No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Eric Michael Schuster,
Petitioner,
v.
United States of America,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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Dated: October 23, 2025

QUESTIONS PRESENTED FOR REVIEW

Whether a reviewing court must strictly adhere to the Supreme Court requirement that a district court's fact-findings "must not be set aside unless clearly erroneous", or whether the reviewing court may engage in its own review with less deference when the court of appeals decides the fact-findings are insufficient.

Whether a reviewing court's failure to apply clearly established Supreme Court standard of review that "deferential review of mixed questions of law and fact is warranted when it appears that the district court is 'better positioned' than the appellate court to decide the issue in question or that probing appellate scrutiny will not contribute to the clarity of legal doctrine" violates a defendant's Fourteenth Amendment right to due process.

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Eric Michael Schuster respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit Court of Appeals.

OPINIONS AND ORDERS BELOW

Decision of United States District Court for the Southern District of Ohio, Western Division, denying Mr. Schuster's Amended Motion to Dismiss for Violation of the Speedy Trial Act (May 5, 2023). *United States v. Schuster*, 2023 U.S. Dist. LEXIS 79502 (S.D. Ohio, 2023).

Decision of United States District Court for the Southern District of Ohio, Western Division, granting Mr. Schuster's Amended Motion to Reconsider (September 15, 2023). *United States v. Schuster*, 2023 U.S. Dist. LEXIS 164976 (S.D. Ohio, 2023)

Opinion and Judgment of Sixth Circuit Court of Appeals reversing Decision of District Court (May 2, 2025). *United States v. Schuster*, 135 F.4th 1037 (6th Cir. 2025).

Order of Sixth Circuit Court of Appeals denying Mr. Schuster's motion for rehearing/hearing en banc (June 11, 2025). *United States v. Schuster*, 2025 U.S. App. LEXIS 14470 (6th Cir. 2025).

Mandate issued by Sixth Circuit Court of Appeals (July 14, 2025). *United States v. Schuster*, C:1:16-cr-00051-MJN Doc. 102, PageID #2212.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

Speedy Trial Act, 18 U.S.C. § 3161 et seq.

STATEMENT OF JURISDICTION

Petitioner seeks review of the Opinion of the Sixth Circuit Court of Appeals, entered May 2, 2025. On June 11, 2025, the Sixth Circuit denied Mr. Schuster's Motion for Rehearing/Hearing En Banc. On July 14, 2025, the Sixth Circuit issued a Mandate. 28 U.S.C. § 1254(1) confers jurisdiction upon this Court to review the judgment of the Sixth Circuit Court of Appeals by writ of certiorari.

STATEMENT OF THE CASE

Factual Background

In 2014, federal law enforcement began investigating a website known as "Playpen," a site used to distribute child pornography. The Department of Justice eventually obtained a warrant authorizing agents to employ a special-investigative technique that revealed the IP addresses of Playpen users. Using

the warrant, law enforcement obtained the identifying information of Playpen users, including one user who accessed Playpen from an address in Ohio associated with Eric Michael Schuster ("Mr. Schuster"). Federal agents then obtained a warrant to search Mr. Schuster's residence and seize electronics found therein. The subsequent search of Mr. Schuster's home uncovered multiple devices containing images and videos of child pornography.

Procedural History

United States District Court for the Southern District of Ohio, Western Division

The Government arrested Mr. Schuster on November 9, 2015. (R. 6) A federal grand jury indicted Mr. Schuster on May 18, 2016 on three count of felony child pornography. (R. 14) At the time of his indictment, over 200 "Operation Pacifier" prosecutions were pending across the United States. Mr. Schuster filed the three pretrial motions on October 18, 2018. (R. 53, 54, 55) At his detention hearing in June, Mr. Schuster pleaded not guilty on all counts, and the magistrate judge, upon the United States' motion, ordered Mr. Schuster detained pretrial. His detention spanned 2,640 days, more than seven years. Pertinent to Mr. Schuster's Speedy Trial Motion to Dismiss was the time following the district court's appointment of new counsel in October 2017. At no point in any of his pleadings on this issue, whether in the district court or the court of appeals, did Mr. Schuster include the 17 month period of time between his indictment and the appointment of new counsel.

