No. 20-6394

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL HAGAR - PETITIONER

vs.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

QUESTIONS PRESENTED

QUESTION 1

Do the Article 3, Section 2, Clause 3 provision, the "trial shall be held in the State where the said Crime shall have been committed" and the Sixth Amendment provision, the trial "in the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law," establishing the tribunal that is part of the government structure and limit the district court's constitutional judicial power, Article 3, Section 2, Clause 1, to hear a criminal case?

QUESTION 2

Does 18 U.S.C. § 3232 limit the statutory judicial power, 18 U.S.C. § 3231, of the district court to hear a case?

QUESTION 3

Is 18 U.S.C. § 3237 a grant of jurisdiction, by Congress, to a district court, giving the judicial power to hear a case, for an offense committed within the district?

QUESTION 4

Can a defendant raise the issue of improper venue in a motion to dismiss for a violation of the Speedy Trial Act and preserve the issue of improper venue for review on appeal?

QUESTION 5

Should the Appeals Court have indulge a reasonable presumption against waiver, related to the issue of improper venue, and not presume acquiescence in the loss of a fundamental right?

QUESTION 6

Did the Government violate Due Process by providing inaccurate information in the venue argument, and did the Appeals Court err when it reached its decision based on the inaccurate information, when the correct information was in the "Statement of the Case" of the same brief by the Government?

QUESTION 7

Did the Appeals Court err when it relied on the "substantial contacts test" instead of "essential conduct elements" and the erroneous view of the statute 18 U.S.C. § 115(c)(2) related to the meaning of an immediate family member, for finding that venue was proper in

the Northern District of Ohio?

QUESTION 8

Does the Speedy Trial Act confine the discretionn of the district court as the Act mandates dismissal of the indictment upon violation of precise time limits? And should the Appeals Court indulge a reasonable presumption against waiver?

QUESTION 9

Did the Appeals Court err, when it did not consider the second Motion to Dismiss; First, when it relied on New Hampshire v Maine, 532 U.S. 742, 749-51, (2001), to conclude that the argument was contradictory in the Appellant proceeding from the argument in the District Court? Second, when the Appeals Court claimed the Petitioner requested a continuance after the Superseding Indictment was filed?

QUESTION 10

Does the Speedy Trial Act require a defendant to articulate the period of time that is [illegible] unexcluded at the time the motion is filed?

QUESTION 11

Did the Appeals Court err when it based its decision not to grant the Rule 29 Motion for Judgment of Acquittal, for improper service of the Temporary Protective Order, on 18 U.S.C. § 2266(5), which defines a protective order, instead of 18 U.S.C. § 2265, which provides jurisdiction to other States to enforce a protective order from another State?

LIST OF PARTIES

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

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CONSTITUTIONAL AUTHORITY

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Sixth Circuit decided my case was August 3, 2020.

No petition for rehearing was timely filed in my case.

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

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

ARTICLE THREE, SECTION TWO, CLAUSE ONE
SEE APPENDIX D

ARTICLE THREE, SECTION TWO, CLAUSE THREE
The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

FIFTH AMENDMENT TO THE CONSTITUTION
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT TO THE CONSTITUTION
In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

18 U.S.C. § 115(c)(2)
SEE APPENDIX D

18 U.S.C. § 875(c)
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18 U.S.C. § 2261(b)
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18 U.S.C. § 2261A(2)
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18 U.S.C. § 2266(5)
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18 U.S.C. § 3161
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18 U.S.C. § 3162(a)(2)
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18 U.S.C. § 3231
The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

18 U.S.C. § 3232
Proceeding to be in district and division in which offense committed, Rule 18.

18 U.S.C. § 3237
SEE APPENDIX D

FEDERAL RULES OF CRIMINAL PROCEDURE RULE 18
Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed. The court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses and the prompt administration of justice.

FEDERAL RULES OF CRIMINAL PROCEDURE RULE 29
SEE APPENDIX D

JUDICIARY ACT OF 1789, CHAPTER 20, SECTION 9
SEE APPENDIX D

STATEMENT OF THE CASE

On June 14, 2016 a criminal complaint was filed against Michael A. Hagar for violating 18 U.S.C. § 875(c), transmitting in interstate/ foreign commerce a communication containing a threat to injure in the Northern District of Ohio. Mr. Hagar was in custody of the County Sheriff at the Multnomah County Detention Center in Portland, Oregon, when the government obtained a Writ of Habeas Corpus ad prosequendum on June 17, 2016. Mr. Hagar made his initial appearance in the Northern District of Ohio on August 2, 2016 and was ordered detained to the custody of the U.S. Marshals, after a detention hearing, on August 5, 2016.

