No. 15-1084

In the Supreme Court of the United States

TERRANCE DANIELS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court permissibly exercised its discretion to exclude petitioner from attending his own federal criminal trial based on petitioner's pattern of disruptive behavior and his refusal to commit not to disrupt his trial.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-38a) is reported at 803 F.3d 335.

JURISDICTION

The judgment of the court of appeals was entered on September 30, 2015. A petition for rehearing was denied on December 1, 2015 (Pet. App. 39a-42a). The petition for a writ of certiorari was filed on February 26, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial, petitioner was convicted in the United States District Court for the Northern District of Illinois of bank robbery and carrying a firearm during and in relation to a crime of violence. He was sentenced to 751 months of imprisonment, to

be followed by five years of supervised release. The court of appeals affirmed. Pet. App. 1a-38a.

1. In February 2008, after a lengthy investigation into several armed bank robberies in the Chicago area, a federal grand jury charged petitioner with two counts of bank robbery, in violation of 18 U.S.C. 2113(a) (Counts 1 and 3), and two counts of using a firearm in connection with the robberies, in violation of 18 U.S.C. 924(c)(1)(A) (Counts 2 and 4). Petitioner's co-defendant Albert Jones pleaded guilty, while petitioner and co-defendant Dahveed Dean stood trial jointly. Pet. App. 2a-3a.

2. a. Beginning on July 30, 2012, approximately six weeks before trial, petitioner began filing pro se documents claiming legal rights consistent with the "sovereign citizen movement."[1] Pet. App. 20a & n.2; see D. Ct. Docs. 144, 145 (July 30, 2012), 148, 149 (July 31, 2012). On August 2, at the request of petitioner's attorney, the district court held a status hearing. D. Ct. Docs. 146 (Aug. 1, 2012), 150 (Aug. 2, 2012). After petitioner twice interrupted that his appointed counsel was "not [his] lawyer," 8/2/12 Tr. 4, the court attempted to address petitioner. Petitioner initially refused to be sworn in, instead reciting legal language similar to that in his pro se filings, but eventually responded "yes" when asked if he swore to tell the truth. *Id.* at 7-9. When the court asked petitioner

[1] "Sovereign Citizens," who "often recruit[] in prisons," Pet. App. 20a n.2, refuse to recognize governmental authority and are considered a domestic terrorist group by the Federal Bureau of Investigation. See *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement*, https://leb.fbi.gov/2011/september/sovereign-citizens-a-growing-domestic-threat-to-law-enforcement (last visited Apr. 26, 2016).

whether he was asking "that [his] lawyer be dismissed," petitioner refused to answer, again reciting "boilerplate language about sovereignty."[2] *Id.* at 10. The court continued to ask petitioner whether he wished to proceed with his appointed counsel, but petitioner, continuing to recite boilerplate language, refused to answer. *Id.* at 10-13. The court warned petitioner about "the dangers of going to trial without a lawyer," but petitioner refused to acknowledge that he understood what the court was saying. *Id.* at 14-15.

After determining that petitioner "intend[ed] to answer any questions [the court] ask[ed] in the same manner," 8/2/12 Tr. 13, the district court found no reason for petitioner's counsel to withdraw, *id.* at 15. The court also noted that petitioner had the "right to attend the trial," but warned that "if he demonstrates any indication that he will be disruptive during the trial, the Court will take appropriate actions and it could include * * * barring him from the courtroom if he is disruptive." *Id.* at 16. In addition, the court warned petitioner that he could "file documents only through counsel." *Ibid.*

On August 14, 2012, despite the district court's warning, petitioner again submitted pro se filings demonstrating his belief in his sovereign status.

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[2] *E.g.*, 8/2/12 Tr. 9 ("I conditionally accept your offer upon proof claim that counsel or co-counsel is not needed here today. I am very competent to handle my own proceedings. And upon the moving party to present an original accusatory criminal instrument for my review and inspection and upon proof of claim that further proceedings pending my private administrative remedy would set off, settle and close this matter making any other further proceedings of this court moot.").

