No. _____

IN THE

Supreme Court of the United States

PAUL FRANCISCO TORRES III,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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Question Presented

"Since March 2020, we may have experienced the greatest intrusions on civil liberties in the peacetime history of this country." *Arizona v. Mayorkas*, 143 S. Ct. 1312, 1314 (2023) (Statement of Gorsuch, J.). Although the Court's pandemic cases so far have focused on executive actions, the judiciary is responsible for some of the most significant suspensions of constitutional rights in response to the coronavirus. The Sixth Amendment's guarantee of a speedy jury trial "is one of the most basic rights preserved by our Constitution." *Klopfer v. North Carolina*, 386 U.S. 213, 226 (1967). Many federal and state courts across the country nevertheless barred all criminal jury trials for months on end, often with little or no meaningful justification. The Central District of California, for example, prohibited jury trials for 15 months, without explaining why that was necessary despite state courts within that district holding many hundreds of jury trials during the same period while facing the same public-health challenges. The petitioner spent that entire period languishing in jail, even though he repeatedly asked to be either tried or released on bond. The question presented is:

> Did prolonged jury-trial bans during the pandemic violate the Sixth Amendment's Speedy Trial Clause, especially as to those accused who were jailed during the bans?

Related Proceedings

United States District Court (C.D. Cal.):

United States v. Torres, Case No. CR-19-00490-CAS (December 17, 2021).

United States Court of Appeals (9th Cir.):

United States v. Torres, Case No. 21-50006 (April, 23, 2021).

United States v. Torres, Case No. 21-50285 (June 20, 2023).

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Petition for a Writ of Certiorari

Petitioner Paul Francisco Torres III respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Opinions Below

The decision of the United States Court of Appeals for the Ninth Circuit (App. 1a-4a) is unpublished but is available at 2023 WL 4077347. The district court's order denying a motion to dismiss for speedy-trial violations (App. 5a-13a) also was not published but is available at 2021 WL 2017290.

Jurisdiction

The court of appeals entered its judgment on June 20, 2023. App. 1a. It denied a petition for panel rehearing / rehearing en banc on December 5, 2023. App. 14a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Constitutional Provision Involved

U.S. Const., Amend. VI provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury[.]"

Introduction

"Even in a pandemic, the Constitution cannot be put away and forgotten." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (cleaned up). This Court has reviewed some assertions of executive power during the pandemic, but it has not yet considered whether federal and state *courts* violated the Sixth Amendment by implementing prolonged jury-trial bans—something unprecedented in our country's long history of many hardships. Doing so now is imperative.

The Constitution guarantees speedy jury trials to all defendants, but that right is particularly important to the accused who, although shielded by the presumption of innocence, must wait for their trials in jail. Lower courts have nevertheless rejected speedy-trial claims by simply assuming that pandemic jury-trial bans were valid for as long as they were in place, without subjecting them to meaningful examination to determine if they were truly necessary, even during the second half of 2020 and well into 2021. Those courts failed to fully engage in the "difficult and sensitive balancing process" that "must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution." *Barker v. Wingo*, 407 U.S. 514, 533 (1972). The required analysis is akin to the balancing the Court required when governors tried to restrict religious gatherings during the pandemic. *See*, *e.g.*, *Tandon v. Newsom*, 593 U.S. 61, 62-65 (2021); *Roman Catholic Diocese*, 592 U.S. at 15-21. But lower courts have ignored that authority.

Granting review will allow the Court to settle this important constitutional speedy-trial question, and to the extent that question concerns the proper functioning of the federal judiciary, doing so will serve the Court's supervisory power too. Addressing whether, and to what extent, the speedy-trial rights of the accused could be infringed during the recent pandemic will also protect all constitutional rights during inevitable future emergencies. In the process, the Court can clarify how its Speedy Trial Clause precedent applies generally.

This case is an excellent vehicle for the Court to address these matters. Paul Torres knew he was innocent of the more serious charge in the two-count indictment filed against him, and he wanted to exercise his constitutional right to present his defense to a jury of his fellow citizens. He was ready and eager to go to trial in April 2020, but then the pandemic happened. In response, the Central District of California implemented an indefinite districtwide ban on jury trials. Although a reasonable precaution in the early days of the pandemic, the Central District inexplicably maintained the ban even as state courts within the district resumed jury trials in summer 2020. Those state courts held many hundreds of jury trials, and federal courts across the country held hundreds more, by the time the Central District ultimately lifted its jury-trial ban in June 2021 in the courthouse at issue here.[1] The Central District has never tried to justify its ban,

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[1] Jury trials resumed a month earlier in another courthouse where only a few of the Central District's judges sit.

except for general assertions about the seriousness of the pandemic. The ability of other courts in the same geographic area confronting the same public-health issues to hold trials up to a year earlier establishes that the Central District's inaction was incompatible with what the Constitution requires.

For the entire 15 months the Central District's jury-trial ban was in place, the government held Torres in pretrial detention, under harsh pandemic conditions, despite his repeated requests to be either tried or released on bond. And when he challenged his pretrial detention, the Ninth Circuit found that his confinement was approaching the limits of what due process would allow in April 2021, several weeks before he finally got his trial. *See United States v. Torres*, 995 F.3d 695, 699, 708-10 (9th Cir. 2021). At that trial, the jury agreed that Torres was not guilty of the serious drug crime he contested and convicted him only for the relatively minor crime of possessing two bullets as a convicted felon. When Torres raised his preserved Speedy Trial Clause claim on appeal, however, the Ninth Circuit rejected it in a memorandum decision with only a single paragraph purporting to apply this Court's constitutional test. App. 2a-3a. That claim deserves serious consideration, so the Court should grant certiorari and reverse.

Statement of the Case

1. Legal Background.

The Sixth Amendment's guarantee of a speedy jury trial is so "generically different from any other criminal right in the Constitution" that violations "preclude retrial." *Smith v. United States*, 599 U.S. 236, 242 (2023) (cleaned up). In *Barker v. Wingo*, the Court identified *some* of the factors courts should consider in determining whether a defendant has been deprived of this right—the length of the delay, the reason for the delay, the defendant's assertion of his right, and the prejudice to the defendant. 407 U.S. at 530. These factors—none of which are "necessary or sufficient"—"must be considered together with such other circumstances as may be relevant" during "a difficult and sensitive balancing process" designed to protect "a fundamental right of the accused[.]" *Id.* at 533.

2. Factual Background and Proceedings Below.

A. In August 2019, Paul Torres was arrested and detained pending his trial, which was eventually scheduled for April 2020.

