No. _____

IN THE

SUPREME COURT OF UNITED STATES

AMIN RICKER - PETITIONER

vs.

UNITED STATES OF AMERICA – RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Does Due Process require an expert's findings and conclusions be provided to Defendant with sufficient notice before trial to effectively rebut the opinions?
2) What level of scrutiny should be applied when excluding a family member of a Defendant from a criminal trial in light of a criminal defendant's rights to a public trial as enumerated in *In re Oliver*?
3) Under the holding of *Alleyne v. United States*, does the prior conviction exception found in *Almendarez-Torres v. United States* apply to an increase of a mandatory minimum sentence, and if so, should *Almendarez-Torres v. United States* be overturned?

LIST OF PARTIES

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

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IN THE

SUPREME COURT OF UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit appears at Appendix A to the petition and is reported at 983 F.3d 987.

JURISDICTION

The date on which the United States Court of Appeals for the Eighth Circuit decided this case was December 22, 2020 and a timely petition for rehearing was denied February 1, 2021. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states, in pertinent part: "No person shall be . . . be deprived of life, liberty, or property, without due process of law[.]"

The Sixth Amendment to the United States Constitution states, in pertinent part: "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[.]"

STATEMENT OF THE CASE

On February 14, 2017, several law enforcement officers converged on a mobile home in Pierre, South Dakota to execute a search warrant relating to child pornography allegations. Detectives knocked on the door and Amin Ricker opened it for them. Amin, who is autistic, asked if he could call his father. Using his own cell phone, Amin Ricker called his father, Carl Ricker, who then requested to speak to the detective.

Carl Ricker explained to the detective his son was autistic, and that Amin Ricker was not to talk to anyone without an attorney present. Around this time, the officer ended the call and turned off the cell phone.

Ricker was thereafter interviewed by law enforcement. During the statement, Ricker made references to photos he was being interviewed about being from "last time" last time being a prior arrest for child pornography charges which lead to a suspended imposition of sentence and eventual dismissal of the charges in state court in South Dakota.

Ricker was indicted for the instant offense on or about April 12, 2017 for distribution and possession of child pornography. On or about July 11, 2017, a Superseding Indictment was filed, which charged Ricker with two counts of Aggravated Sexual Abuse of a Child, one count of Travel with Intent to Engage in

Illicit Sexual Conduct, and one count each of Transportation, Distribution, Receipt, and Possession of Child Pornography.

The trial did not take place until March 2019. That same month, the government disclosed volumes of additional evidence, including potential expert witnesses. One such witness was FBI Forensic Examiner Anthony R. Imel, whose existence as potential witness was not provided to the defense until March 5, 2019, roughly two weeks prior to trial. Shortly thereafter, copies of the pictures that were taken as a result of a search warrant executed in November of 2018 were also disclosed to the defense on or about March 12. A summary expert report from Mr. Imel was not provided to the defense until two business days before trial (March 14). The report detailed the opinion due to similarities in unique characteristics observed between photographs of Amin Ricker and what is seen in certain videos entered into evidence containing child pornography, the hand in the evidence appeared to be the hand of Amin Ricker. Thereafter, actual hand comparison charts which were to document the basis for that opinion and were admitted into evidence were not provided until the business day before the trial began. The binder containing the underlying data supporting the expert report was provided during the trial.

Ricker filed a Motion in Limine to prevent the testimony from Imel and a Motion to Continue based upon the late disclosure of the expert opinion in order to

have an opportunity to review and potentially consult with a defense expert regarding the same. The district court denied the motion for a continuance. The Court granted the motion to prevent testimony some opinion but allowed Imel's testimony regarding his expert opinion of the hand comparison. The Court's reasoning that Ricker had notice of the fact his hands were photographed, despite never seeing any of the photographs at issue, reasoning: "The Defendant knew his hands had been photographed and the images that have been at issue in this Indictment are images that have hands in it. So the opinion – the comparison of the similarity of the hands, the Court's comfortable with that."