D. Ct. Docs. 153, 154. On August 28, 2012, he filed two more. D. Ct. Docs. 166, 167.

On August 29, at a hearing to address the government's pretrial motions, petitioner raised his hand to speak. 8/29/12 Tr. 3. The district court stated that it did not "entertain questions from defendants who are represented by counsel." *Ibid.* Petitioner interjected, "I'm not represented by him." *Ibid.* The court requested clarification from petitioner's counsel, who responded that he was "not asking to address the Court at this time." *Ibid.* The court reiterated that "[t]here will be no addressing the Court then by defendants unless their lawyer addresses the Court." *Id.* at 4.

The parties discussed some additional pretrial matters and the hearing was adjourned. As the United States Deputy Marshals escorted petitioner from the courtroom, however, he twice yelled, "Are you denying me my right to speak?" 8/29/12 Tr. 6. In the minute entry for the hearing, the district court noted that petitioner had "persisted in his behavior and appeared to refuse to leave the courtroom even after the court indicated that the matter had concluded, at which point the United States Deputy Marshals had to forcibly escort [him] from the courtroom." D. Ct. Doc. 168 (Aug. 29, 2012). The court "again warned that further disruptions by [petitioner] during any of the proceedings related to this case, including the trial, may result in his exclusion from the courtroom during trial." *Ibid.*

On September 5, at a pretrial conference, the district court addressed petitioner's counsel:

> [T]here were certain incidents that happened previously in this court relating to your client and I

> made a statement that * * * if any defendant to that matter, if any party, including a special agent of the FBI acts disruptive, I will remove the person from the courtroom. And as I stated, your client has every right to be in the courtroom * * * and I hope that he exercises that right and stays in the courtroom. And if he decides that he does not want to be civil in the courtroom and let the procedures take place, then I need to know that right now.

9/5/12 Tr. 24. The court then asked petitioner to step up so that he could address the issue with him directly. *Id.* at 24-25.

Petitioner, however, refused to be sworn in and instead recited boilerplate language as he had before.[3] 9/5/12 Tr. 25-30. The court explained to petitioner:

> [Y]our trial will take place starting Monday; and during the trial, you'll have to act in a civil manner. And if any time during the trial you decide to be disruptive, which I hope you don't, then I will have no alternative but to consider that you have surrendered your right to be in the courtroom during your trial and I will make arrangements for you to be taken to another room or facility where you will be observing the trial on a video as opposed to have the right to be in the courtroom during the trial. So you'll have to decide whether you will be not

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[3] *E.g.*, 9/5/12 Tr. 27-28 ("[P]ending to my ongoing private administrative remedy being that there's not been presented any original accusatory instrument for my review and inspection that is—it shows that this court lacks jurisdiction in my proceedings and that pending the refuse of my tender of payment to the prosecution which is—sits at the CFO of the courts, this charge and all liabilities and charges against the defendant makes any of these proceedings moot.").

> disruptive—and I hope you don't be disruptive—and listen to your trial, observe the witnesses and be present.
>
> You have to—anything to say about that?

Id. at 26. Petitioner responded, "Yes. I conditionally accept your offer that trial is not needed. Pending my ongoing private administrative remedy will make any proceedings along with this trial moot and I do not participate in any of the public benefits which this court have to offer." *Id.* at 26-27.

The district court advised petitioner of his constitutional right to be present, but petitioner again recited non-responsive boilerplate language. 9/5/12 Tr. 27. Finally, the court asked petitioner, "Do you promise to sit in court without being disruptive?" *Id.* at 28. When petitioner again gave a non-responsive answer, the court stated, "I just want to make sure that you agree to be not disruptive. And if you could make that promise to me, then I will allow you to be present in the courtroom." *Id.* at 29. On the other hand, the court warned petitioner, if he continued "this boilerplate recitation without telling [the court] that [he would] not be disruptive, then [the court would] consider that as surrendering [his] right to be in the courtroom." *Ibid.* When petitioner again refused to answer, the court concluded that it "could [not] ascertain if [he could] be present in the courtroom and not be disruptive," *ibid.*, and stated that petitioner would be excluded from the trial, though he would be able to watch the trial via video feed, *id.* at 29-30. The court explained that if petitioner "decide[d] before Monday to agree to tell the Court that he [would] not be disruptive, then he [would] be most welcome to do so and be present for the trial in person." *Id.* at 30.

