No. _____

In the

Supreme Court of the United States

JAMES VORLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are:

1. Whether, as the Seventh and Ninth Circuits hold, a "scheme or artifice to defraud" under the wire fraud statute, 18 U.S.C. § 1343, encompasses an "implied misrepresentation," or whether, as the Second, Sixth, and Eleventh Circuits hold, the wire fraud statute requires an express statement that is either false or misleading?

2. Whether, as the Seventh Circuit holds, a district court may cure a Speedy Trial Act violation by making an after-the-fact finding that the ends of justice outweigh the interests of the criminal defendant and the public for a speedy trial, 18 U.S.C. § 3161(h)(7), or whether, as the Second, Fifth, Sixth, Eighth, Ninth, and Tenth Circuits hold, a district court must make the ends-of-justice finding at the time that it grants the continuance?

PARTIES TO THE PROCEEDING

Petitioner James Vorley was a defendant before the U.S. District Court for the Northern District of Illinois and an appellant before the U.S. Court of Appeals for the Seventh Circuit. Cedric Chanu was also a defendant before the U.S. District Court for the Northern District of Illinois and an appellant before the U.S. Court of Appeals for the Seventh Circuit. Mr. Chanu intends to file his own petition for a writ of certiorari.

Respondent the United States of America was the prosecution before the U.S. District Court for the Northern District of Illinois and the appellee before the U.S. Court of Appeals for the Seventh Circuit.

RELATED PROCEEDINGS

This case arises from the following proceedings:

United States District Court (N.D. Ill.):

- *United States v. Vorley*, No. 18 CR 00035 (Oct. 21, 2019)
- *United States v. Vorley*, No. 18 CR 00035 (July 21, 2020)
- *United States v. Vorley*, No. 18 CR 00035 (March 18, 2021)

United States Court of Appeals (7th Cir.):

- *United States v. Chanu*, No. 21-2242, 21-2251, 21-2666 (July 6, 2022)
- *United States v. Chanu*, No. 21-2242, 21-2251, 21-2666 (Aug. 4, 2022) (order denying petition for rehearing en banc)

There are no additional proceedings in any court that are directly related to this case within the meaning of this Court's Rule 14(b)(iii).

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This case presents two important questions that have divided the circuits and warrant this Court's review.

First, this case presents yet another expansion of the fraud statutes that threatens to criminalize virtually any conduct that a prosecutor deems deceptive or dishonest. *See Ciminelli v. United States*, 142 S. Ct. 2901 (2022); *Kelly v. United States*, 140 S. Ct. 1565, 1574 (2020); *Skilling v. United States*, 561 U.S. 358 (2010). The wire fraud statute criminalizes the use of wire communications to effect "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." 18 U.S.C. § 1343. Under the government's latest theory, a "scheme or artifice to defraud" encompasses "implied misrepresentations," including the act of "spoofing," which is a trading practice defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 as "bidding or offering with the intent to cancel the bid or offer before execution." 7 U.S.C. § 6c(a)(5)(C).

In proceedings below, the government prosecuted two precious metals traders for wire fraud on the theory that every bid or offer made on an exchange for a commodity futures contract "impliedly represented" a "good-faith intent to trade." Br. of United States, *United States v. Chanu*, No. 21-2242 at 1 (filed Dec. 17, 2021). Under the government's theory, a trader who secretly hopes to cancel a bid commits criminal fraud against other traders, even if the trader is willing and able to honor every bid or

offer. *Id.* The Seventh Circuit endorsed the government's "implied misrepresentation" theory, whereby a defendant can be convicted of wire fraud without evidence of an express false statement or the omission of a material fact that makes an express statement misleading.

The decision below exacerbates a circuit split on the question whether a "scheme to defraud" requires an express false statement or a material omission of fact. Like the Seventh Circuit, the Ninth Circuit has held that the government need not prove that defendants made "any specific false statements." *United States v. Munoz*, 233 F.3d 1117, 1131 (9th Cir. 2000). All the government must prove is that the defendant engaged in a scheme to obtain another's property and harbored a "specific intent" to mislead. *United States v. Bohonus*, 628 F.2d 1167, 1172 (9th Cir. 1980).

Other circuits have taken a conflicting approach, requiring evidence of an express false statement or omission of a material fact. In the Second Circuit, the government must introduce evidence of an objectively "false, fraudulent, or misleading" representation to secure a wire fraud conviction. *United States v. Connolly*, 24 F.4th 821, 843 (2d Cir. 2022). In the Sixth Circuit, a "scheme to defraud" must involve a "false statement of fact." *Blount Financial Services, Inc. v. Walter E. Heller and Co.*, 819 F.2d 151, 152 (6th Cir. 1987). And the Eleventh Circuit likewise requires "lies about the nature of the bargain itself." *United States v. Takhalov*, 827 F.3d 1307, 1313 (11th Cir. 2016).

This is an ideal case to resolve this important issue. Federal prosecutors invoke the fraud statutes "to impose criminal penalties upon a staggeringly broad swath of behavior." *Sorich v. United States*, 555 U.S. 1204, 1204 (2009) (Scalia, J., dissenting from denial of certiorari). Without the Court's intercession, individuals will lack fair notice about what conduct triggers criminal liability, and federal criminal law will vary depending on where the government elects to indict. And this case cleanly presents the question: Petitioner's wire fraud conviction rests on the theory that he impliedly misrepresented his "good faith intent to trade," without evidence that he misrepresented any essential element of the bargain. The theory that a "scheme to defraud" encompasses any form of arguably deceptive conduct that could be described as an "implied misrepresentation" is incompatible with this Court's precedents and warrants review.

Second, the decision below entrenches an additional circuit split on the proper application of the Speedy Trial Act. In the district court, Petitioner's motion to dismiss the indictment triggered an automatic exclusion of time under the Act, which lasted up to 30 days after the district court took the motion "under advisement" at the conclusion of briefing. 18 U.S.C. §§ 3161(h)(1)(D), (H). Although the district court stated that it expected to rule "promptly," it did not decide the motion until almost a year after its filing, which was more than 180 days after the conclusion of briefing. Pet.App.286. Because more than 70 days of non-excluded time had elapsed, the statute required that the indictment be dismissed on Petitioner's motion.

18 U.S.C. § 3161(c)(1) (establishing a 70-day requirement); *Zedner v. United States*, 547 U.S. 489, 501 (2006) (holding that harmless error analysis does not apply to violations of the Speedy Trial Act given the Act's constitutional roots).