The government obtained an indictment charging Paul Torres with possession of methamphetamine with intent to distribute and possession of two bullets as a convicted felon. Given the amount of methamphetamine, Torres faced a five-year mandatory minimum and a 40-year maximum sentence on the drug charge. That

charge raised a presumption of detention, so the district court ordered him permanently detained at his first appearance in August 2019. AOB 4-5.[2]

Torres's trial was expected to last only a few days, and it would occur in the Central District of California's courthouse in downtown Los Angeles. It was originally set for October 22, but the district court granted the parties' stipulations for brief continuances due to, among other things, the amount of discovery and the appointment of Torres's originally-assigned public defender as a magistrate judge. Torres and his new public defender were ready to go to trial on April 7. Then the pandemic happened. AOB 5-6.

B. In response to the pandemic, the Central District of California implemented a jury-trial ban that ultimately lasted 15 months, even though state courts within the district—facing the same public-health conditions—held many hundreds of jury trials during that time, as did federal courts across the country.

In mid-March 2020, both the Central District and the California state courts closed courthouses in response to the pandemic. From the beginning, California's Governor, Chief Justice, and Judicial Council recognized that courts provided essential services that needed to resume as soon as possible. The Administrative

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[2] These abbreviations refer to documents filed in the Ninth Circuit: "AOB" is the appellant's opening brief (docket no. 14). "ARB" is the appellant's reply brief (docket no. 34). "PFR" is the appellant's petition for rehearing (docket no. 42).

Office of the U.S. Courts also emphasized the importance of restarting critical grand and petit jury proceedings in the earliest phase of reopening courts. The Central District nevertheless made resumption of jury trials the last phase of its reopening plan. AOB 7-11.

By June, the Central District and the government managed to make the arrangements necessary to safely gather the large groups of people required for grand-jury proceedings. But having insured that defendants could once again be *indicted*, the Central District and the government showed no urgency in making sure they could be promptly *tried*. AOB 11-13.

The Central District was not without guidance about how to do so. The Administraive Office provided detailed suggestions about how to hold safe jury trials in early June. And the state courts in Orange and Riverside Counties (where two of the Central District's three courthouses are located) resumed jury trials that month, utilizing careful and methodical approaches that prioritized safety and followed recommendations of health officials. In August, the Southern District of California also adopted detailed protocols allowing it to conduct safe jury trials by the end of that month. But the Central District declared that it still would not resume jury trials until some undetermined date. AOB 13-15.

In August, the State of California implemented its *Blueprint for a Safer Economy*, which restricted business activity and other public gatherings by placing counties in one of four tiers based on COVID-19 case rates. Even at Tier 1 (the

highest level), hair salons, barbershops, retail shops, shopping centers, and personal care services could operate indoors with modifications; and at Tier 2, those businesses could operate at a higher capacity and other businesses (like movie theaters, restaurants, and gyms) could open indoors with modifications. But critical infrastructure—which included the courts—was *always* open with modifications in *every* tier. AOB 15-16.

The Central District decided to ignore what the California *courts* were doing and instead based its reopening plan on the state's tier-based limitations on *nonessential businesses*. In September, the Central District delegated authority to its Executive Committee to determine when to transition between phases of its reopening plan per "gating criteria." About a week later, the district's Chief Judge gave an interview in which he "said decisions on resuming operations are being made in light of state government orders." Referring to the *Blueprint*, the Chief Judge anticipated summoning jurors once a county moved to Tier 3, with trials possibly starting seven weeks after that "'because that's how long it takes to summon jurors.'" The Chief Judge explained: "'We basically took the easiest way to follow what the state is doing every Tuesday with regard to positive rates and the like.'" AOB 17-18.

As the Central District continued its indefinite jury-trial ban, the Los Angeles Superior Court resumed jury trials in September, explaining that it had taken numerous safety measures to balance its obligation to render justice with its

obligation to protect the health and well-being of those in its courthouses. By the end of 2020, that court had conducted 148 jury trials countywide. More than 35 of those were in courthouses within a couple blocks of the federal courthouse where Torres's trial would take place. AOB 18-19.[3]

In March 2021, the Central District announced that the jury-trial ban that began a year earlier would continue. Trials did not resume in its Orange County courthouse until May 10 and in its Riverside and Los Angeles courthouses until June 7. About one week later, the Central District resumed "normal operations," and California "moved beyond the *Blueprint*" entirely because the state had "met the criteria to fully reopen the economy." AOB 20-21.

By that time, the state courts within the Central District had already conducted *many hundreds* of jury trials. *See United States v. Olsen*, 21 F.4th 1036, 1075 (9th Cir.) (Collins, CJ, dissenting from denial of rehearing en banc) (noting over 500 such trials by March 2021), *cert. denied*, 142 S. Ct. 2716 (2022). AOB 21.

Many other federal courts across the country also resumed jury trials long before the Central District. In his 2020 year-end report, the Chief Justice acknowledged the pandemic's impact on the federal courts. *See* Chief Justice of the United States,

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[3] Due to an increase in COVID cases in late 2020, courts of the three Central District counties containing federal courthouses temporarily adjusted their operations accordingly, demonstrating their commitment to safety. AOB 19-20.

2020 Year-End Report on the Federal Judiciary (December 31, 2020).[4] "[T]he greatest challenge was faced by the 'first to fight' in the judicial family—the trial courts and their staffs." *Id*. at 2. "Trial judges have obligations under the Constitution and other laws to deal promptly with cases, especially with respect to criminal filings." *Id*. Recognizing the need for action, judges and court staff throughout the country "needed to adopt innovative approaches to conduct court proceedings." *Id*. The Chief Justice commended them for their diligence and creativity, particularly with regard to using "every available avenue to prepare for resumption of jury trials, the bedrock of fairness in our system of justice." *Id*. at 3. By March 2021—a year after the pandemic started—657 petit juries had been selected in federal courts nationwide. AOB 21-22.

C. Based on the Central District's jury-trial ban, the district court repeatedly continued Torres's trial over his objections, while denying his requests for pretrial release.

Given the circumstances during the early months of the pandemic, Torres did not object to government-requested continuances that moved his trial from April 7 to July 7. But when the government sought additional continuances thereafter, he vigorously asserted his speedy-trial rights. He noted that nonessential business activities—and, eventually, state-court jury trials—had resumed in the area.

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[4] https://www.supremecourt.gov/publicinfo/year-end/2020year-endreport.pdf (visited Feb. 28, 2024).

