No. 21-3061

UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

BIRT FORD,
Petitioner-Appellant,

v.

DENNIS REAGLE, Warden,
Respondent-Appellee.

On Appeal from the
United States District Court for the Southern District of Indiana,
Indianapolis Division, Case No. 1:20-cv-01639-RLY-TAB
(Judge Richard Young)

PETITIONER-APPELLANT BIRT FORD'S MOTION TO EXPAND THE CERTIFICATE OF APPEALABILITY

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I. INTRODUCTION

The district court authorized petitioner Birt Ford to argue on appeal (1) whether his trial counsel had rendered "ineffective assistance during plea-bargaining" and (2) whether Mr. Ford should have received "an evidentiary hearing on that claim." R. 1-1 at 33.[1] Pursuant to Fed. R. App. P. 22(b), Mr. Ford moves now to expand his certificate of appealability ("COA") to include his trial counsel's ineffective assistance in witness strategy and the cumulative impact of his trial counsel's missteps.

On witness strategy, Mr. Ford's habeas petition outlined three instances of deficient performance. One, that his trial counsel, Mitchell Hicks, "promis[ed] the jury that Ford would testify in his defense, only to not call Ford and not address his lack of testimony." *Id.* at 31. Two, that Mr. Hicks "elicit[ed] testimony from Laressa," Mr. Ford's daughter, "about Ford's temper." *Id.* And three, that Mr. Hicks failed to call certain impeachment witnesses. *Id.* at 19. The district court determined that "counsel was deficient" in the first two instances. *Id.* at 31. But it denied relief because "of the substantial evidence against Ford" and "the relatively minor consequences of counsel's trial errors." *Id.*

[1] Citations to the Seventh Circuit docket are denoted with an "R." Citations to the Southern District of Indiana docket are denoted with a "Doc."

Neither reason withstands close scrutiny. First, the evidence against Mr. Ford was far from overwhelming. The State charged him with seven criminal counts. Doc. 8-14 at 5. Following trial, the jury *acquitted* on two counts, including one count of felony rape—the most serious charge brought. *Id.*; *see also* R. 1-1 at 6. Nor were counsel's errors "minor." *Id.* at 31. To the contrary, the State's case rested on medical evidence and witness testimony. The jury's decision to acquit on felony rape militates against the weight of the medical evidence. And counsel's inexplicable decisions on witness strategy jeopardized Mr. Ford's chances at acquittal or a less severe sentence.

If this Court expands the COA to include trial counsel's deficient witness strategy, it should also allow Mr. Ford to argue cumulative error because "where, like here, the defense attorney has made multiple errors as opposed to a single error, the cumulative effect of those errors should be considered together to determine the possibility of prejudice." *Earls v. McCaughtry*, 379 F.3d 489, 495–96 (7th Cir. 2004) (citing *Washington v. Smith*, 219 F.3d 620, 634–35 (7th Cir. 2000)).

II. PROCEDURAL HISTORY

A. Mr. Ford's Trial and Direct Appeal

On June 16, 2005, Mr. Ford was charged with five felonies and two misdemeanors arising from an incident between him and his wife, Yolanda. Doc. 8-1 at 2; Doc. 8-14 at 3–5. After a two-day trial, a jury convicted Mr. Ford of four

felonies and one misdemeanor, but acquitted him on felony rape and misdemeanor interference with the reporting of a crime. *Id.* at 5. The trial court sentenced Mr. Ford to a seventy-year term on September 9, 2005. *Id.* Mr. Ford's conviction and sentence were affirmed on appeal. *Ford v. State*, 856 N.E.2d 795 (Table) (Ind. Ct. App. 2006).

B. Mr. Ford's Habeas Petition and Motion for Evidentiary Hearing

On August 28, 2007, Mr. Ford, proceeding pro se, petitioned for post-conviction relief in Indiana state court. Doc. 8-1 at 12. That petition alleged ineffective assistance by Mr. Ford's trial counsel, including a failure to "pursue plea negotiations, to call Petitioner to testify after telling the jury he would do so," to call impeachment witnesses, and to properly elicit testimony from Laressa Ford. *See* Doc. 8-10 at 3–4, 14; R. 1-1 at 30. The Indiana Superior Court denied Mr. Ford's petition without an evidentiary hearing. The Indiana Court of Appeals affirmed. Doc. 8-14 at 22.

