" *as to the trial court*—that is, "it disposes of the issues in the case before the court 'so that the court has nothing remaining to do.'" *Id.* at 332 (quoting *Rolinski v. Lewis*, 828 A.2d 739, 745 (D.C. 2003) (en banc)); *accord Clay*, 537 U.S. at 527 ("Typically, a federal judgment becomes final for appellate review and claim preclusion purposes when the district court disassociates itself

from the case, leaving nothing to be done at the court of first instance save execution of the judgment."). We refer to this type of finality as "appealably final."[2]

Second, a decision may be called "final" because it decisively resolves the litigation between the parties, subject to no further judicial review. For example, the one-year limitations period for filing a federal postconviction motion under 28 U.S.C. § 2255 usually runs from the "date on which the judgment of conviction becomes final." 28 U.S.C. § 2255(f)(1). In that "context [of] postconviction relief," "finality has a long-recognized, clear meaning: Finality attaches when [the Supreme] Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires." *Clay*, 537 U.S. at 527. We refer to this type of finality as "decisively final."

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[2] Ironically, this very appeal might at first blush seem to lack a "final order" subject to appeal under D.C. Code § 11-721(a)(1), given that the trial court's ruling merely delayed appellant's filing of his second IRAA application. But we agree with appellant (see Br. 2) that this Court has jurisdiction under the collateral-order doctrine. *See McNair Builders, Inc. v. Taylor*, 3 A.3d 1132, 1135-36 (D.C. 2010).

2. Meaning of "Becomes Final"

This case does not ask when a trial court's IRAA decision "*is* final" in the abstract, however. Instead, § 24-403.03(d) sets the minimum waiting period after the denial of the defendant's application from "the date that the order on the initial application *becomes final*." The word "become" indicates that finality is not inherent in the order denying the prior IRAA application—it is not a quality that the order necessarily has upon its issuance. Rather, "becomes" signals that finality of the order "come[s] into existence" or "come[s] to be" at some later point.[3] Thus, for example, the Supreme Court has held that in order for an employee "to establish that he or she 'may *become* eligible'" for ERISA benefits, "a claimant must have a colorable claim that (1) he or she *will prevail* in a suit for benefits, or that (2) eligibility requirements *will be fulfilled in the future*." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 117-18 (1989)

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[3] *Become*, Merriam-Webster, https://www.merriam-webster.com/dictionary/become (last accessed Oct. 4, 2023) ("1 a: to come into existence[;] b: to come to be | *become* sick | They both *became* teachers. 2: to undergo change or development | The pain was *becoming* more intense."); *see also Become*, Oxford English Dictionary, https://www.oed.com/dictionary/become_v ("[t]o come to be (something or in some state)").

(emphasis added); *see also, e.g.*, *District of Columbia v. Clawans*, 300 U.S. 617, 627 (1937) ("commonly accepted views of the severity of punishment by imprisonment may *become* so modified that a penalty once thought to be mild may *come to be* regarded as so harsh as to call for the jury trial") (emphasis added).

Yet a dispositive ruling on an IRAA application—whether granting it or denying it (or granting it in part and denying it in part)—will naturally be *appealably* final (see App'x C at 8-9). The ruling will "dispose[ ] of the issues in the case before the court 'so that the court has nothing remaining to do.'" *Facon*, 288 A.3d at 332. So it makes little sense to describe the order as "*becoming* final" if "final" in the statute means only appealable. The statute's emphasis on the point in time when the order "becomes" final thus cuts strongly in favor of the *decisively*-final meaning—the time when any appellate process has played out, and the litigation has definitively concluded.

And indeed, when statutes and courts use a variation on the phrase "becomes final," they usually mean "final" in that decisively-final sense, where any appellate process is over. *See, e.g.*, 28 U.S.C. § 2244(d)(1)(A) (one-year limitation period for filing writ of habeas corpus runs from "the

date on which the judgment *became final* by the conclusion of direct review or the expiration of the time for seeking such review") (all emphases in string-cite added); *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1346 (2021) ("If judicial review favors the Commission (or if the time to seek judicial review expires), the Commission's order normally *becomes final* (and enforceable)."); *Caspari v. Bohlen*, 510 U.S. 383, 390 (1994) ("A state conviction and sentence *become final* for purposes of retroactivity analysis when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied."); *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 218 (1994) ("the Secretary's penalty assessments *become final* and payable only after full review by both the Commission and the appropriate court of appeals."); *Pittston Coal Grp. v. Sebben*, 488 U.S. 105, 121-22 (1988) ("[I]nitial administrative determinations *become final* after 30 days if not appealed to the Benefits Review Board, and persons aggrieved by a final order of the Board may have such an order set aside only by petitioning for review in a court of appeals within 60 days of the final order. Determinations of all of the *Sebben* claims *became final* at one of these two stages.")

