APPENDIX

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APPENDIX A

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7257

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

DEARNTA LAVON THOMAS, a/k/a Bloody Razor,

Defendant – Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk.
Raymond A. Jackson, Senior District Judge.
(2:11-cr-00058-RAJ-FBS-1; 2:21-cv-00147-RAJ)

Argued: October 24, 2023 Decided: November 29, 2023

Before WILKINSON, AGEE, and RICHARDSON, Circuit Judges.

Affirmed by published opinion. Judge Wilkinson wrote the opinion, in which Judge Agee and Judge Richardson joined.

ARGUED: Frances H. Pratt, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Appellant. Richard Daniel Cooke, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee. **ON BRIEF**: Geremy C. Kamens, Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Appellant. Jessica D. Aber, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

WILKINSON, Circuit Judge:

Dearnta Lavon Thomas pleaded guilty in 2011 to possessing a firearm in furtherance of a "crime of violence" in violation of 18 U.S.C. § 924(c), with the underlying crime of violence being VICAR assault with a dangerous weapon. Since his conviction, the Supreme Court has narrowed the kinds of crimes that can support a § 924(c) conviction. We must decide whether VICAR assault with a dangerous weapon is still one of them. Because we find that VICAR assault with a dangerous weapon remains a valid crime-of-violence predicate, we uphold Thomas's conviction.

I.

A.

Thomas was a founding member and "three-star general" of a street gang known as the Bounty Hunter Bloods/Nine Tech Gangsters. The gang sold drugs and engaged in violence around Southeast Virginia for almost eight years, until the United States Attorney for the Eastern District of Virginia took action in 2011. The resulting indictment charged eleven gang members with fifty-nine counts of firearm, drug, and racketeering offenses.

For his part, Thomas—who went by the nickname "Bloody Razor"—was charged with racketeering under 18 U.S.C. § 1962(c), violent crimes in aid of racketeering activity (VICAR) under 18 U.S.C. § 1959(a), possessing a firearm in furtherance of a crime of violence under 18 U.S.C. § 924(c), possessing a firearm as a felon under § 18 U.S.C. § 922(g); and racketeering and drug conspiracy under 18 U.S.C.

§ 1962(d) and 21 U.S.C. § 846. Soon after the indictment, he pleaded guilty to a substantive racketeering offense and, pertinent to this appeal, to possessing a firearm in furtherance of a crime of violence under 18 U.S.C. § 924(c).

Thomas was sentenced to 60 months in prison for his racketeering conviction and the mandatory minimum of 120 months for his conviction under § 924(c). Though he did not directly appeal his conviction or his sentence, he has since filed several collateral 18 U.S.C. § 2255 motions to vacate his § 924(c) conviction in light of changes in the law.

B.

In 2011, when Thomas pleaded guilty to violating § 924(c), the term "crime of violence" was defined as a felony that:

> (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (B) … by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 924(c)(3). Subsection (A) was commonly referred to as the "force" or "elements clause" and subsection (B) as the "residual clause," and felonies could qualify under either subsection. But in the years following Thomas's conviction, the Supreme Court decided a line of cases that would eventually narrow the class of offenses that could serve as predicate crimes of violence for a § 924(c) conviction, first by invalidating the residual clause and then by

establishing a heightened mens rea for the remaining force clause.

In 2015, the Supreme Court began to take issue with residual clauses such as the one in § 924(c). It started with the Armed Career Criminal Act, which provides enhanced punishment for repeat offenders of certain crimes. That Act included a force clause and residual clause quite similar to those in § 924(c). See 18 U.S.C. § 924(e)(2)(B). In *Johnson v. United States*, 576 U.S. 591 (2015), the Supreme Court invalidated the residual clause of the Act's definition of "violent felony" as unconstitutionally vague. *Id*. at 606. Three years later, in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), the Supreme Court relied on Johnson to invalidate the residual clause of the general federal "crime of violence" definition as well. *Id*. at 1223.

The Supreme Court then turned to the statute at issue here. In *United States v. Davis*, 139 S. Ct. 2319 (2019), the Supreme Court extended *Johnson* and *Dimaya* to invalidate the residual clause of § 924(c)'s "crime of violence" definition. *Id*. at 2336. After *Davis*, crimes can only qualify as § 924(c) predicates if they satisfy the force clause.

Finally, in *Borden v. United States*, 141 S. Ct. 1817 (2021) (plurality opinion), the Court held that to qualify as a "violent felony" for purposes of the Armed Career Criminal Act, an offense must have a mens rea greater than recklessness. *See id*. at 1821–22, 1825; *id*. at 1835 (Thomas, J., concurring). We have since held that this mens rea requirement also applies to crimes of violence under § 924(c). *See United States v. Jackson*, 32 F.4th 278, 283 & n.4 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 1026 (2023).

As it stands now, to qualify as a crime of violence under § 924(c), an offense must "ha[ve] as an element the use, attempted use, or threatened use of physical force against the person or property of another" and that force must be applied with a mens rea greater than recklessness. Both of these things are necessary.

C.

This evolving crime-of-violence jurisprudence led Dearnta Lavon Thomas to file a series of § 2255 motions to vacate his § 924(c) conviction for lack of a valid crime-of-violence predicate.

Thomas filed his first § 2255 motion in 2018 based on the Supreme Court's decision in *Dimaya*. The district court denied the motion as untimely after noting that the rule applied in *Dimaya* had been set forth in *Johnson* three years earlier and that § 2255 motions must be filed within one year of "the date on which the right asserted was initially recognized by the Supreme Court." 28 U.S.C. § 2255(f)(3). Thomas sought authorization to file a second § 2255 motion soon after, though there had been no other changes in the law. That request we summarily denied.

But then came *Davis*. Thomas timely applied to file a successive § 2255 motion arguing that, after *Davis*, his § 924(c) conviction no longer rested on a valid crime of violence. In considering his request, we held that *Davis* applied retroactively to cases on collateral review and found that Thomas had stated a plausible claim that *Davis*'s holding required a different outcome in his case. *In re Thomas*, 988 F.3d 783, 792 (4th Cir. 2021). We thus authorized Thomas to file a *Davis*-based § 2255 motion with the district court.

In that post-*Davis* motion, Thomas argued that his § 924(c) conviction had to be vacated because the predicate crime underlying his conviction—VICAR assault with a dangerous weapon—could not satisfy the statute's force clause. He argued that because the VICAR offense was itself predicated on underlying Virginia firearm offenses, the court had to look through the VICAR offense to determine whether those predicate offenses met the narrowed crime-of-violence definition. In other words, he argued that VICAR assault with a dangerous weapon can be a crime of violence only if its predicates are crimes of violence. The predicate Virginia firearm offenses at issue here, he claimed, were not.

The district court was not persuaded. It determined that the appropriate offense to analyze as the predicate for the challenged § 924(c) conviction was the VICAR offense itself, not the underlying state-law offenses. *Thomas v. United States*, 2021 WL 3493493, at *6 (E.D. Va. Aug. 9, 2021). The court then concluded that VICAR assault with a dangerous weapon remained a valid a crime-of-violence predicate and denied Thomas's motion. *Id.* at *6–7.

Thomas appealed the denial, noting that since filing his motion the Supreme Court had issued *Borden*, further limiting the crimes that can serve as predicates for § 924(c) convictions. We granted a certificate of appealability to answer two questions: (1) What is the proper analytical framework for determining whether VICAR assault with a dangerous weapon qualifies as a crime of violence under § 924(c)? And (2) did the predicate offense underlying Thomas's § 924(c) conviction still qualify? We review both questions de novo. *See United States v. Keene*, 955 F.3d 391, 393

(4th Cir. 2020) (reviewing de novo whether the VICAR statute requires a "look through" approach); *United States v. Bryant*, 949 F.3d 168, 172 (4th Cir. 2020) (reviewing de novo whether an offense qualified as a crime of violence).

II.

Thomas claims that his § 924(c) conviction must be vacated for lack of a valid crime-of-violence predicate. We disagree. The Supreme Court may have narrowed the definition of "crime of violence" considerably, but VICAR assault with a dangerous weapon still easily qualifies. We see no need to "look through" the offense to its state-law predicates. For these reasons, we affirm the conviction.

A.

Thomas's § 924(c) conviction cannot stand without a valid crime-of-violence predicate to support it. But before we can decide whether the predicate offense underlying Thomas's conviction qualifies as a crime of violence, we need to determine with precision what the predicate offense is. We thus begin by establishing that Thomas's § 924(c) conviction was predicated on VICAR assault with a dangerous weapon. We then hold that VICAR assault with a dangerous weapon satisfies both the force clause and *Borden*'s mens rea requirement.

1.

Thomas's § 924(c) conviction was predicated on 18 U.S.C. § 1959(a), which sets forth a series of VICAR offenses ranging from threats to murder. Where, as here, the predicate statute sets forth multiple, alternative versions of a crime with distinct elements, we look to "the indictment, jury instructions, or plea agreement" to determine "which of the statute's alternative elements formed the basis of the defendant's prior conviction." *Bryant*, 949 F.3d at 173.

Thomas's plea agreement and the indictment reveal that the appropriate § 924(c) predicate here is VICAR assault with a dangerous weapon as laid out in § 1959(a)(3). Thomas was convicted under § 924(c) after pleading guilty to Count Four of the indictment. Count Four charged Thomas with "Possession of a Firearm in Furtherance of a Violent Crime" in violation of 18 U.S.C. § 924(c)(l)(A) and § 18 U.S.C. § 2 (aiding and abetting), and alleged that he "did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence … to wit: violation of Title 18, United States Code, Section 1959, *as set forth and charged in Count Three*." J.A. 37 (emphasis added). Count Three in turn charged Thomas with "Assault with a Dangerous Weapon in Aid of Racketeering Activity" under the VICAR statute, 18 U.S.C. § 1959(a)(3) and 18 U.S.C. § 2, for his role in a failed robbery. J.A. 36–37.

Counts Three and Four, read together, make it clear that the predicate supporting Thomas's § 924(c)

conviction was VICAR assault with a dangerous weapon.

2.

We thus turn to whether VICAR assault with a deadly weapon continues to qualify as a crime of violence under the force clause. To determine whether an offense qualifies as a "crime of violence" under the force clause, we use the categorical approach. *United States v. Simms*, 914 F.3d 229, 233 (4th Cir. 2019) (en banc). That is, we "look to whether the statutory elements of the offense necessarily require the use, attempted use, or threatened use of physical force." *Id*. Here, "'physical force' means *violent* force—that is, force capable of causing physical pain or injury to another person." *Johnson v. United States*, 559 U.S. 133, 140 (2010). Our precedents establish that VICAR assault with a dangerous weapon satisfies this standard.

The VICAR statute was added to the criminal code in Congress's Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Ch. X, Part A (Oct. 12, 1984). It stipulates the appropriate punishment for anyone who

> as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity … assaults with a dangerous weapon … any individual …

> in violation of the laws of any State or the United States … .

18 U.S.C. § 1959(a). Thus, the elements necessary for a conviction of VICAR assault with a dangerous weapon are: (1) that there exists a racketeering "enterprise"; (2) that the enterprise be engaged in "racketeering activity"; (3) that the defendant have committed an assault "with a dangerous weapon"; (4) that the assault have violated state or federal law; and (5) that the assault have been committed for a racketeering "purpose." *United States v. Manley*, 52 F.4th 143, 147 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2436 (2023). Importantly, by pleading guilty to the § 924(c) offense charged in Count Four of the indictment, Thomas necessarily admitted each of these elements making up the predicate VICAR offense charged in Count Three. *See id.*

Our precedents establish that the inclusion of a dangerous-weapon element, like element three above, elevates an assault to a crime of violence for purposes of § 924(c). In *United States v. Bryant*, 949 F.3d 168 (4th Cir. 2020), we held that an "additional life-in-jeopardy-with-a-dangerous-weapon element transform[ed] … an assault into a crime of violence under the force clause." *Id.* at 180. There, the statute under consideration was 18 U.S.C. § 2114(a), which criminalizes assault with the "intent to rob, steal, or purloin" property of the United States and provides enhanced punishment where the defendant puts a victim's "life in jeopardy by the use of a dangerous weapon." We reasoned that "[b]ecause assault requires at least *some* use or threatened use of force, … the 'use of a dangerous weapon to put the victim's life

in jeopardy transforms the force into violent physical force.'" *Bryant*, 949 F.3d. at 181.

We recently applied our reasoning in *Bryant* to 18 U.S.C. § 111(b), which criminalizes assaults on certain federal officers and provides an enhanced punishment where the defendant "uses a deadly or dangerous weapon" in doing so. We held that "[b]ecause § 111(b) requires the use of a dangerous weapon—that is, an instrumentality used or threatened to be used in a manner to cause death or serious injury—and because § 111(a) requires that at least some force be used, the required level of force referenced by § 111(b) is violent force." *United States v. McDaniel*, — F.4th —, 2023 WL 6934544, at *8 (4th Cir. Oct. 20, 2023).

The considerations here are no different from those in *McDaniel* and *Bryant*. Indeed, the Sixth Circuit has come to the same conclusion. *See Manners v. United States*, 947 F.3d 377, 381–82 (6th Cir. 2020) (holding that precedents finding that § 2114(a) and § 111(b) satisfy the force clause were binding on the question of whether § 1959(a) VICAR assault with a dangerous weapon does as well). Like § 2114(a) and § 111(b), every VICAR assault with a dangerous weapon requires (1) an assault and (2) the presence of a dangerous weapon in its commission. *See* 18 U.S.C. § 1959(a). In light of *Bryant* and *McDaniel*, Thomas "cannot avoid the conclusion that the dangerous weapon element of § 1959(a)(3) elevate[s] even the most minimal type of assault into violent force sufficient to establish this offense as a crime of violence." *Manners*, 947 F.3d at 382.

3.

In addition to satisfying the force clause, VICAR assault with a dangerous weapon satisfies *Borden*'s mens rea requirement because it cannot be committed recklessly. *See Borden*, 141 S. Ct. at 1825, 1828.

The VICAR statute complements the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 et seq., by addressing the "particular danger posed by those … who are willing to commit violent crimes in order to bolster their positions within [racketeering] enterprises." *United States v. Ayala*, 601 F.3d 256, 266 (4th Cir. 2010). Thus, a necessary element of any VICAR offense is that it be committed "as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from" a racketeering enterprise or "for the purpose of gaining entrance to or maintaining or increasing position" in the racketeering enterprise. 18 U.S.C. § 1959(a).

This purposefulness requirement means that, to be guilty of VICAR assault with a dangerous weapon, the defendant must have committed the assault *for one of these purposes*. *See Manley*, 52 F.4th at 152–53 (Niemeyer, J., concurring). That satisfies *Borden*'s instruction that crimes of violence must involve purposeful or knowing conduct. "[W]hen a defendant assaults … to gain a personal collateral advantage with an enterprise, he makes a decision—a deliberate choice—to carry out the assault … to demonstrate his worth to the enterprise." *Id.* at 152 (Niemeyer, J., concurring).

The VICAR statute's purposefulness requirement applies to every offense in § 1959(a), including murdering and maiming. It would be indefensible to hold that a defendant who committed any of these crimes for the purpose of improving his position in a racketeering enterprise did so recklessly. VICAR offenses, including assault with a dangerous weapon, simply are not run-the-risk crimes—they are deliberate and purposeful machinations to raise one's clout in a criminal enterprise.

* * *

It remains only to summarize the components of the predicate VICAR offense, the elements of which Thomas admitted. *See* II.A.2. The actus reus was assault with a dangerous weapon. That was a violent act. The mens rea was one of focused purpose. That is a qualifying intent under *Borden*. Together the act and the purpose behind it plainly qualify as a crime of violence, and the § 924(c) conviction accordingly stands.

B.

Although VICAR assault with a dangerous weapon fits comfortably within the narrowed class of crimes that qualify as § 924(c) crimes of violence, Thomas would have us "look through" the VICAR statute to the state-law predicates underlying it. As "crimes in aid of racketeering," VICAR offenses themselves must be based on an underlying state or federal predicate. Count Three of the indictment listed the predicates for Thomas's VICAR offense as two

Virginia state-law offenses: (1) use or display of a firearm in violation of Virginia Code § 18.2-53.1 and (2) brandishing in violation of § 18.2-282. Thomas argues that for his VICAR offense to qualify as a crime of violence, these underlying predicates must as well. This argument, however, conflates the predicate requirements of § 924(c) (which requires that its predicate qualify as a crime of violence) and the VICAR statute (which does not).

To qualify as a "crime of violence" for purposes of § 924(c), an offense must "ha[ve] as *an* element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3)(A) (emphasis added). The fact that the statute's text speaks so explicitly in terms of a single element is important. If one element of an offense satisfies the force clause, it becomes superfluous to inquire whether other elements likewise meet the requirement.

The VICAR statute makes it a crime to commit any of the statute's enumerated offenses "in violation of the laws of any State or the United States." 18 U.S.C. § 1959(a). We have interpreted this language to mean that one element of a VICAR conviction is that the defendant committed the enumerated federal offense, and another is that the defendant's conduct violated an independent state or federal law. *See Keene*, 955 F.3d at 398–99; *accord Manley*, 52 F.4th at 147. As established above, federal assault with a dangerous weapon easily qualifies as a crime of violence. That this element of VICAR assault with a dangerous weapon qualifies as a crime of violence is sufficient in

and of itself to render the offense a crime of violence, we need not progress to the state-law predicates.*

That is not to say that courts can never look at the underlying state-law predicates. Indeed, we have done so in the past. *See, e.g., United States v. Mathis*, 932 F.3d 242, 264 (4th Cir. 2019); *Manley*, 52 F.4th at 147–48 (looking to a state-law predicate where it had already been established as a valid crime of violence). But where, as here, the generic federal offense standing alone can satisfy the crime-of-violence requirements, courts need not double their work by looking to the underlying predicates as well.

