24-6635

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JORY LEEDY - Petitioner

vs.

UNITED STATES OF AMERICA - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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Based on Circuit precedent, the lower courts refused to inquire into the voluntary nature of Leedy's plea, as in the Sixth Circuit it is not possible to contradict one's statements made in the plea colloquy, no matter what evidence is brought forward. While technically listing every claim Leedy raised, neither court addressed the consistent theme of the entire petition: that the evidence used to convict Leedy was fraudulant and/or incompetent.

QUESTIONS PRESENTED

1) Does the Sixth Circuit's holding in Ramos v. Rogers, 170 F.3d 560 (6th Cir.1999) making a plea unasailable "so long as the judge follows the proper Rule 11 colloquy" violate Blackledge v. Allison, 431 US 63 (1977)'s prohibition on per se rules foreclosing any opportunity to show that a plea is involuntary?

2) As currently utilized, does the Certificate of Appealability process impermissibly raise the risk of "pro forma" or "rubber stamp" denials without any real review of the claims raised in the petition?

3) Given the nature of the Speedy Trial Clause, can a judge ever use a prior denial in denying a defendant's reassertion of that right? If so, does significant delay, especially in a term of years, undermine the force of that prior decision?

4) Where a District Court misses all or part of a claim(s) presented in a §2255 motion, should a Court of Appeals grant the Certificate or issue summary remand, as the Eleventh Circuit does, to ensure a petitioner gets the full and fair review of every claim that Congress intended?

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

COMES NOW the Petitioner, Jory Leedy, respectfully praying this Honorable Court issue a Writ of Certiorari to review the judgment of the Sixth Circuit in this case, which denied a Certificate of Appealability ("COA") based on obvious errors.

OPINIONS BELOW

The Sixth Circuit's denial of a COA in Case No. 23-3701 appears in Appendix A to the Petition and is reported in Lexis Nexis as Leedy v. United States, 2024 US App LEXIS 9159 (6th Cir.2024).

The opinion of the United States District Court for the Southern District of Ohio in Case No. 1:22-CV-00405 appears in Appendix C and is reported as United States v. Leedy, 2023 US Dist LEXIS 86092 (SD OH, 2023).

JURISDICTION

The Sixth Circuit Court of Appeals denied my COA on April 15, 2024. A timely petition for rehearing was denied November 4, 2024. A copy of that denial is included at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment V : No person shall be held to answer for a capital, or otherwise infamous crime...nor be deprived of life, liberty, or property, without due process of law...

Amendment VI : In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...and to have the Assistance of Counsel for his defence.

28 U.S.C. §2253(a) : In a habeas proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(c)(1) Unless a circuit judge or justice issues a certificate of appealability, an appeal may not be taken to the court of appeals from -

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF THE CASE

Judges on this bench have long acknowledged that countless cases that come in front of it likely involve errors, sometimes very significant ones, of Constitutional dimension, sometimes even involving erroneous convictions, that this Court nevertheless does not grant certiorari in, often because the error is not "large enough" to warrant review, as in City & Cnty of San Francisco v. Sheehan, 191 L.Ed.2d 856,873 (2015). Like a great number of those cases, due to inattention or overcrowding of the docket, Leedy falls into a tragic, yet repeating, pattern in the Court of Appeals. Due to the COA process, Leedy never even got his initial required review, but was given a pro forma denial of COA, which, in the average case, is all but a guarantee the petitioner will be unable to present a question to obtain review.

In 2015, Leedy became the subject of a State investigation, initiated by caseworker Alina Whittaker of Ohio's Greene County Job and Family Services office, into allegations involving the sexual abuse of two minors. Leedy had been a part of the minors' lives for nearly three (3) years until their parents were faced with the fact, which they already knew, that Leedy had an old conviction for a sexual offense years earlier, and, with Ms. Whittaker, proceeded to coach, script, and tamper with the minors through an ever-evolving and increasingly contradictory story involving a long term pattern of abuse which became worse with every telling.

As Ms. Whittaker's supervisors became involved, suspicions that the allegations were coached were raised. After local law enforcement became involved in the investigation, the troubling conduct by the

the parents and Ms. Whittaker caused the State to decline prosecution. At that point, the accusers' parents (and "aunt") scripted allegations on camera and claimed the conduct occurred across State lines to get the charges transferred into Federal court. Leedy would ultimately be indicted in the Southern District of Ohio and arrested on April 12, 2016, after which he would spend the next three-and-half (3½) years in county jail awaiting trial.

Originally represented by Richard Monahan of the Public Defender's office, due to a conflict of interest, Leedy was reassigned to new counsel, Kevin Tierney. Leedy and counsel would slowly find, through a series of delayed disclosures, that Ms. Whittaker had primed Leedy's accusers with malicious and false information that Leedy had "raped" and "murdered" a child, and would do so again if they didn't help put him away. The defense would not get the home video recordings of the scripted tampering or find out that Ms. Whittaker had deliberately destroyed evidence until <u>after</u> pretrial motions had been filed.

