25-6157

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Eric D. King — PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Eric D. King
(Your Name)

4216 Jennings Ridge Dr.
(Address)

Cleveland, OH, 44109
(City, State, Zip Code)

216-235-1001
(Phone Number)

Questions Presented

I. DUBIN MISAPPLICATION

Whether Petitioner's conviction for aggravated identity theft under 18 U.S.C. § 1028A can stand where, contrary to *Dubin v. United States*, 599 U.S. 110 (2023), the alleged use of identity was merely incidental in progress notes by a non-credentialed employee without billing authority, rather than the means of executing fraud.

II. INDICTMENT DEFECTS

Whether the Fifth Amendment is violated when a defendant is prosecuted on an indictment that omitted essential elements, mischaracterized Petitioner's role by alleging he "provided counseling services" and falsely attributing licensure and billing authority, and then proceeded to trial on an "Amended Indictment" never returned by a grand jury, never signed by a foreperson, and never subject to arraignment.

III. CONSTRUCTIVE DENIAL OF COUNSEL

Whether structural error requiring automatic reversal occurs where (1) trial counsel deprived Petitioner of core protections by executing waivers without consent, permitting conviction on an unreturned and unarraigned indictment, and failing to present exculpatory audit-trail evidence; and (2) the appellate process compounded those errors when first appellate counsel omitted constitutional claims, successor counsel mischaracterized Petitioner's pro se submissions as "non-meritorious," refused to file a merits or *Anders* brief, and the Court of Appeals excluded Petitioner's filings, leaving the appeal without adversarial testing in violation of the Sixth Amendment.

IV. EQUAL PROTECTION/O'LEAR DISPARITY

Whether the Fifth Amendment's equal-protection guarantee is violated when the same district and appellate court, rejected as implausible that a white credentialed subordinate masterminded fraud in United States v. *O'Lear, 93 F.4th 398 (6th Cir. 2024)*, but affirmed Petitioner's conviction as a Black, unlicensed subordinate legally barred from billing.

LIST OF PARTIES

PETITIONER:

Eric D. King, Petitioner.

RESPONDENT:

United States of America, Respondent.

All parties to the proceedings in the court whose judgment is sought to be reviewed are listed in the caption.

TABLE OF CONTENTS

Questions Presented 1
List of Parties and Related Cases 2
Table of Authorities 3
Opinions Below 5
Jurisdiction 6
Constitutional and Statutory Provisions Involved 7
Statement of the Case 9

Reasons for Granting the Writ 15
I. Misapplication of *Dubin* 15
II. Ineffective and Inadequate Indictment 22
III. Constructive Denial of Counsel at Trial 27
III-A. Continued Constructive Denial of Counsel on Appeal 32
IV. Equal Protection and Racial Disparities 38
Conclusion 44
Index of Appendices 46

INDEX OF APPENDICES

Appendix A – Opinion of the United States Court of Appeals for the Sixth Circuit (May 19, 2025) .....
Appendix B – Order of the United States Court of Appeals for the Sixth Circuit Denying Rehearing En Banc (July 8, 2025) .....
Appendix C – Judgment of the United States District Court for the Northern District of Ohio (August 2, 2023) .....

TABLE OF AUTHORITIES

CASES

- *Anders v. California, 386 U.S. 738 (1967)* *2, 20*
- *Arizona v. Fulminante, 499 U.S. 279 (1991)* *2, 12, 13, 14, 21*
- *Batson v. Kentucky, 476 U.S. 79 (1986)* *2, 24*
- *Bolling v. Sharpe, 347 U.S. 497 (1954)* *2, 22*
- *Bordenkircher v. Hayes, 434 U.S. 357 (1978)* *2, 12*
- *Brady v. Maryland, 373 U.S. 83 (1963)* *2, 14*
- *Carnley v. Cochran, 369 U.S. 506 (1962)* *2, 17*
- *Dubin v. United States, 599 U.S. 110 (2023)* *1, 2, 7, 8, 10, 12, 13, 24*
- *Faretta v. California, 422 U.S. 806 (1975)* *2, 20*
- *Hicks v. United States, 389 F.3d 514 (5th Cir. 2004)* *2*
- *Hinton v. Alabama, 571 U.S. 263 (2014)* *2, 11*
- *Johnson v. Zerbst, 304 U.S. 458 (1938)* *2, 17*
- *Martinez v. Court of Appeal of Cal., 528 U.S. 152 (2000)* *2, 19*
- *Napue v. Illinois, 360 U.S. 264 (1959)* *2, 14*
- *Penson v. Ohio, 488 U.S. 75 (1988)* *2, 19, 21*

- *Rose v. Mitchell, 443 U.S. 545 (1979)* *2, 23*
- *Russell v. United States, 369 U.S. 749 (1962)* *2, 13, 15, 18*
- *Stirone v. United States, 361 U.S. 212 (1960)* *2, 11, 15, 18*
- *Strickland v. Washington, 466 U.S. 668 (1984)* *2, 11*
- *United States v. Armstrong, 517 U.S. 456 (1996)* *2, 12, 22*
- *United States v. Cronic, 466 U.S. 648 (1984)* *2, 11, 18, 19, 21*
- *United States v. Du Bo, 186 F.3d 1177 (9th Cir. 1999)* *2, 13, 15, 18*
- *United States v. Goodwin, 457 U.S. 368 (1982)* *3, 12*
- *United States v. Gonzalez-Lopez, 548 U.S. 140 (2006)* *3*
- *United States v. Klein, 543 F.3d 206 (5th Cir. 2008)* *3, 9*
- *United States v. McLean, 715 F.3d 129 (4th Cir. 2013)* *3, 9*
- *United States v. Medlock, 792 F.3d 700 (6th Cir. 2015)* *3, 10*
- *United States v. Natale, 719 F.3d 719 (7th Cir. 2013)* *3, 9*
- *United States v. O'Lear, 93 F.4th 398 (6th Cir. 2024)* *1, 3, 7, 22*
- *United States v. Olano, 507 U.S. 725 (1993)* *3, 11, 18*
- *United States v. Salisbury, 983 F.2d 1369 (6th Cir. 1993)* *3, 13*
- *United States v. Semrau, 693 F.3d 510 (6th Cir. 2012)* *3, 9*
- *United States v. Vance, 871 F.2d 572 (6th Cir. 1989)* *3, 10, 14*
- *United States v. Walters, 913 F.3d 682 (7th Cir. 2019)* *3, 14*
- *Vasquez v. Hillery, 474 U.S. 254 (1986)* *3, 23*
- *Yick Wo v. Hopkins, 118 U.S. 356 (1886)* *3, 24*
- *Zedner v. United States, 547 U.S. 489 (2006)* *3, 16*
- *18 U.S.C. § 3161(c)(1)* *1, 3, 4, 5, 12, 16*
- *Fed. R. Crim. P. 6(f)* *3*
- *Fed. R. Crim. P. 7(a)* *3*
- *Fed. R. Crim. P. 52(b)* *3, 14*
- *Fed. R. App. P. 25(a)(2)(C)* *3*
- *Fed. R. App. P. 46(c)* *3*
- *Ohio Admin. Code § 5160-27-08(B)* *3, 5, 8, 9, 11, 14, 18, 19, 23*