Furthermore, the government had not explained why the Central District could accommodate in-person grand juries but had not adopted similar safety protocols to allow the petit juries necessary for criminal trials. Torres's pretrial anxiety increased the longer he waited, and his conditions of confinement were far harsher than normal because the jail kept inmates in near-isolation due to the pandemic and severely limited their ability to communicate with counsel. The district court nevertheless granted four continuances over Torres's objections, often with the judge or prosecutor predicting (wrongly) that resumption of jury trials was right around the corner. Each time, the district court and the government invoked the Central District's jury-trial ban as the reason for the continuance without ever trying to justify that ban despite the changing circumstances. Those continuances postponed Torres's trial until May 2021. AOB 23-31.

As continuances were repeatedly granted over his objections during the second half of 2020, Torres asked the district court three times to release him on bond under appropriate conditions if it would not give him a speedy trial. The government opposed his release under any conditions. The district court refused to grant bond, even though it recognized that Torres could not be detained forever due to the pandemic because there is some point at which any defendant must be tried or released. The district court nevertheless continued his detention even after he became infected with COVID-19 in November and experienced chest pain and difficulty breathing. AOB 25-30.

D. Although the Ninth Circuit affirmed the district court's detention order in April 2021, it held that Torres's time in pretrial custody was approaching the limits of what due process allows.

After the district court refused his third request for release in December 2020, Torres appealed the detention order. In April 2021, the Ninth Circuit held that his 21 months of detention at that point did "not yet violate due process," but it "caution[ed] that the length of Torres's detention is approaching the limits of what due process can tolerate." *Torres*, 995 F.3d at 709. "The length of Torres's pretrial detention is significant under any metric and is deeply troubling," the court wrote. *Id*. at 709 (cleaned up). It emphasized that its decision to uphold the district court's detention ruling was "not made lightly" and warned that given "the troubling length of Torres's pretrial detention, due process demands that the district court begin Torres's trial or reconsider bail subject to appropriate conditions very soon." *Id*. at 710. AOB 31-33.

E. When Torres finally got his trial in June 2021, the jury acquitted him on the more serious charge.

Despite the Ninth Circuit's instructions to either begin Torres's trial or release him "very soon" (*Torres*, 995 F.3d at 710), the district court granted the government's request to postpone his trial to June 10, over his objections, because the Central District had still not resumed jury trials. AOB 33-34.

Torres was finally tried in June 2021—14 months after he was supposed to go to trial in April 2020. As expected, the trial lasted only a few days. Torres (who testified) admitted his guilt on the felon-in-possession-of-two-bullets charge and contested only the more serious charge of possessing methamphetamine with the intent to distribute it. The jury was persuaded by the defense Torres had to wait more than a year to present—it acquitted him on the drug charge and convicted only on the count he conceded. The district court later sentenced Torres to 60 months for possessing the two bullets. AOB 36-37.

F. The Ninth Circuit affirmed the district court's denial of Torres's motion to dismiss his case with prejudice due to the violation of his Sixth Amendment right to a speedy jury trial.

In April 2021, Torres filed a motion to dismiss his case with prejudice due to violations of his speedy-trial rights. He once again noted the harsh conditions of his confinement resulting from significant pandemic restrictions that nevertheless did not prevent him from contracting the virus while in jail. Torres also suffered the anxiety of repeated continuances and the stress of unresolved criminal charges. Furthermore, he argued, the federal grand-jury proceedings within the district, the numerous state-court jury trials within the district, the many more federal jury trials outside the district, and the multitude of nonessential business activities that had resumed during the pandemic established that he could have, and should have, received a jury trial. Torres also noted the government's failure to marshal any

evidence from health experts or other sources suggesting that the Central District could not hold safe jury trials when so many other courts managed to do so. Given these facts, Torres argued that the Sixth Amendment's Speedy Trial Clause required dismissal of his case with prejudice. AOB 34-35.[5]

In its opposition, the government relied entirely on the Central District's jury-trial ban, but it did not even try to defend the ban, except for general assertions about it being based on public-health concerns. AOB 35.

The district court denied the motion. It concluded that the Ninth Circuit had "upheld the propriety" of the Central District's jury-trial ban in another case (*United States v. Olson*, *supra*). It also opined (without analysis) that the Ninth Circuit's opinion finding no due process violation in Torres's detention as of April 2021 was "instructive" as to the Speedy Trial Clause because while the analyses of the two constitutional claims are "not identical," they purportedly "do overlap significantly." It merely cited, but did not discuss, the unique *Barker* factors relevant to the Sixth Amendment right to a speedy trial. App. 5a-7a, 12a-13a; AOB 35-36.

Torres reasserted his constitutional speedy-trial claim on appeal. AOB 41-71; ARB 1-30. Without hearing oral argument, the Ninth Circuit rejected it in a memorandum decision that included a single paragraph that devoted one or two

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[5] Although his motion also alleged a violation of the Speedy Trial Act, he only appealed the constitutional issue, so this petition also concerns only that issue.

sentences to each of the four *Barker* factors and discussed no others. App. 2a-3a. It conceded that "the first factor, the length of the delay—here twenty-one and a half months—favors Torres[.]" App. 2a. But it concluded that the second factor, the reason for the delay, did not because most of the delay was attributable to "the Central District of California's suspension of jury trials because of the COVID-19 pandemic." App. 2a-3a. To support that assertion, it cited its recently published opinion in *United States v. Walker*, which similarly brushed off a constitutional speedy-trial claim with a one-paragraph discussion of the *Barker* factors and baldly asserted that "the pandemic, not the prosecution, caused the delay." 68 F.4th 1227, 1238-39 (9th Cir. 2023) (cleaned up), *cert. petition filed*, Case No. 23-6716 (Feb. 6, 2024); App. 3a.[6] Next, despite Torres's repeated requests for a trial from June 2020 onward, the Ninth Circuit characterized the third *Barker* factor as "neutral" because he "asserted his right to a speedy trial only after requesting and acquiescing to continuances." App. 3a. Finally, the Ninth Circuit refused to acknowledged any prejudice to Torres because he "failed to establish that his pretrial incarceration impaired his ability to prepare a defense, and he did not

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[6] *Walker*'s Sixth Amendment discussion began with two paragraphs that conflated the due process limit on pretrial detention with the right to a speedy trial, thereby improperly injected into the speedy-trial analysis whether the defendant's detention was warranted under the Bail Reform Act. 68 F.4th at 1238-39. Given how the Ninth Circuit cited *Walker* in Torres's decision, its analysis was infected by the same error. App. 3a.

provide evidence that his incarceration was unconstitutionally oppressive or that he endured unconstitutional anxiety." App. 3a.

