

No. 23-\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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**KEITH MAS SIMS, JR.,**

*Petitioner,*

v.

**DAVID W. GRAY, Warden,**

*Respondent.*

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**On Petition for Writ of Certiorari  
to the U.S. Court of Appeals  
for the Sixth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED FOR REVIEW

To be eligible for federal habeas relief under 28 U.S.C. § 2254, a state prisoner must have exhausted the remedies available to him in state court. *Id.* at § 2254(b). To exhaust federal-law-based claims, they must be “fairly presented” in the state courts. *Coleman v. Thompson*, 501 U.S. 722, 729–30, 750 (1991). Full and fair opportunity means invoking “one complete round” of the State’s established appellate review process. *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999)).

“Section 2254(c) requires only that state prisoners give state courts a fair opportunity to act on their claims.” *O’Sullivan* at 844 (citing *Castille v. Peoples*, *supra*, at 351; *Picard v. Connor*, 404 U.S. 270, 275–276 (1971). “[T]he crucial inquiry is whether the ‘substance’ of the petitioner’s claim has been presented to the state courts in a manner sufficient to put the courts on notice of the federal constitutional claim.” *Prendergast v. Clements*, 699 F.3d 1182, 1184 (10<sup>th</sup> Cir. 2012) (quoting *Picard*, 404 U.S. at 278).

Petitioner presented the substance of his federal-based speedy trial arguments in his direct appeal through the Ohio state courts. It is undisputed that he raised a federal-law-based speedy trial argument in the Ohio Supreme Court, including by citing this Court’s decision in *Barker v. Wingo*, 407 U.S. 514 (1972). In his intermediate appeal, Petitioner did not cite *Barker*. But the substance of his appellate argument demonstrated that he was making an argument based on *Barker*. Petitioner invoked the U.S. Constitutional right to a speedy trial in the heading of his argument and the first sentence of his argument, and the argument that followed aligned with the factors this Court set forth in the *Barker* case as relevant for a speedy-trial-violation argument.

The district court denied relief, finding that Petitioner failed to fully and fairly present the claims in the state courts. This was based on two legal findings. First, the district court held that invoking the federal right to a speedy trial in a heading and first sentence of an argument and an argument tracking the factors of *Barker* did not sufficiently present the claim in the intermediate court. Second, the district court held that, despite Petitioner clearly presenting a federal speedy trial argument to the Ohio Supreme Court, this, too, was not a fair presentation of the claim because the state’s high court may have found that it was procedurally barred.

Accordingly, the broad question for review is whether it was debatable that Petitioner presented a federal claim in state court sufficient to preserve that claim for review under 28 U.S.C. § 2254. More specifically, the first question is whether the substance of the federal speedy trial claim raised in the state intermediate court of appeals was sufficiently presented through citing the U.S. Constitution and briefing the *Barker* factors. The second question is whether the act of clearly presenting a federal claim to a state’s highest court is somehow failing to give fair and adequate notice of that federal claim to the state court merely because a federal court sees that there may have been a procedural rule that applied to allow the state’s highest court not to reach the merits of that claim.

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## **PETITION FOR WRIT OF CERTIORARI**

Petitioner Keith Mas Sims, Jr. respectfully petitions the Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Sixth Circuit.

### **OPINION BELOW**

The opinion of the U.S. Court of Appeals for the Sixth Circuit, declining to issue a certificate of appealability and affirming the denial of Petitioner's petition for writ of habeas corpus under 28 U.S.C. § 2254 is unpublished. *Keith Mas Sims, Jr. v. David W. Gray, Warden*, No. 23-3015 (6<sup>th</sup> Cir. Jun. 2, 2023). Pet. App. 1a.

### **STATEMENT OF THE BASIS FOR JURISDICTION**

The district court had jurisdiction as Petitioner Keith Mas Sims, Jr. filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 within a year of his state convictions becoming final. See 28 U.S.C. § 2244(d). The Sixth Circuit had jurisdiction under 28 U.S.C. § 1291 and 28 U.S.C. § 2553(c), as Sims timely filed an application for certificate of appealability. This Court has jurisdiction under 28 U.S.C. § 1254(1), as Sims is filing this petition within 90 days of the Sixth Circuit's decision finding that the district court's decision was not debatable. See Sup. Ct. R. 13.1, 13.3., 29.2.

## **RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial \* \* \*.

U.S. Const. amend. VI.