Thomas's position would create a daisy chain of predicates and needlessly complicate our statutory task. It is hardly necessary to examine predicates to a predicate in a case where Congress and our precedents allow for a more straightforward approach. To require courts to "look through" the VICAR offense to the underlying state crimes in every instance would unnecessarily send them on a scramble through innumerable state laws across the circuit. There are

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* Other courts have been wrestling with this question and have taken different approaches. *Compare, e.g., Alvarado-Linares v. United States*, 44 F.4th 1334, 1343 (11th Cir. 2022) (holding that, where the indictment alleged that VICAR murder was based on state-law predicates, the court must consider the underlying state-law predicates to determine whether they constitute crimes of violence), *with Manners v. United States*, 947 F.3d 377, 380–81 (6th Cir. 2020) (holding that VICAR assault with a dangerous weapon was itself a crime of violence without analyzing its predicates). As discussed at length above, we think that both the statutory text and our own precedents make clear that we need not look through a VICAR offense to its predicate crimes when the enumerated offense itself suffices.

enough complications in this field of jurisprudence without adding more to the heap.

III.

The judgment of the district court is hereby affirmed.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

DEARNTA LAVON THOMAS,

Petitioner,

v.

CRIMINAL NO. 2:11-CR-58

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Before the Court is Petitioner Dearnta Lavon Thomas's ("Petitioner") Motion to Vacate, Set Aside, or Correct a Sentence pursuant to Title 28, United States Code, § 2255 ("Motion to Vacate"). For the reasons set forth below, Petitioner's Motion to Vacate is **DENIED**.

I. FACTUAL AND PROCEDURAL HISTORY

On April 8, 2011, Petitioner was named in a fifty-nine-count indictment filed in the Eastern District of Virginia, Norfolk Division. ECF No. 3. On June 27, 2011, Petitioner pled guilty to Counts 1 and 4 of the indictment. ECF No. 144. Count 1 charged Petitioner with Racketeer Influenced and Corrupt Organizations

("RICO"), in violation of 18 U.S.C. § 1962(c). *Id*. Count 4 charged Petitioner with Possession of a Firearm in Furtherance of a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A). *Id*.

According to the Presentence Investigation Report, Petitioner was a founding member and "three-star general" of the Bounty Hunter Bloods gang and an associate of the Nine Tech Gangsters since in or around 2003. ECF No. 416 at 9-19. As part of Petitioner's RICO offenses, Petitioner distributed "crack" cocaine and heroin while in possession of a firearm; was a getaway driver for a business robbery; possessed a firearm during a robbery of five drug associates; shot at two vehicles at a party; shot at a rival gang member on one occasion and was with fellow gang members on another occasion when they shot at the rival gang member; convinced two individuals to give him and other gang members the address of a drug dealer so they could rob him/her; and directed other gang members to rob a juvenile while he waited in the getaway vehicle. *Id*.

On December 13, 2011, Petitioner was sentenced to 60 months imprisonment for Count 1 and 120-months imprisonment for Count 4, for a total of 180 months, all to be served consecutively. ECF No. 377.

Previously, on other grounds, Petitioner filed a § 2255 motion to vacate on April 30, 2018. ECF No. 590. That motion was denied as untimely on August 21, 2018. ECF No. 595. Petitioner, *pro se*, filed the instant motion pursuant to 28 U.S.C. § 2255 on March 18, 2021. ECF No. 678. Petitioner contends that his offense of conviction cannot qualify as a crime of violence under 18 U.S.C. § 924(c)(3) after the United States Supreme Court's ("Supreme Court") ruling in

United States v. Davis, 139 S. Ct. 2319 (2019). *Id*. Petitioner, through counsel, supplemented his Motion to Vacate on April 22, 2021. ECF No. 688. The Government filed its Response in Opposition on May 25, 2021. ECF No. 696. Petitioner filed its Reply on June 4, 2021. ECF No. 702. After reviewing the parties' filings, the Court finds that a hearing on this matter is not necessary. Accordingly, the matter is ripe for disposition.

II. LEGAL STANDARDS

A. Title 28 U.S.C. § 2255

Section 2255 allows a federal prisoner "claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States … [to] move the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. § 2255. In a § 2255 motion, the petitioner bears the burden of proving his or her claim by a preponderance of the evidence. *See Miller v. United States*, 261 F.2d 546, 547 (4th Cir. 1958).

When deciding a § 2255 motion, the Court must promptly grant a hearing "unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b). Motions under § 2255 generally "will not be allowed to do service for an appeal." *Sunal v. Large*, 332 U.S. 174, 178-79 (1947). For this reason, issues already fully litigated on direct appeal may not be raised again under the guise of a collateral attack. *United States v. Dyess*, 730 F.3d 354, 360 (4th Cir. 2013). Issues that should have been raised on direct appeal are deemed waived, procedurally defaulted, and cannot be raised on a § 2255 Motion. *United States v. Mikalajunas*, 186

F.3d 490, 492 (4th Cir. 1999). However, an individual may raise a procedurally defaulted claim if he or she can show (1) "cause and actual prejudice resulting from the errors of which he complains;" or (2) that "a miscarriage of justice would result from the refusal of the court to entertain the collateral attack. … [meaning] the movant must show actual innocence by clear and convincing evidence." *Id.* at 492-93. To demonstrate cause and prejudice, a petitioner must show the errors "worked to [his or her] actual and substantial disadvantage, infecting [his or her] entire trial with error of constitutional dimensions." *United States v. Frady*, 456 U.S. 152, 170 (1982).

An individual may also seek relief under § 2255 within one year of the date on which a right has been newly recognized by the Supreme Court and made retroactively applicable on collateral review. *See* 28 U.S.C. § 2255(f)(3). In other words, if the Supreme Court issues a ruling that may retroactively impact the validity of an individual's sentence, that individual may file a § 2255 motion to assess the substance of his or her claims.

B. Crimes of Violence Under 18 U.S.C. § 924(c)(1)

Section 924(c)(1)(A) provides that a person who uses or carries a firearm "during and in relation to any crime of violence or drug trafficking crime" or who "possesses a firearm… in furtherance of any such crime" may be convicted of both the underlying crime(s) *and* the additional, distinct crime of utilizing a firearm in connection with a "crime of violence or drug trafficking crime." Specific to the facts of this case, Petitioner's § 924(c) conviction requires that Petitioner committed a "crime of violence" as opposed to a "drug trafficking crime."

> Section 924(c)(3) defines a "crime of violence" as "an offense that is a felony" and
>
> (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Courts commonly refer to § 924(c)(3)(A) as the "force clause" and to § 924(c)(3)(B) as the "residual clause." In *United States v. Davis*, the Supreme Court held that the "residual clause" of § 924(c)(3)(B) was unconstitutionally vague, thereby invalidating its enforceability.[1] Accordingly, any conviction under the "crime of violence" framework must satisfy the force clause to avoid vacatur.

As stated above, the force clause requires that the underlying felony offense have as an element of that offense, "use, attempted use, or threatened use of physical force against the person or property of another." *See* 18 U.S.C. § 924(c)(3)(A). Since the force clause requires an examination of the elements of an underlying offense, courts must engage in statutory interpretation to resolve a *Davis* inquiry. *See Davis*, 139 S. Ct. at 2327.

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[1] *See also Sessions v. Dimaya*, 138 S. Ct. 1204 (2018) (holding a similar residual clause defining crimes of violence in 18 U.S.C. § 16(b) to be unconstitutionally vague); *Johnson v. United States*, 135 S. Ct. 2551 (2015) (holding another residual clause defining crimes of violence in 18 U.S.C. § 924(e)(2)(B) to be unconstitutionally vague).

C. Methods of Statutory Interpretation

In determining whether an offense is a "crime of violence," courts employ either the categorical approach or the modified categorical approach. *See United States v. Mathis*, 932 F.3d 242, 263-64 (4th Cir. 2019). Under the categorical approach, courts will "consider only the crime as defined, not the particular facts in the case." *United States v. Simms*, 914 F.3d 229, 233 (4th Cir.), cert. denied, 140 S. Ct. 304 (2019). Stated another way, courts "focus[] solely on the elements of the offense of conviction, comparing those to the commonly understood elements of the generic offense identified in the federal statute." *United States v. Price*, 777 F.3d 700, 704 (4th Cir. 2015). For state offenses, such crimes are a "categorical match" to the federal offense only if "the elements comprising the statute of conviction [are] the same as, or narrower than, those of the generic offense." *Id*. When required, courts use the categorical approach to determine whether a state offense is comparable to "generic" federal offenses as described in a particular statute. *See Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013) (employing the categorical approach to compare a state law to federal immigration laws).

"[I]n cases involving statutes that set out elements in the alternative and thus create multiple versions of the crime, [courts] consider the statute divisible and apply the modified categorical approach." *United States v. Diaz*, 865 F.3d 168, 2017 WL 3159918, at *4 (4th Cir. 2017) (internal quotation marks omitted). "[T]he modified approach serves—and serves solely—as a tool to identify the elements of the crime of conviction when a statute's disjunctive phrasing renders one (or more) of them opaque."

Mathis, 136 S. Ct. at 2253. In carrying out the modified categorical approach, courts may examine a limited class of documents, including indictments and jury instructions, to determine which part of the statute the defendant violated. *Descamps v. United States*, 570 U.S. 254, 257 (2013). Both the modified version and the strict categorical approach, as applied to § 924(c)(3)(A), would assess whether the statutory elements of the predicate crime require the force clause elements of "use, attempted use, or threatened use of physical force."

D. VICAR – 18 U.S.C. § 1959

Title 18 U.S.C. § 1959 imposes criminal penalties for committing "violent crimes in aid of racketeering activity," i.e. VICAR. In general, "[t]he VICAR statute defines prohibited conduct by reference to enumerated federal offenses, but also requires that the conduct be 'in violation of the laws of any State or the United States.'" *United States v. Keene*, 955 F.3d 391, 393 (4th Cir. Apr. 9, 2020) (quoting 18 U.S.C. § 1959(a)). In other words, a VICAR conviction is premised upon the defendant's other federal and state criminal conduct. Here, the underlying statutory offense for Petitioner's § 924(c) conviction is 18 U.S.C. § 1959(a)(3), which specifically identifies "assault with a dangerous weapon or assault resulting in serious bodily injury" as the generic federal offenses for conviction.

III. DISCUSSION

Petitioner relies upon *United States v. Davis*, arguing that because the residual clause of § 924(c)(3)(B) is unconstitutionally vague and because Petitioner's VICAR conviction is not a "crime of violence" under § 924(c)(3)(A)'s force clause,

Petitioner's § 924(c) conviction should be vacated. *See* ECF Nos. 688 and 702. For the reasons stated below, however, Petitioner's contention is without merit.

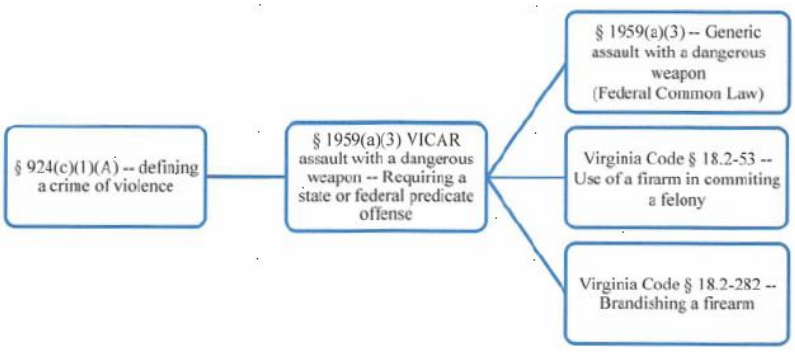
A. Petitioner's successive § 2255 motion is timely.

As a preliminary matter, the Court finds Petitioner's motion timely. On April 30, 2018, Petitioner previously filed a § 2255 motion based upon similar § 924(c) challenges to his conviction under *United States v. Dimaya*. ECF No. 590. The Court denied Petitioner's motion as untimely, holding "the right that Petitioner seeks to invoke was not [initially] recognized in *Dimaya*. Rather, it was recognized in *Johnson* and applied in *Dimaya*." ECF No. 595. Accordingly, Petitioner had one year from *Johnson* to raise *Johnson*-related challenges to his § 924(c) conviction and failed to do so.

The newly recognized right addressed in Petitioner's present Motion to Vacate, however, stems from *United States v. Davis*. Because of the new, retroactive rights established in *Davis*, the parties agree that Petitioner's prior § 2255 motion has no impact on the justiciability of the present Motion to Vacate. *See* ECF Nos. 688 and 696 at 6-7. Moreover, the parties further agree that the factual circumstances of Petitioner's § 924(c) conviction permit him to seek relief pursuant to *Davis*. *Id*. The parties merely disagree as to whether such relief is warranted given the facts particular to Petitioner's conviction. Therefore, the Court finds Petitioner's Motion to Vacate timely and will address the merits of his claims.

B. The Parties disagree as to the applicable predicate offense for Petitioner's § 924(c) conviction.

Petitioner's § 924(c) conviction is premised upon Count 3 of the Indictment. Count 3 charged Petitioner with VICAR assault with a dangerous weapon, in violation of 18 U.S.C. § 1959(a)(3). Although Petitioner was not convicted of Count 3, the offense was incorporated by reference in Count 4 (the § 924(c) count) and serves as the basis of that conviction. *See* Indictment, ECF No. 3. A VICAR offense is predicated upon violations of ascertained generic federal laws or "the laws of any State or the United States." 18 U.S.C. § 1959(a). Here, the predicate offenses for Count 3, as described in the Indictment, are violations of Virginia Code § 18.2-53.1 and 18.2-282. ECF No. 3 at 25. Additionally, the Indictment specifically identifies Count 3 as a violation of "Title 18, United States Code, Sections 1959(a)(3) and 2." Accordingly, to properly adjudicate Petitioner's Motion, the Court must conduct a series of statutory analysis since both § 924(c) and 1959(a) require predicate offenses. To better demonstrate the relationship between these statutes, the Court makes the following illustration:



Accordingly, § 924(c)(1)(A) requires a predicate crime of violence and § 1959(a)(3) requires a predicate crime of assault with a dangerous weapon in violation of state or federal laws. Here, Petitioner argues that the Court need only look to the Virginia statutes to conduct its "crime of violence" analysis. *See* ECF Nos. 688 and 702. On the other hand, the Government argues that the Court need only conduct its analysis based upon the generic, federal assault with a dangerous weapon charge. *See* ECF No. 696. To resolve this point of contention, the Court must engage in statutory interpretation of both § 924(c)(1)(A) and § 1959(a)(3). In so doing, the Court must assess the correct method of statutory interpretation—either the categorical approach or its modified version.

C. The modified categorical approach is the correct method to examine Petitioner's VICAR offense.

Upon review of the filings, the parties do not assess which approach is required by the VICAR statute. Instead, both parties generally reference the categorical approach and dive into their analyses of the underlying elements supporting (or not supporting) § 924(c)'s "crime of violence" requirement. But in order to establish a sufficient foundation for the Court's legal analysis, the Court must ascertain which approach it will use.

Courts within the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit") have routinely applied the modified categorical approach when evaluating similar VICAR offenses under a

§ 2255 Motion.[2] In practice, the modified categorical approach only slightly differs from the categorical approach in that the Court may rely upon "a finite class of extra-statutory materials 'to determine which statutory phrase was the basis for the conviction.'" *Montes-Flores*, 736 F.3d 357 at 365 (quoting *Johnson v. United States*, 559 U.S. 133, 144 (2010)). These "extra-statutory materials" include "the terms of the charging document, the terms of a plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant, or to some comparable judicial record of this information." *Shepard v. United States*, 544 U.S. 13, 26 (2005).

The modified categorical approach is applicable when a statute describes elements in the alternative, thereby creating divisible criminal conduct within the statute. *See* Diaz, 2017 WL 3159918, at *4. Here, the VICAR statute describes multiple predicate offenses, any one of which could serve as the basis for a VICAR conviction. While "assault with a dangerous weapon" under § 1959(a)(3) is Petitioner's offense of conviction, the statute also contemplates murder (§ 1959(a)(1)), maiming (§ 1959(a)(2)), and other criminal conduct (*see* § 1959(a)(4)-(a)(6)), each with varied elements. Therefore, the modified categorical approach is applicable, allowing the Court to rely upon the indictment and various plea documents—not just statutory language—to ascertain the elements of Petitioner's offense.

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[2] *See Cousins v. United States*, 198 F. Supp. 3d 621, 626 (E.D. Va. 2016); *see also United States v. Jones*, 2017 U.S. Dist. LEXIS 139727 (W.D. Va. Aug. 28, 2017).