STATUTES

- 18 U.S.C. § 1001 ..... 1, 3, 4, 5, 12, 16
- 18 U.S.C. § 1028A 1, 3, 4, 5, 12, 16
- 18 U.S.C. § 1347 ..... 1, 3, 4, 5, 12, 16
- 18 U.S.C. § 3161(c)(1) 1, 3, 4, 5, 12, 16
- U.S. Const. amend. V 3, 4
- U.S. Const. amend. VI 3, 4

RULES

- Fed. R. Crim. P. 6(f) 3
- Fed. R. Crim. P. 7(a) 3
- Fed. R. Crim. P. 10 3
- Fed. R. Crim. P. 30 3
- Fed. R. Crim. P. 52(b) 3, 14
- Supreme Court Rule 10 ..... 3, 9, 22, 23
- Fed. R. App. P. 25(a)(2)(C) 3
- Fed. R. App. P. 46(c) 3

REGULATIONS

- Ohio Admin. Code § 5122-29-30 ..... 3, 5, 8, 9, 11, 14, 18, 19, 23
- Ohio Admin. Code § 5160-27-01 ..... 3, 5, 8, 9, 11, 14, 18, 19, 23
- Ohio Admin. Code § 5160-27-08 ..... 3, 5, 8, 9, 11, 14, 18, 19, 23
- Ohio Admin. Code § 5160-27-08(B) 3, 5, 8, 9, 11, 14, 18, 19, 23
- Ohio Admin. Code § 5160-43-04 ..... 3, 5, 8, 9, 11, 14, 18, 19, 23

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit, entered May 19, 2025, is unpublished and is reproduced in the Appendix at A.

The order of the court of appeals denying rehearing en banc, entered July 8, 2025, is reproduced in the Appendix at B.

The judgment of the United States District Court for the Northern District of Ohio, entered August 2, 2023, is unpublished and is reproduced in the Appendix at C.

JURISDICTIONAL STATEMENT

The judgment of the United States District Court for the Northern District of Ohio was entered on August 2, 2023. The United States Court of Appeals for the Sixth Circuit affirmed the judgment on May 19, 2025. The court of appeals denied rehearing en banc on July 8, 2025.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(The following provisions are reproduced or cited as directly implicated in this Petition.)

U.S. Constitution

- **U.S. Const. amend. V** — "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury; … nor be deprived of life, liberty, or property, without due process of law."

- **U.S. Const. amend. VI** — "In all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defence."

Federal Statutes

- **18 U.S.C. § 1028A (Aggravated Identity Theft)** — Mandates a consecutive two-year sentence where a defendant "knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person" during and in relation to certain predicate offenses.

- **18 U.S.C. § 1347 (Health Care Fraud)** — Prohibits knowingly and willfully executing a scheme to defraud a health care benefit program, or to obtain money or property under false pretenses in connection with delivery or payment of

health care services.

- **18 U.S.C. § 1001 (False Statements)** — Criminalizes knowingly making false statements or representations in any matter within the jurisdiction of the federal government.

- **18 U.S.C. § 3161(c)(1) (Speedy Trial Act)** — Requires trial to commence within 70 days of indictment or initial appearance, absent valid exclusions or continuances.

Federal Rules of Criminal Procedure

- **Rule 6(f)** — Requires concurrence of at least 12 grand jurors to return an indictment and return in open court.

- **Rule 7(a)** — Mandates indictment for all felony offenses.

- **Rule 7(c)(1)** — Requires a "plain, concise, and definite" statement of the essential facts constituting the offense charged.

- **Rule 7(e)** — Limits amendment of an indictment absent grand jury resubmission.

- **Rule 10** — Requires arraignment in open court on the indictment or information.

- **Rule 30** — Governs jury instructions, requiring proper statement of the law and opportunity to object.

- **Rule 52(b)** — Plain error rule: permits relief on errors affecting substantial rights even if not raised below.

Federal Rules of Appellate Procedure

- **FRAP 25(a)(2)(C)** — Establishes inmate filing rule (mailbox rule) for timeliness of pro se filings.

- **FRAP 46(c)** — Addresses attorney misconduct and discipline in appellate proceedings.

Supreme Court Rules

- **Rule 10(a), (c)** — Standards for granting certiorari: conflicts among circuits and important federal questions.

Ohio Administrative Code

- **Ohio Admin. Code § 5122-29-30** — Governs CPST and TBS services; requires QMHS services to be supervised and prohibits independent billing.

- **Ohio Admin. Code § 5160-27-01** — Defines Medicaid-eligible community behavioral health services and credentialing requirements.

- **Ohio Admin. Code § 5160-27-08** — Requires licensed supervisory oversight for QMHS documentation and billing.

- **Ohio Admin. Code § 5160-27-08(B)** — Specifies co-signature requirements for Medicaid reimbursement where services are rendered by unlicensed staff.

- **Ohio Admin. Code § 5160-43-04** — Establishes requirements for Medicaid provider agreements and billing authority.

STATEMENT OF THE CASE

Petitioner Eric D. King worked as a Qualified Mental Health Specialist (QMHS) at Eye for Change, a Cleveland community mental health provider. In this entry-level role, he

prepared progress notes documenting case-management services. He held no professional license, no billing authority, and no supervisory access to Medicaid systems.

Petitioner was not named in the government's original 2020 indictment. A superseding indictment returned on May 27, 2021 (Doc. 134), first added him as a defendant, alleging one count of conspiracy, two counts of health-care fraud, and two counts of false statements. On April 20, 2023, a supplemental indictment (Doc. 613) expanded the charges to include aggravated identity theft under 18 U.S.C. § 1028A. On July 18, 2023, the government filed an "Amended Indictment" (Doc. 770) that was never returned by a grand jury, never arraigned in open court, and bore no foreperson's signature. The Amended Indictment materially expanded the case in violation of Rules 6(f), 7(e), and 10. It described Petitioner as providing "counseling services" outside his QMHS scope. It added new billing-code and bonus-pay theories absent from prior indictments. It introduced new CPT billing codes and client-specific claim numbers never presented to the grand jury. It renumbered aggravated identity theft counts as 25–30. And it embedded selectively edited text messages portraying Petitioner as central to a conspiracy, despite those allegations never being reviewed by the grand jury.

Further, the Amended Indictment referred to a generic "Company 2" but never identified Life Enhancement Services (LES) by name, even though the allegations and client records were tied to that entity. Although Petitioner had left Eye for Change for an opportunity at LES, the government relied on these clients to sustain charges without naming the company or calling its supervisors. The only LES witness, Mr. Abubaker, testified that he never met Petitioner, had no knowledge of him fabricating notes, and

confirmed that LES supervisors—not Petitioner—reviewed QMHS documentation. By expanding the case to encompass an unindicted and unnamed company while declining to charge its credentialed supervisors, the government deprived Petitioner of notice, grand-jury review, and adversarial testing on an entire category of allegations.