Instead, while conceding that it had "misconstrued" the duration of the statutory exclusions of time, Pet.App.161, the district court denied Petitioner's speedy trial motion. The district court stated that, if it had realized its error, it *would have* excluded time under a separate subcategory of the Act, which allows courts to grant a continuance "on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). The district court relied on a long line of Seventh Circuit precedents to conclude that it could make this sort of after-the-fact ends-of-justice finding. Pet.App.157; *United States v. Adams*, 625 F.3d 371 (7th Cir. 2010); *United States v. Rollins*, 544 F.3d 820 (7th Cir. 2008); *United States v. Larson*, 417 F.3d 741 (7th Cir. 2005). And the Seventh Circuit affirmed.

By endorsing the district court's after-the-fact ends-of-justice findings, the Seventh Circuit further entrenched a circuit split. The Second, Fifth, Sixth, Eighth, Ninth, and Tenth Circuits all prohibit retroactive findings made in support of a previously granted continuance. *United States v. Kelly*, 45 F.3d 45 (2d Cir. 1995); *United States v. Jones*, 56 F.3d 581, 585 n.9 (5th Cir. 1995); *United States v. Moran*, 998 F.2d 1368, 1372 (6th Cir. 1993); *United States v. Suarez-Perez*, 484 F.3d 537, 542 (8th Cir. 2007);

United States v. Frey, 735 F.2d 350, 351–53 (9th Cir. 1984); *United States v. Williams*, 511 F.3d 1044, 1055 (10th Cir. 2007).

This case thus presents an ideal vehicle to resolve this important question as well. The Speedy Trial Act is the principal mechanism to secure the Sixth Amendment right to a speedy trial. It ensures that the presumed innocent do not languish in custody for prolonged periods of pretrial incarceration or live under the cloud of criminal accusations for longer than necessary. The Seventh Circuit's decision below undermines the statutory safeguards Congress has enacted to preserve that constitutional right. And the district court's acknowledgment that it had not conducted the required ends-of-justice analysis when it granted the continuance ensures that the issue is cleanly presented here.

This case presents the Court with the rare opportunity to resolve two circuit splits on cleanly presented questions of national importance. It should grant certiorari and reverse.

OPINIONS BELOW

The Seventh Circuit's opinion (Pet.App.1–8) is reported at 40 F.4th 528. One of the relevant opinions of the U.S. District Court for the Northern District of Illinois (Pet.App.188–237) is reported at 420 F.Supp.3d 784. The second is unpublished (Pet.App.49–150) but is available at 2021 WL 1057903. The third is unpublished but is reproduced below at Pet.App.151–170.

JURISDICTION

The court of appeals issued its decision on July 6, 2022. Pet.App.1–38. Petitioner filed a petition for rehearing on July 20, 2022, which was denied on August 4, 2022. Pet.App.39–41. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Wire Fraud Statute is reproduced at Pet.App.316. The Speedy Trial Act is reproduced at Pet.App.317.

STATEMENT OF THE CASE

A. Statutory Background

1. The wire fraud statute has existed in its current form since 1952. It criminalizes the use of wire communications to effect "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." 18 U.S.C. § 1343. Wire fraud affecting a financial institution is punishable by up to 30 years' imprisonment and has a 10-year statute of limitations. *Id.* § 3293(2).

As part of Dodd-Frank, almost 60 years after the enactment of the wire fraud statute, Congress amended § 4c(a)(5)(C) of the Commodity Exchange Act ("CEA") to outlaw "spoofing"—defined as "bidding or offering with the intent to cancel the bid or offer before execution," 7 U.S.C. § 6c(a)(5)(C). The anti-spoofing provision took effect on July 16, 2011, and it is subject to the CEA's general five-year statute of limitations. *See* 28 U.S.C. § 2462.

A spoofing scheme involves a trader placing a large order on one side of the market and entering at the same time a smaller order on the other side of the market. *See* Gideon Mark, *Spoofing and Layering*, 45 J. Corp. L. 399, 402 (2020). The trader places the large order with the hope of inducing other market participants to execute against the smaller order. *See* John I. Sanders, *Spoofing: A Proposal for Normalizing Divergent Securities and Commodities Futures Regimes*, 51 Wake Forest L. Rev. 517, 518–19 (2016). If that hope comes to fruition, the trader cancels the larger order.

An example of spoofing might help. Suppose a trader purchases a small number of futures contracts for $5.00, which he offers for sale at $5.02. The trader then places a large buy order at $5.01, hoping that other market participants interpret the large buy order as an indication that the price will soon rise in value. Some market participants, attempting to front-run the large buy order, purchase the contracts at $5.02. Having sold his contracts at $5.02, the initial trader then cancels the $5.01 buy order, and takes home a 2-cent profit.

Spoofing dates to the 1800s, *United States v. Wedd*, 993 F.3d 104, 111 n.2 (2d Cir. 2021), and historically was not considered fraudulent among traders, *see* Jerry W. Markham, LAW ENFORCEMENT AND THE HISTORY OF FINANCIAL MARKET MANIPULATION 388 (M.E. Sharpe 2014) (describing the trading acumen of Nathan Rothschild in the 1820s in first entering sell orders to prevent other traders from discovering that he intended soon after to make large purchases).

Before Dodd-Frank, in competitive trading environments, where traders owe one another no fiduciary duties, spoofing referred to deception that was considered "cunning." Kevin Rodgers, WHY AREN'T THEY SHOUTING? 99 (2016). Indeed, spoofing is no more deceptive than many other common trading practices, including hidden "iceberg" orders, large orders broken into multiple smaller orders, and trading anonymously on both sides of the market. In Dodd-Frank, Congress deliberately treated spoofing different from fraud, categorizing it as a "disruptive practice," subject to a maximum sentence of 10 years and a 5-year statute of limitations, 28 U.S.C. § 2462, rather than the 30-year maximum sentence and the 10-year statute of limitations governing wire fraud. Prior to the passage of Dodd-Frank, not a single person had been prosecuted criminally for spoofing, and courts had rejected the theory that a bid or offer that a trader was willing to honor could be fraudulent. *See United States v. Radley*, 659 F. Supp. 2d 803, 814–15 (S.D. Tex. 2009) (dismissing indictment against traders who allegedly used "best bids" and "stacked bids" to drive up prices); Mark, 45 J. Corp. L. at 428 ("[U]ntil October 2019 no court had held that spoofing constitutes wire fraud.").

