No. 23-5633

IN THE SUPREME COURT OF THE UNITED STATES

DEMETRIUS VERARDI RAMOS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in finding that the district court conducted de novo review of the magistrate judge's report and recommendation, where both the district court's original decision and its decision responding to petitioner's reconsideration motion represented that it had.

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OPINIONS BELOW

The published opinion of the court of appeals (Pet. App. A) is reported at 65 F.4th 427; the court's unpublished memorandum (Pet. App. B) is available at 2023 WL 2853516. The order of the district court (Pet. App. E) is unreported but is available at 2021 WL 10429455. The report and recommendation of the magistrate judge (Pet. App. D) is available at 2021 WL 409758.

JURISDICTION

The judgment of the court of appeals was entered on April 10, 2023. A petition for rehearing was denied on June 20, 2023 (Pet. App. G). The petition for a writ of certiorari was filed on

September 18, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Arizona, petitioner was convicted on one count of conspiring to transport and harbor noncitizens for financial gain, in violation of 8 U.S.C. 1324(a)(1)(A)(v)(I); four counts of harboring noncitizens for financial gain, in violation of 8 U.S.C. 1324(a)(1)(A)(iii) and (B)(i); and three counts of transporting noncitizens for financial gain, in violation of 8 U.S.C. 1324(a)(1)(A)(ii) and (B)(i). Judgment 1. Petitioner was sentenced to four months of imprisonment, to be followed by three years of supervised release. Ibid. The court of appeals affirmed petitioner's convictions, but vacated his sentence and remanded the case for the district court to conform the judgment to the supervised release conditions orally pronounced at sentencing. Pet. App. B1-B4; see id. at A6-A23; C1; Gov't C.A. Br. 3.

1. In December 2019, U.S. Border Patrol agents stopped petitioner's car in Douglas, Arizona, and arrested him for unlawfully transporting noncitizens. Pet. App. A6. Petitioner was taken to a holding cell and fingerprinted. Ibid. While he was being fingerprinted, he asked Agent Daniel Regan for

prescription medication that was in his car. Ibid. Agent Regan retrieved the medication and gave it to Ramos. Id. at A22.

Video footage (with no accompanying audio) shows that Agent Robert Marrufo visited petitioner's holding cell at 3:40 a.m. and then returned approximately 40 minutes later. Pet. App. A6. During the second visit, Agent Marrufo showed petitioner a plastic baggie, had a short conversation with him, and then left the cell with petitioner following him. Id. at A6-A7.

Agents Marrufo and Jesus Barron interviewed petitioner in an interrogation room shortly thereafter. Pet. App. A7. They informed him of his rights under Miranda v Arizona, 384 U.S. 436 (1966), and encouraged him to tell the truth. Pet. App. A7. During the subsequent interview, petitioner admitted that he was a Brazilian citizen who had overstayed his visa, and that he had been offered $1000 per person to transport people from Douglas to Phoenix, Arizona. Ibid. Petitioner also acknowledged that he had transported people for pay many times before and that he had been told to use a separate phone for these transactions. Ibid. Petitioner claimed, however, that he was unaware that the passengers he was transporting were undocumented. Ibid.

Throughout the interview, petitioner attempted to get the agents to agree to help him in return for his cooperation. Pet. App. A7. He claimed, for example, that "he knew 'the bosses of this area'," that "he was a 'big piece of the puzzle,'" and that

he could "get further information." Ibid. The agents responded that they were unable to make that kind of deal, and "the 'only thing [they could] do . . . is to take down the information'" and provide it to someone else. Ibid. (brackets in original). Petitioner then asked to speak to the person to whom they would provide the information. Ibid. During those exchanges, petitioner did not mention the plastic baggie Agent Marrufo had held during the second visit to petitioner's holding cell, nor did anyone mention the baggie at any other point in the interview. Id. at A7-A8; Gov't C.A. Br. 12-15.

