IN THE
SUPREME COURT OF VIRGINIA

Record No. 230514

JOSE ISAIS GARCIA VASQUEZ,
Petitioner,

v.

CHADWICK DOTSON, in his official capacity as Director of the Virginia Department of Corrections; and TONY DARDEN, in his official capacity as Warden of Haynesville Correctional Center,
Respondents.

RESPONDENTS' MOTION TO DISMISS THE PETITION AND MEMORANDUM IN SUPPORT

JASON S. MIYARES
Attorney General

LAURA H. CAHILL (#86328)
Assistant Attorney General

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071 – Telephone
(804) 786-1991 – Facsimile
SolicitorGeneral@oag.state.va.us

ANDREW N. FERGUSON (#86583)
Solicitor General

ERIKA L. MALEY (#97533)
Principal Deputy Solicitor General

GRAHAM K. BRYANT (#90592)
Deputy Solicitor General

M. JORDAN MINOT (#95321)
Assistant Solicitor General

November 13, 2023

Counsel for Respondents

TABLE OF CONTENTS

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

INTRODUCTION 1

EXHIBITS 2

STATEMENT 3

A. Virginia's Earned Sentence Credit System 3

B. Garcia Vasquez's Sentence Computation and Petition for a Writ of Habeas Corpus 5

SUMMARY OF ARGUMENT 8

ARGUMENT 9

I. The plain meaning of "any violation of § 18.2-32" includes conspiracy to commit murder 9

II. *Prease* does not control this case 17

CONCLUSION 20

CERTIFICATE 21

TABLE OF AUTHORITIES

Page(s)

Cases

Borden v. United States,
141 S. Ct. 1817 (2021) 12

Boynton v. Kilgore,
271 Va. 220 (2006) 10

Chase v. DaimlerChrysler Corp.,
266 Va. 544 (2003) 10

Department of Housing and Urban Devel. v. Rucker,
535 U.S. 125 (2002) 10

Falden v. Commonwealth,
167 Va. 542 (1937) 11, 12

Massachusetts v. EPA,
549 U.S. 497 (2007) 11, 12

Meeks v. Commonwealth,
274 Va. 798 (2007) 10, 15

Prease v. Clarke,
888 S.E.2d 758, __ Va. __ (2023) .... *passim*

Ricks v. Commonwealth,
290 Va. 470 (2015) 10

Schwartz v. Commonwealth,
45 Va. App. 407 (2005) 12

Thomas v. Commonwealth,
37 Va. App. 748 (2002) 12

Tvardek v. Powhatan Vill. Homeowners Ass'n, Inc.,
291 Va. 269 (2016) 19

United States v. Gonzales,
520 U.S. 1 (1997) 11

Zinone v. Lee's Crossing Homeowners Ass'n,
282 Va. 330 (2011) 19

Statutes

Code § 8.01-660 2

Code § 18.2-22 13

Code § 18.2-25 17

Code § 18.2-29 13

Code § 18.2-32.1 13

Code § 18.2-46.5 14

Code § 53.1-202.2 *et seq.* 3

Code § 53.1-202.3 .... *passim*

Other Authorities

2020 Acts ch. 50 (Spec. Sess. I) 4, 5

2020 Acts ch. 52 (Spec. Sess. I) 4, 5

Merriam Webster's Collegiate Dictionary 53 (10th ed. 1995) 11

Rule 5:7(a)(5) 2

Webster's New World Dictionary 62 (3d College ed. 1994) 11

INTRODUCTION

Petitioner Jose Isais Garcia Vasquez, together with coconspirators, participated in a gang-related murder for which he was convicted of conspiracy to commit first-degree murder. Garcia Vasquez's crime is among the serious and dangerous offenses that the General Assembly determined should not be eligible to earn enhanced sentence credits for faster release from incarceration. Relying on an overbroad construction of both Code § 53.1-202.3 and this Court's decision in *Prease v. Clarke*, 888 S.E.2d 758, __ Va. __, __ (2023), Garcia Vasquez maintains that he is entitled to immediate release from prison. This Court should dismiss his petition.