Torres filed a petition for panel rehearing / rehearing en banc that discussed the flaws in the memorandum decision and explained that whether prolonged jury-trial bans during the pandemic violated the Speedy Trial Clause deserved serious, not cursory, consideration, especially as to pretrial detainees. PFR 1-24. The Ninth Circuit summarily denied it. App. 14a. That not even one Ninth Circuit judge dissented is somewhat surprising given what happened in *United States v. Olsen*, which considered the Central District's jury-trial ban in the context of the Speedy Trial Act. 21 F.4th at 1040-49.

First, two judges would have reheard *Olsen* en banc because, "even in the midst of a pandemic, there are some things that, in a constitutional republic, should be all but unthinkable. There are measures that, given the scope and duration of their infringement on fundamental rights, may be maintained, if at all, only upon the weightiest of showings. That category includes . . . the wholesale suspension of criminal jury trials." 21 F.4th at 1065-66 (Collins, CJ, joined by Forrest, CJ, dissenting from denial of rehearing en banc) (cleaned up). "The existence of 'risks' to public safety, even significant ones, does not justify the cancellation of jury trials absent some sufficient basis for concluding that, as a practical matter, there are no feasible mitigation measures that would allow a trial to go forward. That showing

has not been made," those judges concluded; "indeed, it was not even attempted." *Id*. at 1076 (cleaned up).

Second, another judge would have reached a constitutional speedy-trial claim in *Olsen*, and he concluded that "while the indefinite suspension of jury trials" by the Central District was "disconcerting," the delay in that case did not "offend the core right as established by the Sixth Amendment" only because that defendant—unlike Torres—was *not* detained pending trial. *Id*. at 1058 (Bumatay, CJ, concurring in denial of rehearing en banc).

Finally, *Olsen* panel members wrote: "Nothing in our opinion minimizes the importance of the constitutionally guaranteed right to a speedy trial, and we will surely be presented with future cases in which the balancing required by the Speedy Trial Act will present different results." 21 F.4th at 1057 (Murguia and Christen, CJJ, concurring in denial of rehearing en banc). Nevertheless, the same panel that decided *Olsen* and Torres's prior detention appeal later disposed of his constitutional speedy-trial claim without meaningful discussion. App. 1a-3a.

Reasons for Granting the Writ

The Sixth Amendment right to a speedy jury trial is fundamental, so whether prolonged pandemic-based jury-trial bans violated that right, especially as to the incarcerated accused, is an extremely-important issue. Lower courts have not given it the attention it deserves, however. Among other things, they have ignored this Court's analogous precedent reversing religious-services restrictions where states

failed to explain why they were really necessary despite permitting similar secular business activities during the pandemic. As with those First Amendment cases, how the Speedy Trial Clause applies in the context of the pandemic is an important constitutional question—one that should be settled by this Court. And to the extent that question implicates the proper functioning of the federal judiciary, granting review would serve the Court's supervisory power as well. Review is also necessary to protect the speedy-trial right, and other constitutional rights, in future emergencies. Addressing the pandemic-era claim presented here will also provide needed guidance about how the Court's Speedy Trial Clause precedent applies generally. This case is an excellent vehicle for the Court to address these matters.

1. **Whether prolonged pandemic-based jury-trial bans violated the Sixth Amendment's Speedy Trial Clause—especially as to the *incarcerated* accused—is an issue of the utmost importance that deserve the Court's consideration.**

"Prior to conviction, the accused is shielded by the presumption of innocence, the bedrock, axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law." *Betterman v. Montana*, 578 U.S. 437, 442 (2016) (cleaned up). The Constitution supports the presumption of innocence by twice guaranteeing to an accused the right to a jury trial. U.S. Const., Art. III, § 2; U.S. Const., Amend. VI; *see Herrera v. Collins*, 506 U.S. 390, 398-99 (1993) (jury trial among constitutional rights "ensuring against the risk of

convicting an innocent person."). The Framers "considered the right to trial by jury the heart and lungs, the mainspring and the center wheel of our liberties, without which the body must die; the watch must run down; the government must become arbitrary." *United States v. Haymond*, 588 U.S. __, 139 S. Ct. 2369, 2375 (2019) (plurality). The jury-trial guarantee reflects "a profound judgment about the way in which law should be enforced and justice administered." *Duncan v. Louisiana*, 391 U.S. 145, 155 (1968); *see also id.* at 151-54 (discussing historical roots of jury-trial right).

But the Constitution does not just guarantee a jury trial—the Sixth Amendment's Speedy Trial Clause promises a prompt one. By doing so, it "implements" the presumption of innocence "by preventing undue and oppressive incarceration prior to trial, minimizing anxiety and concern accompanying public accusation, and limiting the possibilities that long delay will impair the ability of an accused to defend himself." *Betterman*, 578 U.S. at 442 (cleaned up). Furthermore, "there is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused." *Barker*, 407 U.S. at 519. Speedy Trial Clause violations "preclude retrial." *Smith*, 599 U.S. at 242.

The right to a speedy trial is guaranteed to <u>all</u> defendants. The Court has repeatedly recognized that trial delay is harmful to a defendant, whether he is free on bail or not. *See*, *e.g.*, *Barker*, 407 U.S. at 532 n.33, 533; AOB 43-44. Thus, "delay

in trial, by itself," even without detention, can be "an improper denial of justice." *Klopfer v. North Carolina*, 386 U.S. 213, 224 (1967).

Although all defendants enjoy the constitutional right to a speedy trial, deprivation of that right falls hardest on those who languish in pretrial detention while waiting for their day in court. In *Klopfer v. North Carolina*, for example, the Court explored the deep historical roots of the speedy-trial right and its particular importance to those in custody, concluding that "the history of the right to a speedy trial and its reception in this country clearly establish that it is one of the most basic rights preserved by our Constitution." 386 U.S. at 223-26 (cleaned up); *see also Betterman*, 578 U.S. at 442-43 (also discussing history). In a recent Ninth Circuit case, Judge Bumatay delved into the relevant history even further and concluded that the "primary" or "core" protection of the "sacred" constitutional speedy-trial right is "against prolonged pretrial detention by the government," thereby ensuring that "defendants are not locked up in jail indefinitely pending trial." *Olsen*, 21 F.4th at 1058-63 (Bumatay, CJ, concurring in denial of rehearing en banc) (cleaned up); *see also id.* at 1065 ("COVID-19 does not put the Constitution on hold. Courts must always be vigilant in protecting constitutional rights. Yet, because Olsen was not under pretrial detention, I do not believe he suffered a deprivation of his Sixth Amendment speedy trial right.").

In *Barker v. Wingo*, the Court explained what it meant by "oppressive pretrial incarceration" for purposes of the speedy-trial right:

> We have discussed previously the societal disadvantages of lengthy pretrial incarceration, but obviously the disadvantages for the accused who cannot obtain his release are even more serious. The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious.