At the conclusion of the interview, Agent Barron asked petitioner whether "all the statements" he had "made today were voluntarily [sic]? Were you forced or coerced during your declaration? Did we force you to talk? Did we force you to say anything?" Pet. App. A8. Petitioner responded "No, but I thought that I was going to get * * * something in return." Ibid. When Agent Barron again asked if the statements were made voluntarily, petitioner said "I -- kind of, man, but I thought I was going to get something in return. I thought I was going to --." Ibid. Agent Maruffo then said "Like I -- like I told you, I never -- we never promised you anything," petitioner said "You kind of did. You said, hey, man, this stuff, I'm going to take it, you just tell the truth." Ibid. When the agents reiterated that they had

not promised him anything, petitioner offered to give them "all the information" and wear a "bug." Ibid.

2. A federal grand jury in the District of Arizona charged petitioner with one count of conspiring to transport and harbor noncitizens for financial gain, in violation of 8 U.S.C. 1324(a)(1)(A)(v)(I); four counts of harboring noncitizens for financial gain, in violation of 8 U.S.C. 1324(a)(1)(A)(iii) and (B)(i); and four counts of transporting noncitizens for financial gain, in violation of 8 U.S.C. 1324(a)(1)(A)(ii) and (B)(i). Superseding Indictment 1-5, Gov't C.A. Br. 3.

a. Petitioner moved to suppress his interrogation statements on the ground that they were involuntary. Pet. App. A9. Petitioner alleged that, before the Mirandized interrogation, Agent Barron showed him a baggie containing drugs and threatened him with drug charges if he did not cooperate. Ibid. In response, the government denied such a conversation had occurred. Ibid.

The district court referred the matter to a magistrate judge. See Pet. App. A9. The Federal Magistrates Act (FMA), 28 U.S.C. 631, et seq., authorizes a district court to designate a magistrate judge to conduct an evidentiary hearing on, and to submit proposed findings of fact and recommendations for the disposition of, inter alia, motions to suppress evidence. 28 U.S.C. 636(b)(1)(A) and (B). A party may file written objections to the magistrate judge's report within 14 days. 28 U.S.C. § 636(b)(1). The statute then

requires the district court to "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." Ibid. "[I]n providing for a 'de novo determination' rather than de novo hearing, Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate's proposed findings and recommendations." United States v. Raddatz, 447 U.S. 667, 676 (1980).

b. At the magistrate judge's hearing in this case, petitioner sought to portray his conduct leading up to his arrest as innocent, by claiming that he had arranged with a friend to accept $1000 to take a number of passengers Christmas shopping. Pet. App. A9. He first testified that their destination was Phoenix, but later stated that they were going to Tucson for an overnight trip. Ibid. He also asserted that he had been using a separate phone to communicate with his friend regarding the job because it was "easier to communicate with [the] same cellphone company," and he claimed that his friend had hired him because Uber no longer provided service so "close to the border." Ibid. (brackets in original). On cross-examination, petitioner also stated that, when he had told the agents during the interrogation that he knew the "bosses of this area," he was exaggerating in an effort to go home that night. Ibid.

Petitioner also provided an account of the conversations that allegedly occurred in his holding cell before the interrogation. Pet. App. A10; see C.A. E.R. 453-458. Petitioner claimed that the first time Agent Marrufo -- whom he appears to have erroneously referred to as Agent Barron, see Pet. App. A10 n.2 -- entered his cell, Agent Marrufo informed him that if he did not talk it was "going to be very bad," but if he did cooperate he could go home that night. Pet. App. A10; see C.A. E.R. 453-458. And petitioner claimed that, on his second visit, Agent Marrufo had a baggie containing drugs, which Agent Marrufo said were found in petitioner's car, and told petitioner that the government would "use it" against him if he failed to cooperate. C.A. E.R. 456; see Pet. App. A10. Petitioner stated that he had agreed to talk to the agents immediately thereafter. Pet. App. A10; see C.A. E.R. 457-458.