Then, shortly before trial, the Government amended its witness list to include Carl Ricker, Amin Ricker's father and power of attorney, as Carl Ricker was not on the defense witness list for the trial. The Government thereafter made a motion to exclude him from the trial by way of sequestration. Ricker objected to the district court that there was no basis for Carl Ricker being called by the Government, that he was not on the defense witness list, and that he was the Power of Attorney for a client going to trial with autism and significant mental health issues. The Court ruled that Carl Ricker would be sequestered from the trial.

At trial, despite it not originally being something contested by the Government, a major dispute arose as to whether the jury would be required to find whether Ricker had been convicted of a prior child pornography offense. The

preliminary jury instructions read by the district court included the indictment language, which included an element that Ricker had a prior conviction under the laws of the State of South Dakota relating to the possession and distribution of child pornography. The Government's Proposed Jury Instructions submitted prior to trial included the same element. At a motions hearing held roughly two weeks prior to trial, the district court opined that whether or not there was a prior conviction "was an element of the offense" in explaining why such would be admissible evidence. However, at the pretrial conference on March 18, on the first day of trial, the district court, *sua sponte*, questioned the need to instruct the jury regarding the prior conviction element. Over Ricker's objection, the district court eventually decided that the jury should not be instructed on whether Ricker had a prior conviction under the laws of the State of South Dakota relating to the possession and distribution of child pornography.

On March 22, 2019, the jury returned a verdict of guilty on all counts. Sentencing was held on June 17, 2019. The district court sentenced Ricker to 420 months imprisonment each on Counts I and II and 360-months imprisonment on Count III, with Counts I through III running concurrently with each other. In addition, the Court sentenced Ricker to 240 months imprisonment each on Counts IV through VII, running concurrently to each other, and with 60 months of those counts served concurrently with Counts I through III. In essence, the total length

of sentence is 600 months, or 50 years, in custody.

Ricker appealed several issues to the Eighth Circuit Court of Appeals, including, but not limited to the issues raised herein. The Eighth Circuit affirmed the conviction and sentence in an opinion dated December 22, 2020. A Petition for Rehearing by the panel and en banc was filed by Ricker, which was denied on February 1, 2021.

REASONS FOR GRANTING THE PETITION

I. REVIEW IS NECESSARY TO FOSTER UNIFORM APPLICATION OF THE DUE PROCESS CLAUSE TO PREVENT TRIAL BY AMBUSH

"Criminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence." *Hinton v. Alabama*, 571 U.S. 263, 273 (2014) (*quoting Harrington v. Richter*, 562 U.S. 86, 106, 131 S. Ct. 770, 788 (2011)). Review is necessary to clarify whether the due process clause requires a district court afford such an opportunity or whether trial by ambush is appropriate when a person is facing some of the most severe criminal charges a person can face in the modern criminal justice system.

Put another way, the Court now faces what due process and Rule 16 require for notice of a government expert opinion prior to a criminal trial. Until the *Ricker* decision was entered, the federal circuits have been long and universally held that "fairness requires that adequate notice be given the defense to check the findings and conclusions of the government's experts." *See United States v. Sims*, 776 F.3d

583, 584-586 (8th Cir. 2015); *United States v. Rivera-Guerrero*, 426 F.3d 1130, 1140 (9th Cir. 2005) (*quoting United States v. Barrett*, 703 F.2d 1076, 1081 (9th Cir. 1982) (*quoting United States v. Kelly*, 420 F.2d 26, 29 (2nd Cir. 1969) (internal quotation marks omitted))); *United States v. Davis*, 244 F.3d 666, 668, 671-72 (8th Cir. 2001)l *United States v. Carnes*, No. 86-5015, 1986 U.S. App. LEXIS 37708, at *11 (4th Cir. Oct. 1, 1986) ("Fairness does require that adequate notice be given the defense in order that it may check the findings and conclusions of the prosecution's expert witness" but affirming because the offer of a continuance was rejected by the defense.). In part, this is because regardless of whether there is an expert discovery deadline in a scheduling order, it is impossible to "check the findings and conclusions of the government's experts" until you have actual possession of their findings and conclusions. Providing the information to do so during trial violates due process.

