**No. 19-7638**

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# United States Court of Appeals
**FOR THE FOURTH CIRCUIT**

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**CALVIN CURRICA,**
Plaintiff-Appellant,

**v.**

**WARDEN RICHARD MILLER,**
Defendant-Appellee.

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**Appeal from the United States District Court for the District of Maryland**

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## REPLY BRIEF OF APPELLANT


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## ARGUMENT

The state's misunderstanding of Mr. Currica's constitutional due process claim and AEDPA's standard for relief echoes throughout its brief. It fails to point to anything in the record showing that Mr. Currica was told that he could receive 90, rather than 30 to 51, years. The PCR court's decision—denying relief when Mr. Currica received an 85-year sentence that he did not know was possible— "threatens to tear . . . trust" from the processes of our criminal justice system. *Bennett v. Stirling*, 842 F.3d 319, 328 (4th Cir. 2016). Because the PCR court's decision was objectively unreasonable and flies in the face of *Boykin*, this Court should reverse.

### I. THE STATE'S ARGUMENTS SIDESTEP MR. CURRICA'S CORE CONSTITUTIONAL CLAIM AND THE RECORD.

Mr. Currica's guilty plea was involuntary because it resulted in an unexpected 85-year sentence. The state's brief never squarely responds to that argument. Instead, many of its arguments are either irrelevant to Mr. Currica's due process claim or distort the record.

Perhaps the starkest illustration of the state's misjudgment is its invocation of *Cheek v. United States*, 498 U.S. 192 (1991), to argue that Mr. Currica was "expected to know" that Maryland's sentencing

guidelines are advisory. State's Br. 10.[1] *Cheek* recognizes that criminal defendants are generally expected to know what conduct the legislature has criminalized. *See* 498 U.S. at 199–200. But it says nothing about defendants needing to know a state's sentencing laws or criminal procedure; lawyers and judges are responsible for explaining those processes. And it is precisely because defendants are not expected to know the legal consequences of their pleas—including their sentencing exposure—that *Boykin* requires courts to "make sure" defendants understand this information. *Boykin v. Alabama*, 395 U.S. 238, 243–44 (1969). Not only is *Cheek* irrelevant but accepting the state's argument would also render *Boykin*'s due process guarantee meaningless.

The state's repeated emphasis that someone in Mr. Currica's "position" should have known his sentencing exposure is also misplaced. State's Br. 4, 20, 33. The state never addresses Mr. Currica's actual position as a young Black man who had never faced a felony charge and had struggled through high school with homelessness, psychiatric conditions, and substance abuse. Opening Br. 6–7, 19–20. If Mr.

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[1] Citations to the parties' briefs use the page numbers the party inserted at the bottom of each page, rather than the ECF page numbers.

Currica's "position" is relevant to his constitutional claim, then he should have been told about his sentencing exposure. *See Boykin*, 395 U.S. at 244 (emphasizing that the constitution "demands the utmost solicitude" of courts to fully explain the consequences of a guilty plea).

Nor does it matter that Maryland courts are free to impose sentences beyond the guidelines. *See* State's Br. 8–9. The core of Mr. Currica's legal claim is that no one—not Judge Thompson, not his lawyer, and not the state—ever told him that Maryland courts could impose sentences longer than the guidelines range. And that is the issue on which this Court granted a certificate of appealability: Whether Mr. Currica's plea "was involuntary because [he] did not understand that state sentencing guidelines were advisory and that he could be sentenced above the guidelines range upon which the parties agreed in the plea agreement."

The state's effort to stretch the meaning of words in Mr. Currica's plea agreement similarly fails. It argues that Mr. Currica was "properly advised" of his potential sentence because his plea agreement said that the parties were "free to allocute at the time of sentencing." State's Br. 2, 12, 13, 17. But "allocute"—making an allocution—means to deliver "a

formal speech." *Allocution*, Merriam-Webster's Dictionary (Jan. 23, 2023), https://www.merriam-webster.com/dictionary/allocution. At most, this told Mr. Currica that the government could formally request a sentence at the high end of the 30 to 51-year guidelines range. But it said nothing about the possibility of receiving a 90-year sentence.