(citations omitted); *Atlas Roofing Co., Inc. v. Occupational Safety & Health Rev. Comm'n*, 430 U.S. 442, 446-47 (1977) ("the Commission's subsequent order directing abatement and the payment of any assessed penalty *becomes final* unless the employer timely petitions for judicial review in the appropriate court of appeals"); *Burnett v. New York Cent. R. Co.*, 380 U.S. 424, 435 (1965) ("the limitation provision is tolled until the state court order dismissing the state action *becomes final* by the running of the time during which an appeal may be taken or the entry of a final judgment on appeal"); *Mobley v. S. Ry. Co.*, 418 A.2d 1044, 1050 (D.C. 1980) (same); *Washington Gas Light Co. v. Pub. Serv. Comm'n of D.C.*, 61 A.3d 662, 674 (D.C. 2013) ("orders that are not challenged by reconsideration motion or appeal *become final* for the purpose of assessing forfeitures once it is clear they will not be timely challenged"); *Nat'l Council of Am.-Soviet Friendship, Inc. v. Subversive Activities Control Bd.*, 322 F.2d 375, 378 (D.C. Cir. 1963) ("If this court affirms the order or dismisses the petition for review, and no petition for certiorari is filed, the order of the Board *becomes final*."). Similarly, in § 24-403.03(d),

the prior denial is most naturally understood to "become final" when the appellate process ends.[4]

3. Postconviction Context

Multiple contextual clues confirm that plain meaning of § 24-403.03(d): a trial court's order denying the defendant's IRAA application "becomes final" when the appellate process has run, rather at the time that the order is first subject to appeal.

To begin, the IRAA is a statute for postconviction relief. The Supreme Court has that explained when "the relevant context is postconviction relief," "finality has a long-recognized, clear meaning: Finality attaches when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires." *Clay*, 537 U.S. at 527.

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[4] We do not claim that *every* use of the phrase "becomes final" bears this meaning. Though normally if a court means the order "becomes final" in the sense that it becomes subject to appeal, it says so. *See, e.g.*, *Clay*, 537 U.S. at 527 ("Typically, a federal judgment *becomes final for appellate review* and claim preclusion purposes when the district court disassociates itself from the case, leaving nothing to be done at the court of first instance save execution of the judgment.") (emphasis added).

Appellant counters that by "postconviction relief," *Clay* really meant "collateral review" challenging the legality of a conviction, like a collateral attack under 28 U.S.C. § 2255 or D.C. Code § 23-110 (Appellant's Brief (Br.) 24-25). But there is no reason to give Supreme Court precedent that stilted narrowing. A motion to reduce a sentence—under the IRAA or otherwise—fits comfortably into the normal meaning of "postconviction relief." *See, e.g.*, *In re Gordon*, 747 A.2d 1188, 1189 (D.C. 2000) (attorney "was appointed to represent an indigent criminal defendant seeking post-conviction relief, specifically a reduction in his sentence"); 3 Sarah N. Welling, *Federal Practice and Procedure (Wright & Miller)* § 613 (5th ed. updated June 2023) (comparing Rule 35 motion to reduce sentence to "other post-conviction remedies"). And anyway, whatever the pre-*Clay* landscape, *Clay*'s clear explanation of the meaning of "finality" when "the relevant context is postconviction relief" has itself created a background understanding of the term that subsequent laws—including the IRAA—legislate against. Thus, the IRAA's reference to finality within the context of postconviction relief alone "would ordinarily determine the meaning of 'becomes final'": when the appellate process has finished.