On August 24, 2016 a three (3) count Indictment was filed against Michael Hagar. Count 1 charged Mr. Hagar with Cyberstalking in violation of 18 U.S.C. §§ 2261A (2)(B) and 2261(b)(6). Counts 2 and 3 charged Mr. Hagar with Interstate Threatening Communication, 18 U.S.C. § 875(c). The Indictment alleged that Mr. Hagar's email communication traveled to an Eaton Corporation server located in the Northern District of Ohio. Count 1 alleged Mr. Hagar violated a protection order as defined by 18 U.S.C. § 2266(5). On September 19, 2016 Mr. Hagar appeared before Judge Nugent for his arraignment where a not guilty plea was entered on his behalf.

Between September 19, 2016 and September 11, 2018, Mr. Hagar signed 5 waivers to the Speedy Trial Act and requested 3 Motions for Continuance. Mr. Hagar's trial was set for September 17, 2018 but the government notified Mr. Hagar's attorney around September 6, 2018 that the government planned on issuing a Superseding Indictment. On September 11, 2018, the government obtained a three (3) count

Superseding Indictment against Mr. Hagar. The Superseding Indictment made changes to the Original Indictment, in that, it removed the allegation that Mr. Hagar's emails traveled to the server maintained by Eaton Corporation in the Northern District of Ohio. The rest of the Superseding Indictment remained essentially the same as the Original Indictment.

On September 19, 2018, Mr. Hagar appeared before Judge Nugent for his arraignment on the Superseding Indictment and a not guilty plea was entered. This arraignment occurred exactly two years after the arraignment on the Original Indictment. A status hearing was scheduled for November 27, 2018. At the status hearing the trial was scheduled to begin on Febuary 26, 2019. On January 22, 2019, Mr. Hagar filed a Motion to Dismiss, arguing that Mr. Hagar had been confined in excess of seventy (70) days without being brought to trial. The Government filed a Response in Opposition to the Defendant's Motion to Dismiss on Febuary 12, 2019. The District Court never ruled on the Defendant's second Motion to Dismiss.

At trial Matthew Coberly testified that Mr. Hagar's emails were forwarded to him by other individuals who were not in the State of Ohio. In addition C.B., the Eaton employee who worked for Eaton in the Northern District of Ohio, testified that she never received any of the emails that were part of the alleged conduct. C.B. testimony also established she was a step aunt to the victim of the Cyberstalking charge.

The Defendant made Motions for Judgment of Acquittal pursuant to Fed. R. Crim. P. 29. The defendant argued that similar to the second Speedy Trial Motion to Dismiss, that the Northern District of Ohio

did not have jurisdiction as all the correspondences in this case occurred outside of the Northern District of Ohio, and the case should have been pursued by the government in Oregon. Mr. Hagar also asked the Court to grant his Motion for Judgment of Acquittal based upon improper service of the temporary protective order. Mr. Hagar placed an objection to the jury instruction in Count 1, arguing that the jury not be instructed as to R.G. "and/or her family members" and only be permitted to consider R.G. potential emotional distress, as R.G.'s step-aunt does not qualify as an immediate family member under the law.

The government oppossed the Defendant's Motion and the Court denied all of the Defendant's Motions. The Jury returned a guilty verdict on all three counts and the Defendant was sentenced on June 7, 2019 for five years for each count, to be served consecutively for a total of 15 years.

On Appeal Mr. Hagar raised the following issues among others not relavent to this petition:

1. The Northern District of Ohio was not the proper venue for the prosecution of Mr. Hagar.
2. The District Court erred when it failed to grant the Defendant's second Motion to Dismiss.
3. The District Court erred when it failed to determine that R.G.'s Temporary Stalking Order was not lawfully issued and therefore invalid.

The Appeal's Court affirmed the District Court on all the issues presented to the court.