- (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—
  - (A) the applicant has exhausted the remedies available in the courts of the State; or
  - (B) (i) there is an absence of available State corrective process; or(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.
- (2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.
- (3) A State shall not be deemed to have waived the exhaustion requirement or be stopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

28 U.S.C. § 2254(b)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

## STATEMENT OF THE CASE

The Court has been clear that fully and fairly presenting a federal claim means giving the state courts one complete round of appeal, which in this case would include appealing to the Ohio Supreme Court. *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). This case presents questions on what it takes to fully and fairly present a federal claim in state courts in order to preserve it for a petition for writ of habeas corpus under 28 U.S.C. § 2254.

Sims' appeal to the Ohio Supreme Court clearly presented a federal speedy trial violation argument, as both the district court and Sixth Circuit acknowledged. See Pet. App. 6a (Sixth Circuit confirming that Sims' pro se jurisdictional memorandum filed with the Ohio Supreme Court discussed *Barker*); 13a (magistrate judge listing language of propositions of law presented to the Ohio Supreme Court); 43a (district court adopting report and recommendation in its entirety). Those lower courts nevertheless concluded that Sims had not fully and fairly presented his claims by imposing requirements not drawn from this Court's case law. This included findings that Sims' appeal to the Ohio Supreme Court was not a full and fair presentation of the federal speedy trial violation claim because the state's highest court might have found that Sims' argument to the intermediate state court was not sufficient enough to present the federal aspect of the claim. The Sixth Circuit and district courts thereby speculated that the Ohio Supreme Court might have agreed that Sims' argument in that intermediate court was insufficient to fully and fairly present the federal speedy trial violation argument, even though his appellate brief had stated in a heading and in the first sentence that his U.S. Constitutional speedy trial right was violated, and he went on to argue the relevant factors of *Barker v. Wingo*, 407 U.S. 514 (1972), even though he failed to cite the case.

1. In 2014, Sims was arrested and charged in an Ohio county with offenses including with murder. Over the course of several months, Sims and counsel for the state filed numerous pretrial motions. Sims was incarcerated for the entire pretrial period and at no point waived his right to have a speedy trial.

2. In the second half of 2015, Sims filed two pro se motions to dismiss the charges on the basis that his speedy trial right was violated. The state trial court denied these motions on the basis that Sims' counsel moved for and was granted a previous continuance which tolled the running of his speedy trial clock. Before the end of 2015, Sims filed another pro se motion to dismiss the charges on the basis that his speedy trial right was violated. The trial court denied the motion.

3. Sims' case proceeded to jury trial in March 2016—508 days after his arrest. The jury returned guilty verdicts on all counts.

4. Sims appealed. Relevant here, appellate counsel asserted that Sims was denied his state and federal rights to a speedy trial. The assignment of error was raised both in state and federal terms—that Sims' rights to speedy trial were violated “pursuant to the United States and Ohio Constitutions.” While the legal argument overwhelmingly cited state court authorities, Sims cited the U.S. Constitution and a certain page of an Ohio Supreme Court case that set forth federal case law and the outline for the precise argument he was presenting. The case law on that page included a full citation to *Barker*. Sims then went forward to make substantive factual assertions that, while also relevant for his state claim, showed that he was tracking the four-part test set forth in *Barker* to show that he met the standard and, as a result, his federal speedy trial right had been violated.

5. The intermediate Ohio court of appeals carefully reviewed the state argument that Sims presented and expressly denied it. While the decision did not expressly review the federal argument, its decision on the state argument is read to have included review of the federal argument. See *Harrington v. Richter*, 562 U.S. 86, 99 (2011) (“When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary.”).<sup>1</sup>

6. Sims timely appealed to the Ohio Supreme Court. His memorandum in support of jurisdiction raised the speedy trial argument in clear federal terms, with citation to this Court’s case law. The Supreme Court of Ohio entered an order declining jurisdiction. That decision did not state that it was denying relief for any procedural reason.

7. Sims timely filed his petition for writ of habeas corpus under 28 U.S.C. § 2254. He again raised his *Barker*-based arguments that he was denied his federal right to a speedy trial.