By contrast, the context where "final" is used to mean appealably final is (unsurprisingly) usually in laws and court rules providing the procedures and deadlines for taking an appeal. *See, e.g.*, D.C. Code § 11-721(a)(1); D.C. Code § 16-4427(a)(6); D.C. App. R. 4(a)(6), (b)(5). Timelines in such cases are usually measured in a *maximum* of days—not the *minimum* of three years provided in § 24-403.03(d). *See, e.g.*, *id.* That makes sense. Focus on whether a decision is subject to immediate appeal (and thus appealably final) is an important part of the appellate process, but it usually carries little significance outside of that appellate context.

4. The Multiple-Orders Problem

Interpreting "final" to require only an appealably-final order also runs into textual and practical problems, as there can be multiple appealable orders stemming from a single IRAA application.

Indeed, *any time* a defendant prevails in a motion for reconsideration or an appeal but fails to obtain immediate release, there will be at least two such orders. The first appealable order denying the IRAA application will come when the trial court initially denies the motion. But if the defendant (or, for that matter, the government after a

partial denial) convinces the trial court to reconsider, the trial court will have to issue a new order, which will likewise be appealable. Or, if the defendant appeals and wins a remand from this Court, the trial court will have to issue a new order responding to this Court's remand, and that new order will again be appealable.

Yet the text of § 24-403.03(d) contemplates only one "final" order: "a court shall entertain a 2nd application under this section no sooner than 3 years after *the date* that *the order* on the initial application becomes final." *See Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1483 (2021) ("using a definite article with a singular noun ('the notice')" indicates "a discrete thing"). Interpreting "final" to mean appealable, where there can be multiple appealable orders, thus contradicts the statutory text.

Moreover, the possibility of multiple appealable orders leaves uncertainty about which order denying the application would trigger the start of the three-year waiting period. The initial order? The order on reconsideration? The order on remand? The text offers no answer, as each of these qualifies as an order that "denies or grants only in part the defendant's [prior] application." Had the D.C. Council intended for "final" to mean appealable, it could have easily clarified that the period runs

from the date that "the first order" or "the last order" on the application becomes final. The lack of such a qualifier in the statute cuts against the appealably-final meaning. Appellant recognizes the benefits of clarity here, contending that his interpretation eliminates supposed ambiguity in the unusual situation when a trial court issues a tentative oral ruling with a written opinion to follow (Br. 14-15), a claim we address below. *See infra* Part B.5. But he ignores the gaping statutory uncertainty left by his preferred interpretation.

By contrast, interpreting "final" to mean decisively final offers a clear answer: the three-year period runs from the time that the litigation on the prior application has concluded.

5. Surplusage

Further, as the trial court explained (App'x C at 7-10), interpreting "becomes final" in § 24-403.03(d) merely to mean that the order is appealable renders "becomes final" surplusage. *See Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) ("[T]he interpretive canon against surplusage" is "the idea that 'every word and every provision is to be given effect [and that n]one should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.'"). That is because

an "order on the [prior] application" that "denies or grants only in part the defendant's [prior IRAA] application," D.C. Code § 24-403.03(d), is already "final" in the sense of being appealable.[5]

Put another way, if appellant's interpretation were correct, the statute could have been written as follows, with no difference in meaning:

> If the court denies or grants only in part the defendant's 1st application under this section, a court shall entertain a 2nd application under this section no sooner than 3 years after ~~the date that~~ the order on the initial application ~~becomes final~~. If the court denies or grants only in part the defendant's 2nd application under this section, a court shall entertain a 3rd and final application under this section no sooner than 3 years following ~~the date that~~ the order on the 2nd application ~~becomes final~~.

Indeed, if the D.C. Council really intended to enact appellant's preferred interpretation, the far more obvious way to do so would be cutting the last dozen words of each sentence above and inserting "later": "If the court denies or grants only in part the defendant's 1st application under

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[5] *Accord United States v. Carpenter*, 542 F. Supp. 2d 183, 184 (D. Mass. 2008) ("Interpreting the statute otherwise would render superfluous the statutory words 'becomes final.' Something more than just the trial court's allowance of the new trial motion—the 'action occasioning the retrial'—is clearly required by a plain reading of § 3161(e) to reset the STA clock; that order must have become 'final.' That phrase usually is employed to signify the completion of any appellate review of the trial court's order."), *aff'd*, 781 F.3d 599 (1st Cir. 2015).

this section, a court shall entertain a 2nd application under this section no sooner than 3 years later." Instead, however, the Council used the additional language to ensure that the period for subsequent filings runs from the time that the prior IRAA "becomes final."[6]

Appellant speculates that the Council was trying to address the rare possibility that a trial court might orally state at the end of an IRAA hearing that it will be denying the application, with a written opinion to follow (Br. 14-15). Because the statute requires the court to "issue an opinion in writing stating the reasons for granting or denying the application under this section," D.C. Code § 24-403.03(b)(4), appellant suggests that the oral statement there is an order denying relief that has not yet "become final," giving the language some conceivable role. To substantiate this possibility, he points to (Br. 13) this Court's unpublished order sua sponte dismissing the appeal in *Newman v. United States*, No. 22-CO-586 (D.C. Sept. 7, 2022).