2. The Speedy Trial Act requires that the trial of the accused "shall commence" within 70 days "from the filing date (and making public) of the information or indictment" or from the accused's initial appearance before a judicial officer, whichever occurs later. 18 U.S.C. § 3161(c)(1). To provide "sufficient flexibility" to make compliance with the 70-day deadline a realistic goal, the Act "automatically" excludes from the computation of the 70-day period

certain "specific and recurring periods of time often found in criminal cases." S. Rep. No. 212, 96th Cong., 1st Sess. 9 (1979); *see Bloate v. United States*, 559 U.S. 196, 199 n.1 (2010). Two of the automatic exclusions have relevance here.

First, the Act automatically excludes "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." 18 U.S.C. § 3161(h)(1)(D). *Second*, the Act automatically excludes "delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court." *Id.* § 3161(h)(1)(H). A motion has been taken "under advisement" once "the court receives all the papers" it needs to decide the motion. *Henderson v. United States*, 476 U.S. 321, 329 (1986).

In addition to the subsections involving automatic exclusions, the Act contains exclusions that apply "only if the district court makes certain findings enumerated in the statute." *Bloate*, 559 U.S. at 200; *see* 18 U.S.C. § 3161(h)(6)–(8). The Act authorizes district courts to exclude from the 70-day calculation "[a]ny period of delay resulting from a continuance . . . if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). A district court must consider four specific factors listed in § 3161(h)(7)(B) along with other considerations to

determine whether the circumstances warrant an ends-of-justice continuance.

When the district court fails to commence a trial within the 70-day period, "the information or indictment shall be dismissed on motion of the defendant." *Id.* § 3162(a)(2). Dismissal may be with or without prejudice, depending on the district court's weighing of various factors. *United States v. Taylor*, 487 U.S. 326, 336–337 (1988).

B. District Court Proceedings

Petitioner worked as a precious metals trader for Deutsche Bank, where he traded futures contracts from May 2007 through March 2015 out of the bank's London office. Pet.App.2.[1]

Petitioner traded on COMEX, a fast-moving, electronic exchange used for trading commodity futures contracts. Pet.App.4. COMEX allows traders to enter orders to buy or sell contracts at specified prices and quantities. Pet.App.4. COMEX permits traders to bid and offer on both sides of the market simultaneously. Pet.App.306. It also allows hidden "iceberg" orders that disguise the true number of contracts bid or offered. Pet.App.306. Orders placed on COMEX must be honored once accepted. Pet.App.306. But traders may cancel open orders at any time prior to execution. Pet.App.306.

The government initially charged Petitioner with, among other things, spoofing in violation of the CEA. Pet.App.303. In a July 2018 indictment, however,

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[1] The government prosecuted Petitioner and Cedric Chanu together, and their appeals were consolidated below. Pet.App.5.

the government dropped the CEA charges and indicted Petitioner for wire fraud affecting a financial institution under 18 U.S.C. § 1343 and conspiracy to commit wire fraud affecting a financial institution under 18 U.S.C. § 1349, based on trading that occurred between 2009 and 2011. Pet.App.303. By doing so, the government sought to reach conduct that pre-dated Dodd-Frank's July 16, 2011 effective date or fell outside the CEA's five-year statute of limitations.

According to the government, some of Petitioner's orders "were material misrepresentations that falsely and fraudulently represented to traders that [Petitioner was] intending to trade . . . when, in fact, [he was] not because, at the time [the orders] were placed, [Petitioner] intended to cancel them before execution." Pet.App.177. The government thus charged Petitioner under the wire fraud statute on the theory that he impliedly misrepresented his intent to cancel orders that he was willing to honor if accepted.

On November 15, 2018, Petitioner moved to dismiss the indictment. *See* Mot. to Dismiss, *United States v. Vorley*, No. 18-cr-35 (N.D. Ill. Nov. 15, 2018). That same day, the district court granted a continuance and excluded time under the Speedy Trial Act, relying on the automatic exclusion of time triggered by the filing of the motion. Pet.App.302. The subsequent docket entry cited 18 U.S.C. § 3161(h)(1)(D), which excludes "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." It did not refer

to the automatic exclusion in § 3161(h)(1)(H) or the "ends of justice" exclusion in § 3161(h)(7)(A).

At the conclusion of oral argument on January 24, 2019, the district court stated that it would "rule pretty promptly." Pet.App.286. Nearly ten months later, on October 21, 2019, the district court denied the motion to dismiss. Pet.App.188.

Ten days later, on October 31, 2019, the district court, relying on 18 § U.S.C. 3161(h)(7)(A), made an ends-of-justice finding to exclude time until the next status conference. Pet.App.289. This marked the first time since November 15, 2018, that the district court excluded time under the Act.

In May 2020, Petitioner moved to dismiss under the Speedy Trial Act, arguing that the district court had allowed more than 70 days of non-excluded time to elapse during the consideration of the motion to dismiss the indictment. Mot. to Dismiss, *United States v. Vorley*, No. 18-cr-35 (N.D. Ill. May 20, 2020). As Petitioner explained, briefing on the motion to dismiss had concluded on March 26, 2019, at which point the district court took the motion "under advisement" and trigged the 30-day period under 18 U.S.C. § 3161(h)(1)(H). Mot. to Dismiss, *United States v. Vorley*, No. 18-cr-35 at 11 (N.D. Ill. May 20, 2020). That automatic exclusion of up to 30 days extended the tolling of time to April 25, 2019, at the latest. The district court, however, did not deny Petitioner's motion until October 21, 2019, and it did not grant any ends-of-justice continuance until October 31, 2019. Pet.App.188. Based on that timeline, Petitioner argued that the district court had allowed 189 days of non-excludable time to elapse

from April 25, 2019 to October 31, 2019. Mot. to Dismiss, *United States v. Vorley*, No. 18-cr-35 at 11 (N.D. Ill. May 20, 2020).

Two months later, the district court denied the motion. Pet.App.151. While acknowledging that it had misconstrued the duration of the automatic exclusions, by incorrectly believing that they carried through until disposition of the pending motion to dismiss, the district court concluded that Petitioner had not suffered a violation of his rights under the Act because the court *would have* made an ends-of-justice finding under 18 U.S.C. § 3161(h)(7) on November 15, 2018, had it known of its error. Pet.App.158 n.3. The district court then made an ends-of-justice finding that it applied retroactively to exclude all time from April 25, 2019 to October 31, 2019. Pet.App.158 n.3.