Garcia Vazquez is not eligible for enhanced earned sentence credits. The plain language of Code § 53.1-202.3(A)(2) categorically excludes inmates convicted of "any violation" of the first-degree murder statute, Code § 18.2-32, from earning enhanced sentence credits. Garcia Vasquez's conviction of conspiracy to commit first-degree murder is a type of violation of the first-degree murder statute. Garcia Vasquez therefore falls within the class of offenders that the General Assembly intended to exclude from earning enhanced sentence credits.

Prease does not support Garcia Vasquez's position. In *Prease*, this Court held that "Code § 53.1-202.3(A)(1) does not operate to exclude individuals convicted of attempted aggravated murder from eligibility to receive expanded earned sentence credits." 888 S.E.2d at 762. But unlike this case, the aggravated murder statute "is conspicuously absent" from Code § 53.1-202.3(A). *Id.* Instead, *Prease* turned on paragraph (A)(1)'s reference to persons convicted of a "Class 1 felony," a class that does not include the attempt to commit aggravated murder at issue in that case. *Id.* Moreover, as this Court noted, paragraph (A)(1) does not include the "any violation" modifier contained in paragraph (A)(2), and specifically declined to consider that language's effect. *Id.* This Court should reject Garcia Vasquez's attempt to broaden both the plain language of the statute and the *Prease* ruling to obtain premature release from incarceration.

EXHIBITS

Pursuant to Code § 8.01-660 and in accordance with Rule 5:7(a)(5), Respondents submit as Exhibit 1 an affidavit of Donna M. Shiflett, Manager of the Virginia Department of Corrections' (VDOC) Court and Legal Services Section. (Shiflett Aff.). VDOC's Court and Legal Services

Section is responsible for computing inmates' sentences and projecting the discretionary parole eligibility date, mandatory parole release date, and good-time release date. Respondents request that this Court consider this affidavit and the accompanying enclosures as evidence in this matter.

STATEMENT

A. Virginia's Earned Sentence Credit System

Virginia has long allowed inmates serving certain sentences to earn credit for good behavior during their incarceration, thereby reducing the length of their sentences. Code § 53.1-202.2 *et seq.* These credits reduce the time the inmate must serve to satisfy the term of active incarceration, providing an incentive for inmates to engage in constructive behavior and work toward rehabilitating themselves while incarcerated. Shiflett Aff. ¶ 9, Enclosure B at 5.

Different credit systems apply to different sentences, depending on the type, date, and severity of the offense. The current system, called the earned sentence credit system, applies to inmates who committed felony offenses on or after January 1, 1995. Shiflett Aff. ¶ 6, Enclosure

B at 5. Before July 1, 2022, inmates in the earned sentence credit system could earn a maximum of 4.5 credit days for every 30 days served. Code § 53.1-202.3 (2020); see Shiflett Aff. ¶ 8, 10, Enclosures C and D.

In 2020, the General Assembly amended the earned sentence credit system to alter the maximum rate at which certain inmates could earn sentence credits. 2020 Acts chs. 50, 52 (Spec. Sess. I). This legislation added a new subsection (A) to Code § 53.1-202.3. Subsection (A) enumerates offenses—primarily more serious violent felonies—for which the maximum rate of sentence credits would remain 4.5 days per 30-day period. *Id.* For offenses not enumerated in subsection (A), the maximum sentence credits an inmate could earn varied, and could be as high as 15 days for every 30 days served for certain eligible inmates. *Id.*; see generally Shiflett Aff. ¶¶ 11–12.

As relevant here, the amended statute specifically provides that sentences for "any violation of § 18.2-32"—the first- and second-degree murder statute—are ineligible for the new maximum rate of sentence credits. Code § 53.1-202.3(A)(2). The legislation amending Code § 53.1-202.3 included enactment clauses providing that the amended

statute would "become effective on July 1, 2022," and that upon that effective date, the provisions of Code § 53.1-202.3 "shall apply retroactively to the entire sentence of any person who is confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2022." 2020 Acts chs. 50, 52 (Spec. Sess. I), at enactment cl. 2, 4; Shiflett Aff. ¶ 11.