[6] By contrast, statutes like D.C. Code § 11-721(a)(1) and 28 U.S.C. § 1291 that specify that a generic "order" or "decision" subject to appeal must be "final" seek to sort the interlocutory orders that must await appeal from the "final" orders subject to immediate appeal.

The problem with that theory, as *Newman* illustrates (see also App'x C at 9 n.5), is that the court's oral statement is not a binding "order" that "denies or grants only in part the defendant's [IRAA] application" at all. Rather, as the *Newman* show-cause order explained, when the court there gave a "preliminary oral decision wherein the trial court indicated its intent to issue a written order from chambers in the upcoming weeks," that decision "'will not be effective until it's incorporated in a written order and the time for appeal does not run until the order is entered.'" *Newman v. United States*, No. 22-CO-586 (D.C. Aug. 11, 2022) (quoting *United States v. Nicks*, 427 A.2d 444, 446-47 (D.C. 1981)). There is, in other words, no order dismissing the IRAA application when the court states that it *will be* denying the application and issuing a written decision explaining why.

On the other hand, appellant's suggestion that a written order will *always* be required to make an IRAA denial appealably final (and that § 24-403.03(d) clarifies such a requirement) also appears to be incorrect. *Newman* and *Nicks* found the preliminary decisions expressed during hearings to be non-final not because they were oral, but because each court made clear that it would be issuing a written opinion later. Absent

such a qualification, an oral ruling *would* normally be taken as final for purposes of appealability. *See* D.C. App. R. 4(b)(5) ("A judgment or order is deemed to be entered within the meaning of this subdivision when it is entered on the criminal docket by the Clerk of the Superior Court."). Section 24-403.03(b)(4)'s requirement of a written opinion might provide a ground for reversing a trial court who issued only an oral ruling, but it would not prevent this Court from finding an appealable order. So even if interpreting "final" to mean appealably final, the "becomes final" language still does not provide the clarity about triggering the three-year waiting period that appellant imagines, and it still could be eliminated from the statute with no change in meaning.

6. Purpose

The purpose of the three-year waiting periods between unsuccessful IRAA applications imposed by § 24-403.03(d) also favors interpreting "final" to mean decisively final. *See Tippett v. Daly*, 10 A.3d 1123, 1127 (D.C. 2010) (en banc) ("We consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme.") (citation omitted). At the outset, appellant misfires in suggesting (Br. 19) that the entire point of the IRAA is to reduce incarceration, so the word "final"

must be interpreted to advance that purpose. "[N]o legislation pursues its purposes at all costs . . . ." *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 637 (2012). And § 24-403.03(d) in particular runs directly counter to wholesale decarceration, forcing defendants to wait at least three years after an unsuccessful IRAA application, and barring any "4th or successive application."

Rather, § 24-403.03(d)'s limits and forced waiting periods balance conservation of judicial (and party) resources with offering defendants three "meaningful opportunit[ies] to attain demonstrable maturity and rehabilitation." *Williams*, 205 A.3d at 855. It strikes the balance in favor of requiring those whose initial applications fail to wait long enough that they can "make further progress" before the next filing. *Id.* As this case illustrates, however, the "progress" that a defendant needs to make and the actions he needs to take in order to "demonstra[te]" maturity and rehabilitation will often only become clear when the litigation is over, and the prior IRAA denial is definitively final.