A variety of challenges were filed, including to the Government's intentional misleading of the Magistrate by withholding evidence that their charges were likely fraudulant. District Court Judge Timothy S. Black routinely denied these motions, holding that these were largely jury issues—deciding who to believe, the alleged victims or the defendant. At the same time, Judge Black denied an expert witness, who had intended to explain to the jury how the techniques used to interview the minors often lead to false allegations. Between this series of decisions abdicating judicial responsibility to prevent unjust prosecution, and the inability to get his counsel to press for bond, Leedy finally signed a plea agreement for 30 years in June 2019.

Prior to sentencing, Leedy would move to withdraw his plea, bringing forth an affidavit from the same expert witness, testifying that Leedy may have been wrongly convicted. The District Court ruled that any request to withdraw a plea past thirty (30) days was presumptively unreasonable and, even though the expert witness' affidavit was based on fact, the witness mentioned payment for services for trial, so the motion was denied. Though Leedy appealed, his appellate counsel filed an Anders brief, and Leedy received the cursory review that normally entails (instead of full proceedings when briefed by counsel), followed by a summary denial.

Leedy then filed a §2255 motion. While he raised a variety of grounds, the primary thrust of his arguments was that it was fundamentally unfair to even make him go to trial on such scripted and egregiously tainted allegations, especially when the allegations were based on plainly obvious fraud and misconduct. See Mussachio v. United States, 193 L.Ed.2d 639,647-48 (2016). This is especially true with child-sexual accusations, where the nature of the alleged crime causes juries to ignore problems with victim credibility. See Maryland v. Craig, 497 US 839,860-61 (1990).

Though the initial review determined Leedy's arguments were not disproved by the record, when the Government failed to respond by the date set by the District Court (despite three (3) time extensions), the District Court acted as Leedy's opponent. Using prior determinations (even when Leedy was attacking counsel's failures and lack of evidence in pursuing these issues), the District Court completely dodged the issue of whether the case against Leedy was based on inherently unreliable evidence and misconduct. Since the District Court acted sua

sponte, these issues were never fully briefed. See United States v. Leedy, 2023 US Dist LEXIS 86092 (SD OH, 2023).

Although the standard for a Certificate of Appealability is supposed to be relatively modest, and as the lower court plainly erred both in the procedural handling of the case and in using incorrect tests in evaluating several claims, the Sixth Circuit Court of Appeals denied a COA, largely copying and pasting the lower court's denial and saying it "wasn't debatable". Of particular concern is its invocation of Ramos v. Rogers, 170 F3d 560 (6th Cir.1999), which, discussed in Ground I, makes a plea impossible to challenge if a judge follows the Rule 11 script, see Leedy v. United States, 2024 US App LEXIS 9159 (6th Cir.2024).

Rehearing was denied on November 4, 2024, causing Leedy to seek this Court's review in this Petition for Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

I. The Sixth Circuit's holding in Ramos v. Rogers makes it impossible to challenge the voluntariness of a plea, no matter what a defendant shows. This rule is contrary to this Court's precedents and creates a circuit split.

Starting in 1999, the Sixth Circuit has set an insurmountable bar to the review of the voluntariness of a plea both on direct review and habeas, which has effectively denied any meaningful review to petitioners for over a quarter of a century. As the panel summarized in this case:

> Leedy stated, under oath, that he had understood and discussed [the plea] with counsel. "[A] defendant must be bound by the answers he provides during a plea colloquy."...when, as here, the district court fully complied with Rule 11 in accepting

> the guilty plea," the defendant "is bound by his responses indicating that his plea was knowing and voluntary." Leedy v. United States, No. 23-3701 at 6-7 (citing Ramos v. Rogers, 170 F.3d 560,566 (6th Cir.1999)).

So long as the judge reads off the standard script, and the defendant gives the "correct" answers to allow his plea to be accepted, his plea becomes the only evidence needed against him to dismiss any challenge he may later bring to that plea. One cannot later claim that they were under duress, threatened, or misled into a plea because the judge had asked if they were threatened or if anyone made them any promises, and they said "no".

The extremity in this unyielding rule is shown in Ramos itself. In that case, counsel admitted, under oath, that he had explicitly told his client that, if he pled guilty, he would be released on what was called "supershock probation" in one year, at 563. Not only did the lawyer in that case acknowledge that his misrepresentations had been the leading factor in his client's decision to plead guilty, the record showed counsel himself believed them, as he filed for the release of his client one year into his incarceration. Id.

The court was so troubled at counsel's admitted ethics violations that it referred him to State ethics boards for professional sanctions and to both Federal and State prosecutors for potential criminal charges, at 565. Yet, despite accepting that Ramos had been misled into a plea, the Sixth Circuit refused to let him withdraw his plea. The reasoning was as follows:

> If we were to rely on Ramos's alleged subjective impression rather than the record, we would be rendering the plea colloquy process meaningless, for any convict who alleges

> that he believed the plea bargain was different from that outlined in the record could withdraw his plea, despite his own statements during the plea colloquy (which he now argues were untruthful) indicating the opposite. This we will not do, for the plea colloquy process exists in part to prevent petitioners such as Ramos from making the precise claim that is today before us...We do understand that Ramos's claim is very troubling. A judge who would make or "bless" on off-the-record plea bargain is probably engaging in judicial misconduct. A defense attorney who makes promises to his clients about the existence of off-the-record agreements in order to induce them to plead guilty is clearly engaging in professional misconduct, as would be a prosecutor who countenances such an agreement and perjury concerning it. ...However, the very serious nature of claims such as these mandates that a defendant must be bound by the answers he provides during a plea colloquy. Allowing petitioner to withdraw his plea would essentially put this court in the position of remedying a violation of an unethical off-the-record plea agreement and condoning the practice by defendants of providing untruthful responses to questions during plea colloquys. This simply we will not do. Ramos v. Rogers, at 565 (emphasis added).