C. Mr. Ford's § 2254 Petition and Motion for Evidentiary Hearing

On June 16, 2020, Mr. Ford filed a federal habeas petition in the U.S. District Court for the Southern District of Indiana. Doc. 1 at 1. That petition reiterated the ineffective assistance claims that Mr. Ford had raised previously in state court. Mr. Ford also moved for an evidentiary hearing. Doc. 14. The district court denied both this motion and Mr. Ford's habeas petition.

Still, the district court granted a COA on Mr. Ford's "ineffective assistance of trial counsel at the plea-bargaining stage claim." R. 1-1 at 33. Mr. Ford claimed "that he told trial counsel to discuss a plea with the prosecutor, but counsel failed to follow up." *Id.* at 13. Although the district court determined that the post-conviction court's decision "was not an unreasonable application of Supreme Court jurisprudence," it "harbor[ed] concerns about Ford's ability to fairly litigate this claim given the post-conviction court's refusal to hold an evidentiary hearing or otherwise assist Ford in procuring testimony from his attorneys." *Id.* at 15.

The district court also recognized that trial counsel's witness strategy was deficient. First, counsel "promis[ed] several times in [his] opening statement that he would" call "Ford to testify." *Id.* at 24; *see also id.* at 24–25 (giving examples). But Mr. Ford did not testify, and "[t]here [was] no evidence suggesting that counsel made a strategic decision by promising six times during opening that Ford would testify, only to not call him and not explain why during closing argument." *Id.* at 26.

Second, Mr. Ford's trial counsel "was ineffective when he elicited testimony from Laressa about whether she had seen her dad angry because it opened the door to harmful evidence." *Id.* at 30. It was "difficult to find a strategic reason for asking Laressa" these questions at trial. *Id.* Even so, the district court did not grant a COA as to these two instances of ineffective performance, holding that Mr. Ford had failed to show prejudice. *Id.* at 31.

The district court also denied relief on Mr. Ford's allegation that his counsel was ineffective for not calling Barbara and Jimmy Ford as impeachment witnesses. *Id.* at 19. Finally, on Mr. Ford's cumulative prejudice claim, the district court repeated the reasoning of the Indiana Court of Appeals: Because Mr. Ford had "failed to establish that any of his claims have merit, . . . nothing plus nothing still equals nothing." *Id.* at 31.

Mr. Ford filed a notice of appeal on October 21, 2021, Doc. 24, and later moved for appointment of counsel. On July 6, 2022, this Court appointed undersigned counsel under the Criminal Justice Act. R. 8.

III. STANDARD OF REVIEW

A COA may issue so long as "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner seeking a COA need not show that he will ultimately prevail on appeal. *See Miller-El v. Cockrell*, 537 U.S. 322, 337–38 (2003). He need only "show that reasonable jurists could debate whether (or for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Id.* at 336 (citations and alterations omitted).

As this Court has explained, a COA should be granted unless the claim is "utterly without merit." *Jefferson v. Welborn*, 222 F.3d 286, 289 (7th Cir. 2000). Even petitioners who "seem likely to lose in the court of appeals nonetheless are

entitled to certificates of appealability under the statutory standard; meritorious appeals are a subset of those in which a certificate should issue." *Thomas v. United States*, 328 F.3d 305, 308 (7th Cir. 2003); *Buie v. McAdory*, 322 F.3d 980, 981 (7th Cir. 2003) (purpose of requiring COA is to "screen[] out *clearly unmeritorious* appeals.") (emphasis added); *accord Wilson v. Belleque*, 554 F.3d 816, 826 (9th Cir. 2009) (requirements of Section 2253(c) are "non-demanding").

