No. 22-

In the Supreme Court of the United States

ROGELIO ALBINO DIAZ-TOMAS AND
EDGARDO GANDARILLA NUNEZ,
Petitioners,

v.

NORTH CAROLINA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of North Carolina

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Klopfer v. North Carolina*, 386 U.S. 213 (1967), the Court held unconstitutional a practice unique to North Carolina, under which the state indefinitely postponed certain prosecutions over the objection of the accused. The Court determined that this practice violated the Speedy Trial Clause. Justice Harlan, concurring in the result, took the view that this practice violated the Due Process Clause.

District attorneys in North Carolina have now revived this practice. In DWI cases, where the defendant fails to appear for a scheduled court date, the state indefinitely postpones the defendant's prosecution. The charge remains pending, but the case is removed from the court's docket. The district attorneys refuse to reinstate these prosecutions unless defendants agree to plead guilty and to waive their right to appeal. Defendants are left in perpetual limbo, with no way to contest the charges against them. Their only exit from this predicament is to relinquish their right to a trial.

The question presented is whether this practice violates either the Speedy Trial Clause or the Due Process Clause.

RELATED PROCEEDINGS

Supreme Court of North Carolina:

State v. Diaz-Tomas, No. 54A19-3 (Nov. 4, 2022)
State v. Nunez, No. 255PA20 (Nov. 4, 2022)

Court of Appeals of North Carolina:

State v. Diaz-Tomas, No. COA19-777 (Apr. 21, 2020)

Wake County (N.C.) Superior Court:

State v. Diaz-Tomas, No. 15 CR 1985 (July 24, 2019)
State v. Nunez, Nos. 12 CR 221746 and 14 CR 758278 (Sept. 23, 2019)

Wake County (N.C.) District Court:

State v. Diaz-Tomas, No. 15 CR 1985 (July 15, 2019)
State v. Nunez, Nos. 12 CR 221746 and 14 CR 758278 (Sept. 11, 2019)

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Rogelio Albino Diaz-Tomas and Edgardo Gandarilla Nunez respectfully petition for a writ of certiorari to review the judgments of the Supreme Court of North Carolina.

OPINIONS BELOW

The opinion of the Supreme Court of North Carolina in *State v. Diaz-Tomas* is published at 382 N.C. 640, --- S.E.2d --- (N.C. 2022). The opinion of the Supreme Court of North Carolina in *State v. Nunez* is reported at 382 N.C. 601, 878 S.E.2d 797 (N.C. 2022) (mem.). The opinion of the Court of Appeals of North Carolina in *State v. Diaz-Tomas* is published at 271 N.C. App. 97, 841 S.E.2d 355 (N.C. Ct. App. 2020).

JURISDICTION

The judgments of the Supreme Court of North Carolina were entered on November 4, 2022. On January 6, 2023, the Chief Justice extended the time in which to file a petition for certiorari until March 14, 2023. No. 22A599. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The Sixth Amendment to the U.S. Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."

The Fourteenth Amendment to the U.S. Constitution provides in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

Section 15A-932 of the North Carolina General Statutes provides:

Dismissal with leave when defendant fails to appear and cannot be readily found or pursuant to a deferred prosecution agreement

(a) The prosecutor may enter a dismissal with leave for nonappearance when a defendant:

(1) Cannot be readily found to be served with an order for arrest after the grand jury had indicted him; or

(2) Fails to appear at a criminal proceeding at which his attendance is required, and the prosecutor believes the defendant cannot be readily found.

(a1) The prosecutor may enter a dismissal with leave pursuant to a deferred prosecution agreement entered into in accordance with the provisions of Article 82 of this Chapter.

(b) Dismissal with leave for nonappearance or pursuant to a deferred prosecution agreement results in removal of the case from the docket of the court, but all process outstanding retains its validity, and all necessary actions to apprehend the defendant, investigate the case, or otherwise further its prosecution may be taken, including the issuance of nontestimonial identification orders, search warrants, new process, initiation of extradition proceedings, and the like.

(c) The prosecutor may enter the dismissal with leave for nonappearance or pursuant to a deferred prosecution agreement orally in open court or by filing the dismissal in writing with the clerk. If the dismissal for nonappearance or pursuant to a de-

ferred prosecution agreement is entered orally, the clerk must note the nature of the dismissal in the case records.