Though Ramos could definitively prove he had been misled, he was bound by his plea, even in light of evidence that some of the statements he made were incorrect. Whatever dicta might exist in that case that might seemingly mitigate that holding must be taken in light of the fact that blatant attorney misconduct was not a "valid reason" to contradict statements, nor was it enough to establish ineffective assistance to undermine the plea, at 564 n.5.

The Sixth Circuit's holding in Ramos stands as an absolute, categorical bar to relief. Indeed, on numerous occasions, the lower

court has held that, even were a defendant to prove threats, duress, promises, or misrepresentations, the court would not find that sufficient to undermine a "sworn" plea, see, for example, Robertson v. United States, 2023 US App LEXIS 4223 (6th Cir.2023); Barker v. United States, 2023 US App LEXIS 31995 (6th Cir.2023). Even evidence that a person's family was threatened is not sufficient to contradict one's plea, Adams v. Taskila, 2022 US App LEXIS 27522 (6th Cir.2022).

No other Circuit has endorsed this logic behind Ramos, leaving the Sixth Circuit standing alone on this rule. In United States v. Stewart, 198 F.3d 984,987 (7th Cir.1999), the court rejected the idea that the repudiation of the statements at a plea colloquy should be treated as perjury. Not only could other explanations exist, but, even if it was treatable as perjury, if it would create an injustice, the court would have to overturn the plea, despite the defendant's "misrepresentations". So, too, in United States v. Bradley, 381 F.3d 641,645 (7th Cir.2004), the court explicitly rejected the idea that a Rule 11 colloquy could overcome a defendant's claim that he pled out of misunderstanding, because any misunderstanding would necessarily taint the Rule 11 colloquy.

In Clayton v. Crow, 2022 US App LEXIS 29168 at 268 n.27 (10th Cir. 2022), the court likewise found that the evidence of pre-plea promises proved that the statements made at the plea colloquy were false. It also rejected the idea that it would give the defendant a "benefit," as, if the promises were, in fact, made, it would give the Government a benefit in not holding them to their word. The Ninth Circuit came to a similar conclusion in Chizen v. Hunter, 809 F.2d 560 (9th Cir.1986).

While this Court has repeatedly recognized that plea proceedings should "constitute a formidable barrier in any subsequent collateral

proceedings", instructing lower courts that "[s]olemn declarations in open court carry a strong presumption of verity", Blackledge v. Allison, 431 US 63,73 (1977), the specific practice in the Sixth Circuit seems to run afoul of the command in that same case:

> In administering the writ of habeas corpus and its §2255 counterpart, the federal courts cannot fairly adopt a per se rule excluding all possibilities that a defendant's representations at the time his guilty plea was accepted were so much the product of such factors as misunderstanding, duress, or misrepresentation by others to make the guilty plea a constitutionally inadequate basis for imprisonment. Id at 75.

No procedural device for the taking of guilty pleas is so perfect in design that the plea is "invulnerable to subsequent challenge", see Fontaine v. United States, 411 US 213,215 (1973). Withdrawing a plea is supposed to be difficult, not impossible.

Leedy was indicted for committing the alleged acts in the Southern District of Ohio. Due solely to the prosecutor's decision to prosecute in his home State, rather than the nearby Pennsylvania, to which he was accused of traveling, or in Florida, Georgia, or North Carolina, where other allegations were made by the Government, the tests used in those districts—the Third, Eleventh, Fifth, and Fourth Circuits, respectively—each of these Circuits would have allowed Leedy to challenge his plea. And the number of affidavits and letters supported by detailed discussion of the record would have at least warranted a hearing. Solely due to factors beyond Leedy's control, he was and is stuck with the restrictive Ramos test. The matter of a few miles means the difference between three (3) decades in prison, or freedom.

Finally, "[i]t is crucial in maintaining public perception of fairness and integrity in the justice system that courts exhibit regard for fundamental rights and respect for prisoners 'as people'," Rosales-Mireles v. United States, 201 L.Ed.2d 376,387 (2018). "Both the appearance and the reality of justice are necessary" to the public view of the courts "and thus to the rule of law itself", Williams v. Pennsylvania, 195 L.Ed.2d 132,145 (2016). The Ramos test doesn't just vary from this and other courts' holdings, it seriously undermines this public view of the system's integrity.

It is one thing for a court to dismiss allegations that a plea is coerced as conclusory, self-serving, or even untrue. Even an inaccurate resolution of a challenge to a plea, often that the evidence presented was not strong enough to overcome the plea colloquy, involves only good faith error in the weighing of facts.

By contrast, courts in the Sixth Circuit applying the Ramos test often tell petitioners that it doesn't matter if they can prove the facts they claim or not. The court often seems to assume that it may be true that a petitioner was lied to, or confused, or even threatened. The underlying presumption, as even applied in Ramos itself, is that it is irrelevant whether a plea was as a matter of fact knowing and voluntary, so long as a defendant can be convinced, no matter how or how briefly, to play along.