Contrary to the state's assertion, Mr. Currica's confirmation that he "understood the court's explanation of the plea agreement" does not demonstrate an understanding of his sentencing exposure. State's Br. 40. To start, the plea agreement never mentions his sentence. JA286–287. And Judge Thompson's plea colloquy neither mentioned the plea agreement nor said anything about the impact of the guidelines on Mr. Currica's potential sentence. Because Mr. Currica's statements at his plea colloquy were the product of "misunderstanding," his plea is a "constitutionally inadequate basis for imprisonment." *Blackledge v. Allison*, 431 U.S. 63, 75 (1977); *see* Opening Br. 19–20.

The state further muddles involuntary plea principles when it argues that "not getting a within-the-guidelines sentence was not a 'consequence' of [Mr. Currica's] guilty plea." State's Br. 17 (quoting Opening Br. 14). If the state is arguing that a potential 90-year sentence

was not a "direct consequence" of Mr. Currica's plea, it is flatly wrong. *See Meyer v. Branker*, 506 F.3d 358, 368 (4th Cir. 2007) (holding that a direct consequence is one that has "a definite, immediate, and largely automatic effect on the defendant's range of punishment") (citation and quotation marks omitted). Indeed, as Mr. Currica's 85-year sentence demonstrates, a potential 90-year sentence was a direct consequence of his plea.

Finally, the state argues that Mr. Currica's "silence and lengthy delay in challenging his guilty plea" show that he knew of a potential 90-year sentence. State's Br. 41. The extensive record of Mr. Currica's sustained and consistent challenges to his sentence refutes that argument. At sentencing, defense counsel argued that it was improper for the prosecutor to seek a sentence higher than the parties' agreed-upon 30 to 51-year range. JA111. Three days later, counsel filed both a motion to reconsider Mr. Currica's sentence with Judge Thompson and an application for review of his sentence by a three-judge panel. JA63; JA209. The PCR court later concluded that defense counsel should have filed an application for leave to appeal—the only other immediate action that Mr. Currica could have taken—and it permitted him to file an

untimely application. JA248–249. Mr. Currica, proceeding pro se, promptly filed that application. JA68, JA255, JA262. He did everything he could to immediately challenge his sentence, and he then filed three additional motions to reconsider his sentence before filing his state habeas petition. JA64–66. These actions show that Mr. Currica "genuinely believed" he would receive a sentence of 30 to 51 years. State's Br. 41.

## II. THE STATE MISUNDERSTANDS *BOYKIN* AND *BRADY* AND THE § 2254(D)(1) STANDARD.

The PCR court's decision contradicted or misapplied *Boykin* and *Brady* in an objectively unreasonable manner because Mr. Currica was never told his maximum sentencing exposure.[2] *See* Opening Br. 17–21. Acknowledging as it must that those cases are "certainly relevant," the state argues that they are "not on point" because the facts of Mr. Currica's case are different. State's Br. 3, 30–31. But 28 U.S.C. § 2254(d)(1) does

[2] The state does not respond to Mr. Currica's argument that if he shows the PCR court committed § 2254(d)(2) and (e)(1) error, this Court should review his involuntary plea claim de novo. *See* Opening Br. 24 (citing *Austin v. Plumley*, 565 F. App'x 175, 184–85 (4th Cir. 2014)). If this Court finds a factual error, the state has thus waived any argument that this Court needs to afford deference to the PCR court's legal conclusion, and it need not reach any of the state's scatter-shot arguments about § 2254(d)(1) deference.

not require "materially indistinguishable facts" for a state court's decision to contradict clearly established federal law. State's Br. 3, 26; *see, e.g.*, *White v. Woodall*, 572 U.S. 415, 427 (2014); *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007). Despite factual differences, "state courts must reasonably apply the rules 'squarely established' by [Supreme Court] holdings to the facts of each case." *White*, 572 U.S. at 427 (citation omitted). Because Mr. Currica's claim concerns the voluntariness of his plea, *Boykin* and *Brady* are clearly established law governing his claim.