The case proceeded to trial. In September 2020, a jury deliberated for four days before convicting Petitioner of three counts of wire fraud. Pet.App.16. The district court denied Petitioner's motion for a judgment of acquittal and motion for a new trial. Pet.App.16. Petitioner was sentenced to one year and one day of incarceration. Pet.App.16. He appealed.

C. The Decision Below

1. On appeal, Petitioner argued that a "scheme to defraud" for purposes of the wire fraud statute requires an express false statement or material omission of fact. Br. of Appellants, *United States v. Vorley*, No. 21-2242 at 46 (filed Oct. 15, 2021). Placing visible orders on the COMEX exchange that

Petitioner was willing and able to honor fell short of that requirement, regardless of whether Petitioner had hoped to cancel the orders. *Id.* at 2. Petitioner also argued that the superseding indictment should have been dismissed because of the district court's violation of the Speedy Trial Act. *Id.* at 3.

2. The Seventh Circuit affirmed. Addressing the wire fraud convictions, the court concluded that, "[b]y obscuring [his] intent to cancel, through an orchestrated approach, [Petitioner] advanced a quintessential 'half-truth' or implied misrepresentation—the public perception of an intent to trade and a private intent to cancel in the hopes of financial gain." Pet.App.23. The decision thus adopted the government's "implied misrepresentation" theory and upheld Petitioner's convictions without any evidence of an express false statement or a material omission that made an express statement misleading.

With respect to the Speedy Trial Act, the Seventh Circuit accepted that 189 days of delay had transpired from April 25, 2019 through October 31, 2019, while the district court had Petitioner's motion to dismiss the indictment under advisement. Pet.App.37. But the Seventh Circuit nevertheless held that the district court cured that unexcused delay when it made an ends-of-justice finding in its later order denying Petitioner's speedy trial motion. Pet.App.38. It cited a long line of Seventh Circuit precedents, which establish that a "district court is not required to make the ends of justice findings contemporaneously with its continuance order." *Adams*, 625 F.3d at 380.

3. The Seventh Circuit denied a petition for rehearing and for rehearing en banc. Pet.App.39.

REASONS FOR GRANTING THE PETITION

The decision below is wrong, violates this Court's repeated warnings against expansive interpretations of the fraud statutes, and exacerbates a circuit split on whether an express false statement or material omission is required for a conviction under the wire fraud statute.

The decision below also entrenches a circuit split with respect to the Speedy Trial Act. Seventh Circuit precedents permitting retroactive ends-of-justice findings are wrong, split from six other circuits, and undermine the constitutional guarantee protected by the Act. This case presents an ideal vehicle to resolve both issues.

I. This Court Should Grant Review To Resolve A Circuit Split Over The Evidence Required To Support A Conviction Under The Wire Fraud Statute.

A. The Circuits Are Divided on This Question.

The government's expansive theory in this case has exacerbated a circuit split. Consistent with the text of the wire fraud statute, the Second, Sixth, and Eleventh Circuits hold that a "scheme to defraud" requires evidence of an express false statement or an omission of material fact. By contrast, the Seventh and Ninth Circuits permit the government to obtain a wire fraud conviction based on evidence of an "implied misrepresentation," without evidence that

the defendant made an express false statement or omitted a material fact that made an express statement misleading. The Court should intervene to resolve this important question.

1. The Seventh and Ninth Circuits hold that a defendant can be convicted of wire fraud based on an "implied misrepresentation" that could induce a counterparty to engage in a transaction that the party might otherwise have avoided.

In the decision below, the Seventh Circuit concluded that "false representation" as used in the wire fraud statute "encompasses a range of conduct," including "implied misrepresentations" that are "intended to induce a false belief." Pet.App.23. Based on that interpretation, the Seventh Circuit held that "[b]y obscuring [his] intent to cancel, through an orchestrated approach, [Petitioner] advanced a quintessential 'half-truth' or implied misrepresentation—the public perception of an intent to trade and a private intent to cancel in the hopes of financial gain." Pet.App.23. But Petitioner never made any false statement about his offers to buy or sell futures contracts—which he was prepared to (and did) honor if accepted. Nor did he make any statement about whether he would trade or cancel an order. And the supposed victims of the scheme received exactly what they bargained for. But it was sufficient according to the Seventh Circuit that Petitioner's orders "implied" that he actually wanted to trade them and could have deceived other traders into executing on other orders that they might not otherwise have traded.

The Ninth Circuit takes a similar approach. There, all the government must prove to obtain a wire fraud conviction is a defendant's "specific intent" to defraud. *Bohonus*, 628 F.2d at 1172. The government need not prove "an affirmative misrepresentation of fact, since it is only necessary for the government to prove that the scheme was calculated to deceive persons of ordinary prudence." *Id.* In *United States v. Woods*, 335 F.3d 993 (9th Cir. 2003), for instance, the Ninth Circuit explained that, where "a scheme is devised with the intent to defraud, and the mails are used in executing the scheme, the fact that there is no misrepresentation of a single existing fact is immaterial. It is only necessary to prove that the scheme is reasonably calculated to deceive, and that the mail service of the United States was used and intended to be used in the execution of the scheme." *Id.* at 998 (quoting *Lustiger v. United States*, 386 F.2d 132, 138 (9th Cir. 1967)); *United States v. Namvar*, 498 F. App'x 749, 751 (9th Cir. 2012) ("[T]he government is not required to prove any particular false statement was made" so long as there is "proof of a scheme or artifice to defraud, which may or may not involve any specific false statements.").

2. By contrast, the Second, Sixth, and Eleventh Circuits require evidence of an express false statement or an omission of material fact that makes an express statement misleading.