At trial, the government pursued this amended theory, compounding prejudice by portraying Petitioner as a licensed counselor—asking whether he conducted "counseling sessions" or made diagnoses, activities outside the QMHS role. This narrative mirrored discovery materials tied to another individual, Eric L. King Sr., a licensed professional clinical counselor eligible to bill Medicaid for Therapeutic Behavioral Services (TBS). By contrast, Petitioner was unlicensed, not authorized to bill TBS, and limited to QMHS case-management under CPST code H0036.

Government discovery also included provider-contract records showing that billing authority was tied to Eric L. King Sr., not Petitioner. Yet trial counsel Timothy Hess failed to investigate these records, never disclosed them to Petitioner, and did not raise the identity issue at trial. The billing claims introduced by the government were incomplete: they omitted any licensed billing provider, listed Bailey—who also lacked credentials—and showed Petitioner only as a "rendering provider," despite his lack of billing authority. This failure to object or investigate deprived Petitioner of adversarial testing on a central issue of identity and billing authority.

The only supervisory witness called was Robert Spencer, who testified that clients consistently confirmed receiving services from Petitioner and expressed satisfaction. No

licensed clinical directors or billing-authorized supervisors were indicted or called to testify, leaving the jury with an incomplete view of agency operations and billing practices.

The jury acquitted Petitioner of conspiracy but convicted him of aggravated identity theft, health care fraud, and false statements. The district court imposed a term of imprisonment.

On appeal (No. 24-3095), Petitioner's first appellate counsel filed a limited brief omitting structural and constitutional claims. Successor counsel refused to submit either a merits brief or an Anders filing, dismissed Petitioner's pro se submissions without review, and left the appeal without adversarial testing. The Sixth Circuit declined to consider Petitioner's filings, affirmed in an unpublished opinion, and denied rehearing en banc on July 8, 2025. Petitioner now seeks review by this Court.

RULE 10 INTRODUCTION

This case presents questions of exceptional national importance and entrenched circuit conflict.

First, the Sixth Circuit misapplied *Dubin v. United States*, 599 U.S. 110 (2023), by affirming aggravated identity theft convictions where identity was not the "means of fraud." Other circuits, including the Second and Eleventh, have reversed such

convictions post-*Dubin*, creating a split that leaves defendants in some jurisdictions facing mandatory sentences while others are spared for identical conduct.

Second, Petitioner was prosecuted on charging instruments that were constitutionally defective from the outset. The Superseding Indictment first naming him falsely alleged that he "provided counseling services to Medicaid recipients," inflating his role with credentials and billing authority he never possessed, and omitted essential elements required under § 1028A. Trial then proceeded on an Amended Indictment never returned by a grand jury, never signed by a foreperson, never subject to arraignment, and expanded to include new clients from an unindicted company.

Third, Petitioner was denied meaningful counsel at every stage. Trial counsel executed unauthorized waivers of Petitioner's Speedy Trial rights without consent and allowed trial to proceed on an unreturned indictment. Petitioner's first appellate counsel omitted preserved constitutional claims from briefing, ensuring they were never reviewed on the merits. Successor counsel then mischaracterized Petitioner's pro se filings as "non-meritorious," refused to file a merits or *Anders* brief, and left the appeal without adversarial testing. The result was a complete collapse of advocacy.

Fourth, the case raises extraordinary Equal Protection concerns. In *United States v. O'Lear*, 93 F.4th 398 (6th Cir. 2024), the same district and circuit rejected as implausible the theory that a subordinate masterminded Medicaid fraud—when that subordinate was white and licensed. Yet here, Petitioner, a Black, unlicensed subordinate, was convicted on the very theory deemed a "bald-faced lie" in *O'Lear*. With both outcomes affirmed in

the Sixth Circuit on materially indistinguishable facts, this contradiction highlights a racially selective application of law that erodes confidence in federal prosecutions.

The rights at issue—statutory fidelity under *Dubin*, the grand jury safeguard, the right to effective counsel, and equal protection—are not procedural technicalities but structural guarantees at the core of due process. This Court has long held that such defects—convictions based on misapplied statutes, unreturned indictments, constructive denials of effective counsel, or racially selective prosecutions—are structural in nature, defy harmless-error review, and mandate automatic reversal. Certiorari is warranted to resolve entrenched circuit splits, restore national uniformity, and reaffirm that federal defendants cannot be convicted where these constitutional foundations are ignored.

I. MISAPPLICATION OF SUPREME COURT PRECEDENT IN DUBIN: A FUNDAMENTAL ERROR OF LAW

This case squarely presents whether § 1028A can be applied to a low-level, non-credentialed worker who lacked billing authority or supervisory access and whose only ministerial duties was preparing progress notes that included client names under supervisory review.

A. The Government's Theory Conflicts with the Supreme Court's Holding in *Dubin*

In *Dubin v. United States*, 599 U.S. 110 (2023), the Court clarified that § 1028A liability applies only when another's identity is the means by which fraud is executed, not when identity is used incidentally or administratively. There, a licensed psychologist overbilled Medicaid using a patient's real name, and the Court held the name was not the mechanism of fraud. The government's theory here falls even further outside the statute's scope.

The government relied on Trial Exhibit 512 (Ex. A.1), a claims table that omitted the billing provider name and NPI, creating the false impression Petitioner had billing authority. Discovery records (Ex. A.2) show every claim tied to Petitioner's name was billed under NPI 1780136275, assigned to agency owner Alfonzo Bailey. Petitioner appeared only as "rendering provider," a para-professional designation without billing authority under Ohio Admin. Code §§ 5160-27-01 and 5122-29-30. The CMS NPI Registry (Ex. A.3) confirms Bailey—not Petitioner—was the billing provider of record. By concealing this field, the government distorted the very identity of the alleged fraud.

As a Qualified Mental Health Specialist (QMHS), a para-professional, Petitioner was legally barred from billing Medicaid or performing TBS (H2019) services independently. His identity functioned only in a non-billing role—precisely the kind of incidental use that *Dubin*, 599 U.S. 110 (2023), holds insufficient for § 1028A.

Further official documentary record reinforces this limited role. The Supervisor Justification Form (Ex. B, Feb. 13, 2020, signed by Robert Spencer, LISW-S) identified him only as a QMHS whose notes required supervisory approval. The Supervision Log

(Ex. C, maintained by Spencer) documents routine note submission and review, while staffing records (Ex. D, Eye for Change) list credentialed TBS providers such as Michael Jackson—not Petitioner.

Finally, client treatment records, corroborated by both direct and cross-examination testimony, show Petitioner was miscast as a counselor when in fact he served only as a QMHS. The treatment plans for Essence Hill and Nicholas Dottorre identify Michael Jackson—not Petitioner—as the responsible TBS provider (Exs. E.1–E.2). Both clients testified that they voluntarily signed up for services with Petitioner and confirmed he neither made diagnoses nor provided counseling sessions, consistent with his QMHS role (Exs. E.3–E.4; Trial Tr. Vol. II, pp. 357, 363; Vol. III, pp. 476, 496–97). Supervisor Robert Spencer reinforced this picture, testifying that clients were satisfied with Petitioner's services (Ex. F.1, Trial Tr. Vol. IV, p. 787) and emphasizing that only supervisors had billing access, while QMHS staff like Petitioner were limited to preparing progress notes. He further admitted that many notes went "straight to billing" without review and that others—including Bailey, Evans, and Kellam—had system access (Ex. F.2, Trial Tr. Vol. IV, pp. 800–01).

