

No.

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**In The Supreme Court Of The United States**

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Clifton Jackson,

*Petitioner,*

v.

United States of America,

*Respondent.*

On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit

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**Petition for a Writ of Certiorari**

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## Question Presented for Review

1. After Jackson was charged with and convicted of unlawful firearm possession, this Court overturned near-unanimous circuit authority by holding the government must prove the defendant knew at the time of alleged possession that he belonged to the category of persons barred from possessing a firearm. *Rehaif v. United States*, 139 S. Ct. 2191 (2019). This Court emphasized the critical distinction between innocent and criminal conduct turns on the defendant’s mental state. Yet Jackson’s indictment failed to charge this essential mens rea element, necessary to establish a federal crime.

Should this Court grant review to resolve the circuit split over whether an indictment “defect,” such as omission of the element necessary to render conduct criminal, can ever strip federal courts of jurisdiction?

2. The Speedy Trial Act prohibits trial continuances for “lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.” 18 U.S.C. § 3161(h)(7)(C). Here, however, the Ninth Circuit affirmed Jackson’s conviction finding he was not deprived of his statutory or constitutional rights to speedy trial after a continuance was granted over his objection as a remedy for a discovery violation.

Should this Court grant review to correct the Ninth Circuit’s interpretation that 18 U.S.C. § 3161(h)(7)(C) does not include delay caused by government agencies?

## Related Proceedings

Petitioner Clifton Jackson challenged his conviction and sentence following a jury trial in *United States v. Jackson*, No. 3:18-cr-105-HDM-WGC, Dkt. 216 (D. Nev. March 28, 2019), and his revocation sentence in *United States v. Jackson*, No. 3:11-cr-142-HDM-CLB, Dkt. 154 (D. Nev. August 2, 2019).

In 2012, Jackson was convicted of unlawful possession of a firearm, for which he completed his custodial sentence and began a term of supervised release. While on supervised release, he was charged with a new firearm offense, and in 2019, a jury returned a guilty verdict against Jackson for Count 1 (unlawful firearm possession, 18 U.S.C. §§ 922(g)(1) and 924(a)(2)); and a not guilty verdict for Count 2 (unlawful ammunition possession, 18 U.S.C. §§ 922(g)(1) and 924(a)(2)). App. D. The district court imposed 78-months in prison and three years of supervised release. App. C. Jackson’s 2012 supervised release sentence was revoked for committing the new offense—the 2019 conviction for unlawful firearm possession. App. G. The district court imposed an 18-month sentence for the supervision violation, consecutive to the 2019 sentence, for a total 96-month sentence. App. G.

The Ninth Circuit affirmed the 2019 conviction and sentence, but vacated the revocation sentence because of a Guideline error, ordering limited remand for revocation resentencing. *United States v. Jackson*, 838 F. App’x 262, 263 (9th Cir. 2020) (unpublished); *see* App. B. The Ninth Circuit denied Jackson’s petition for rehearing on July 20, 2021. App. A. Jackson remains in federal custody of the Bureau of Prisons, with an estimated release date of March 4, 2025.

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## **Petition for Certiorari**

Petitioner Clifton Jackson petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

### **Opinions Below**

The Ninth Circuit opinion denying appellate relief is not published in the Federal Reporter but is reprinted at: *United States v. Jackson*, 838 F. App'x 262, 263 (9th Cir. 2020) (unpublished). App. B. The Ninth Circuit order denying rehearing is unpublished and not reprinted. App. A.

The district court's final judgment, jury verdict, calendar call transcript, and indictment are unpublished and not reprinted. App. C, D, E, F.

### **Jurisdiction**

The Ninth Circuit entered the final order denying Jackson's timely petition for rehearing of his direct appeal on July 20, 2021. App. A: 1a. The district court had jurisdiction over the initial criminal indictment under 18 U.S.C. § 3231. The Ninth Circuit had jurisdiction over the final judgment under 28 U.S.C. § 1291 and 18 U.S.C. § 3742. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

This petition is timely per Supreme Court Rule 13.1 as it is filed within 90 days from the lower court order denying a timely petition for rehearing.

## Constitutional and Statutory Provisions Involved

1. U.S. Const. amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury . . . nor be deprived of life, liberty, or property, without due process of law . . . .

