18-8464

ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Oscar Mims Sr. — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

8th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Oscar Mims Sr.
(Your Name)

USMCFP SPRINGFIELD, P.O. BOX 4000
(Address)

Springfield, MO 65801
(City, State, Zip Code)

(Phone Number)

Oscar Mims Sr. was denied his §2255, without reaching the merits of his claims, because the District Court found he did not specifically allege ineffective assistance of counsel in each ground. The 8th Circuit decided, on it's own motion, not to let petitioner brief the issues at all, and ultimately denied a Certificate of Appealability.

Questions Presented

I. Does the Certificate of Appealability process weaken the efficacy of the Writ, either to the point of working a Suspension of the Writ or of making §2255 on inadequate and ineffective substitute for habeas corpus?

II. As the burden to show that a Certificate of Appealability should issue is on the Petitioner, must an opportunity to brief the request be given?

III. Must a petitioner mechanically cite The Strickland v Washington, 466 US 668 (1984), standard in every ground to obtain review of his claim?

IV. Is the right to a Speedy Trial a strategic decision, which Counsel may make without consulting his client, or over his objection under McCoy v Louisiana, 200 L Ed 2d 821 (2018), or must the client consent to the waiver?

V. Should the aggregation principle of Gonzales v Raich, 545 US 1 (2005), be revisited in light of later cases of this Court, and to provide meaningful limits on Congress Commerce Clause powers?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR CERTIORARI

Opinions Below

COMES NOW Oscar Mims Sr., Propria personam, Sui juris, the Principal who has an interest in these proceedings and all others similarly situated, asking this Honorable Court to grant a writ of certiorari to the 8th Circuit Court of Appeals in the case of UNITED STATES v OSCAR MIMS, No. 18-2893 (8th 2018). The summary denial of Certificate of Appealability is included at Appendix A, and appears to be unpublished.

The District Courts denial is included at Appendix C, and is published on Lexis Nexis at MIMS v UNITED STATES, 2018 US Dist Lexis 141217 (ED Mo, 2018).

Jurisdiction

The 8th Circuit Court of Appeals denied the Certificate of Appealability on November 9, 2018. A timely motion for rehearing/enbanc was denied December 20, 2018 which is included at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Constituional and Statutory Provisons

Art. I §8 cl 3	To regulate Commerce with Foreign Nations, and among the Several States, and with the Indian Tribes;
Art. I §9 cl 2	The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion of Invasion the public safety may require it;
Amendment VI	(in pertinent part) In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial....and to have the Assistance of Counsel for his defense.
28 U.S.C. §2253 (c)(1)	Unless a circuit justice or judge issue a Certificate of Appealability an appeal may not be taken to the court of appeals from... (B) the final order in a proceeding under 2255 (2) A Certificate of Appealability may issue under paragraph (1) only if the applicant has made a substantial showing of a Constitutional Right.
F.R.A.P. 22(b) (2)	If no express request is filed, the notice of appeal may be treated as a request for Certificate of Appealability.
Rule 12 of §2255	Procedure The Federal rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not incompatable with any statutory provisions or these rules may be applied to a proceeding under these rules.

FACTUAL BACKGROUND

In the fall of 2011, the DEA began investigating Derrick Miller for selling heroin in the St. Louis area. Based on controlled buys and information from a C.I. the DEA obtained authorization to tap and record Miller's phone calls to find out who was supplying him. During their surveillence of Miller, an individual who would be identified as (Petitioner) Oscar Mims was heard on several alleged calls.

Based solely on these calls, Mims was included with several others on an eight count indictment for conspiracy to possess and distribute heroin, in violation of 21 U.S.C. §841(a)(1), §846 and §841(b)(1)(A). Mims was arrested on June 4, 2013 by the U.S. Marshal's and DEA without **MIRANDA** warnings. He was denied pre-trial release, a decision he repeatedly challenged.