There is simply no way to read a case like Adams without suspicion, even if the court came to the correct conclusion. In light of the court telling the petitioner explicitly that iron-clad evidence of his family being physically threatened would not be enough to withdraw his plea, it is simply impossible to believe justice was even attempted, let

alone accomplished. If it is beyond suspension of disbelief for normal people, who have no stake in the game, for someone like Leedy, they will not accept that the court gave them a fair shake for the simple reason that they are telling other petitioners they are not obligated to give them any shake—fair or otherwise—at all.

As the Ramos test cannot be reconciled with Blackledge and its progeny, as so many other Circuits have rejected similar arguments by the Government as unsound, and as it can only lead to distrust of the system, this Court's review is necessary to bring the Sixth Circuit back into correct legal doctrine. Certiorari should grant on this issue.

II. The handling of the Certificate of Appealability in this case denied Leedy his statutory right of review and raises serious questions about how the process works in practice.

Like the overwhelming majority of §2255 petitioners who seek a COA, Leedy was denied, see McGee v. McFadden, 204 L.Ed.2d 1160,1163 (2019)(noting that only 8% of requests for a COA are granted). This is supposed to be a relatively low bar to clear. As the Ninth Circuit has described it, the court is to "take only a quick look to determine whether the petition facially alleges the denial of a constitutional right", Lopez v. Schriro, 491 F.3d 1029,1040 (9th Cir.2007). It is a mere "threshold inquiry" into whether "the District Court's decision was debatable". Leedy v. United States, 2024 US App LEXIS 9159 at 2 (6th Cir.2024)(citing Miller-El v. Cockrell, 537 US 322,327,348 (2003)).

As is currently being argued in the Eighth Circuit in Kendell Straub v. United States, No. 24-2697, the COA standard appears to be widely misused. According to counsel in that case, of the 12,399 petitions for a COA recorded by WestLaw between July 1, 2014, and

August 1, 2024, 9,631 were summarily denied. He concluded that the "reasonable jurist test seems to be mere dicta inconveniently recited" (Appellant's Brief p.4). Indeed, this Court has repeatedly had to correct lower courts on improper denials of COA under too exacting of a standard, see Buck v. Davis, 580 L.Ed.2d 100 (2017); Ayestas v. Davis, Dir., Tex. Dep't. of Crim. Just., 2002 L.Ed.2d 376 (2018); Jennings v. Stephens, 574 US 271 (2015). Not to mention all of the dissents from denials of certiorari as misapplying the COA standard.

The Sixth Circuit, unlike most of its sister Circuits, actually issues reasons why it denies a COA. Most petitioners get a single sentence denial. And the summary denial of a COA usually will deprive an individual of the ability to petition for certiorari, as a Court of Appeals has already determined, without explanation, that the petition presents no issues worthy of review. That alone constitues a heavy bar to review the underlying issues. The denial of the COA is, further, a procedural, case specific bar, see Slack v. McDaniel, 529 US 473,484-85 (2000), which will probably never pose an independent certiorari-worthy question.

Despite the significant barriers the denial of a COA creates for the petitioner, the raw numbers and summary nature of such proceedings strongly suggests that Courts of Appeals are issuing these denials very lightly indeed. Whether one accepts the statistics from McGee or Straub, it is highly improbable that such a small number of cases present an issue worthy of even reading or briefing. The fact that less cases today, both in percentage and absolute number, get the COA than used to get relief on appeal is troubling to say the least.

Leedy's case may not have been of the one-sentence-denial variety,

but it is troubling for many of the same reasons. First, many of Leedy's grounds challenge his counsel's failure to raise relevant evidence of his innocence, or, conversely, of the fraudulant nature of the Government's case against him, at many key points during the proceedings. Neither the District Court nor Court of Appeals addressed this failure or the evidence, which is the entire issue, but instead relied on prior rulings, issuing a res judicata denial. Counsel's potential failings in hearings was not addressed because the hearings occurred.

As this Court explained in Bobby v. Bies, 556 US 825,829,834 (2009), issue preclusion only applies when an issue is necessarily part of the decision made and is essential to the final judgment. If a judgment does not depend on a certain determination, it may be relitigated. Clearly, the decision previously made could not have relied upon evidence not presented to the court during those hearings, because it was not presented, and courts do not act as roving boards of inquiry looking for evidence, Lebron v. National Railroad Passenger Corp., 513 US 374,408 (1995). Further, as Leedy has claimed his proceedings were lacking in the minimum of due process, relying on those proceedings without further examination is prohibited, see Richards v. Jefferson County, 517 US 793,798-99 (1996); Taylor v. Sturgell, 553 US 880 (2008).

Second, the Sixth Circuit's opinion on Leedy's claim of misconduct involving false statements simply copied and pasted the District Court's disregard of his claim, stating that "no misrepresentations occurred", Leedy at 8. However, Leedy did, in fact, document several deliberate distortions, highlighting the minors' actual statements as recorded in

Government's own discovery, and comparing them to the transcripts of the officers' testimony. It would be one thing to state that such distortions do not rise to a level warranting relief; but it is a complete fabrication of the court to claim they did not occur at all.