The relevant dates for this issue are as follows, and they are not disputed. On April 28, 2017, Ricker requested, pursuant to Fed. R. Crim.P. 16(a) (1) (E), disclosure of the identities, qualification, and testimony of any expert witnesses the government intended to call at trial as well as any photographs or tangible documents in the Government's possession. The search warrant authorizing pictures of the defendant's hands was executed November 6, 2018. Defendant was not provided with a copy of *any* photographs resulting from the execution of that

search warrant until the *week before trial* in March 2018. Despite not providing them to the defense for several months, according to the Government, the photographs of Rickers hand were sent to the "lab", if not the next day, within a few days, and that analysis has been pending. The government has not proffered any reasoning for not providing those same photographs to the defense until a week before trial, and that, in and of itself, is inexcusable. Moreover, the Government's expert testified that lab did not receive the photographs until February 4, 2019. In short, either the expert committed perjury or Government's counsel misrepresented when the photos were sent to the Lab. Neither explanation is satisfactory to excuse the late disclosure to the defense.

On March 5, 2019, roughly two weeks prior to trial, the Government provided notice of a potential intended expert whose existence or opinion was never previously disclosed in discovery, FBI Forensic Examiner Anthony R. Imel. That notice indicates that "Mr. Imel will prepare and testify consistent with reports that have yet to be submitted regarding his examination of certain evidence in this case." It is important to note that, at this time, the Government had yet to provide any of the underlying photographs to the defense. A summary expert report was not provided to the defense until the two business days before trial (March 14). Four hand comparison charts were provided on the business day before the trial was set to begin. The remainder of the evidence was provided during the trial.

It is also important to recognize that child pornography cases are unique as to how discovery is handled, and that, under 18 USC § 3509(m), defense counsel did not have physical possession of any of the alleged child pornography videos at issue. Although there are exceptions for allowing defense counsel and a defense expert to view such at a government facility, there is no ability to simply send an expert a copy of an alleged child pornographic video to and expert review or to produce and look at "still shots" of videos in the Government's possession. Given such roadblocks, it is even more important in such cases that the Government give the defense ample opportunity to review expert opinions regarding physical evidence that is solely in control of the Government, which makes getting an expert opinion more time consuming.

Most importantly, the crux of this issue is that the district court and the Eighth Circuit both essentially rely on the same reasoning: "[I]f the fingers in the video were different from Ricker's, the very able defense attorney involved in the case would have presented such testimony." *Ricker*, 983 F.3d at 997 (*quoting United States v. Ricker*, No. 3:17-CR-30053-RAL, 2019 U.S. Dist. LEXIS 64358, at *30 (D.S.D. Apr. 10, 2019)). This reasoning is contrary to the very foundations of our criminal justice system: the Government bears the burden of proof and a defendant need not prove his innocence. Although in some cases a defendant may seek to prove his or her innocence, the requirement to provide fair notice of an

expert opinion is not only so the defense can find an expert in an attempt to prove innocence, but rather is to give the defendant a fair opportunity to present a case showing the government hasn't proven its case beyond a reasonable doubt. If the goal were only to give a defendant the ability to procure an expert to prove his or her innocence, such could be done without notice of a government expert at all. Rather, "fairness requires that adequate notice be given the defense to check the findings and conclusions of the government's experts." *Rivera-Guerrero*, 426 F.3d at 1140. "Indeed, it is important that the defense be given a chance to research the techniques and results of scientific tests taken by the government." *Kelly*, 420 F.2d at 29.

That necessity for due process, frankly, was impossible in this case under the reasoning of the Eighth Circuit. It was not possible for the defense to properly research or confer with a consulting expert regarding the techniques and results of scientific tests regarding a potential *Daubert* hearing. It was not possible for the defense to research or confer with a consulting expert regarding the techniques and results of scientific tests for purposes of cross examination. It also was not possible for the defense to procure expert trial testimony for the purpose of challenging the methodology of the state's expert opinion.

Review should be granted because, if the reasoning stands, use of trial by ambush tactics in district courts may become the norm, and clarity is needed

between the circuits to allow consistent application of due process and Rule 16 regarding expert disclosures.