Start with the Second Circuit. In *United States v. Connolly*, 24 F.4th 821 (2d Cir. 2022), the government charged two traders with wire fraud, accusing them of manipulating submissions used to

calculate the London Interbank Offered Rate, or LIBOR. According to the government, the traders submitted manipulated estimates of the bank's borrowing costs, which influenced the LIBOR rate and allowed the traders to profit on contracts dependent on changes in that rate. *Id.* at 825. After the jury convicted, the Second Circuit reversed, finding no evidence showing that the traders submitted data that was objectively "false, fraudulent, or misleading." *Id.* at 843. The court rejected the government's theory that the submissions were false "because they impliedly certified that there had in fact been no trader influence." *Id.* And the Second Circuit had previously "drawn a fine line between schemes that do no more than cause their victims to enter into transactions they would otherwise avoid—which do not violate the mail or wire fraud statutes—and schemes that depend for their completion on a misrepresentation of an essential element of the bargain—which do violate the mail and wire fraud statutes." *United States v. Shellef*, 507 F.3d 82, 108 (2d Cir. 2007).[2]

The Eleventh Circuit similarly holds that a wire fraud conviction requires proof of an objectively false

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[2] The Second Circuit has, at times, taken a more expansive approach. This Court is reviewing the Second Circuit's adoption of a "right-to-control" theory in *Ciminelli v. United States*, 142 S. Ct. 2901 (2022). As explained below, the Seventh Circuit error here is akin to the Second Circuit's misreading of the statute in *Ciminelli*. Thus, this Court should similarly grant review here or, at a minimum, hold this petition for resolution of *Ciminelli*.

statement or a material omission relating to an essential element of the bargain. In *United States v. Takhalov*, 827 F.3d 1307 (2016), bar owners hired women to lure businessmen into their nightclub, where the men were induced to spend money on alcohol. *Id.* at 1310. The government convicted the bar owners of wire fraud based on the "bar girl" scheme. *Id.* But the Eleventh Circuit reversed. The Eleventh Circuit explained that dictionary definitions "make clear that there is a difference between deceiving and defrauding" because, "to defraud, one must intend to use deception to cause some injury[,] but one can deceive without intending to harm at all." *Id.* at 1312. Based on that distinction, the Eleventh Circuit held that a "scheme to defraud," as used in the wire fraud statute, "refers only to those schemes in which a defendant lies about the nature of the bargain itself." *Id.*

The Sixth Circuit has held that a civil claim based on an alleged violation of the criminal wire fraud statute must involve false statements or material omissions of fact. In *Bender v. Southland Corp.*, 749 F.2d 1205 (6th Cir. 1984), plaintiffs brought a civil RICO claim predicated on the mail fraud statute on the theory that the defendant charged plaintiffs for expenses that never occurred. *Id.* at 1210. The district court dismissed the claim and the Sixth Circuit affirmed. Relying on circuit precedent, the Sixth Circuit held that "plaintiffs' complaint [did] not allege what misrepresentations (or omissions) of material fact [the defendant] made to the plaintiffs." *Id.* at 1216.

Similarly, in *Walters v. First Tennessee Bank, N.A. Memphis*, 855 F.2d 267 (6th Cir. 1988), the Sixth Circuit affirmed a directed verdict in favor of a bank-defendant because the plaintiff failed to allege that the bank made a false misrepresentation or omission needed to support a civil RICO claim predicated on the mail fraud statute. Plaintiff based the RICO claim on the theory that the bank charged a rate of interest at the bank's "prime" rate, thereby deceiving plaintiff into believing that it was the lowest rate available to bank customers. *Id.* at 272. The Sixth Circuit affirmed because the plaintiff presented no evidence that the bank made any false "misrepresentations or omissions reasonably calculated to deceive Walters as required for mail fraud." *Id.* at 273; *Blount Financial Services, Inc.*, 819 F.2d at 152 (affirming the dismissal of a civil RICO claim predicated on the mail fraud statute because the "plaintiff has not alleged with particularity any such false statement of fact").

B. The Decision Below Was Incorrect.

1. The wire fraud statute targets *fraud*. *See* 18 U.S.C. § 1343. Someone commits fraud by presenting a materially false statement as true. *U.S. ex rel. O'Donnell v. Countrywide Home Loans, Inc.*, 822 F.3d 650, 656 (2d Cir. 2016) (equating fraud with "a knowingly false statement, made with intent to defraud"). And an express "'representation stating the truth so far as it goes but which the maker knows or believes to be materially misleading because of his failure to state additional or qualifying matter' is also actionable.'" *Universal Health Servs., Inc. v. United States*, 579 U.S. 176, 188 (2016) (quoting

Restatement (Second) of Torts § 529, p. 62 (1976)). A "scheme to defraud" therefore requires a false statement or the omission of material information that makes an express statement misleading. *Neder v. United States*, 527 U.S. 1, 4 (1999).

Moreover, a scheme to defraud "refers only to those schemes in which a defendant lies about the nature of the bargain itself." *Takhalov*, 827 F.3d at 1313–14. As Judge Thapar has put it: "the defendant might lie about the price (e.g., if he promises that a good costs $10 when it in fact costs $20) or he might lie about the characteristics of the good (e.g., if he promises that a gemstone is a diamond when it is in fact a cubic zirconium). In each case, the defendant has lied about the nature of the bargain and thus in both cases the defendant has committed wire fraud." *Id.*

But that is not what happened here. Petitioner made no materially false statement about his orders. Nor did he omit a material fact that he had a duty to disclose to other traders. The decision below acknowledged that, "by simply placing an order, a trader is not certifying it will never be cancelled." Pet.App.23. Yet, the Seventh Circuit affirmed Petitioner's conviction on the theory that he made an "implied misrepresentation" that he had "an intent to trade" while harboring "a private intent to cancel in the hopes of financial gain." Pet.App.23. That is simply wrong on its own terms: Petitioner's orders, at most, implied a *willingness* to trade—which was, in fact, true because he was willing and able to perform if the order was executed. And Petitioner's desire to cancel the orders did not render any express

statement of fact false or misleading. Nor did Petitioner's "private intent" affect the "nature of the bargain"—which was to buy or sell certain commodities at specified prices. Indeed, COMEX's own rules—permitting traders to place "iceberg" orders, to structure large orders into smaller ones, and to otherwise conceal the full extent of their private intent to buy or sell—confirm as much.

2. The government's "implied misrepresentation" theory is inconsistent with decades of decisions from this Court, starting with *Williams v. United States*, 458 U.S. 279 (1982). There, this Court held that the presentation of a check with knowledge that the checking account had insufficient funds did not constitute a "false statement" within the meaning of 18 U.S.C. § 1014. *Id.* at 285. In this Court's view, "a check is not a factual assertion at all, and therefore cannot be characterized as 'true' or 'false,'" as a check just "contains an unconditional promise or order to pay a sum certain in money." *Id.* at 284–85. If a check's promise to pay is not a materially false statement, then an offer to buy or sell—which required Petitioner to accept the risk of execution—is not a materially false statement either. *See, e.g.*, *United States v. Kurlemann*, 736 F.3d 439, 447 (6th Cir. 2013) (Sutton, J.) ("The district court's instruction in this case—a 'statement may be false when it contains a half-truth or when it conceals a material fact,' . . . permits the same kind of implied representation or material omission theory that the *Williams* majority rejected.").