Agents Reed, Barron, and Marrufo all testified at the hearing. Pet. App. A10, A22. Agent Reed testified that he had retrieved petitioner's medication from the car after petitioner requested it during fingerprinting. Id. at A22, A27. Agent Barron testified that he had never threatened petitioner or forced him to cooperate. Id. at A10. Agent Marrufo, who had not yet seen the video footage of his visits to the holding cell, testified that he had entered petitioner's cell the first time to perform a welfare check, and that during it he had informed petitioner that record checks

revealed that petitioner was not a U.S. citizen as he had claimed, that petitioner would be interviewed, and that it would "behoove[]" him "to tell the truth." C.A. E.R. 205; see id. at 203-205; Pet. App. A10. When asked about the plastic baggie, Agent Marrufo testified that he did not remember having a plastic baggie when he entered petitioner's cell, but observed that there had been "a lot of moving parts that night" so he "had a lot stuff in [his] hand throughout the night." C.A. E.R. 208. Agent Maruffo also repeatedly denied having told petitioner that he would face additional charges if he did not cooperate in the interview. Id. at 207-208.

c. After the hearing, the magistrate judge issued a report and recommendation that petitioner's motion to suppress be denied. Pet. App. D1-D20. The magistrate judge found that the agents had complied with Miranda and that petitioner's confession was voluntary. Id. at D12-D17.

The magistrate judge explained that petitioner's testimony was "incredible," observing that petitioner "contradicted himself throughout his testimony and told an untenable story," and that "his demeanor was not that of an honest but nervous witness, but instead was that of a fabricator." Pet. App. D15. The magistrate judge further found that petitioner's "claims that the agents had made explicit promises to release him and to not charge him [with] the narcotics if he talked [we]re inconsistent with his numerous

requests to know what the agents could do for him and his overall demeanor during the interrogation." Ibid.

The magistrate judge accordingly "f[ound] that the agents did not threaten [petitioner] with a baggie or explicitly promise him he would go home if he cooperated." Pet. App. D15. In a footnote, the magistrate judge noted that "[t]he Government does not explain the [plastic] bag[gie], but there are alternative explanations. The most likely of which is that the bag contained medicine [petitioner] had requested." Id. at D15 n.7.

More broadly, the magistrate judge found the agents' testimony about their interactions with petitioner "to be credible." Pet. App. D16. The magistrate judge cited the agents' testimony that they had encouraged petitioner to tell the truth and told him that the "'truth will set you free,'" observing that while petitioner "apparently took these [statements] as promises that he would be released if he provided information," the record of the interview showed that the agents had repeatedly disclaimed their ability to promise petitioner anything. Pet. App. D16 (citation omitted).

b. Petitioner objected to the magistrate judge's report and recommendation, renewing his contention that his statements were coerced and asserting that the magistrate judge's footnote regarding the contents of the plastic baggie had relieved the government of its burden of proof. Pet. App. A12.

The district court overruled petitioner's objections. Pet. App. E1-E5. The court represented that it had "conducted a de novo review of the record," and that "the Court's de novo review of the record include[d] review of the record and authority before [the magistrate judge] which led to the Report and Recommendation in this case." Id. at E2-E3. And it further represented that, based on that "de novo review," it had found that petitioner's objections lacked merit and "adopt[ed]" the magistrate judge's report and recommendation "in its entirety." Id. at E3.

Petitioner filed a motion for reconsideration, arguing (inter alia) that the district court had not actually applied de novo review. Pet. App. F1. The district court denied the motion, see id. at F3, affirming that it "did, in fact, conduct a de novo review," emphasizing that it had "stated so several times in its order." Id. at F2. The court observed that it is "common practice" for a court to "issue a terse order stating that it conducted a de novo review as to objections" and "adopt[ing] the magistrate judge's recommended dispositions when they find that magistrate judges have dealt with the issues fully and accurately and that they could add little of value to that analysis." Ibid. (quoting Garcia v. City of Albuquerque, 232 F.3d 760 (10th Cir. 2000)) (brackets omitted). And the court represented that, "[i]n adopting the report and recommendation, [it had] reviewed not only the recommendations but the complete record in the case, the

authorities relied on in the report and recommendation, and all other pertinent authority." Ibid.

c. The case proceeded to trial, where Agent Marrufo again testified, and again stated that he had never threatened petitioner with drug charges. Pet. App. A13. After being shown video footage of the holding cell encounters, Marrufo testified that he had not shown petitioner a plastic baggie "'per se'" and that, if he was holding one during their conversation, he was "doing something else with it." Ibid. He further testified that the baggie looked like an evidence bag, that "he had handled 'a lot of evidence that night,'" and that he may have been going to drop off evidence after visiting petitioner's cell before heading to the interrogation room. Ibid. When petitioner's counsel asked Agent Marrufo to identify the material in the bag, he testified that he was unable to do so and that he could barely see the bag on the video, "let alone what's in" it. Ibid.