b. On the morning of September 10, 2012, the first day of trial, the district court again addressed petitioner. See 9/10/12 Tr. 3-5; D. Ct. Doc. 181 (Sept. 6, 2012) (stating that petitioner would have "another opportunity to assure the Court that he will not disrupt the trial and not undermine the ability of his Co-Defendant, Dahveed Dean, or the Government to have a fair trial"). The court attempted to have petitioner sworn in, but petitioner, refusing to raise his hand, recited similar boilerplate language challenging the court's authority.[4] 9/10/12 Tr. 5-7.

The district court again advised petitioner of his right to be present at trial and warned him that because of his conduct he was surrendering that right. 9/10/12 Tr. 7. The court advised petitioner, "[Y]ou have to promise to the Court that you will obey the Court's rules and not disrupt this Court's proceedings no matter what you believe your sovereign status * * * is." *Ibid.* The court then again asked petitioner, "Are you able and do you promise not to disrupt this trial?" *Id.* at 8. Petitioner launched into his boilerplate language. *Ibid.* The court ordered that petitioner be excluded from trial and that arrangements be made for him to watch the trial on video. *Ibid.* The court also noted, as it had before, that petitioner would be allowed to return if he "promises this Court that he will not be disruptive and not cause an unfair trial for his codefendant Mr. Dean and to the government." *Id.* at 8-9. Petitioner was removed from the

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[4] *E.g.*, 9/10/12 Tr. 6-7 ("And upon proof of claim that with no outstanding charges, the defendant, Terry Daniels, I move the Court to enforce the laws of the state to discharge the collateral—namely, myself—and set at liberty now. Are you refusing my tender of payment, Judge?").

courtroom. *Id.* at 10. He declined to watch the video feed. 9/11/12 Tr. 2; 9/12/12 Tr. 300; 9/13/12 Tr. 575; 9/18/12 Tr. 972.

When the government rested after its case-in-chief, petitioner was brought before the district court and advised of his right to testify. 9/17/12 Tr. 824. He again refused to be sworn in and again responded to the court's questions with boilerplate recitations. *Id.* at 824-829. After attempting to discuss the matter with petitioner, the court found that petitioner would "not answer the Court's questions" or "cooperate in these proceedings," and it concluded that he had waived his right to testify. *Id.* at 829. Petitioner was again removed from the courtroom. *Ibid.*

c. The jury convicted petitioner on all four counts. He was sentenced to 151 months of imprisonment on Counts 1 and 3, to run concurrently with each other and consecutively to his 300-month terms of imprisonment on Counts 2 and 4. D. Ct. Doc. 257 (May 2, 2013).[5]

3. The court of appeals affirmed. Pet. App. 1a-38a. The court noted this Court's admonition that "a defendant has a right to be present at every stage of trial," but that this right "is not absolute." *Id.* at 19a (citing *Illinois* v. *Allen*, 397 U.S. 337, 342-343 (1970)).

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[5] A violation of Section 924(c) that involves the use or carrying of a firearm during and in relation to a crime of violence typically carries a mandatory consecutive sentence of 60 months. See 18 U.S.C. 924(c)(1)(A)(i); *Abbott* v. *United States*, 562 U.S. 8, 12 (2010). A "second or subsequent conviction," however, carries a mandatory consecutive sentence of 300 months of imprisonment. 18 U.S.C. 924(c)(1)(C)(i) (25 years). Petitioner is subject to one mandatory 300-month sentence on Count 2 and another on Count 4 because his criminal history includes a 1990 conviction for violating Section 924(c). See Presentence Investigation Report ¶ 61.