Consider next *Neder v. United States*, 527 U.S. 1 (1999). There, this Court held that, to come within

the wire fraud statute, a defendant's "scheme to defraud" must involve a "material fact." *Id.* at 22. That requirement derives from the well-settled meaning of fraud, which "required a misrepresentation or concealment of material fact." *Id.* The law simply does not conceive of fraud without proof that the fraud involved some underlying falsehood. *Id.* Here, there was no material falsehood because Petitioner was, in fact, willing to perform on the relevant orders if they were executed before cancellation.

Pasquantino v. United States, 544 U.S. 349 (2005), confirms that, even in the omission context, the government must prove that the defendant omitted a *material* fact to obtain a wire fraud conviction. There, the Court reviewed convictions under the wire fraud statute arising from a scheme to smuggle large quantities of liquor from the United States into Canada, to evade Canadian taxes. *Id.* Although the defendants made no affirmative false representations, the Court concluded that they had engaged in a "scheme to defraud" Canada of its valuable entitlement to tax revenue when they "concealed imported liquor from Canadian officials and failed to declare those goods on customs forms." *Id.* The key was that the defendants had concealed a fact (that they possessed imported liquor) that was material (because it enabled them to avoid tax liability). *Id.* Here, Petitioner was accused merely of concealing a subjective intent (to cancel the orders) that was not material to the nature of the bargain (to trade commodities at specified prices).

C. This Question is Exceptionally Important and This Case Presents an Ideal Vehicle to Resolve it.

1. Resolution of this question is critically important for courts, prosecutors, and individuals alike. Federal prosecutors invoke the fraud statutes "to impose criminal penalties upon a staggeringly broad swath of behavior." *Sorich*, 555 U.S. at 1204 (Scalia, J., dissenting from denial of certiorari). To prevent turning the wire fraud statute into a catchall, the Court has repeatedly reined in broad interpretations of the fraud statutes that would "approve a sweeping expansion of federal criminal jurisdiction in the absence of a clear statement by Congress." *Cleveland v. United States*, 531 U.S. 12, 24 (2000). The decision below does exactly that.

In the Seventh and Ninth Circuits, federal prosecutors may target individuals for prosecution under the wire fraud statute even when those individuals made no express false statement nor omitted a material fact. This expansive view exploits the fraud statutes' "general statutory language" to place "power in the hands of the prosecutor" to "pursue their own personal predilections." *Marinello v. United States*, 138 S. Ct. 1101, 1108 (2018) (quoting *Smith v. Goguen*, 415 U.S. 566, 575 (1974)). And it risks "nonuniform execution" of prosecutorial power "across time and geographic location." *Marinello*, 138 U.S. at 1109. The Court should intervene to ensure that the fraud statutes are not construed to criminalize conduct in some parts of the country but not in others.

2. This question is also a frequently recurring one. Federal prosecutors rely on the federal fraud statutes in hundreds of prosecutions each year. *See* Susan R. Klein & Ingrid B. Grobey, *Debunking Claims of over–Federalization of Criminal Law*, 62 Emory L.J. 1, 29 (2012) (noting that 1400 individuals were prosecuted for mail and wire fraud in 2011 alone). Allowing prosecutors to rely on an "implied misrepresentation" will lead to even more prosecutions where defendants lack fair notice that their conduct may be considered a federal crime. *Kelly*, 140 S. Ct. at 1568, 1574.

This Court recently granted certiorari to consider whether the wire fraud statute allows a conviction where a defendant deprives a counterparty of information that could affect the party's economic decision-making. *See Ciminelli*, 142 S. Ct. at 2901. The Seventh Circuit's decision allowing spoofing to be prosecuted under an implied misrepresentation theory derives from a similar misapprehension of the statute: the notion that counterparties on COMEX were deprived of material information about supply and demand based on Petitioner's failure to disclose his secret intention to cancel his orders and thereby induce others to engage in transactions they otherwise would have avoided. This Court should thus similarly grant this petition to consider the Seventh Circuit's expansion of the statute or, at a minimum, hold the petition pending the outcome in *Ciminelli*.

3. This case is also an ideal vehicle for considering this question. The Seventh Circuit has now squarely held that, to obtain a conviction under

the wire fraud statute, the government need not prove that a defendant's scheme to defraud involved an actual false statement or an omission of material fact, but may be based on an implied misrepresentation about subjective intentions. If this theory of fraud is invalid, Petitioner's conviction must be vacated. Moreover, no procedural or jurisdictional issues prevent review. The issue has sufficiently percolated in the lower courts and only this Court's review can bring uniformity.

II. This Court Should Grant Review To Resolve A Circuit Split Over Whether An Ends-of-Justice Determination Must Be Made At The Time Of A Continuance.

A. The Circuits Are Divided on This Question.

The Speedy Trial Act "sets forth a basic rule" that the accused must be tried within 70 days of indictment or the date the accused first appears in court, whichever is later. *United States v. Tinklenberg*, 563 U.S. 647, 652 (2011); 18 U.S.C. § 3161. The Act, however, expressly excludes eight subcategories of time from the 70-day calculation. 18 U.S.C. § 3161(h). Among those subcategories include a district court's finding that the ends of justice outweigh the interests of the defendant and the public in a speedy trial. *Id.* § 3161(h)(7)(A).

While district courts have discretion in excluding time under the ends-of-justice subcategory, they must do more than merely cite the category to warrant exclusion. No time may be excluded under this subcategory "unless the court sets forth, in the

record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Id.* § 3161(h)(7)(A); *id.* § 3161(h)(7)(C) (prohibiting a court from excluding time based solely on "general congestion of the court's calendar").

A list of four non-exclusive factors dictates whether a district court may grant a continuance under the ends-of-justice subcategory. *Id.* § 3161(h)(7)(B). All four factors contain forward-looking language. *United States v. Marquez*, 602 F. Supp. 2d 285, 289 (D. Mass. 2009) (noting that the factors "all encompass at least some prediction about events yet to occur"). Thus, a district court's ends-of-justice finding "must occur contemporaneously with the granting of the continuance because Congress intended that the decision to grant an ends-of-justice continuance be prospective, not retroactive." *United States v. Apperson*, 441 F.3d 1162, 1180 (10th Cir. 2006).