Finally, the denial of a COA made several claims that go beyond debatable; these claims by the courts are objectively wrong on their face. These claims do not even require one to read the briefs that were filed in the case, they are simply wrong from the face of the opinion. And one, the Speedy Trial claim is so egregiously wrong that it deserves its own ground, solely based on the rationale of the denial, brief as it may be.

The court below held that counsel could not be ineffective for failing to exclude testimony as misleading, because that evidence was not obtained by law enforcement or the prosecutor, Leedy at 4. Yet, Rule 403 of the Federal Rules of Evidence allows a judge to exclude any evidence, regardless of its source, if the evidence is misleading or tends to confuse the jury. And, further, this Court has stated that such evidence being presented is a due process violation, even at sentencing, see Gall v. United States, 552 US 38,51 (2007); Goldberg v. Kelly, 397 US 254,268 (1970).

Indeed, on the very same page, the District Court completely disregarded the paragraph above, and argued it had the power to exclude testimony from an expert witness (also not taken by the Government) as merely irrelevant. This completely different standard was used to deny Leedy's claim that he was denied due process in losing his expert witness. Conveniently, the adopting of a completely different standard for the defense meant that Leedy lost both claims, despite very similar

issues being involved, whereas a consistent standard would have required relief for Leedy on one or the other. Such "heads-I-win, tails-you-lose" standards are illegitimate, Cichos v. Indiana, 385 US 76,82 (1966).

More important than the double standard is the denial of the expert witness because his testimony was based on "plain observations", Leedy at 4. Because the witness was going to testify how the techniques he "plain[ly] observ[ed]" being used on the accusers are improper, the opinion fails to explain why the expert does not qualify as an expert. On the face of the opinion, someone with seemingly relevant information was excluded simply because the District Court said so, without any substantive reason. The failure to explain the justification is itself reversible error, regardless of what Leedy argued.

One more example will suffice. The Sixth Circuit restated Leedy's claim that, after he filed a motion to reconsider a denial, the Government filed a superceding indictment charging Leedy with an additional, third count. This Court has held that charges filed right after an exercise of rights are presumptively vindictive, United States v. Goodwin, 457 US 368,377 (1982); Blackledge v. Perry, 417 US 21,28-29 (1974). Again, the face of the denial claims Leedy made a prima facie case on this claim, and yet was still denied. Leedy at 9-10.

In each of these situations, the Appellate Court merely stated what Leedy's issue was, repeated the District Court's analysis, usually verbatim, and then stated that this conclusion "was not debatable amongst jurists of reason" (or some variation thereof) with no further analysis. Not only is nothing from Leedy's briefing so much as mentioned, the Sixth Circuit addressed every single issue the District Court

raised, even if Leedy did not ask for a COA on that issue.

The nature of the COA process understandably leaves most inmates unsatisfied, feeling as if they did not receive a genuine review (a concern this Court once acknowledged as valid (see Garrison v. Patterson, 391 US 464 (1968)), something that hinders valid peneological goals, preventing successful rehabilitation (see Jago v. Van Curen, 454 US 14,24-25 (1981)). That Leedy received an 11-page opinion might seem to exclude him from this analysis regarding summary denials, but the above shows differently. Because the Court Clerk wrote an opinion (rather than a judge), Leedy knows that he didn't get a meaningful review, whereas the average petitioner only suspects so.

Just as this Court has stated that grants of COA should not be pro forma or matters of course, Miller-El at 337, neither should denials. Yet, this is the second time in recent years that, from the prison where Leedy is currently incarcerated by itself, that such pro forma denials routinely occur, see Lattrell Morris v. United States, 203 L.Ed.2d 693 (2019). Since current practices neither fulfill Congressional intent nor satisfy the historical purposes of habeas in protecting liberty, this Court's intervention is necessary on this issue.

III. The Sixth Circuit's denial in this case ignores the 4-part test of Barker v. Wingo and sets a dangerous precedent for future petitioners.

As this Court noted in United States v. MacDonald,456 US 1,9(1982), the very purpose of the speedy trial guarantee is to "minimize the possibility of lengthy incarceration prior to trial" protecting the defendant from unnecessary impairment of his liberty interests, which "has a destructive effect on human character," Barker v. Wingo, 407 US

514,520 (1972). Despite enduring such conditions for over five (5) years, the Sixth Ciruit has not only held that Leedy is entitled to no relief, but that his claim doesn't even deserve further review. That dismissal does violence to this Court's precedent.

Arrested on April 12, 2016, Leedy endured almost a year-and-a-half of delay waiting while confined in pretrial detention before his counsel finally asserted Leedy's speedy trial rights in September of 2017. And, at this point, he had been waiting almost a year for rulings on pretrial motions. Though the District Court, in denying the speedy trial motion, promised to rule "expeditiously" on the pretrial motions, Leedy would wait another year and then some (13+ months) for those rulings. Counsel would not, despite Leedy's increasing adamance (including sending letters and motions to the District Court, and eventually filing a Petition for Writ of Mandamus with the Court of Appeals), reassert Leedy's speedy trial rights, up until Leedy pled guilty in June 2019, more than three (3+) years into the process.