2. 18 U.S.C. § 922(g)(1):

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

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to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

3. 18 U.S.C. § 924(a)(2):

(a)(2) Whoever knowingly violates subsection . . . (g) . . . of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

4. The Speedy Trial Act, 18 U.S.C. § 3161(h)(7), provides in relevant part:

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence: . . .

(7)(A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

- (i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.
- (ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.
- (iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex.
- (iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

(C) No continuance under subparagraph (A) of this paragraph shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

## **Statement of the Case**

Petitioner Jackson stands convicted of a 78-month sentence for an unlawful possession of a firearm charge after a trial with several errors. After Jackson was convicted, this Court clarified the elements required for unlawful possession of a firearm, which Jackson's 2018 indictment omitted. Further, Jackson's speedy trial right was violated when the court continued his trial date beyond the speedy trial deadline because the government failed to timely provide the defense with necessary discovery.

### **I. Jackson is charged in a federal indictment.**

In December 2018, a grand jury charged Jackson with two counts under 18 U.S.C. § 922(g)(1): unlawful possession of a firearm (Count One); and unlawful possession of ammunition (Count Two). App. F.

### **II. Jackson moves to dismiss for speedy trial violations.**

The Speedy Trial Act required Jackson's trial to occur by February 23, 2019. App. E: 16a. At calendar call, Jackson asserted his speedy trial rights and made clear he would not waive speedy trial for a continuance. App. E: 23a, 27a, 36a. Over Jackson's objection, the district court continued the trial date to allow the government time to collect and provide crucial discovery to the defense. App. E: 27a–36a. Jackson's trial did not start until April 10, 2019.

### **III. Jury trial, hung jury, and mixed verdict**

After about three hours of deliberation the jury twice informed the district court it was deadlocked. The district court provided no additional instructions and

ordered the jury to return to return the following morning and continue deliberations. The jury returned its verdict the next day, finding Jackson guilty of Count One, unlawful possession of the firearm, and not guilty of Count Two, unlawful possession of ammunition. App. D.

**IV. After Jackson’s conviction, this Court issued *Rehaif v. United States*.**

After Jackson’s conviction, this Court reversed a wall of circuit precedent and held that 18 U.S.C. §§ 922(g) and 924(a) require, as an essential element, that the defendant knew he belonged to the category of persons barred from possessing a firearm at the time of the alleged possession. *Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019). This Court clarified the *Rehaif* mens rea requirement was necessary “to make [Jackson’s] behavior wrongful,” thus separating innocent from criminal conduct. *Id.* at 2197. Jackson’s indictment, however, did not allege he knew he was a prohibited person. App. F.

**V. Jackson is sentenced to 78 months on the firearm count.**

Over Jackson’s objection to the guideline range, the district court applied a 63 to 78-month guideline range and imposed a high-end 78-month sentence. App. C.

**VI. Jackson appealed, and the Ninth Circuit denied relief.**

Jackson timely appealed and the Ninth Circuit affirmed his conviction finding, in part, *Rehaif* did not require that his firearm conviction be vacated, the challenges to the indictment and jury instructions failed plain error, and Jackson was not deprived of his statutory right to speedy trial. App. B. The Ninth Circuit also denied Jackson’s petition for panel and en banc rehearing on these grounds. App. A.

## Reasons for Granting the Petition

Jackson is serving 78 months in prison due to critical errors below. In affirming Jackson’s 2019 conviction and sentence for a firearm offense, the Ninth Circuit deepened circuit splits and misinterpreted the Speedy Trial Act, requiring resolution by this Court.

### I. This Court should resolve whether an indictment’s failure to charge the essential mens rea element renders federal courts without jurisdiction.

Possessing a firearm can be an “entirely innocent” act: if a defendant lacks knowledge of the facts making his possession unlawful, he “lack[s] the intent needed to make his behavior wrongful.” *Rehaif v. United States*, 139 S. Ct. 2191, 2197 (2019). Thus, an element of prohibited person in possession of a firearm under 18 U.S.C. §§ 922(g) and 924(a) is that the defendant knew he belonged to the category of persons barred from possessing a firearm at the time of the alleged possession. *Rehaif*, 139 S. Ct. at 2200. This Court’s *Rehaif* decision overturned near-unanimous circuit authority that held the knowledge requirement applied only to the possession element.<sup>1</sup>