The government pointed to Petitioner's electronic signature on progress notes and his appearance as "provider" on claims to imply billing authority. Yet none of the progress notes produced for Eye for Change bore a licensed supervisor's co-signature, as required by Ohio Admin. Code §§ 5160-27-08 and 5122-29-30. Even if notes contained inaccuracies, they were not billing instruments and could not supply the "means" element of

Aggravated Identity Theft (§ 1028A), the falsity required for Health Care Fraud (§ 1347), or the material falsehood required for False Statements (§ 1001).

Routine ministerial documentation, prepared without billing authority or intent to defraud, cannot be transformed into the mechanism of fraud. See Dubin, 599 U.S. at 125 (holding that "the means of identification specifically must be at the crux of what makes the conduct criminal"). As recognized in *United States v. Klein*, 543 F.3d 206, 213 (5th Cir. 2008); *United States v. Natale*, 719 F.3d 719, 740 (7th Cir. 2013); *United States v. Semrau*, 693 F.3d 510, 526 (6th Cir. 2012); and *United States v. McLean*, 715 F.3d 129, 137 (4th Cir. 2013). Because the conviction rests on redacted Medicaid data that omitted the true billing provider, the defect is structural rather than evidentiary and squarely raises a federal question warranting review under Supreme Court Rule 10(a) and (c).

B. Administrative-Level Fraud and Sixth Circuit Precedent Confirm Petitioner's Conduct Falls Outside § 1028A

Discovery evidence confirms billing misuse occurred at the administrative level, beyond Petitioner's control. Co-defendant David Brown reported that Bailey, the owner, directed staff to fabricate narratives and billed under Sandra Wilson's NPI even though she did not actually work at Eye for Change. "During his initial months at Eye for Change, Petitioner was subject to de facto supervision by agency owner Alfonzo Bailey, who voluntarily assumed that role and held sole control over billing. Petitioner was later reassigned to licensed supervisors—first Deandra Evans, then Robert Spencer, whose approval was

required for all progress notes. Only after indictment did Petitioner learn Bailey lacked credentials to supervise or bill Medicaid.

This broader pattern of Bailey's administrative-level fraud was corroborated by multiple witness interviews and trial testimony. These accounts independently confirmed that Petitioner neither directed billing nor engaged in TBS services (Ex. G.1, Brown Interview, Points 8, 13, Gov't Discovery, Feb. 2023), and that Bailey billed under the higher-tier TBS H2019 code while Petitioner, as a QMHS, was limited to the lower-tier CPST H0036 code (Ex. G.2, Brown Interview, Point 16). Co-defendent Mitchell Townsend told FBI Agent Krista Toole that Bailey billed under Townsend's NPI and that TBS services were wrongly attached to staff names; Toole herself raised TBS during questioning, demonstrating investigators knew it was separate from Petitioner's QMHS role (Ex. G.3, Townsend FBI Interview, Feb. 15, 2023, pp. 8, 19–21). On cross-examination, Toole confirmed that Eye for Change inflated billing rates years before Petitioner's employment, misused licensed providers' Medicaid numbers, and that text messages directing falsification did not implicate Petitioner (Ex. G.4, Trial Tr. Vol. V, pp. 1023, 1031-32, 1039–40, 1049-50, 1052). A prior Joint Motion Hearing further confirmed that Eye for Change relied on generic logins, preventing attribution of billing entries to Petitioner or any individual staff member (Ex. H, Joint Mot. Hr'g Tr., Feb. 11, 2022, Doc. 360, PageID 1683–84). *United States v. Medlock*, 792 F.3d 700, 705 (6th Cir. 2015); *United States v. Vance*, 871 F.2d 572, 575–76 (6th Cir. 1989), incidental identity linkage or misattribution cannot sustain § 1028A. The administrative firewall severs causation; *Dubin*, 599 U.S. 110 (2023), controls.

Because Petitioner's documentation could not trigger reimbursement without supervisory approval, the causal link between his actions and any alleged fraud was severed. Without billing authority, system access, or intent, Petitioner could not have used client identities as the mechanism of fraud. His § 1028A conviction is therefore irreconcilable with *Dubin*, 599 U.S. 110 (2023).

C. The Supplemental Indictment and Jury Instructions Failed to Incorporate *Dubin*'s Standard, Resulting in Structural and Constitutional Error

The Supplemental Indictment (Doc. 613) charged that Petitioner "used" identifiers "during and in relation to" health-care fraud—the theory rejected in *Dubin v. United States*, 599 U.S. 110, 118–21 (2023). (Ex. I, ¶ 14 & Counts 107–112). The Final Jury Instructions repeated that error, permitting conviction without finding that identity use was the mechanism of fraud. (Ex. J, Jury Instructions at 25, PageID 3747). By omitting this essential element, the court violated Fed. R. Crim. P. 7(c)(1) and 30.

Because the missing element was contested and never found, the omission affected substantial rights and constitutes plain error. See *United States v. Olano*, 507 U.S. 725, 734–35 (1993). Proceeding on such a defective theory also contravenes structural indictment requirements. See *Stirone v. United States*, 361 U.S. 212, 218–19 (1960).

The prejudice was compounded by omission of Ohio's regulatory firewall: QMHS staff cannot bill Medicaid or provide TBS (H2019). See Ohio Admin. Code §§ 5160-27-08,

5122-29-30. Without that safeguard, the jury was never instructed on the limits of Petitioner's role.

By failing to align charges and instructions with *Dubin*, the court denied Petitioner his Fifth Amendment right to notice and due process and his Sixth Amendment right to a jury finding on every element. These defects—individually structural and cumulatively prejudicial—undermine the integrity of the proceeding.

D. Ineffective Assistance of Counsel for Failing to Raise *Dubin*

Dubin, 599 U.S. 110 (2023), issued June 8, 2023—weeks before trial. Yet counsel never raised it in pretrial motions, at trial, in the Rule 29 motion for acquittal, or post-trial, despite Petitioner flagging it (Ex. K, Text Message Evidence from Petitioner to Counsel Regarding *Dubin*). Failing to research and apply controlling law is deficient under *Strickland v. Washington, 466 U.S. 668, 688–96* (1984), and *Hinton v. Alabama, 571 U.S. 263, 274–75* (2014), and prejudicial where it permits conviction on an invalid legal theory. Competent counsel would have demanded a *Dubin*-compliant indictment and jury instructions and invoked the Ohio Administrative Code provisions that barred QMHS' from billing Medicaid or providing TBS services. See Ohio Admin. Code §§ 5160-27-08; 5122-29-30. These authorities confirm Petitioner's role could not lawfully support a Medicaid claim, meaning identity use in his notes was—at most—administrative background use excluded by *Dubin*.

