No. 24-780

IN THE

Supreme Court of the United States

ANTHONY BLUE,

Petitioner,

v.

NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

REPLY BRIEF FOR PETITIONER

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May 14, 2025

REPLY BRIEF FOR PETITIONER

Respondent's opposition does not dispute that the federal Courts of Appeal and state high courts have divided evenly on the question whether a valid waiver of the Sixth Amendment right to trial counsel requires that the criminal defendant understood, at the time of the waiver, the "range of allowable punishments" that may be imposed following conviction. Nor does Respondent dispute the importance of the question presented. Instead, it alleges only that this case does not implicate that question. This is wrong, and the Court should grant the petition for certiorari.

1. Respondent is right to concede that the courts have divided on the question presented, which *Tovar* expressly left open more than 20 years ago. Pet. 9-10 (citing *Iowa* v. *Tovar*, 541 U.S. 77, 92 n.11 (2004)). Since then, the Third, Ninth and Eleventh Circuits, and high courts of Connecticut and Maryland, have instructed unambiguously as a matter of federal constitutional law that a defendant's understanding of the range of allowable punishments is needed to demonstrate a knowing and voluntary waiver of the right to counsel, independent of any other factors tending to show a knowing waiver. Pet. 18-24. By contrast, the Seventh, Eighth, and Tenth Circuits, and the high courts of Montana and (now) New York, hold the opposite. According to them, an understanding of the range of allowable punishments is only a non-dispositive factor that courts may consider in assessing whether a waiver of the right to counsel is knowing and voluntary. *Id.* 24-28.

Respondent is also right not to contest the importance of the question presented. The right to

counsel is critical to the fair administration of justice; the question presented arises frequently; and courts and commentators have noted the absence of direction from this Court both as to what the rule is and how it applies. Pet. 29 (citing *Akins v. Easterling*, 648 F.3d 380, 398–99 (6th Cir. 2011) (noting that this Court "has not defined the phrase 'range of allowable punishments'")), and Wayne R. LaFave et al., 3 *Criminal Procedure* § 11.3(b) (4th ed.) (noting that "[t]he *Tovar* opinion had no need to explore exactly what the accused has to understand as to 'the nature of the charges against him' or the 'range of allowable punishments attendant the entry of a guilty plea.'").

2. Effectively admitting that this Court should address the question presented in a case implicating that question, Respondent opposes review here solely on the basis that this is supposedly not that case. Br. in Opp. 11 (arguing that "any such split is not implicated"). According to Respondent, the New York Court of Appeals made a "factual finding" that Mr. Blue did understand the range of allowable punishments when he waived counsel on February 4, 2013. *Id.* 1.

This is wrong. The New York Court of Appeals squarely held that the U.S. Constitution does not require Mr. Blue to have understood "the range of allowable punishments" when he waived his right to counsel. It decided this question of federal constitutional law *de novo* based on a cold record. And, in holding that knowledge of the range of allowable punishments is not constitutionally required but instead a non-dispositive "***factor[] relevant***" to assessing the waiver's validity, Pet. App. 11a, New York's high court joined the Seventh, Eighth, and

Tenth Circuits and the State of Montana on one side of the division of authority. The dissent only confirms the point, explaining that Mr. Blue's case turned on whether a defendant's knowledge of the range of allowable punishments is constitutionally required. Pet. App. 30a (noting in dissent that "[t]here is no way around the Supreme Court's mandate that a constitutionally effective waiver requires that a defendant understand the range of punishments[.]") (citing *Tovar*, 541 U.S. at 81)).

The federal-constitutional character of the New York Court of Appeals' decision is unambiguous. It explicitly rejected Mr. Blue's argument that it is "constitutionally necessary" for a defendant to understand the range of allowable punishments at the time of waiver. Pet. App. 9a-11a. It "instead instruct[ed] that the [waiver] inquiry is flexible," and "the scope of [that] inquiry turns on the context in which the right to counsel is waived"—consistent with the approach taken by the Seventh, Eighth, and Tenth Circuits and Montana's highest court. *Id*. And New York's high court insisted that this approach is compelled by this Court's decision in *Tovar*, which it interpreted as "reaffirm[ing]" the *Von Moltke* plurality's emphasis on "examin[ing] of all the circumstances" surrounding the waiver. *Von Moltke* v. *Gillies*, 332 U.S. 708, 724 (1948) (plurality opinion); Pet. App. 9a-11a (tracing the continuity of reasoning from *Von Moltke* to *Tovar*). Accordingly, the Court of Appeals read *Tovar* as rejecting, on constitutional grounds, the adoption of a "new rule" requiring an understanding of allowable punishments as a constitutional floor. Pet. App. 11a.

In arguing otherwise, Respondent contends that the New York Court of Appeals made findings of fact. Br. in Opp. 1. But that is wrong. Not only does the decision clearly rest on the Court of Appeals answering the federal-legal question presented in the negative, but under New York's Constitution, the Court of Appeals is a court of limited jurisdiction that can decide only questions of law. *People* v. *Baez*, 42 N.Y.3d 124, 132 (2024). It lacks power to find facts. *Id.* ("This Court, moreover, is jurisdictionally prohibited from making factual findings[.]"). The Court's holding and reasoning make clear that it conformed to its limited function under New York's Constitution; the Court of Appeals reached a legal conclusion about the meaning of the United States Constitution, adopted the view of one side of the division of authority, and then applied that rule to facts already in the record.

There is therefore no impediment to this Court resolving the division of authority in this case by deciding whether the New York Court of Appeals took the correct side of the split. And this Court should disregard Respondent's lengthy discussions of the record and whether Mr. Blue would prevail under the test he proposes. *E.g.*, Br. in Opp. 3-8, 11-14. Those are questions for remand, and it is settled that the likelihood of a state court reaching the same result on remand should the Court reverse does not bear on the reviewability of a squarely presented federal-legal issue. *Kansas* v. *Carr*, 577 U.S. 108, 118 (2016).[1]

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[1] Respondent's discussions are also wrong. To begin, Respondent ignores the constitutional requirement that a waiver of the right to counsel must be knowing and voluntary ***when made***. Indicia of a defendant's *later* understanding cannot cure an invalid waiver. Even if they could, Respondent agrees that

Respondent's final argument is that the Court need not grant review in Mr. Blue's case because the New York Model Colloquy was subsequently amended to require warnings about the range of allowable punishments. That does not present a vehicle problem either. It does not moot Mr. Blue's case, which still turns on a question that has divided the courts. Numerous courts hold that the factual record need not show that the defendant had *any* understanding of the range of allowable punishments. If those courts are wrong, then constitutionally infirm waivers are being upheld in multiple circuits. If they are right, then convicted defendants who validly waived counsel may nevertheless be freed based on a (widely adopted) misinterpretation of this Court's cases. Pet. 30. Either way, this Court should resolve the applicable rule of constitutional law—and it can do so in this case.

* * *

Mr. Blue faced a sentence of up to 90 years in prison if convicted on all counts. Mr. Blue never demonstrated any understanding that he faced up to 90 years. And while the parties now agree that Mr. Blue's exposure would be capped at 20 years by operation of New York law, there is no indication that Mr. Blue understood that either.

This Court should grant the petition for certiorari.

Dated: May 14, 2025

Respectfully submitted,

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