### A. *The State Ignores How the PCR Court's Decision Contradicted* Boykin *and* Brady.

Asserting that the PCR court's decision does not contradict *Boykin* and *Brady,* the state suggests that Mr. Currica merely "disagrees" about the sufficiency of his plea colloquy and whether he was "guaranteed a sentence within the guidelines." State's Br. 31–32, 37. Not so. Mr. Currica's opening brief details *Boykin* and *Brady*'s requirement that the record *affirmatively* demonstrate that he was fully informed of his potential sentence. *See* Opening Br. 17–19; *see, e.g.*, *Appleby v. Warden, N. Reg'l Jail & Corr. Facility*, 595 F.3d 532, 544 (4th Cir. 2010) (Traxler, C.J., dissenting) ("Clearly established federal law requires that

defendants be informed of the maximum penalty to which their guilty plea exposes them."); *Lewellyn v. Wainwright*, 593 F.2d 15, 16 (5th Cir. 1979) (finding a state court's decision contrary to *Boykin* when "neither the trial judge nor anyone else had ever apprised [the defendant] of the maximum sentence that could be imposed if he pled guilty"). The state focuses only on the PCR court's conclusion that Mr. Currica was correctly advised, offering no argument that Judge Thompson's references to statutory maximums provided "reasonable assurance" of a voluntary plea. *Hanson v. Phillips*, 442 F.3d 789, 800 (2d Cir. 2006); *see* State's Br. 32.

The state's argument that the PCR court did not apply a rule "diametrically different" from *Boykin* and *Brady*, State's Br. 31 (quoting *Williams v. Taylor*, 529 U.S. 362, 405 (2000)), is flawed. The state insists that *Jamison v. Klem*, 544 F.3d 266 (3d Cir. 2008), is distinguishable. State's Br. 34–35. It is not. Like the *Jamison* petitioner, Mr. Currica was told his correct statutory maximum sentence. 544 F.3d at 276. But the *Jamison* petitioner and Mr. Currica both received information about their sentencing exposure that was "far too opaque." *Id.* Specifically, just as the *Jamison* petitioner received only "vague reference[s]" to his

mandatory minimum sentence, Mr. Currica was repeatedly told about his guidelines range without any explanation that this range did not limit his sentence. *Id.* The state never explains how providing Mr. Currica with an "*accurate*" statutory maximum was any more instructive of his actual sentencing exposure than the statutory maximum provided in *Jamison*. State's Br. 37 (emphasis in original); *see also* Opening Br. 27.

The state's argument also misses the point of *Boykin* and its progeny. Under *Boykin*, it is not enough that Judge Thompson mentioned a statutory maximum of 30 years on each offense because the plea proceedings and documents emphasized Mr. Currica's guidelines range. State's Br. 20, 37. Nor did the phrase "whatever sentence" inform Mr. Currica that he could receive a sentence above 51 years. JA83–84; *see also* Opening Br. 21, 27. The state simply ignores the relevant cases Mr. Currica cited applying *Boykin* and *Brady* to similar facts and holding that courts must adequately inform a defendant of the consequences of his guilty plea. *See* Opening Br. 19–21 (citing *Hanson*, 442 F.3d at 799); *Hart v. Marion Corr. Inst.*, 927 F.2d 256, 259 (6th Cir. 1991)).

The state points to nothing in either the PCR or plea hearing record demonstrating that Mr. Currica had a "full understanding" of his

sentencing exposure. *Brady v. United States*, 397 U.S. 742, 748 n.6 (1970). It instead asserts that the guidelines range could not have affected Mr. Currica's understanding of his maximum sentence because Judge Thompson's mention of the guidelines range at the plea hearing was not in the "formal" plea colloquy. State's Br. 13, 15. But whether part of the "formal" plea colloquy or not, Judge Thompson confirmed the 30 to 51-year guidelines range at the plea hearing, putting everyone in the courtroom—including Mr. Currica—on notice of that range. JA75–76. And the state has no answer to the fact that Mr. Currica discussed the guidelines range with his counsel and was told about that range in letters from both his counsel and the state. JA314–317. The state's failure to respond mirrors the PCR court's error: Mr. Currica was repeatedly told his guidelines range but was never told that it did not limit his sentence. Because he did not have a full understanding of his sentencing exposure, the PCR court's denial of relief contradicts *Boykin*.