The omission allowed conviction on a pre-*Dubin* standard; relief is warranted under *United States v. Olano, 507 U.S. 725, 734–35* (1993), or as structural error under *United States v. Cronic, 466 U.S. 648, 659–60* (1984). This deprived him of effective assistance and rendered the outcome unreliable. A new trial or vacatur of the § 1028A conviction is required—whether analyzed as plain error under *Olano* or structural error under *Cronic*.

E. Intercircuit Conflict, Selective Prosecution, and Structural Error

Post-*Dubin*, circuits have reversed convictions where identity use was merely administrative. See *United States v. Kwakye*, No. 22-1051, 2024 WL 1077587, at *3 (2d Cir. Mar. 13, 2024); *United States v. Gbenedio*, No. 21-11636, 2024 WL 246387, at *2 (11th Cir. Jan. 23, 2024). Petitioner—an unlicensed QMHS with no billing authority—falls squarely within the category excluded by *Dubin*. Yet unlike *Kwakye* and *Gbenedio*, his conviction was affirmed, creating a clear conflict over § 1028A's scope.

The charging history compounds this disparity. § 1028A counts were added against Petitioner only after he rejected a plea offer, though other defendants with direct billing involvement were not charged with aggravated identity theft under § 1028A. The April 20, 2023 Supplemental Indictment (Doc. 613, ¶ 14, Counts 107–115, PageID 3421-3422) added aggravated identity theft counts solely against Petitioner and co-defendant Townsend. As the last to decline a plea, Petitioner was uniquely targeted, raising the appearance of

retaliatory and selective prosecution. See *United States v. Goodwin*, 457 U.S. 368, 372–73 (1982).

This charging pattern violates the Fifth Amendment's Due Process Clause and equal protection principles. *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978); *United States v. Armstrong*, 517 U.S. 456, 465 (1996). Because the prosecution pursued an invalid legal theory while penalizing the exercise of trial rights, the defects were structural—*infecting the entire trial process* and rendering the result inherently unreliable. *Arizona v. Fulminante*, 499 U.S. 279, 309–10 (1991).

The Sixth Circuit's failure to apply *Dubin*, combined with inequitable charging decisions and the appearance of retaliatory and selective prosecution, establishes constitutional and structural violations warranting this Court's review.

I. Conclusion

The government's theory of aggravated identity theft—endorsed by the Sixth Circuit—criminalizes conduct outside the reach of 18 U.S.C. § 1028A as clarified in *Dubin v. United States*, 599 U.S. 110 (2023). As an unlicensed QMHS with no billing authority or system access, Petitioner prepared only supervised notes reflecting services clients confirmed receiving. Under Ohio Medicaid policy, such documentation could not trigger reimbursement.

Dubin excludes background or administrative identity use, yet conviction rested solely on routine documentation. The indictment never alleged—and the jury was never instructed to find—that identity misuse was the mechanism of fraud. Counsel failed to invoke *Dubin*, and the Sixth Circuit affirmed while other circuits reversed in comparable circumstances. See *Kwakye*, 2024 WL 1077587 (2d Cir. 2024); *Gbenedio*, 2024 WL 246387 (11th Cir. 2024).

The record evidence supports these claims. See Exs. A–L. To prevent erosion of *Dubin*, safeguard due process, and correct these structural violations, Petitioner respectfully asks this Court to grant certiorari, reverse the § 1028A conviction, or remand for reconsideration under controlling law.

II. INEFFECTIVE AND INADEQUATE INDICTMENT: STRUCTURAL CHARGING DEFECTS, FACTUAL MISSTATEMENTS, AND FAILURE TO RETURN FINAL INDICTMENT TO A GRAND JURY IN VIOLATION OF THE FIFTH AMENDMENT

This case squarely presents whether a defendant may be tried and convicted on charges that were never constitutionally alleged, accurately framed, or properly returned by a grand jury.

A. The Superseding Indictment Failed to Charge a Crime with Constitutional Sufficiency

The Superseding Indictment (Ex. A, Superseding Indictment, Doc. 134, May 27, 2021, ¶ 16, PageID 450–52) named Petitioner in Count 2 via vague group language—"provided counseling services"—falsely implying licensure and billing authority. As this Court held in *Russell v. United States*, 369 U.S. 749, 763–64 (1962), an indictment must clearly inform the accused of the nature and circumstances of the offense. The Sixth Circuit has likewise reversed where charges rested on such conclusory allegations. *United States v. Salisbury*, 983 F.2d 1369, 1374–75 (6th Cir. 1993).

The deficiency became fatal after *Dubin v. United States*, 599 U.S. 110 (2023), which clarified that identity misuse must be the "crux" of the offense to sustain § 1028A. The indictment never alleged identity misuse as the means of fraud, and no later charging document cured this omission. As *United States v. Du Bo*, 186 F.3d 1177, 1179 (9th Cir. 1999), makes clear, an indictment failing to state an offense requires dismissal regardless of trial posture.

The jury's acquittal on conspiracy (Ex. B, Jury Verdict Form, Doc. 771, Aug. 2, 2023, PageID 4683) further underscores the flaw. The government's theory of coordinated fraud collapsed, leaving no factual basis to tie Petitioner to others. By omitting essential elements under § 1028A, the indictment was void, not merely defective. See *Arizona v. Fulminante*, 499 U.S. 279 (1991); *Du Bo*, 186 F.3d at 1179. Mr. King's prosecution thus proceeded on a constitutionally deficient foundation in violation of due process.

B. The Indictment Misrepresented Mr. King's Role and Legal Authority

The Superseding Indictment (Ex. A, Superseding Indictment, Doc. 134, May 27, 2021, ¶ 16, PageID 450–452) misrepresented Petitioner as a "counselor," falsely implying licensure, billing authority, and clinical independence he never held. In reality, Petitioner was a Qualified Mental Health Specialist (QMHS), a non-licensed role limited to CPST services under supervision.

Each charge—including *Aggravated Identity Theft* (§ 1028A), *Health Care Fraud* (§ 1347), and *False Statements* (§ 1001)—was premised on billing code H2019, reserved for licensed clinicians. Petitioner's scope was CPST under H0036. Ohio law prohibits QMHS staff from billing under H2019. (Ex. C, Orientation Sheet; Ohio Admin. Code §§ 5160-27-08(B), 5122-29-30). By basing every count on an authority Petitioner did not possess, the government advanced a legally impossible theory.

Discovery confirmed this misattribution. The Paramount Medicaid provider contract in government discovery (Ex. D.1; Discovery Production 17, Item 24, Bates USAO_304323–388) actually belonged to another individual, Eric L. King Sr., a licensed professional counselor, not Petitioner. Its first page (Ex. D.2) and signed final page (Ex. D.3) confirm his identity. Yet the prosecutor told jurors Petitioner "was a counselor" at a "behavioral health counseling" agency. (Ex. E, Trial Tr. Vol. II, p. 201).

