No. 18-8292

IN THE SUPREME COURT OF THE UNITED STATES

JULIUS GREER,
PETITIONER,

- VS. –

UNITED STATES OF AMERICA,
RESPONDENT.

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

PETITIONER'S REPLY TO GOVERNMENT'S BRIEF IN OPPOSITION

ROBERT EPSTEIN
Assistant Federal Defender
Counsel of Record

BRETT G. SWEITZER
Assistant Federal Defender
Chief of Appeals

LEIGH M. SKIPPER
Chief Federal Defender

Federal Community Defender Office
for the Eastern District of Pennsylvania
Suite 540 West – Curtis Center
601 Walnut Street
Philadelphia, PA 19106
(215) 928-1100

Counsel for Julius Greer

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

FEDERAL CASES **PAGE(S)**

No. 18-8292

IN THE SUPREME COURT OF THE UNITED STATES

JULIUS GREER,
PETITIONER,

- VS. -

UNITED STATES OF AMERICA,
RESPONDENT.

REPLY TO GOVERNMENT'S BRIEF IN OPPOSITION

Although the government opposes the granting of certiorari, the government's brief nevertheless assists in making the case for it. The government does not dispute any of the essential points made in Mr. Greer's petition: 1) the district judge blatantly violated the Speedy Trial Act; 2) the courts of appeals are thoroughly divided as to the reviewability of claims, such as Mr. Greer's, that were not specifically identified in a defendant's Speedy Trial Act motion to dismiss; 3) both the language of the Act and this Court's decision in *Zedner v. United States*, 547 U.S. 489 (2006), strongly suggest that such claims are not waived and that dismissal is mandatory whenever a violation is determined; and 4) the Third Circuit's application of the plain error standard was therefore erroneous, and the court exacerbated its legal error by misapplying the standard's fourth prong.

Despite its acquiescence on these points, the government contends that certiorari should be denied because "petitioner provides no reason to believe that he would have received relief in any other circuit" and the question of whether "the court of appeals improperly applied plain error review . . . is factbound . . . . " Gov't Mem. at 6-7. The government is doubly mistaken.

First, to the extent the government is correct, that no circuit would have granted Mr. Greer relief for an undisputed flagrant violation of the Speedy Trial Act, that is a reason

certiorari should be granted in this case, not denied. The Act is "designed" not only to "protect a criminal defendant's constitutional right to a speedy trial," but to "serve the public interest in bringing prompt criminal proceedings." *United States v. Toombs*, 574 F.3d 1262, 1268 (10th Cir. 2009). Accordingly, the public interest would be well served by a decision from this Court insuring that the Act's requirements are followed, not ignored.

Second, the question of whether the Third Circuit improperly applied plain error review is not factbound, it is entirely legal. The question, at least initially, is whether plain error review under Rule 52(b) is even applicable, given this Court's holding in *Zedner* that the Act has "impli[citly] repeal[ed] Rule 52," making Rule 52(a)'s harmless error provision inapplicable, and that under the plain terms of the Act dismissal is mandated when there is a violation. 547 U.S. at 507-08.

Even assuming arguendo that notwithstanding *Zedner* the plain error standard applies, a second important legal question arises: how is the plain error standard properly applied to violations of the Act? The Third Circuit here held that Mr. Greer failed to satisfy prong four of the plain error standard because he did not show how the Speedy Trial Act violation prejudiced him at trial. Prong four, however, does not concern prejudice to the defendant, but rather whether the error affects the "'fairness, integrity or public reputation of judicial proceedings.'" *United States v. Olano*, 507 U.S. 725, 737 (1993) (quoting *United States v. Atkinson*, 297 U.S. 157, 56 (1936)). The government does not dispute that the district court's error here – addressing its own calendar congestion by entering a continuance "based on a nonexistent scheduling conflict" – is certainly an error that affects the integrity and reputation of judicial

proceedings. Appx. A at 3.[1]

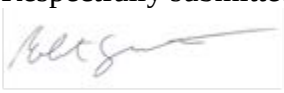
Contrary to the government's argument, there are no facts here that need to be determined and this case is thus an ideal vehicle for answering the important legal questions that have been presented; indeed, it may well be *the* vehicle for doing so. Critically, the Speedy Trial Act violation here has already been judicially determined and the government does not dispute the correctness of that holding. Accordingly, there is no need in this case to wade through the typical procedural morass of continuances and motion practice to determine whether a violation has occurred. By contrast, in most other cases, if not all, where this issue would be presented to this Court, there would not have been a finding of a Speedy Trial Act violation, given that the majority of circuits do not conduct any review of alleged violations which were not specifically raised in the district court. Here, the Speedy Trial Act violation indisputably occurred and the issue is thus presented in its clearest light; the validity of Mr. Greer's conviction turns on the appropriate standard of review. The government does not dispute that it is impossible to know how many other Speedy Trial Act violations like this one have gone unreviewed by the other circuits. A decision of this Court is needed and this case presents the perfect opportunity.

[1]It is, of course, prong three of the plain error standard, whether the error has affected the defendant's "substantial rights," that concerns the issue of prejudice. *See Olano*, 507 U.S. at 734. A defendant has been prejudiced when there is a "'reasonable probability that, but for the error,' the outcome of the proceeding would have been different." *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1343 (2016) (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 76 (2004)). When it comes to a Speedy Trial Act violation, the result of the proceeding would certainly have been different if the violation had been correctly noted by the district court, given that the Act requires dismissal for its violations. While such dismissal can be without prejudice and a new indictment possibly obtained, that new indictment would constitute a new proceeding. The result of the proceeding at issue would still clearly have changed, the indictiment would have been dismissed.

CONCLUSION

For the reasons stated, and as elaborated in greater detail in the petition, Mr. Greer respectfully requests that certiorari be granted.

Respectfully submitted,



ROBERT EPSTEIN
Assistant Federal Defender
Counsel of Record

BRETT G. SWEITZER
Assistant Federal Defender
Chief of Appeals

LEIGH M. SKIPPER
Chief Federal Defender

Federal Community Defender Office
for the Eastern District of Pennsylvania
Suite 540 West – Curtis Center
601 Walnut Street
Philadelphia, PA 19106
(215) 928-1100

Counsel for Julius Greer