Everyone in the conspiracy plead, execept for Mims, petitioner and Timothy Anderson. Though Mims repeatedly invoked his Speedy Trial Rights, Judge Rodney D. Sippel continued the case for three years over his protests. Unsatisfied with Court ordered Counsel Eric Butts, Mims filed several pro se notice's challenging his

representation. He also challenged the Prosecutions jurisdiction, their Principal of Law, the legality of the wiretaps, the amendment of the indictment by the Court, and more. Rather than address Mims complaints, Judge Sippel put Mims in for a competency evaluation and barred the filing of pro se motions as Mims was allegedly represented by counsel. They were never addressed.

Mims went to trial on March 2, 2016. After a 6 day trial, the jury found him guilty of count 1 of the indictment. He was sentenced to the mandatory minimum of 120 months, with eight years of supervised release to follow. Counsel was removed and a pro se notice of appeal was filed. The 8th. Circuit Court of Appeals reinstated Eric Butts as Counsel.

Counsel filed an Anders brief, stating his supposedly client's case was frivolous, despite noting that the alleged evidence showed 51 grams of heroin, which is insufficient to satisfy the 100 gram threshold. Counsel, in essence, threw away Mims appeal, though an argualble basis for relief obviously exists even in his own submission. None of Mims arguments were presented.

Mims filed a §2255 challenging these issues, and raising his Counsel's ineffective Anders brief as reason for failure to present the issues on appeal. Ignoring this, Judge Sippel summarily denied the issues for failure to show cause. The complaint Counsel;s performance was summarily denied because he "performed admirably".

On appeal, the 8th. Circuit refused to let Mims file a brief, preemtively construing his Notice of Appeal as his request-something that is common practice in the 8th. Circuit. The Certificate was summarily denied three months later. A motion for reconsideration attacking the treatment as a denial of the writ altogether was denied. Nearly six years after first raising his claims, Mims has never received a ruling on them.

Reasons To Grant The Writ

I. Does the Certificate of Appealability process weaken the efficacy of Habeas Corpus to the point of being a suspension of the Writ? Does it dilute §2255 to where it is no longer an effective and adequate substitute for habeas?

A. The Certificate of Probable Cause Rationale Does Not Apply to §2255

In Barefoot v Estelle, 463 US 880, 892 &n3 (1983), this Court examined the development and purpose of the Certificate of Probable Cause, the forerunner to today's Certificate of Appealability. Frustrated by increasing number of frivolous habeas petitions challenging death sentences, in 1908 Congress instituted the Certificate, This prevented state death row inmates from using the federal courts to endlessly delay their execution. Before a Court could issue a stay, it had to find a substantial showing of the denial of a federal right, at 893. With the passage of the AEDPA, 28 U.S.C. §2253 also makes this showing mandatory for federal habeas petitoners, Slack v McDaniel, 529 US 473, 481 (2000).

The problem is, the interests identified in Barefoot for requiring state petitioners to make this showing do not easily translate into the federal context. While acknowledging the important role federal habeas played in protecting Constitutional Rights, this Court noted that it was inappropriate for federal courts to essentially relitigate entire state trials, giving habeas seekers a second bite at the apple, as it were, at 887. The considerations of finality, comity and conservation of resources come into play, at 887. By expanding federal habeas too much, it could call the very sovereignty of the States into question, id.

Habeas review of federal convictions affects only finality, and even that is only to a limited degree given the strict one year limitations. By setting aside or correcting serious error, the federal court is not undermining the authority of the state(s); it is vindicating it's own. The petitioner is exercising his one and only avenue to habeas relief, not using the federal courts as a last resort when he failed to convince the State. No procedure is sidestepped, for the federal rules still exist in habeas, and courts may-and do-still enforce them.