Supervisor Robert Spencer testified Petitioner was employed only as a QMHS under his supervision, "in other words, a case manager," who provided resources and direction for clients with mental problems—not counseling. All progress notes required supervisory

oversight. (Ex. F.1, Trial Tr. Vol. IV, pp. 778–779). He admitted Petitioner's notes could even go "straight to billing" without review, and that other individuals—including Bailey, Evans, and Kellam—had access to those notes. (Ex. F.2, Trial Tr. Vol. IV, pp. 800–801). Nevertheless, the government portrayed Petitioner as credentialed with independent billing authority

Courts reverse where role inflation or identity confusion prejudices the jury. *See United States v. Vance*, 871 F.2d 572, 575–76 (6th Cir. 1989) (misidentification of defendants required reversal); *United States v. Hicks*, 389 F.3d 514 (5th Cir. 2004) (misrepresentation of subordinate's role prejudicial); *United States v. Walters*, 913 F.3d 682 (7th Cir. 2019) (failure to distinguish participants violated due process). The government also had a duty under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959), to correct the false impression. Instead, it relied on it, constituting plain error under Fed. R. Crim. P. 52(b). And as *Arizona v. Fulminante*, 499 U.S. 279 (1991), makes clear, structural errors that distort trial fairness require reversal.

C. Proceeding on an Unreturned and Unarraigned Amended Indictment Violated the Fifth Amendment

The final operative indictment—the "Amended Indictment" (Doc. 770, filed July 18, 2023)—was never returned by a grand jury as required by the Fifth Amendment and Rule 7(a). Unlike the properly returned Superseding Indictment of May 27, 2021 (Doc. 134)

and the Supplemental Indictment of April 20, 2023 (Doc. 613), the Amended Indictment consolidated those prior instruments but expanded the case without resubmission.

It added new CPT billing codes such as 90791 and 90837 absent from the earlier indictments (Ex. G.1, Doc. 770, PageID 4657–58), client-specific claim numbers and service durations (Ex. G.2, Doc. 770, PageID 4677), and renumbered aggravated identity theft counts as 25–30 alleging unauthorized use of client names and Medicaid IDs (Ex. G.3, Doc. 770, PageID 4678–79). It also embedded selectively edited text messages portraying Petitioner as central to a conspiracy—allegations never reviewed by the grand jury.

The expansion further extended to client allegations, introducing five individuals—T.H., E.G., E.G., C.P., and J.M.(Ex. G.2, Doc. 770, PageID 4677),—all newly enrolled through Life Enhancement Services (LES). Notably, the Supplemental Indictment never mentioned LES or a second company at all. The Amended Indictment later referenced a generic "Company 2" (Ex. G.4, Doc. 770, ¶ 16, PageID 4653), but still never identified LES by name or explained its role. Proceeding against Petitioner on clients tied to an unindicted and undisclosed company deprived him of constitutionally required notice and grand jury review. *Russell v. United States*, 369 U.S. 749, 763–64 (1962); *Stirone v. United States*, 361 U.S. 212, 215–19 (1960).

Beyond the scope of its expansion, the Amended Indictment was also formally defective. Despite reciting "A TRUE BILL," it bore no foreperson's signature, no return date, and no record of return in open court. PACER shows it was docketed Aug. 3, 2023—after trial

began July 24 and one day after the Aug. 2 verdict. Petitioner was never arraigned on it, in violation of Rule 10.

The jury verdict (Ex. B, Jury Verdict Form, Doc. 771, Aug. 2, 2023, PageID 4683) confirms Petitioner was convicted on counts found only in the Amended Indictment. That practice violates *Stirone v. United States*, 361 U.S. 212, 215–19 (1960), which bars conviction on charges not passed by a grand jury, and *Russell v. United States*, 369 U.S. 749, 770 (1962), which demands specific notice. Other courts likewise reverse where indictments are altered without grand-jury approval. *United States v. Du Bo*, 186 F.3d 1177, 1179–81 (9th Cir. 1999).

Because neither the Superseding nor Supplemental Indictments contained thirty counts or the added billing codes, claim data, and text-message allegations, Petitioner was tried and convicted on charges never returned by a grand jury or subjected to arraignment. These defects constitute plain and structural error requiring automatic reversal.

II. Conclusion

The charging instruments in this case were constitutionally defective at every stage. The Superseding Indictment omitted essential elements and mischaracterized Petitioner's role, advancing a legally impossible theory under Ohio Medicaid law. *Russell*, 369 U.S. 749, 763–64 (1962); *Du Bo*, 186 F.3d 1177, 1179 (9th Cir. 1999). The government compounded this by portraying another individual, Eric L. King Sr., a licensed

professional counselor, not Petitioner—and failing to correct the false impression. *Brady*, 373 U.S. 83 (1963); *Napue*, 360 U.S. 264 (1959).

The defect became structural when the prosecution and court proceeded on an Amended Indictment (Doc. 770, July 18, 2023) never returned by a grand jury or read at arraignment. That document expanded the case by adding new billing-code theories and client-specific claim numbers, renumbering the aggravated identity theft counts, and introducing clients tied to Life Enhancement Services (LES), an unindicted company never presented to the grand jury. Proceeding on such charges and theories violated the Fifth Amendment's Indictment Clause and Rules 6(f), 7, and 10. *Stirone*, 361 U.S. 212, 217 (1960); *Russell*, 369 U.S. at 770.

Conviction on such defective instruments is not a procedural irregularity—it is a constitutional nullity. Structural errors of this magnitude require automatic reversal. *Fulminante*, 499 U.S. 279, 309–10 (1991). The record evidence fully supports these claims. See Exs. A–F. Certiorari is warranted to reaffirm that no defendant may be convicted on charges never constitutionally alleged, returned, or tied to an unindicted company.

III. CONSTRUCTIVE DENIAL OF COUNSEL THROUGH FORGED WAIVERS, UNRETURNED INDICTMENT, AND FAILURE TO INVESTIGATE

This case presents the rare convergence of structural trial-level defects: unauthorized Speedy Trial waivers, conviction on an unreturned and unarraigned indictment, reliance

on a false narrative of licensure, and failure to investigate exculpatory audit-trail evidence. Together, these errors deprived Petitioner of the adversarial testing guaranteed by the Sixth Amendment.

A. Unauthorized and Invalid Waivers of Speedy Trial Rights

The Sixth Amendment and the Speedy Trial Act, 18 U.S.C. § 3161(c)(1), require a federal trial to begin within 70 days of indictment or first appearance unless time is validly excluded. Under *Zedner v. United States*, 547 U.S. 489, 500–01 (2006), any waiver must be knowing, voluntary, and made on the record in open court to ensure the defendant's understanding and voluntariness. No such hearing occurred here, and no transcript exists showing Petitioner's consent.

The record instead shows two defective forms. The first, filed August 19, 2021 (Ex. A.1, Doc. 255, PageID 925–26), bears only counsel Timothy Hess's signature and a digital entry of Petitioner's name, with no prosecutor or judge signatures. The second, executed August 20 and filed August 23, 2021 (Ex. A.2, Doc. 272, PageID 979–80), bears the judge's and prosecutor's signatures but again only a digital insertion for Petitioner, which he never authorized.