REASONS FOR GRANTING THE PETITION

ARGUMENT AND AUTHORITIES REGARDING QUESTION 1

This court has repeatedly said that the Constitution is to be considered in light of the Common Law. The court should consider if the provisions of Article 3, Section 2, Clause 3, and the Sixth Amendment, with respect to the location of the trial for criminal offenses, were originally intended by the framers to create a tribunal as part of the government structure, as it was in Common Law. The relevant part of Article 3, Section 2, Clause 1, provides: " The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, Laws of the United States, and Treaties made, or which shall be made under their Authority;" Does the provisions of Article 3, Section 2, Clause 3, and the Sixth Amendment, related to the location of the trial limit "The judicial Power ... extend[ed] to all Cases in Law ... arising under this Constitution."

On page 12 of the Appeals Court decision, the court relied on United States v Obak, 884 F.3d 934, 936-37, (9th Cir., 2018), deciding that jurisdiction and venue are two distinct concepts. This opinion, however, ignores the numerous cases that this court decided which dealt with venue as jurisdiction.

In United States v Lombardo, 241 U.S. 73, (1916), this court affirmed a District Court decision to sustain a demurrer as the court was without jurisdiction of the subject-matter and there could not be a prosecution because of the Sixth Amendment. Two prominent venue cases this court decided, United States v Johnson, 328 U.S. 273,

(1944) and United States v Anderson, 328 U.S. 699, (1946) both dealt with the issue of jurisdiction of the District Court. In Johnson the issue was; "Appeal by the United States from a judgment of the District Court of the United States for the District of Delaware quashing, for want of jurisdiction, an indictment charging a violation of the Federal Denture Act." And in Anderson the issue was; "Appeal by the United States from an order of the District Court of the United States for the Western District of Washington sustaining a demurrer, on the ground of want of jurisdiction, to an indictment for refusal to submit to induction into the armed forces of the United States."

Today all the circuit courts have decided that a defendant's right to proper venue is waivable and that the constitutional provisions have no limitation to a court's jurisdiction.

ARGUMENT AND AUTHORITES REGARDING QUESTION 2

The relevant part of 18 U.S.C § 3231 provides: "The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." 18 U.S.C. § 3232 provides: "Proceeding to be in district and division in which offense committed, Rule 18." When the two statutes are considered as complementary, it is a relative reproduction of the relevant part of the Judiciary Act of 1789, Chapter 20, Section 9. "That the district courts shall have ... exclusively of the courts of the several, States, cognizance of all crimes and offenses that shall be cognizable under the authority of the United States, committed within their respective districts,..." 18 U.S.C. § 3232 is an orphan statute, it is rarely mentioned and

mostly ignored. This court should consider whether the statute has an important part to play with repect to the statutory judicial structure of the courts. In other words, does 18 U.S.C. § 3232 limit the jurisdiction of 18 U.S.C. § 3231 to the district where the offense was committed. This court's opinion about 18 U.S.C. § 3232 would benefit both the courts and the parties in future legal proceedings."

ARGUMENT AND AUTHORITIES REGARDING QUESTION 3

In United States v Johnson, 323 U.S. 273, 276, (1944), this court said; "It is significant that when Congress desires to give a choice of trial, it does so by specific venue provisions, giving jurisdiction to prosecute in any criminal court of the United States through which a process of wrong doing moves." This court should consider if the statute 18 U.S.C. § 3237 is a jurisdiction statute with the effect of limiting the court's power to hear a case within the territorial limits of the district court.

The first three question have a significant importance to the nation. During the Colonial period, the transportation of the colonist to England for trial was one of the complaints the colonist raised to the King in the Declaration of Independence. Today with the complexities of the technology used by society, opens up the possibility of criminal prosecutions occuring in places where no essential conduct elements occur. The limitation placed on the government relating to the location of the trial, is an issue that affects every individual of this nation.

ARGUMENT AND AUTHORITIES REGARDING QUESTION 4

On page 11 of the Appeals Court decision the court wrote: "Hagar did

not bring a pre-trial change of venue motion, and he did not try to show 'good cause' for that failure. He merely mentioned venue in his second speedy trial motion." The Appeals Court has ignored that the motion to dismiss was both the Sixth Amendment and the Speedy Trial Act. The relevant part of the Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law,..." The Amendment includes a speedy trial at the location where the offense was committed. For the Appeals Court to conclud the Petitioner "did not try to show 'good cause' for that failure" ignores the Petitioner's rights protected by the Sixth Amendment; a speedy trial at the location where the crime was committed. A motion of improper venue is either dismissed without prejudice or transfered to the proper district and a defendant could be said to have abandoned his claim to a speedy trial under the Sixth Amendment and the Speedy Trial Act. This case can provide the lower courts the proper way to proceed, when the issue of a delay in the trial and proper location of the trial are intertwined as it is in this situation.