Unlike other limitations that the Court has upheld, such as the Congressional codification of the abuse of the writ proceedures, operating to no meaningful disadvantage from prior practices, this is a substantial departure from previous rules, Boumediene v Bush, 553 US 723, 773-74 (2008). It seeks only to limit access of federal petitioners to appellate review, Miller-El v Cockrell, 537 US 332, 337 (2003).

The rationale of the rules simply does not apply in this context, so the rule itself cannot consistently be applied in defiance of it's purpose, Zadvydas v Davis, 533 US 678, 699 (2001).

B. The Lack of Appealate Review Weakens the Writ

150 years ago, this Court recognized that appellate review of habeas essential to the general efficacy of the Writ, both for the individual petitioner, and for the development of law in general, Ex Parte Yerger, 8 Wall 85, 102-03 (1869). Having a Court of further review protects the individual against the lazy, biased, or even overworked or rushed judge denying their habeas petition without real, fair consideration. Preventing hasty, pro forma denials has always been a goal of appellate review, Barefoot at 911 (citing Garrison v Patterson, 391 US 464, 466 n2 (1968)).

Even prior to the ability to appeal, oversight has been inherent in habeas, since the founding of our country. Originally, res judatica did not apply in habeas proceedings. So, an individual could apply for habeas to every single judge in the district, knowing that a previous denial didn't preclude relief from a later judge. The abuse of the writ doctrine this Court created was due to appellate review being added. Abuse of the writ made that replacement, rather than a supplement, McClesky v Zant, 499, 479 (1991).

Now, with the Certificate of Appealability process, the petitioner gets neither. There is no review guaranteed at all. The continuing decline in number of Certificates granted: regardless of whether relief is given, despite an ever increasing number of first time filers, shows that review has been sharply curtailed. The decision of a district judge that the petition is meritless is now, essentially, final. Of the 17 Certificates granted in the 8th. Circuit last year, all but 3 were granted by district courts, according to LexisNexis. The 8th. Circuit virtually always rubber stamps the lower court's conclusions.

While other Circuits are more likely to grant a Certificate, the numbers are still extremely low. A LexisNexis search finds a total of 215 certificates granted nationwide, most of which do not lead to any relief being granted. It is statistically improbable that, out of the tens of thounsands of new habeas claims filed each year, that such a small percentage present even on arguable claim. Comparing the numbers before and after the new standard, it becomes impossible to believe that the new standard just magically coincided with a dramatic decline in quality of habeas claims. It is obvious the new standard just sharply curtailed review.

The Government has always argued that the Suspension Clause only protects habeas as it existed at our founding, see INS v St. Cyr, 533 US 289, 301 (2001). This imposes a new and illegitimate limit that didn't exist at our founding, calling into serious question its legality. Unfortunately, it is not just the loss of further review the AEDPA imposed, it has undermined the Writ even at the district level.

C. This Leaves §2255 an Inadequate Remedy

For a significant number of petitioners, this has led to an effective denial of the protections of habeas altogether. Knowing meaningful review of their decisions is unlikely, many judges quickly dispose of petitions with almost summary dismissal.

It's not uncommon to see a decision address a claim and dismiss is as frivolous in a single sentence, without any discussion-even when the claim is not obviously frivolous. See, for example, Haney v United States, 2017 US Dist Lexis 31092 (ED Mo, 2017); United States v Lee, 84 F Supp 3d 7 (D DC, 2015).

What occured here is, sadly, no outlier. Contempt for habeas petitioners is not uncommon, and has even been expressed by dissents in this court, see, Brown v Allen, 344 US 443, 537 (1943). On the face of the denial, Mims did not receive a ruling on the merits of three out of four claims, despite alleging ineffective assistance of counsel. Then, the 8th. Circuit, as is their common practice, denied the Certificate without so much as allowing Mims to file a brief.