Petitioner first learned of these waivers on October 5, 2021, through a text message (Ex. A.3). The following day, he instructed new counsel Gary and Nicole Springstead to challenge them (Ex. A.4). They refused, leaving the defect unremedied.

Irregular documents cannot substitute for the constitutional requirement of an in-court waiver. *Carnley v. Cochran*, 369 U.S. 506, 516 (1962), held that waiver of fundamental rights cannot be presumed from a silent record, and *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938), instructs courts to presume against waiver absent proof. Here, the silent record confirms no valid relinquishment occurred. The statutory 70-day clock under § 3161(c)(1) continued to run with no lawful exclusion, and constitutionally, Petitioner's Sixth Amendment right to a speedy trial was never waived in open court. He was thus forced to trial without valid waiver—a structural error requiring reversal. *Zedner*, 547 U.S. 489, 509 (2006).

B. Trial Counsel's Failure to Object to the Unreturned Amended Indictment Caused Structural Harm

The Sixth Amendment guarantees not only a valid indictment under the Fifth Amendment but effective counsel to enforce that guarantee. Counsel failed in that duty when the case proceeded on the Amended Indictment (Doc. 770, July 18, 2023), which was never returned by a grand jury, bore no foreperson's signature, and was not docketed until August 3, 2023—one day after the August 2 verdict. Petitioner was never arraigned on it, in violation of Rules 6(f), 7(e), and 10.

Competent counsel would have objected. Unlike the properly returned Superseding (Doc. 134) and Supplemental (Doc. 613) Indictments, the Amended Indictment (Doc. 770) materially expanded the case without grand-jury approval: it added new CPT billing

codes such as 90791 and 90837 (Ex. B.1, PageID 4657–58, 4660–61), inserted client claim numbers and service durations (Ex. B.2, PageID 4677), renumbered aggravated identity theft counts as 25–30 (Ex. B.3, PageID 4678–79), and introduced five new clients—T.H., E.G., E.G., C.P., and J.M.—all newly enrolled through Life Enhancement Services (LES), an unindicted company never presented to the grand jury (Ex. B.4, PageID 4677). Yet counsel never moved to strike or limit trial to grand-jury–returned charges, and the jury was instructed to deliberate on this unreturned indictment. Final Jury Instructions (Ex. C, Trial Tr. Vol. VI, 1409–1410, Aug. 1, 2023). By standing silent, counsel permitted conviction on a constitutionally void instrument.

This omission was not a tactical choice but a collapse of adversarial testing. *Stirone v. United States*, 361 U.S. 212, 217 (1960), and *Russell v. United States*, 369 U.S. 749, 770 (1962), establish that trial on charges not returned by a grand jury is a nullity. *United States v. Du Bo*, 186 F.3d 1177, 1179–81 (9th Cir. 1999), holds reversal automatic where indictments omit elements or are altered without grand-jury approval. By failing to enforce these safeguards, trial counsel permitted conviction on a void indictment—structural error under *United States v. Cronic*, 466 U.S. 648, 659–60 (1984).

C. Trial Counsel's Failure to Challenge False Jury Instructions and Opening Misrepresentations Constitutes Plain and Structural Error

At trial, the court's instructions and the prosecution's statements distorted both the law and Petitioner's role. Trial counsel stood silent, failing to object or preserve the issues. This collapse of adversarial testing produced plain error under *United States v. Olano*, 507 U.S. 725, 732–34 (1993), and structural error under *Cronic*, 466 U.S. 648, 659–60 (1984).

The jury was first misled by a preliminary instruction on Count 1, which stated Petitioner was charged with "submitting or causing to be submitted billings to Medicaid for counseling services not actually performed" (Ex. D.1, Trial Tr. Vol. II, p. 267). This was legally impossible. As a Qualified Mental Health Specialist (QMHS), Petitioner lacked authority to bill Medicaid independently. Ohio Admin. Code § 5122-29-30 restricts QMHS staff to CPST (H0036) under supervision. Counsel did not object.

The government then reinforced this false narrative in opening statements, telling jurors Petitioner was a "counselor" (Ex. D.2, Trial Tr. Vol. II, p. 277)—and claiming he fabricated notes: "He was lying. He was making it up." (Ex. D.3, Trial Tr. Vol. II, p. 280). Yet the record showed otherwise. A Joint Motion Hearing confirmed generic logins prevented attribution of notes (Ex. E, Doc. 509, PageID 1876–77).

The prosecution repeated these misrepresentations in closing: "He needed to create these notes in order to get paid, and they had to be a certain way to be acceptable for Medicaid." (Ex. D.4, Trial Tr. Vol. VI, pp. 1364–65). This was misleading. Petitioner's notes were clinical records required for treatment documentation and, at most, for internal payroll tracking. But under Ohio Admin. Code §§ 5160-27-08(B) and 5122-29-30,

such notes were valid only when co-signed by a licensed supervisor and could not serve as independent Medicaid billing instruments. Finally, the jury was instructed to deliberate on "Counts 1 through 30." —Final Jury Instructions, Aug. 1, 2023 (Ex. B, Doc. 770, PageID 3747). Only the Amended Indictment (Doc. 770, July 18, 2023) contained thirty counts, including aggravated identity theft Counts 25–30, but it was never returned by a grand jury or arraigned under Rule 10. Counsel's silence permitted conviction on charges that lacked constitutional validity.

These overlapping defects—false preliminary instructions, role misrepresentations, unsupported accusations, and reliance on an unreturned indictment—struck at the trial's framework. Under *Stirone*, conviction on charges not returned by a grand jury is a nullity. Under *Olano*, they were clear, obvious, and outcome-determinative. Under *Cronic*, the absence of adversarial testing renders the verdict unreliable. Collectively, these errors amount to cumulative and structural violations of the Fifth and Sixth Amendments, requiring automatic reversal.

Section III: Continued Constructive Denial of Counsel and Violation of Appellate Rights

The collapse continued on appeal. Petitioner was abandoned by two successive lawyers: the first omitted preserved constitutional claims; the second mischaracterized his pro se brief, refused to file a merits or *Anders* brief, and left the appeal without advocacy.

Deprived of both counsel's voice and his own, the process became the complete denial of adversarial testing condemned in *Cronic* and *Penson.*

A. Legal Framework: Structural Error from Constructive Denial of Counsel on Appeal

The Sixth Amendment guarantees both the right to counsel and, at trial, the right to self-representation. Either safeguard protects the accused; where neither is honored—when counsel abandons advocacy and the defendant is barred from presenting his own case—the adversarial process collapses. That collapse is not ordinary ineffective assistance but structural denial.

In *United States v. Cronic*, 466 U.S. 648 (1984), this Court held prejudice is presumed where counsel wholly fails to test the prosecution's case. Likewise, in *Penson v. Ohio*, 488 U.S. 75 (1988), prejudice was presumed when appellate counsel abandoned the client without a merits brief. And while *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163 (2000), makes clear there is no constitutional right to self-representation on appeal, it also confirms that due process requires meaningful review when courts accept or block pro se filings.