II. REVIEW IS NECESSARY TO RESOLVE WHAT LEVEL OF SCRUTINY IS REQUIRED TO INFRINGE ON A CRIMINAL DEFENDANT'S RIGHT TO A PUBLIC TRIAL AS ENUMERATED IN *IN RE OLIVER.*

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]" U.S. Const. amend. VI. The public trial right of the Sixth Amendment has long been viewed as "a safeguard against any attempt to employ our courts as instruments of persecution." *In re Oliver*, 333 U.S. 257, 270 (1948)). "Public scrutiny of a criminal trial enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the defendant and to society as a whole." *Globe Newspaper Co. v. Super. Ct. for Norfolk Cnty*., 457 U.S. 596, 606 (1982).

> The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions.

Waller v. Georgia, 467 U.S. 39, 46 (1984) (quotations omitted); *accord Estes v. Texas*, 381 U.S. 532, 588, 85 S. Ct. 1628, 14 L. Ed. 2d 543 (1965) (Harlan, J., concurring) ("Essentially, the public-trial guarantee embodies a view of human nature, true as a general rule, that judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret

proceedings."). This issue should be reviewed for structural error, as a violation of the Sixth Amendment's public-trial guarantee is not subject to harmlessness review because "the benefits of a public trial are frequently intangible, difficult to prove, or a matter of chance[.]" *Waller v. Georgia*, 467 U.S. 39, 104 S. Ct. 2210 (1984).

Courts have universally recognized specifically that the right of an accused to have his family and friends present is an integral element of right to a public trial under the Sixth Amendment. Indeed, in the case of *In re Oliver*, 333 U.S. 257 (1948), the United States Supreme Court said that "*without exception* all courts have held that an accused is at the very least entitled to have his friends, relatives and counsel present, no matter with what offense he may be charged." *Id*. at 271-272 (emphasis added); *see also State v. Crowley*, 766 P.2d 1069, 1071 (Utah. 1988) (the Court could not conceive of a case "in which the near relatives and friends of the accused should not be permitted to be in attendance upon the trial for the purpose of seeing that the accused is fairly and justly dealt with by the officers of the court and not improperly condemned."); *Commonwealth v. Marshall*, 253 N.E.2d 333 (Mass. 1969).

Despite the United States Supreme Court characterizing that the right to have a person's friends, relatives and counsel present at trial as being "without exception[,]" the Eighth Circuit decision reasons that the rights enumerated in *Oliver* "are not absolute[.]" Although Ricker would argue that in *Oliver*, this Court

has directed that the right be "without exception," Ricker recognizes that generally, no right is absolute. *McDonald v. City of Chi*., 561 U.S. 742, 802, 130 S. Ct. 3020, 3056 (2010) (Scalia, J., concurring) ("No fundamental right--not even the First Amendment --is absolute").

Even if the right is not absolute, the interests at issue in this case plainly give rise to a situation where Ricker's rights as enumerated in *Oliver* were violated. The government made a bare bones argument as to the ability to call Ricker's father because he has knowledge of Ricker's life experience with Autism. The Eighth Circuit found that the potential reason for placing Ricker on the witness list was "not without some merit." *Ricker*, 983 F.3d at 994. However, this proffered purpose is tenuous, at best, and despite the defense presenting the proffered testimony regarding Ricker's autism diagnosis, the government did not call Ricker's father as a rebuttal witness. In reality, the Government was never going to present Ricker's father. Indeed, the Assistant United States Attorney trying the case stated he viewed Carl Ricker as akin to "a member of the Defense team." Such a person was never going to be called as a rebuttal witness regarding Ricker's ability to live with an autism diagnosis, but instead the Government was simply trying to disrupt the defense.