Finally, the state's assertion that Mr. Currica's claim "hinges on his own postconviction testimony" is simply wrong. State's Br. 4, 38. As in *Boykin*, Mr. Currica's claim rests on the record showing that he was not

fully informed of his potential sentence before he entered his plea. *See* *Boykin*, 395 U.S. at 243–44.

### ***B. The State Misinterprets Precedent Establishing that the PCR Court's Decision Was Objectively Unreasonable.***

The state agrees that Mr. Currica should have been adequately informed of his sentencing exposure before entering his guilty plea. *See* State's Br. 28 (citing *Boykin*, 395 U.S. at 242–44). But relying on *White*, 572 U.S. at 427, the state suggests that the PCR court's decision was not "objectively unreasonable" under § 2254(d)(1) because "reasonable minds could disagree about whether a layperson in [Mr.] Currica's position would understand from the record and plea colloquy the nature and consequences of his plea." State's Br. 4, 33. This misconstrues precedent interpreting AEDPA's unreasonable application standard. *See, e.g.*, *Williams v. Taylor*, 529 U.S. at 397–98; *Gray v. Branker*, 529 F.3d 220, 235 (4th Cir. 2008) (holding that a state court was objectively unreasonable under § 2254(d)(1) for improperly discounting record evidence).

The state sporadically repeats the phrase "fairminded disagreement" from *White* but leaves out its main point. State's Br. 4, 6, 33, 38. "The critical point is that relief is available under § 2254(d)(1)'s

unreasonable-application clause if it is so obvious that a clearly established rule *applies to a given set of facts* that there could be no 'fairminded disagreement' on the question." *White*, 572 U.S. at 427 (quoting *Harrington v. Richter*, 562 U.S. 86, 103 (2011)) (emphasis added). And *Boykin* and *Brady* directly apply to Mr. Currica's claim that he was not fully aware of his potential sentence when he pleaded guilty. *See* Opening Br. 17–21. *White* also does not bar relief on Mr. Currica's claim. In *White*, the Court denied habeas relief because the guilt-phase precedent the petitioner relied on for his sentencing-phase claim had "never directly . . . [been] applied" to the sentencing phase. *See White*, 572 U.S. at 421 (citations omitted). No such issue exists here.

The state also appears to argue that relief on Mr. Currica's claim is precluded because "it can hardly be said that no reasonable jurist could find" that Mr. Currica was adequately advised of his sentence. State's Br. 38. The state provides no legal or factual analysis to support its assertion. To be clear, courts consider whether "'fairminded jurists could disagree' on the correctness of the state court's decision." *Woods v. Etherton*, 578 U.S. 113, 116–17 (2016) (quoting *Harrington*, 562 U.S. at 101). But fairminded jurists would all agree that nothing in the record

"affirmatively discloses" that Mr. Currica was told that he could receive a sentence of 90, rather than 30 to 51 years. *Hanson*, 442 F.3d at 799. Thus, the PCR court's denial of Mr. Currica's involuntary plea claim is an "'error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.'" *White*, 572 U.S. at 419–20 (citing *Harrington*, 562 U.S. at 103).

The state cites no precedent—perhaps because it cannot—deeming the PCR court's legal and factual analysis sufficient under *Boykin* or *Brady*. State's Br. 33–34. A PCR court's decision is objectively unreasonable when, for example, it mischaracterizes or unduly narrows clearly established federal law by imposing a higher standard for relief. *See Barnes v. Joyner*, 751 F.3d 229, 248 (4th Cir. 2014); *see also Sears v. Upton*, 561 U.S. 945, 952 (2010) (per curiam) (holding a state court decision objectively unreasonable because it "did not correctly conceptualize" how the constitutional standard applied to petitioner's case); *Tice v. Johnson*, 647 F.3d 87, 111 (4th Cir. 2011) (determining that a state court "misapprehended the *Strickland* standard in evaluating the . . . force of the legitimate evidence"). The PCR court impermissibly narrowed the involuntary plea standard when it concluded that Mr.