407 U.S. at 532-33; *see also id.* at 520 ("Lengthy exposure to [jail] conditions has a destructive effect on human character and makes the rehabilitation of the individual offender much more difficult.") (cleaned up). Thus, lengthy pretrial detention is inherently oppressive.

Although the Sixth Amendment does not only protect against *especially* oppressive pretrial detention, it cannot reasonably be questioned that the same conditions that purportedly required trial delays also resulted in particularly harsh conditions of confinement for those in custody during the pandemic. *See Valentine v. Collier*, 140 S. Ct. 1598, 1601 (2020) (Statement of Sotomayor and Ginsburg, JJ., respecting denial of application to vacate stay) ("It has long been said that a society's worth can be judged by taking stock of its prisons. That is all the truer in

this pandemic, where inmates everywhere have been rendered vulnerable and often powerless to protect themselves from harm."). The oppressive conditions endured by pretrial detainees—aggravated during the pandemic—provides a compelling reason to review of the constitutional speedy-trial claim presented here.

2. Despite the importance of the issue, lower courts have given short shrift to constitutional speedy-trial claims in the pandemic era.

Barker v. Wingo requires "a difficult and sensitive balancing process" that "must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution." 407 U.S. at 533. Contrary to that requirement, lower courts have rejected constitutional speedy-trial claims based on pandemic jury-trial bans without giving this important issue the attention it deserves.

Take this case, for example. The Ninth Circuit's entire constitutional "analysis" consisted of a single paragraph superficially applying the *Barker* factors and pointing to its recent published opinion doing the same thing. App. 2a-3a (citing *Walker*, 68 F.4th at 1238-39). The Ninth Circuit has similarly disposed of pandemic-era constitutional speedy-trial claims in other unpublished decisions with little discussion. *See*, *e.g.*, *United States v. Motley*, __ Fed.Appx. __, 2023 WL 9014457, *1 (9th Cir. Dec. 29, 2023); *United States v. Pelayo*, __ Fed.Appx. __, 2023 WL 4858147, *3 (9th Cir. July 31, 2023); *United States v. Jones*, __ Fed.Appx. __, 2023 WL 4288349, *2-3 (9th Cir. June 30, 2023).

The Central District of California was not the only district that implemented a prolonged jury-trial ban during the pandemic. Federal courts across the country held over 650 jury trials in the first year of the pandemic, but those trials were not evenly distributed. *See* U.S. Courts, *Federal Judicial Caseload Statistics* (March 31, 2021), table J-2.[7] Of the 94 district and territorial courts, 18 did not hold any jury trials during that period. *See id*. (showing no trials for D. Alaska, W.D. Ark., C.D. Cal., E.D. Cal., D.D.C., S.D. Fla., N.D. Ga., S.D. Ga., E.D. La., W.D. La., D. Me., E.D. Mich., N.D. Miss., D.N.J., N.D. Okla., W.D. Pa., D. Utah, and E.D. Wash.). And some of those prohibited jury trials for even longer than the Central District's 15-month ban. *See*, *e.g.*, *United States v. Reed*, __ Fed.Appx. __, 2024 WL 229668, *5 (6th Cir. Jan. 22, 2024) ("In-person jury trials did not resume in the Eastern District of Michigan until September 2021."). This discrepancy cannot be explained by the population densities of the districts. For example, trials occurred in the districts including New York City (Southern District of New York), Chicago (Northern District of Illinois), and Houston (Southern District of Texas), but not Los Angeles (Central District of California). Or consider this statewide disparity: During the first year of the pandemic, the four districts in Texas held 94 jury trials while the four districts in California held only 19 (in just two of those districts). *Federal Judicial Caseload Statistics* (March 31, 2021), table J-2. For comparison, in

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[7] https://www.uscourts.gov/statistics/table/j-2/federal-judicial-caseload-statistics/2021/03/31 (visited Feb. 28, 2024).

calendar year 2019, the federal courts in each state held roughly the same number of jury trials (about 320). *See* U.S. Courts, *Federal Judicial Caseload Statistics* (December 31, 2019), table J-2.[8] Although all these first-year comparisons are helpful, even many districts that held some jury trials by the end of March 2021 may have had jury-trial bans that did not end much before then.

Because prolonged jury-trial bans were a nationwide phenomenon, other courts of appeals have confronted them, but like the Ninth Circuit, they have assumed that delays caused by such bans were justified, thereby rendering *Barker*'s reason-for-delay factor neutral, without any critical analysis of whether the bans could be justified at the relevant times, and often pointing to other circuits that had categorically endorsed such bans without scrutiny previously. *See*, *e.g.*, *United States v. Gordon*, __ F.4th __, 2024 WL 655980, *7 (5th Cir. Feb. 16, 2024); *United States v. Allen*, 86 F.4th 295, 305 (6th Cir. 2023); *United States v. Pair*, 84 F.4th 577, 589 (4th Cir. 2023); *United States v. Snyder*, 71 F.4th 555, 578 (7th Cir.), *cert. granted on other grounds*, 144 S. Ct. 536 (2023); *United States v. Keith*, 61 F.4th 839, 853 (10th Cir.), *cert. denied*, 144 S. Ct. 420 (2023); *United States v. Fonseca*, __ Fed.Appx. __, 2023 WL 7272320, *4 (11th Cir. Nov. 3, 2023), *cert. petition filed*, Case No. 23-6701 (Jan. 22, 2024); *United States v. Rodriguez-Mendez*, __ Fed.Appx. __, 2023 WL 3378005, *3 (3d Cir. May 11, 2023), *cert. denied*, 144 S. Ct. 314 (2023);

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[8] https://www.uscourts.gov/statistics/table/j-2/statistical-tables-federal-judiciary/2020/12/31 (visited Feb. 28, 2024).

United States v. Zhukov, __ Fed.Appx. __, 2023 WL 3083284, *2 (2d Cir. Apr. 26, 2023).

State courts throughout the country also prohibited trials for various lengths of time, so state supreme courts have weighed in on the constitutional speedy-trial issue too. There is some conflict in those cases about exactly how *Barker*'s reason-for-delay factor should be considered in the pandemic context—namely, whether pandemic delays are not weighed at all against the prosecution or only slightly so—but the end result is the same: state supreme courts (like federal appellate courts) have assumed the validity of jury-trial bans without subjecting them to meaningful examination to determine if they were truly necessary. *See*, *e.g.*, *Berry v. Commonwealth*, 680 S.W.3d 827, 834-36 (Ken. 2023); *State v. Labrecque*, 307 A.3d 878, 886-88 & n.5 (Vt. 2023); *Person v. State*, 526 P.3d 61, 73-74 (Wy. 2023); *State v. Paige*, 977 N.W.2d 829, 838-40 (Minn. 2022); *State v. Brown*, 310 Neb. 224, 240-41 (2021); *see also Ex Parte State*, __ So.3d __, 2023 WL 7952861, *7 n.1 (Ala. Nov. 17, 2023) (citing cases).