(d) Upon apprehension of the defendant, or in the discretion of the prosecutor when he believes apprehension is imminent, the prosecutor may reinstitute the proceedings by filing written notice with the clerk.

(d1) If the proceeding was dismissed pursuant to subdivision (2) of subsection (a) of this section and charged only offenses for which written appearance, waiver of trial or hearing, and plea of guilty or admission of responsibility are permitted pursuant to G.S. 7A-148(a), and the defendant later tenders to the court that waiver and payment in full of all applicable fines, costs, and fees, the clerk shall accept said waiver and payment without need for a written reinstatement from the prosecutor. Upon disposition of the case pursuant to this subsection, the clerk shall recall any outstanding criminal process in the case pursuant to G.S. 15A-301(g)(2)b.

(e) If the defendant fails to comply with the terms of a deferred prosecution agreement, the prosecutor may reinstitute the proceedings by filing written notice with the clerk.

STATEMENT

This certiorari petition consolidates two cases that raise the same question and that were decided on the same day by the North Carolina Supreme Court.

1. North Carolina's "dismissal with leave" procedure

Under North Carolina law, where a defendant fails to appear at a criminal proceeding, "[t]he prosecutor may enter a dismissal with leave." N.C. Gen. Stat. § 15A-932(a). Despite the name, a "dismissal with leave" does not actually dismiss the case. Rather, dismissal with leave merely "results in removal of the case from the docket of the court." *Id.* § 15A-932(b). Meanwhile, "all process outstanding retains its validity, and all necessary actions to apprehend the defendant, investigate the case, or otherwise further its prosecution may be taken." *Id.* The defendant is still under a criminal charge, but nothing can happen in court until the prosecutor reinstitutes proceedings.

The prosecutor has complete control over this procedure. The prosecutor does not need the court's permission to enter a dismissal with leave. *Id.* § 15A-932(c). Nor does the prosecutor need the court's permission to reinstitute proceedings once the defendant reappears in court. *Id.* § 15A-932(d). These decisions are purely within the prosecutor's discretion.

The prosecutor's discretion is even broader than that. The prosecutor can leave the charge pending indefinitely, for as long as the prosecutor likes, and under state law neither the defendant nor the court can compel the prosecutor to reinstitute proceedings. App. 14a-19a. When the defendant reappears in

court, "the prosecutor *may*"—not must—"reinstitute the proceedings." § 15A-932(d) (emphasis added). That is, once a prosecutor has entered a dismissal with leave, state law does not require the prosecutor to reinstitute proceedings. Ever. The limitations period never recommences running because the charge was never actually dismissed, so prosecutors can keep a criminal charge hanging over a defendant's head for as long as they choose.

Under a separate provision of state law, a person's driver's license must be revoked if he is charged with a motor vehicle offense and he fails to appear in court. N.C. Gen. Stat. § 20-24.1(a)(1). His license may not be restored until the charge is disposed of. *Id.* § 20-24.1(b).

Prosecutors in North Carolina are now taking advantage of this dismissal with leave procedure to coerce DWI defendants into pleading guilty. When a DWI defendant misses a court date, the prosecutors enter a dismissal with leave and refuse to reinstate proceedings unless the defendant pleads guilty and waives his right to an appeal. As one of the assistant district attorneys acknowledged below, "the State does not generally reinstate older DWI cases in VL [i.e., voluntary dismissal with leave] status for trial—in cases where the Defendant willfully failed to appear in Court—unless the Defendant agrees to plead guilty to a DWI charge." Diaz-Tomas Record on Appeal at 44. The assistant district attorney added that these defendants "would need to waive their right to such appeal at the time of the guilty plea." *Id. See also id.* at 46 (stating that prosecutors will reinstate charges "only if the Defendant enters into a plea agreement and pleads guilty to a DWI offense"

and that "defendants are required to waive appeal … as part of the plea agreement").

A DWI defendant who misses a court date is thus unable to exercise his right to trial. He has only two choices. One option is to plead guilty and waive his right to appeal. The other is to remain in limbo, unable to drive, with a criminal charge hanging over his head, for the indefinite future.