B. Garcia Vasquez's Sentence Computation and Petition for a Writ of Habeas Corpus

Garcia Vasquez, along with his co-conspirators, were involved in a gang-related murder on March 18, 2016. Shiflett Aff. ¶ 4. He ultimately pleaded guilty to conspiracy to commit first-degree murder and criminal gang participation. Am. Pet. 2, Exs. 1–2; Shiflett Aff. Enclosure A. The Circuit Court of Prince William County sentenced Garcia Vasquez to an active term of incarceration with the VDOC totaling ten years, for his convictions for conspiracy to commit first-degree murder in violation of Code § 18.2-22, the conspiracy statute, and Code § 18.2-32, the first-degree murder statute, as well as for criminal gang participation in violation of Code § 18.2-46.2. Shiflett Aff. ¶ 4, Enclosure A.

Garcia Vasquez became a state-responsible inmate on July 14, 2020. Shiflett Aff. ¶ 10. At that time, VDOC assigned him to ESC Class

Level 1, and he began earning sentence credits at a rate of 4.5 days for every 30 days he served. Shiflett Aff. ¶ 10. His projected release date—assuming that he would continue to earn credits at this rate without misbehavior or another future event that would result in a credit deduction or change in earning level—was February 19, 2025. Shifflett Aff. ¶ 19–20, Enclosure D.

Because the amendments to Code § 53.1-202.3 would not become effective until July 1, 2022, VDOC could not and did not change any inmate's official sentence computation before that date. Shiflett Aff. ¶ 12, 16. Thus, prior to the amendments' effective date, VDOC worked diligently to identify inmates whose sentences could possibly be affected but made no changes to any inmate's official sentence computation. Shiflett Aff. ¶ 12. In addition, VDOC notified all inmates by letters posted in every housing unit that the effects of amended Code § 53.1-202.3 on their sentences, if any, would not occur until the July 1, 2022 effective date. Shiflett Aff. ¶ 13, 15.

Upon the amendments' effective date, "the maximum rate of earned sentence credit that Garcia Vasquez could receive remained unchanged" because his term of incarceration includes a sentence for an

offense enumerated in Code § 53.1-202.3(A)—conspiracy to commit first-degree murder. Shiflett Aff. ¶ 17. Accordingly, he continues to earn sentence credits at the same rate of 4.5 days for every 30 days served, and his projected good time release date remains February 19, 2025. Shiflett Aff. ¶ 18–19.

Garcia Vasquez filed a petition for a writ of habeas corpus asserting that VDOC has unlawfully detained him because it wrongfully denied him earned sentence credits. Am. Pet. 1. He subsequently moved to amend his petition on September 26, 2023, after obtaining counsel. Mot. for Leave to Amend 1–2. The petition "does not challenge Mr. Garcia Vasquez's underlying convictions or sentence," instead contending that "by virtue of the 2020 legislative expansion of the earned sentence credit program," he "earned sufficient sentence credits to be released." Am. Pet. 1, 3 n.1. Garcia Vasquez argues that "upon the effective date" of amended Code § 53.1-202.3, VDOC should have "awarded [him] earned sentence credits at a rate of 15 days for every 30 served over the

course of his entire sentence." Am. Pet. 9. Awarding those credits, he contends, "w[ill] result in his immediate release."[1] Am. Pet. 11.

SUMMARY OF ARGUMENT

The plain language of Code § 53.1-202.3(A)(2) encompasses inchoate violations of the first-degree murder statute, Code § 18.2-32. Paragraph (A)(2) excludes persons convicted of "any violation" of the first-degree murder statute from the enhanced sentence credit system. "Any" is an expansive modifier, and it demonstrates that the General Assembly intended to exclude inchoate murder offenses from the new maximum earned sentence credit rate. There is no textual reason to read "any violation" to exclude convictions of conspiracy to commit first-degree murder. Indeed, reading the text to cover only completed murder offenses reads "any" right out of the statute.