The Second, Fifth, Sixth, Eighth, Ninth, and Tenth Circuits all recognize that this is how Congress designed the statute to work. By contrast, the decision below quadrupled down on Seventh Circuit precedents that allow district courts to make retroactive ends-of-justice findings. In the Seventh Circuit, a defendant can never obtain the dismissal of the indictment for a Speedy Trial Act violation so long as the district court, upon reviewing the motion to dismiss, decides, after the fact, that the "ends of justice" would have favored an already elapsed delay.

This Court should intervene to resolve this split and to safeguard the rights of the accused.

1. The Second, Fifth, Sixth, Eighth, Ninth and Tenth Circuits hold that an ends-of-justice finding must be made at the time the court grants a continuance—and cannot be made after-the-fact.

Take the case of *United States v. Jones*, 56 F.3d 581 (5th Cir. 1995). There, Jones's co-defendant filed a motion in May 1992 to continue trial given the complexity of the legal issues at stake. *Id.* at 583. After 13 months, the district court had still not issued any ruling or made any findings to justify the delay. *Id.* So Jones (like Petitioner here) moved to dismiss the indictment on Speedy Trial Act grounds. *Id.* In July 1993, the district court entered an order purporting to "memorializ[e]" its earlier "ruling" granting the May 1992 continuance motion. *Id.* The Fifth Circuit reversed. In doing so, it noted that "virtually every Circuit has held that the entry of findings in the record after granting the continuance is not reversible error so long as the findings were not actually made after the fact." *Id.* at 585 n.9. In this instance, "the district court did perform an ends-of-justice analysis, but did so on July 8, 1993, almost a year after the continuance was implicitly granted." *Id.* That amounted to reversible legal error.

The Eighth Circuit agrees. In *United States v. Suarez-Perez*, 484 F.3d 537 (8th Cir. 2007), the district court granted an ends-of-justice continuance to exclude time from August 2004 through September 2004. In an order issued in January 2005, however, the district court realized that it should have excluded time from June 2004 through September

2004, rather than just from August 2004 through September 2004. So the court amended the prior order to retroactively extend the exclusion from June 2004 through September 2004. *Id.* at 539. The Eighth Circuit reversed. *Id.* According to the Eighth Circuit, the "Speedy Trial Act does not provide for retroactive continuances." *Id.* at 542. The district court's January 2005 order "rewr[o]te history and substantially change[d] Suarez-Perez's Speedy Trial Act rights." *Id.* at 541. Nothing in the record supported the district court's claim that it had made an "ends of justice continuance" from June 2004 through September rather than from August 2004 through September at the time it granted the continuance. *Id.* at 542. That amounted to reversible error.

The Tenth Circuit has taken the same approach. In *United States v. Williams*, 511 F.3d 1044 (10th Cir. 2007), the district court granted a continuance based on an ends-of-justice finding in July 2005 to exclude time from February 2005 through September 2005. On appeal, the defendant argued that the district court "retroactively excluded the days following February 14, 2005 through July 19, 2005," which violated his Speedy Trial Act rights. *Id.* at 1056. The Tenth Circuit agreed, holding that "the Act does not allow a district court to retroactively grant an ends-of-justice continuance." *Id.* at 1055. The Tenth Circuit added that, even though the "ends-of-justice findings mandated by the Act 'may be entered on the record after the fact, they may not be made after the fact.'" *Id.* (quoting *Apperson*, 441 F.3d at 1180); *United States v. Koerber*, 813 F.3d 1262,

1279 (10th Cir. 2016); *United States v. Johnson*, 120 F.3d 1107, 1111 (10th Cir. 1997).

The Second Circuit has adopted the same view. In *United States v. Kelly,* 45 F.3d 45 (2d Cir. 1995), the district court made an ends-of-justice finding that retroactively excluded time from calculation under the Act. The Second Circuit reversed and reaffirmed circuit precedent establishing that a district court's retroactive exclusion of time under § 3161(h)(7)(A) cannot serve to toll the clock. *Id.* at 47 (citing *United States v. Tunnessen*, 763 F.2d 74, 78 (2d Cir. 1985)). In a similar vein, the Second Circuit holds that a district court may not render an indefinite ends-of-justice exclusion based on the complexity of the case. Even if a case presents some complexity, "complexity *per se* is not an excuse for indefinite delay," or "a means of circumventing the requirements of the Speedy Trial Act." *United States v. Pikus*, 39 F.4th 39, 54 (2d Cir. 2022) (quotation omitted). To avoid violating a defendant's Speedy Trial Act rights, a court must not only "police the behavior of the prosecutor and defense counsel," but also must "police itself." *Id.*

The Ninth Circuit agrees. In *United States v. Spanier*, 637 F. App'x 998 (9th Cir. 2016), the district court made a retroactive ends-of-justice finding to cure a Speedy Trial Act violation. The Ninth Circuit reversed. Relying on circuit precedent, the Ninth Circuit reiterated that a "district court err[s] by making nunc pro tunc findings to accommodate its unwitting violation of the Act." *Id.* at 1000 (quoting *Frey*, 735 F.2d at 351–53). Applying that precedent, the Ninth Circuit concluded that the district court

never made an ends-of-justice finding and that it could not do so after the continuance had already been granted. *Spanier*, 637 F. App'x at 1000.

The Sixth Circuit is in accord. In *United States v. Moran*, 998 F.2d 1368 (6th Cir. 1993), the district court issued an ends-of-justice finding in February 1990, which excluded time up until the defendant filed his suppression motion. At a date after the defendant had already filed his motion, the "district court retroactively expanded the continuance to exclude all of the time through the date the court ruled on the motion." *Id.* at 1372. The Sixth Circuit held that the Act did not permit the court's "post-hoc rationalization." *Id.* The Sixth Court also made clear that a district court may not "wipe out violations of the Speedy Trial Act after they have occurred by making the findings that would have justified granting an excludable delay continuance before the delay occurred." *Id.* (quoting *United States v. Crane*, 776 F.2d 600, 606 (6th Cir. 1985)). As a result, the Sixth Circuit reversed and remanded with instructions to dismiss the indictment. *Moran*, 998 F.2d at 1372.

2. The decision below breaks with those circuits by allowing a district court to cure an admitted Speedy Trial Act violation by making a retroactive ends-of-justice finding.

