**NO:**

**IN THE**
**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 2023**

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**VICTOR VARGAS,**

***Petitioner*,**

**v.**

**UNITED STATES OF AMERICA,**

***Respondent*.**

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**On Petition for Writ of Certiorari to the**
**United States Court of Appeals**
**for the Eleventh Circuit**

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# PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

Whether the Eleventh Circuit's Standard of Review for Sixth Amendment Speedy Trial Rights That Involve "Mixed Questions of Law and Fact" Conflicts With This Court's Established Precedent Which Requires *De Novo* Review of Constitutional Issues, Reserving Only Questions of Historical Fact for Clear Error Review.

## INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

## RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

*United States v. Victor Vargas*, No. 18-60265-Cr-Moore (February 22, 2022)

United States Court of Appeals (11th Cir.):

*United States v. Victor Vargas*, No. 22-10604 (April 3, 2024)

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Victor Vargas respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 22-10604 in that court on April 3, 2024, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

## OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

## STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on April 3, 2024. A 30-day extension was granted by this Court for the filing of the instant petition. This petition is timely filed pursuant to SUP. CT. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

## STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely on the following constitutional and statutory provisions:

**United States Constitution, Amendment VI**

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

## STATEMENT OF THE CASE

### Course of Proceedings and Disposition in the District Court

Mr. Victor Vargas ("Vargas") was indicted for conspiracy to possess with intent to distribute heroin and possession with intent to distribute heroin in violation of 21 U.S.C. §§841 and 846.

Mr. Vargas filed a motion to dismiss based on speedy trial grounds. The Magistrate Judge held a hearing on the matter and recommended that the motion be denied in a Report & Recommendation ("R&R"). Mr. Vargas filed objections, but the district court adopted the R&R and denied the motion.

Mr. Vargas offered to enter into a conditional plea, but that offer was rejected. Consequently, Mr. Vargas opted for a bench trial with stipulated facts so he could preserve his speedy trial motion. The parties submitted a joint stipulated proffer statement for the trial. In this statement, Mr. Vargas admitted guilt. The court adjudged Mr. Vargas guilty of counts 1 and 2, and formally issued a guilty verdict.

Sentencing was held February 22, 2022. The court imposed 46 months imprisonment as to both counts, run concurrently, with 2 years of supervised release. Mr. Vargas timely appealed.

### Statement of Facts

In June 2018, Mr. Vargas was a participant in a conspiracy involving two kilograms of heroin. He transported the heroin from New York to Florida and was

arrested on June 18, 2018, when he tried to consummate the deal. At his arrest, Mr. Vargas agreed to cooperate with the government. This cooperation included returning to New York to assist law enforcement agents in New York. His efforts to cooperate failed, and unbeknownst to Mr. Vargas, authorities in Florida filed the instant indictment against him on September 25, 2018. An arrest warrant issued the same day. However, Mr. Vargas was not arrested until almost three years later on August 18, 2021.

## I. The Motion to Dismiss

During the instant prosecution, Mr. Vargas filed a motion to dismiss for speedy trial violations. He argued that his Sixth Amendment speedy trial rights had been violated due to the post-indictment delay of approximately three years. He noted that police knew where he resided and had even visited him at his home for cooperation purposes, and that he had lived at that address continuously. He also stated that he did not know the indictment had been filed against him. He argued that the delay was presumptively prejudicial, and that no showing of actual prejudice was necessary. Under the circumstances, he argued that the government could not meet the requirements under *Barker v. Wingo*, 407 U.S. 514 (1972) to excuse its delay, and therefore, he requested the Court to dismiss his convictions.

The government opposed Mr. Vargas' motion, admitting that the 35-month post-indictment delay was presumptively prejudicial, but arguing against dismissal based on: (1) COVID; (2) governmental negligence which it mainly attributed to

New York law enforcement agents; (3) Mr. Vargas' attempts to cooperate; (4) and allegations that Mr. Vargas failed to make arrangements for his voluntary surrender and failed to timely assert his speedy trial rights. Based on those grounds, the government argued that Mr. Vargas needed to prove prejudice before he could prevail on his speedy trial motion.

## II. The Hearing

The matter was referred to a Magistrate Judge who held a hearing. The evidence at that hearing established facts about the case and the timing of the charges as set forth below.