2. Facts and proceedings below

a. Rogelio Diaz-Tomas was charged with the offenses of driving while impaired and driving without a license. App. 5a. He failed to appear for two scheduled court dates in the Wake County District Court. *Id.* at 5a-6a. The district attorney entered a "dismissal with leave" pursuant to N.C. Gen. Stat. § 15A-932(a). App. 5a.

After being arrested for failure to appear, Diaz-Tomas appeared in the District Court. *Id.* at 6a. The district attorney, following the regular practice of the Wake County District Attorney's office, refused to reinstate the charges unless Diaz-Tomas pled guilty and waived his right to appeal. *Id*. Diaz-Tomas declined to plead guilty. Instead, he filed a motion asking the District Court to reinstate the charges. *Id.* at 6a-7a. The District Court denied the motion. *Id.* at 7a. Diaz-Tomas filed a petition for review in the Wake County Superior Court, but the Superior Court denied the petition. *Id.* at 8a-9a. A divided North Carolina Court of Appeals affirmed. *Id.* at 30a-50a.

b. Edgardo Nunez was also charged with the offenses of driving while impaired and driving without

a license. When he did not appear for a scheduled court date, the district attorney entered a dismissal with leave. After being arrested for failure to appear, Nunez appeared in the District Court. The district attorney, again following his office's general policy, refused to reinstate the charges unless Nunez pled guilty and waived his right to appeal. Nunez declined to do so. He filed a motion asking the District Court to reinstate the charges. The District Court denied the motion. He filed a petition for review in the Superior Court, but the Superior Court denied the petition.

c. The North Carolina Supreme Court affirmed in both cases. App. 2a-27a, 28a-29a. (When the court granted review in *Diaz-Tomas*, it also granted review in *Nunez*, even though *Nunez* had not been decided by the Court of Appeals.) The North Carolina Supreme Court used the *Diaz-Tomas* case to explain its reasoning. In *Nunez*, the court issued a one-sentence per curiam opinion affirming "[f]or the reasons stated in *State v. Diaz-Tomas*." *Id.* at 29a.

The North Carolina Supreme Court first rejected several arguments made by Diaz-Tomas and Nunez that were based on state law. *Id.* at 11a-22a.

The court then turned to Diaz-Tomas's and Nunez's argument that the practice of indefinitely postponing prosecutions unless the defendant pleads guilty violates the defendant's federal constitutional rights to a speedy trial and to due process. *Id.* at 22a-26a. The court recognized that in *Klopfer v. North Carolina*, 386 U.S. 213 (1967), this Court held that North Carolina prosecutors violated the Speedy Trial Clause by indefinitely postponing prosecutions

under a procedure then called "*nolle prosequi* with leave" rather than "dismissal with leave." App. 23a-25a. The North Carolina Supreme Court acknowledged that the practice held unconstitutional in *Klopfer* "bore some similarity to the dismissal-with-leave procedure employed in the case at bar." *Id.* at 23a.

But the North Carolina Supreme Court distinguished *Klopfer*. In *Klopfer*, the court reasoned, the defendant "continually sought to resolve his active criminal charges," while in the present cases, the prosecutor indefinitely postponed the charges only after the defendants "fail[ed] to appear as scheduled for court." *Id.* at 26a. The North Carolina Supreme Court concluded that *Klopfer* was therefore "inapplicable." *Id.*

REASONS FOR GRANTING THE WRIT

North Carolina's prosecutors have revived the practice the Court held unconstitutional in *Klopfer*—the practice of indefinitely postponing prosecutions over the objection of the accused. The prosecutors admit that they will not reinstate proceedings unless defendants plead guilty and waive their right to appeal. As the Court held in *Klopfer*, this practice violates the Speedy Trial Clause. It also violates the Due Process Clause, as Justice Harlan concluded in *Klopfer*, because it renders the resulting guilty pleas involuntary.

The ostensible distinction drawn by the North Carolina Supreme Court is no distinction at all. Defendants who miss a court date do not thereby waive their constitutional rights to a speedy trial or to due process.

This practice appears to be unique to North Carolina, just as it was in *Klopfer*. (It nevertheless affects an enormous number of people, as we will explain below.) Every other state, as far as we are aware, manages to address defendants' non-appearance without stripping defendants of their constitutional rights. The Court should grant certiorari and reverse.