This Court's recent decision in *Prease* is not to the contrary. *Prease* held that Code § 53.1-202.3(A)(1)'s exclusion of criminals convicted of "[a] Class 1 felony" did not exclude criminals convicted of attempts to commit a Class 1 felony because attempts are not Class 1 felonies and

---

[1] The Respondents agree that if this Court concludes that Garcia Vasquez is entitled to enhanced earned sentence credits, then he would be eligible for immediate release.

no other subsection of Code § 53.1-202.3(A) encompasses them. *Prease*, 888 S.E.2d at 762. Paragraph (A)(2), however, does not refer to a felony's classification at all. In sharp contrast to this case, where the first-degree murder statute is expressly listed in Code § 53.1-202.3(A)(2), the aggravated murder statute at issue in *Prease* is "conspicuously absent from the list of enumerated offenses under Code § 53.1-202.3(A)." *Id.* And, as *Prease* noted, paragraph (A)(2) includes a modifier—"any violation" of the enumerated criminal statutes—that paragraph (A)(1) does not. *Id. Prease* explicitly left open the possibility that criminals convicted of inchoate violations of the crimes listed in paragraph (A)(2) may be excluded from the enhanced credit scheme, and the logic of *Prease* does not indicate otherwise. This Court should deny the petition.

ARGUMENT

I. The plain meaning of "any violation of § 18.2-32" includes conspiracy to commit murder

Garcia Vasquez pleaded guilty to conspiracy to commit first-degree murder. That crime is a type of "violation of § 18.2-32," the first-degree murder statute. Because Garcia Vasquez was convicted of "any violation of § 18.2-32," he is ineligible to receive enhanced sentence credits. Code § 53.1-202.3(A)(2).

When construing a statute, the "'plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction,' and a statute should never be construed in a way that leads to absurd results." *Ricks v. Commonwealth*, 290 Va. 470, 477 (2015) (quoting *Meeks v. Commonwealth*, 274 Va. 798, 802 (2007)) (internal citation omitted). The goal of statutory construction is to "ascertain and give effect to the intention of the legislature," which "is usually self-evident from the words used in the statute." *Boynton v. Kilgore*, 271 Va. 220, 227 (2006) (quoting *Chase v. DaimlerChrysler Corp.*, 266 Va. 544, 547 (2003)).

The plain language of Code § 53.1-202.3(A)(2) differs from paragraph (A)(1). While Code § 53.1-202.3(A)(1) is limited to "Class 1 felon[ies]," paragraph (A)(2) encompasses "*any* violation of § 18.2-32," without specifying the felony classification. Code § 53.1-202.3(A) (emphasis added). The inclusion of the broad phrase "any violation" evinces the General Assembly's intention to include conspiracy to commit one of the enumerated violations in the exclusion.

"[T]he word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Department of Housing and Urban*

Devel. v. Rucker, 535 U.S. 125, 131 (2002) (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997)). By its plain meaning, "any violation" encompasses "whatever kind" of violation that might occur. Merriam Webster's Collegiate Dictionary 53 (10th ed. 1995); see Webster's New World Dictionary 62 (3d College ed. 1994) (defining "any" as "one, no matter which, of more than two"). The use of the term "any" indicates that the General Assembly meant to "embrace[] all" varieties of violation, "of whatever stripe." *Massachusetts v. EPA*, 549 U.S. 497, 529 (2007); see also *id.* ("On its face, the [Clean Air Act's] definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word 'any.'").