Mims, while allowed to go through the forms, is indistinguishable from someone who had no writ al all. In cautious denials of habeas have long been disfavored for this very reason; it makes habeas ineffective, Lonchar v Thomas, 517 US 314, 324 (1996). Though §2255 has been repeatedly upheld against attack, it was because the substance was essentially unchanged, Swain v Pressley, 430 US 372, 381 (1977); United States v Hayman, 342 US 205, 223 (1952); Felker v Turpin, 518 US 651 (1996). This is no longer true.

As it stands, a significant number of pro se litigants are being denied adjudication altogether. And they are left without remedy. Even when the Court is not summarily denying the request without briefing, a petitioner has to jump sizable hurdles just to show it was incorrect to deny him a ruling at all, Slack v McDaniel, 529 US 473, 484 (2000). See also, Christeson v Roper, 860 F3d 585 (8th. 2017),(explaining that, to receive a C.O.A. on a 60(b) motion, the petitioner must also show he is entitled to relief). This allows judges to deny a forum, and to shut the court house doors, contrary to precedent.

A judicial suspension of the writ is more repugnant than a Congressional one, for no such power is Constitutionally authorized. That it is occurring deserves Certiorari.

D. Habeas IS the Main Event.

While use of habeas to diminish the force of trial as "the main event" has long been disfavored and disapproved of, McFarland v Scott, 512 US 849, 859 (1994), today we no longer have a system of trials, we have a system of pleas, Betterman v Montana, 194 L Ed 2d 723, 733 (2016). The average defendant now will be shuffled through the system, without a single motion besides continuances filed on his behalf, only to sign a plea, foreclosing challenges or appeal. Most of these defendants will be poor, and forced to rely upon an overworked public defender or CJA attorney, who is trying to clear cases off his neverending caseload.

For many defendants today, they will not learn errors have been made until they get into the federal system and get access to a law library. In such cases,

habeas is not just "the main event", it is the only event. It will be their only real opportunity to raise any challenge whatsover. Many of them will only allege sentencing mistakes, but that makes them no less important to review. As one Justice noted, most defendants are more concerned with sentence than with the fact of a conviction anyway, United States v DiFrancesco, 449 US 117, 149 (1980). Current practices effectively deny this important avenue of review, granting it on paper but withholding it in reality, Mapp v Ohio, 367 US 643, 656 (1961).

All of those considerations deserve certiorari, to preserve the force of the writ and stop judicial suspension. The Certificate of Appealability requirement of the AEDPA raises serious constitutional questions that have remained unanswered for far too long. This Court's review could provide essential guidance and resolve thise issues.

II. As the burden to show a Certificate of Appealability should issue is on the Petitioner, must an opportunity to brief the request be given?

A. Without briefing, the Certificate of Appealability process is pointless formality.

In general, judges and commentators alike criticize summary decisions issued without even full briefing. It is felt to deny the litigants fair proceedings, as it deprives them of the opportunity to be heard, Montana v Hall, 481 US 400, 405-06 &n7 (1987). This is not for its own sake. By doing this, a Court runs the risk of rendering erroneous or ill advised decisions which cause confusion amongst litigants and lower courts, Allen v Hardy, 478 US 255, 261-62 (1986). Despite this broad disfavoring, the 8th. Circuit routinely and constently denies pro se litigants the opportunity to file briefing over the Certificate of Appealability, deliberately choosing to review tha matter on its own (See letter, at Appendix E).

As unreasonable as this is in the average case, it is worse in §2255 proceedings, where the burden to show a certificate of Appealability should issue is on the petitioner, Gonzales v Thaler, 181 L Ed 2d 619, 632(2011). This requires him to show both that the lower court's ruling was "debatable" and that he was denied a Constitutional right, where, as here, the denial is on a procedural ground, both that and the underlying issue must be debated, Miller-El v Cockrell, 537 US 322, 338 (2003)(citing Slack v McDaniel, 529 US 473, 484 (2000)). The showing made must be "substantial", id at 337.

