No. 22-5371

IN THE

SUPREME COURT OF THE UNITED STATES

DARRELL LAMONT HARRIS — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DARRELL LAMONT HARRIS #83241-083
(Your Name)

FCI - Gilmer
P.O. Box 6000
(Address)

Glenville, W.Va. 26351
(City, State, Zip Code)

(Phone Number)

## QUESTION(S) PRESENTED

WHETHER PRINCIPLES OF "RES JUDICATA" TRIGGERED APPLICATION OF ISSUE PRECLUSION AND COLLATERAL ESTOPPEL SO AS TO DEPRIVE THE FEDERAL COURT OF AUTHORITY TO CHARGE THE PETITIONER WITH A FEDERAL OFFENSE BASED ON THE SAME FACTS USED IN A PRIOR STATE PROCEEDINGS BUT WHICH WAS DISMISSED BECAUSE OF THE SIXTH AMENDMENT'S "SPEEDY TRIAL" CLAUSE?

## LIST OF PARTIES

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

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

## RELATED CASES

NONE

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## INDEX TO APPENDICES

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

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix "C" to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

## JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was April 29, 2022.

[X] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

2 → Fourteenth Amendment Due Process

3 → Sixth Amendment's "Speedy Trial" Clause

4 → Fifth Amendment Due Process Rights
Pre-indictment delay and Double Jeopardy

1 → Full Faith and Credit Clause - Art. IV, § 1

28 USC § 1738

Commonwealth is not seperate sovereign from federal government so dual sovereignty doctrin do not applies to this case at all. See: Puerto Rico v. Sanchez Valle, 136 S.Ct. 1863 (2016)

## STATEMENT OF THE CASE

The petitioner - Darrell Lamont Harris, was charged, initially, by the Commonwealth of Virginia, with robbery. A preliminary hearing was held on August 8, 2012, and a trial scheduled for January 28, 2013, but the charges were ultimately "nolle prossed". Later, the charges were reinstated, but dismissed by the circuit court when it held petitioner's entitlement to a speedy trial was denied as required by the Sixth Amendment to the Federal Constitution.

The above-recited dismissal was followed by a federal indictment when state officers, in collusion with federal officials, obtained a grand jury indictment against the petitioner for a "Hobbs Act" robbery (18 USC § 1951), on July 9, 2013. A jury trial was held on January 6, 2014. A guilty verdict was returned on the "Hobbs Act" robbery. On April 8, 2014, the petitioner was sentenced to 240 months imprisonment. An appeal resulted in affirmance of the conviction and sentence. United States v. Harris, 593 Fed. App'x. 189 (4th Cir.2014).

The instant proceeding is a collateral challenge to petitioner's conviction and sentence, under 28 USC § 22[illegible] The petitioner asserts a constitutional denial of his Sixth Amendment entitlement to the effective assistance of counsel. Included as one of the claims alleging ineffective assistance of counsel was that defense counsel failed to seek dismissal of the indictment under the Sixth Amend-

ment's "Speedy Trial" section:

> In Claim Four, Harris argues that "appellate counsel was ineffective for failing to present on appeal evidence to support the contention that the subsequent federal indictment against him should have been constitutionally barred from re-prosecution due to the prior dismissal of all state charges on Sixth Amendment speedy trial grounds."

United States v. Harris, 2014 U.S.Dist.LEXIS 200361 (E.D. Va. July 27, 2014), at *24. The same claim was made against his trial attorney. Id. at *20-21.

The lower courts denied petitioner's aforesaid claim by refusing to accord the state court's ruling the deference required by the doctrine of "full faith and credit". The state court found that the petitioner suffered unnecessary prejudice from the pre-trial delay, and dismissed the state charge under the Sixth Amendment's "speedy trial" section. However, the district court concluded, without analysis, by totally disregarding the findings of the state court about the prejudice suffered by Darrell Harris: "Harris has provided no factual support for any of these conclusory arguments." Id at *21. Thus, the district court placed the burden on Darrell Harris to establish the truth of findings already made by a state court in a previous parallel proceeding on the same charge.

In discounting the state court findings on prejudice suffered by Darrell Harris, and his argument that the dismissal by the state court created judicial estoppel, issue preclusion, and collateral estoppel for the federal government to relitigate the Sixth Amendment "speedy trial" claim, the district court ruled that Darrell Harris had failed to "provide[] factual support for any of these conclusory arguments." Id. The district court refused to consider the doctrine of "res judicata", and whether it applied to state rulings previously made on the same issue. The district court held: "It is settled that conclusory assertions, without any factual support, fail to establish that counsel was deficient for failing to file a pretrial motion to dismiss the indictment." Id. at * 21. There was no discussion of whether principles of "res judicata" were applicable to the facts of the case, in that the state court's ruling became binding on another court entertaining the same cause of action.

## REASONS FOR GRANTING THE PETITION

Under the "Full Faith and Credit" Clause of the United States Constitution (Art. IV, § 1), and 28 USC § 1738, the federal courts were obligated to honor the ruling by the Judicial Courts for the Commonwealth of Virginia, that the Petitioner's "Speedy Trial" right under the Sixth Amendment was violated, and required dismissal of the indictment and charges therein. Thus, a "Certificate of Appealability" was required to be issued on this claim since jurists of reason could disagree as to the resolution of the claim. Tharpe v. Sellers, 138 S.Ct. 545, 546, 199 L.Ed.2d 424, 425 (2018).