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<sup>1</sup> *United States v. Games-Perez*, 667 F.3d 1136, 1142 (10th Cir. 2012); *United States v. Thomas*, 615 F.3d 895, 899 (8th Cir. 2010); *United States v. Schmidt*, 487 F.3d 253, 254 (5th Cir. 2007); *United States v. Enslin*, 327 F.3d 788, 798 (9th Cir. 2003); *United States v. Lane*, 267 F.3d 715, 720 (7th Cir. 2001); *United States v. Dodd*, 225 F.3d 340, 344 (3d Cir. 2000); *United States v. Jackson*, 120 F.3d 1226, 1229 (11th Cir. 1997) (per curiam); *United States v. Langley*, 62 F.3d 602, 604-08 (4th Cir. 1995) (en banc); *United States v. Smith*, 940 F.2d 710, 713 (1st Cir. 1991). Other Circuits had not expressly addressed the issue but did not list knowledge of prohibitive status as an element of § 922(g). See *United States v. Gardner*, 488 F.3d 700, 713 (6th Cir. 2007); *United States v. Smith*, 160 F.3d 117, 121 n.2 (2d Cir. 1998).

**A. Federal courts are those of limited jurisdiction, and therefore may only preside over criminal matters charging “offenses against the laws of the United States.”**

In every federal criminal prosecution, subject-matter jurisdiction is conferred by 18 U.S.C. § 3231. Through this statute, Congress limited federal judicial jurisdiction, promulgating that the “district courts of the United States shall have original jurisdiction . . . of all offenses *against the laws of the United States.*” 18 U.S.C. § 3231 (emphasis added). Federal courts, then, lack jurisdiction over a criminal proceeding absent an allegation of an offense against the laws of the United States. The indictment here failed to charge this essential mens rea element, which rendered the allegation in the indictment “an innocent mistake to which criminal sanctions normally do not attach”—not a cognizable federal crime. *Rehaif*, 139 S. Ct. at 2197; App. I: 30a.

**B. The Ninth Circuit’s decision widens the current circuit split about whether an indictment “defect” can ever leave federal courts without jurisdiction.**

Circuits are split about whether an indictment “defect” can ever render the federal courts without jurisdiction. *See United States v. Muresanu*, 951 F.3d 833, 838 (7th Cir. 2020) (recognizing split). Some circuits hold certain defects in an indictment render the courts without jurisdiction, while others hold all indictment defects, no matter how severe, do not impact jurisdiction.

This conflict stems from this Court’s decision in *United States v. Cotton*, 535 U.S. 625 (2002), which addressed a “defective” indictment. In *Cotton*, the indictment did “not allege any of the threshold levels of drug quantity that lead to

enhanced penalties under [21 U.S.C.] § 841(b).” *Id.* at 628. This Court held such “defects in an indictment do not deprive a court of its power to adjudicate a case.” *Id.* at 630. Thus, the defect did not deprive the district court of jurisdiction. *Id.* at 632.

*Cotton* based its jurisdictional holding on *Lamar v. United States*, 240 U.S. 60 (1916). In *Lamar*, the indictment charged the defendant with “falsely pretend[ing] to be an officer of the Government of the United States, to wit, a member of the House of Representatives . . . .” *Id.* at 64. Because a congressperson is not a United States officer, the defendant argued the indictment did not charge a crime and the court therefore lacked jurisdiction. *Id.* Rejecting the defendant’s jurisdictional argument, the *Lamar* Court explained:

[T]he district court, which has jurisdiction of all crimes cognizable under the authority of the United States, acts equally within its jurisdiction whether it decides a man to be guilty or innocent under the criminal law, and whether its decision is right or wrong. The objection that the indictment does not charge a crime against the United States goes only to the merits of the case.

*Id.* at 65 (internal citation omitted).

But in rejecting jurisdictional challenges based on the indictment defects present in both *Lamar* and *Cotton*, these cases properly adhere to federal courts’ limited jurisdictional grant under 18 U.S.C. § 3231, which provides for federal “original jurisdiction . . . of all offenses against the laws of the United States.” In *Lamar*, the indictment alleged all essential elements of “falsely pretend[ing] to be an officer,” thus alleging a cognizable crime. 240 U.S. at 64. Though the *Lamar*

defendant argued the method for proving one element, “officer,” did not meet the statutory requirements, this argument went to his innocence and not whether the indictment alleged a cognizable crime. *Id.*

Similarly, the indictment in *Cotton*—which charged the defendant with conspiracy and possession with intent to distribute cocaine and cocaine base, but failed to “allege any of the threshold levels of drug quantity that lead to enhanced penalties under § 841(b)”—also alleged a cognizable offense. *Cotton*, 535 U.S. at 628. Because conspiring and possessing with intent to distribute *any* cocaine and cocaine base violates United States law, alleged drug quantity controlled only the statutory sentencing range, not the conviction for a cognizable crime itself. *See* § 841(a) and (b).