Mr. Schuster's Second Motion to Suppress was premised on the government's unauthorized use of an "exploit" software program to permit the authorized NIT to

enter his computer. (R. 54) At the time Mr. Schuster filed this Motion, no other federal court had addressed this issue. In fact, no federal court has since addressed this issue. Similarly, the Sixth Circuit has yet to address the issues Mr. Schuster's raised in his *Franks* Motion or his Motion to Reconsider. (R. 55, 53). The foregoing motions were fully briefed and ready for consideration by the District Court on April 20, 2019. The motions were pending almost 11 months before the COVID pandemic disrupted the federal calendars. Mr. Schuster filed a Motion for Status Conference on October 13, 2020. (R. 67, Motion, PageID# 1595) In this Motion, Mr. Schuster noted the potential for a speedy trial violation due to the District Court's inaction on the Motions. (R. 67, Motion, PageID# 1595) Mr. Schuster's Motion also recounted how the continued delay was affecting his mental health. (R. 67, Motion, PageID# 1595) It took almost two months for this Court to schedule a phone conference.

Almost 60 days passed before the District Court conducted a telephonic status conference. It was the Government's failure to comply with Mr. Schuster's discovery request that led to Mr. Schuster's Motion to Compel, filed within a few days of the Status Conference. At this point, Mr. Schuster's Motions (Second Motion to Suppress, Motion to Reconsider and Franks Motion) had been pending 20 months. By February 21, 2021 Mr. Schuster's Motion to Compel was fully briefed. It was not until the District Court issued its decision denying Mr. Schuster's Motions to Dismiss that it identified the cases whose resolution he claimed delayed its adjudication of Mr. Schuster's Motions; to wit, *United States v. Jones,* No. 18-3743, 2019 U.S. App. LEXIS 19503 (6th Cir. 2019); *United States v. Bateman*, No. 18-3977 (6th Cir. 2019); and

United States v. Collard, 19-2151/2153 (6th Cir., Feb. 2021). (R. 84, Order, PageID# 2056-57) None of these cases was apposite to the issues Mr. Schuster raised in his pretrial motions, and therefore, should not serve as a valid excuse for the District Court's failure to adjudicate them.

After eight additional months with no decision on or hearing date for any Mr. Schuster's Motions, he filed a Motion for Bond. Mr. Schuster's Motion directed the District Court's attention to the fact he had been incarcerated pretrial for over five years and posited it would be fair and humane to permit him to return home pending resolution of his pretrial motions. (*Id.*) The District Court never ruled. With five motions still pending, Mr. Schuster filed an Amended Motion to Dismiss in September 2022. (R. 76, Amended Motion, PageID# 1975) The Government filed a 13-page Response. (R. 79, Response, PageID# 1997-2012) The Motion was fully briefed on December 2, 2022. After another four months of inaction by the District Court, Mr. Schuster filed a Second Motion to Dismiss on April 3, 2023. On May 5, 2023, the District Court issued its decision denying Mr. Schuster's Motion.(R. 84, Order, PageID# 2054)

As to the first *Barker* factor, the District Court acknowledged the length of delay in this case "triggered" the necessity to examine the remaining [*Barker*] factors. (R. 84, Order, PageID# 2063) In its analysis of the second *Barker* factor, reason for the delay, the District Court found the time that cannot be squarely placed on Defendant's shoulders was from February 2021 (motion to compel fully briefed) to August 2022, when Defendant filed his motion to dismiss. (*Id.* at 2064) Although this