I. The indefinite postponement of prosecutions violates the Speedy Trial Clause.

North Carolina's practice of indefinitely postponing prosecutions unless defendants plead guilty violates the Speedy Trial Clause for precisely the reason the Court articulated in *Klopfer*.

In *Klopfer*, the Court considered "whether a State may indefinitely postpone prosecution on an indictment without stated justification over the objection of an accused who has been discharged from custody." 386 U.S. at 214. The procedural device North Carolina used in *Klopfer* was the same one it is using today, under a slightly different name. It was "an unusual North Carolina criminal procedural device known as the 'nolle prosequi with leave.'" *Id.* As the Court explained, "the taking of the nolle prosequi does not permanently terminate proceedings on the indictment." *Id.* Rather, the indictment remained in effect and the case could be placed back on the court's docket at the prosecutor's discretion. *Id.* "Since the indictment is not discharged," the Court noted, "the statute of limitations remains tolled." *Id.*

The Court emphasized that North Carolina's use of this device left defendants in an impossible position.

> The consequence of this extraordinary criminal procedure is made apparent by the case before the Court. A defendant indicted for a misdemeanor may be denied an opportunity to exonerate himself in the discretion of the solicitor and held subject to trial, over his objection, throughout the unlimited period in which the solicitor may restore the case to the calendar. During that period, there is no means by which he can obtain a dismissal or have the case restored to the calendar for trial.

Id. at 215.

The Court held that this procedure violated the Speedy Trial Clause. *Id.* at 221-22. "The petitioner is not relieved of the limitations placed upon his liberty by this prosecution merely because its suspension permits him to go 'whithersoever he will,'" the Court explained. *Id.* "The pendency of the indictment may subject him to public scorn and deprive him of employment." *Id.* at 222. The Court concluded that "[b]y indefinitely prolonging this oppression, as well as the anxiety and concern accompanying public accusation, the criminal procedure condoned in this case by the Supreme Court of North Carolina clearly denies the petitioner the right to a speedy trial." *Id.* (footnote and internal quotation marks omitted).

By reviving this practice, North Carolina is once again violating the Speedy Trial Clause. Defendants stand charged indefinitely. They are unable to achieve any resolution of the pending charges—unless they plead guilty and waive their appeals.

North Carolina has changed the name of this procedural device—now it is called "dismissal" with leave rather than "nolle prosequi" with leave—but the substance is identical. It is hard to imagine how a state could more flagrantly defy *Klopfer*.

The Court's more recent Speedy Trial Clause decisions only reinforce the conclusion that North Carolina is acting unconstitutionally. In *United States v. MacDonald*, 456 U.S. 1, 8 n.8 (1982), the Court explained that while the speedy trial guarantee is inapplicable where charges have been dismissed outright, this rule does not apply to the "unusual state procedure" at issue in *Klopfer*, under which "a prosecutor was able to suspend proceedings on an indictment indefinitely." The Court emphasized that under North Carolina's unique procedure, the charges were "never dismissed or discharged in any real sense so the speedy trial guarantee continued to apply." *Id.* The same is true today, now that North Carolina has revived its use of this device.

North Carolina's revival of the tactic condemned in *Klopfer* is also contrary to the purpose of the Speedy Trial Clause—"the concern that a presumptively innocent person should not languish under an unresolved charge." *Betterman v. Montana*, 578 U.S. 437, 443 (2016). In North Carolina, the presumptively innocent can languish under an unresolved charge forever. Worse, prosecutors are deliberately exploiting the "dismissal with leave" procedure to coerce defendants into pleading guilty. *Cf. Doggett v. United States*, 505 U.S. 647, 656 (1992) ("Doggett would prevail if he could show that the Government had intentionally held back in its prosecution of him to gain some impermissible advantage.").

The North Carolina Supreme Court erred in finding *Klopfer* "inapplicable," App. 26a, on the ground that Diaz-Tomas and Nunez failed to appear for their initial court dates. Defendants who miss a court date do not thereby lose the right to contest delays that occur *after* they have appeared in court. If that were the law, a single missed court date would allow the prosecutor to keep a charge pending for the rest of the defendant's life.