It was established that from approximately June 16- June 18, 2018, Mr. Vargas drove a car from New York to Florida, to consummate a drug deal involving two kilograms of heroin. Vargas was supposed to receive payment in the amount of $110,000 for the two kilos. Unbeknownst to Mr. Vargas, the people purchasing the heroin were really undercover law enforcement agents. Vargas dealt with undercover Detective Gonzalo Gandarillas ("Gandarillas") who worked with Special Agent Brett Palat ("Palat") from the Drug Enforcement Administration (DEA) to effectuate the transaction. Gandarillas spoke Spanish, and thus, was the undercover agent who had direct contact with Vargas. Palat was the case agent. He was the only agent to testify at the hearing on Vargas' motion to dismiss.

On June 18, 2018 – the day that Vargas tried to deliver the kilos in Fort Lauderdale – he was arrested by Palat and Gandarillas. At the time of his arrest,

Mr. Vargas was forthright about his guilt, he waived his *Miranda* rights, he confessed, and he stated his desire to cooperate with the government. He went through his phone contacts with the agents and gave them information about individuals who were involved in the conspiracy. *Id.* He also placed monitored phone calls to his co-conspirators and put those co-conspirators in direct contact with Gandarillas.

Palat and Gandarillas also spoke with law enforcement agents from New York. The agents concluded that Mr. Vargas could be helpful in an investigation in New York. Thus, Mr. Vargas was not taken into custody and no formal charges were filed. Instead, agents permitted Vargas to travel to New York to further assist law enforcement agents in New York. Thus, Mr. Vargas was attempting to help law enforcement agents in two investigations – one in New York and one in Florida.

Ultimately, these cooperation efforts failed. First in Florida, the co-conspirators suspected that Gandarillas was part of law enforcement, and they told him so. No one could explain how the co-conspirators knew this, but the defense argued it was related to the fact that Mr. Vargas was unable to produce or explain what happened to the $110,000 he was supposed to receive in payment for the two kilos. The government argued that Mr. Vargas was to blame.

In New York, police spoke with Mr. Vargas at his residence a few times, but ultimately decided that cooperation efforts were not fruitful. According to Palat, New York agents indicated that Vargas no longer wanted to cooperate. However,

Palat could not explain what he was told or by whom. *Id*. Further, there was no evidence showing any discussions about Vargas' cooperation efforts in New York.

On September 25, 2018, approximately three months after Mr. Vargas returned to New York, the government determined that cooperation efforts would not work. At that time, the government filed the instant indictment. An arrest warrant also issued the same day. The indictment charged a conspiracy between "June 2018 to June 18, 2018" to possess with intent to distribute one kilogram or more of heroin and possession with intent to distribute one kilogram or more of heroin (June 18) in violation of 21 U.S.C. §§841, 846.

Mr. Vargas was not aware that the indictment had been filed, and he resided continuously at his residence. No law enforcement officers or agents told Mr. Vargas about the pending indictment. By November 2018, Gandarillas transferred jobs and no longer worked on Mr. Vargas' case. In September 2019, Palat was reassigned from DEA Miami to DEA Mexico, and he also no longer worked on Mr. Vargas' case. In July 2021, Mr. Vargas was held by Immigration officials based on the instant indictment. However, they released Mr. Vargas after a few hours and told him that he had "no problem." Approximately one month after speaking to immigration – by that time approximately 35 months after the indictment issued -- Mr. Vargas was arrested on August 18, 2021.

The evidence showed that the Indictment issued on September 25, 2018, and that the government made scant efforts to arrest Mr. Vargas for approximately 10

months from October 5, 2018 to July 8, 2019. During this time the case agent Palat sent four emails to other law enforcement agents and he entered Vargas' information on two legal databases:

**(1)** on 10/5/2018 he sent the arrest warrant to agents in New York;

**(2)** on January 28, 2019 he completed Form 202 to have Vargas inputted into the National Crime Information Center (NCIC);

**(3)** on March 20, 2019, he sent the warrant, photo, and CLEAR report to a New York DEA Agent;

**(4)** on May 1, 2019 he sent the warrant, photo, and CLEAR report to a different DEA agent in New York;

**(5)** on June 21, 2019 he asked for status from the last DEA agent he corresponded with;

**(6)** on July 8, 2019 he registered Vargas in the El Paso Intelligence Center (EPIC) border crossing data base.

During that same time, Palat's supervisor sent four emails relating to Vargas' case:

**(1)** On 10/26/2018 he sent an email to New York agents to follow up on the warrant that was sent earlier in the month;

**(2)** on 11/7/2018 he sent an email to New York agents to notify them that an agent had left and was no longer on the case;

**(3)** on 1/9/2019 he sent an email to Palat, telling Palat to find out what was

going on with the arrest or have the indictment dismissed;

**(4)** on May 1, 2019 he sent an email to Palat with the name of a DEA agent in New York that he should send the warrant to.

After Palat entered Vargas' information into the EPIC system, no further efforts were made to arrest Mr. Vargas.

COVID was declared a pandemic on March 3, 2020. The World Health Organization declared that the COVID pandemic was over on May 5, 2023.

In July 2021, Mr. Vargas was stopped in the airport by immigration officials, but they released him to his home after a few hours. On August 18, 2021, Mr. Vargas was arrested at his home. This was 35 months after the indictment was issued. He was granted a bond, and he ultimately made his initial appearance for his charges in the Southern District of Florida while living in New York via Zoom.

## III. The Magistrate Judge's Report & Recommendation ("R&R")

The Magistrate Judge issued an R&R which recommended the denial of Mr. Vargas' motion. It cited the *Barker* factors. And it noted that everyone -- the court, the government, and the defense -- recognized that the 35-month delay was presumptively prejudicial. It also noted that the defense did not claim any prejudice. It found that the timing of Mr. Vargas' assertion of his right to a speedy trial (i.e., through the motion to dismiss) did not weigh against either party. Accordingly, it found that the *Barker* factor gauging the reason for the delay would dictate the outcome in the case. The R&R stated:

> Thus, the outcome of this Motion turns on the second factor: the reason for the delay. As the Defendant points out, he was arrested at the same address as was listed on his driver's license in 2018; there is no evidence that he had ever resided at a different address; there is no evidence that he knew of the Indictment pending against him until he was stopped by Immigration authorities in July 2021 or that he was attempting to evade arrest; there is very little evidence of attempts made by Government agents in new York to locate and apprehend him, and there is no evidence that the COVID-19 pandemic impeded those efforts.
>
> The undersigned agrees with the Defendant that each of these facts weighs against the Government, so the issue to be resolved is whether their cumulative weight is heavy enough to excuse the Defendant from demonstrating prejudice.

The R&R then found three circumstances that mitigated in favor of the government: (1) Mr. Vargas' attempts to cooperate which led to his release and travel to New York, rather than to immediate custody in Florida; (2) a finding that Agent Palat made diligent efforts to have Vargas arrested which other agents did not follow-through on; and (3) COVID-19 as a "complicating" factor. The R&R found important that the delay in Mr. Vargas' case was due to government negligence, not to government bad faith. In evaluating these factors, the R&R relied mainly on two Eleventh Circuit cases, *United States v. Ingram*, 446 F.3d 1332 (11th Cir. 2006) and *United States v. Clark*, 83 F.3d 1350 (11th Cir. 1996). It found that Mr. Vargas' case was more closely aligned with *Clark*. The R&R concluded that the cumulative weight against the government did not obviate the need for Mr. Vargas to prove prejudice. Thus, it recommended denying Mr. Vargas' motion. Mr. Vargas filed objections to the R&R. The government did not file any objections to the R&R.

## V. The District Court's Order Denying the Motion to Dismiss

The District Court adopted the R&R and denied Mr. Vargas' motion. Key findings included: **(1)** the delay in Mr. Vargas' case was presumptively prejudicial; **(2)** the defense did not claim any prejudice (*Id.*); **(3)** there was "no doubt" that the government was negligent in its efforts to arrest Mr. Vargas; **(4)** Mr. Vargas timely asserted his right to a speedy trial; **(5)** there was no evidence that Mr. Vargas ever changed addresses or tried to evade law enforcement; and **(6)** there was no evidence that Mr. Vargas was aware of the indictment.