"We have long favored application of the common-law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality." Astoria F.S.&L. Assn. v. Solimino, 501 US 104, 107 (1991). "'When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.'" Id.(quoting United States v. Utah Constr. & Mining Co., 384 US 394, 422 (1966)). See also University of Tennessee v. Elliott, 478 US 788, 798 (1986). the foregoing rulings were premised on the legal principle that a "losing litigant

deserves no rematch after a defeat fairly suffered." Astoria F.S. & L. Assn. v. Solimino, 501 US at 107.

Since the Supreme Court has held that federal courts, including itself, are bound by rulings decided by administrative agencies, which act in a judicial capacity, then the same principle must be applied, equally, to rulings made by a state court because state courts certainly act in ajudicial capacity. See Puerto Rico v. Sanchez Valle, 136 S.Ct. 1863 (2016)(holding that the defendant's prosecution in a federal court, subsequent to being tried for the same crime in the Commonwealth of Puerto Rico, violated his Double Jeopardy rights); and Tharpe v. Sellers, 138 S.Ct. 545, 546 (2018)(holding that a state court's determination is binding on a federal court in the absence of clear and convincing evidence to the contrary). Instantly, there was no effort conducted by the federal courts to demonstrate that the state court's dismissal of the offense was plain error. Consequently, the state court's ruling, that prosecuting the petitioner was in violation of the Sixth Amendment's speedy trial right, was binding on the federal courts, and required dismissal of the federal indictment. Thus, the petitioner received ineffective assistance of counsel when no motion was made for dismissal.

Charging the petitioner in federal court following dismissal of the same charges in state court constitutes a clear violation of his due process rights, and to the equal protection of the laws, as enunciated in the 14th Amendment to the Federal Constitution. See: Benton v. Maryland, 395 U.S. 784 (1969); and, McDonald v. Chicago, 177 L.Ed.2d 894, 130 S.Ct. 3020 (2010). Furthermore, the state court's dismissal triggered application of the statute of limitations, and prohibited the prosecution. See: United States v. Barber, 219 U.S. 72, 78 (A plea of the statute of limitations is a plea to the merits, and however the issue was raised, the case could not reopened in a later prosecution).

Cases from lower courts have also found that a federal conviction is void when a district court fails to abide by the "Full Faith and Credit Clause" (28 USC § 1738). Meindl v. Genesys Pac. Techs., Inc., 204 F.3d 124 (4th Cir.2000); Sanders v. Sanford, 138 F.2d 415 (5th Cir.1943). A state court's determination which "specifically" deals with a speedy trial issue, and assistance of counsel, are all Clauses within the Bill of Rights that protect the state court's ruling against further federal encroachment. Mc-

Donald v. Chicago, supra.; and United States v. McKoy, 129 Fed.Appx. 815, 819 (4th Cir.2005)(prejudice is demonstrated when the defendant has been meaningfully impaired in his ability to defend against the state's charges to such an extent that the disposition of the criminal proceeding was likely affected; and Jones v. Angelone, 94 F.3d 900, 907 (4th Cir.1996); and United States v. Kissel, 218 U.S. 601, 610; and United States v. Oppenheimer, 242 U.S. 85; United States v. Barber, 219 U.S. 72, 78.

A second reason for granting certiorari presents itself under recent judicial rulings and opinions demonstrating that the petitioner was incorrectly sentenced as a "career offender" under U.S.S.G. § 4B1.1. In United States v. Green, 996 F.3d 176 (4th Cir.2021), it was held that the defendant's sentence was incorrectly enhanced because a Hobbs Act robbery does not qualify as a predicate under § 4B1.2(a)(2)'s "force clause". The Court relied on the fact that "all five circuits to address the issue have held that Hobbs Act robbery is not a crime of violoence under the Guidelines,". Id. at 185. Thus, the Court remanded to the district court with directions to conduct a re-sentencing hearing.

This same issue was addressed on June 22, 2022, by this

Court in United States v. Taylor, No. 20-1459. Ruling 7-2 in favor of the federal defendant, the Supreme Court rejected a broad reading of "crime of violence" for applying enhancements under 18 USC § 924(c). Taylor pleaded guilty to one count each of violating the Hobbs Act (18 USC § 1951), and for using a firearm in connection with a crime of violence (18 USC § 924(c)). Taylor was sentenced to 30 years of imprisonment. He later filed a federal habeas petition focusing on his § 924(c) conviction, which was predicated on his admission that he had committed both conspiracy to commit Hobbs Act robbery and attempted Hobbs Act robbery. Taylor argued neither Hobbs Act offense qualified as a "crime of violence" for purposes of § 924(c), after United States v. Davis, 588 U.S. _____(2019), was published, which held that § 924(c)(3)(B)'s residual clause was unconstitutionally vague. In his habeas proceeding, Taylor asked the court to apply Davis retroactively and vacate his § 924(c) conviction and sentence. The Fourth Circuit held that attempted Hobbs Act robbery does not qualify as a crime of violence under § 924(c)(3)(A), and vacated Taylor's conviction, and remanded for resentencing. On the Government's appeal to this Court, it was held that Hobbs Act robbery does not qualify as a "crime of violence" under § 924(c)(3)(A), because no element of the offense requires proof that the defendant used, attempted to use, or threatened to use force. Id.

Since the instant petitioner's sentence for committing a Hobbs Act robbery was enhanced for being a career offender (U.S.S.G. § 4B1.1), he is entitled to be resentenced without the enhancement because a Hobbs Act robbery does not qualify as a crime of violence for purposes of meeting the requirements of being sentenced as a career offender under Taylor, supra.

In addition, this Court's ruling in Wooden v. United States, No. 20-5279, establishes the invalidity of enhancing petitioner's sentence as a career offender since he fails to possess the qualifying required number of predicates.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darrell L Harris

Date: July 26, 2022