delay was 18 months, the District Court found this factor weighed only slightly in Mr. Schuster's favor. (*Id.* at 2064) Although Mr. Schuster had argued another prior 20 month delay, from April 20, 2019 (pretrial motions fully briefed) to December 3, 2020 (telephonic status conference), also supported his motion, the District Court did not address this delay. The District Court next evaluated the third *Barker* factor, assertion of the right to a speedy trial. (*Id.* at 2065) Here, the District Court concluded "Defendant's only assertion of his right to a speedy trial arises from the filing of his motions to dismiss." (*Id.* at 2065) It did not mention, much less discuss, Mr. Schuster's Motion for Status Conference or Motion for Bond. (*Id.*) The District Court found the third factor weighed against Mr. Schuster. (*Id.*) (Emphasis added) The District Court briefly Mr. Schuster's claims of actual prejudice and non-trial prejudice. It dismissed out of hand his assertion the delays precluded him from questioning Agent Alfin on the issue of bad faith prior to his death, then after acknowledging "the delay has contributed to Defendant's non-trial prejudice," it weighed the fourth factor as neutral. (*Id.* at 2065-67) Based upon the foregoing findings, the District Court denied Mr. Schuster's Amended Motion to Dismiss. (*Id.* at 2067) (Appendix C)

Mr. Schuster filed a Motion to Reconsider on May 30, 2023, then an Amended Motion to Reconsider on July 25, 2023. (R. 86, Amended Motion, PageID# 2081) On September 15, 2023, the District Court entered an order granting Mr. Schuster's Amended Motion to Reconsider, finding reconsideration of the *Barker* factors was appropriate to "correct a mistake of fact and to avoid manifest injustice" and further

finding "the delay has deprived Defendant of his constitutional right to a speedy trial". (R. 88, Order, PageID# 2095-2109)

Sixth Circuit Court of Appeals

On February 21, 2024, the Government appealed the District Court's decision granting Mr. Schuster's motion for reconsideration and dismissing the case against him with prejudice, to the Sixth Circuit Court of Appeals. (R. 19, Government's Brief, PageID# 1-67) At issue was whether the District Court committed clear error in finding who was responsible for a delay, and whether the District Court erred in its weighing of the facts and its application of the law to the facts. Although "troubled" by the record, the Sixth Circuit disagreed with how the District Court had applied the factors outlined in *Barker v. Wingo*, 407 U.S. 514 (1972), and therefore, reversed the District Court's judgment of dismissal, allowing the prosecution to proceed. *United States v. Schuster*, 135 F.4th 1037 (6th Cir. 2025) (Appendix B) On June 11, 2025, the Sixth Circuit denied Mr. Schuster's Motion for Rehearing/Hearing En Banc. (Appendix E) On July 14, 2025, the Sixth Circuit issued a Mandate. (Appendix D)

REASON THE COURT SHOULD GRANT THIS PETITION

The Sixth Circuit misapprehended and misapplied the clearly erroneous standard, and accordingly erred in denying Mr. Schuster relief, thereby violating Mr. Schuster's Fourteenth Amendment right to due process

A reviewing court's failure to apply established Supreme Court standard of review that "deferential review of mixed questions of law and fact is warranted when it appears that the district court is 'better positioned' than the appellate court to decide the issue in question or that probing appellate scrutiny will not contribute to

the clarity of legal doctrine" violates a defendant's Fourteenth Amendment right to due process.

Almost 60 years ago, the United States Supreme Court established the clear error standard in *United States v. United States Gypsum Co.*, defining a finding as clearly erroneous if, despite supporting evidence, a reviewing court is left with a "definite and firm conviction that a mistake has been committed". *United States Gypsum Co.*, 333 U.S. 364, 395 (1948). Despite this well-established Supreme Court precedent requiring a finding of clear error by the District Court, the Sixth Circuit gave no deference to the District Court's decision. Rather, it imposed its own *de novo* analysis of the procedural history of Mr. Schuster's case, giving it the latitude it needed to impose its own interpretation of the facts. In doing so, the Sixth Circuit completely ignored perhaps the most important purpose of the Sixth Amendment – the prevention of oppressive pre-trial incarceration. Rather, it focused on blaming Mr. Schuster for the delays and minimizing the failures of the District Court and Government to ensure Mr. Schuster's right to a speedy trial remained intact. *See Barker*, 407 U.S. at 529–30 (stating it is proper to put the burden of ensuring a speedy trial on the prosecution).