Although the Court often grants review to resolve conflicts, here it is a disturbing and unearned consensus that warrants review because lower courts have wrongly "decided an important question of federal law that has not been, but should be, settled by this Court[.]" Sup. Ct. R. 10(c). Banning all jury trials throughout large swaths of the country for long periods of time (sometimes well over a year) is unprecedented, so one would expect courts to require substantial evidence that the

bans were truly necessary before rejecting constitutional speedy-trial claims of the accused who had to wait for their trials, often while in custody. But that is not what happened. Instead, courts have taken a superficial nothing-to-see-here approach that does little more than assert: "Pandemic bad!" Contrary to the principle underlying many of these cases—that the pandemic caused the delay—it was the *reaction* of courts and prosecutors to the pandemic that was the true cause, and that reaction must be *justified*. Moreover, that justification must be grounded in the circumstances at the relevant times in the relevant places. For example, the conditions in the first few months of the pandemic were far different from what they were by Summer or Fall 2020, let alone Spring or Summer 2021. Banning jury trials might have been reasonable when almost everything was shut down at first, but they were impossible to justify where (as here) state courts had long resumed jury trials in the same area (sometimes just across the street) and large groups of people were convening in theaters and other nonessential businesses. The federal and state courts rejecting speedy-trial claims have not acknowledged that, however. This complete failure to meaningfully analyze an important constitutional question calls out for this Court to show lower courts what is required.

3. Although the careful and sensitive balancing required by the Court's speedy-trial precedent is similar to what the Court required when governors tried to restrict religious gatherings during the pandemic, lower courts have ignored that authority.

Again, *Barker* requires "a difficult and sensitive balancing process" that "must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution." 407 U.S. at 533. It is therefore significant that this Court has provided guidance about how the similar balancing process for another right specifically affirmed in the Constitution—the freedom to attend religious services—should be applied during the pandemic.

In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Court recognized that "even in a pandemic, the Constitution cannot be put away and forgotten." 592 U.S. at 19. It saw the fundamental inconsistency in state policies treating constitutionally-protected activity less favorably than purportedly "essential" and "non-essential" businesses, especially when "the list of 'essential' businesses includes things such as acupuncture facilities, camp grounds, garages, as well as many whose services are not limited to those that can be regarded as essential[.]" *Id*. at 17; *see also id.* at 22 (Gorsuch, J., concurring) ("The only explanation for treating religious places differently seems to be a judgment that what happens there just isn't as 'essential' as what happens in secular spaces."); *id*. at 27 ("It is time—past time—to make plain that, while the pandemic poses many grave

challenges, there is no world in which the Constitution tolerates color-coded executive edicts that reopen liquor stores and bike shops but shutter churches, synagogues, and mosques."). Although stemming the spread of the virus was "a compelling state interest," there were "many other less restrictive rules that could be adopted to minimize the risk to those attending religious services." *Id.* at 18. Because the restrictions at issue struck "at the very heart of the First Amendment's guarantee of religious liberty," the Court emphasized its "duty to conduct a serious examination of the need for such a drastic measure." *Id.* at 19-20 (cleaned up). As Justice Kavanaugh put it: "judicial deference in an emergency or a crisis does not mean wholesale judicial abdication, especially when important questions of religious discrimination, racial discrimination, free speech, *or the like* are raised." *Id.* at 30 (Kavanaugh, J., concurring) (emphasis added). Surely, the fundamental Sixth Amendment right to a speedy jury trial is within the scope of this admonition. If anything, federal courts' duty to protect rights *in their own courtrooms* is even stronger than when they consider injunctive relief for state conduct outside them.

Another line of cases repeatedly enjoined restrictions in California's *Blueprint for a Safer Economy* that the Ninth Circuit had upheld. *See Tandon*, 593 U.S. at 64 ("This is the fifth time the Court has summarily rejected the Ninth Circuit's analysis of California's COVID restrictions on religious exercise.") (citing cases). The Court recognized that "narrow tailoring requires the government to show that measures less restrictive of the First Amendment activity could not address its

interest in reducing the spread of COVID." *Id*. at 63. "Where the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied. Otherwise, precautions that suffice for other activities suffice for religious exercise too." *Id*. But "California treat[ed] some comparable secular activities more favorably than at-home religious exercise, permitting hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time." *Id*. The Ninth Circuit failed to consider whether those activities posed "a lesser risk of transmission" than the proposed religious activities. *Id*. The Ninth Circuit also failed to require California to "explain why it could not safely permit at-home worshipers to gather in larger numbers while using precautions used in secular activities[.]" *Id*. at 64.

In another religion case, a majority of justices faulted California for not even trying "to explain why it cannot address its legitimate concerns with rules short of a total ban." *See South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 718 (2021) (Gorsuch, J., joined by Thomas and Alito, JJ.); *see also id.* at 717 (Barrett, J., joined by Kavanaugh, J.) (agreeing with Justice Gorsuch's statement, except for his position on singing during indoor services). In February 2021 (four months before the Central District finally ended its jury-trial ban), those justices observed: "As this crisis enters its second year . . . it is too late for the State to

defend extreme measures with claims of temporary exigency, if it ever could. Drafting narrowly tailored regulations can be difficult. But if Hollywood may host a studio audience or film a singing competition while not a single soul may enter California's churches, synagogues, and mosques, something has gone seriously awry." *Id.* at 720.

As with the state of California and religious-service restrictions, the Central District has never explained why it could not address any legitimate safety concerns with measures short of a total ban on jury trials lasting until June 2021. Indeed, the record shows that such measures existed and were being utilized by the state courts within the district and by the Southern District, not to mention other courts across the country. Ignoring their example, the Central District improperly sidelined the Speedy Trial Clause by following the same *Blueprint* this Court rejected as a basis to limit First Amendment activity. *See supra* Statement of the Case, Part 2.B.

The general principles announced in the Court's pandemic-era religious-services cases are relevant to the similar balancing required by *Barker*. After all, if strict scrutiny is required because citizens "are irreparably harmed by the loss of free exercise rights 'for even minimal periods of time'" (*Tandon*, 593 U.S. at 64), then deprivation of the right to a speedy jury trial for well over a year also deserves close examination and strong justification. Lower courts have nevertheless ignored this precedent in their speedy-trial cases. In this case, for example, Torres expressly

and repeatedly invoked it, but the Ninth Circuit did not even mention it. App. 2a-3a, 14a; AOB 66-70; ARB 14-15; PFR 14-15.