On the other hand, the interests underlying Ricker's rights as set forth in *Oliver* are exceedingly high in this case. Ricker's father was the power of attorney

for a client going to trial with significant mental health issues, including an autism diagnosis. In fact, the Government knew the importance Ricker placed on his father, arguing "he's almost a member of the Defense team." These interests reflected in *Oliver* should be deemed particularly true in cases when the accused is autistic and faces substantial mental health challenges, and a family member has moved from Florida to South Dakota to be their advocate. The Government should not be authorized to "use of the trial court's subpoena powers as a subterfuge to obtain the relative's removal." *State v. Sams,* 802 S.W.2d 635, 641 (Tenn. Crim. App. 1990).

In the end, review is necessary to determine what scrutiny must be applied when the Government proposes to sequester a witness pursuant to Fed. R. Ev. 615 contrary to a Defendant's rights set forth in *Oliver.* Ricker submits, given the circumstances of this case, such a sequester violated Defendant's rights set forth in *Oliver*, and that the violation was structural error. The petition should be granted to ensure the proper application of *Oliver* in the circuits and district courts.

III. REVIEW IS NECESSARY TO CLARIFY THAT THE PRIOR CONVICTION EXCEPTION FOUND IN *ALMENDAREZ-TORRES* DOES NOT APPLY TO INCREASES OF A MANDATORY MINIMUM SENTENCE, AND IF IT DOES, TO REVIEW THE HOLDING OF *ALMENDAREZ-TORRES*.

The holding in *Alleyne* is simple: "It follows, then, that any fact that increases the mandatory minimum is an 'element' that must be submitted to the

jury." *Alleyne v. United States*, 570 U.S. 99, 103, 133 S. Ct. 2151, 2155 (2013). Footnote 1 in the opinion states: "In *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998), we recognized a narrow exception to this general rule for the fact of a prior conviction. Because the parties do not contest that decision's vitality, we do not revisit it for purposes of our decision today." *Id.* at 111 n.1

As a primary matter, it is important to recognize that *Almendarez-Torres'* explicit holding only related to increases in statutory maximum sentences. Indeed, *Almendarez-Torres* distinguishes increases in mandatory minimum sentences from increases in maximum sentences, reasoning that risks to a criminal defendant by increasing a mandatory minimum "may well be greater, when a mandatory minimum sentence, rather than a permissive maximum sentence, is at issue." *Almendarez-Torres*, 523 U.S. at 245, 118 S. Ct. at 1231.

The most natural reading of *Alleyne* is that although it did not overrule *Almendarez-Torres* as it relates to increases in a statutory maximum sentence, the holding of *Alleyne* is exactly what it says it is relating to an increase in a mandatory minimum sentence: "*any* fact that increases the mandatory minimum is an 'element' that must be submitted to the jury." 570 U.S. at 103, 133 S. Ct. at 2155 (emphasis added). "Any" should mean "any", including prior convictions. That plain reading of the *Alleyne* decision is at odds with the Eighth Circuit

decision in the case at hand, and review is necessary to bring clarity to an oft litigated and unclear area of law.

Alternatively, if the prior conviction exception found in *Almendarez-Torres* is to be read to apply to increases in mandatory minimum sentences, rather than only to increases to a statutory maximum sentence, then review is appropriate to consider the continued viability of *Almendarez-Torres* in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny.

This Court's holding in *Almendarez-Torres* has always been controversial and is often criticized. Commentators and lower courts have detailed how the foundation for the rule in *Almendarez-Torres* has been eroded. *See United States v. Adame-Orozco*, 607 F.3d 647, 651 n.6 (10th Cir. 2010) (questioning the continuing viability of *Almendarez-Torres*); *Nichols v. United States, 563 F.3d 240, 243 n.1 (6th Cir. 2009)* (noting a question concerning the status of the *Almendarez-Torres* decision); Nancy J. King, *Sentencing and Prior Convictions: The Past, the Future, and the End of the Prior-Conviction Exception to Apprendi*, 97 Marq. L. Rev. 523 (2014) ("If all of the possible justifications for the prior-conviction exception to the *Apprendi* rule are as weak as suggested here, the Court is unlikely to decide that stare decisis warrants keeping it on life support any longer.").