Diaz-Tomas and Nunez did not waive their constitutional right under *Klopfer* to a speedy trial based on delays subsequent to their appearance in court. As the Court has observed countless times, "[t]o establish a valid waiver, the State must show that the waiver was knowing, intelligent, and voluntary under the high standard of proof for the waiver of constitutional rights." *Maryland v. Shatzer*, 559 U.S. 98, 104 (2010) (citation, brackets, and internal quotation marks omitted). Diaz-Tomas and Nunez did not waive their speedy trial rights at all, much less in a knowing, intelligent, and voluntary manner. If missing a court date is tantamount to a waiver of constitutional rights, North Carolina could just as well deprive petitioners of their right to counsel, on the theory that they have waived that right as well. Indeed, North Carolina could just as well sentence petitioners to death for their DWI offenses, on the theory that they have also waived their rights under the Eighth Amendment.

Lying beneath the North Carolina Supreme Court's decision, no doubt, is the legitimate concern that defendants should be punished for willfully missing court dates. But the state has other ways to do that. Missing a court date is a separate offense

under North Carolina law. N.C. Gen. Stat. § 15A-543. Defendants can be charged under this statute if they miss a court date without a good reason. Defendants can also be charged with criminal contempt for willfully missing court dates. Measures like these must be working well in the other 49 states, which have not found it necessary to keep defendants under the perpetual cloud of a criminal charge. North Carolina has no reason to deprive defendants of their constitutional right to a speedy trial.

II. The indefinite postponement of prosecutions, for the purpose of coercing guilty pleas, violates the Due Process Clause.

North Carolina's practice of indefinitely postponing prosecutions also violates the Due Process Clause because it coerces defendants into pleading guilty.

A guilty plea "is valid only if done voluntarily, knowingly, and intelligently." *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005). As the Court has long recognized, a guilty plea obtained by coercion is inconsistent with due process because it is involuntary. *See, e.g.*, *Waley v. Johnston*, 316 U.S. 101, 104 (1942).

By indefinitely postponing prosecutions while charges remain pending, North Carolina coerces defendants to plead guilty. The only way a defendant can avoid staying perpetually under the cloud of a criminal charge is to plead guilty and waive his right to appeal. The defendant is given no opportunity to go to trial and put the prosecution to its proof. A

guilty plea obtained under these circumstances can hardly be called voluntary.

Moreover, "[a] fundamental requirement of due process is the opportunity to be heard … at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (citation and internal quotation marks omitted). In North Carolina, defendants are deprived of their liberty without being heard at all. Whether they are guilty or innocent, their only choice is to plead guilty and waive their right to appeal.

In *Klopfer*, Justice Harlan concurred in the judgment on the ground that North Carolina's procedural shenanigans violated the Due Process Clause. 386 U.S. at 226-27. (Justice Harlan did not think the Speedy Trial Clause was incorporated against the states, so he did not join the Court's opinion.) In Justice Harlan's view, "this unusual North Carolina procedure, which in effect allows state prosecuting officials to put a person under the cloud of an unliquidated criminal charge for an indeterminate period, violates the requirement of fundamental fairness assured by the Due Process Clause of the Fourteenth Amendment." *Id.*

North Carolina's dismissal with leave procedure indefinitely postpones defendants' prosecutions, so it violates the Due Process Clause for the same reason.

III. North Carolina appears to be the only state that employs this unconstitutional procedure.

Just as in *Klopfer*, North Carolina seems to be the only state in which prosecutors can defer cases indefinitely over the objection of the accused. We have

found two states with procedures that partially resemble North Carolina's dismissal with leave, but in neither state can a defendant be forced to remain perpetually under the cloud of a criminal charge.

In Illinois, a criminal case can be "stricken with leave to reinstate." When a case is in this posture, "[t]he same charges continue to lie against the accused, albeit in a dormant state." *Ferguson v. City of Chicago*, 820 N.E.2d 455, 459 (Ill. 2004). When a case is in this posture, however, the defendant is entitled by statute to a trial within 160 days of demanding one. *Id.* at 458. This entitlement removes the speedy trial concerns the Court expressed in *Klopfer*. Defendants in North Carolina, by contrast, are not entitled to demand a trial at any time. Prosecutors can leave them twisting in the wind, forever.