ARGUMENT AND AUTHORITIES REGARDING QUESTION 5

As the court considers the issues of questions 1 thru 4, the court should consider directing the lower courts to indulge a reasonable presumption against waiver of the substantial right to proper venue of the trial. On Page 12 of the Appeals Court decision, the court relied on United States v Dandy 998 F.2d 1344, 1356-57 (6th Cir., 1993), for the Petitioner's Rule 29 Motion for Judgment of

Acquittal, stating the Petitioner raised a specific issue of jurisdiction and not venue. The case that Dandy relied on as the authority for this opinion was United States v Rivera, 388 F.2d 545, 548, (2nd Cir., 1968). The relevant points of Rivera are included in Dandy: "It is not unreasonable to expect the defendant to make some reference to the venue point in order to save his objection for appeal, ... where he does specify grounds for the motion and omits mention of venue we must conclude that he cannot be considered to have raised a question concerning the place of trial."
On page 12 of the Appeals Court decision they wrote: "In his Rule 29 motion for judgment of acquittal, Hagar argued that the district court did not have jurisdiction over this case because the emails and correspondence occurred outside the Northern District of Ohio and suggested that the case could only be tried in Oregon." As mentioned above, on Page 11 of the Appeals Court decision, the court acknowledged the second speedy trial motion "mentioned venue."
This court should instruct the lower courts to consider the issue of proper location of the trial is as important as the right to a speedy trial, as this court did in Barker v Wingo, 407 U.S. 514, (1972). The Petitioner did not waive his right to trial at the location where the alleged crime was committed. The court should indulge every reasonable presumtion against waiver. And the court should not presume acquiescence in the loss of this fundamental right.

ARGUMENT AND AUTHORITIES REGARDING QUESTION 6

In the Appellant Brief Page ID 40 the Petitioner wrote: "Matthew Coberly, the global security director for Eaton Corporation,

testified that other individuals were forwarding him Mr. Hagar's emails to be monitored in Beachwood, Ohio ... Although C.B. worked in Ohio, she testified that she never received any emails from Mr. Hagar in this case." In the Appellee Brief Page ID 20 the government wrote: "C.B. read the messages Hagar sent to her Eaton work email account for the first time during preparation for her trial testimony ..." On Page ID 45 during the venue argument the government wrote: "C.B. routinely received and reviewed her Eaton email at her office in Beachwood, Ohio ..." Then the government concluded: "Because Hagar sent the threats via email from Oregon to C.B. in the Northern District of Ohio venue was proper." The government intentionally mislead the Appeals Court that C.B. received emails sent by the Petitioner. Matthew Coberly's testimony proved C.B. did not receive any emails from the Petitioner, as another individual, in a state other than Ohio, received the emails and then forwarded the emails to Matthew Colberly.

The Government used the inaccurate information in its brief for the venue argument, and the Appeals Court relied on this inaccurate information as part of its conclusion against the Petitioner. This is fundamentally unfair to the Petitioner and also affects the fairness, integrety and public reputation of the judicial proceedings. (See United States v Olano, 507 U.S. 725, 733-37, (1993). This erroneous decision affects the substantial rights of the Petitioner. The fact that the government succeeded in misleading the Appeals Court places the confidence of the public in the fairness of the judicial process in doubt that anyone in the future will be treated fairly if confronted with a similar situation.

ARGUMENT AND AUTHORITIES REGARDING QUESTION 7

The Appeals Court reliance on the "substantial contacts test" to determine proper venue is in conflict with this court's opinion in United States v Rodriquez-Moreno, 526 U.S. 275, 280, (1999), where it articulated that "essential conduct elements" should be used in the determination of proper venue. The Appeals Court used the "substantial contacts test" to expand the government's ability to claim proper venue of an offense. The two cases the Appeals Court relied on have no relevance to the Petitioner's case. United States v Houston, 683 F. Appx 434, 438, (6th Cir., 2017) is different to the Petitioner's case as the emails that were part of the case did not enter the Northern District of Ohio when the transmission occurred. All the emails to Eaton Corporation in this case were routed to an individual in a state other than Ohio. This individual later transmitted the emails to the Northern District of Ohio. In United States v Jefferies 692 F.3d 473, 483, (6th Cir., 2012), Jefferies sent links to YouTube's website, for a video which contained the threat, to individuals in the district where the prosecution took place. Jefferies is different from the Petitioner's case for the same reason the Houston case is, the transmission by the Petitioner never entered the Northern District of Ohio.