Conspiracy to commit first-degree murder is a type of violation of the first-degree murder statute, Code § 18.2-32, within the intendment of Code § 53.1-202.3(A)'s language excluding sentences for "any violation" of Code § 18.2-32 from eligibility for enhanced earned sentence credits. A "[c]onspiracy is an agreement between two or more persons by some concerted action to commit an offense." *Falden v. Commonwealth*, 167 Va. 542, 544 (1937). Virginia's general conspiracy statute does not function alone—it requires a separate object felony. "Code § 18.2-22(a)

contain[s] gradations of punishment," but it does not contain "separate and distinct offenses [comprising] their own discrete elements." *Schwartz v. Commonwealth*, 45 Va. App. 407, 437 (2005); see also *Thomas v. Commonwealth*, 37 Va. App. 748, 754 (2002) ("The crime is not defined by the penalty."). Rather, Code § 18.2-22 provides the punishment levels for all felony conspiracy offenses, but it also requires the Commonwealth to demonstrate that the defendant conspired to commit a particular underlying offense—in this case, first-degree murder in violation of Code § 18.2-32. In other words, conspiracy to commit a crime is not a distinct stand-alone crime, but rather an inchoate version of the completed offense. See *Borden v. United States*,141 S. Ct. 1817, 1823 n.3 (2021).

Thus, given the General Assembly's employment of the intentionally broad phrase "any violation of" in enumerating the offenses for which enhanced earned sentence credits are unavailable, see *Massachusetts*, 549 U.S. at 529, a conspiracy to commit an offense is a type of violation of that underlying offense for purposes of Code § 53.1-202.3(A), see *Falden*, 167 Va. at 544; *Schwartz*, 45 Va. App. at 437. Garcia Vazquez's guilty plea states that he is guilty of "Conspiracy to Commit

1st Degree Murder," and significantly, his sentencing order enumerates both Code § 18.2-32 and Code § 18.2-22 as the code sections that Garcia Vazquez violated. Am. Pet. Ex. 1; Shiflett Aff. ¶ 4; Enclosure A (sentencing order listing "Code Section 18.2-22/18.2-32" as the statutes he violated by committing conspiracy to commit first degree murder).

Garcia Vasquez downplays the inclusion of "any" in the enumerated exclusion, instead arguing that because some inchoate offenses are "presen[t]" in Code § 53.1-202.3, therefore all others are excluded via the *expressio unius* canon. Mem. in Supp. 15–16. This argument fails. Generally, the Code of Virginia does not enumerate and define inchoate offenses independently of the completed offense. Rather, the Code defines the *punishment* for inchoate offenses distinct from the punishment for completed crimes defined elsewhere in Title 18.2. See generally Code §§ 18.2-22 through 18.2-29. For example, there is no standalone criminal offense titled "Attempted Murder of a Pregnant Woman" in the Code, only the completed offense of "Murder of a Pregnant Woman." See Code § 18.2-32.1. Consequently, the General Assembly did not specifically enumerate each of the inchoate offenses encompassed in subsection (A), because those offenses are not separately enumerated in

the Code and are instead encompassed by reference to the underlying enumerated offense.

The inchoate offenses that Garcia Vasquez points to are different because they *are* separately enumerated in the Code. See, *e.g.*, Code § 18.2-46.5 (listing inchoate offenses related to terrorism); Code § 53.1-202.3(A)(4) (excluding "[a]ny violation of subsection A of § 18.2-46.5" from enhanced credits). Contrary to Garcia Vasquez's argument, that structure demonstrates that the General Assembly intended subsection (A) to cover inchoate offenses. For Code sections that specifically define inchoate offenses like Code § 18.2-46.5, the General Assembly excluded those inchoate offenses from the enhanced earned sentence credits by expressly enumerating them in the statute. Where inchoate offenses are not separately enumerated, however, the General Assembly covered the offenses by specifying that "*any* violation" of the Code section would render the offender ineligible for the enhanced credits—as with the murder offenses in Code § 18.2-32. (Emphasis added). This reading does not render any language "superfluous," as Garcia Vazquez contends, Mem. in Supp. 18; rather, it shows that the General Assembly covered inchoate offenses in different ways based upon the way the

General Assembly defined them in the Code. There is no reason to believe that the General Assembly, by choosing catch-all language like "any," intended silently to limit the reach of the statute. See *Meeks v. Commonwealth*, 274 Va. 798, 802 (2007) (noting that the "plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction").