Relying on *Cotton*, the First, Second, Fifth, Seventh, Eighth, Ninth, and Tenth Circuits have gone further, extending *Cotton* to hold that “defects” in an indictment—of whatever kind—do not affect subject matter jurisdiction.<sup>2</sup> *United States v. Lara*, 970 F.3d 68, 85-86 (1st Cir. 2020); *United States v. Balde*, 943 F.3d 73, 91-92 (2d Cir. 2019); *United States v. Scruggs*, 714 F.3d 258, 262-64 (5th Cir. 2013); *United States v. Dowthard*, 948 F.3d 814, 817 (7th Cir. 2020); *United States v. Fogg*, 922 F.3d 389, 391 (8th Cir. 2019); *United States v. Velasco-Medina*, 305 F.3d 839, 845-46 (9th Cir. 2002); *United States v. De Vaughn*, 694 F.3d 1141, 1147-48 (10th Cir. 2012). The Seventh Circuit holds without exception that “indictment

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<sup>2</sup> The Third Circuit has not squarely addressed the question but has suggested it reads *Cotton* similarly. *United States v. Al Hedaithy*, 392 F.3d 580, 588 (3d Cir. 2004).

defects are never jurisdictional.” *United States v. Maez*, 960 F.3d 949, 956 (7th Cir. 2020). The other Circuits in this group similarly hold that an indictment defect can never deprive a court of the power to adjudicate a case and categorically deny defendants’ claims challenging jurisdiction based on omission of the *Rehaif* mens rea element. *United States v. Burghardt*, 939 F.3d 397, 402 (1st Cir. 2019); *Lara*, 970 F.3d at 85-86; *United States v. McEachin*, No. 19-4255, 2021 WL 4060436, at \*2 (4th Cir. Sept. 7, 2021) (unpublished disposition); *United States v. Espinoza*, 816 F. App’x 82, 84 (9th Cir. 2020) (unpublished disposition).<sup>3</sup> And when rejecting the argument that an indictment’s omission of the *Rehaif* mens rea deprived the court of jurisdiction, the Second Circuit expressed that only “an indictment that utterly fails, on its face, to charge any federal offense may fail to establish the jurisdiction of the federal court.” *Balde*, 943 F.3d at 89.

The Eleventh Circuit generally has taken a more nuanced approach, recognizing that “indictment errors are not all the same’ and should not be treated categorically.” *United States v. McIntosh*, 704 F.3d 894, 902 (11th Cir. 2013). Some indictments “charge no federal crime at all,” and thus lack jurisdiction. *Id.* But some, such as the *Cotton* indictment, still charge “a complete federal offense” even though they omit an allegation necessary for an enhanced sentence. *Id.* And in the *Rehaif* context, the Eleventh Circuit placed the error in the latter category,

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<sup>3</sup> The Third Circuit has also summarily rejected this *Rehaif* claim, though based on its law that an indictment is not defective if its language “echoes the language of the statute.” *United States v. Nasir*, 982 F.3d 144, 162 n.15 (3d Cir. 2020).

concluding that “[s]o long as the conduct described in the indictment is a criminal offense, the mere omission of an element does not vitiate jurisdiction.” *United States v. Moore*, 954 F.3d 1322, 1336 (11th Cir. 2020). To so hold, the Circuit applied the rule that an indictment is sufficient if it “track[s] the statutory language and stat[es] approximately the time and place of an alleged crime.” *Id.* The Circuit did not grapple with the watershed import of *Rehaif*. The Circuit did not address that *Rehaif* eviscerated the Circuit’s prior improper reading of the illegal firearm possession statutes, nor that the missing mens rea element marks the distinction between innocent conduct and a federal offense.