Currica understood the consequences of his plea in the face of a record that muddied his maximum sentencing exposure. JA243–244; JA247–248.

Finally, the state offers no argument that the PCR court's decision was harmless. *See, e.g.*, *Barnes*, 751 F.3d at 239 ("[B]efore a federal court grants habeas relief, it must conclude that the state court's constitutional error 'actually prejudiced' the habeas petitioner") (quoting *Bauberger v. Haynes*, 632 F.3d 100, 104 (4th Cir. 2011)). And with good reason. Had Mr. Currica been fully advised of the upper limits of his sentence, he would not have pleaded guilty. Opening Br. 15; *cf. United States v. Lockhart*, 947 F.3d 187, 194–95 (4th Cir. 2020) (holding that a state court's failure to adequately inform the petitioner of his sentencing exposure was an "obvious and significant mistake" that impacted the petitioner's "assessment of his strategic position."). The PCR court's decision thus contradicted and unreasonably applied *Boykin* and *Brady*.

## III. THE PCR COURT'S FACTUAL ERROR ENTITLES MR. CURRICA TO HABEAS RELIEF.

The state asserts that the PCR court correctly found that: (A) Mr. Currica was advised that he could receive 90 rather than 51 years, and (B) even if that finding was incorrect, the PCR court's decision did not

rely on this finding. State's Br. 10, 20. The state is wrong on both counts, and Mr. Currica has satisfied § 2254(d)(2) and (e)(1).

### *A. The Plea Colloquy Transcript Says Nothing About Whether the Guidelines Were Advisory.*

The state argues that Mr. Currica was "clearly and correctly advised" that he could receive "a 30-year sentence on each of the three charges" in his guilty plea, and, "depending on what [the court] determine[d]," he could receive "whatever sentence, including jail time." State's Br. 15 (quoting JA83–84). To be sure, Judge Thompson identified the 30-year statutory maximums at the plea colloquy. JA316–318. But it is undisputed that Mr. Currica was never told that the *only* limit on his sentence was the statutory, not the guidelines, maximum. Without that information, Judge Thompson's off-handed references to the 30-year statutory maximums meant nothing to Mr. Currica.

Nor was it enough for Judge Thompson to identify both the statutory maximum and the guidelines maximum. The relationship between the two—namely, that Mr. Currica could receive the *statutory* maximum despite the agreed-upon *guidelines* range—had to be explained to Mr. Currica. *Cf. Hart v. Marion Corr. Inst.*, 927 F.2d 256, 259 (6th Cir. 1991) (determining that the record did not "fairly support the factual

findings" of a state court regarding defendant's "knowledge of the consequences of his plea"); *Jamison*, 544 F.3d at 275–76, 279 (explaining that the record showed the defendant was neither adequately informed nor asked whether his knowledge of his mandatory minimum sentence impacted his decision to plead guilty). The state points to nothing in the transcript (or anywhere in the record) explaining the distinction between these sentencing ranges.

The state is similarly silent about Mr. Currica's argument that the record does not support the PCR court's finding that Judge Thompson "made it clear" that the guidelines were advisory. *See* Opening Br. 23. Ignoring Mr. Currica's reliance on *Wiggins v. Smith*, 539 U.S. 510 (2003), the state instead goes to great lengths trying to distinguish *Williams v. Stirling*, 914 F.3d 302, 316–17 (4th Cir. 2019). It asserts that Mr. Currica's case appears less "demonstrably incorrect." State's Br. 24. But the state never explains how the factual differences between *Williams v. Stirling* and this case matter. *See* State's Br. 23–24. Like the record in *Williams v. Stirling*, the plea colloquy transcript does not support the PCR court's finding, and that constitutes 2254(d)(2) and (e)(1) error. Undaunted, the state contends that "the gist [of the PCR court's] factual

finding was accurate" by summarily concluding that Judge Thompson's advisements were clear. State's Br. 18–20, 24. Leaving aside the dubious relevance of "gist," nothing in the record supports the PCR court's factual finding. State's Br. 24.