Without an opportunity to explain the errors of the lower court, the petitioner cannot meet this burden. This leaves the lower court's ruling essentially uncontested, and makes the result of the process a foregone conclusion. While going through the motions, the process contains on substance. It is nothing more than an empty ritual.

No case could be found where the 8th. Circuit has engaged in this practice, and sua sponte found issues worthy of a Certificate. Few opinions will be so obviously wrong, on their face, as to catch the Court's attention under the light scrutiny such requests receive. If a lower court has erred in denying relief, it is more likely that it is because of a missed claim, overlooked evidence, or misweighing the facts in front of it than it is that it blantanly disregarded or misapplied the law. Most issues deserving a certificate are not those that will be easily discernable; as errors of omission or comprehension they will necessarily be absent from, or hidden in the record.

This Court has routinely noted that Courts of Appeals are not well equipped to perform this sort of review, trying to find facts and weigh evidence from a cold record, bereft of guidance from an advocate, Penson v Ohio, 488 Us 75, 84-85(1988)(collecting cases); Clemons v Mississippi, 494 US 738, 765(1990). If the Court of Appeals is unlikely to correctly sift through an entire record and find meritorious claims on direct appeal, how much more unlikely is it that they will uncover undiscovered or misunderstood issues in the District Courts denial, especially when those issues may not have received a single word of discussion. This process dramatically increases the risks of erroneous and unfair denial.

B. F.R.A.P. 22 does not support sua sponte dispensing with briefs.

Under Federal Rule of Appealate Procedure 22(b)(2), if the petitioner fails to file a request for Certificate of Appealability, his Notice of appeal may be construed as such a request. This is part of the liberal treatment of pro se litigants, which most §2255 filers are, and is part of the overall theme of the federal rules to run proceedings fairly, efficiently, eliminating delay, and coming to a just and correct result, see F.R.E. 102; Burnet v Guggenheim, 288 US 280, 285(1933).

The 8th Circuit has instead construed this rule to preliminarily decide to dispense with briefing from a party. This is not done after a long period of time with no action on behalf of the petitioner, but often occurs immediately upon receipt of the notice of appeal. The 8th Circuit petitioner seeking the Certificate of Appealability often learns his case number on the same day that he learns he doesn't have to brief it; the Court has decided that it is uninterested in being bothered with a party's submission.

This is inconsistent with both the letter and spirit of the Rules of Procedure. Rule 12 of the §2255 Rules states that the Rules of Criminal and Civil Procedure are applicable to §2255 Proceedings, so long as they are not in conflict. To this end, though the rules may not specifically call for them, standards like a statement of reasons-setting forward both factual and legal reasons for denial-have long been practiced, see Hart v United States, 565 F 2d 360, 362(5th. 1978). Since briefing is opportunity to be heard under the Civil Rules, Paladin Assocs v Montana Power Co, 328 F3d 1145, 1164(9th 2003) the failure to provide that opportunity is a fatal flaw.

Accordingly, other Circuits have viewed Rule 22's permissive as a way to still provide review, even if the petitioner fails to brief his own case. The Courts may not, however, do this if any merits brief is filed, see Brewer v Quarterman, 475 F.3d 253, 255(5th. 2006). This pracitice is more consistent with this Court's allowing the various Circuits to set their own procedures, so long as they do not deny the opportunity to be heard, Nelson v Adams, Inc, 529 US 460(2000).

This currently denies pro se litigants appellate review in the 8th Circuit, and creates a serious Circuit Split. Certitorari is warranted.

III. Must a defendant mechanically recite the Strickland standard in every single ground or risk forfeit of his claims?

Petitioner was denied review of three out of his four claims because the District Court alleged that he did not show cause for his failure to present those claims on direct appeal (Order p 3-4). However, petitioner unmistakably claimed ineffective assistance of counsel in the beginning of his petition, stating Counsel basically abandoned him (§2255 p. 9-14). As the District Court noted, these claims were nothing new; Mims had complained about his Counsel everystep of the way (Order p. 4). See also Dkt. #347, 727, 809 and 854.