4. Granting review would serve the Court's supervisory power because this case concerns the proper functioning of the federal judiciary.

Because this case concerns the appropriate "course of judicial proceedings" during the pandemic, the Court's "supervisory power" over such matters provides an independent ground for granting certiorari. Sup. Ct. R. 10(a). The Court reviews cases that involve its "significant interest in supervising the administration of the judicial system" to ensure "compliance with proper rules of judicial administration," particularly "when those rules relate to the integrity of judicial processes." *Hollingsworth v. Perry*, 558 U.S. 183, 196 (2010) (cleaned up); *see*, *e.g.*, *id.* at 184-85 (addressing whether district court improperly changed its rules regarding the broadcasting of trials shortly before trial was to begin). Whether, and to what extent, judges can suspend all jury trials districtwide for a substantial time period is plainly a question that directly implicates the integrity of judicial processes.

Exercising the Court's supervisory power in this context is particularly appropriate given its observation when reviewing *executive actions* during the pandemic that judges "are not public health experts[.]" *Roman Catholic Diocese*, 592 U.S. at 19. They "lack the background, competence, and expertise to assess workplace health and safety issues." *National Federation of Independent Businesses v. Department of Labor*, 595 U.S. 109, 138 (2022) (Breyer, Sotomayor,

and Kagan, JJ., dissenting) (cleaned up). But the prolonged jury-trial bans were based on courts' own assessments of the public-health risks, often behind closed doors without significant input from outsiders. *See Arizona v. Mayorkas*, 143 S. Ct. 1312, 1316 (2023) (Statement of Gorsuch, J.) ("Decisions produced by those who indulge no criticism are rarely as good as those produced after robust and uncensored debate. Decisions announced on the fly are rarely as wise as those that come after careful deliberation. Decisions made by a few often yield unintended consequences that may be avoided when more are consulted."). Given judges' general lack of expertise as to such matters, the public and defendants can reasonably expect *substantial public justification* for administrative judicial actions that neutralized constitutional speedy-trial rights for months on end, especially when state courts in the same area had resumed jury trials. But that did not happen here. "Justice must satisfy the appearance of justice," so "public perception of judicial integrity" is an "interest of the highest order." *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 446 (2015) (cleaned up). Granting review will serve this interest by demonstrating to the public that administrative judicial actions that suspended important rights of a large group of people for a long period of time will receive the most rigorous appellate review.

5. Review of the speedy-trial issue now is necessary to protect that right—and other constitutional rights—in future crises.

What the Court decides now will not only inform what the government could do during the past pandemic but also what it will be allowed to do during future crises, which are inevitable. *See Mayorkas*, 143 S. Ct. at 1316 (Statement of Gorsuch, J.) (noting that "the number of declared emergencies has only grown" in the last half-century, and cautioning that "rule by indefinite emergency edict risks leaving all of us with a shell of a democracy and civil liberties just as hollow."). As demonstrated by this case (which took four years from the start of the pandemic to reach this Court), appellate review of speedy-trial cases is not quick because defendants must generally wait until they finally get their trials and their district-court cases end in judgments before they can appeal. Prompt protection of speedy-trial rights in the future therefore depends on the Court's review now.

But such review will not protect *only* the speedy-trial right. History, including the recent pandemic, has shown that *all* constitutional rights will be at risk when the next emergency comes. *See generally* A. Tyler, *Judicial Review in Times of Emergency: From The Founding Through the Covid-19 Pandemic*, 109 Va. L. R. 489 (2023). It is not hard to imagine that the same courts that have so casually endorsed jury-trial bans will rely on that precedent during future crises to conclude that if general statements about an emergency could justify keeping the accused (who had the presumption of innocence) incarcerated without trial for well over a

year, then surely the government can eliminate or curtail the right to assemble, freedom of speech, the ability to keep and bear arms, voting, or any of the other liberties we hold dear. In short, the incarcerated accused are the canaries in the coal mine, and if their rights are not defended now, we all will pay for it later.

6. Although considering the Court's Speedy Trial Clause precedent in the context of the pandemic merits special attention, doing that will also provide needed guidance in applying that precedent across the board.

Considering the Speedy Trial Clause in the particular context of pandemic-era jury-trial bans is important for the reasons stated above. But taking on that issue will also allow the Court to address subsidiary questions and clarify how the analysis required by *Barker* and its progeny should be done generally. That is because the Ninth Circuit's entire analysis was defective.

A. The Ninth Circuit found that *Barker*'s second factor—the reason for the delay—did not weigh in Torres's favor given that most of the delay was attributable to "the Central District of California's suspension of jury trials because of the COVID-19 pandemic." App. 2a-3a (citing *Walker*, 68 F.4th at 1238-39 ("The pandemic, not the prosecution, caused the delay.")). As discussed above, other courts have similarly classified that factor as neutral, or only slightly in the defendant's favor, by assuming the validity of jury-trial bans, without requiring courts or prosecutors to justify the bans as truly necessary at the relevant times and places. *See supra* Part 2. Doing so was erroneous because the government, as the

representative of the sovereign as a whole (including both the executive and judicial branches) bears the burden to justify court-caused delays, and if it cannot do so, then the delay should be weighed heavily in the defendant's favor. AOB 48-54; ARB 5-6; PFR 10-11. That burden flows from the fact that a "defendant has no duty to bring himself to trial; the State has that duty[.]" *Barker*, 407 U.S. at 527. Moreover, "society has a particular interest in bringing swift prosecutions, and society's representatives are the ones who should protect that interest." *Id*. The Court therefore "places the primary burden on the courts and the prosecutors to assure that cases are brought to trial." *Id*. at 529. For example, the Court has held that delays caused by court-appointed attorneys are not attributable to the state for speedy-trial purposes because, "unlike a prosecutor or the court, assigned counsel ordinarily is not considered a state actor." *Vermont v. Brillon*, 556 U.S. 81, 90-91 (2009) (cleaned up). In contrast, the state may be charged with delay resulting "from the trial court's failure to appoint replacement counsel with dispatch." *Id*. at 85. Delay caused by "a breakdown in the public defender system" may also be attributable to the state, even though the prosecution is not involved. *Id*. at 85, 94 (cleaned up). And even delay caused entirely by "overcrowded courts" weighs against the government because "the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." *Barker*, 407 U.S. at 531. The Court should clarify that court-caused delay weighs significantly against the government unless it can justify the delay.