In spite of these findings, the court agreed with the R&R's assessment that Mr. Vargas' case was more similar to the *Clark* case than to the *Ingram* case. It found that the delay was due to government negligence, not bad faith. And in particular, it found that New York law enforcement agents were the main source of the negligence, and that Agent Palat had acted diligently. The court also found that the 35-month delay in Mr. Vargas' case was comparable to the 17-month delay in *Clark*.

Moreover, while acknowledging that the R&R did not find evidence that COVID delayed Mr. Vargas' arrest, the court still found that COVID weighed in favor of the government because "it reduce[d] the extent to which the Government was responsible for the delay in Defendant's arrest." The court further agreed "for the reasons discussed in the R&R" that Mr. Vargas' timely assertion of his right to a speedy trial was neutral, meaning it did not weigh against either party, and thus, did not obviate the need for the defendant to show prejudice. Based on these findings,

the district court determined that Mr. Vargas was required to prove prejudice. Since he did not do so, the district court denied his speedy trial motion.

## VI. The Bench Trial and Sentencing

After the motion was denied, Mr. Vargas attempted to enter a conditional plea to preserve the speedy trial issue. However, the Department of Justice rejected that offer, and thus, the parties proceeded to a stipulated bench trial on December 1, 2021. The parties jointly agreed that Mr. Vargas admitted to the elements for his charged offenses. The court found Mr. Vargas guilty of counts 1 and 2 of the indictment and adjudicated him guilty. The court also entered a formal guilty verdict. Mr. Vargas was remanded into custody and ultimately sentenced to 46 months imprisonment.

## VII. The Appeal

Mr. Vargas appealed the district court's denial of his speedy trial motion. After oral argument, the Eleventh Circuit affirmed the district court's denial of petitioner's motion to dismiss based on constitutional speedy trial violations. *United States v. Vargas,* 97 F.4th 1277 (11th Cir. 2024). In doing so, it employed the clear error standard of review to the district court's application of the law to the established and undisputed historical facts. A concurrence also issued, stating that it was constrained to join the majority due to the clear error standard of review. Had the *de novo* standard governed, the case would have been reversed.

Both the majority and the concurrence operated on the same undisputed historical facts. The most relevant of those facts included:

1. the facts of the government's efforts to arrest the petitioner as reflected in email communications made by DEA Agents (i.e., over a 10-month period of time: four emails by the DEA case agent, four emails by the DEA supervisor, and evidence that the DEA case agent entered petitioner's information into two legal data bases);

2. the fact that defendant attempted to cooperate with the government which led to his living in New York rather than being subject to immediate arrest in Florida;

3. the fact that COVID arose 18 months after the defendant's indictment issued;

4. the fact that petitioner resided at the same New York residence continuously;

5. the fact that petitioner's New York residence was listed on his driver's license which law enforcement had since 2018, and the fact that law enforcement had visited petitioner's New York residence on multiple occasions for cooperation efforts;

6. the fact that the defendant was not aware of the indictment and was not attempting to evade arrest;

7. the fact that petitioner was, in fact, arrested while COVID was still a pandemic, that his case did not involve any trial issues because he confessed and intended to plead guilty from the time he began his cooperation in 2018;

8. the fact that law enforcement was able to make accommodations during the COVID pandemic in 2021 by granting petitioner bond and permitting him to appear for pre-plea court appearances held in South Florida through zoom while he continued to reside in New York; and

9. the fact that petitioner could not prove prejudice.

*Vargas,* 97 F.4th 1278-83.

Under a clear error review, the majority agreed with the district court that the government's efforts at arrest were "diligent;" that COVID was a "complicating" factor that mitigated the government's negligence; that the effort to cooperate which caused petitioner to live in New York was a factor that mitigated the government's negligence; for the ultimate conclusion that the 35-month delay in petitioner's case did not violate his speedy trial rights. It found that petitioner's speedy trial rights had not been violated because the first three speedy trial factors did not weigh heavily against the government. Therefore, it found that petitioner had to prove the fourth factor of prejudice, but he conceded he could not do so. Accordingly, petitioner could not prevail. *Vargas,* 97 F.4th 1285-94.