This unreasonable failure to protect his client's rights was challenged in Leedy's §2255 motion, but was denied as frivolous, since counsel had filed one (1) speedy trial motion (albeit more than a year prior), and any reassertion would necessarily be frivolous:

> Counsel cannot be faulted for failing to refile a motion that was already filed. Additionally, Defendant suffered no prejudice from counsel's decision not to file a duplicative trial motion. Specifically, the speedy trial motion was ultimately denied, and an identical motion would not have changed that fact. Indeed, quite the contrary, another motion to dismiss would only have caused more delay and, critically, would have provided yet another basis on which to toll time. Thus Mr. Tierney's decision not to file another motion was indeed the most practical way to protect Defendant's speedy trial rights.

United States v. Leedy, 2023 US Dist LEXIS 86092 at 32-33 (SD OH, 2023)(emphasis in original). The Sixth Circuit somehow found this denial was not debatable, Leedy v. United States, 2024 US App 9159 at 5 (6th Cir.2024).

Even accepting as a starting premise that Leedy wanted nothing more than a duplicative speedy trial motion filed, it is simply incorrect to say that the same result would have occurred several months, or even years, later. Under Barker's four part test, the length of the delay is the very first factor to consider, with a longer delay always weighing more heavily in favor of the defendant than a short delay. All else being equal, the same exact facts will provide a more compelling case for relief at 2-years than they would at 18-months, and will be more compelling still at 3-years.

The general consensus is that 8-months is the minimum threshhold for delay before a court can start the analysis under Barker, United States v. Gregory, 322 F3d 1157,1161-62 (9th Cir.2003)(collecting cases), although some Circuits require a year, see, for example, United States v. Nixon, 919 F.3d 1265,1269 (10th Cir.2019); United States v. Walter, 2024 US App LEXIS 20288 at 8 (8th Cir.2024). The first speedy trial motion here was filed 17-months in, well past the threshhold, but not necessarily at the "must dismiss" stage if other factors did not weigh heavily enough.

By contrast, at the 23-month mark, unless the delays are caused by the defendant, courts note that the analysis is presumptively different, United States v. Gunter, 2023 US App LEXIS 21016 (7th Cir.2023); see also Walter, at 8 (finding a delay of 4-years unreasonable, but failing to dismiss because the defendant was the primary cause). Here, Leedy

had a term of more than 3-years between his arrest and plea. And almost all of that delay was directly attributable to the District Court's lengthy delay in resolving otherwise straightforward challenges to evidence and testimony.

The final factor, prejudice from the delay, also presumptively favors a defendant who is incarcerated, as two of the three showings of prejudice are (1) oppresive pretrial incarceration; and (2) anxiety and concern from criminal proceedings themselves, Barker, at 532-33. Indeed, this Court has recognized in the bail context that, not only does the denial of bail inflict punishment before an official finding of guilt, it raises the risk that an innocent defendant might plead guilty due to the pressures of jail, Stack v. Boyle, 342 US 1,4-6,8 (1951). And there is a strong presumption against practices that "needlessly encourage" pleas, United States v. Jackson, 390 US 570,583 (1968).

Given this, regardless of Leedy's arguments, it is impossible to state that the analysis would have remained the same throughout the entire 3-years. Under any reading of Barker, the lower court's denial is incorrect as a matter of law. Counsel's failure to push his client's rights is de facto unreasonable.

Beyond the specific prejudice to Leedy specifically, by enshrining his denial as precedent, and beyond debate by reasonable jurists, the opinion in Leedy threatens to destabilize the speedy trial rights of defendants in the Sixth Circuit, across the board, much as Ramos has for the past 25-years as discussed above. Whereas the defendant's assertion of his speedy trial rights is the strongest evidence of the prejudice he is suffering, Barker, at 532, in Leedy's case it is held against him, and any delay becomes presumptively his fault. This could

make counsel hesitate before zealously pursuing their clients' rights.

Caselaw is replete with instances of individuals repeatedly asserting their speedy trial rights under the Sixth Amendment. If the rule advocated in Leedy becomes entrenched in law, however, any defendant who asserts his rights "too early" can simply be denied on any subsequent motion, no matter how much time has passed, based solely on the previous denial. Lawyers will hesitate to assert their clients' rights, increasing potentially unnecessary incarceration, on the fear that a judge will find their request premature, thus inadvertantly ceding their rights. Presumably, this would also freeze appellate review to the time the ruling was made, not based on the facts at the time of appeal, as denial is reviewed for abuse of discretion. This is an absurd result, to be avoided, if at all possible, Griffin v. Oceanic Contractors, Inc., 458 US 564,575 (1982).

Moreover, the denial below turns an unsuccessful motion against the defendant, weighing it against him as the cause of any delay under the second Barker factor. This would be true even if the judge summarily denies the claim as "duplicative." The practical result is that a defendant's rights will end up being "served" by not being asserted at all until, perhaps, on appeal—presuming he doesn't waive the issue by pleading, as 98% of all Federal defendants do.

The ruling below threatens to turn the Speedy Trial Clause from a shield to protect the defendant into a sword to strip him of his rights. Far from preventing unnecessary and oppressive pretrial incarceration, which is always serious when done to one not convicted of a crime, Barker, at 533, it turns the Clause into a mere "form of words," granted on paper but denied in reality, Mapp v. Ohio, 367 US 643,655-56 (1961).

This Court's review is necessary to prevent this result.