A defendant may be deemed to have "impliedly waive[d]" his right to attend his own trial, the court of appeals explained, if "'after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful that his trial cannot be carried on with him in the courtroom.'" *Ibid.* (quoting *Allen*, 397 U.S. at 343). The court emphasized that a trial court confronted with an incorrigible defendant "must be given sufficient discretion to meet the circumstances" and that "[n]o one formula for maintaining the appropriate courtroom atmosphere will be best in all situations." *Ibid.* (quoting *Allen*, 397 U.S. at 343).

After reviewing the circumstances that culminated in petitioner's exclusion from trial, the court of appeals concluded that the district court had permissibly exercised its discretion. As an initial matter, the court explained that petitioner was present in the courtroom on the day that jury selection began. Pet. App. 25a; cf. *Crosby* v. *United States*, 506 U.S. 255, 256 (1993). The court then concluded that the district court was "exceedingly patient with [petitioner] and gave him more than ample opportunity to attend his trial," but that petitioner's "belligerent behavior" and outright refusal to assure the court that he would refrain from improper conduct during the trial left the court with "no option but to hold that [petitioner] had forfeited his right to attend trial." Pet. App. 24a-25a.

Petitioner filed a petition for rehearing en banc, which was denied over the dissent of three judges. Pet. App. 39a-42a.

ARGUMENT

Petitioner contends (Pet. 8-12) that the district court erred in excluding him from his trial because his behavior did not rise to the level of an implied waiver of his right to be present. He further contends (Pet. 1, 8-10) that the judgment of the court of appeals conflicts with two other appellate decisions. The judgment of the court of appeals is correct and does not conflict with any decision of this Court or any other court. Further review is not warranted.

1. The court of appeals correctly concluded that the district court acted within its discretion in excluding petitioner from his trial.

a. The Constitution entitles a criminal defendant to be present at every stage of his trial. See *Illinois* v. *Allen*, 397 U.S. 337, 338 (1970); *Snyder* v. *Massachusetts*, 291 U.S. 97, 105-106 (1934). But while courts must "indulge every reasonable presumption against the loss of [this] constitutional right[]," the right is not absolute and may be lost "by consent or at times even by misconduct." *Allen*, 397 U.S. at 342-343 (quoting *Snyder*, 291 U.S. at 106). As this Court explained in *Allen*, "if, after [a defendant] has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom," then he will be deemed to have surrendered this right. *Ibid.*; accord Fed. R. Crim. P. 43(c)(1)(C) ("A defendant who was initially present at trial * * * waives the right to be present * * * when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior, but the defendant persists in

conduct that justifies removal from the courtroom."). The Court reasoned that a defendant who engages in "flagrant disregard in the courtroom of elementary standards of proper conduct" has demeaned the "dignity, order, and decorum" that are "the hallmarks of all court proceedings in our country," and that trial judges retain appropriate discretion to "maintain[] the appropriate courtroom atmosphere." *Allen*, 397 U.S. at 343-344.

Allen further recognized that trial judges have "at least three constitutionally permissible ways * * * to handle an obstreperous defendant * * * : (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; [or] (3) take him out of the courtroom until he promises to conduct himself properly." 397 U.S. at 343-344. Recognizing limitations to binding and gagging (prejudice to the defendant and the dignity of the proceedings) and contempt (lack of deterrence where "a very severe sentence * * * is likely to be imposed" for the underlying offense), the Court found physical removal appropriate. *Id.* at 344-346. The Court also emphasized that "the right to be present can * * * be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings." *Id.* at 343.

b. The district court's decision here to exclude petitioner from the courtroom reflected a reasonable exercise of its discretion under the circumstances. Petitioner was present at trial on the day that jury selection began. The court addressed petitioner in open court and, drawing upon the history of petitioner's behavior in prior proceedings—which included rambling speeches about his sovereign status, his

refusal to be sworn in before addressing the court, and his verbal outburst directed at the court when he was escorted from the courtroom—asked petitioner whether he was willing to agree to obey the court's orders during trial. The court warned petitioner, as it had before, that he would be removed if he did not agree to act appropriately. Instead of responding to the court's questions or warnings, however, petitioner launched into yet another diatribe asserting the court's alleged lack of authority over him and his demand to be freed due to his sovereignty. Petitioner's refusal to abide by the court's instructions, and his unwillingness to acknowledge the court's authority and commit not to disrupt his and his co-defendant's trial, led the court to exclude him from trial. At the same time, the court made clear that while it was considering petitioner's refusal to cooperate a waiver of his right to be present, the courtroom door would remain open to him as long as he promised to behave in front of the jury. 9/10/12 Tr. 8-9.