In contrast to the majority, the concurrence evaluated the same historical facts differently. It found that the *Barker* factors of length of delay, reason for delay and timely assertion of speedy trial rights weighed heavily against the government. *Vargas,* 97 F.4th 1298. It found the government was not diligent, that COVID did not impair the ability of the government to arrest petitioner, and that the petitioner's

attempt to cooperate was not a mitigating circumstance that weighed in favor or the government. *Vargas,* 97 F.4th 1298-1300. The concurrence concluded, however, that it was constrained to affirm because of the clear error standard of review. It noted: "If a set of facts called for a ruling which might have a deterrent effect on government apathy, it is this one. But the clear error standard, as applied to the findings made by the magistrate judge and the district court on the second speedy trial factor, prevents relief to Mr. Vargas." *Vargas,* 97 F.4th 1300.

This Petition follows.

## REASON FOR GRANTING THE WRIT

**The Eleventh Circuit's Standard of Review for Sixth Amendment Speedy Trial Rights That Involve "Mixed Questions of Law and Fact" Conflicts With This Court's Established Precedent Which Requires *De Novo* Review of Constitutional Issues, Reserving Only Questions of Historical Fact for Clear Error Review.**

This Court has recognized that many issues submitted for appellate review involve questions involving mixed characteristics bearing on both legal and factual issues. Such issues can cause confusion in the lower courts as to the proper standard of appellate review. Accordingly, this Court has provided established rules for this in between category of mixed questions of law and fact.

A true mixed question of law and fact involves [a] question[] in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the . . . standard." *Pullman-Standard v. Swint,* 456 U.S. 273, 289 n.19 (1982).

Under this Court's cases, such questions are reviewed *de novo* when, as here, they implicate constitutional rights. As the plurality explained in *Lilly v. Virginia,* 527 U.S. 116 (1999), the Court's "prior opinions . . . indicate that . . . with . . . fact-intensive, mixed questions of constitutional law, . . . '[i]ndependent review is . . . necessary . . . to maintain control of, and to clarify, the legal principles' governing the factual circumstances necessary to satisfy the protections of the Bill of rights," id. at 136 (cleaned up), *quoting Ornelas v. United States,* 517 U.S. 690, 697 (1996)*; see also*

*United States v. Bajakjian,* 524 U.S. 321, 337 n.10 (1998) (employing de novo review because "the question of whether a fine is constitutionally excessive "calls for the application of a constitutional standard to the facts of a particular case"); *Pullman-Standard,* 456 U.S. at 290 n.19 ("There is also support in decisions of this Court for the proposition that conclusions on mixed questions of law and fact are independently reviewable by an appellate court." (citations omitted)); *United States v. McConney,* 728 F.2d 1195, 1203 (9th Cir. 1984) (*en banc*) ("The predominance of factors favoring de novo review is even more striking when the mixed question implicates constitutional rights." (citing *Ker v. California,* 374 U.S. 23 (1963)).

These principles are in contrast to questions that do not implicate constitutional issues, where more deferential review is accorded to district courts. See *Pullman-Standard,* 456 U.S. at 290 n.19 (giving examples).

This Court has thus held that *de novo* review (with deference to associated historical facts) is appropriate for a wide variety of constitutional rights. *See e.g., Lilly,* 527 U.S. at 136 (plurality opinion) (Sixth Amendment Confrontation Clause); *Strickland v. Washington,* 466 U.S. 668, 698 (1984) (Sixth Amendment ineffectiveness of counsel); *Brewer v. Williams,* 430 U.S. 387, 403-04 (1977) (Sixth Amendment waiver of the right to counsel); *Harte-Hanks Comm. Inc., v. Connaughton,* 491 U.S. 657, 685-686 n.33 (1989) (First Amendment issues); *Ornelas,* 517 U.S. at 699 (Fourth Amendment probable cause and reasonable suspicion inquiries); *Miranda v. Arizona,* 384 U.S. 436 (1966) (Fifth Amendment questions

about whether a defendant was "in custody"); *Arizona v. Fulminante,* 499 U.S. 279, 287 (1991), *citing Miller v. Fenton,* 474 U.S. 104, 110 (1985) (Fifth Amendment voluntariness of confession); *Bajakjian,* 524 U.S. at 336 n.10 (Eighth Amendment constitutionally excessive fines).