IV. By failing to address the underlying evidence in support of the claim that Leedy was convicted by the use of misleading, tainted, and incompetent evidence, the lower courts effectively denied Leedy any adjudication at all. There is no consistent standard to address this issue.

This case provides an excellent vehicle to address a recurring problem in habeas corpus litigation for Federal prisoners: incompetent adjudication of §2255 motions. Either a judge will fail completely to address an issue (or more than one issue), or will address it in a way that fails to resolve part or all of a question raised. This can be done by not acknowledging pertinent authorities, evidence, or even in re-framing the issue argued by the parties in a way that answers a related question or the question in different circumstances.

Here, Leedy raised 13 grounds for relief, in various ways attacking the conduct of counsel and misconduct by the Government. Despite the differences in these grounds, they all essentially boil down to the same underlying problem: The entire case was based on the statements of the two accusers in this case (both of them minors), and evidence came to light that the allegations were the product of a pattern of tampering, coaching, scripting, and coercion by both private and governmental parties. A video of the minors reading from scripts (and laughing while doing so) and their parents and aunt coaching them on how to deliver the lines came to light long after the proceedings started.

At its very base, Leedy's argument is that the "evidence" against him was inherently unreliable, if not deliberately fraudulant. As the Due Process Clause prevents the Government from trying to mislead the trier of fact, judge or jury, for example Simmons v. South Carolina, 512 US 154,161-62,165 n.5 (1994), a case based exclusively on such

evidence should never even have been submitted to the Grand Jury. Here, not only was Leedy tried on this, he was detained for three (3) years awaiting trial and ultimately deprived of thirty (30) years of his life on the basis of statements the Government had every reason to believe were untrue.

Yet, if one were solely to read the courts' opinions in Leedy's case, they would be entirely unaware that these issues had ever been raised, because they are not so much as mentioned in either the District or Appellate Court opinions. It is not merely that the judge was not convinced that the evidence, which was captured on video (alone or in combination with other factors), was enough to undermine faith in the outcome, there simply is no discussion whatsoever of any kind on the matter. The closest the opinion comes to even acknowledging that any issue regarding competency of the evidence was even raised is a brief description of the fact that the accusers' statements were "contradictory," but this was dismissed as a "jury question," Leedy at 32.

Three cases emphasize perfectly how crucial a single piece of evidence, or one fact, can be, and how detrimental its exclusion: Bartkus v. Illinois, 359 US 121 (1958); Herring v. United States, 555 US 135 (2009); and McGee v. McFadden, 204 L.Ed.2d 1160 (2019). In Bartkus, the defendant was implicated in a robbery by the actual offenders, but had alibi witnesses. The Federal court allowed the witness, leading to acquittal, while, at the State level, they were excluded and the defendant was convicted. Herring involved a mistaken traffic stop where the officer found drugs and a gun in the vehicle. For the majority, the underlying error was good faith, but, for the dissent, the fact that the defendant was a witness against the officer

who arrested him in a pending criminal investigation, a fact of which the officer was aware, called any finding of "good faith" into question. Indeed, the officer had been following Herring, looking for a pretext to arrest him, at 149-50. Finally, in McFadden, the sole evidence against the defendant was the word of a jailhouse informant. At trial, the Government deliberately misled the jury into believing that the informant had no motive to make up the story, but evidence later came to light that he'd been in negotiations to get time off if he testified against someone.

Like the above cases, the knowledge that Leedy's accusers were tampered with and coached dramatically alters the nature of the allegations, which are the only evidence against Leedy. Without this fact, all of the District Court's rulings may be reasonable, or even correct, but not once it is taken into account. While the District Court listed every claim and denied each one, it did not deal with the evidence underlying each of the claims. The court dutifully followed the forms and went through all the motions, but gave absolutely no substance to the proceedings. Leedy's §2255 proceedings were not any different from no proceedings at all. Or, put another way, if the judge addressed the issues, he did so as if no evidence had been presented at all.

What has happened here is unfortunately not unique, especially in the pro se context. Habeas petitions are often given cursory treatment, missing claims or given stock answers that fail to address the arguments advanced for relief. Though it may not be obvious to an outside observer, without the benefit of the underlying briefs, a few egregious examples can make the point.

In Ballard v. United States, 2020 US Dist LEXIS 179230 (ED MO,2020),

the petitioner used almost a century of this Court's precedent to argue that the instrumentality prong did not cover purely intrastate activities. The nature of the phone or Internet is irrelevant when the actual phone call is intrastate and noncommercial. The defendant got a stock answer that the Internet is an instrumentality...with no further discussion. This Court's precedents may as well not have existed. The District Court further reconstrued a claim that property forfeited by a plea deal was not covered by the statute, and therefore must be returned, as an attack on the plea itself.

In United States v. Simpson, 4:10-CR-169;4:23-CR-297 (ED MO,2024), despite lengthy opinions, the court refused to address claims that supervised release violated double jeopardy and that §2250(a)(2)(a) was unconstitutional as applied to non-military offenders, or that SORNA could not cover pornography offenders. When the defendant argued that the court was failing to address his actual claims, the court, on the record, dismissed such concerns, Simpson at 2024 US Dist. LEXIS 38235. To date, Simpson has been incarcerated for over twenty (20) months with noone disputing that the statute he's being held under cannot be applied to him.