8. The magistrate judge concluded that Sims had procedurally defaulted on these claims. This was based on two rulings. First, the magistrate judge concluded that Sims’ multiple citations to the U.S. Constitution’s right to speedy trial, his citation to a particular page of an Ohio Supreme Court decision that set forth the foundation of Sims’ federal claim, and his subsequent statement of facts that met each of the four requirements needed to prove his federal claim under

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<sup>1</sup> If this were not the case—if the state appellate court failed to reach the merits of Sims’ federal speedy trial right violation argument—then both the district court and Sixth Circuit erred in affording the state courts any deference. Where state courts do not reach the merits of a habeas petitioner’s claim, federal habeas review is not subject to the deferential standards set out in the Antiterrorism and Effective Death Penalty Act of 1996. See *Cone v. Bell*, 556 U.S. 449, 472, 129 S. Ct. 1769 (2009) (citing 28 U.S.C. § 2254(d)). Instead, *de novo* review applies. *Id.*

*Barker v. Wingo*, were insufficient. Pet. App. 22-23a. Second, the magistrate judge concluded that, while Sims had fully briefed the Ohio Supreme Court on a federal speedy trial challenge, that act did not count as giving the state courts full and fair notice of his federal speedy trial violation because the Ohio Supreme Court might have viewed Sims' argument to the intermediate state appellate court as failing to present a federal claim. Pet. App. 23-24a.

9. Sims timely objected. The district court adopted the findings and conclusions of the magistrate judge's report on these issues. Pet. App. 43a., denied relief, and dismissed the petition. Pet. App. 44a.

10. Sims timely applied to the Sixth Circuit for certificate of appealability. Like the district court, the Sixth Circuit concluded that Sims had procedurally defaulted on these claims for the same two reasons. First, the Sixth Circuit found that Sims' argument to the intermediate state appellate court was insufficient to fully and fairly present the argument at that level despite his multiple citations to the U.S. Constitution's right to speedy trial and his argument that tracked the factors set forth in *Barker v. Wingo*. Pet. App. 4-6a. Second, the Sixth Circuit concluded that, while Sims had fully briefed the Ohio Supreme Court on a federal speedy trial challenge, because the Ohio Supreme Court might have viewed Sims' argument to the intermediate state appellate court the same way—as failing to present a federal claim—the act of clearly presenting a federal claim was not giving fair notice to the state's high court of that claim. Pet. App. 6a.

At this time, Sims stands wrongfully convicted of murder, two felonious assault counts, and firearm specifications, all based on inaccurate eyewitness testimony, with a minimum aggregate sentence of 18 years of incarceration, all in violation of his constitutional right to speedy trial. He is incarcerated at Belmont Correctional Institution in St. Clairsville, Ohio.

## REASONS FOR GRANTING THE PETITION FOR WRIT

This case presents important procedural questions about what it means to “fully and fairly present” federal claims in state courts in order to preserve them for presentation and review under 28 U.S.C. § 2254. The district and circuit courts found that Sims did not meet the minimum threshold of putting the intermediate court on notice of the substance of his claim by citing the U.S. Constitutional right to speedy trial in the heading of his argument, in the first sentence of his argument, and then by tracking the relevant factors set forth by this Court in *Barker v. Wingo*. 407 U.S. 512 (1972). This flies in the face of this Court’s case law establishing that giving notice of the substance of a federal claim is sufficient to fully and fairly present a federal claim. See *Picard v. Conner*, 404 U.S. 270 (1971).

Even more surprisingly, the district and circuit courts found that Sims’ clear presentation of the federal argument—including direct citation to *Barker*—in the state’s supreme court was insufficient to put the state courts on notice because the state’s high court might have concluded that the federal argument was not presented in the intermediate court (and therefore procedurally barred). This was, in essence, a ruling that, even if a prisoner litigant’s argument to a state’s highest court is clearly a full and fair presentation of the federal claim, if there is simply a chance that the state’s highest court would have found that the argument was barred based on a lack of clarity in the intermediate court, the claim can never be considered fully and fairly presented. This flies in the face of the Court’s rulings in cases such as *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999).

The Court has held that a complete round of review in the state courts is required. *Id.* And the Court had held that the federal claim is not exhausted if it is not taken to the state’s highest

court. *Id.* But at no point has this Court held a claim has not been “fully and fairly presented” for the purposes of § 2254 when a district and circuit court speculate that the state’s highest court might have applied a procedural bar if that state’s highest court also found that the petitioner’s filing in the intermediate appellate court was insufficient to raise the federal claim.