Garcia Vazquez also posits that the General Assembly used the term "any violation" to clarify that, for code sections listing multiple different offenses, the General Assembly intended to cover all of them. Mem. in Supp. 19. This argument, however, does not accord with the statutory structure: subsection (A) does not use the "any violation of" language for some code sections that include multiple different offenses, and does use the language for some code sections describing only a single offense. Compare Code § 53.1-202.3(A)(9) (enumerating "[r]obbery under § 18.2-58" when Code § 18.2-58 lists various types of robberies, each punished differently, including robbery causing serious injury or death punished as a Class 2 felony and robbery using threat, intimidation, or any other means than a deadly weapon punished as a Class 6 felony) with Code § 53.1-202.3(A)(16) (enumerating "[a]ny violation of

§ . . . 37.2-917" when Code § 37.2-917 contemplates only the Class 6 felony of escape by a person committed to the custody of the Commissioner of Behavioral Health and Developmental Services). That statutory structure further confirms that "any violation of" Code § 18.2-32 includes inchoate offenses.[2]

Garcia Vasquez's conviction of conspiracy to commit first degree murder is a type of violation of Code § 18.2-32, the first-degree murder statute, as well as of Code § 18.2-22, the conspiracy statute, within the intendment of the General Assembly's broad language in Code § 53.1-202.3(A). His conviction is therefore enumerated in Code § 53.1-202.3(A)(2), and he is ineligible for enhanced earned sentence credits. Code § 53.1-202.3(A)(2).

---

[2] Garcia Vazquez also argues that it would be "meaningless" to give the term "any" an "expansive definition" because Code § 53.1-202.3(B) states that "any offense other than those enumerated" is eligible for the enhanced credits. Mem. in Supp. 20 n.6. This argument is pure question-begging because the question in this case is whether inchoate murder offenses are *enumerated* in subsection (A). Because the "any violation" language of paragraph (A)(2) includes inchoate violations of Code § 18.2-32, attempted murder is "enumerated" in subsection (A), and the language in subsection (B) is inapplicable.

II. *Prease* does not control this case

Garcia Vazquez primarily relies upon *Prease*, which held that "Code § 53.1-202.3(A)(1) does not operate to exclude individuals convicted of attempted aggravated murder from eligibility to receive expanded earned sentence credits." *Prease*, 888 S.E.2d at 762. The subsection at issue in *Prease*, however, was markedly different than in this case. *Prease* turned on the fact that, unlike the first-degree murder statute at issue here, the aggravated murder statute at issue in *Prease*—Code § 18.2-31—is not enumerated anywhere in Code § 53.1-202.3(A). Rather, Code § 53.1-202.3(A)(1) excludes prisoners convicted of "[a] Class 1 felony" from eligibility for enhanced sentence credits. *Id.* This Court in *Prease* explained that, although "[a]ggravated murder is a Class 1 felony . . . attempted aggravated murder is not a Class 1 felony; it is a Class 2 felony." *Id.* Because the inmate had been convicted of an offense that is statutorily defined as a Class 2 felony, see Code § 18.2-25, his conviction did not fall under Code § 53.1-202.3(A)(1)'s exclusion of Class 1 felony convictions. *Id.*