The Sixth Circuit has recognized, in the context of a defendant who pled guilty to illegal possession of a firearm, that a defendant successfully challenges jurisdiction if he establishes “that the face of the indictment failed to charge the elements of a federal offense.” *United States v. Martin*, 526 F.3d 926, 934 (6th Cir. 2008) (holding that, pre-*Rehaif*, the indictment charged all the elements of § 922(g)(1)); *see also United States v. Howard*, 947 F.3d 936, 942 (6th Cir. 2020) (citing *Martin* favorably for the proposition “that a defendant challenges the court’s jurisdiction when he asserts that the ‘indictment failed to charge the elements of a federal offense’”). In the *Rehaif* context, however, the Sixth Circuit relied on *Cotton*’s statement that “defects in an indictment do not deprive a court of its power to adjudicate a case” to hold that an indictment’s omission of the *Rehaif* mens rea element did not deprive the court of jurisdiction. *United States v. Hobbs*, 953 F.3d 853, 856 (6th Cir. 2020) (quoting *Cotton*, 535 U.S. at 630). Like the Eleventh

Circuit, the Sixth Circuit also failed to address the unique issues posed by omission of the *Rehaif* mens rea element.

At issue is much more than an alleged “defect” in an indictment, the analytical framework the Ninth Circuit relied on to deny Jackson’s claim below. App. B: 5a (citing *Cotton*, 535 U.S. at 631; *Velasco-Medina*, 305 F.3d at 845–46). The district court lacked jurisdiction under 18 U.S.C. § 3231 to convict or sentence Jackson because there was no federal crime alleged.

**C. *Rehaif*’s impact in this context presents an issue of national importance.**

*Rehaif*’s implications are widespread and of national importance. Federal prosecutions for unlawful firearm possession under 18 U.S.C. § 922(g) account for just over ten percent of all federal criminal cases. U.S. Sent. Comm’n, *Quick Facts: Felon in Possession of a Firearm* (May 2021).<sup>4</sup> In fiscal year 2020, 6,782 cases involved convictions under § 922(g), representing only a slight decline from fiscal year 2019’s significant high over the previous four years. *Id.* (reporting 4,984 unlawful possession cases in fiscal year 2015 and progression through fiscal year 2019). Unlawful firearms offenses thus continue to represent a steady and significant portion of federal convictions. And this Court has addressed the framework through which to review the validity of defendants’ pre-*Rehaif* guilty plea and jury trial convictions. *Greer v. United States*, 141 S. Ct. 2090, 2096 (2021).

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<sup>4</sup> Available at [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon\\_In\\_Possession\\_FY20.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY20.pdf)

This Court also maintains jurisdictional boundaries, carefully limiting federal, state, and tribal jurisdiction: a court may not “favor contemporaneous or later practices *instead of* the laws Congress passed.” *See McGirt v. Oklahoma*, 140 S. Ct. 2452, 2468 (2020) (holding prosecution of crimes by Native Americans on tribal lands in eastern Oklahoma falls into tribal and federal jurisdiction under the Major Crimes Act, rather than state jurisdiction) (emphasis in original). The pre-*Rehaif* practice of erroneously indicting § 922(g) firearm offenses leaves those indictments without jurisdiction—the unlawful indictment practice cannot “amend the law.” *See McGirt*, 140 S. Ct. at 2482 (holding that although Oklahoma had been exercising jurisdiction over tribal cases does not make it correct as “unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law.”). Federal criminal jurisdiction must be strictly limited to “offenses *against the laws of the United States*.” 18 U.S.C. § 3231 (emphasis added).

*Rehaif* therefore presents a unique wrinkle in the debate over when and whether an elemental “defect” in an indictment strips federal courts of jurisdiction. This Court’s pronouncement in *Rehaif* of the previously missing mens rea element demolished the wall of Circuit authority to the contrary and demarcated the difference between “an innocent mistake to which criminal sanctions normally do not attach” and a federal crime. *Rehaif*, 139 S. Ct. at 2197. This Court should grant certiorari to review how the defective indictment framework applies here, and whether the critical mens rea omission requires dismissal.