More importantly, this Court has itself repeatedly questioned it's propriety. Within three months of its publication, it was called into question. *Monge v.*

California, 524 U.S. 721, 740-41 (June 26, 1998) (Scalia, J., dissenting) (noting that his preferred "disposition" of the case "would contradict, of course, the Court's holding in *Almendarez-Torres* that 'recidivism' findings do not have to be treated as elements of the offense, *even if* they increase the maximum punishment to which the defendant is exposed. That holding was in my view a grave constitutional error affecting the most fundamental of rights."). Since that time, this Court has repeatedly noted its discomfort with the decision.

Two years after this Court decided *Almendarez·Torres*, the decision came under attack in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The majority conceded that "it is arguable that *Almendarez·Torres* was incorrectly decided, and that a logical application of our reasoning today should apply if the recidivist issue were contested." *Id.* at 489-490. Nevertheless, the Supreme Court declined to reach that issue because it was not raised and was not critical to the outcome of the case. *Id.*

In *Mathis v. United States*, 136 S.Ct. 2243, 2249-50 (2016), this Court again limited the reach of *Almendarez·Torres* by circumscribing the evaluation a district court may engage in when determining whether to enhance a defendant's sentence pursuant to the recidivist-based ACCA.

In his concurrence in *Mathis*, Justice Thomas again called into question the vitality of *Almendarez-Torres*: "I continue to believe that the exception in

Apprendi was wrong, and I have urged that *Almendarez·Torres* be reconsidered." *Id*., at 2259, 195 (Thomas, J. concurring). Today, the Court "at least limits the situations in which courts make factual determinations about prior convictions." *Id*.

Even more recently still, in *Sessions v. Dimaya*, 138 S. Ct. 1204, 1253-54 (2018) (Thomas, J. dissenting), Justice Thomas again called the *Almendarez·Torrez* holding into question: "The exception recognized in *Almendarez·Torres* for prior convictions is an aberration, has been seriously undermined by subsequent precedents, and should be reconsidered."

The facts of this particular case provide an ideal case for review of *Almendares-Torres* because it squarely addresses each basis for which *Almendarez·Torres* was not overturned in *Apprendi*. Although *Almendarez·Torres* was questioned in *Apprendi,* it was not overruled because 1) procedural safeguards are attached to the finding of a prior conviction, 2) the defendant did not contest the fact that he, in fact, had a prior conviction in *Almendarez-Torres*, and 3) in *Apprendi*, the prior conviction exception was not directly at issues. *See Apprendi*, 530 U.S. at 488-490.

However, in this case, the issue was preserved and presented at every stage of the case, it is directly at issue for the 15-year consecutive sentences Ricker received on Counts IV through VII. Maybe most importantly, there is an actual, not just hypothetical, dispute about whether Ricker was convicted of a predicate

offense. Specifically, Ricker has argued under the laws of South Dakota, he was not convicted of this offense because he received a suspended imposition of sentence and an eventual dismissal of charges in South Dakota state court relating to possession of child pornography. *See* SDCL 23A-27-13; SDCL 23A-27-14. Even the Eighth Circuit has failed to uniformly determine whether a suspended imposition of sentence leading to an eventual dismissal of the charge is a "prior conviction." *Compare United States v. Stallings*, 301 F.3d 919, 922 (8th Cir. 2002) (finding that a suspended imposition of sentence is not a conviction for purposes of a sentencing enhancement pursuant to 21 U.S.C. § 841) with *United States v. Henderson,* 613 F.3d 1177, 1185 (8th Cir. 2010) (finding that a suspended imposition of sentence is a prior conviction for such an enhancement pursuant to 21 U.S.C. § 841). In situations where there is a fair dispute as to the validity of an element, a criminal defendant should retain his or her Sixth Amendment rights to a jury trial the disputed element. A jury very well may have decided that Ricker was not convicted of the prior offense given the dismissal of the criminal charge that was entered.

It is time to take *Almendarez·Torres* off life support. This Court should grant this petition, erase the doubt surrounding the continued vitality of *Almendarez·Torres*, and save the lower courts time and resources of continually re-litigating the issue.

CONCLUSION

For the foregoing reasons, Ricker respectfully requests that the petition for a writ of certiorari should be granted.

Dated this 16th day of April, 2021.

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