Here, for example, the trial court's reconsideration order clarified that it had not improperly delegated release decisions to the parole board. *See* 2021 MOJ at 7-8. Instead, appellant's disciplinary record in prison

and his failure to take responsibility (both for his crime and his prison record) indicated a lack of fitness to reenter society. The reconsideration order, in other words, made appellant's task before his next IRAA application far clearer. Similarly, this Court's decision to uphold the trial court's finding of continuing dangerousness—and, indeed, to clarify that appellant's dangerousness meant he should not have gotten *any* IRAA relief in the first place—emphasized the importance of finding ways to make his release safer for the community. It probably also should have signaled to appellant that he might want to "wait to move for reduction of his sentence" even longer than the minimum waiting period, as the unwarranted sentencing reduction that he got through his first application suggests that, before meriting an even shorter sentence, "he needs more time to make the showing of his rehabilitation and suitability for return to society." *Williams*, 205 A.3d at 855.

In a case where the trial court *grants* reconsideration, or this Court reverses and remands—including at the government's requests—the utility of waiting for the end of litigation is even clearer. In such a situation, the trial court's later-vacated original order is a poor guide for what a defendant should do to obtain IRAA relief going forward.

By delaying the running of the waiting period until the prior IRAA litigation has fully played out, the multiple IRAA applications and forced waiting periods play their intended role of offering the initially unsuccessful defendant a target to aim for. Interpreting "final" to mean decisively final best furthers that statutory purpose.

7. Common Sense

Finally, stepping back, it would be quite odd here to refer to the trial court's initial order on the IRAA application as "final" in any relevant way, when the order is subject to so much further change. *See Pereira v. Sessions*, 138 S. Ct. 2105, 2115 (2018) (interpreting statute according to "common sense"). A trial court may reconsider its decision, altering its reasoning or even its decision. Or an appellate court may identify errors in the decisionmaking and remand for further analysis, potentially leading the trial court to order different relief. The ultimate decision on the IRAA application—including the bottom-line outcome of whether the application will be fully granted, fully denied, or granted in part and denied in part—is only settled once the complete review process has run, including reconsideration, appeals, and remands.

It is entirely unclear, then, why the D.C. Council would want to start the clock for the waiting period between applications at the time when the trial court issues its first, interim order. Rather, it makes far more sense to wait until the dust settles on the prior application, and the litigation comes to a definitive conclusion, and then start the clock.

C. Other Interpretive Tools Appellant Invokes Do Not Help His Cause.

First, the passing references to § 24-403.03(d) in the legislative history and this Court's decision in *Williams* offer no useful guidance (cf. 16-19). Neither mentions the phrase "becomes final," let alone resolves (or even recognizes) the questions raised in this appeal.

The IRAA was originally passed as part of larger overhaul in the Comprehensive Youth Justice Amendment Act of 2016, D.C. Act 21-568, 63 D.C. Reg. 15312 (Apr. 4, 2017). The committee report includes just one paragraph summarizing the IRAA, with a lone sentence on § 24-403.03(d): "If the defendant's initial application is unsuccessful, they may make a second application five years after the order on the first application, and a third and final application five years after the order on the second application." D.C. Council Comm. on the Judiciary, Rep. on

Bill 21-683, at 14 (Oct. 5, 2016). That quick summary (understandably) avoids getting into the weeds on the IRAA application timelines. It skips over the "becomes final" language now at issue on appeal completely, with no hint on whether "final" means appealably final or decisively final. While courts sometimes use "clear evidence of [legislative] intent" in legislative history to "illuminate ambiguous text," they do "not take the opposite tack of allowing ambiguous legislative history to muddy clear statutory language." *Milner v. Dep't of Navy*, 562 U.S. 562, 572 (2011); *see also Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 549 (2013) (declining to rely on "inconclusive" legislative history); *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 755 (D.C. 1983) ("ambiguous" legislative materials "should not be permitted to control the customary meaning of words"). The committee report sheds no light on the questions presented here.

This Court's passing summary in *Williams* of the original five-year waiting period from § 24-403.03(d) is similarly unilluminating: "The defendant may file a second sentence reduction motion after five years; if that motion too is denied, he may file a third such motion after another five years." 205 A.3d at 848. The relevant phrase in that sentence—"is

denied"—could refer either to the initial denial by the trial court or to the definitive denial at the end of the litigation process. And the sentence is dicta anyway. *See Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 35 (2012) ("We resist reading a single sentence unnecessary to the decision as having done so much work."); *Cent. Virginia Cmty. Coll. v. Katz*, 546 U.S. 356, 363 (2006) ("we are not bound to follow our dicta in a prior case in which the point now at issue was not fully debated"). Again, *Williams* simply was not addressing this issue.[7]