The jury found petitioner guilty on all of the counts submitted to it. Pet. App. A13; see Gov't C.A. Br. 3; C.A. E.R. 71-75 (noting that the government had voluntarily dismissed one Section 1324 charge before trial). Petitioner was sentenced to four months of imprisonment, to be followed by three years of supervised release. Judgment 1.

3. The court of appeals affirmed the denial of petitioner's motion to suppress. Pet. App. A1-A23.

The court of appeals rejected petitioner's challenge to the district court's adoption of the magistrate judge's report and recommendation, finding that "the district court did what [the law] requires: it indicated that it reviewed the record de novo, found no merit to [petitioner's] objections, and summarily adopted the magistrate judge's analysis in his report and recommendation." Pet. App. A15. The court of appeals cited prior circuit decisions, as well as decisions of other circuits, in which it was "presumed that districts courts conduct proper de novo review where they state they have done so, even if the order fails to specifically address a party's objection." Id. at A15; see id. at A15-A16 & n.3 (citing cases). And it observed that in several cases it had found the presumption overcome, but the circumstances of this case did not warrant such a finding. Id. at A17.

The court of appeals highlighted the district court's repeated representation -- both in its original order and its order denying reconsideration -- that it had conducted de novo review. Pet. App. A17. And the court rejected petitioner's assertion that, to fulfill its obligation to perform de novo review, the district court was required to expressly address petitioner's contention that the magistrate judge had "erred in finding that he was not threatened with the baggie and drug charges." Id. at A18. The court of appeals explained that the objection was simply a "reformulation of [petitioner's] argument from his motion to

suppress." Id. at A18-A19. And the court found "no reason to second-guess [the district court's] assertion of de novo review" where "the district court said it independently reviewed the record and there is no evidence indicating otherwise." Id. at A19-A20.

The court of appeals also rejected petitioner's contention that the district court had "mistakenly adopted the magistrate judges 'improper speculation regarding the contents of the baggie shown to [petitioner] when he was detained.'" Pet. App. A20. The court of appeals explained that "[t]he magistrate judge did not, nor was he required to, make a proposed finding about the contents of the baggie; rather, he only had to consider whether [petitioner's] 'will was overborne' under the totality of the circumstances." Ibid. (quoting United States v. Leon Guerrero, 847 F.2d 1363, 1366 (9th Cir. 1988)). And the court explained that, "[a]fter observing the implausibility of [petitioner's] testimony and considering [petitioner's] verbal and signed Miranda waiver, age, education level, and fluency in English, the magistrate judge properly recommended finding the statements made during the interrogation voluntary." Id. at A20-A21.

The court of appeals further observed that the video footage of Agent Marrufo's second visit to petitioner's holding cell, which was the only evidence petitioner had offered beyond his own testimony, "confirms that Agent Marrufo had a baggie in his hand when talking to [petitioner]," but "does not clearly show the

contents of the bag." Pet. App. A22; see id. at A21-A22. The court of appeals accordingly found it insufficient to refute the agents' testimony and the "transcript of the interrogation," in which there was "no mention of the plastic baggie or purported drug charges." Id. at A22. In these circumstances, the court found that a "selective focus" on the magistrate judge's speculation about the contents of the plastic baggie "ignores the actual question before the magistrate judge and district court" -- "whether the confession was voluntary" -- as well as the "magistrate judge's detailed analysis finding [petitioner] not credible." Id. at A23.