IV. ARGUMENT

A. Additional Ineffective Assistance Arguments May Be Brought Without Necessarily Expanding the COA.

Ineffective assistance constitutes "a single ground for relief no matter how many failings the lawyer may have displayed." *Peoples v. United States*, 403 F.3d 844, 848 (7th Cir. 2005). Consequently, where—as here—a COA has *already* been granted on one ineffective assistance argument, parties in the past have been able to raise additional ineffective-assistance arguments without first moving to expand the COA. "[I]t is," as this Court has explained, "the overall deficient performance, rather than a specific failing, that constitutes the ground of relief." *Thompson v. Battaglia*, 458 F.3d 614, 616 (7th Cir. 2006); *accord Williams v. Benik*, 165 F. App'x 487, 490 (7th Cir. 2006) ("declin[ing] to interpret [the] inclusion of addition[al] theories as a request to expand the certificate").

But out of an abundance of caution, Mr. Ford seeks an expansion of the COA to ensure that he may seek review of trial counsel's deficient witness strategy and the cumulative prejudice of counsel's errors.

B. Mr. Ford Meets the Bar for a COA.

i. Reasonable Jurists Could Debate Whether Trial Counsel's Witness Strategy Was Ineffective.

a. Trial Counsel's Performance Was Deficient.

An attorney renders constitutionally ineffective assistance of counsel if (1) his performance was deficient, and (2) "the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Though there is a presumption that an attorney's performance constitutes "sound trial strategy," *id.* at 689, reviewing courts "should [] not construct strategic defenses which counsel does not offer." *Harris v. Reed*, 894 F.2d 871, 878 (7th Cir. 1990); *accord Goodman v. Bertrand*, 467 F.3d 1022, 1029 (7th Cir. 2006).

No sound strategy undergirds counsel's approach to witnesses at trial. *First*, during opening statements, trial counsel built his case around the anticipated testimony of Mr. Ford. Doc. 8-9 at 15–16. But Mr. Ford did not end up testifying in his own defense. As the district court correctly recognized, such actions—promising one thing and then inexplicably doing another—typify ineffective assistance. R. 1-1 at 26; *accord United States ex rel. Hampton v. Leibach*, 347 F.3d 219, 238 (7th Cir. 2003) (counsel's "failure to keep the promise he made during

opening that [a defendant] would testify in his own defense reinforce[s] the . . . conclusion that" counsel "was ineffective").

Second, while conducting Laressa's direct examination, a witness who should have helped his case, counsel posed targeted questions that opened the door to harmful character evidence. R 1-1 at 30. By taking his own witness and effectively transforming her into a witness for the State, counsel failed to follow any semblance of strategy. *Id.* at 31.

Third, during opening statements, counsel informed the jury that he would "call[] . . . Barbara Ford" to support his client's case. Doc. 8-9 at 19. Counsel even described Barbara, who would challenge Yolanda's credibility, as the linchpin of his "case in chief." *Id.* at 18. Counsel included Jimmy Ford on his witness list for substantially similar reasons. Yet counsel spoke with neither Barbara nor Jimmy before trial. *Id.* at 7, 19. He failed to interview or prepare them. *Id.* at 7. During the trial itself, neither was called to the stand. *Id.* And counsel never gave a reason for his about-face. *Id.*

Although, unlike with Mr. Ford and with Laressa, the district court did not find counsel's performance deficient as to these impeachment witnesses, "reasonable jurists could debate whether" that question "should have been resolved in a different manner." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Indeed, much like trial counsel's approach to Mr. Ford, counsel promised to call Barbara and Jimmy—even describing them as critical to the defense's case. As with Mr. Ford, both Barbara and Jimmy could have made themselves available; Barbara, for one, was in the courtroom and ready to testify against Yolanda's credibility. And as with Mr. Ford, trial counsel called neither witness at trial. There is no reasonable way to reconcile counsel's course of action. To the contrary, as this Court has observed, "[m]aking false promises about evidence in an opening statement is a surefire way for defense counsel to harm his credibility with the jury." *Myers v. Neal*, 975 F.3d 611, 621 (7th Cir. 2020). "[F]alse promises are" therefore "indefensible—a clear instance of deficient performance." *Id.*

What is more, as *Strickland* emphasizes, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. Consonant with that guidance, this Court has stated that "[t]o fail to interview any witnesses or prospective witnesses [is] a shocking dereliction of professional duty." *Stanley v. Bartley*, 465 F.3d 810, 813 (7th Cir. 2006). The failure to call and to interview both Barbara and Jimmy was an error of preparation, not a strategic choice. *Olvera v. Gomez*, 2 F.4th 659, 669 (7th Cir. 2021) ("[I]f counsel never bothers to find out what a potential witness may say on the stand, counsel's decision not to call that witness to testify cannot be passed off as a matter of strategy."). Counsel's performance was deficient on this

score and enjoys as little strategic justification as the district court recognized for his decisions about Mr. Ford and Laressa.

b. Trial Counsel's Performance Was Prejudicial.