D. *United States v. Keene* provides guidance but is not controlling on a § 2255 Motion.

In examining a nearly identical VICAR assault with a dangerous weapon charge, the Fourth Circuit invalidated a district court's use of the categorical or modified categorical approaches to interpret the VICAR statute. *Keene*, 955 F.3d at 391. The *Keene* Court reasoned that "nothing in the statutory language at issue suggests that Congress intended an element-by-element comparison of the enumerated federal offense with the specified state offense." *Id*. at 393 The *Keene* Court ultimately concluded that "[i]nstead, the statutory language at issue requires only that a defendant's *conduct*, presently before the court, constitute one of the enumerated federal offenses as well as the charged state crime." *Id*. (emphasis in original).

In *Keene*, the Fourth Circuit reviewed an interlocutory appeal after the district court dismissed counts 4, 8 and 14 of the indictment. *Keene*, 955 F.3d at 393. Counts 4, 8, and 14 charged those defendants with VICAR brandishing, in violation of the Virginia brandishing statute—Virginia Code § 18.2-282. *Id*. "Applying the categorical approach, the district court concluded that the crime of Virginia brandishing is broader than the offense of assault with a dangerous weapon under VICAR, because the federal assault crime requires as an element an intent or threat to inflict injury while Virginia brandishing does not." *Id*. Accordingly, the district court dismissed the claim.

On appeal, the *Keene* Court further evaluated the text of § 1959(a), specifically addressing the following language therein: "[w]hoever... assaults with a dangerous weapon... in violation of the laws of any

state or the United States... shall be punished...". *Keene*, 955 F.3d at 397 (quoting 18 U.S.C. § 1959). The Court concluded "[n]othing in this language suggests that the categorical approach should be used to compare the enumerated federal offense of assault with a dangerous weapon with the state offense of Virginia brandishing." *Id*. Instead, "before convicting a defendant, a jury must find that he engaged in the conduct alleged in the indictment, namely, assaulting the named victim with a dangerous weapon in violation of the Virginia brandishing statute." *Id*. at 399.

Keene is not applicable here for two reasons. First, the *Keene* Court narrowed its holding to only the clauses of § 1959(a) applicable to those defendants in that case. *Id*. at 397 (stating "we focus on the specific language of VICAR under which the defendants were charged"). Upon review of the *Keene* indictment, although the VICAR counts at issue are nearly identical to that of Petitioner, the Fourth Circuit references § 1959(a)(3) but limits its statutory interpretation to § 1959(a) only.[3] *See id*.; *see also* Indictment, *United States v. Keene*, No. 4:18-cr-12 (W.D. Va. Jun. 11, 2018) (ECF No. 5 at 11). Accordingly, the *Keene* Court provided no analysis of the statutory interpretation methods applicable to § 1959(a)(3).

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[3] There, Count 4 charged those defendants with assault with a dangerous weapon in violation of Virginia Code § 18.2-282 and 18.2-18, and in further violation of 18 U.S.C. §§ 2 and 1959(a)(3). These charges are substantially similar to that of Petitioner with the only difference being the subchapters of one of the applicable Virginia statutes—here, Virginia Code § 18.2-53.1 instead of 18.2-18. *See* ECF No. 3.

Second, *Keene* is not applicable because it evaluates statutory interpretation of § 1959(a) alone, with no added layer of a § 924(c)(1)(A) analysis. It is still the case that under a § 924(c)(3) analysis, "the court may (depending on the features of the applicable statute) employ the categorical approach or the modified categorical approach." *United States v. Fuertes*, 805 F.3d 485, 498 (4th Cir. 2015) (internal quotation marks omitted). Here, any analysis of the force clause necessarily requires an in-depth review of the elements of the predicate offense. *See* § 924(c)(3)(A) (where the term "crime of violence" requires that a felony "has as an element the use, attempted use, or threatened use of physical force against the person or property of another"). Therefore, it is the opinion of this Court that *Keene's* method of statutory interpretation—looking to a defendant's conduct rather than the statutes' elements—is inapplicable to the Court's interpretation of § 1959(a)(3) as a predicate offense to § 924(c)(1)(A). The Court now returns to its modified categorical review of § 1959(a)(3) as applied to Petitioner.

E. The elements of § 1959(a)(3) do not require a showing that Petitioner's underlying Virginia violations are crimes of violence.

The elements of VICAR assault with a dangerous weapon are as follows: (1) the organization is a RICO enterprise; (2) the enterprise was engaged in racketeering activity as defined in RICO; (3) the defendant had a position in that enterprise; (4) the defendant committed the alleged crime of violence in violation of federal or state law; and (5) the defendant's general purpose in doing so was to maintain or increase position in the enterprise.

United States v. Fiel, 35 F.3d 997, 1003 (4th Cir. 1994). At issue here is element four and the alleged crime of violence is § 1959(a)(3). While Petitioner's indictment includes violations of Virginia Code § 18.2-282 and 18.2-53.1 within the § 1959(a)(3) charge, it is the view of this Court that the Virginia state violations are not the crimes that require proof of crimes of violence. Instead, the predicate offense is merely § 1959(a)(3) alone.

While *Keene* is not determinative of the outcome in this case, the *Keene* Court does provide guidance on how the Court should treat § 1959. In its analysis, the *Keene* Court reasoned that "the VICAR statute includes no language suggesting that all violations of a state law also must qualify as the enumerated federal offense." *Keene*, 955 F.3d at 397. Accordingly, to be convicted of a § 1959 offense, the elements of an underlying state offense need not mirror that of a federal offense. It follows that if an individual can be convicted of a § 1959 offense without the government having to compare the state statute to the federal offense, then the Court's crime of violence analysis similarly does not require that both the generic federal offense and the state offenses have as an element the "use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3)(A). Instead, the Court may, as it has done in the past, merely rely upon the generic federal offense. *See Cousins*, 198 F. Supp. 3d at 626 ("Section 1959 reaches the generic conduct described therein, without concern for the labels a state may use in criminalizing the conduct that qualifies as a VICAR predicate.") (citing *United States v. Le*, 316 F. Supp. 2d 355, 362 (E.D. Va. 2004)); *see also Jones*, 2017 U.S. Dist. LEXIS 139727 at *12 ("The

court concludes that the generic definition of assault with a dangerous weapon applies in examining whether the VICAR counts in the Superseding Indictment qualify as crimes of violence under § 924(c).”). Therefore, the Court will only look to the generic federal offense of “assault with a dangerous weapon” during its crime of violence analysis.

F. The generic federal offense of “assault with a dangerous weapon” constitutes a crime of violence.

The Government argues that VICAR assault with a dangerous weapon is a “generic” federal offense which, by its very nature, requires “use, attempted use, or threatened use of physical force against the person or property of another.” ECF No. 696 at 11-17. The Government relies upon the common law definition of assault—coupled with the added dangerous weapon—to make this assertion. On the other hand, Petitioner argues that the common law definition of assault, as applied to VICAR assault with a dangerous weapon, is not a crime of violence because: 1) it can be completed by recklessness, 2) it can be accomplished by acts not requiring violent force or physical force, and 3) it impermissibly includes mere possession of a dangerous weapon rather than use.

“[C]ourts have uniformly recognizes that various federal statutes criminalizing assault incorporate the long-established common law definition of that term.” *United States v. Passaro*, 577 F.3d 207, 217-18 (4th Cir. 2009) (internal quotation marks omitted). “In its traditional common law usage, the term assault encompasses two types of actions. It can refer either to an unsuccessful attempted battery or to a

threatening act which places another person in reasonable apprehension of an imminent physical harm." *United States v. Barbeito*, No. 2:09-cr-00222, 2010 U.S. Dist. LEXIS 55688 at *81-82 (S.D.W. Va. June 3, 2010). Therefore, common law assault with a dangerous weapon "requires a physical act, utilizing a dangerous weapon, that signifies to the victim that the aggressor has the present ability to cause the threatened harm with the weapon, and that the weapon may be put to harmful use immediately." *Cousins*, 198 F. Supp. 3d at 626 (citing *Barbeito*, 2010 U.S. Dist. LEXIS 55688 at *84-85). "For a battery-type assault, the weapon would have to make contact with the victim." *Id*.

Upon review, both common law assault with a dangerous weapon and the battery-type of assault with a dangerous weapon clearly require "use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3)(A). Contrary to Petitioner's contention, mere possession is not included in the common law definition. Moreover, while simple assault may be committed with recklessness or forcible touching[4], inherent in placing another in reasonable apprehension of immediate harm *with a dangerous* weapon is that the offender intended to commit the assault *with violent force*. Therefore, since Petitioner's predicate VICAR conviction qualifies as a crime of violence under the force clause, Petitioner's § 2255 claims pursuant to *United States v. Davis* are without merit.

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[4] *See Diaz*, 2017 WL 3159918, at *9 ("[A]ssault need only be a forcible touching, and there is no evidence that it needs to rise to the level of violent force.") (internal quotation marks omitted).

IV. CONCLUSION

For the reasons above, Petitioner's Motion is **DENIED**.

This Court may issue a certificate of appealability only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b)(1). This means that Petitioner must demonstrate that "reasonable jurists could debate whether … the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n.4 (1983)); *see United States v. Swaby*, 855 F.3d 233, 239 (4th Cir. 2017). Petitioner's claims are based on incorrect interpretations of statutory provisions and judicial precedent. As such, Petitioner fails to demonstrate a substantial showing of a denial of a constitutional right, and a Certificate of Appealability is **DENIED**.

In addition, the Court **ADVISES** Petitioner that he may appeal from this final Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. The Clerk must receive this written notice within sixty (60) days from this Order's date. The Court **DIRECTS** the Clerk to provide a copy of this Order to all Parties.

IT IS SO ORDERED.

/s/
Raymond A. Jackson
United States District Judge

Norfolk, Virginia
August 9, 2021

APPENDIX C

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-292

In re: DEARNTA LAVON THOMAS, a/k/a Bloody Razor,

Movant.

Application for Successive Habeas Authorization Arising from the United States District Court for the Eastern District of Virginia, at Norfolk

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Submitted: December 11, 2020 Decided: February 23, 2020

Before WILKINSON, AGEE, and RICHARDSON, Circuit Judges.

Motion granted by published opinion. Judge Richardson wrote the opinion, in which Judges Wilkinson and Agee concurred. Judge Wilkinson wrote a concurring opinion.

Geremy C. Kamens, Federal Public Defender, Frances H. Pratt, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Movant. G. Zachary Terwilliger, United States Attorney, Daniel T. Young, Assistant United States Attorney, Alexandria, Virginia, Richard D. Cooke, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Respondent.

Richardson, Circuit Judge:

Dearnta Thomas seeks authorization to file a successive § 2255 application. His claim rests on the rule announced in *Davis v. United States*, 139 S. Ct. 2319 (2019) (finding that the residual clause of 18 U.S.C. § 924(c)'s crime-of-violence definition was unconstitutionally vague). We face two questions in determining whether to grant his motion: (1) whether *Davis* applies retroactively to cases on collateral review and (2) whether Thomas states a plausible crime-of-violence claim that warrants further exploration by the district court.

Today we join our sister circuits in holding that Davis applies retroactively to cases on collateral review. We also find that Thomas has stated a plausible claim for relief that warrants review by a district court. We therefore grant his motion.

I. Background

In 2011, Thomas pleaded guilty to a substantive RICO offense. 18 U.S.C. § 1962(c).[1] He also pleaded guilty under § 924(c) to possessing a firearm in furtherance of a crime of violence. The predicate "crime

[1] The Racketeer Influenced and Corrupt Organizations Act ("RICO") criminalizes an individual's participation in an organized-crime enterprise. *See* 18 U.S.C. §§ 1961–68. RICO is supplemented by the Violent Crimes in Aid of Racketeering ("VICAR") offense, which "addresses the particular danger posed by those … who are willing to commit violent crimes in order to bolster their positions within such enterprises." *United States v. Ayala*, 601 F.3d 256, 266 (4th Cir. 2010). To sustain a VICAR conviction, the defendant must have committed another state or federal crime that fits within VICAR's violent-offense definition, for example, "assault with a dangerous weapon." *See* 18 U.S.C. § 1959(a)(3).

of violence" for the § 924(c) offense was aiding and abetting the commission of VICAR assault with a dangerous weapon. 18 U.S.C. §§ 1959(a)(3), 2. The VICAR offense in turn was predicated on two Virginia state-law offenses: Va. Code Ann. §§ 18.2-53.1 ("Use or display of firearm in committing felony") and 18.2-282 ("Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance"). Thomas was sentenced to 180 months in prison. He did not appeal his conviction or sentence.

After Thomas's conviction, the Supreme Court decided a line of cases that eventually led to finding § 924(c)'s residual clause, part of the definition of "crime of violence," unconstitutional. First, in 2015, the Supreme Court invalidated the residual clause of the Armed Career Criminal Act's definition of "violent felony" for being unconstitutionally vague. *See Johnson v. United States*, 576 U.S. 591, 606 (2015). Thomas did not file a § 2255 application at that time.

Then in 2018, the Supreme Court relied on *Johnson* to invalidate the residual clause in 18 U.S.C. § 16, the generally applicable "crime of violence" definition. *See Sessions v. Dimaya*, 138 S. Ct. 1204, 1223 (2018). Thomas filed his first § 2255 motion within a year of *Dimaya*'s issuance, arguing that his § 924(c) conviction could not stand based on that decision. The district court denied his motion as time-barred under § 2255(f)(3), finding that the rule Thomas sought to invoke was recognized in *Johnson*, not *Dimaya*, and that Thomas had not filed his motion within one year of *Johnson*'s issuance.

Circuit courts split over whether the principles of *Johnson* and *Dimaya* rendered § 924(c)'s crime-of-violence residual clause unconstitutional. So the

Supreme Court granted certiorari. *United States v. Davis*, 139 S. Ct. 2319 (2019). But before the Supreme Court could resolve the circuit split, Thomas sought authorization to file a second § 2255 application, which we denied.

Two months after we denied Thomas authorization, the Supreme Court decided *Davis*, which found § 924(c)'s residual clause unconstitutionally vague. 139 S. Ct. at 2336. Several weeks later, Thomas filed the motion for authorization to file a second or successive § 2255 application at issue here. We have jurisdiction to rule on his motion pursuant to 28 U.S.C. §§ 2244(b)(3)(C) and 2255(h).

II. Discussion

To file a second or successive § 2255 application in federal district court, an applicant must first obtain authorization from a court of appeals. 28 U.S.C. § 2255(h). Authorization requires the applicant to either (1) provide "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the [applicant] guilty of the underlying offense" or (2) show that his claim relies on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." *Id.*

Thomas's application invokes the latter condition, citing *Davis*. He argues that his § 924(c) conviction was not predicated on a "crime of violence" because the two state-law offenses underlying his VICAR conviction cannot satisfy § 924(c)'s force clause after Davis invalidated § 924(c)'s residual clause.

But at this stage, Thomas need not *definitively* show that he will prevail on his claim. Instead, he must only "make[] a *prima facie* showing that the application satisfies the requirements." § 2244(b)(3)(C) (emphasis added).[2] To do so, he must first "show that his claim relies on a new and retroactive rule of constitutional law." *In re Irby*, 858 F.3d 231, 233 (4th Cir. 2017). And then he must show that his claim is "plausible," thus making "a sufficient showing of possible merit to warrant a fuller exploration by the district court." *Id.* (quoting *In re Hubbard*, 825 F.3d 225, 229–30 (4th Cir. 2016)). We address each requirement in turn, ultimately granting Thomas authorization to file his habeas application in the district court.[3]

A. Retroactivity

We first consider whether *Davis* (1) announced a new rule of constitutional law (2) made retroactive to cases on collateral review (3) by the Supreme Court (4) that was previously unavailable. 28 U.S.C.

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[2] Thomas seeks to challenge his federal custody under § 2255, which incorporates the certification requirements in § 2244. 28 U.S.C. § 2255(h) ("A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals.").

[33] Section 2244(b)(1) also requires that we dismiss a "claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application." 28 U.S.C. § 2244(b)(1). We have not waded into the circuit split over whether this requirement for successive § 2254 applications also applies to federal inmates seeking to file successive § 2255 applications. *See Avery v. United States*, 140 S. Ct. 1080, 1080–81 (2020) (Kavanaugh, J., statement respecting the denial of certiorari); *see also United States v. Winestock*, 340 F.3d 200, 204 (4th Cir. 2003). And we need not do so here because Thomas's prior § 2255 application and authorization motion did not bring the same claim that he now puts forth.

§ 2255(h)(2); *see Tyler v. Cain*, 533 U.S. 656, 662 (2001). The government does not address this question in its brief, apparently agreeing with our sister circuits that *Davis* satisfies these requirements.[4] That concession is correct.

First, *Davis*'s constitutional rule is new. A "case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant's conviction became final." *Teague v. Lane*, 489 U.S. 288, 301 (1989) (plurality). A rule is "dictated by precedent" if it "was apparent to all reasonable jurists." *Lambrix v. Singletary*, 520 U.S. 518, 527–28 (1997). But even if a decision does not itself announce a new rule, extending an "old rule" "in a novel setting" creates a new rule if the "old rule" is applied "in a manner that was not dictated by precedent." *Stringer v. Black*, 503 U.S. 222, 228 (1992).