**II. Whether time can be excluded based on delays by the government or its agencies' lack of diligence is an issue of exceptional importance this Court has not yet addressed.**

The Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, limits the time during which criminal charges may hang over a person's head unresolved. *See United States v. Marion*, 404 U.S. 307, 317-18 (1971). With this purpose in mind, "Congress intended to eliminate the practice of granting continuances as a matter of course" in passing the Act. *United States v. Perez-Reveles*, 715 F.2d 1348, 1352 (9th Cir. 1983). The Act provides "[n]o continuance . . . shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government." 18 U.S.C. § 3161(h)(7)(C).

When addressing this specific restriction on continuances, federal courts have interpreted this subsection to include delay caused by government agencies. In *United States v. Dog Taking Gun*, 7 F. Supp. 2d 1118, 1119 (D. Mont. 1998), the district court addressed whether FBI Laboratory inefficiency in processing DNA evidence preempted the defendant's statutory right to a speedy trial. The district court found the Assistant United States Attorney was "without blame" but that the FBI lab, "acting on behalf of the United States" failed to "diligently process the evidence the government had in its possession, custody, and control" for over a year. *Id.* at 120, 1122. The court reasoned that "when the Act explicitly rejects lack of diligence in case preparation by the prosecuting attorney as a ground for excludable delay, it seems unlikely the Congress meant lack of diligence by the FBI lab would be an avenue to exclude time from the speedy trial computation." *Id.* at 1121.

Thus, the court held “[t]he lack of diligence by the FBI in processing evidence, and the congested workload of the FBI lab do not constitute a factual basis to exclude time from the Speedy Trial computation.” *Id.* at 1122; *see also United States v. Stubbs*, No. 2:13-cr-0381-APG-CWH, 2014 U.S. Dist. LEXIS 66116 (D. Nev. May 13, 2014) (delay in preparation of DNA report and fingerprint evidence by Metro lab was not excludable under STA).

Jackson’s trial took place 46 days past the 70-day Speedy Trial Act deadline. He did not waive his speedy trial rights and specifically objected to the continuance. Over Jackson’s objection, the district court continued trial because the government was late in completing its discovery obligations. App. E: 23a, 27a–36a. The discovery included police records, dashboard, and body camera footage, and dispatch logs. App. E: 23a–27a. This was not discovery that required testing or analysis by a lab technician; the discovery consisted of records already complete and available. App. E: 27a–36a. The government blamed the discovery delays on the investigating agency and the local police departments. App. E: 30a–33a.

Without citing or relying on any case law, the Ninth Circuit held the government “encountered unavoidable bureaucratic hurdles outside of its control” that caused discovery delay and this was excludable time under the Speedy Trial Act. App. B: 5a. This holding ignores that the Act militates against all but the most necessary delays.

The Speedy Trial Act provides a short time frame in which “the Government—and the law enforcement agencies it works with—must timely

process the evidence it wishes to use at trial.” *Stubbs*, 2014 U.S. Dist. LEXIS 66116, at \*7. By excluding the delay caused by the investigating agency and the local police departments, the Ninth Circuit impermissibly allowed the rights of defendants to “be compromised by the Bureau’s administrative processing of evidence” effectively charging the defendant with the problems of bureaucracy. *Dog Taking Gun*, 7 F. Supp. 2d at 1122. This Court must correct the Ninth Circuit’s unsupported and incorrect narrow interpretation that the delays caused by government agencies are excludable time because it is out of the government’s control.

This Court has not yet addressed this issue of exceptional importance that impacts excludable time for all defendants. In fiscal year 2020, there were over 64,500 federal defendants nationwide, nearly 20% of whom were charged in the Ninth Circuit. U.S. Sent. Comm’n, *2020 Sourcebook of Federal Sentencing Statistics*, Appx B, p.219 and Table 1, p.35 (2020)<sup>5</sup> (reporting 64,565 federal offenders, with 12,039 in the Ninth Circuit). Firearm offenses are the third most common federal crime charged nationwide. *Id.* at Figure 2, p.45 (reporting firearm offenses as 11.7% of all federal offenses). The Ninth Circuit’s interpretation of the Speedy Trial Act would allow the government to extend the 70-day speedy trial period just because its agencies have affected workloads and delay production of

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<sup>5</sup> Available at <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2020/2020-Annual-Report-and-Sourcebook.pdf>.

crucial discovery. This interpretation renders the statute toothless. Defendants' right to speedy trial must be protected against "bureaucratic hurdles."

### Conclusion

Petitioner Jackson requests that the Court grant this joint petition for a writ of certiorari.

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Respectfully submitted,  
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