The state also asserts that Mr. Currica deemed the PCR court's decision "incorrect[]" rather than unreasonable. State's Br. 23–24. To the contrary, Mr. Currica has demonstrated that the PCR court's decision was unreasonable. Opening Br. 23–24. A finding is not unreasonable under § 2254(d)(2) and (e)(1) if "reasonable minds reviewing the record might disagree about the finding in question." *Wood v. Allen*, 558 U.S. 290, 301 (2010) (citation omitted). But there is no evidence in the record that Judge Thompson communicated *anything* about the advisory nature of the guidelines. Opening Br. 23–24.

Even if the record does not precisely mirror *Williams v. Stirling*, the state ignores the fact that the PCR court's finding is also unreasonable because it is unsupported by the record. *See, e.g.*, *Wiggins*, 539 U.S. at 528. The PCR court denied relief on a flatly incorrect reading of the record. That is an unreasonable determination of fact. *See, e.g.*, *Austin v. Plumley*, 565 F. App'x 175, 183–84 (4th Cir. 2014) (recognizing

unreasonable error when sentencing transcript contradicted state court's finding); *Dodson v. Ballard*, 800 F. App'x 171, 178 (4th Cir. 2020) (same). And contrary to the state's suggestion, Mr. Currica's claim is not limited to Judge Thompson's failure to "say the words 'advisory only.'" State's Br. 21. Judge Thompson did not tell Mr. Currica in any way—directly or indirectly—that the guidelines were advisory. Thus, the PCR court's decision was more than "inartful." State's Br. 3. It was unreasonable.

***B. The PCR Court's Decision Rested Solely on its Erroneous Finding.***

The state argues that even if the PCR court unreasonably found that Judge Thompson "made it clear" that the guidelines were advisory, it did not necessarily base its decision on that finding. State's Br. 20. This argument fails because the PCR court's factual error was the *only* finding supporting its denial of Mr. Currica's involuntary plea claim. This error thus fatally infected the PCR court's decision.

As an initial matter, the state recognizes that the PCR court's finding had at least some "import" to the PCR court's decision and was part of its "rationale." State's Br. 20, 22. That recognition is fatal to its argument because "[e]ven a partial reliance on an erroneous fact finding can support a finding of unreasonableness" under § 2254(d)(2) and (e)(1).

*Ben-Yisrayl v. Buss*, 540 F.3d 542, 550 (7th Cir. 2008) (citing *Wiggins*, 539 U.S. at 528). And contrary to the state's argument, the PCR court made no other factual findings regarding what should have put Mr. Currica on notice that the sentencing guidelines are advisory. JA241–248. The PCR court's ruling therefore rests on its finding that Judge Thompson "made it clear" that the guidelines were advisory. State's Br. 20.

Claiming that the PCR court's "relevant factual findings were much more extensive" than that finding (and quoting five pages of the court's ruling to try to prove the point), the state suggests that there was another basis for the decision. State's Br. 18–20. But it fails to identify any such basis. Regardless how "extensive" the PCR court's findings were, no other finding related to Mr. Currica's claim that he did not understand he could receive a sentence over 51 years.

Finally, the state asserts that Mr. Currica's claim fails under § 2254(d)(2) and (e)(1) because "[r]easonable minds could disagree over the import of the PCR court's finding." State's Br. 20–29. Not so. In the cases the state cites, the court's factual errors were not at all relevant to the ultimate decision. For example, in *O'Quinn v. Spiller*, 806 F.3d 974,

978 (7th Cir. 2015), the state court's "modest factual mistake" had no "meaningful effect" nor "constitutional significance" because its finding—a failure to correctly attribute 10% of the overall delay to the prosecution—was inconsequential to the petitioner's Sixth Amendment speedy trial claim. There are no such circumstances here. The PCR court's erroneous finding had a "meaningful" and "constitutional" impact because it underpins Mr. Currica's due process involuntary plea claim. *Id.*

## CONCLUSION

For the foregoing reasons, this Court should reverse and remand with instructions to grant Mr. Currica habeas relief.

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4034 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Respectfully Submitted,

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January 23, 2023

## CERTIFICATE OF SERVICE

I, Erica Hashimoto, certify that on January 23, 2023, a copy of Appellant's Reply Brief was served on counsel for Appellee via the Court's ECF system.

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