While *Davis* looked to *Johnson* and *Dimaya* in invalidating § 924(c)'s residual clause as unconstitutionally vague, that decision was not dictated by that precedent. 139 S. Ct. at 2326–27. The *Davis* Court extended the holdings of *Johnson* and *Dimaya* to invalidate a different—even if analogous—provision in § 924(c). *United States v. Reece*, 938 F.3d 630, 634 (5th Cir. 2019). In doing so, *Davis* resolved a

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[4] *King v. United States*, 965 F.3d 60, 64 (1st Cir. 2020); *United States v. Reece*, 938 F.3d 630, 635 (5th Cir. 2019); *In re Franklin*, 950 F.3d 909, 910–11 (6th Cir. 2020); *United States v. Bowen*, 936 F.3d 1091, 1097–101 (10th Cir. 2019); *In re Hammoud*, 931 F.3d 1032, 1038–39 (11th Cir. 2019); *see also In re Matthews*, 934 F.3d 296, 301 (3d Cir. 2019) (authorizing a successive § 2255 motion because applicant made a "prima facie showing" that *Davis* announced a new rule of constitutional law that was made retroactive by the Supreme Court, without so holding).

substantial circuit split over the constitutionality of § 924(c)'s residual clause after *Dimaya*. *See Davis*, 139 S. Ct. at 2325 n.2 (collecting cases); *see also Butler v. McKellar*, 494 U.S. 407, 415 (1990) ("[T]he differing positions taken by the judges of the Court of Appeals" is evidence that a case's outcome "was susceptible to debate among reasonable minds."). As the arguments by several circuit courts and the dissent in *Davis* reflect, the rule ultimately adopted was open to reasonable debate and not "dictated by" *Johnson* and *Dimaya*. *Teague*, 489 U.S. at 301.

But the Supreme Court mandates that we look to the "precedent existing at the time [Thomas]'s conviction became final" in 2011. *Teague*, 489 U.S. at 301; *see also United States v. Morris*, 429 F.3d 65, 70 (4th Cir. 2005); *O'Dell v. Netherland*, 95 F.3d 1214, 1221 (4th Cir. 1996). And in 2011, neither *Johnson* nor *Dimaya* had been decided. So if *Davis* was not dictated by precedent even after *Johnson* and *Dimaya*, it certainly was not dictated by precedent in 2011. *Cf. Welch v. United States*, 136 S. Ct. 1257, 1264 (2016) ("It is undisputed that *Johnson* announced a new rule."). So the *Davis* rule is a new one for purposes of this motion.

Second, the new rule in *Davis* applies retroactively to cases on collateral review. "*Teague* and its progeny recognize two categories of decisions that fall outside th[e] general bar on retroactivity": (1) new substantive rules and (2) new "watershed rules of criminal procedure." *Id.* (quoting *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004)). A "substantive" rule "alters the range of conduct or the class of persons that the law punishes." *Schriro*, 542 U.S. at 353. This category includes rules that "narrow the scope of a

criminal statute by interpreting its terms as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the State's power to punish." *Id*. at 352 (internal citation omitted). By contrast, a procedural rule "regulate[s] only the manner of determining the defendant's culpability." *Id*. at 353 (emphasis omitted).

Davis's rule is substantive. Before *Davis*, someone who had committed a "crime of violence" that satisfied the definition in the residual clause, but not the definition in the force clause, was subject to prosecution under § 924(c). But after *Davis*, that same person cannot face a § 924(c) charge. So *Davis* placed that individual and others like him beyond the government's power to prosecute. *See Schriro*, 542 U.S. at 352; *see also Welch*, 136 S. Ct. at 1265 (holding that *Johnson*, which invalidated the Armed Career Criminal Act's residual clause, announced a new substantive rule). The *Davis* rule is thus substantive.

Third, it was the Supreme Court that made *Davis* retroactive. The Supreme Court did not state that *Davis* was retroactive in *Davis* itself. But such an express statement by the Supreme Court is not required. *Tyler*, 533 U.S. at 668 (O'Connor, J., concurring) ("a single case that expressly holds a rule to be retroactive is not a *sine qua non*" for satisfying § 2244(b)(2)(A)'s requirement that the Supreme Court itself make the rule retroactive). Instead, a combination of Supreme Court "cases can render a new rule retroactive … if the holdings in those cases necessarily dictate retroactivity of the new rule," for example, by saying that "all" of a certain category of rules "apply retroactively." *Id*. at 666 (majority opinion). Justice O'Connor's concurrence in *Tyler* describes how two

Supreme Court cases can be read together to 'make' a rule retroactive:

> [I]f [the Supreme Court] hold[s] in Case One that a particular type of rule applies retroactively to cases on collateral review and hold[s] in Case Two that a given rule is of that particular type, then it necessarily follows that the given rule applies retroactively to cases on collateral review. In such circumstances, we can be said to have 'made' the given rule retroactive to cases on collateral review.

Id. at 668–69 (O'Connor, J., concurring); *see San-Miguel v. Dove*, 291 F.3d 257, 260 (4th Cir. 2002).

That logic applies here. The Supreme Court has held that new substantive rules of constitutional law "generally" apply retroactively to cases on collateral review. *Welch*, 136 S. Ct. at 1264. And *Davis* announced a new substantive constitutional rule. So *Davis*'s retroactivity has been "necessarily dictate[d]" by prior Supreme Court cases. *Tyler*, 533 U.S. at 666 (majority opinion).

Finally, an argument based on the rule announced in *Davis* was previously unavailable to Thomas. To satisfy this requirement, the new constitutional rule Thomas puts forth must not have been available to him when he brought his last federal proceeding—including an authorization motion—challenging his conviction. *In re Williams*, 364 F.3d 235, 239 (4th Cir. 2004). The last time Thomas challenged his conviction in federal court was when he filed his first pre-filing motion for authorization in March 2019. *Davis* was not decided until several months later. So at the time of his last motion, Thomas did not have the opportunity to bring a claim based on *Davis*.

So we conclude that *Davis* announced a new substantive rule of constitutional law that has been made retroactive to cases on collateral review by the Supreme Court and that was previously unavailable to Thomas. And so by invoking *Davis*, Thomas's application overcomes the first hurdle to granting his motion.

B. Plausible claim for relief

Having found Thomas's crime-of-violence claim relies on a new retroactive rule, we must ask if he states a "'plausible' claim for relief." *In re Irby*, 858 F.3d at 233 (quoting *In re Hubbard*, 825 F.3d at 230). That determination "may entail a cursory glance at the merits" but "the focus of the inquiry must always remain on" the authorizing standards in §§ 2244(b)(2) and 2255(h). *In re Hubbard*, 825 F.3d at 231. In doing so, "we need not decide whether [the applicant] will ultimately prevail on his claim." *Id.* at 229; *see also In re Stevens*, 956 F.3d 229, 233 (4th Cir. 2020) (noting that once a prima facie showing satisfies the authorizing standard in § 2244(b)(2)(B), "we may not plod along any further").

But we need not blind ourselves to reality. A claim is not plausible if it would clearly fail, as authorizing such a claim would be "an exercise in futility." *In re Vassell*, 751 F.3d 267, 271 (4th Cir. 2014); *see also In re Williams*, 330 F.3d 277, 284 (4th Cir. 2003). For that reason, we have declined to authorize successive applications under both §§ 2254 and 2255 on procedural grounds, for example, when the application would be untimely. *In re Vassell*, 751 F.3d at 272; *see also In re Phillips*, 879 F.3d 542, 546–47 (4th Cir. 2018) (application for authorization under § 2254 raised claim presented in a prior application in violation of § 2244(b)(1)).

Taking a "cursory glance at the merits," we determine that Thomas has stated a plausible claim for relief. *In re Williams*, 330 F.3d at 282; *see also In re Irby*, 858 F.3d at 233. In *United States v. Mathis*, we considered whether two VICAR offenses predicated on violations of Virginia law qualified as crimes of violence under § 924(c)'s force clause. 932 F.3d 242, 264–67 (4th Cir. 2019). In doing so, we followed the arguments of the parties and looked through the elements of the VICAR offense to consider whether the charged state-law predicates were categorically crimes of violence. *Id*. Thomas argues that we should follow that approach in this case. And if we do so, he makes a plausible argument that his *Davis* claim could prevail. *See* Movant's Opening Br. 18–20 (contending that Va. Code Ann. § 18.2-282[5] does not satisfy the force clause because a person could "point, hold or brandish" a firearm "in such manner as to reasonably induce fear in the mind of another" with a mens rea of recklessness); *id*. at 21–24 (arguing that Va. Code Ann. § 18.2-53.1[6]

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[5] "It shall be unlawful for any person to point, hold or brandish any firearm or any air or gas operated weapon or any object similar in appearance, whether capable of being fired or not, in such manner as to reasonably induce fear in the mind of another or hold a firearm or any air or gas operated weapon in a public place in such a manner as to reasonably induce fear in the mind of another of being shot or injured." Va. Code Ann. § 18.2-282.

[6] "It shall be unlawful for any person to use or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit murder, rape, forcible sodomy, inanimate or animate object sexual penetration as defined in § 18.2-67.2, robbery, carjacking, burglary, malicious wounding as defined in § 18.2-51, malicious bodily injury to a law-enforcement officer as defined in § 18.2-51.1, aggravated malicious wounding as defined in § 18.2-

does not qualify as a crime of violence because there is a "realistic probability" that an individual could be convicted of the offense by using or threatening the use of force against himself, rather than "against another").

But our recent holding in *United States v. Keene*, 955 F.3d 391 (4th Cir. 2020), suggests that we need not look through the VICAR elements and examine only the underlying state-law predicates. In *Keene*, we held that to convict a defendant of VICAR assault with a dangerous weapon, the defendant must have "engag[ed] in conduct that violated both th[e] enumerated federal offense as well as a state law offense, regardless whether the two offenses are a categorical 'match.'" *Id.* at 398–99. And *Keene* held that one element of a VICAR-assault-with-a-dangerous-weapon offense is that the defendant committed the enumerated federal offense, "assault with a dangerous weapon." *Id.* at 397. That suggests that we are not limited to considering whether the charged state-law predicate offenses are categorically crimes of violence independent of VICAR.[7] And the government explains that doing so permits us to consider an easier question: whether the assault-with-a-dangerous-weapon element satisfies § 924(c)'s force clause. *See United States v. Bryant*, 949 F.3d 168, 182 (4th Cir. 2020) (explaining for a different statute that "assault requires at least *some* use or threatened use of force" and the

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51.2, malicious wounding by mob as defined in § 18.2-41 or abduction." Va. Code Ann. § 18.2-53.1.

[7] In *Mathis*, neither party questioned the propriety of looking through the VICAR offense to the charged state-law predicates to conduct the crime-of-violence analysis, nor did we hold that we must ignore VICAR's "assault" element.

"use of a dangerous weapon to put the victim's life in jeopardy transforms the force into violent physical force" that satisfies § 924(c)'s force clause); *see also Manners v. United States*, 947 F.3d 377, 382 (6th Cir. 2020) (following this approach and holding that a § 1959(a)(3) VICAR conviction is a crime of violence under § 924(c)'s force clause).

Based on our cursory glance at these competing approaches, we find that Thomas has stated a plausible claim for relief that warrants further exploration by the district court. *See In re Irby*, 858 F.3d at 233; *In re Hubbard*, 825 F.3d at 229.

* * *

Thomas has satisfied the requirements for authorization to file a second or successive § 2255 application. *Davis* applies retroactively to cases on collateral review, and Thomas has made a plausible claim that *Davis*'s new rule requires a different outcome in his case. His motion is therefore

GRANTED.

WILKINSON, Circuit Judge, concurring:

I am happy to concur in the majority opinion in this case. I do so for two reasons.

I.

The first concerns the need for pre-filing authority to file a successive habeas corpus petition. *See* 28 U.S.C. § 2255(h). Congress did not enact AEDPA's pre-filing requirement on a whim. It was a gateway decidedly not designed for universal collateral admissions. *See Felker v. Turpin*, 518 U.S. 651, 664 (1996) (recognizing that AEDPA's pre-filing authorization requirement "further restricts the availability of relief to habeas petitioners").

I do not understand the majority opinion to regard this requirement as any sort of open door. My fine colleagues rightly recognize, for example, that there is no need to grant authorization to applications that are untimely or that raise claims presented in an earlier petition. *See* Maj. Op., *ante* at 10 (citing *In re Vassell*, 751 F.3d 267 (4th Cir. 2014); *In re Phillips*, 879 F.3d 542 (4th Cir. 2018)). These examples are buttressed by the requirement that petitioner show a plausibly meritorious claim. As the opinion notes, the standard at this stage is whether the movant "states a 'plausible claim for relief.'" Maj. Op, *ante* at 9 (quoting *In re Irby*, 858 F.3d 231, 233 (4th Cir. 2017) (internal quotation marks and citation omitted)). This makes good on the statement in *Vassell* that we are not required to engage in "an exercise in futility." 751 F.3d at 271.

Our criminal justice system faces a burgeoning tension between prospectivity and retroactivity. A romance with retroactivity not only threatens justice through staleness. It risks a consequential misallocation of limited resources. Serious crimes are occurring

as we speak. Prosecutors should not be so consumed with past convictions that they are hampered in the ability to prosecute present crimes. Public defenders should not be stretched so thin that they cannot afford defendants the robust defense they deserve at the time it will do the most good.

The budding romance with retroactivity does have its downside. Every crime is committed at some point (or over some span) of time. And as the Ex Post Facto Clause instructs, *see* U.S. Const. art. I, § 9, it is often not only right but required to apply law as it exists at that finite point. Of course, law changes in all directions over time. But it imposes a Promethean task on criminal justice to revisit cases repeatedly in order to keep them "current." And to revisit some cases but not others and to correct some alleged errors but not others will create a whole new perception of unfairness. The entire enterprise shall soon enough outstrip our best intentions; we shall be chasing our tails. As Professor Paul Bator famously said, "There comes a point where a procedural system which leaves matters perpetually open no longer reflects humane concern but merely anxiety and a desire for immobility." Paul M. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441, 452–53 (1963). Such a fate has already befallen some criminal justice systems, including, for example, those of India and Brazil. *See United States v. Hawkins*, 724 F.3d 915, 918 (7th Cir. 2013) (Posner, J.).

From the inmate's point of view, the retroactive perspective also carries risks if permitted to compromise the spirit of redemption. This is true both in prison and beyond. I do not underestimate for one moment the pitfalls and obstacles that await prisoners

upon release. Nor do I discount the instances where some serious injustice has been done. But every person has the potential to make a positive difference to his or her community going forward if, that is, the prospective perspective is not overcome by bitterness and resentment at the past.

Lives are irreparably damaged by unduly harsh sentences. Lives are also irreparably scarred by the commission of serious crimes. The First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018), represents a laudable effort on the part of Congress to redress the ills of excessive incarceration. But AEDPA is a very different sort of statute, designed in the main to respect the finality of pleas, verdicts, sentencings, and judgments. Unraveling either Congressional effort is not a judicially sober action, and I do not understand the majority opinion to do so.

II.

I likewise commend the majority's approach to Thomas's 18 U.S.C. § 924(c) conviction. It holds open the possibility that, "to convict a defendant of VICAR assault with a dangerous weapon," we need only decide whether the crucial "assault with a dangerous weapon" element satisfies § 924(c)'s force clause. Maj. Op., *ante* at 11–12 (citing *United States v. Keene*, 955 F.3d 391, 397–99 (4th Cir. 2020)). That is a far simpler and more straight-forward approach than looking through the VICAR elements to determine whether the underlying state predicates qualify. Conducting the perennially quarrelsome exercise of deciding whether there is a categorical match between the state predicate crime and the generic definition of a VICAR offense is neither legally necessary nor economically desirable. Agreeing with the majority's

commonsensical allusion to simplicity, *see* Maj. Op., *ante* at 11–12, I likewise concur in its opinion.

APPENDIX D

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Norfolk Division

UNITED STATES OF AMERICA v. DEARNTA LAVON THOMAS a/k/a "Bloody Razor" Defendant.	Case Number: 2:11cr00058-001 USM Number: 78241-083 Defendant's Attorney: Timothy V. Anderson, Esquire

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Counts 1 and 4 of the Indictment.

Accordingly, the defendant is adjudged guilty of the following counts involving the indicated offenses:

Title and Section	**Nature of Offense**	**Offense Class**	**Offense Ended**	**Count**
T. 18 U.S.C. § 1962(c)	R.I.C.O	Felony	April 8, 2011	1
T. 18 U.S.C. § 924(C)(1)(A) and (2)	Possession in Furtherance of a Violent Crime or Use or Carry a Firearm in Relation to a Crime of Violence	Felony	April 25, 2006	4

On motion of the United States, the Court dismissed the remaining counts in the indictment as to defendant DEARNTA LAVON THOMAS.

As pronounced on December 12, 2011, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 13th day of December, 2011.

/s/
Raymond A. Jackson
United States District Judge

Case Number: 2:11cr00058-001
Defendant's name: THOMAS, DEARNTA LAVON

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **ONE HUNDRED EIGHTY (180) MONTHS.**

This term of imprisonment consists of a term of SIXTY (60) MONTHS on Count 1 and a term of ONE HUNDRED TWENTY (120) MONTHS on Count 4, all to be served consecutively.

The defendant is remanded to the custody of the United States Marshal.