B. The Ninth Circuit concluded that "the third *Barker* factor is neutral because Torres asserted his right to a speedy trial only after requesting and acquiescing to continuances." App. 3a. In truth, his public defenders (the first of which had to be replaced after his appointment as a judge) obtained brief continuances to prepare for trial and then did not oppose government-requested continuances during the first few months of the pandemic, but beginning in June 2020, when it was clear that the jury-trial ban could no longer be justified, Torres consistently and repeatedly asserted his right to a speedy trial by opposing government-requested continuances, and in his alternative requests for pretrial release; he then filed a motion to dismiss on speedy-trial grounds. *See supra* Statement of the Case, Parts 2.A, 2.C, & 2.F. Torres's vigorous challenges to the serious deprivations of his speedy-trial right are "entitled to strong evidentiary weight" in the overall analysis. *Barker*, 407 U.S. at 531-32; AOB 54; ARB 23-25; PFR 18-20. The Court should firmly reject the Ninth Circuit's contrary conclusion that once a defendant requests *any* continuance, of *any* duration, for *any* reason, it neutralizes the third *Barker* factor in his favor, no matter how long of a delay occurred thereafter and how much he invoked his speedy-trial rights as to that delay.

C. The Ninth Circuit found that "the fourth *Barker* factor, actual prejudice, weighs against Torres" because he "failed to establish that his pretrial incarceration impaired his ability to prepare a defense, and he did not provide evidence that his incarceration was *unconstitutionally oppressive* or that he endured *unconstitutional*

anxiety." App. 3a (emphasis added). That conclusion is flawed. First, a defendant is not required to show any particular kind of prejudice, or even any prejudice at all, to prevail on his speedy-trial claim. *See Barker*, 407 U.S. at 533 ("*none* of the four factors" is "a *necessary* . . . condition to the finding of a deprivation of the right of speedy trial.") (emphasis added); *see also Moore v. Arizona*, 414 U.S. 25, 26 (1973) ("*Barker v. Wingo* expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial[.]"). Second, Torres did suffer significant prejudice—both prolonged pretrial incarceration and the anxiety accompanying unresolved criminal charges. AOB 54-60; ARB 26-29; PFR 20-23. These are "the major evils protected against by the speedy trial guarantee" and they "exist quite apart from actual or possible prejudice to an accused's defense." *United States v. MacDonald*, 456 U.S. 1, 7-8 (1982) (cleaned up); *see also Betterman*, 578 U.S. at 442, 444, 448; *Barker*, 407 U.S. at 520, 527, 532-33. The Court should therefore hold that the Ninth Circuit improperly required those things to reach a level of unconstitutionality *independently*, which is contrary to *Barker*'s instruction to consider *any* prejudice as a factor in the defendant's favor in the *overall balancing* to determine if *delay* was unconstitutional. 407 U.S. at 530, 533.

D. The Ninth Circuit's analysis stopped with its superficial analysis of the four *Barker* factors. App. 2a-3a. The Court should reaffirm that those factors "have no talismanic qualities; courts must still engage in a difficult and sensitive balancing

process," which "necessitates a functional analysis of the [speedy-trial] right in the particular context of the case." *Barker*, 407 U.S. at 522, 533 (cleaned up). Thus, even if the Ninth Circuit were correct that key facts raised by Torres were not covered by the *Barker* factors in some hyper-technical sense, it still had to consider them in the overall balancing. AOB 61; ARB 29; PFR 23-24. The Court should emphasize that the comprehensive approach is required whenever a court considers a constitutional speedy-trial claim, but it is particularly important in the context of the pandemic or other unusual situations because the general factors are rooted in the assumption that "in large measure because of the many procedural safeguards provided an accused, the ordinary procedures for criminal prosecution are designed to move at a deliberate pace." *Barker*, 407 U.S. at 521 n.15 (cleaned up). Here, the ordinary procedures completely stopped for 15 months, so given the totality of the circumstances the Speedy Trial Clause violation is manifest.

7. This case is an excellent vehicle for the Court to address how the Speedy Trial Clause applies to the incarcerated accused in times of emergency.

Given its posture and record, Torres's case presents an excellent vehicle for consideration of the question presented in this petition. First, his appeal raised only a Speedy Trial Clause claim, so there is no other potential case-dispositive issue (like a Speedy Trial Act claim) that might prevent the Court from reaching the constitutional issue. AOB 41-71. Second, Torres was incarcerated throughout the

entirety of the Central District of California's 15-month jury-trial ban. *See supra* Statement of the Case, Parts 2.A-2.C. Third, he vigorously asserted his speedy-trial rights in the district court, repeatedly asking to be either tried or released beginning in June 2020, when the total shutdown of the pandemic's early days passed and even nonessential businesses began to reopen. *See supra* Statement of the Case, Part 2.C. Fourth, even the Ninth Circuit recognized several weeks before Torres's trial that his detention was "significant under any metric," "deeply troubling," and "approaching the limits of what due process can tolerate." *Torres*, 995 F.3d at 709 (cleaned up); *see also supra* Statement of the Case, Part 2.D. Fifth, this case presents the sharp contrast between the Central District's jury-trial ban and the state courts within that district, which held many hundreds of jury trials during the same period despite facing the same public-health issues in the same geographic area—a discrepancy that has never been explained by the government, the district court, or the Ninth Circuit. *See supra* Statement of the Case, Part 2.B.

Finally, although Torres did not succumb to the pressure to plead guilty, the Court should appreciate that other defendants in pretrial detention during the pandemic surely did. Such defendants "face immense pressure to plead guilty, particularly when holding out for acquittal may mean spending weeks, months or years behind bars." *Olsen v. United States*, Brief of the Cato Institute as Amicus Curiae in Support of Petitioner, 2022 WL 1432048, *11-12 (2022) (cleaned up). We will never know how many defendants who otherwise would have exercised their

constitutional rights to jury trials, and perhaps would have been acquitted, gave up when faced with indefinite jury-trial bans that dragged on month after month with no end in sight. It is also noteworthy that defendants who are denied their speedy-trial rights but are entirely acquitted will never have convictions to appeal, so this case—where, when Torres finally got his trial, he was acquitted of the far-more-serious drug charge and was only found guilty of possessing two bullets—presents as close as the Court will get to its concern about the "especially unfortunate" consequences of pretrial detention "on those persons who are ultimately found to be innocent." *Barker*, 407 U.S. at 533; *see supra* Statement of the Case, Part 2.E.

Conclusion

For the foregoing reasons, the petitioner respectfully requests that this Court grant his petition for a writ of certiorari.

February 29, 2024

Respectfully submitted,

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