The Appeals Court also relied on other factors of the "substantial contacts test" none of which had any relationship to the essential conduct elements of the offenses the Petitioner was charged with.

The Appeals Court conclusion that the individual in the Northern District of Ohio is a family member to the victim of the Cyberstalking charge ignored the statute 18 U.S.C. § 115(c)(2)(B), defining an

immediate family member as "any other person living in his household and related to him by blood or marriage." As one person lives in Oregon and the other person lives in Ohio, it is impossible for the person in Ohio to meet the definition of "immediate family member." The Appeals Court erroneous interpretation of the meaning of "immediate family member," its erroneous use of the "substantial contacts test," the invalid application of Jefferies and Houston, plus the court's reliance on the inaccurate information provided by the government has dramatically affected the Petitioner's right to have his trial in the district where the offense was committed.

An example of the effect it has had on the Petitioner which will be discussed later, is the issue related to the Speedy Trial Act. If the Petitioner had been prosecuted in the District of Oregon and the district court did not rule on the two motions to dismiss for violation of the Speedy Trial Act, the Ninth Circuit would have considered the two motions preserved for appeal and it would not be an issue for this court to consider.

The important issue of jurisdiction and proper venue in this case has significant value to the lower courts and to future litigation in criminal cases as well as the nation. The importance of this issue was articulated in United States v Auernheimer, 748 F.3d 525, 541, (3rd Cir., 2014): "As we progress technologically, we must remain mindfull that cybercrimes do not happen in some metaphysical location that justifies disregarding constitutional limits on venue. People and computers still exist in identifiable places in the physical world. When people commit crimes we have the ability and obligation to ensure that they do not stand to account for those

crimes in forums in which they performed no 'essential conduct element' of the crime charged."

ARGUMENT AND AUTHORITIES REGARDING QUESTION 8

This court should consider the Petitioner's case as this question has significant importance to future defendants and the public as well, with respect to the Speedy Trial Act. In United States v Taylor 487 U.S. 326, 343-44, (1988), this court said: "Ordinarily, a trial court is endowed with great discretion to make decisions concerning trial schedules and to respond to abuse and delay where appropriate. The Speedy Trial Act, however confines that exercise of that discretion more narrowly, mandating dismissal of the indictment upon violation of precise time limits, and specifying criteria to consider in deciding whether to bar reprosecution." The Appeals Court decision that the Petitioner waived his speedy trial claim is in conflict with this court's opinion in Taylor. The Sixth Circuit is also in conflict with the Ninth Circuit decision, United States v Hall 181 F.3d 1057, 1061, (9th Cir., 1999), where a defendant's pro se motion was preserved for appeal when the district court never ruled on the motion. In the Tenth Circuit, United States v Arnold, 113 F.3d 1146, 1149, (10th Cir., 1997): "Appellant's statements to the district court prior to trial, in which he claimed a violation of the STA, satisfy the motion requirement of 18 U.S.C. § 3162(a)(2). The district court itself acknowledged the adequacy of appellant's presentation when it stated in response, 'If there is a speedy trial violation, then you've raised the issue, ... that will protect you ... If there was a trial and the prosecution got the conviction and it violated the Speedy Trial Act ... we'd have to set it aside and

dismiss."

The Speedy Trial Act has only one waiver provision. The relevant part of 18 U.S.C. § 3162(a)(2) provides: "Failure of the defendant to move for a dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section."

The Sixth Circuit has now established a new waiver to the Speedy Trial Act. Now district courts can simply ignore motions to dismiss for violation of the Speedy Trial Act. This court can insure a defendant's right to a speedy trial under the Speedy Trial Act by following the doctrine of presuming against waiver of the fundamental right to a speedy trial when a defendant has met his obligation under the Speedy Trial Act by filing a timely motion to dismiss.