Given this, it is difficult to truly accept that Mims has failed to show cause for his default. Indeed, it is hard to imagine what more Mims could have done. If consistently claiming that your lawyer is failing to follow your orders and act as your agent in presenting your defense is not enough to excuse the fact that an argument has not been raised sooner, it is uncertain what will. "My lawyer should have presented x, but did not" is as textbook a claim of ineffective assistance of counsel as one can get under Strickland v Washington, 466 US 668, 690 (1984).

Had the Court decided that these claims were meritless, and therefore, Counsel could not have been ineffective for failing to raise them, that would be a different matter. But that is not what occured, The Court went out of its way to find a procedural bar to refuse to address the claim.

This is not an isolated problem, Courts often refuse to address potentially valid claims because a petitioner does not specifically allege, in each ground, that Counsel was ineffective on tha ground. See Snow v Pfister, 880 F3d 857, 865 (7th. 2018)(it is not specifically alleged Counsel was ineffective in calling the witness); United States v Holley, 2018 US Dist Lexis 198526 (WD Ark, 2018)(not specifically claimed that Counsel's incorrect advice made the plea involuntary); Branagan v Baca, 2018 US Dist Lexis 132877 (D Nev. 2018)(does not directly claim counsel was ineffective in failing to pursue diminished capacity).

These cases show that Courts are adopting needlessly technical and strict rules of pleadings for pro se litigants, rather than the liberal treatment required by Haines v Kerner, 404 US 519(1972) and its progeny. This is all the more inappropriate as most pro se litigants are unskilled, often illiterate, prisoners with no real resources, and the law is difficult, even for skilled laymen, Gideon v Wainwright, 372 US 335, 345(1963).

Though this Court has generally disfavored "magic words" said just right to invoke the desired outcome, Fry v Napoleon Cmty Schs, 197 L Ed2d 46, 62 (2017) this is what many lower courts are doing. Obvious claims of ineffective assistance, which identify specificates or omissions, as required by Strickland, at 690, that are claimed to cause prejudice are not reached because of how they are worded. While some Courts ignore technical necessity's and construe claims to be ineffective assistance despite a lack of specific wording, see Wall v Luther, 2018 US Dist Lexis 145454 (ED Penn, 2018) far too many do not.

Deliberately refusing to reach claims in a §2255 on such a basis serves no practical or just purpose. It diminishes respect for the judiciary, both by participants and observers, as the Courts are seen refusing to resolve controversies for no reason. It also fails to preserve economy as it encourages disgruntled prisoners to file repeater petitions. Finally, it fails to promote justice, as, rather than come to correct conclusions, Courts dismiss on irrelevant errors, making the process a trap for the unwary habeas seeker, Slack v McDaniel, 529 US 473, 487(2000).

This Court should grant certiorari to prevent its precedent from being diluted or disregarded.

IV. Is the Right to Speedy Trial one which cannot be waive over a defendant's objection under McCoy v Louisiana, 200 L Ed2d 821(2018) or is it a matter of strategy left to the Attorney?

In McCoy, this Court rejected the idea that a lawyer could concede their client's guilt over their client's objection. A defendant need not completely cede tje entire trial to their attorney just to have the use of a professional attorney. "The 6th. Amendment contemplates a norm in which the accused, not his lawyer, is the master of his own defense", at 829-30. While many strategic matters are left to counsel's discretion, some decisions remain the sole decision of the client, id at 830.

Though this Court enumerated several examples on either side, the right to a Speedy Trial was not mentioned. And it appears that none of the lower courts have addressed the question either. It is a right personal to the accused, like the right to take the stand or the right to insist on pleading not guilty, yet it also shares characteristics with some other decisions which might be tactical in nature, such as deciding which witnesses to call.