I have execute this judgment as follows: **RETURN**

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

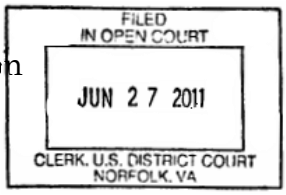
By _____
DEPUTY UNITED STATES MARSHAL

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Norfolk Division



UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 2:11cr58
	)	
DEARNTA LAVON THOMAS	)	

PLEA AGREEMENT

Neil H. MacBride, United States Attorney for the Eastern District of Virginia, and William D. Muhr and V. Kathleen Dougherty, Assistant United States Attorneys, the defendant, DEARNTA LAVON THOMAS, and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. Offense and Maximum Penalties

The defendant agrees to plead guilty to Counts One and Four of the pending indictment. Count One charges the defendant with participating directly or indirectly in the affairs of an enterprise, engaged in activities affecting interstate commerce, through a

pattern of racketeering activity, in violation of Title 18 U.S.C. § 1962(c). The maximum penalties for this offense are a term of imprisonment of life, $250,000.00 fine, a special assessment and five (5) years supervised release. Count Four charges the defendant with Possession of a Firearm in Furtherance of a Crime of Violence in violation of 18 U.S.C. § 924(c)(1)(A). The maximum penalties for this offense are a term of imprisonment of life, a mandatory minimum term of imprisonment of ten (10) years, $250,000.00 fine, a special assessment and five (5) years of supervised release. Any term of imprisonment for Count Four must run consecutive to any other term of imprisonment. The defendant understands that any supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offenses. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offenses charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

3. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this

agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

a. the right to plead not guilty and to persist in that plea;

b. the right to a jury trial;

c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and

d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

4. Role of the Court and the Probation Office

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553. The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in United States v. Booker, 125 S.Ct 738

(2005), the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

5. Waiver of Appeal and Review

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

6. Special Assessment

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars ($100.00) per count of conviction.

7. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to Title 18, United States Code, Sections 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and

subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of defendant's financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

8. Immunity from Further Prosecution in this District

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the indictment or statement of facts, except that the United States may prosecute the defendant for any crime of violence or conspiracy to commit, or aiding and abetting, a crime of violence not charged in the indictment as an offense. In such a prosecution the United States may allege and prove conduct described in the indictment or statement of facts. "Crime of violence" has the meaning set forth in Title 18, United States Code, Section 16.

9. Defendant's Cooperation

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any

criminal activity as requested by the government. In that regard:

a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.

b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.

c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice.

e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating

whether to file a motion for a downward departure or reduction of sentence.

g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

10. Use of Information Provided by the Defendant Under This Agreement

The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other prosecution. Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement, however, restricts the Court's or Probation Office's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

11. Prosecution in Other Jurisdictions

The United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction.

Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the United States Attorney's Office for Eastern District of Virginia agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

12. Defendant Must Provide Full, Complete and Truthful Cooperation

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

13. Motion for a Downward Departure

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

14. Forfeiture Agreement

The defendant agrees to forfeit all interests in any racketeering or drug related asset that the defendant owns or over which the defendant exercises control, directly or indirectly, as well as any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of his offense. The defendant further agrees to waive all interest in the asset(s) in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case. Defendant admits and agrees that the conduct described in the charging instrument and Statement of Facts provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government.

15. Restitution

Defendant agrees that restitution is mandatory pursuant to 18 U.S.C. §3663(a)(1)(A). Defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. Pursuant 18 U.S.C. § 3663(b)(2), the defendant agrees that victims of the conduct described in the charging instrument, statement of facts or any related or similar conduct shall be entitled to restitution.

16. Breach of the Plea Agreement and Remedies

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;

b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed; and

c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom

> may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

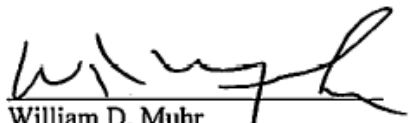
Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

17. Nature of the Agreement and Modifications

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made,

nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

NEIL H. MACBRIDE
UNITED STATES ATTORNEY

By: 

William D. Muhr
V. Kathleen Dougherty
Assistant United States Attorneys

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending indictment. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: 6-27-11

DEARNTA LAVON THOMAS
Defendant

Defense Counsel's Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 6/27/11

Timothy V. Anderson
Counsel for Defendant

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 2:11cr58
	)	
DEARNTA LAVON THOMAS	)	
	)	
Defendant.	)	

STATEMENT OF FACTS

The parties stipulate that the allegations in Counts 1 and 4 of the Indictment and the following facts are true and correct, and that had the matter gone to trial, the United States would have proven them beyond a reasonable doubt.

1. The Bounty Hunter Bloods / Nine Tech Gangsters (BHB/NTG) street gang is an "association-in-fact" enterprise as defined under the Racketeer Influenced and Corrupt Organizations (RICO) statute, 18 U.S.C. § 1961, and related case law. See United States v. Turkette, 452 U.S. 576 (1981); United States v. Tillet, 763 F.2d 628 (4th Cir. 1985). This enterprise is involved in racketeering activity which included murder, attempted murder, kidnaping, robbery, and narcotics trafficking. The enterprise affects interstate commerce through its narcotics trafficking activities and robbery of retail and

commercial establishments. The defendant, DEARNTA LAVON THOMAS, is a member or associate of the enterprise BHB/NTG.

2. The Indictment alleges that the defendant participated in the enterprise through a pattern of racketeering activity which includes the following acts. The evidence for the below-mentioned facts includes testimony by various gang members, co-conspirators, victims, and witnesses, as well as by police reports.

(A) Racketeering Act 2 of Count One of the Indictment, which alleges (a) Conspiracy to Commit Robbery and (b) Robbery of A.B. On or about November 9, 2005, the defendant and an unindicted BHB/NTG gang member made plans to rob the Sonic restaurant on Western Branch Boulevard in Chesapeake, Virginia. The unindicted co-conspirator gained the assistance of an unknown Sonic employee, who left the rear door of the restaurant unlocked in order to facilitate the robbery. After the establishment closed, the unindicted co-conspirator entered the restaurant and approached A.B., the only employee left inside the building, who was putting together the night's bank deposit. The unindicted co-conspirator pointed a gun to the back of A.B.'s head and took the deposit bag, which contained almost $1,000.00. He then fled the establishment and got into the waiting getaway car driven by the defendant.

(B) Racketeering Act 3 of Count One of the Indictment, which alleges (a) Conspiracy to Commit Robbery, (b) Robbery of A.H., and (c) Attempted Robbery of A.W. and J.R.. In December 2005, James Mack went to the residence of A.W. in Portsmouth, Virginia, for the purpose of purchasing

drugs. While there he observed a large quantity of drugs and was told that A.W. had a large amount of cash on his person. Later that day, Mack recruited other members of the BHB/NTG, including the defendant, co-defendants Amaad Brantley and Tyrone Williams, Jr., and two unindicted gang members to plan and execute a robbery of A.W. Two members of the group were armed with two handguns. They drove to A.W.'s residence and observed A.W. in a vehicle, along with J.R. and another individual. They also observed A.H. and two other individuals standing outside of the vehicle, speaking with A.W. and the other occupants of the vehicle. The BHB/NTG members ran up to the automobile with handguns pointed and forced both A.H. and the other individual standing outside of the automobile on to the ground. A.W., J.R., and the third individual in the automobile then drove off while the gang members fired shots at their automobile striking the rear bumper. They then robbed A.H. of two cellular phones, but before they could search A.H. further they were forced to flee because of an approaching automobile.

(C) Racketeering Act 5 of Count One of the Indictment, which alleges (a) Conspiracy to Commit Robbery and (b) Attempted Robbery of D.B. and Count Four of the Indictment, which alleges Possession of a Firearm in Furtherance of a Violent Crime. On or about April 25, 2006, the defendant and three other members of the BHB/NTG, namely Arous Phillips, Eric Ward, and Danyell White, were driving around the Geneva Square section of Chesapeake, Virginia looking for someone to rob. The defendant spotted D.B. who was taking out the trash and was wearing a large gold chain. The other three gang members got out of the automobile and

approached D.B. while brandishing handguns at him. D.B. suddenly took off running and they gave chase while shooting at D.B.. One of the bullets hit D.B. in the lower back. All of the assailants got back into the automobile driven by the defendant and drove away.

(D) Racketeering Act 7 of Count One of the Indictment, which alleges (a) Conspiracy to Commit Robbery and (b) Attempted Robbery of A.W. and T.W. On or about May 10, 2006 the defendant, Danyell White, Eric Ward, and two unindicted co-conspirators made plans to rob known drug dealer A.W. They drove to the A.W.'s residence in Portsmouth, Virginia, and White, Ward, and the two unindicted co-conspirators entered A.W.'s residence under the guise of purchasing drugs. Once inside White and Ward produced handguns and pointed them at A.W. and T.W., another occupant of the residence. They forced them to the ground and demanded drugs and money. T.W. suddenly rushed toward his assailants and was shot in the leg as a result. Because of the gunshot all of the assailants fled the house and got into the getaway car driven by the defendant.

(E) Racketeering Act 8 of Count One of the Indictment, which alleges (a) Conspiracy to Commit Murder and (b) Attempted Murder of D.B. In Spring 2006 the defendant, co-defendant Draindell Bassett, BHB/NTG members Eric Ward and Danyell White, and two unindicted co-conspirators were looking for D.B. in the Burbage Grant area of Suffolk, Virginia. D.B. was a member of the rival gang the Crips and had just recently been involved in an altercation with the defendant during which the defendant was shot in the lower abdomen. The group

found D.B. and began chasing after him with a knife. D.B. ran through various neighborhoods. D.B. was able to force his way into an automobile driven by an unknown female in order to escape. As the female began to drive away, the assailants caught up to her automobile and started kicking her car, putting dents into it. The female drove ahead for a distance, then dropped off D.B. and he ran away.

(F) Racketeering Act 9 of Count One of the Indictment, which alleges (a) Conspiracy to Commit Murder and (b) Attempted Murder of D.B. In Spring 2006, the defendant and James Mack were riding together in the Bellesville Meadows section of Suffolk, Virginia, when they spotted D.B. driving an automobile. D.B. was a member of the rival gang the Crips and had just recently been involved in an altercation with the defendant during which the defendant was shot in the lower abdomen. The defendant and Mack made a U-turn in their vehicle in order to chase after D.B. As they approached D.B.'s vehicle, the defendant hung out the passenger side window and began shooting at D.B. D.B. was not hit and was able to evade his assailants by driving away.

(G) Racketeering Act 1 of Count One of the Indictment, which alleges the defendant's involvement in the distribution of illegal narcotics. Between 2003 and 2006, in the Eastern District of Virginia, the defendant was involved in the distribution of over 280 grams of crack cocaine, as well as in the distribution of a certain quantity of heroin.

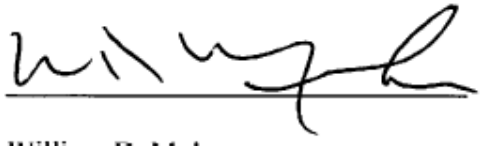
3. The United States Supreme Court has held that a pattern of racketeering activity in a RICO charge requires the proof of at least two racketeering acts. See H.J. Inc. v. Nw. Bell Tel., 492 U.S. 229, 236

(1989). The defendant admits his involvement in racketeering acts 1, 2, 3, 5, and 7, and therefore has committed the prerequisite number of racketeering acts for a pattern of racketeering activity.

4. These events occurred in the Eastern District of Virginia.

5. The defendant acknowledges that the foregoing statement of facts does not describe all of the defendant's conduct relating to the offenses charged in this case, nor does it identify all of the persons with whom the defendant may have engaged in illegal activities. The defendant further acknowledges that he is obligated under his plea agreement to provide additional information about this case beyond that which is described in this statement of facts.

NEIL H. MACBRIDE
UNITED STATES ATTORNEY

By: 

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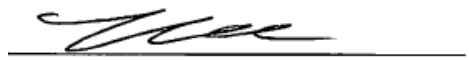
Defendant's Signature: After consulting with my attorney and pursuant to the plea agreement entered into this day between myself, the United States and my attorney, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

DEARNTA LAVON THOMAS
Defendant

Defense Counsel's Signature: I am the attorney for DEARNTA LAVON THOMAS. I have carefully reviewed the above Statement of Facts with him. To the best of my knowledge, his decision to stipulate to these facts is an informed and voluntary one.



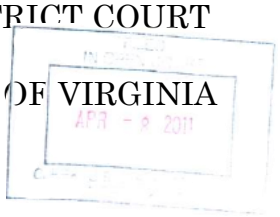
Timothy V. Anderson
Counsel for the Defendant

APPENDIX G

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division



UNITED STATES OF AMERICA v. DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," (Counts 1-8, 12-17, 58) JERRELL IVEY WOODLEY, a/k/a "Rell," (Counts 56, 57) KIWANII EDWARD MOSLEY, a/k/a "Ghost," (Counts 1, 2, 22, 23, 35-49, 58, 59) JAMYIA RASHAD BROTHERS, a/k/a "J-Black," (Counts 1, 2, 22, 23, 35-49, 58)	)	UNDER SEAL CRIMINAL NO. 2:11cr58 SEALED R.I.C.O. 18 U.S.C. § 1962(c) (Count 1) R.I.C.O. Conspiracy 18 U.S.C. § 1962(d) (Count 2) Assault with a Dangerous Weapon in Aid of Racketeering Activity 18 U.S.C. § 1959(a)(3) (Counts 3, 6, 10, 12, 16, 18, 20, 22,

AMAAD JAMAAL BRANTLEY,
(Counts 1, 2, 18, 19, 50-52, 58)

RODERICK ALLEN COTTON, JR.,
a/k/a "Rod,"
(Counts 30-32)

DARIUS DEMARCO PRAYER,
(Counts 1, 2, 24, 25, 58)

DARREN ANTOINE POLLARD,
a/k/a "Wimpy,"
(Counts 1, 2, 20, 21, 58)

TYRONE WILLIAMS, JR.,
a/k/a "TJ,"
(Counts 1, 2, 9-11, 26-29, 53-55, 58)

DRAINDELL DOMONTA BASSETT,
(Counts 1, 2, 14, 58)

MARCELLOUS CORNELIUS SMALL,
a/k/a "Peanut,"
(Counts 33, 34)

Defendants.

) 24, 26, 28, 30, 33, 40-42, 51, 54, 56)

) Attempted Murder in Aid of Racketeering Activity 18 U.S.C. § 1959(a)(5) (Counts 9, 14, 15, 37, 50, 53)

) Murder in Aid of Racketeering Activity 18 U.S.C. § 1959(a)(1) (Count 35, 36)

) Possession in Furtherance of a Violent Crime or Use or Carry a Firearm in Relation to a Crime of Violence 18 U.S.C. § 924(c)(1) (Counts 4, 7, 11, 13, 17, 19, 21, 23, 25, 27, 29, 32, 34, 43-47, 52, 55, 57)

) Interference with Commerce by

) Threat or
) Violence
) 18 U.S.C.
) § 1951(a)
) (Count 31)
)
) Felon in
) Possession of a
) Firearm
) 18 U.S.C.
) § 922(g)(1)
) (Counts 5, 8, 59)
)
) Maiming in Aid of
) Racketeering
) Activity
) 18 U.S.C.
) § 1959(a)(2)
) (Count 38)
)
) Assault Resulting
) in Serious Bodily
) Injury in Aid of
) Racketeering
) Activity
) 18 U.S.C.
) § 1959(a)(3)
) (Count 39)
)
) Murder Resulting
) from the Use and
) Discharge of a
) Firearm During
) and in Relation to
) a Crime of

) Violence
) 18 U.S.C. § 924(j)
) (Counts 48, 49)
)
) Conspiracy to
) Distribute and
) Possess with the
) Intent to
) Distribute
) Controlled
) Substances
) 21 U.S.C. § 846
) (Count 58)
)
) 18 U.S.C. § 1963
) R.I.C.O.
) Forfeiture
)
) 21 U.S.C. § 853
Criminal
Forfeiture

APRIL 2011 TERM – at Norfolk

THE GRAND JURY CHARGES THAT:

COUNT ONE
(Racketeer Influenced and Corrupt Organizations)

The Enterprise

At all times relevant to this indictment:

1. The defendants, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," KIWANII EDWARD MOSLEY, a/k/a "Ghost," JAMYIA RASHAD BROTHERS, a/k/a "J-Black," AMAAD JAMAAL BRANTLEY, DARIUS DEMARCO PRAYER, DARREN ANTOINE

POLLARD, a/k/a "Wimpy," TYRONE WILLIAMS JR, a/k/a "TJ," and DRAINDELL DOMONTA BASSETT, and others known and unknown to the Grand Jury, were members and/or associates of the Bounty Hunter Bloods (BHB)/Nine Tech Gangsters (NTG) (hereinafter "BHB/NTG" street gang), a criminal organization whose members and associates engaged in acts of violence, including murder, attempted murder, robbery, maiming, assault with a dangerous weapon, and narcotics distribution, and which operated principally in the cities of Portsmouth, Chesapeake, and Suffolk, Virginia.

2. The BHB/NTG street gang, including its leadership, membership, and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1961(4) (hereinafter "the enterprise") that is, a group of individuals associated in fact. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise. This enterprise was engaged in, and its activities affected, interstate and foreign commerce.