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[7] The point is underscored by *Williams*'s later summary of the IRAA waiting periods: "the prisoner has twenty years in which to make progress before he can take the first of those chances [for IRAA relief], another five years in which to make further progress before he can take the second chance, and yet another five years before he can take his third chance." *Id.* at 855. This sentence does not mention "orders" or "denials" at all. So if shorn of context and taken literally, it would suggest that a defendant must wait five years after *filing his first application*—clearly the wrong trigger for the waiting period. In context, however, it is clear *Williams* is merely describing the waiting periods in broad terms, with no thought of resolving when an order "becomes final."

The same is true of the government's brief in *Williams*, which uses essentially the same language as the *Williams* opinion. *See* Gov't Supp. Br. 12, 43, 45, *Williams*, 205 A.3d 837 (No. 16-CO-570). In any event, appellant also offers no theory for how a party's brief could control a statute's meaning. Indeed, this Court long ago rejected such a delegation of its authority, even as to express stipulations. *See, e.g.*, *District of Columbia v. Coleman*, 667 A.2d 811, 820 n.14 (D.C. 1995) ("[W]e are not bound by stipulations on questions of law in general[.]") (internal

(continued . . .)

Second, interpreting "becomes final" to require definitive finality does not impose some extraordinary "Hobson's choice" between obtaining IRAA relief and taking an appeal (cf. Br. 20-23). Rather, the delays occasioned by an appeal—particularly delays in any later trial-court proceedings—are a predictable part of the appellate process. That is because "[a]n appeal, including an interlocutory appeal, 'divests the [trial] court of its control over those aspects of the case involved in the appeal.'" *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)). "Once appealed, the case is said to be 'in' this [C]ourt and in that circumstance, . . . the trial court may not vacate, amend, or reduce a sentence." *Bell v. United States*, 676 A.2d 37, 41 (D.C. 1996).

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quotation marks omitted); *see also Swift & Co. v. Hocking Valley Ry. Co.*, 243 U.S. 281, 289 (1917) ("If [a] stipulation is to be treated as an agreement concerning the legal effect of admitted facts, it is obviously inoperative; since the court cannot be controlled by agreement of counsel on a subsidiary question of law."); *United States v. Harbin*, 56 F.4th 843, 850 n.3 (10th Cir. 2022) ("The government's concession . . . does not affect our resolution of this appeal. . . . [T]his court is not required to 'accept what in effect was a stipulation on a question of law.'") (quoting *U.S. Nat'l Bank of Ore. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 448 (1993)).

For example, a federal district court usually will not resolve a prisoner's petition for collateral relief under 28 U.S.C. § 2255 until the judgment becomes final, including full resolution of the direct appeal. *See Clay*, 537 U.S. at 527. Similarly, while this Court follows different procedures for staggering the direct appeal and collateral review, the same delay persists: a defendant must file his § 23-110 motion during the pendency of the direct appeal, and the direct appeal is then stayed until the § 23-110 motion is decided, with the appeals then consolidated. *See Shepard v. United States*, 533 A.2d 1278, 1280 (D.C. 1987). Either way, either the trial or appellate court must pause to allow the other to proceed. Indeed, even on appellant's preferred interpretation of "becomes final," the lengthy four- and five-year appellate timelines that he imagines (Br. 22-23) would inevitably extend the IRAA interval, because litigation on a second IRAA application would at least have to await resolution of the appeal on the first IRAA application. Similarly here, appellant's decision to pursue this appeal will delay his second IRAA application if this Court has not issued its decision by October 6, 2024, even though an IRAA application would otherwise be timely then under either interpretation of "becomes final." Delays occasioned by appeals are

a common feature of postconviction litigation—not an absurd result to be avoided at all costs (cf. Br. 22-23).

Third, the rule of lenity does not require this Court to adopt appellant's preferred interpretation of "becomes final" (cf. Br. 25-27). The rule of lenity "is a secondary canon of construction" to be invoked only if, after "us[ing] all of the traditional tools of statutory interpretation," "the statute remains grievously ambiguous [such] that the court can make no more than a guess as to what the statute means." *Lee v. United States*, 276 A.3d 12, 18-19 (D.C. 2022) (quotation marks omitted). There is no grievous ambiguity here—the text, context, purpose, and common sense all favor the decisively-final meaning. *See supra* Part B.