Petitioner nonetheless contends (Pet. 11-12) that his exclusion was unjustified because he was espousing a sovereign jurisdictional theory and did not engage in disruptive conduct that threatened the district court's ability to conduct a fair trial. But as the court of appeals concluded, petitioner's "belligerent behavior" began before trial and his "obstinacy held firm." Pet. App. 23a-24a. Petitioner refused to respond to the district court when asked about his jurisdictional objections, *e.g.*, 9/5/12 Tr. 27-28, which it overruled, 9/10/12 Tr. 4 (Petitioner "has refused to recognize this Court's finding that the Court has jurisdiction over him."), and instead spoke out of turn and sidelined the legitimate business of the court with his baseless im-

munity claims. The court, which had experience with "sovereign citizen" claims, see, *e.g.*, 8/2/12 Tr. 9; 9/5/12 Tr. 27, was understandably concerned that petitioner would continue the pattern of disruptive and disrespectful behavior exhibited thus far before the jury, thereby risking not only juror confusion, but also prejudice to petitioner's co-defendant, Dahveed Dean, see, *e.g.*, 9/10/12 Tr. 8-9; D. Ct. Doc. 181 (Sept. 6, 2012), who did not voice petitioner's objection to the court's authority, see 1:09-cr-00446-1 Docket entry No. 169, at 6 (N.D. Ill. Aug. 31, 2012). And when petitioner was brought back at the close of the government's case-in-chief—after repeatedly refusing to watch the video and without once asking to return—he continued to recite his sovereign immunity theories without answering the court's repeated questions about whether he wanted to testify. 9/17/12 Tr. 824-829.

Furthermore, the district court appropriately weighed the other public interests at stake before excluding petitioner from his trial. For example, the court took steps to ensure that petitioner was not unduly prejudiced by his exclusion by (1) asking potential jurors during voir dire about potential bias against an absent defendant (*e.g.*, 9/10/12 Tr. 80-82, 93, 163, 238), (2) instructing the jury that petitioner's absence should not be considered in arriving at a verdict, 9/18/12 Tr. 1072-1073, and (3) arranging for petitioner to view the trial via a live video feed (although he refused). Under the circumstances, the court reasonably exercised its discretion to exclude petitioner.

2. Petitioner contends (Pet. 8-10) that the decision in this case conflicts with *United States* v. *Ward*, 598 F.3d 1054 (8th Cir. 2010), and *Tatum* v. *United States*,

703 A.2d 1218 (D.C. 1997). He is mistaken. Those decisions turned on their particular and distinguishable facts, and they do not indicate that the district court abused its discretion here.[6]

In *Ward*, the district court ordered the defendant removed from the courtroom on the morning of trial for "refusing the judge's command to stop talking to his attorney." 598 F.3d at 1058-1059. Following the defendant's conviction, the court of appeals identified several errors requiring remand for a new trial. First, the court noted that, because the defendant was removed before the trial actually began, it "d[id] not know whether he would have persisted in disruptive