In this case, the Sixth Circuit and district court created law out of whole cloth that appears to conflict with the principles of *O’Sullivan, Picard*, and *Anderson v. Harless*, 459 U.S. 5, 46 (1992). They found that even when the federal claim is clearly presented in the state’s highest court, if that high court might have interpreted the claim raised in the intermediate appellate court was not a federal claim and denied relief as a result of a procedural bar, the claim was not fully and fairly presented.<sup>2</sup> The rule that the district court and Sixth Circuit have developed in this case means first that federal courts can make determinations of whether a federal issue is fully and fairly presented based on speculation on what a state court may have done. Second, the bright-line rule means that, even if a state court is clearly put on “notice” of the “substance” of a federal claim, the claim is not fully and fairly presented if there exists a procedural bar that might have been invoked (but was not involved). This undermines the Court’s view that a federal claim is exhausted if raised in the state’s highest court.

The Court should accept jurisdiction, address and resolve these important questions. See Sup. Ct. R. 10(a), 10(c). Because the lower federal courts agreed that Sims had clearly presented

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<sup>2</sup> There is no question that Ohio has that procedural rule. Accordingly, the question is not whether the procedural rule exists. The question is whether it applied. The Ohio Supreme Court did not make a finding that the federal claim was not sufficiently presented in the lower appellate court. Instead, the district court and circuit court concluded that the federal claim was not sufficiently presented in the lower appellate court and then noted that the Ohio Supreme Court might have concluded the same.

the federal claim in the Ohio Supreme Court and because both the district and circuit court concluded that this was not “full and fair presentation” because the Ohio Supreme Court might have concluded that the claim was not preserved in the intermediate appellate court, Sims addresses that legal issue first.

**I. The Court Should Grant Certiorari to Address and Resolve for the Lower Courts whether a Federal Claim that is Clearly Presented to a State’s Highest Court Nevertheless Fails to “Fully and Fairly Present” the Claim under 28 U.S.C. § 2254 because the State’s Highest Court *might have* Concluded that the Claim was Procedurally Barred.**

**A. A Petitioner Fully and Fairly Presents a Federal Claim by Clearly Making that Claim in the State’s Highest Court.**

A state prisoner is not eligible for federal habeas relief unless he first exhausts his claim by “fairly present[ing]” it to the state courts. *Picard v. Connor*, 404 U.S. 270, 275 (1971). The prisoner must have “provide[d] the state courts with a ‘fair opportunity’ to apply controlling legal principles to the facts bearing upon his constitutional claim.” *Anderson v. Harless*, 459 U.S. 4, 6 (1982) (per curiam) (citations omitted).

**B. The Lower Courts’ Rulings are based on Speculation on How a State Court Might have Ruled and Arguably Run Contrary to the Court’s Precedent.**

The lower courts conceded that Sims’ appeal to the Ohio Supreme Court presented a *Barker*-based argument that he was deprived of the federal right to a speedy trial. See Pet. App. 6a, 13a, 43a. The Ohio Supreme Court did not deny Sims’ request for discretionary jurisdiction on the merits or on a finding that Sims had procedurally defaulted on the claim. And yet the lower courts found that Sims had not fully and fairly presented the federal claim to the state’s highest court on a finding that the Ohio Supreme Court might have agreed with their view as to

whether Sims had sufficiently raised the claim in the intermediary appellate court and therefore concluded that Sims had procedurally defaulted on the claim. Pet. App. 6a, 23-24a.

Clearly briefing a state's highest court on a violation of a federal right must qualify as providing a state a full and fair opportunity to address a federal error. Sims did more than enough to put the Ohio Supreme Court on notice that he had raised a federal claim. This new holding from the district court and Sixth Circuit, adding the requirement that a petitioner must show that he could not have been denied relief for a procedural default conflicts with this Court's case law. "Section 2254(c) requires only that state prisoners give state courts a fair opportunity to act on their claims." *O'Sullivan* at 844 (citing *Picard v. Connor*, 404 U.S. 270, 275-276 (1971). "[T]he crucial inquiry is whether the 'substance' of the petitioner's claim has been presented to the state courts in a manner sufficient to put the courts on notice of the federal constitutional claim."

*Prendergast v. Clements*, 699 F.3d 1182, 1184 (10<sup>th</sup> Cir. 2012) (quoting *Picard*, 404 U.S. at 278).

### **C. The Lower Courts' Bright-line Rule Unreasonably Restricts Access to Federal Courts on Federal Claims.**

The lower courts held in this case that while a state petitioner clearly presented a federal claim to a state's highest court, he somehow did not give the state courts a fair opportunity to address the error. Beyond flying in the face of this Court's precedent as reviewed above, it creates a rule out of whole cloth that goes too far and would lead to a dangerous precedent that unreasonably restricts access to federal courts on federal claims.