In an accompanying unpublished memorandum disposition, the court vacated petitioner's sentence and remanded the case for the district court to conform the judgment to the supervised release conditions orally pronounced at sentencing. Pet. App. B1-B4; see id. at A6-A23.

Judge Collins concurred in the judgment in part and dissented from the portion of the court of appeals' decision addressing the suppression motion. Pet. App. A24-A38. He took the view that the magistrate judge's "speculation" that the plastic baggie Agent Marrufo was holding in the video was "most likely" petitioner's medication was "clearly erroneous." Id. at 31. And he would have found that "the district judge's failure to discuss" petitioner's baggie-related objection and the other "issues raised by

[petitioner's] motion to suppress or by [petitioner's] objections to the magistrate judge's report is unacceptable and warrants remand." Id. at A28.

ARGUMENT

Petitioner contends (Pet. 9-16) that the court of appeals erred in finding that the district court reviewed the magistrate judge's report and recommendation de novo. That factbound contention does not warrant this Court's review. The court of appeals did not err in affirming the district court's order accepting the magistrate judge's report and recommendation to deny petitioner's motion to suppress, and the court of appeals' decision does not conflict with decisions of this Court or another court of appeals. In any event, this case would be a poor vehicle for review because it is in an interlocutory posture. The petition for a writ of certiorari should be denied.

1. a. Under 28 U.S.C. 636(b)(1), a district court is required to conduct "de novo" review of those portions of a magistrate judge's "report or specified proposed findings or recommendations to which objection is made." Ibid. As this Court has recognized, that standard of review is "intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate judge's proposed findings and recommendations." United States v. Raddatz, 447 U.S. 667, 676 (1980).

In this case, the district court complied with Section 636(b)(1) when it adopted the magistrate judge's report and recommendation in an order explaining that the district court had performed "de novo" review. Pet. App. E3. And nothing required the court of appeals to reject the district court's repeated assurances, both in its initial order and its order denying reconsideration, that it had in fact performed the requisite de novo review. See id. at E2 ("As to the objections filed by Defendant, the Court has conducted a de novo review of the record."); id. at E3 ("[T]he Court's de novo review of the record includes review of the record and authority before [the magistrate judge] which led to the Report and Recommendation in this case."); ibid. ("Upon de novo review of the record and authority herein, the Court finds Defendant's objections to be without merit."); see also id. at F2.

Most tellingly, in response to petitioner's motion to reconsider arguing that it had not actually applied de novo review, the district court specifically represented that "[i]n adopting the report and recommendation, [it had] reviewed not only the recommendations but the complete record in the case, the authorities relied on in the report and recommendation, and all other pertinent authority." Pet. App. F2. This Court has made clear that even "[w]hen a district court's language is ambiguous * * * it is improper for the court of appeals to presume that the

lower court reached an incorrect legal conclusion." Sprint/United Mgmt. Co. v. Mendelsohn, 552 U.S. 379, 386 (2008). There was no sound reason for the court of appeals to disbelieve the district court's repeated express assurances here.

b. In challenging the court of appeals' finding, petitioner contends (Pet. 13-14) that the district court could not have performed de novo review, asserting that the report made a factual error in speculating that the plastic baggie petitioner was shown while in his holding cell might have contained medicine petitioner requested, when other testimony showed that petitioner had already received the medicine. But the magistrate judge's statement regarding the potential contents of the baggie was not material to the recommendation; instead, it appeared in a footnote to the magistrate judge's lengthy discussion of all the reasons why petitioner's testimony that he had been threatened with a drug charge was "not credible." Pet. App. D15. That footnote "accurately stated that the government failed to explain the bag but noted there were 'alternative explanations,' speculating '[t]he most likely of which is that the bag contained" the requested medicine. Id. at A22 (brackets in original).