To emphasize: The district court recognized that Mr. Ford's trial counsel was deficient in promising and failing to call Mr. Ford to the stand, and questioning Laressa with no apparent strategy. R. 1-1 at 31. It should have also, consistent with *Strickland* and this Court's case law, found counsel deficient for failing to prepare Barbara and Jimmy for trial and failing to call them at trial.

Despite these deficiencies, the district court denied Mr. Ford a COA, holding that he was not prejudiced by his counsel's ineffectiveness. *Id.* Arguing that the evidence against Ford was strong, the district court reasoned that counsel's errors, though grievous, merely hastened Mr. Ford's inevitable conviction. *Id.* That assessment misapplies the law and misreads the facts.

To start, *Strickland* does not require Mr. Ford to convince a reviewing court that his attorney's ineffectiveness "more likely than not altered the outcome in the case." 466 U.S. at 693. Rather, "prejudice [is] established so long as the chances of acquittal are better than negligible." *Leibach*, 347 F.3d at 246. Furthermore, for now, Mr. Ford need only show that "reasonable jurists could debate whether," *Slack*, 529 U.S. at 484, his "chances of acquittal are better than negligible," 347 F.3d at

246. So long as his claim is not "utterly without merit," *Jefferson*, 222 F.3d at 289, a COA should issue.

Viewed within this legal framework, the assertion that the evidence against Ford was so strong as to prohibit further review is incorrect. The case against Mr. Ford consisted of medical and testimonial evidence. *See, e.g.*, Doc. 8-9 at 4, 9. The State's medical evidence was far from definitive. R. 1-1 at 20. Even the State's own medical expert could not confirm that the injuries described in the report were "necessarily the result of rape." *Id.* And the jury ultimately acquitted Mr. Ford of one count of rape and an associated misdemeanor charge, rebutting the idea of the medical evidence as being overwhelming. R. 1-1 at 6.

To supplement its medical evidence, the State relied heavily on witness testimony. On this front, Mr. Ford's trial counsel erred at just about every turn. He reneged on his promise to call Mr. Ford to testify. In other instances, that misstep alone—failing to "live up [to] the claims made in [] opening[s]"—has been found to be prejudicial. *Harris*, 894 F.2d at 879. But citing *Hartsfield v. Dorethy*, 949 F.3d 307, 317 (7th Cir. 2020), the district court asserted that since Mr. Ford had already presented his "version of events" in a videotaped statement to police, which was admitted at trial, counsel's failure to present his testimony did not prejudice the outcome. R. 1-1 at 27.

Such a determination assumes a result without analysis. Mr. Ford's interview was not a confession to rape. To the contrary, he explicitly denied having nonconsensual sex. R. 1-1 at 3. More to the point, he gave the interview while shackled and without counsel, in the immediate aftermath following his arrest. Had counsel prepared Mr. Ford to testify and called him at trial, the jury would have had the benefit of observing Mr. Ford's demeanor, seen his responses to both direct and cross-examination, and considered his statements against the backdrop of the defense team's overall strategy. Such a narrative frame is a far cry from the "generic denial of guilt" in *Hartsfield*. 949 F.3d at 316 (citations omitted).

The district court's prejudice analysis of Laressa's testimony likewise fails. Again, calling a witness to the stand only to elicit harmful character testimony has, in other cases, been considered prejudicial. *Goodman*, 467 F.3d at 1030. The district court's halfhearted explanation for trial counsel's conduct—that perhaps Mr. Hicks "wanted to highlight that [Mr.] Ford had a bad temper but would not physically harm his family members"—makes little sense. R. 1-1 at 30. For one, there is little explanation for why counsel needed a witness to offer evidence of his client's "bad temper." *Id.* That evidence helps no one. More to the point, courts "should [] not construct strategic defenses which counsel does not offer." *Harris*, 894 F.2d at 878. *No* one—not Laressa (who was never interviewed), not Mr. Ford, not trial or

appellate counsel, and not any other witness or participant—has asserted *any* "strategic reason" behind trial counsel's decision. R. 1-1 at 30.