Under the "highly deferential" clear error standard of review, we must affirm the district court's findings of fact unless we are "left with the definite and firm conviction that a mistake has been committed." *Taglieri v. Monasky*, 907 F.3d 404, 408 (6th Cir. 2018) (*en banc*) (citation omitted), aff'd, 140 S. Ct. 719 (2020). A district court does not clearly err "so long as the finding is 'plausible in light of the record

viewed in its entirety.'" *United States v. Grant*, 15 F.4th 452, 457 (6th Cir. 2021) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985)).

Supreme Court precedent and decades of circuit case law demonstrate the importance of and requirement to conduct a deferential review in an appellate court's analysis of facts, where it is clear the district court was 'better positioned' than the circuit court to decide the issue in question or that probing appellate scrutiny will not contribute to the clarity of legal doctrine. *Salve Regina College v. Russell*, 499 U.S. 225, 233 (1991); *U.S. Bank Nat. Ass'n v. Village at Lakeridge, LLC*, 138 S.Ct. 960, 967 (2018). In *U.S. Bank*, the Supreme Court's decision on applicable standards of review distinguished among three components of any given lower court ruling: "the first purely legal, the next purely factual, the last a combination of the other two." *Id.* at 965. The first of these-the "legal test" or the "standard" that governs a particular issue-is an "unalloyed legal ... question[]" that an appellate court reviews *de novo*, "without the slightest deference." *Id*. In the second category are questions of " 'basic' or 'historical' fact," which address "who did what, when or where, how or why." *Id*. at 966. Such purely factual questions are subject to deferential review. *Id*. ("By well-settled rule, such factual findings are reviewable only for clear error – in other words, with a serious thumb on the scale for the [lower] court."). "When the statutory factors are properly considered, and supporting factual findings are not clearly in error, the district court's judgment of how opposing considerations balance should not lightly be disturbed." *United States v. Taylor,* 487 U.S. 326, 337 (1988).

The predominant nature of the District Court's analysis of Mr. Schuster's Motion to Reconsider was fact-based. The District Court had to review the procedural history to determine whether Mr. Schuster, the Government or the District Court was at fault in creating the delays in Mr. Schuster's case. More important, it was the District Court who presided over the entirety of Mr. Schuster's pretrial procedural history, and the District Court which, upon reconsideration, revised its conclusions on fault in each of the *Barker* factors. Because of the fact-based nature of the inquiry performed by the District Court, not once but twice, the Sixth Circuit was obligated to implement the more deferential "clear error" standard of review. *U.S. Bank Nat'l Ass'n,* 138 S. Ct. at 966.

The Court need only look at the Sixth Circuit's numerous prior applications of the clear-error analysis, where it sets forth the parameters of such a review and applies them to the case at hand, to see it did not do so in Mr. Schuster's case. *Taglieri*, 907 F.3d at 408, aff'd, 140 S. Ct. 719; *United States v. McCallister*, 39 F.4th 368, 372 (6th Cir. 2022) (quoting *Grant*, 15 F.4th at 457) (quoting *Anderson*, 470 U.S. at 574. "If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that, had it been sitting as the trier of fact, it would have weighed the evidence differently." *United States v. Atkins*, 843 F.3d 625, 632 (6th Cir. 2016) (internal citations omitted). This is so even when the district court's findings do not rest on credibility determinations, but are based instead on physical or documentary evidence or inferences from other facts. *Anderson*, 470 U.S. at 565.