In a pair of cases straddling United States v. Haymond, 204 L.Ed.2d 897 (2019): United States v. Beyers, 2019 US Dist. LEXIS 22528 (WD MO, 2019); and United States v. Eaton, 3:19-CV-05064-RK (WD MO,2020), both petitioners raised substantive attacks to application of supervised release prior to Haymond, but failed to get a ruling on their claims. (This Court ordered briefing in Eaton, but declined certiorari, 204 L.Ed.2d 1131 (2019)). Both cases saw the District Court refuse to address the claims on §2255 because they were not addressed on appeal.

Such problems are not limited to Missouri. United States v.

Stauffacher, 2013 US Dist. LEXIS 147964 out of the District of Minnesota, involved the imposition of a 10-year mandatory minimum for conspiracy to distribute methamphetamine. Stauffacher's scope in the conspiracy however was not broad enough to warrant the 10-year minimum. Under the commentary to USSG§1B1.3 Application Note 3(B), individuals are not liable for the scope of the entire conspiracy, but only what they agreed to. Several examples were almost dead ringers for his case, see (4)(C)(III),(V), and (VII). Nothing in the opinion addressed this obviously incorrect application of the mandatory minimum.

In United States v. Kamal, 2014 US Dist. LEXIS 4488 (ND TX,2014), the case dealt with an individual charged with enticement of a minor involving intrastate travel, even though both parties lived in the same county in Texas. At trial, the Government affirmatively misled the jury into believing that adult pornography was child pornography (the Government conceded both the truth of this claim, and that it influenced both conviction and sentence). Further, the defendant was enhanced for attempted production, even though he had no available means to do so, which was denied without opinion.

Leedy is also aware of cases out of the Third Circuit: United States v. Hockaday, 2012 US Dist. LEXIS 201019 (MD Penn,2012); United States v. Miknevich, 3:08-CR-00185 (MD Penn); the Sixth Circuit: Edington v. United States, 2016 US Dist. LEXIS 6597 (SD OH,2016); and the Tenth Circuit: United States v. Miller, 2023 US Dist. LEXIS 223543 (ED Okla,2023), that fit this pattern.

That State courts can miss claims, sublclaims, or even imperfectly address them is universally recognized among the Circuits, see Johnson v. Williams, 185 L.Ed.2d 105,1188 n.6 (2013)(collecting cases), but

there is little even addressing the matter involving Federal courts, much less coming up with a consistent test for handling it. As Leedy's case suggests, if the District Court fails to address something, it is unlikely that the Appellate Court will do so. See brief for Morris (arguing that the 8th Circuit's practice of sua sponte reviewing COA requests without briefing necessarily leads to incorrect results as any contradictory evidence or case law will never be in the opinion, and thus will not be considered by the court).

The only court that seems to have squarely addressed this issue is the 11th Circuit, see Clisby v. Jones, 960 F.2d 925,938 (11th Cir. 1992). That Court of Appeals holds that the appropriate course of action in such a case is summary remand to the District Court to explicitly rule on the matter, which seems to comply with the plain text of §2255(b), requiring a court to explain why relief was not warranted. Other than admitting that 60(b) may be available, see, for example, Tyler v. Anderson, 749 F.3d 499,508 (6th Cir.2014), there seems to be little guidance.

For the untold number of petitioners who receive summary treatment, this is an issue of great importance, that clearly implicates their liberty interests. The 60(b) option, whether it is available or not, is also an inefficient and unsatisfactory remedy. Having waited years for an answer (the average response time on §2255 is currently around 3-years) and having gone through the entire appellate process, telling the petitioner he can start the whole process over again is cold comfort, as he has no guarantee the process will somehow work in his favor the second time around. Nor does this option serve the purposes of judicial efficiency.

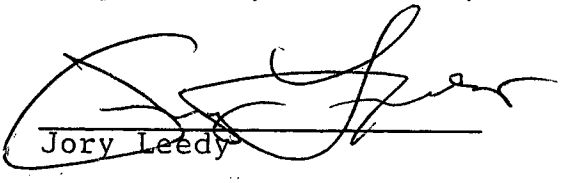
Finally, most of these cases will present no certiorary-worthy issue, but will still be of extreme importance to the individual petitioner and society as a whole, see Rosales-Mireles, at 388 (the public has no interest in paying for unnecessary or incorrect imprisonment, and it diminishes faith in the justice system). The time a prisoner must wait for a full and fair adjudication of his properly presented claims implicates significant interests for the public as a whole where he is incarcerated without due process.

These reasons warrant this Court's review to address this common and overlooked issue in habeas practice.

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,



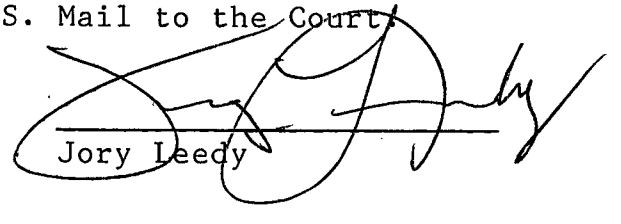
Jory Leedy

01/15/2025

Date

PROOF OF SERVICE

I certify that this Petition was placed in the prison's mailing system on January 15, 2025, to be sent via U.S. Mail to the Court.



Jory Leedy