Although the report's speculation about the baggie appears to have been incorrect, the district court was not required to expressly address it because nothing in the magistrate judge's opinion suggested that its recommendation turned on it. Instead,

the magistrate judge offered a series of reasons why petitioner was "not credible," including that petitioner "contradicted himself throughout his testimony and told an untenable story"; that petitioner's "demeanor was not that of an honest but nervous witness, but instead was that of a fabricator"; and that his claim that the agents threatened him with drug charges unless he talked was "inconsistent with his numerous requests to know what the agents could do for him and his overall demeanor during the interrogation." Pet. App. D15. Petitioner's "incredible" testimony was also the only evidence suggesting that the baggie was used to threaten him. Ibid. Agent Marrufo consistently testified that he had no memory of holding the baggie in petitioner's cell, Pet. App. 10, 13; C.A. E.R. 208, and the baggie was never mentioned in the recorded interrogation that immediately followed the alleged threats, Pet. App. A22. An express discussion of the footnote was not a prerequisite for taking the district court at its word that it conducted de novo review.

Petitioner likewise errs in contending that the court of appeals' decision signals the circuit's "wholesale abdication of any meaningful review in this area." Pet. 15 (citation omitted). While the court of appeals rejected petitioner's assertion that the district court had not performed de novo review, it expressly recognized that a district court's decision adopting a magistrate judge's report and recommendation is subject to reversal where "it

[i]s clear that the district court failed to conduct review on the whole record" or "clearly applied the wrong standard of review." Pet. App. A17 (citing United States v. Remsing, 874 F.2d 614, 616-618 (9th Cir. 1989); Orand v. United States, 602 F.2d 207, 209 (9th Cir. 1979); and CPC Pat. Techs. Pty Ltd. v. Apple, Inc., 34 F.4th 801, 810 (9th Cir. 2022)). Petitioner's argument therefore boils down to a disagreement with the court of appeals' determination that his case did not fit that paradigm -- a fact-bound contention that does not warrant this Court's review. See Sup. Ct. R. 10; United States v. Johnston, 268 U.S. 220, 227 (1925) (this Court "do[es] not grant * * * certiorari to review evidence and discuss specific facts").

2. Petitioner does not contend that the decision below conflicts with that of another circuit. And, while petitioner observes (Pet. 15) that the dissent took the view that the district court had not performed the requisite de novo review of the magistrate judge's recommendation, that intra-panel disagreement regarding what happened in this case is not a proper basis for a petition for a writ of certiorari. See Sup. Ct. R. 10. Nor did the dissent cite any "caselaw from any court requiring the district court to provide more analysis or case-specific reasoning when summarily adopting a magistrate judge's report and recommendation, absent newly raised objections." Pet. App. A19. And as the panel majority observed, other courts of appeals have likewise "upheld

district court orders that adopt the magistrate judge's report and recommendation without additional analysis of case-specific facts or law." Id. at A16 n.3 (citing Elmendorf Grafica, Inc. v. D.S. Am. (E.), Inc., 48 F.3d 46, 49-50 (1st Cir. 1995); Murphy v. International Bus. Machs. Corp., 23 F.3d 719, 722 (2d Cir.) (per curiam), cert. denied, 513 U.S. 876 (1994); United States v. Jones, 22 F.4th 667, 679 (7th Cir. 2022); Gonzalez-Perez v. Harper, 241 F.3d 633, 636-637 (8th Cir. 2001); Garcia v. City of Albuquerque, 232 F.3d 760, 766 (10th Cir. 2000)).

In any event, this case would be a poor vehicle for review because it is in an interlocutory posture. In an accompanying unpublished, per curiam order, the court of appeals vacated petitioner's sentence and remanded with instructions for the district court to conform its judgment to the supervised release conditions orally pronounced at sentencing. Pet. App. B1-B4; id. at A6-A23, C1; Gov't C.A. Br. 3. Under this Court's ordinary practice, the interlocutory posture of a case "alone furnishe[s] sufficient ground for the denial of the application." Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916); see Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R., 389 U.S. 327, 328 (1967) (per curiam) (explaining that a case remanded to the district court "is not yet ripe for review by this Court").

That approach promotes judicial efficiency and enables issues raised at different stages of lower-court proceedings to be consolidated in a single petition for a writ of certiorari after all lower-court proceedings conclude. See Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 508 n.1 (2001) (per curiam) ("[W]e have authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals."). No sound reason exists for the Court to depart from its usual practice in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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