The goal is to ensure that the state courts have notice that a federal claim is presented. That undoubtedly occurred here. As the lower federal courts conceded, Sims' claim presented to the Ohio Supreme Court was a federal claim. Pet. App. 6a, 13a, 43a. The gymnastics thereafter

used to overcome the reality that the Ohio Supreme Court could not have missed the federal claim being presented stretched beyond credible. It is true that, if the Ohio Supreme Court had believed that Sims had not presented a federal speedy trial claim in the intermediate appellate court and concluded that Sims therefore had procedurally defaulted on the claim, the claim would be barred. If so, that argument would have been barred because it was denied on an adequate and independent grounds. See *Edwards v. Carpenter*, 529 U.S. 446, 451 (2000); *Wainwright v. Sykes*, 433 U.S. 72, 81-88 (1977). But that did not happen here.

In the end, Sims presented his federal speedy trial violation arguments in one complete round of appeal in the state courts. This included fully and clearly briefing the Ohio Supreme Court on the federal claim. In response, instead of following this Court's case law to agree that the state courts had a fair opportunity to correct the federal error, the district and circuit courts created a new rule, read their own views of how Sims' federal argument to the intermediate appellate court was insufficient into the record, and speculated that the Ohio Supreme Court could have or should have found the argument was procedurally defaulted. But this Court has not imposed that rule, and such a rule would unnecessarily restrict access to federal courts on federal claims.

Because Sims gave the Ohio courts notice of claims that his federal right to a speedy trial was violated, the lower courts erred in finding that he failed to show a full and fair presentation of those federal claims. Sims asks the Court to grant this petition for writ of habeas corpus and order full briefing on this important legal question affecting a prisoner litigant's ability to fully and fairly present claims in state court in order to preserve them to be raised in federal court.

**II. The Court Should Grant Certiorari to Address and Resolve for the Lower Courts whether a Federal Claim is “Fully and Fairly Presented” under 28 U.S.C. § 2254 when the Appellate Argument’s Heading and First Sentence Cite the U.S. Constitutional Right to a Speedy Trial and the Argument Tracks the Factors the Court has Announced as Relevant to a Federal Speedy Trial Violation Claim.**

Sims concedes—as he must—that the only federal authority his appellate counsel expressly cited on intermediate appeal in support of his speedy trial claims was the U.S. Constitution. But the headings of his argument, followed by the substantive argument he presented, together showed that he was addressing the criteria for showing a federal speedy trial violation based on federal case law. Moreover, when proceeding before the Ohio Supreme Court, Sims expressly cited U.S. Supreme Court case law on the matter and demonstrated how those cases showed that his federal speedy trial right was violated.

Before the intermediary state appellant court (and represented by counsel at the time), Sims asserted that he had a federal right to a speedy trial, citing legal authority in support. See Pet. App. 5a.. Sims also cited an Ohio Supreme Court case in support—*State v. Adams*, 43 Ohio St. 3d 67, 68 (1989).

Sims recognizes that he just as easily could have cited a federal case in support of the same proposition, such as *Klopfer v. North Carolina*, 386 U.S. 213 (1967). But the citation of *Adams* was sufficient to communicate that a federally-based claim was being raised. Sims cited *Adams*, at 43 Ohio St. 3d at 68. At that point in the decision, *Adams* quoted the Sixth Amendment right to speedy trial, cited and quoted *Klopfer*, and went on to cite *United States v. Ewell*, 383 U.S. 116, 120 (1966), *United States v. Marion*, 404 U.S. 307, 320 (1971), and *Barker*, 407 U.S. at 523, for propositions including that the federal speedy trial right is “fundamental” and “obligatory,” that the right exists “to limit the possibilities that long delay will impair the

ability of the accused to defend himself,” and that the right exists and must be enforced even though the U.S. Supreme Court has declined to pinpoint a certain time period by which a defendant must be brought to trial. *Adams*, 43 Ohio St. 3d. at 68. The record shows that Sims went on to address these precise concerns.

To win his federally-based argument, Sims needed to address a four-part test the Supreme Court set forth in *Barker*. Those elements were (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his right; and (4) prejudice to the defendant. *Barker*, 407 U.S. at 530. Important to Sims’ argument on appeal in the state courts was that the length of the delay is a “triggering mechanism,” *id.*, and it takes into account the entire duration of pretrial detention, regardless of who is to blame for the delay in getting to trial. See *Maples v. Stegall*, 427 F.3d 1020, 1026 (6<sup>th</sup> Cir. 2005).