ARGUMENT AND AUTHORITIES REGARDING QUESTION 9

On Page 10 of the Appeals Court decision the court concluded that the Petitioner's second speedy trial claim was "contradictory to the argument ... made before the district court." The Appeals Court relied on New Hampshire v Maine 532 U.S. 742, 749-51, (2001), to refuse to consider the argument put before the Appeals Court. The Appeals Court reliance on New Hampshire v Maine was erroneous as the opinion does not support the Appeals Court conclusion. As the district court never ruled on the Motion to Dismiss, it cannot be said that the Petitioner succeeded in the position in the District Court. The Government is not prejudiced by the argument in the Appeals Court, and the Government never acquiesed to the Motion to Dismiss. Because the Petitioner never succeeded in the Motion to Dismiss at the District Court, the Petitioner's argument in the

Appeals Court is not inconsistent and the Petitioner has posed question number 10 to address this issue for the court's consideration with regard to question number 9.

The second reason the Appeals Court determined that the Petitioner's second speedy trial motion should be rejected was: "Hagar forgets that he himself requested a continuance after the government filed the superseding indictment on September 11." This reasoning is in direct conflict with this court's decision in Zedner v United States 547 U.S. 489 (2006), as the district court never made an end-of-justice finding as required by 18 U.S.C. § 3161(h)(7)(A). This court has the opportunity to address the issue to instruct the lower courts on how to proceed in the future with cases that have similar situations to the Petitioner.

ARGUMENT AND AUTHORITIES REGARDING QUESTION 10

The relevant part of 18 U.S.C. § 3162(a)(2) provides: "If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion..."

In Zedner v United States, 547 U.S. 489, 507, (2006), this court said: "In ruling on a defendant's motion to dismiss, the court must tally the unexcluded days. This in turn requires identifying the excluded days."

In the Petitioner's Motion to Dismiss, the Petitioner identified that "November 27, 2016 marked the seventieth day after the defendant's arraignment." Page ID 254. The Petitioner did not articulate that 23 days that passed from the date of arraignment on

September 19, 2016, to the day he signed the first Speedy Trial Act waiver on October 13, 2016. With the logic of the Government's argument and the conclusion of the Appeals Court leads one to the conclusion that this time does not count towards the speedy trial motion. When the Petitioner filed the Motion to Dismiss, the period of time from arraignment on the Superseding Indictment, September 19, 2018, to the day the motion was filed, January 22, 2019, was not "extended by section 3161(h)." As the district court never made an on the record "ends-of-justice" finding there was never an exclusion under §3161(h)(7). See Zedner v United States, 547 U.S. at 507. The District Court and the Appeals Court have denied the Petitioner his Fifth Amendment right to procedural due process. And the Appeals Court erred when it did not dismiss the Superseding Indictment or remand it to the District Court for dismissal.

ARGUMENT AND AUTHORITIES REGARDING QUESTION 11

The Appeals Court erred when it denied the Petitioner's Rule 29 Motion for Judgment of Acquittal for improper service of the Temporary Protective Order, when it relied on the definition of a Protective Order, 18 U.S.C. § 2266(5), instead of 18 U.S.C. § 2265, Full Faith and Credit given to protective orders. It is well established that a court cannot exercise jurisdiction over a person unless that person is properly served according to due process. Both the Petitioner and the Government agreed at trial that Mr. Hagar did not receive the Petition for the Temporary Stalking Protective Order. Oregon law requires the Petition, the Temporary Stalking Protective Order and the Notice to Appear, to be served on the Respondant. Pennoyer v Neff, 95 U.S. 714, 733, (1878): "To give ...

proceeding any validity ... the defendant ... must be brought within its jurisdiction by service of process within the state or his voluntary appearance." Griff v Griff, 327 U.S. 220, 228-29, (1946): "A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction. (Citation omitted). Moreover due-process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process." Under 18 U.S.C. § 2265 the Federal Government can exercise jurisdiction to enforce a protective order if the court in Oregon "... has jurisdiction over the parties and matter under the law of such State." As it is agreed by both the Petitioner and the Government that the Petition for the Temporay Stalking Protective Order was not served at the time of service, the Oregon court never obtained jurisdiction over the person. Because of the improper service the Federal Government cannot exercise jurisdiction to enforce the Temporary Protective Order.

This court should consider this issue as the Fifth Amendment Due Process clause is a fundamental principle in this country. The court can provide the proper procedure to all the courts of this nation with respect to jurisdiction and enforcement of Protective Orders.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael A. Hagar

Date: October 29, 2020