Finally, counsel's failure to investigate or present testimony from Jimmy and Barbara prejudiced Mr. Ford. When defense counsel fails to present certain key witnesses, that ineffectiveness prejudices the defendant. *Leibach*, 347 F.3d at 252 ("[Petitioner] was prejudiced by his attorney's ineffectiveness" in failing to investigate and interview exculpatory witnesses.); *Toliver v. Pollard*, 688 F.3d 853, 862 (7th Cir. 2012) ("Counsel's failure to call [key witnesses], despite the family relationship, constitutes deficient performance."). Here, both Jimmy and Barbara would have testified to the victim's history of levying false accusations against Mr. Ford, information that had exculpatory potential in a case which turned on Yolanda's credibility. Doc. 8-9 at 7.

To justify its decision denying leave to appeal this final allegation, the district court claimed that neither Barbara nor Jimmy's testimony would have been admissible. R. 1-1 at 20 (citing *Kavanaugh v. Berge*, 73 F.3d 733, 736 (7th Cir. 1996) ("[F]ailure to offer inadmissible evidence is not ineffective assistance.")). "Barbara would have testified about two specific lies that [the victim] told, and Jimmy would have testified about [the victim's] propensity to lie." R. 1-1 at 19. But—per the district court—under Indiana law, "a witness's credibility can be impeached by opinion or reputation evidence . . . [and] *not* by specific instances of

untruthfulness unless they have resulted in convictions for dishonesty-related offenses." *Id.* (emphasis in original).

This singular reference to the Indiana Rules of Evidence is unavailing. To begin, Jimmy's testimony would have—even under the district court's rubric—been admissible. That is because "Jimmy would have testified about [the victim's] propensity to lie," *id.*, and "[t]he Indiana rules of evidence" explicitly "allow impeachment of a witness . . . by evidence of reputation or character," *Pierce v. State*, 640 N.E.2d 730, 732 (Ind. Ct. App. 1994); *see also* Ind. R. Evid. 608(a). Further, even *if* Barbara were prevented from testifying about specific instances of dishonesty, she could have, like Jimmy, offered more general evidence of Yolanda's character. Such testimony could have been readily available had counsel interviewed and prepared Barbara to take the stand—a basic responsibility for a witness that counsel had described as being critical to his client's case. His failure to do so fits within a "pattern" of performance that fell below an "objective standard of reasonableness." *Goodman*, 467 F.3d at 1030; *Strickland*, 466 U.S. at 688.

In short, trial counsel failed to evince a strategy through his handling of witnesses and did not give a coherent reason for his actions. Since Mr. Ford was denied an evidentiary hearing, trial counsel has *never* articulated any strategic reason for his decisions. Nor has any court ever evaluated, considering all the evidence, whether this witness strategy was prejudicial. Considering these circumstances, and

given that Mr. Ford need only show that "reasonable jurists could debate whether," *Slack*, 529 U.S. at 484, his "chances of acquittal are better than negligible," *Leibach*, 347 F.3d at 246, the Court should expand the COA to include trial counsel's ineffective witness strategy.

ii. Reasonable Jurists Could Debate Whether Trial Counsel's Deficiencies Constituted Cumulative Error.

If the Court expands the COA to include counsel's errors on witness strategy, it should also allow Mr. Ford to brief, on appeal, the cumulative impact of counsel's missteps. Mr. Ford raised such a claim in both state and federal postconviction proceedings. Doc. 8-11 at 28–29; R. 1-1 at 31. The Indiana Court of Appeals dismissed the claim because "nothing plus nothing still equals nothing." R. 1-1 at 31 (quoting *Ford v. State*, 145 N.E.3d 140, ¶ 28 (Table) (Ind. Ct. App. 2020)). The district court affirmed on this same basis. *Id.*