So, it falls neatly into neither column. And it is a matter in which the interests of the client, who may want a speedy resolution to the trial may conflict with the lawyer's who may want to a liesurely pace for numerous reasons.

Despite the fact that the underlying right-to plead not guilty versus that of speedy trial-was different, the two cases otherwise share the same flaw. Like McCoy, Mims objected early and often to his lawyer's request for continuances, which were granted over his protest. No doubt, this was considered strategy, done in the lawyer's estimation of what was best for his client. And, just like McCoy, it undermined the client's authority, sacrificing his Constitutional Rights "for his own good", id at 830. Mims was the servant, not the master-an inversion of the 6th. Amendment.

Yet, when Mims challenged this, he was told his claim was invalid, as he had waived his right to a Speedy Trial (District Court Order, p4 n2). The only way this could be is under the fiction that Counsel's actions were Mims actions, see Holland v Florida, 177 L Ed 2d 130, 150 (2010). The docket shows that all of the requested continuances were done by Counsel (Dkt. 150, 267, 767), while Mims repeatedly filed pro se Notice's to dismiss for speedy trial violations, based on his failure to consent to its waiving (Dkt. 347, 452, 499, 519).

The reach of McCoy, and its new understanding that the client is not merely an unimportant passenger along for the ride-it is his defense, so he must have some say (after all, he hears the consequences for the failure, McKoskle v Wiggins, 465 US 168, 174 (1983)) is the essential to this case. If the right to a Speedy Trial is one up to the discretion of Counsel, then there is no error, but if it is a structural right, fundamental to the fairness of the trial, Weaver v Massachusetts, 198 L Ed 2d 420 (2017), then the lower decision was in error, and Mims is entitled to relief.

Certiorari would be useful to decide which side of the line this right falls on.

V. Does Aggregation Principle of Gonzales v Raich, 545 US 1 (2005) need to be revisited as it fails to provide any meaningful check on federal authority?

Does Raich conflict with later cases like Bond v United States, 189 L Ed 2d 1 (2014).

Jurisdiction can be challenged at any time by any party at any stage of the proceedings, even for the first time in front of this Court, Henderson v Shinseki, 179 L Ed 2d 159, 166 (2011). While Mims challenged this before, in the trial court before conviction, the Court refused to address it, so it has never been resolved.

Currently, the federal courts are interpretting the Commerce Clause to allow Congress to rgulate "the national market" for drugs; this automatically brings every drug case, no matter how petty or insignificant, under the federal authority to prosecute, Taylor v United States, 195 L Ed 2d 456, 461 (2016). While the Taylor Court acknowledged there are valid objections to this policy, so long as no one challenges Gonzales v Raich, 545 US 1 (2005), the policy will continue. Raich was flawed from its inception, and has been eroded by later cases.

As Justice Thomas has routinely noted, the aggregation principle at use in these cases essentially abandons any limits on federal power, Taylor, at 471; Raich, at 65. Using Raich and Taylor as their guide, prosecutors have brought numerous cases into court that would traditionally be considered state crimes. See, for example United States v Barnes, 2018 US Dist Lexis 175443 (WD NY, 2018)(criminalizing interstate sex crimes as a commercial market exists for sex); United States v Chaplain, 854 F.3d 853, 858 (8th. 2017)(theft from Jiffy lube, a national commercial chain); PETA v United States Fish & Wildlife Servs, 852 F.3d 990 (10th, 2016)(animals). Even Justice O'Connor's bitter Raich dissent, at 49-50, that every human action has a commercial counterpart, opening up federal regulation of every activity of the individual has proven precient. See United States v Naegarwala, 2018 US Dist Lexis 197494 (ED Mich. 2018)(home done medical procedures are "akin" to commercial healthcare subject to Government control).