3. The enterprise was organized as follows:

a. Members were part of the enterprise that primarily operated out of: (i) the Churchland and Craddock sections of the City of Portsmouth, Virginia; (ii) the College Square, Huntersville, and Burbage Grant sections of the City of Suffolk, Virginia; and (iii) the Dunedin section of the City of Chesapeake, Virginia. Each locality served the enterprise as a whole and operated according to their geographic location within the Hampton Roads area of Virginia.

b. Within the enterprise, there was a clear hierarchy of members, many of whom were narcotics

dealers themselves within the area. Leaders of the enterprise obtained drugs, which they sold or "fronted" (paid the supplier after selling the drugs) to lower members of the enterprise, who in turn sold these drugs on the streets. Often the leaders obtained and distributed weapons to lower level members of the enterprise to protect the members, activities, and territories of the enterprise.

c. The hierarchy of the enterprise originated with a Blood "OG" (Original Gangster) who brought the enterprise to the East Coast from the Los Angeles, California, area. Top generals were then inducted into the enterprise, who in turn inducted other soldiers to further the enterprise and recruit other members into the enterprise.

d. Members of the enterprise recruited others, including juveniles, to become members of the enterprise. Membership required the approval of the local "OG" also known as the "Big Homie." There were various methods of induction, including being "Jumped in" or "Shoot a tre one," during which a potential member was beaten by other members of the enterprise for thirty-one seconds; completing a "Mission" or a criminal act at the direction of the leadership of the enterprise; and/or being "Blessed In," where a potential member was recognized for his or her credibility and knowledge and allowed to join the enterprise without having to undergo any type of initiation.

e. Members of the enterprise physically identified themselves as members by wearing, preferring, or associating with the colors red and black; the number "5"; the five-pointed star; various hand signs that they showed or flashed to each other;

a brand or tattoo referred to as "The Dog Paw," which was comprised of three dots forming a triangle on the upper right shoulder of the individual; and by placing gang graffiti on buildings, fences, and other structures in their neighborhoods.

f. Members of the enterprise displayed their affiliation through pictures, videos, and postings on computer social networking sites such as MySpace, Facebook, and Twitter.

g. Members of the enterprise were required to learn the traditions, customs, and protocols of the enterprise. New or suspect members could be "G-Checked," in which the new or suspect member's knowledge of the enterprise was tested to determine if he or she is an actual member of the enterprise or if they were "false flagging," that is, falsely identifying with the enterprise.

h. Members of the enterprise, whether acting independently, in small groups, or under the direction and control of the leaders, were held accountable to the upper echelon within the organization for violations of gang rules, particularly if their actions drew attention to the enterprise as a whole.

i. The leaders of the enterprise gave orders and directives to perform various tasks or jobs, referred to as "missions." These missions included narcotics distributions and various acts of violence, including attempted murder for the purposes of retribution, retaliation, and financial gain. If a member of the enterprise refused or failed to complete the task or mission, he or she was subject to discipline by the other members of the enterprise, which could include beatings and possibly death for flagrant violations.

Purposes and Objectives of the Enterprise

4. The purposes of the enterprise included the following:

a. Enriching, preserving, expanding, and protecting the power, territory, and prestige of the enterprise through the use of intimidation, violence, and threats of violence, including, murder, attempted murder, robbery, narcotics distribution, and firearm violations.

b. Keeping intended victims in fear of the enterprise and in fear of its members and associates through threats of violence and acts of violence.

c. Confronting and retaliating against rival gangs and potential witnesses through the use of intimidation, violence, threats of violence, and assaults.

d. Financially supporting members of the enterprise through drug dealing, robberies, and home invasions.

Roles of the Defendants

5. The following defendants were members or associates of BHB/NTG street gang and participated in the operation and management of this enterprise in the following manners, among others:

a. The defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," was one of the founding members and a three-star general of the BHB set of the Bloods street gang in the City of Portsmouth, Virginia, and an associate of NTG, who personally committed and directed other members of the enterprise to carry out unlawful acts and other activities in furtherance of the conduct of the enterprise's affairs.

b. The defendant, KIWANII EDWARD MOSLEY, a/k/a "Ghost," was a former member of the BHB set of the Bloods street gang in the City of Portsmouth, Virginia, and later a member of the NTG, who personally committed unlawful acts and other activities in furtherance of the conduct of the enterprise's affairs.

c. The defendant, JAMYIA RASHAD BROTHERS, a/k/a "J-Black," was a former member within the BHB set of the Bloods street gang in the City of Portsmouth, Virginia, and later a member of NTG, who personally committed unlawful acts and other activities in furtherance of the conduct of the enterprise's affairs.

d. The defendant, AMAAD JAMAAL BRANTLEY, was a leader within the BHB set of the Bloods street gang in the City of Suffolk, Virginia and also an associate of NTG, who personally committed and directed other members of the enterprise to carry out unlawful acts and other activities in furtherance of the conduct of the enterprise's affairs.

e. The defendant, DARIUS DEMARCO PRAYER was an associate of the BHB set of the Bloods street gang in the City of Suffolk, Virginia, and also an associate of NTG, who personally committed unlawful acts and other activities in furtherance of the conduct of the enterprise's affairs.

f. The defendant, DARREN ANTOINE POLLARD, a/k/a "Wimpy," was an associate of the BHB set of the Bloods street gang in the City of Suffolk, Virginia, and also an associate of NTG, who personally committed unlawful acts and other activities in furtherance of the conduct of the enterprise's affairs.

g. The defendant, TYRONE WILLIMAS, JR., a/k/a "TJ," was a member of the BHB set of the Bloods street gang in the City of Suffolk, Virginia, and also an associate of NTG, who personally committed unlawful acts and other activities in furtherance of the conduct of the enterprise's affairs.

h. The defendant, DRAINDELL DOMONTA BASSETT, was a member of the BHB set of the Bloods street gang in the City of Suffolk, Virginia, and also an associate of NTG, who personally committed unlawful acts and other activities in furtherance of the conduct of the enterprise's affairs.

Manner and Means of the Enterprise

6. The means and methods by which the defendants and their associates conducted and participated in the conduct of the affairs of the enterprise included, but were not limited to, the following:

a. Members of the enterprise and their associates used intimidation, violence, threats of violence, assaults, and maiming to preserve, expand, and protect the enterprise's territory and activities

b. Members of the enterprise and their associates used intimidation, violence, threats of violence, assaults, and maiming to promote and enhance its prestige, reputation, and position in the community.

c. Members of the enterprise and their associates promoted a climate of fear through intimidation, violence, and threats of violence.

d. Members of the enterprise and their associates used intimidation, violence, threats of violence, assaults, and maiming against various

individuals, which included known and suspected members of rival gangs.

e. Members of the enterprise used intimidation, violence, threats of violence, assaults, and maiming to discipline enterprise members and associates who had violated enterprise rules or who showed disloyalty to the enterprise.

f. Members of the enterprise distributed illegal substances to include cocaine, crack cocaine, heroin, "ecstasy," and marijuana.

The Racketeering Violation

7. In or about 2000, the exact date being unknown to the Grand Jury, and continuing thereafter up to the date of this Indictment, in the Eastern District of Virginia, and elsewhere, the defendants, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," KIWANII EDWARD MOSLEY, a/k/a "Ghost," JAMYIA RASHAD BROTHERS, a/k/a "J-Black," AMAAD JAMAAL BRANTLEY, DARIUS DEMARCO PRAYER, DARREN ANTOINE POLLARD, a/k/a "Wimpy," TYRONE WILLIAMS, JR., a/k/a "TJ," and DRAINDELL DOMONTA BASSETT, along with others known and unknown to the Grand Jury, being persons who are members of and associated with BHB/NTG, an enterprise described in Paragraphs 1 through 6 of Count One of this Indictment, did unlawfully and knowingly conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise, which was engaged in and the activities of which affected interstate commerce, through a pattern of racketeering activity, to wit: the commission of racketeering acts set forth in Paragraph 8 of Count One of this Indictment as Racketeering Acts 1 through 19.

The Pattern of Racketeering Activity

8. The pattern of racketeering activity as defined in Title 18, United States Code, Section 1961(1) and (5), consisted of the following acts:

Racketeering Act One – Conspiracy to Distribute and Possess with the Intent to Distribute Controlled Substances

a. **Conspiracy to Distribute Controlled Substances**

In or about early 2000, and continuing until the Summer of 2008, in the Eastern District of Virginia, and elsewhere, the defendants, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," KIWANII EDWARD MOSLEY, a/k/a "Ghost," JAMYIA RASHAD BROTHERS, a/k/a "J-Black," AMAAD JAMAAL BRANTLEY, DARIUS DEMARCO PRAYER, DARREN ANTOINE POLLARD, a/k/a "Wimpy," TYRONE WILLIAMS, JR., a/k/a "TJ," and DRAINDELL DOMONTA BASSETT, did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with each other and with others, both known and unknown to the Grand Jury, to distribute and to possess with the intent to distribute 5 kilograms or more of cocaine, 280 grams or more of cocaine base, commonly known as "crack" cocaine, 1 kilogram or more of heroin, and 1000 tablets or more of 3, 4-Methylenedioxymethamphetamine (MDMA) commonly known as "Ecstasy," in violation of 21 U.S.C. §§ 841(a)(1) and 846.

Racketeering Act Two – Robbery, November 9, 2005

The defendant named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Two:

a. **Conspiracy to Commit Robbery**

In or about November 9, 2005, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with other persons known and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Robbery**

In or about November 9, 2005, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," did commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby take from the person and presence of A.B., property, money, or other things of value belonging to the Sonic Restaurant, located at 3285 Western Branch Boulevard, Chesapeake, Virginia, in violation of Va. Code Ann. § 18.2-58.

Racketeering Act Three – Robbery, December 2005

The defendants named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Three:

a. **Conspiracy to Commit Robbery**

In or about December of 2005, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," AMAAD JAMAAL BRANTLEY, and TYRONE WILLIAMS, JR., a/k/a "TJ," did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with each other and with other persons known and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Robbery**

In or about December 2005, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," AMAAD JAMAAL BRANTLEY, and TYRONE WILLIAMS, JR., a/k/a "TJ," did commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby take from the person and presence of A.H., property, money, or other things of value belonging to A.H., in violation of Va. Code Ann. § 18.2-58.

c. **Attempted Robbery**

In or about December 2005, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, AMAAD JAMAAL BRANTLEY, KIWANII MOSLEY, a/k/a "Ghost," and JAMYIA BROTHERS, a/k/a "J-Black," along with others known and unknown to the Grand Jury, did attempt to commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby attempt to take from the

person and presence of A.W. and J.R., property, money, or other things of value belonging to A.W. and J.R., in violation of Va. Code Ann. §§ 18.2-58 and 18.2-26.

Racketeering Act Four – Attempted Robbery on December 8, 2005

The defendants named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Four:

a. **Conspiracy to Commit Robbery**

On or about December 8, 2005, in Suffolk, Virginia, in the Eastern District of Virginia, the defendants, AMAAD JAMAAL BRANTLEY, KIWANII MOSLEY, a/k/a "Ghost," and JAMYIA BROTHERS, a/k/a "J-Black," did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with each other and with other persons known and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Attempted Robbery**

On or about December 8, 2005, in Suffolk, Virginia, in the Eastern District of Virginia, the defendants, AMAAD JAMAAL BRANTLEY, KIWANII MOSLEY, a/k/a "Ghost," and JAMYIA BROTHERS, a/k/a "J-Black," along with others known and unknown to the Grand Jury, did attempt to commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons and did thereby attempt to take from the person and presence of A.W and P.P., property, money, or other things of value belonging to A.W. and

P.P., in violation of Va. Code Ann. §§ 18.2-58 and 18.2-26.

Racketeering Act Five – Attempted Robbery
April 25, 2006

The defendant named below committed the following acts, any one of which alone constitutes the commission of Racketeering Act Five:

a. **Conspiracy to Commit Robbery**

On or about April 25, 2006, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," did knowingly and intentionally combine, conspire, confederate, and agree with other persons known and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Attempted Robbery**

On or about April 25, 2006, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," along with others known and unknown to the Grand Jury, did attempt to commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby attempt to take from the person and presence of D.B., property, money, or other things of value belonging to D.B., in violation of Va. Code Ann. §§ 18.2-58 and 18.2-26.

Racketeering Act Six – Attempted Murder, April 29, 2006

The defendant named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Six:

a. **Conspiracy to Commit Murder**

On or about April 29, 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendant, TYRONE WILLIAMS, JR., a/k/a "TJ," did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with other persons known and unknown to the Grand Jury, to commit murder, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-22.

b. **Attempted Murder**

On or about April 29, 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendant, TYRONE WILLIAMS, JR., a/k/a "TJ," along with others known and unknown to the Grand Jury, did attempt to murder C.A., in violation of Va. Code Ann. §§ 18.2-32 and 18.2-26.

Racketeering Act Seven – Attempted Robbery, May 10, 2006

The defendant named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Seven:

a. **Conspiracy to Commit Robbery**

On or about May 10, 2006, in Hampton, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," did unlawfully, knowingly, and intentionally combine, conspire, confederate and agree with other persons known and unknown to the Grand Jury, to commit

robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Attempted Robbery**

On or about May 10, 2006, in Hampton, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," and others known and unknown to the Grand Jury, did attempt to commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby attempt to take from the person and presence of T.W., property, money, or other things of value belonging to A.W. and T.W., in violation of Va. Code Ann. §§ 18.2-58 and 18.2-26.

Racketeering Act Eight – Attempted Murder, Spring 2006

The defendants named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Eight:

a. **Conspiracy to Commit Murder**

In or about the Spring of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendants, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," and DRAINDELL DOMONTA BASSETT, did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with each other and persons known and unknown to the Grand Jury, to commit murder, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-22.

b. **Attempted Murder**

In or about the Spring of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendants, DEARNTA LAVON THOMAS, a/k/a

"Bloody Razor," and DRAINDELL DOMONTA BASSETT, along with others known and unknown to the Grand Jury, did attempt to murder D.B., in violation of Va. Code Ann. §§ 18.2-32 and 18.2-26.

Racketeering Act Nine – Attempted Murder, Spring of 2006

The defendant named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Nine:

a. **Conspiracy to Commit Murder**

In or about the Spring of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with other persons known and unknown to the Grand Jury, to commit murder, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-22.

b. **Attempted Murder**

In or about the Spring of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," along with others known and unknown to the Grand Jury, did attempt to murder D.B., in violation of Va. Code Ann. §§ 18.2-32 and 18.2-26.

Racketeering Act Ten – Conspiracy to Commit Robbery, June 24, 2006

On or about June 24, 2006, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, AMAAD JAMAAL BRANTLEY, did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with persons known

and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

Racketeering Act Eleven – Attempted Robbery, August 3, 2006

The defendant named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Eleven:

a. **Conspiracy to Commit Robbery**

On or about August 3, 2006, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendant, AMAAD JAMAAL BRANTLEY, did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with other persons known and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Attempted Robbery**

On or about August 3, 2006, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendant, AMAAD JAMAAL BRANTLEY, along with others known and unknown to the Grand Jury, did attempt to commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby attempt to take from the person and presence of R.O., property, money, or other things of value belonging to R.O., in violation of Va. Code Ann. §§ 18.2-58 and 18.2-26.

Racketeering Act Twelve – Robbery, Summer of 2006

The defendant named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Twelve:

a. **Conspiracy to Commit Robbery**

In or about the Summer of 2006, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendant, DARREN ANTOINE POLLARD, a/k/a "Wimpy," did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with other persons known and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Robbery**

In or about the Summer of 2006, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendant, DARREN ANTOINE POLLARD, a/k/a "Wimpy," and others known and unknown to the Grand Jury, did commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby take from the person and presence of S.G., K.G., T.G., A.A., and J.P., property, money, or other things of value belonging to S.G., K.G., T.G., A.A., and J.P., in violation of Va. Code Ann. § 18.2-58.

Racketeering Act Thirteen – Robbery, Summer 2006

The defendants named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Thirteen:

a. **Conspiracy to Commit Robbery**

In or about the Summer of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," did unlawfully, knowingly, and

intentionally combine, conspire, confederate, and agree with each other and with other persons known and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Robbery**

In or about the Summer of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," along with others known and unknown to the Grand Jury, did commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby attempt to take from the person and presence of D.B., property, money, or other things of value belonging to D.B., in violation of Va. Code Ann. § 18.2-58.

Racketeering Act Fourteen – Robbery, April 24, 2007

The defendant named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Fourteen:

a. **Conspiracy to Commit Robbery**

On or about April 24, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, DARIUS DEMARCO PRAYER, did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with other persons known and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Robbery**

On or about April 24, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, DARIUS DEMARCO PRAYER, and others known and unknown to the Grand Jury, did commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby take from the person and presence of M.C., V.H., and K.H., property, money, or other things of value belonging to the M.C., V.H., and K.H., in violation of Va. Code Ann. § 18.2-58.

Racketeering Act Fifteen – Attempted Robbery, April 25, 2007

The defendant named below committed the following acts, any one of which alone constitutes the commission of Racketeering Act Fifteen:

a. **Conspiracy to Commit Robbery**

On or about April 25, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, TYRONE WILLIAMS, JR., a/k/a "TJ," did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with each other and with other persons known and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Attempted Robbery**

On or about April 25, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, TYRONE WILLIAMS, JR., a/k/a "TJ," along with others known and unknown to the Grand Jury, did attempt to commit robbery by an act of violence, and by putting a person in fear of serious

bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby attempt to take from the person and presence of T.J. and D.J., property, money, or other things of value belonging to T.J. and D.J., in violation of Va. Code Ann. §§ 18.2-58 and 18.2-26.