In proceedings below, Petitioner filed a motion to dismiss the superseding indictment. Mot. to Dismiss, *United States v. Vorley*, No. 18-cr-35 (N.D. Ill. May 20, 2020). The district court expressly relied on 18 U.S.C. § 3161(h)(1)(D) to exclude time while it considered the motion. Pet.App.290 ("Time will be

excluded through briefing and ruling on the defendant's motion to dismiss pursuant to 18 U.S.C. § 3161(h)(1)(D)."). Under 18 U.S.C. § 3161(h)(1)(H), that automatic exclusion expired 30 days after the district court took the motion "under advisement." But the district court took much longer than 30 days to decide the motion, without ever considering whether the "ends of justice" could justify the delay.

When ruling on the speedy trial motion, the district court acknowledged that it had "misconstrued" the duration of the automatic exclusions, wrongly believing that they carried through until disposition of a motion no matter how long it took to decide. Pet.App.161. Despite conceding the error, the district court stated that if it had known of the error "I unquestionably *would have* remedied the error by including my determination that the defendants' request to defer other pretrial motions warranted an ends-of-justice exclusion under § 3167(h)(7)." Pet.App.161 (emphasis added). Relying on Seventh Circuit precedent, the district court ruled that the "ends-of-justice findings required by § 3161(h)(7) need only be made by the time that the Court rules on a motion to dismiss based on a violation of the Speedy Trial Act." Pet.App.157. The district court thus made an after-the-fact ends-of-justice finding.

The Seventh Circuit affirmed. It concluded that, had "the underlying error been brought to [the district court's] attention, it 'unquestionably' would have given 'a full articulation of [its] reasoning.'" Pet.App.38. The decision below thus reaffirmed that no violation of the Speedy Trial Act occurs in the

Seventh Circuit so long as the district court makes an ends-of-justice finding when ruling on the defendant's motion, even if the district court failed to make the finding at the time the district court granted the continuance.

The decision below relied on its own precedent in *United States v. Rollins*, 544 F.3d 820 (7th Cir. 2008). In that case, the defendant, like Petitioner here, argued that the district court violated the Speedy Trial Act because the court failed to make an ends-of-justice finding at the time it granted a continuance. *Id.* at 830. The Seventh Circuit disagreed, holding that a "district court is not required to make the ends of justice findings contemporaneously with its continuance order." *Id.* The decision below also cited *United States v. Adams*, 625 F.3d 371 (7th Cir. 2010), where the district court failed to make an ends-of-justice finding at the time it granted a continuance and instead provided a "subsequent elaboration of its rationale" for excluding time under the ends-of-justice subcategory. *Id.* at 380. There, too, the Seventh Circuit concluded that the "fact that in one instance the court made that finding (and stated the reasons for it) in retrospect rather than contemporaneously with its order granting the continuance is immaterial." *Id.*; *see also Larson*, 417 F.3d at 746 (holding that the district court is not required to make Speedy Trial Act findings contemporaneously with a continuance order").

B. The Decision Below Was Incorrect.

The plain language of the Speedy Trial Act prohibits a district court from making a retroactive ends-of-justice finding. A district court instead must

consider the non-exhaustive list of factors and make the required ends-of-justice finding at the time the court grants the continuance. *See* 18 U.S.C. § 3161(h)(7)(B).

Each factor contains forward-looking language, which has led other circuits to correctly conclude that a district court's ends-of-justice finding "must occur contemporaneously with the granting of the continuance because Congress intended that the decision to grant an ends-of-justice continuance be prospective, not retroactive." *Apperson*, 441 F.3d at 1180. A contrary rule that allows a district court to make ends-of-justice findings after-the-fact deprives the accused and the public of the opportunity to be heard on whether the need for the continuance outweighs their interest in a speedy trial.

This is not to say that a district court must always put its finding on the record at the time that it grants the continuance. The Court has noted that the ends-of-justice subcategory is ambiguous on when the ends-of-justice findings must be "se[t] forth, in the record of the case," although "best practice . . . is for a district court to put its findings on the record at or near the time when it grants the continuance." *Zedner*, 547 U.S. at 507. And a district court must at a minimum enter its ends-of-justice findings on the record before ruling "on a defendant's motion to dismiss under § 3162(a)(2)." *Id.*

But that is not what happened here. The reasons for a continuance granted on November 15, 2018, could not have included the unanticipated period of delay between March and October 2019, while the court had the motion to dismiss under advisement.

Indeed, the district court in January 2019 indicated that it still expected to rule "promptly." Pet.App.286. But the Seventh Circuit allowed the district court to retroactively cure a Speedy Trial Act violation by deciding after the fact that the interests of justice *would have* favored the previously granted continuance.

C. This Question is Exceptionally Important and This Case Presents an Ideal Vehicle to Resolve it.

1. Resolution of this question is critically important for courts, prosecutors, and individuals alike. The Speedy Trial Act safeguards fundamental individual liberties and constitutional rights. By preventing excessive pretrial incarceration, the Act protects the "core" of the right to a speedy trial. Brian P. Brooks, *A New Speedy Trial Standard for Barker v. Wingo: Reviving a Constitutional Remedy in an Age of Statutes*, 61 U. Chi. L. Rev. 587, 596–597 (1994). The Speedy Trial Act thus mandates "fixed time limits" within which the defendant must be brought to trial. S. Rep. No. 212, 96th Cong., 1st Sess. 8 at 9 (1979) (statement of William H. Rehnquist, Assistant Attorney General). Without such limits, "the speedy trial protections afforded both the individual and society by the Sixth Amendment [are] largely meaningless." *Id.*

Congress carefully balanced the need for fixed time limits with narrowly tailored, judicially supervised exceptions. By permitting district courts to make ends-of-justice findings after-the-fact, the Seventh Circuit distorts the Act's statutory design. And the Seventh Circuit's misreading of the statute

could affect every federal prosecution within that Circuit.

2. This case presents a procedurally clean vehicle to resolve this entrenched circuit split. There is no dispute about the Court's jurisdiction. And there is no doubt that the issue is squarely presented. The district court admitted that it had misconstrued the automatic exceptions and conducted a retroactive ends-of-justice analysis. The decision below squarely reached the issue presented after briefing by the parties. If Petitioner prevails on the sole question presented, the judgment below necessarily will be invalid. There is no need for further percolation because a long line of Seventh Circuit precedents authorize district courts to make ends-of-justice findings after-the-fact, while six circuits reject that approach. The Court should intervene to restore uniformity and safeguard the right of the accused to a speedy trial.

CONCLUSION

This Court should grant the petition for certiorari.

Respectfully submitted,

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