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[6] Consistent with *Allen*'s recognition that trial judges "must be given sufficient discretion to meet the circumstances of each case," 397 U.S. at 343, the courts of appeals have uniformly held that the decision to remove a defendant is reviewed for abuse of discretion. See *United States* v. *McGill*, 815 F.3d 846, 899-902 (D.C. Cir. 2016) (per curiam); *United States* v. *Pina*, 844 F.2d 1, 13-15 (1st Cir. 1988); *Jones* v. *Murphy*, 694 F.3d 225, 241 (2d Cir. 2012), cert. denied, 133 S. Ct. 1247 (2013); *United States* v. *Awala*, 260 Fed. Appx. 469, 470 (3d Cir.), cert. denied, 553 U.S. 1047 (2008); *United States* v. *Jones*, 242 Fed. Appx. 945, 947 (4th Cir. 2007) (per curiam); *United States* v. *Clark*, 591 Fed. Appx. 367, 373 (6th Cir. 2014), cert. denied, 135 S. Ct. 1572 (2015); *United States* v. *Gabrion*, 719 F.3d 511, 534 (6th Cir. 2013), cert. denied, 134 S. Ct. 1934 (2014); *United States* v. *Benabe*, 654 F.3d 753, 769 (7th Cir. 2011), cert. denied, 132 S. Ct. 1051, 132 S. Ct. 1054, 132 S. Ct. 1612, and 132 S. Ct. 1986 (2012); *United States* v. *Williams*, 431 F.3d 1115, 1119 (8th Cir. 2005); *United States* v. *Gillenwater*, 717 F.3d 1070, 1076 (9th Cir. 2013); *United States* v. *Munn*, 507 F.2d 563, 568 (10th Cir. 1974), cert. denied, 421 U.S. 968 (1975); *Foster* v. *Wainwright*, 686 F.2d 1382, 1388 (11th Cir. 1982) (per curiam), cert. denied, 459 U.S. 1213 (1983); see also *Lockhart* v. *Johnson*, 104 F.3d 54, 57 (5th Cir.) (use of "visible restraints lies within the sound discretion of the trial judge"), cert. denied, 521 U.S. 1123 (1997).

behavior to the point that it threatened continuation of the trial, or would have controlled his behavior in the presence of the jury." *Ibid.* Second, the court noted that, while the district court has discretion to control "disruptive talking during a trial," an "absolute ban on the defendant talking to counsel is, in some circumstances, a violation of the defendant's right to counsel." *Id.* at 1059. (The district court had apparently overlooked the defendant's claims that he could not "write quickly enough to inform [his attorney]" of his concerns and that "he didn't get all his medication." *Id.* at 1057.) Third, the court of appeals noted the district court's failure to "converse[] directly with [the defendant] about his right to return" and to "testify in his own defense," despite indications that he and his attorney "might disagree." *Id.* at 1059. These circumstances are a far cry from those created here by petitioner, whose removal, in contrast, was based on a pattern of behavior that occurred both before and after the commencement of his trial, but did not deny him the right to communicate with counsel or to testify. The procedures the district court used to give petitioner multiple chances to remain or return comported with *Allen* and the court of appeals' precedents.

Petitioner's reliance on *Tatum* is equally misplaced. The defendant there was removed from his bench trial because he laughed during the testimony of a prosecution witness, nodded when a defense witness directly asked him a question while she was testifying, and repeated two words spoken by the same defense witness that were apparently not understood by counsel or the court reporter. 703 A.2d at 1224. The D.C. Court of Appeals reversed and remanded, finding that while the defendant's behavior was "cer-

tainly disruptive," it "did not rise to the level required by *Allen*" because it was "neither abusive, disrespectful, nor obscene, nor was it likely to obstruct the progress of the trial." *Ibid.* Moreover, the court noted that the defendant had apologized for disrupting the proceedings, *id.* at 1221-1222, and that the judge, who was sitting as factfinder, "was capable of disregarding [the defendant's] disruptions," unlike a jury, *id.* at 1224. Here, in contrast, petitioner's conduct was far more disruptive and disrespectful than simply laughing, nodding, or repeating a witness's words. Petitioner's behavior openly defied the district court's authority, undermined the integrity and decorum of the proceedings, and threatened to prejudice his co-defendant before a jury.

Contrary to petitioner's assertion, no conflict exists between the decision in his case and the decisions in *Ward* or *Tatum*. In all three cases, the courts applied the correct legal standard articulated by this Court in *Allen* to the particular facts presented by those cases. The factbound application of established legal principles to the particular facts of this case does not merit this Court's review. See *Exxon Co.* v. *Sofec, Inc.*, 517 U.S. 830, 841 (1996); *Kyles* v. *Whitley*, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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