Racketeering Act Sixteen – Attempted Robbery, April 25, 2007

The defendant named below committed the following acts, either one of which alone constitutes the commission of Racketeering Act Sixteen:

a. **Conspiracy to Commit Robbery**

On or about April 25, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, TYRONE WILLIAMS, JR., a/k/a "TJ," did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with persons known and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Attempted Robbery**

On or about April 25, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, TYRONE WILLIAMS, JR., a/k/a "TJ," along with others known and unknown to the Grand Jury, did attempt to commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby attempt to take from the person and presence of B.H. and B.D.H., property, money, or other things of value belonging to B.H. and B.D.H., in violation of Va. Code Ann. §§ 18.2-58 and 18.2-26.

Racketeering Act Seventeen – Murder, December 15, 2007

The defendants named below committed the following acts, any one of which alone constitutes the commission of Racketeering Act Seventeen:

a. **Conspiracy to Commit Robbery**

On or about December 15, 2007, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with each other and with other persons known and unknown to the Grand Jury, to commit robbery, in violation of Va. Code Ann. §§ 18.2-58 and 18.2-22.

b. **Attempted Robbery**

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," and others known and unknown to the Grand Jury, did attempt to commit robbery by an act of violence, and by putting a person in fear of serious bodily harm, and by the threat or presenting of firearms or other deadly weapons, and did thereby attempt to take from the person and presence of J.T., R.T., R.E., S.T., and J.B., property, money, or other things of value belonging to J.T., R.T., R.E., S.T., and J.B., in violation of Va. Code Ann. §§ 18.2-58 and 18.2-26.

c. **Murder**

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the

defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," and others known and unknown to the Grand Jury, did murder John Trollinger, said murder being in the first degree in violation of Va. Code Ann. § 18.2-32.

d. **Murder**

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," and others known and unknown to the Grand Jury, did murder Ronald Trollinger, said murder being in the first degree in violation of Va. Code Ann. § 18.2-32.

e. **Murder**

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," and others known and unknown to the Grand Jury, did murder John Trollinger during the attempted commission of a robbery, said murder being capital murder in violation of Va. Code Ann. § 18.2-31(4).

f. **Murder**

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," and others known and unknown to the Grand Jury, did murder Ronald Trollinger during the attempted commission of a robbery, said murder being

capital murder in violation of Va. Code Ann. § 18.2-31(4).

g. **Attempted Murder**

On or about December 15, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," along with others known and unknown to the Grand Jury, did attempt to murder R.E. during the commission of an attempted robbery, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-25.

Racketeering Act Eighteen – Attempted Murder, June/July 2008

In or about June/July of 2008, in Virginia Beach, in the Eastern District of Virginia, the defendant, AMAAD JAMAAL BRANTLEY, along with others known and unknown to the Grand Jury, did attempt to murder E.G., in violation of Va. Code Ann. §§ 18.2-32 and 18.2-26.

Racketeering Act Nineteen – Attempted Murder, Summer 2008

In or about the Summer of 2008, in the Eastern District of Virginia, the defendant, TYRONE WILLIAMS, JR., along with others known and unknown to the Grand Jury, did attempt to murder E.G., M.M., and C.W., in violation of VA. Code Ann. §§ 18.2-32 and 18.2-26.

COUNT TWO
(Racketeering Conspiracy)

1. Paragraphs 1 through 6 and 8 of Count One of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or about 2000, the exact date being unknown to the Grand Jury, and continuing thereafter up to the date of this indictment, in the Eastern District of Virginia and elsewhere, the defendants, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," KIWANII EDWARD MOSLEY, a/k/a "Ghost," JAMYIA RASHAD BROTHERS, a/k/a "J-Black," AMAAD JAMAAL BRANTLEY, DARIUS DEMARCO PRAYER, DARREN ANTOINE POLLARD, a/k/a "Wimpy," TYRONE WILLIAMS JR., a/k/a "TJ," and DRAINDELL DOMONTA BASSETT, together with other persons known and unknown to the Grand Jury, being employed by and associated with the BHB/NTG street gang, an enterprise, which engaged in, and the activities of which affected, interstate commerce, knowingly and intentionally conspired to violate 18 U.S.C. § 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise, through a pattern of racketeering activity, as that term is defined by 18 U.S.C. § 1961(1) and (5). The pattern of racketeering activity through which the defendants agreed to conduct the affairs of the enterprise consisted of the acts set forth in paragraph 8 of Count One of this Indictment as Racketeering Acts 1 through 22, which are re-alleged and incorporated as if fully set forth herein. It was a further part of the conspiracy that DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," KIWANII EDWARD MOSLEY, a/k/a "Ghost," JAMYIA RASHAD BROTHERS, a/k/a "J-Black," AMAAD JAMAAL BRANTLEY, DARIUS DEMARCO PRAYER, DARREN ANTOINE POLLARD, a/k/a "Wimpy," TYRONE WILLIAMS, JR., a/k/a "TJ," and DRAINDELL DOMONTA BASSETT, agreed that a conspirator would commit at least two acts of

racketeering activity in the conduct of the affairs of the enterprise.

(In violation of Title 18, United States Code, Section 1962(d).)

COUNT THREE

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

The Enterprise

At all times relevant to this Indictment:

1. The defendants, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," JERRELL IVEY WOODLEY, a/k/a "Rell," KIWANII EDWARD MOSLEY, a/k/a "Ghost," JAMYIA RASHAD BROTHERS, a/k/a "J-Black," AMAAD JAMAAL BRANTLEY, RODERICK ALLEN COTTON, a/k/a "Rod," DARIUS DEMARCO PRAYER, DARREN ANTOINE POLLARD, a/k/a "Wimpy," TYRONE WILLIAMS, JR., a/k/a "TJ," DRAINDELL DOMONTA BASSETT, and MARCELLOUS CORNELIOUS SMALL, and others known and unknown to the Grand Jury, were members and/or associates of the Bounty Hunter Bloods (BHB)/Nine Tech Gangsters (NTG) (BHB/NTG street gang), a criminal organization whose members and associates engaged in acts of violence, including murder, attempted murder, robbery, maiming, assault with a dangerous weapon, and narcotics distribution, and which operated principally in the cities of Portsmouth, Chesapeake, and Suffolk, Virginia.

2. The criminal organization, including its leadership, membership, and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of

individuals associated in fact that engaged in, and the activities of which affect, interstate commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

3. Paragraphs 3 through 6 of Count One of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

4. On or about April 25, 2006, in Chesapeake, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," the defendant, did unlawfully and knowingly assault D.B. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT FOUR

(Possession of a Firearm in Furtherance of a Violent Crime)

On or about April 25, 2006, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the

commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Three of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT FIVE

(Felon in Possession of a Firearm)

On or about April 25, 2006, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," having been previously convicted of a felony crime punishable by imprisonment for a term exceeding one year, did unlawfully and knowingly possess in and affecting commerce a 40 caliber pistol, which had been shipped and transported in interstate and foreign commerce.

(In violation of Title 18, United States Code, Sections 922(g)(1) and 2.)

COUNT SIX

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about April 28, 2006, in Suffolk, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing

position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," the defendant, did unlawfully and knowingly assault D.B. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT SEVEN

(Possession of a Firearm in Furtherance of a Violent Crime)

On or about April 28, 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Six of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT EIGHT

(Felon in Possession of a Firearm)

On or about April 28, 2006, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," having been previously convicted of a

felony crime punishable by imprisonment for a term exceeding one year, did unlawfully and knowingly possess in and affecting commerce a 40 caliber pistol, which had been shipped and transported in interstate and foreign commerce.

(In violation of Title 18, United States Code, Sections 922(g)(I) and 2.)

COUNT NINE

(Attempted Murder in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about April 29, 2006, in Suffolk, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position with the BHB/NTG street gang, an enterprise engaged in racketeering activity, TYRONE WILLIAMS, JR., a/k/a "TJ," the defendant, together with persons known and unknown to the Grand Jury, did unlawfully and knowingly attempt to murder C.A., and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-26.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT TEN

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about April 29, 2006, in Suffolk, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, TYRONE WILLIAMS, JR., a/k/a "TJ," the defendant, did unlawfully and knowingly assault L.P., M.A., and B.A. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT ELEVEN

(Possession of a Firearm in Furtherance of a Violent Crime)

On or about April 29, 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendant, TYRONE WILLIAMS, JR., a/k/a "TJ," did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States

Code, Section 1959, as set forth and charged in Counts Nine and Ten of this Indictment, which are re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT TWELVE

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about May 10, 2006, in Hampton, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," the defendant, did unlawfully and knowingly assault A.W. and T.W. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT THIRTEEN

(Possession of a Firearm in Furtherance of a Violent Crime)

On or about May 10, 2006, in Hampton, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor,"

did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Twelve of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT FOURTEEN

(Attempted Murder in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. In Spring of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position with the BHB/NTG street gang, an enterprise engaged in racketeering activity, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," and DRAINDELL DOMONTA BASSETT, the defendants, together with persons known and unknown to the Grand Jury, did unlawfully and knowingly attempt to murder D.B., and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-26.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT FIFTEEN

(Attempted Murder in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. In Spring of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position with the BHB/NTG street gang, an enterprise engaged in racketeering activity, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," the defendant, together with persons known and unknown to the Grand Jury, did unlawfully and knowingly attempt to murder D.B., and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-26.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT SIXTEEN

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. In Spring of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing

position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," the defendant, did unlawfully and knowingly assault D.B. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT SEVENTEEN

(Possession of a Firearm in Furtherance of a Violent Crime)

In Spring of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendant, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Counts Fifteen and Sixteen of this Indictment, which are re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT EIGHTEEN

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about August 3, 2006, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, AMAAD JAMAAL BRANTLEY, the defendant, did unlawfully and knowingly assault R.O. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT NINETEEN

(Possession of a Firearm in Furtherance of a Violent Crime)

On or about August 3, 2006, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendant, AMAAD JAMAAL BRANTLEY, did unlawfully and knowingly possess, brandish and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Eighteen of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT TWENTY

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. In or about Summer of 2006, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, DARREN ANTOINE POLLARD, a/k/a "Wimpy," the defendant, did unlawfully and knowingly assault S.G., K.G., T.G., A.A., and J.P. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT TWENTY-ONE

(Possession of a Firearm in Furtherance of a Violent Crime)

In or about the Summer of 2006, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendant, DARREN ANTOINE POLLARD, a/k/a "Wimpy," did unlawfully and knowingly possess, brandish and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted

in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Twenty of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT TWENTY-TWO

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. In or about the Summer of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," the defendants, did unlawfully and knowingly assault D.B. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT TWENTY-THREE
(Possession of a Firearm in Furtherance of a Violent Crime)

In or about the Summer of 2006, in Suffolk, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce and procure, the commission of said offense, in furtherance of a crime of violence for which the defendants may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Twenty-Two of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT TWENTY-FOUR
(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about April 24, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, DARIUS DEMARCO PRAYER, the

defendant, did unlawfully and knowingly assault M.C., V.H., and K.H. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT TWENTY-FIVE

(Possession of a Firearm in Furtherance of a Violent Crime)

On or about April 24, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, DARIUS DEMARCO PRAYER, did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Twenty-Four of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT TWENTY-SIX

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about April 25, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration

for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, TYRONE WILLIAMS, JR., a/k/a "TJ," the defendant, did unlawfully and knowingly assault T.J. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT TWENTY-SEVEN

(Possession of a Firearm in Furtherance of a Violent Crime)

On or about April 25, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, TYRONE WILLIAMS, JR., a/k/a "TJ," did unlawfully and knowingly possess, brandish and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Twenty-Six of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT TWENTY-EIGHT
(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about April 25, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, TYRONE WILLIAMS, JR., a/k/a "TJ," the defendant, did unlawfully and knowingly assault B.H. and B.D.H. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT TWENTY-NINE
(Possession of a Firearm in Furtherance of a Violent Crime)

On or about April 25, 2007, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, TYRONE WILLIAMS, JR., a/k/a "TJ," did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United

States Code, Section 1959, as set forth and charged in Count Twenty-Eight of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT THIRTY

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about May 7, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, RODERICK ALLEN COTTON, JR., a/k/a "Rod," the defendant, did unlawfully and knowingly assault M.A. and H.A. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT THIRTY-ONE

(Interference with Commerce by Threats or Violence)

1. At all times material to this Indictment, Getty Mart was a business engaged in the sale of sundry items that were transported in interstate commerce.

2. On or about May 7, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, and elsewhere, the defendant, RODERICK ALLEN COTTON, JR., a/k/a "Rod," did unlawfully obstruct, delay, and affect, and attempt to obstruct, delay, and affect, commerce as that term is defined in Title 18, United States Code, Section 1951, and the movement of articles and commodities in such commerce by robbery as that term is defined in Title 18, United States Code, Section 1951, in that the defendant, RODERICK ALLEN COTTON, JR., a/k/a "Rod," did unlawfully take and obtain personal property consisting of United States Currency from and in the presence of the owner and possessor of the property, against his will by means of actual and threatened force, violence, and fear of injury, immediate and future, to his person, that is, by the brandishing of a firearm and threats of injury, and did aid, abet, counsel, command, induce, and procure the commission of said offense.

(In violation of Title 18, United States Code, Sections 1951 and 2.)

COUNT THIRTY-TWO

(Possession of a Firearm in Furtherance of a Violent Crime)

On or about May 7, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendant, RODERICK ALLEN COTTON, JR., a/k/a "Rod," did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Sections 1951 and 1959, as set forth and

charged in Counts Thirty and Thirty-One of this Indictment, which are re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT THIRTY-THREE

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about September 24, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, the defendant, MARCELLOUS CORNELIUS SMALL, a/k/a "Peanut," did unlawfully and knowingly assault C.L. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT THIRTY-FOUR

(Possession of a Firearm in Furtherance of a Violent Crime)

On or about September 24, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendant, MARCELLOUS CORNELIUS SMALL,

a/k/a "Peanut," did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Thirty-Three of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT THIRTY-FIVE

(Murder in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG, an enterprise engaged in racketeering activity, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," the defendants, together with persons known and unknown to the Grand Jury, did unlawfully and knowingly murder John Trollinger, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. § 18.2-32.

(In violation of Title 18, United States Code, Sections 1959(a)(1) and 2.)

COUNT THIRTY-SIX

(Murder in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG, an enterprise engaged in racketeering activity, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," the defendants, together with persons known and unknown to the Grand Jury, did unlawfully and knowingly murder Ronald Trollinger, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. § 18.2-32.

(In violation of Title 18, United States Code, Sections 1959(a)(1) and 2.)

COUNT THIRTY-SEVEN

(Attempted Murder in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration

for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position with the BHB/NTG street gang, an enterprise engaged in racketeering activity, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," the defendants, together with persons known and unknown to the Grand Jury, did unlawfully and knowingly attempt to murder R.E., and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-26.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT THIRTY-EIGHT

(Maiming in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," did unlawfully and knowingly maim J.B., and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. § 18.2-51.

(In violation of Title 18, United States Code, Sections 1959(a)(2) and 2.)

COUNT THIRTY-NINE

(Assault resulting in serious bodily injury in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," did unlawfully and knowingly assault J.B., resulting in serious bodily injury, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53, 18.2-53.1, and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT FORTY

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," the defendants, did unlawfully and knowingly assault R.E. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT FORTY-ONE

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," the defendants, did unlawfully and

knowingly assault J.B. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT FORTY-TWO

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," the defendants, did unlawfully and knowingly assault S.T. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT FORTY-THREE
(Use or Carry a Firearm in Relation to of a Crime of Violence)

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," did unlawfully and knowingly use, carry, and discharge a firearm during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Thirty-Five of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT FORTY-FOUR
(Use or Carry a Firearm in Relation to of a Crime of Violence)

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," did unlawfully and knowingly use, carry, and discharge a firearm during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Thirty-Six of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT FORTY-FIVE
(Use or Carry a Firearm in Relation to of a Crime of Violence)

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," did unlawfully and knowingly use, carry, and discharge a firearm during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Counts Thirty-Seven and Forty of this Indictment, which are re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT FORTY-SIX
(Use or Carry a Firearm in Relation to of a Crime of Violence)

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," did unlawfully and knowingly use, carry, and discharge a firearm during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Counts Thirty-Eight, Thirty-Nine, and Forty-One of this Indictment, which are re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT FORTY-SEVEN
(Use or Carry a Firearm in Relation to of a Crime of Violence)

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," did unlawfully and knowingly use, carry, and discharge a firearm during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Forty-Two of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT FORTY-EIGHT
(Murder Resulting From the Use and Discharge of a Firearm During and in Relation to a Crime of Violence)

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," in the course of committing a violation of Title 18, United States Code, Section 924(c), as set forth in Count Forty-Three of this Indictment, which is realleged and incorporated by reference herein, did cause the death of a person through the use of a firearm, which killing is a murder as defined in Title 18, United States Code, Section 1111, in that the defendants, with malice aforethought, unlawfully caused the death of John Trollinger as charged in Count Thirty-Five of this Indictment, and did aid,

abet, counsel, command, induce, and procure the commission of said offense.

(In violation of Title 18, United States Code, Sections 924(j) and 2.)

COUNT FORTY-NINE

(Murder Resulting from the Use and Discharge of a Firearm During and in Relation to a Crime of Violence)

On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black," in the course of committing a violation of Title 18, United States Code, Section 924(c), as set forth in Count Forty-Four of this Indictment, which is realleged and incorporated by reference herein, did cause the death of a person through the use of a firearm, which killing is a murder as defined in Title 18, United States Code, Section 1111, in that the defendants, with malice aforethought, unlawfully caused the death of Ronald Trollinger as charged in Count Thirty-Six of this Indictment, and did aid, abet, counsel, command, induce, and procure the commission of said offense.