This Court has emphasized that *de novo* review is required for such mixed questions of constitutional issues because, "the [constitutional] legal rules . . . acquire content only through application. Independent review is therefore necessary if appellate courts are to maintain control of, and to clarify, the legal principles." *Ornelas,* 517 U.S. at 697, *quoted in Cooper Indus. Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424, 436 (2001). Stated another way, such *de novo* review is necessary to prevent disparities in the enjoyment of constitutional rights which would necessarily flow from a variation in the way that different district courts draw general conclusions based on the same or similar facts. *Ornelas,* 517 U.S. at 697; *see also United States v. Arvizu,* 534 U.S. 266, 275 (2002) ("*de novo* review would prevent the affirmance of opposite decisions on identical facts from different judicial districts in the same circuit," which is likely to occur under a deferential standard of review). Thus, plenary review "reflects a deeply held conviction that judges – and particularly Members of this [United States Supreme] Court – must exercise such review in order to preserve the precious liberties established and ordained by the Constitution." *Bose Corp. v. Consumers Union of U.S., Inc.,* 466 U.S. 485, 510-511 (1984).

This is surely true of a defendant's fundamental and explicit Sixth Amendment Speedy Trial rights. *Barker v. Wingo*, 407 U.S. 514, 533 (1972) (speedy trial rights are, "a fundamental right of the accused," the weighing of the factors must reflect a "full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution."). In *Barker,* this Court established a four-factor analysis for determining whether a defendant's Sixth Amendment right to a speedy trial had been violated. The courts are to weigh the "[l]ength of the delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *Barker,* 407 U.S. at 530. The constitutional *Barker* analysis is triggered when a delay of at least one year has occurred. *Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992). If the one-year mark has occurred raising a presumption of prejudice, the defendant may be excused of having to prove further prejudice if the other three factors weigh heavily against the government. *United States v. Ingram*, 446 F.3d 1332 (11th Cir. 2006).

This inquiry, like the one in *Ornelas,* 517 U.S. 690, has two parts, the first being a straight finding of historical facts, and the second being a true mixed question where the district court draws legal conclusions from the historical facts. The first part involving the finding of historical facts remains a deferential standard of review such as clear error. However, the second part where legal rules come into play, are to be reviewed on a more plenary level to ensure consistency and fidelity in a determination of whether "facts satisfy the . . . [constitutional] standard, or to put it

another way, whether the rule of law as applied to the established facts is or is not violated." *Ornelas,* 517 U.S. at 696-697.

This Court's previous speedy trial cases are consistent with the principles articulated in *Ornelas*, as stated above. Such cases show that this Court does not defer to a lower court's speedy trial determination, but instead has engaged in its own independent review of whether, under the circumstances of the particular case, the defendant was denied his Sixth Amendment right to a speedy trial. *See e.g.*, *Vermont v. Brillon,* 556 U.S. 81 (2009); *Doggett,* 505 U.S. 647 (1992); *United States v. Loud Hawk,* 474 U.S. 302 (1986); *Moore v. Arizona,* 414 U.S. 25 (1973); *Barker,* 407 U.S. 514 (1972).

The Eleventh Circuit's mixed standard of review in speedy trial cases violates these principles. Rather than cabining the deferential clear error standard to historical facts, the Eleventh Circuit extends the deferential standard to the application of the rule of constitutional law to those established facts. In the case at bar, the historical facts were undisputed and established. Clear error review was appropriate for review of the historical facts to ensure that they were accurate. However, since the historical facts of petitioner's case were undisputed, this was a non-issue.

Instead, the error was carrying forward the clear error review to the legal conclusions that the district court assigned to the historical facts. Under this court's precedents, these legal conclusions should have been reviewed *de novo*. Had the

Eleventh Circuit utilized the correct de novo standard of review, reversal would have been required. The erroneous standard of review was dispositive. As noted by the concurring opinion in petitioner's case:

> If a set of facts called for a ruling which might have a deterrent effect on government apathy, it is this one. But the clear error standard, as applied to the findings made by the magistrate judge and the district court on the second speedy trial factor, prevents relief to Mr. Vargas.

*Vargas,* 97 F.4th 1277, 1300.

This Court should grant the writ to correct the Eleventh Circuit's erroneous clear error standard of review for mixed questions of law and fact regarding constitutional errors.

## CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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August 1, 2024