This is more than Constitutional doubtful, see Murphy v NCAA, 200 L Ed 2d 854, 882 (2017)(Thomas concurring)(noting tha Congress cannot legally ban interstate gambling, as it is the "internal commerce of a state", citing Licence Cases, 5 Wall 462-71 (1861). This Court has previously held that Congress has no legal authority to ban interstate drug markets, United States v Nigro, 276 US 332 (1928), which is still cited, Bond v United States, 180 L Ed 2d 269, 284 (2011). See also "Blowing Smoke" by Michael J. Reznicek, (2012) p38-39 (describing the traditional view that Congress could not regulate drugs absent Constitutional Amendment, as was done with Alcohol Prohibition).

While later cases have used the Commerce Clause as an end run around this natural limitation of the Constitution (the power to regulate X is not specifically enumerated, therefore it does not exist, Bond at 24 (citing Gibbons v Ogden, 9 Wheat 1, 195 (1824)), this court has always noted that this may not be done in a way to leiminate the distinction between what is truly local and truly national, United States v Lopez, 514 US 549, 568 (1995); National L R Bd v Jones & Laughlin S. Corp, 301 US 1 37 (1937). interference with state sovereignty).

With the decisions in Raich and Taylor, this is no longer true. If the creation for personal use or consumption of a commodity for which there is a national market, Raich, at 18, or robbery (itself not commerce, Taylor, at 468) of someone who engages in such an activity (even if illegally), is commerce of which the federal government may regulate, id, at 465, then everything is commerce.

All of productive human activity has a commercial counterpart, Raich, at 50 (O'Conner, dissenting).

As infirm as Raich itself is, it also creates irreconsilable conflict with later dicisions, namely Bond v United States, 189 I Ed 2d (2014). There, Carol Ann Bond was charged aa a federal terrorist for simple, minor assault, since she used a chemical agent as the means of assault. While agreeing that the United States had a valid interest in preventing terrorists from using chemical weapons against the American populous, this did not convert into a freestanding right to reach into every kitchen cupboard and bathroom cabnit, id at 10.

This was no license for Bond to commit assault. The Court noted that what Bond did was no just unacceptable, it was illegal. But the State itself could, and indeed had, dealt with the matter as it felt appropriate, id at 16.

Federal prosecutors could not attempt to bring charges just because they disagreed with the State's resoulution, at 17. This brings to mind former Chief Justice Rhenquist"s statements (reproduced in the Sentencing Commision's 2011 Report on Mandatory Minimums) that, to some degree or other, all crime is nationwide. That fact, on its own, does not give the federal government an interest in that crime, Congress does not exist to solve all social ills. See, also, Perez v United States, 402 US 146, 157 (1971).

These rules of law, both currently inforce, are in conflict, a fact the lower courts are well aware of, United States v Chengle, 902 F.3d 104, 118 (2nd, 2018). And, as numerous Petitioners have brought to this Court's attention, the Raich expansion of federal jurisdiction is being used to undermine state sovereignty and individual rights, William Eaton v United States, No 17-6680; Gamble v United States, No. 17-646 (both still pending).

This is no small matter for those halled into federal court. Not only are the penalties more severe at the federal level than the state for identical crimes, but this forces individuals to spend more time and resources fighting similar charges. Oftentimes, this occures after the conclusion of state charges, creating the problems addressed in Bond; Eaton; and Gamble. Many defendants, like Mims are utterly denied bail, or given extortionately high, unmectable bails for offenses which receive O.R. bonds at the state. For drugs offenses, like this, the defendant is subject to the amorphous conspiracy laws and their overly permissive rules allowing conviction under lesser evidence that would often be considered inadmissible in the State. This affects the fundamental rights of those charged and increases dramatically the chances of conviction.

Certiorari would be useful to solve the conflict between these cases, to rein in federal jurisdiction, and to protect the rights of petitioners, like Mims, who are forced to run the federal gauntlet where ther is not enough to bring charges in the State.

Conclusion

For all the reasons contained within, a Writ of Certiorari should be granted.

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Respectfully Submitted
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