In Georgia, a case can be placed on the "dead docket." "The term 'dead-docketed' is really a misnomer; it refers to a procedural, administrative device, not to the termination of a matter. … [A] dead-docketed count may be reinstated to the active docket any time at the trial court's direction." *Seals v. State*, 860 S.E.2d 419, 426 (Ga. 2021). As in Illinois, however, when a case is in this posture, the defendant can remove the case from the dead docket by demanding a trial. *Id.* Not so in North Carolina, where the prosecutors have the discretion to keep a case in dismissal with leave status for as long as they like.

It is hardly surprising that no state apart from North Carolina allows prosecutors to postpone cases indefinitely, because this tactic is so clearly contrary to *Klopfer*.

IV. This issue affects an enormous number of people.

This is an important question because it affects so many defendants in North Carolina.

In the year that ended June 30, 2022, 146,689 criminal cases were dismissed with leave in North Carolina's Superior Courts. N.C. Admin. Off. of the Cts., *2021-2022 Statistical and Operational Report of North Carolina Trial Courts* 7 (2022).[1] Most of these cases were traffic misdemeanors, including DWI offenses. *Id.* This past year was no aberration; the figures have been similar for many years.[2]

It would be hard enough to live under a perpetual criminal charge, but it is even harder when one cannot drive while the charge is pending, because a driver's license is often "essential in the pursuit of a livelihood." *Bell v. Burson*, 402 U.S. 535, 539 (1971). This circumstance places additional pressure on defendants to plead guilty.

More than 1.2 million people in North Carolina—around one in seven adult drivers—have a suspended driver's license. William E. Crozier & Brandon L. Garrett, *Driven to Failure: An Empirical Analysis of Driver's License Suspension in North Carolina*, 69 Duke L.J. 1585, 1606 (2020). Most of these suspensions are for failure to appear at a court date. *Id.* Members of minority groups are disproportionately affected. Of the drivers whose licenses have been suspended for failure to appear, 33 percent are black

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[1] Available at https://www.nccourts.gov/documents/publications/statistical-and-operational-reports-2021-22.

[2] Annual statistical reports for the North Carolina courts are available at https://www.nccourts.gov/documents/publications/north-carolina-courts-statistical-and-operational-reports.

and 24 percent are Latino, while the state's driving population is only 21 percent black and only 8 percent Latino. *Id.*

People whose cases are dismissed with leave suffer a wide range of adverse consequences beyond the loss of their drivers' licenses. A pending criminal charge makes it much more difficult to get a job, to find housing, and to get into college. Without the ability to clear one's name, it is also much harder to break out of the cycle of court debt that traps many people of limited means. People with criminal charges hanging over their heads are often afraid to call the police when they become victims of crimes themselves. These problems place even more pressure on defendants to plead guilty and waive their appeals, the only option the state allows them.

While some defendants deliberately miss court dates because they hope to avoid punishment, many miss court dates for reasons that are not blameworthy. Some defendants are simply unaware of their court dates because notices of the dates were mailed to an incorrect or outdated address. Researchers at Duke Law School recently tried to send surveys to the addresses used by the North Carolina Department of Motor Vehicles and found that more than a third of the surveys were returned by the postal service as undeliverable, which suggests that many notices of court dates never reach their intended recipients. Brandon L. Garrett, Katima Modjadidi, & William Crozier, *Undeliverable: Suspended Driver's Licenses and the Problem of Notice*, 4(1) UCLA Crim. Just. L. Rev. 185 (2020).

There are many other reasons defendants might miss court dates that have nothing to do with the

hope of escaping punishment. Some lack transportation. Some have unavoidable employment or child-care obligations. Non-citizens are often afraid they will face immigration consequences if they appear in court. In recent times, Covid has scared many people away from court appearances. In North Carolina, all these people can be coerced into pleading guilty by prosecutors who have the power to postpone charges indefinitely.

CONCLUSION

This case is appropriate for summary reversal. The North Carolina prosecutors are blatantly flouting *Klopfer*. The North Carolina Supreme Court clearly erred in letting them get away with it. The petition for a writ of certiorari should be granted and the decision below should be summarily reversed. At the very least, the petition should be granted and the case should be set for briefing and argument.

Respectfully submitted,

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