In his argument to the intermediary state appellate court, Sims addressed the first *Barker* factor, length of delay. He noted that 508 days passed from the time he was arrested until trial finally began. He noted that no time waiver was ever executed. Sims addressed the second *Barker* factor, reason for the delay. He recognized that his trial counsel had filed a motion for discovery (the state responded the very next day), the state had requested discovery, and his trial counsel had filed a supplemental motion for discovery, a motion to hire a private investigator, and motions to continue trial. Sims noted when his motions were the cause for the delay and accepted those periods but then demonstrated how much time had nevertheless passed excluding those periods. He noted that one reason given for the delay was the state request for discovery that went unanswered by Sims’ trial counsel because there was no defense discovery to provide. He especially focused on the fact that a main cause for delay was that, when new trial dates were

set, the trial court would set the new trial date out extremely far, with no indication that any party requested a continuance of such length. Sims addressed the third *Barker* factor, his assertion of his right to a speedy trial. He noted that he had filed a motion to dismiss for violations of the rights to speedy trial under both the statutory speedy trial provisions and the constitutional rights on August 20, 2015. He noted that on September 3, 2015 he filed a second motion to dismiss, again, for “both statutory and constitutional” violations of the rights to speedy trial. And he noted that he filed a third motion to dismiss based on the rights to speedy trial, containing “both statutory and constitutional challenges” on December 16, 2015.

Sims addressed the fourth *Barker* factor, the prejudice he suffered. He noted that “[d]uring the entirety of this matter [he] remained in jail on these charges, only, as he was unable to make bond.” This was critical, as this was an eye-witness case. His assertions lined up with his citation to case law noting that the federal speedy trial right seeks “to limit the possibilities that long delay will impair the ability of the accused to defend himself.” *Adams*, 43 Ohio St. 3d. at 68 (quoting *Ewell*, 383 U.S. at 120).

Despite Sims’ argument tracking the *Barker* factors, the Sixth Circuit found that he had not sufficiently presented the federal claim in the state appellate court. To do so, the Sixth Circuit heavily and unreasonably relied on how the state intermediate court responded to the argument, stating, “Importantly, the state court of appeals did not discuss or resolve any federal speedy trial issues in its decision.” Pet. App. 3a. But how a state court responds to defendant’s argument is no measure of what is argued because courts of appeals often miss arguments.

Moreover, Sixth Circuit ruled in violation of its own case law. It has held that a prisoner satisfies the fair opportunity “requirement if his state-court brief relied on federal cases

employing constitutional analysis, relied on state cases employing federal constitutional analysis, phrased his claims in constitutional terms or terms sufficient to allege the denial of a specific constitutional right, or alleged facts within the mainstream of constitutional law.” *Nian v. Warden, N. Cent. Corr. Inst.*, 994 F.3d 746, 751 (6<sup>th</sup> Cir. 2021) (emphasis added). In this case, Sims relied on a state case employing federal constitutional analysis, phrased his claims in federal speedy-trial-right-violation terms, and alleged facts that lined up with the *Barker* factors relevant for whether a federal right to speedy trial has been violated. And yet the Sixth Circuit found that these precise steps—combined with his express citations to the federal constitutional right to a speedy trial—were somehow insufficient to put the state appellate court on notice of the federal claim.

Because Sims gave the Ohio courts notice of claims that his federal right to a speedy trial was violated, the lower courts erred in finding that he failed to show a full and fair presentation of those federal claims. Sims asks the Court to grant this petition for writ of certiorari and order full briefing on this important legal question affecting a prisoner litigant’s ability to fully and fairly present claims in state court in order to preserve them to be raised in federal court.

## **CONCLUSION**

Petitioner Keith Mas Sims, Jr. submits that his petition for writ of certiorari should be granted for the compelling reasons noted above. He asks the Court to grant his petition and grant full briefing in this important matter to address and resolve these important legal questions.

Respectfully submitted,

ROBINSON & BRANDT, P.S.C.

Dated: 3 August 2023

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**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing petition for writ of certiorari and the following appendix were served by U.S. Priority Mail on the date I reported below upon the Solicitor General's Office, Room 5614, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; and Ohio Attorney General Dave Yost (attn: Daniel J. Benoit), 150 East Gay Street, 16<sup>th</sup> Floor, Columbus, OH 43215.

Dated: 3 August 2023

/s/ Jeffrey M. Brandt  
Jeffrey M. Brandt

# APPENDIX