In any event, even if there were grievous ambiguity, the rule of lenity would not apply here anyway. For one thing, this Court has said the rule of lenity applies to "statutes which proscribe criminal conduct" and "those that fix or alter the punishment for misdeeds previously done." *Luck v. District of Columbia*, 617 A.2d 509, 515 (D.C. 1992). But § 24-403.03(d) does neither. It merely sets out the procedural waiting period for filing a subsequent IRAA petition after the first petition fails. Appellant "has not provided us with an example of an instance in which

the 'rule of lenity' has been applied to a statutory time provision in the criminal context." *Dolan v. United States*, 560 U.S. 605, 621 (2010). And even in the category of statutory time provisions, § 24-403.03(d) would be a weak candidate for lenity, as it imposes only a *minimum* waiting period, not a mandatory deadline that risks dismissal.

Moreover, the rule of lenity "teach[es] that ambiguities about the breadth of a criminal statute should be resolved in the *defendant's favor*." *United States v. Davis*, 139 S. Ct. 2319, 2333 (2019) (emphasis added). But it is far from clear that the reading of § 24-403.03(d) that appellant urges really *does* ultimately favor defendants. Section 24-403.03(d)'s forced waiting periods between motions are unusual, but they serve a clear purpose: protecting defendants from an understandable instinct to grasp at any possibility of release, by ensuring that a defendant who initially fails in his efforts to gain IRAA release has enough time to mature and rehabilitate and build a colorable case for release before trying again, rather than wasting all three chances immediately and then being obligated to serve out his entire prison sentence. *See supra* Part B.6; *see also* D.C. Code § 24-403.03(d) ("No court shall entertain a 4th or successive application under this section."). By contrast, shortening the

waiting periods and allowing a defendant to file a new IRAA request immediately after the prior IRAA litigation wraps up—here, for example, in as little as 10 months after this Court issued its MOJ—ultimately sets defendants up for another defeat. Lenity thus would not support appellant's statutory reading here anyway.

CONCLUSION

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

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney

CHRISELLEN R. KOLB
JOHN P. MANNARINO
Assistant United States Attorneys

/s/
ERIC HANSFORD
D.C. Bar #1017785
Assistant United States Attorney
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Eric.Hansford@usdoj.gov
(202) 252-6829

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (amended May 2, 2023), this certificate must be filed in conjunction with all briefs submitted in all criminal cases designated with a "CF" (criminal felony), "CM" (criminal misdemeanor), "CT" (criminal traffic), and "CO" (criminal other) docketing number. Please note that although briefs with above designations must comply with the requirements of this redaction certificate, criminal sub-case types involving child sex abuse, cruelty to children, domestic violence, sexual abuse, and misdemeanor sexual abuse will not be available for viewing online.

If you are incarcerated, are not represented by an attorney (also called being "pro se"), and not able to redact your brief, please initial the box below at "G" to certify you are unable to file a redacted brief. Once Box "G" is checked, you do not need a file a separate motion to request leave to file an unredacted brief.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21, amended May 2, 2023, and Super. Ct. Crim. R. 49.1, and removed the following information from my brief:

A. All information listed in Super. Ct. Crim. R. 49.1(a) has been removed, including:

(1) An individual's social-security number
(2) Taxpayer-identification number
(3) Driver's license or non-driver's' license identification card number
(4) Birth date
(5) The name of an individual known to be a minor as defined under D.C. Code § 16-2301(3)
(6) Financial account numbers

(7) The party or nonparty making the filing shall include the following:

(a) the acronym "SS#" where the individual's social-security number would have been included;
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(c) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
(d) the year of the individual's birth;
(e) the minor's initials;
(f) the last four digits of the financial-account number; and
(g) the city and state of the home address.

B. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

C. All pre-sentence reports (PSRs); these reports were filed as separate documents and not attached to the brief as an appendix.

D. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

E. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

F. Any other information required by law to be kept confidential or protected from public disclosure.

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23-CO-645
Case Number(s)

Eric Hansford
Name

October 20, 2023
Date

Eric.Hansford@usdoj.gov
Email Address

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Paul Maneri, Public Defender Service, on this 20th day of October, 2023.

/s/
ERIC HANSFORD
Assistant United States Attorney