As Garcia Vasquez notes in his brief, *Prease* was "a relatively narrow ruling that explicitly applied only to inchoate offenses of aggravated

murder." Mem. in Supp. 12. Indeed, *Prease* explicitly declined to decide whether Code § 53.1-202.3(A)(2) includes inchoate offenses, noting that paragraph (A)(2) is worded and structured differently than paragraph (A)(1): "Code § 53.1-202.3(A)(2) . . . states, in relevant part, that a conviction for '*any violation* of § 18.2-32, 18.2-32.1, 18.2-32.2, or 18.2-33' is ineligible for expanded earned sentence credits." *Prease*, 888 S.E.2d at 762. Paragraph (A)(2) does not contain any reference to the classification of the felony conviction. Code § 53.1-202.3(A)(2). And this Court noted that neither paragraph (A)(2) nor Code § 18.2-32 were at issue in *Prease*. *Id.* Accordingly, because aggravated murder falls under Code § 18.2-31, the Court "d[id] not consider the Commonwealth's argument on this point." *Id.*

Further, *Prease*'s reasoning does not apply here. *Prease*'s textual analysis turned upon the fact that Code § 53.1-202.3(A)(1) excludes those convicted of a "Class 1 felony," and the inmate at issue had been convicted of a Class 2 felony. *Prease*, 888 S.E.2d at 762. The structure of Code § 53.1-202.3(A)(2) is completely different. Paragraph (A)(2) does not rely on the classification of the felony and instead applies to "any violation" of certain felony statutes. Indeed, paragraph (A)(1) is the only

paragraph in the statute that refers to an offense's classification rather than a specific portion of the Code. Garcia Vasquez's reference to the classification of his offense is therefore inapposite. Mem. in Supp. 13.

In Code § 53.1-202.3(A), the General Assembly employed the term "any" to broaden the reach of the exclusion in some areas, see, *e.g.*, Code § 53.1-202.3(A)(4) ("Any violation of subsection A of § 18.2-46.5," the anti-terrorism statute), and chose not to include the "any" modifier in other areas, see, *e.g.*, Code § 53.1-202.3(A)(9) ("[C]arjacking under § 18.2-58.1").

"Virginia courts 'presume that the legislature chose, with care, the words it used when it enacted the relevant statute.'" *Tvardek v. Powhatan Vill. Homeowners Ass'n, Inc.*, 291 Va. 269, 277 (2016) (quoting *Zinone v. Lee's Crossing Homeowners Ass'n*, 282 Va. 330, 337 (2011)). The inclusion of the modifier "any" in some paragraphs and not others is a choice by the General Assembly to treat some crimes as deserving of broader exclusions from the enhanced sentence credit scheme than others. This Court's decision in *Prease* is in no way inconsistent with that plain meaning.

CONCLUSION

For the foregoing reasons, this Court should deny the petition. In accordance with Rule 5:7(a)(5), Respondents submit that this Court may deny and dismiss this petition as a matter of law without requiring an evidentiary hearing. See Code § 8.01-654(B)(4); Code § 8.01-695.

Respectfully submitted,

/s/ Graham K. Bryant
GRAHAM K. BRYANT (#90592)
Deputy Solicitor General

JASON S. MIYARES
Attorney General

LAURA H. CAHILL (#86328)
Assistant Attorney General

ANDREW N. FERGUSON (#86583)
Solicitor General

ERIKA L. MALEY (#97533)
Principal Deputy Solicitor General

M. JORDAN MINOT (#95321)
Assistant Solicitor General

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071 – Telephone
(804) 786-1991 – Facsimile
SolicitorGeneral@oag.state.va.us

November 13, 2023

Counsel for Respondents

CERTIFICATE

I certify that on November 13, 2023, this document was filed electronically with the Court through VACES. This brief complies with Rule 5:7(a)(7) because the portion subject to that Rule does not exceed the longer of 50 pages or 8,750 words. Copies were transmitted by email to:

Geri M. Greenspan, Esq.
Vishal Agraharkar, Esq.
American Civil Liberties Union
Foundation of Virginia, Inc.
701 E. Franklin Street, Suite 1412
Richmond, Virginia 23219
(804) 491-8584 – Telephone
(804) 649-2733 – Facsimile
ggreenspan@acluva.org
vagraharkar@acluva.org

Counsel for Petitioner

/s/ Graham K. Bryant
GRAHAM K. BRYANT (#90592)