(In violation of Title 18, United States Code, Sections 924(j) and 2.)

COUNT FIFTY

(Attempted Murder in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. In or about June/July of 2008, in Virginia Beach, Virginia, in the Eastern District of Virginia, as

consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position with the BHB/NTG street gang, an enterprise engaged in racketeering activity, AMAAD JAMAAL BRANTLEY, the defendant, together with persons known and unknown to the Grand Jury, did unlawfully and knowingly attempt to murder E.G., and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-26.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT FIFTY-ONE

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. In or about June/July of 2008, in Virginia Beach, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, AMAAD JAMAAL BRANTLEY, the defendant, did unlawfully and knowingly assault E.G. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said

offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT FIFTY-TWO

(Possession of a Firearm in Furtherance of a Violent Crime)

In or about June/July of 2008, in Virginia Beach, Virginia, in the Eastern District of Virginia, the defendant, AMAAD JAMAAL BRANTLEY, did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Counts Fifty and Fifty-One of this Indictment, which are re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT FIFTY-THREE

(Attempted Murder in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. In or about the Summer of 2008, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position with the BHB/NTG street gang, an enterprise

engaged in racketeering activity, TYRONE WILLIAMS, JR., a/lc/a "TJ," the defendant, together with persons known and unknown to the Grand Jury, did unlawfully and knowingly attempt to murder E.G., M.M., and C.W., and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-26.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT FIFTY-FOUR

(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. In or about the Summer of 2008, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, TYRONE WILLIAMS, JR., a/k/a "TJ," the defendant, did unlawfully and knowingly assault E.G., M.M., and C.W. with a dangerous weapon, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT FIFTY-FIVE
(Possession of a Firearm in Furtherance of a Violent Crime)

In or about the Summer of 2008, in the Eastern District of Virginia, the defendant, TYRONE WILLIAMS, JR., a/k/a "TJ," did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Counts Fifty-Three and Fifty-Four of this Indictment, which are re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT FIFTY-SIX
(Assault with a Dangerous Weapon in Aid of Racketeering Activity)

1. Paragraphs 1 through 3 of Count Three of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about March 12, 2009, in Chesapeake, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from the BHB/NTG street gang, and for the purpose of gaining entrance to and maintaining and increasing position in the BHB/NTG street gang, an enterprise engaged in racketeering activity, JERRELL IVEY WOODLEY, a/k/a "Rell," the defendant, did unlawfully and knowingly assault A.R.C., A.L.C., and N.C. with a dangerous weapon,

and did aid, abet, counsel, command, induce, and procure the commission of said offense, in violation of Va. Code Ann. §§ 18.2-53.1 and 18.2-282.

(In violation of Title 18, United States Code, Sections 1959(a)(3) and 2.)

COUNT FIFTY-SEVEN

(Possession of a Firearm in Furtherance of a Violent Crime)

On or about March 12, 2009, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, JERRELL IVEY WOODLEY, a/k/a "Rell," did unlawfully and knowingly possess, brandish, and discharge a firearm, and did aid, abet, counsel, command, induce, and procure the commission of said offense, in furtherance of a crime of violence for which the defendant may be prosecuted in a court of the United States, to wit: a violation of Title 18, United States Code, Section 1959, as set forth and charged in Count Fifty-Six of this Indictment, which is re-alleged and incorporated by reference herein.

(In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.)

COUNT FIFTY-EIGHT

(Conspiracy to Distribute and Possess with the Intent to Distribute Controlled Substances)

From early 2000, up to and including the Summer of 2008, within the Eastern District of Virginia, and elsewhere, the defendants, DEARNTA LAVON THOMAS, a/k/a Bloody Razor," KIWANII EDWARD MOSLEY, a/k/a "Ghost," JAMYIA RASHAD BROTHERS, a/k/a "J-Black," AMAAD JAMAAL BRANTLEY, DARIUS DEMARCO PRAYER, DARREN ANTOINE POLLARD, a/k/a "Wimpy,"

TYRONE WILLIAMS, JR., a/k/a "TJ," and DRAINDELL DOMONTA BASSETT, did unlawfully and knowingly combine, conspire, confederate, and agree with each other and with others both known and unknown to the Grand Jury, to commit the following offenses against the United States:

1. To unlawfully, knowingly, and intentionally distribute, and possess with the intent to distribute, 5 kilograms or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A)(ii);

2. To unlawfully, knowingly, and intentionally distribute, and possess with the intent to distribute, 280 grams or more of a mixture and substance containing a detectable amount of cocaine base, commonly known as "crack," a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A)(iii);

3. To unlawfully, knowingly, and intentionally distribute, and possess with the intent to distribute, one kilogram or more of a mixture and substance containing a detectable amount of heroin, a Schedule I narcotic controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(l)(A)(i); and

4. To unlawfully, knowingly, and intentionally distribute, and possess with the intent to distribute, 1000 tablets or more of a mixture and substance containing a detectable amount of 3, 4-Methylenedioxymethamphetamine (MDMA), commonly known as "Ecstasy," a Schedule I narcotic

controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

OVERT ACTS

1. Between 2000 and 2008, in the Eastern District of Virginia, DARIUS DEMARCO PRAYER purchased one-fifth of a gram of crack cocaine three times a week for the purpose of further distribution (approximate weight is 242 grams of crack cocaine).

2. Between 2003 and 2004, in the Eastern District of Virginia, DEARNTA LAVON THOMAS purchased one-half ounce of crack cocaine twice a week for the purpose of further distribution (approximate weight is 1,458 grams of crack cocaine).

3. Between 2003 and 2004, in the Eastern District of Virginia, DEARNTA LAVON THOMAS purchased 2 grams of heroin three times a month for the purpose of further distribution (approximate weight is 72 grams of heroin).

4. Between 2003 and March 2007, in the Eastern District of Virginia, DARIUS DEMARCO PRAYER purchased 1 gram of crack cocaine every day for the purpose of further distribution (approximate weight is 1187 grams of crack cocaine).

5. Between January 2004 and June 2006, in the Eastern District of Virginia, DEARNTA LAVON THOMAS purchased 7 grams of crack cocaine once a week for the purpose of further distribution (approximate weight is 910 grams of crack cocaine).

6. Between 2004 and March 2007, in the Eastern District of Virginia, DRAINDELL DOMONTA BASSETT possessed three and one-half grams of crack cocaine once a week for the purpose of further

distribution (approximate weight is 409.5 grams of crack cocaine).

7. Between January 2005 and June 2006, in the Eastern District of Virginia, DEARNTA LAVON THOMAS distributed one-half ounce of crack cocaine every three days (approximate weight is 2,548 grams of crack cocaine).

8. In the Summer of 2005, in Suffolk, Virginia, in the Eastern District of Virginia, KIWANII EDWARD MOSLEY and JAMYIA RASHAD BROTHERS robbed and individual of a quantity of crack cocaine for the purpose of further distribution.

9. Between 2005 and 2007, in the Eastern District of Virginia, AMAAD JAMAAL BRANTLEY purchased fourteen grams of crack cocaine two times a week for the purpose of further distribution (approximate total 2,912 grams of crack cocaine)

10. Between September 2005 and March 2007, in the Eastern District of Virginia, DARREN ANTOINE POLLARD purchased three and one-half grams of crack cocaine once a week for the purpose of further distribution (approximate total 273 grams of crack cocaine).

11. In April 2006, in the Eastern District of Virginia, DEARNTA LAVON THOMAS distributed seven grams of crack cocaine for the purpose of further distribution.

12. In April 2006, in the Eastern District of Virginia, DEARNTA LAVON THOMAS possessed a firearm in furtherance of a drug trafficking offense.

13. In June 2006, in Suffolk, Virginia, in the Eastern District of Virginia, DEARNTA LAVON THOMAS possessed with the intent to distribute 10 capsules of

heroin on four different occasions (approximate total 40 capsules of heroin).

14. In the Summer of 2006, in Portsmouth, Virginia, in the Eastern District of Virginia, TYRONE WILLIAMS, JR. robbed an individual of 75 capsules of heroin for the purpose of further distribution.

15. In the Summer of 2006, in Portsmouth, Virginia, in the Eastern District of Virginia, TYRONE WILLIAMS, JR. possessed a firearm in furtherance of a drug trafficking offense.

16. Between 2006 and 2008, in the Eastern District of Virginia, DRAINDELL DOMONTA BASSETT distributed one-fifth of a gram of crack cocaine three times a week (approximate weight is 62.4 grams of crack cocaine).

17. On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, KIWANII EDWARD MOSLEY distributed one-tenth of a gram of crack cocaine.

18. On or about December 15, 2007, in Portsmouth, Virginia, in the Eastern District of Virginia, KIWANII EDWARD MOSLEY possessed with the intent to distribute a quantity of crack cocaine.

19. In the Summer of 2008, in Portsmouth, Virginia, in the Eastern District of Virginia, DRAINDELL DOMONTA BASSETT possessed three and one-half grams of crack cocaine with the intent to distribute.

20. In the Summer of 2008, in Portsmouth, Virginia, in the Eastern District of Virginia, DRAINDELL DOMONTA BASSETT possessed a firearm in furtherance of a drug trafficking offense.

(In violation of Title 21, United States Code, Section 846.)

COUNT FIFTY-NINE

(Felon in Possession of a Firearm)

On or about December 1, 2010, in Chesapeake, Virginia, in the Eastern District of Virginia, the defendant, KIWANII EDWARD MOSLEY, a/k/a "Ghost," having been previously convicted of a felony crime punishable by imprisonment for a term exceeding one year, did unlawfully and knowingly possess in and affecting commerce firearms, specifically, one rifle and one shotgun, both of which had been shipped and transported in interstate and foreign commerce.

(In violation of Title 18, United States Code, Sections 922(g)(1) and 2.)

R.I.C.O. FORFEITURE

1. The allegations contained in Counts One and Two of this Indictment are hereby repeated, re-alleged, and incorporated by reference herein as though fully set forth at length for the purpose of alleging forfeiture pursuant to the provisions of Title 18, Untied States Code, Section 1963. Pursuant to Federal Rule of Criminal Procedure Rule 32.2, notice is hereby given to the defendants that the United States will seek forfeiture as part of any sentence in accordance with Title 18, Untied States Code, Section 1963 in the event of any defendant's conviction under Counts One and Two of this Indictment.

2. The defendants, DEARNTA LAVON THOMAS, a/k/a "Bloody Razor," KIWANII EDWARD MOSLEY, a/k/a "Ghost," JAMYIA RASHAD BROTHERS, a/k/a "J-Black," AMAAD JAMAAL BRANTLEY, DARIUS DEMARCO PRAYER, DARREN ANTOINE POLLARD, a/k/a "Wimpy," TYRONE WILLIAMS, JR., a/k/a "TJ," and DRAINDELL DOMONTA BASSETT,

a. Have acquired and maintained interests in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1);

b. Have property constituting and derived from proceeds obtained, directly and indirectly, from racketeering activity, in violation of Title 18, United States Code, Section 1962, which property is subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(3);

3. The interests of the defendants subject to forfeiture to the United States pursuant to Title 18,

United States Code, Section 1963(a)(1), (a)(2), and (a)(3), include but are not limited to:

i. Proceeds of robbery and proceeds of drug dealing; and

ii. Personal property;

4. The above-named defendants, and each of them, are jointly and severally liable for the forfeiture obligations as alleged above.

(All pursuant to Title 18, United States Code, Section 1963.)

CRIMINAL FORFEITURE

A. The defendants, if convicted of one or more of the drug violations alleged in this Indictment, shall forfeit to the United States;

i. Any and all property constituting, or derived from, and proceeds the defendant obtained, directly or indirectly, as a result of such violation.

ii. Any of the defendant's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of such violation.

B. The property subject to forfeiture includes, but is not limited to:

A monetary judgment amount of a sum to be determined later, which is the aggregate gross amount involved in the aforementioned offense or proceeds traceable to such property, to be offset by the net proceeds realized from the forfeiture of any property:

C. If any property that is subject to forfeiture, (a) cannot be located upon the exercise of due diligence, (b) has been transferred to, sold to, or deposited with a third person, (c) has been placed beyond the jurisdiction of the Court, (d) has been substantially diminished in value, or (e) has been commingled with other property that cannot be subdivided without difficulty; it is the intent of the United States to seek forfeiture of any other property of the defendant, up to the value described above, as subject to forfeiture under Title 21, United States Code, Section 853(p).

(All in violation of Title 21, United States Code, Section 853.)

NOTICE OF SPECIAL FINDINGS

A. The allegations of Counts Thirty-Five, Thirty-Six, Forty-Eight, and Forty-Nine of this Indictment are hereby re-alleged as if fully set forth herein and incorporated by reference.

B. As to Counts Thirty-Five, Thirty-Six, Forty-Eight and Forty-Nine of this Indictment, the defendants, KIWANII EDWARD MOSLEY, a/k/a "Ghost," and JAMYIA RASHAD BROTHERS, a/k/a "J-Black":

(1) were more than 18 years old at the time of the offense (Title 18, United States Code, Section 3591(a));

(2) intentionally killed Ronald Trollinger and John Trollinger (Title 18, United States Code, Section 3591(a)(2)(A));

(3) intentionally inflicted serious bodily injury that resulted in the death of Ronald Trollinger and John Trollinger (Title 18, United States Code, Section 3591(a)(2)(B));

(4) intentionally participated in an act, contemplating that the life of one or more persons would be taken or intending that lethal force would be used in connection with persons, other than one of the participants in the offense, and the victims died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

(5) intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to one or more persons, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and Ronald Trollinger and John Trollinger died as

a result of the act (Title 18, United States Code, Section 3591(a)(2)(D));

(6) in the commission of the offense, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to one or more persons in addition to the victims of the offense (Title 18, United States Code, Section 3592(c)(5));

(7) committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value (Title 18, United States Code, Section 3592(c)(8)); and

(8) intentionally killed or attempted to kill more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).

(Pursuant to Title 18, United States Code, Sections 3591 and 3592).

United States v. Dearnta Lavon Thomas, et al.
Criminal No. 2:11cr 58

A TRUE BILL:

Redacted
FOREPERSON

NEIL H. MACBRIDE
UNITED STATES ATTORNEY

By: redacted

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APPENDIX H

18 U.S.C. § 924. Penalties

…

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

…

APPENDIX I

18 U.S.C. § 1959. Violent crimes in aid of racketeering activity

(a) Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished—

(1) for murder, by death or life imprisonment, or a fine under this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine under this title, or both;

(2) for maiming, by imprisonment for not more than thirty years or a fine under this title, or both;

(3) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than twenty years or a fine under this title, or both;

(4) for threatening to commit a crime of violence, by imprisonment for not more than five years or a fine under this title, or both;

(5) for attempting or conspiring to commit murder or kidnapping, by imprisonment for not more than ten years or a fine under this title, or both; and

(6) for attempting or conspiring to commit a crime involving maiming, assault with a dangerous weapon, or assault resulting in serious bodily injury, by imprisonment for not more than three years or a fine of[1] under this title, or both.

(b) As used in this section—

(1) "racketeering activity" has the meaning set forth in section 1961 of this title; and

(2) "enterprise" includes any partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, which is engaged in, or the activities of which affect, interstate or foreign commerce.

APPENDIX J

Code of Virginia § 18.2-53.1. Use or display of firearm in committing felony

It shall be unlawful for any person to use or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while

[1] So in original. The word "of" probably should not appear.

committing or attempting to commit murder, rape, forcible sodomy, inanimate or animate object sexual penetration as defined in § 18.2-67.2, robbery, carjacking, burglary, malicious wounding as defined in § 18.2-51, malicious bodily injury to a law-enforcement officer as defined in § 18.2-51.1, aggravated malicious wounding as defined in § 18.2-51.2, malicious wounding by mob as defined in § 18.2-41 or abduction. Violation of this section shall constitute a separate and distinct felony and any person found guilty thereof shall be sentenced to a mandatory minimum term of imprisonment of three years for a first conviction, and to a mandatory minimum term of five years for a second or subsequent conviction under the provisions of this section. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

APPENDIX K

Code of Virginia § 18.2-282. Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance; penalty

A. It shall be unlawful for any person to point, hold or brandish any firearm or any air or gas operated weapon or any object similar in appearance, whether capable of being fired or not, in such manner as to reasonably induce fear in the mind of another or hold a firearm or any air or gas operated weapon in a public place in such a manner as to reasonably induce fear in the mind of another of being shot or injured.

However, this section shall not apply to any person engaged in excusable or justifiable self-defense. Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor or, if the violation occurs upon any public, private or religious elementary, middle or high school, including buildings and grounds or upon public property within 1,000 feet of such school property, he shall be guilty of a Class 6 felony.

B. Any police officer in the performance of his duty, in making an arrest under the provisions of this section, shall not be civilly liable in damages for injuries or death resulting to the person being arrested if he had reason to believe that the person being arrested was pointing, holding, or brandishing such firearm or air or gas operated weapon, or object that was similar in appearance, with intent to induce fear in the mind of another.

C. For purposes of this section, the word "firearm" means any weapon that will or is designed to or may readily be converted to expel single or multiple projectiles by the action of an explosion of a combustible material. The word "ammunition," as used herein, shall mean a cartridge, pellet, ball, missile or projectile adapted for use in a firearm.