In virtually every other decision in which the Sixth Circuit has applied the clear error standard of review, it not only defined "clear error", but also, described in detail why the district court did or did not commit clear error. In Mr. Schuster's case, however, the Sixth Circuit mentioned the term "clear error" once.

> In applying *Barker* to the facts of this case, we review questions of law de novo and questions of fact under the clearly erroneous standard. *United States v. Smith*, 94 F.3d 204, 208 (6th Cir. 1996).

Schuster, 135 F.4th at 1048.

More significant, the Sixth Circuit made no effort to define "clear error", much less analyze the District Court's decision through the "clear error" standard of review. In fact, the Sixth Circuit admitted the basis of its decision reversing the District Court's decision was because "we respectfully disagree with how the district court applied the factors outlined in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972),…". *Schuster*, 135 F.4th at 1045. A difference of opinion as to how factual evidence is viewed is insufficient to establish a district court committed clear error.

The Supreme Court has identified four virtues of consistency that *stare decisis* brings: predictability, fairness, appearance of justice, and efficiency. *Hohn v. United States*, 524 U.S. 236 (1998). Although predictability is consistency's virtue before a case reaches court, fairness is the virtue once in litigation. William O. Douglas, *Stare Decisis*, 49 COLUM. L. REV. 735, 735–36, note 38 (1949). Inconsistent application of law is unfair because it violates the fundamental premise in our legal system that similar litigants should be treated similarly. *Id*.

In the absence of any indication the Sixth Circuit complied with well-established Supreme Court precedent by carefully applying the clear error standard to the District Court's factual findings, Mr. Schuster has established the grounds necessary to justify granting his Petition for Writ of Certiorari. See, 470 U.S. at 565-66.

CONCLUSION

The "clearly erroneous" standard does not entitle a reviewing court to reverse the finding of the trier of fact simply because it would have decided the case differently. In applying the clearly erroneous standard to the findings of a district court, appellate courts must constantly have in mind that their function is not to decide factual issues *de novo.* If a district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.

Where there is nothing in the Sixth Circuit's decision to support a finding it correctly apprehended, much less correctly applied, the clearly erroneous standard in its review of the District Court's decision, it erred in reversing that decision and ordering the prosecution of Mr. Schuster, a United States Iraqi war veteran, to go forward. As such, Mr. Schuster submits the opinion of the Sixth Circuit should not be permitted to stand without Supreme Court review of its baseless disregard for the Court's precedent. Mr. Schuster petitions the Court for Writ of Certiorari to review the decision of the Sixth Circuit in this case.

Respectfully submitted,

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Dated: October 23, 2025

APPENDIX

[SEE APPENDIX A OPINION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION GRANTING AMENDED MOTION TO RECONSIDER (September 15, 2023) IN ORIGINAL]

[SEE APPENDIX B OPINION AND JUDGMENT OF THE SIXTH CIRCUIT COURT OF APPEALS (May 2, 2025) IN ORIGINAL]

[SEE APPENDIX C DECISION OF UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION OVERRULING AMENDED MOTION TO DISMISS (May 5, 2023) IN ORIGINAL]

[SEE APPENDIX D MANDATE ISSUED BY THE SIXTH CIRCUIT COURT OF APPEALS (July 14, 2025) IN ORIGINAL]

[SEE APPENDIX E DECISION OF THE SIXTH CIRCUIT COURT OF APPEALS DENYING MOTION FOR REHEARING (June 11, 2025) IN ORIGINAL]

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CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 3188 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 23, 2025.

William R. Gallagher

WILLIAM R. GALLAGHER (Ohio Bar Number 0064684)

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CERTIFICATE OF SERVICE

I, William R. Gallagher, do swear or declare that on this date, October 13, 2025, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by email. The names and addresses of those served are as follows: Mary B. Young, by email at Mary.Beth.Young@usdoj.gov and Kyle Healey at Kyle.Healey@usdoj.gov.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 23, 2025.

William R. Gallagher

WILLIAM R. GALLAGHER
(Ohio Bar Number 0064684)