Such reasoning is wrong both as a matter of fact and as a matter of law. As a matter of fact, Mr. Ford's case is plainly *not* a case in which "nothing" went awry. To the contrary, the district court found that there was *something* to *several* of Mr. Ford's claims. It granted a certificate of appealability because "jurists of reason could disagree with the Court's resolution of [1] Ford's ineffective assistance during plea-bargaining and [2] his eligibility for an evidentiary hearing on that claim." *Id.* at 33. It also held that "counsel was deficient at trial for [3] promising the jury that Ford would testify in his defense . . . and [4] eliciting testimony from Laressa" that

"opened the door to harmful evidence." *Id.* at 30–31. Even holding aside whether trial counsel's handling of Barbara and Jimmy Ford fell below an objective standard of reasonableness, the district court identified no fewer than four instances in which Mr. Ford's counsel might have been deficient.

This factual misapprehension sets the table for legal error. For the Indiana Court of Appeals calculus to make sense—that "nothing plus nothing still equals nothing," R. 1-1 at 31—a reviewing court would have needed to analyze Mr. Hicks's deficiencies individually. Under such a rubric, because no individual deficiency clears the bar for constitutionally ineffective assistance, relief is unwarranted.

But that is not how cumulative prejudice analysis works. If a deficiency, standing on its own, *already* establishes ineffective assistance, then there would be no point in going through a cumulative error analysis. Such an analysis would be redundant.

Rather, as this Court has underscored, the *correct* legal standard requires analyzing whether "the cumulative effect of two or more individual harmless errors has the potential to prejudice a defendant to the same extent as a single reversible error." *Alvarez v. Boyd*, 225 F.3d 820, 824 (7th Cir. 2000). That is because examining the "synergistic effect of these errors," *id.*, is critical to determining cumulative prejudice—an examination that neither the Indiana state courts nor the district court has undertaken.

Goodman v. Bertrand and *Washington v. Smith* are instructive. In *Goodman*, the court pointed to (1) counsel's failure to question a key witness's "credibility," (2) counsel asking on direct examination "a question that ultimately led the court to allow [the prosecutor on] cross-examination" to bring in harmful propensity evidence, (3) counsel's "fail[ure] to subpoena" favorable witnesses, and (4) counsel's concussion that he was "generally unfamiliar with the case." 467 F.3d at 1024–25, 1030. Each fault mirrors Mr. Ford's situation. Here, Mr. Hicks (1) failed to impeach Yolanda's credibility, R. 1-1 at 19; (2) "opened the door" during Laressa's examination to shine a light on harmful propensity evidence, *id.* at 30; (3) failed to call favorable witnesses, *id.* at 19–20; and (4) admitted "on the record that he [was focused] on a double homicide trial" and was unprepared for Mr. Ford's case. *Id.* at 12. If counsel's performance in *Goodman* "fell below the constitutional minimum" because of cumulative error, then reasonable jurists could find that Mr. Ford's did as well. 467 F.3d at 1031.

Washington v. Smith is of a piece. Counsel there (1) made false promises to the jury about the future of the case during voir dire; (2) did not call multiple favorable witnesses; and (3) admitted to being too "busy" to contact those witnesses. 219 F.3d at 631, 634. So too here. Mr. Ford's counsel (1) made false promises to the jury during opening, (2) failed to call favorable impeachment witnesses, and (3) was preoccupied with another case. R. 1-1 at 8, 12, 19. Based on "'the totality of

the omitted evidence under *Strickland'* rather than the individual errors," *Washington* affirmed the district court's finding of ineffective assistance. 219 F.3d at 634–35 (internal citations omitted). Reasonable jurists, given these parallels, could reach the same conclusion here.

In sum, had the district court applied the appropriate cumulative prejudice standard to this case, it might well have reached a different result. Such a claim "deserve[s] encouragement to proceed further." *Slack*, 529 U.S. at 484.

IV. CONCLUSION

Based on the foregoing arguments, this Court should grant Mr. Ford's motion to expand the COA.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE LIMITATION

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it does not exceed 20 pages and contains fewer than 5,200 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(a)(2)(B). The motion contains 4,181 words.

/s/ Xiao Wang
Xiao Wang

CERTIFICATE OF SERVICE

I certify that on October 3, 2022, I electronically filed this motion with the Clerk of the Court using the ECF system, which will send notification to opposing counsel of record.

/s/ Xiao Wang
Xiao Wang