This case reflects that convergence. Petitioner's first appellate counsel, Gary and Nicole Springstead, omitted preserved constitutional claims, notably the forged Speedy Trial waivers. Successor counsel, Kevin Schad, compounded the harm: he mischaracterized Petitioner's pro se claims as "non-meritorious" without review, refused to file an *Anders*

brief, see *Anders v. California*, 386 U.S. 738 (1967), and left Petitioner without advocacy. Meanwhile, the Sixth Circuit excluded his pro se submissions from review. This combination—omission by first appellate counsel, abandonment and mischaracterization by successor counsel, and judicial refusal to review—produced a constitutional vacuum, the precise structural denial recognized in *Cronic* and *Penson*.

B. Constructive Denial of Counsel During Direct Appeal

From October 2024 through April 2025, the appellate process collapsed into a complete denial of advocacy. Successor counsel Schad turned openly hostile, calling Petitioner a "liar" and refusing support (Ex. A), creating a conflict of interest that FRAP 46(c) and ABA standards required him to resolve by withdrawal. Instead, he remained counsel of record and obstructed meaningful review.

When Petitioner attempted to protect his rights, the Court blocked his efforts. On December 26, 2024, he submitted a Declaration of Inmate Filing certifying timely mailing of his pro se supplemental brief under FRAP 25(a)(2)(C) (Ex. B), yet the Court refused to docket it. Days later, Schad conditioned representation on personal disclosures (Ex. C) and refused to brief preserved constitutional claims. Petitioner then filed a 42-page pro se brief raising structural errors (Ex. D), invoked Faretta v. California, 422 U.S. 806 (1975), in seeking to proceed independently (Ex. F), and moved to withdraw counsel, (Ex. G), but each filing was rejected as impermissible hybrid representation (Exs. E, H).

Thus, the Court denied both self-representation and effective representation, leaving no avenue for adversarial testing.

The collapse was compounded when the Government was allowed to expand the record while Petitioner was silenced. On January 29, 2025, the Government moved to strike Petitioner's pro se filing (Ex. J), while Schad simultaneously misrepresented Petitioner's submissions and denied his *Faretta* invocation (Ex. I). Petitioner rebutted these misstatements (Ex. K), but the Court refused to consider it. Later, Petitioner filed a Rule 28(j) letter highlighting plain and structural error (Ex. L), followed by a supplemental memorandum (Ex. N), but again only the Government's response was accepted (Ex. M).

Together, Exhibits A–N show that the appellate process collapsed: counsel disparaged his client, refused to file a merits or *Anders* brief, mischaracterized pro se submissions, and blocked constitutional claims from review, while the Court barred Petitioner's own filings but accepted the Government's. This is the precise constructive denial of appellate advocacy condemned in *United States v. Cronic*, 466 U.S. 648 (1984), and *Penson v. Ohio*, 488 U.S. 75 (1988).

C. Continued Constructive Denial After Judgement

The collapse of advocacy persisted even after the Court's May 19, 2025 decision. Because Petitioner never received timely notice of judgment, deadlines were missed, counsel withdrew only after harm was done, and professional misconduct continued.

On June 5, 2025, Petitioner filed a sworn declaration (Ex. O) and a petition for rehearing en banc (Ex. P), explaining that he never received timely notice of the Court's decision. That same day, counsel Schad belatedly moved to withdraw (Ex. Q)—months after Petitioner's own motion (Ex. G) and only after the appeal had already been denied—leaving Petitioner to act pro se.

The confusion was compounded by conflicting accounts of mailing. Schad claimed he sent the decision on May 20 (Ex. R), but when Petitioner demanded proof and a tracking number (Exs. S–U), none was produced. Hazelton mailroom logs later confirmed Petitioner did not receive the decision until June 18 (Ex. Y), too late to meet en banc deadlines.

Meanwhile, Schad contacted an outside attorney without Petitioner's consent (Ex. V), a breach of confidentiality. Petitioner attempted to correct the record, submitting a handwritten request for delivery logs (Ex. W) and filing a pro se response opposing Schad's withdrawal motion (Ex. X). Yet misconduct continued: even after withdrawal was granted, Schad sent hostile TRULINCS messages accusing Petitioner of lying about mail receipt (Ex. Z).

Exhibits O–Z confirm that appellate review never functioned in a constitutionally meaningful way. Petitioner was denied timely notice, forced into pro se filings, and left with conflicted counsel whose conduct obstructed rather than advanced his rights. Alongside Exhibits A–N, they show a continuous collapse of advocacy before and after judgment, the very type of constructive denial condemned in *Cronic* and *Penson*.

Conclusion

The defects strike core constitutional guarantees. Trial counsel's unauthorized execution of Petitioner's Speedy Trial waivers deprived him of control over his defense. The court's reliance on an unreturned Amended Indictment invited conviction on charges never reviewed by a grand jury, in violation of the Fifth Amendment and Rules 7 and 10. The prosecution's false narrative—that Petitioner was a licensed counselor who fabricated notes—went unchallenged, compounding the harm.

Each of these trial-stage errors independently constitutes structural error. Even if not deemed structural, they satisfy Rule 52(b): clear, obvious, and outcome-determinative. *Arizona v. Fulminante*, 499 U.S. 279 (1991).

The collapse continued on appeal. First appellate counsel Springstead failed to brief preserved constitutional claims. Successor counsel Schad mischaracterized Petitioner's pro se brief as "non-meritorious," refused to file a merits or *Anders* brief, and left the appeal without adversarial testing. Meanwhile, the Sixth Circuit docketed Petitioner's filings but refused to consider them, even while accepting and addressing the Government's responses. This selective treatment contravened FRAP 25(a)(2)(C) and FRAP 46(c), compounding the constructive denial of appellate advocacy condemned in *Penson*, 488 U.S. 75 (1988), and *Cronic*, 466 U.S. 648 (1984).

This was not an isolated lapse but a continuous breakdown that silenced the defense. Because trial and appeal proceeded without adversarial engagement or review of Petitioner's arguments, the judgment cannot stand. The record evidence fully supports these claims. See Exs. A–E (trial-stage constructive denial) and Exs. A–Z (appellate-stage denial of counsel). Certiorari is warranted to reaffirm that proceedings infected by forged waivers, unreturned indictments, prosecutorial misrepresentations, and appellate abandonment require automatic reversal.

IV. EQUAL PROTECTION AND RACIAL DISPARITIES: THE O'LEAR CONTRAST

The Constitution forbids treating similarly situated defendants differently by race. Yet in *O'Lear*, a white subordinate was shielded from mastermind liability, while Petitioner—a Black, unlicensed subordinate—was convicted on that very theory.

A. Legal Framework: Equal Protection and Selective Prosecution

This case meets Supreme Court Rule 10(a) and (c) because it presents both intra-circuit inconsistency and a constitutional question of exceptional importance. Equal Protection forbids prosecuting defendants differently by race, and the Fifth Amendment—through *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954)—binds the federal government to the same guarantee. Prosecutorial discretion is broad, but it ends where race dictates outcomes. Under *United States v. Armstrong*, 517 U.S. 456, 465 (1996), selective prosecution is

established when defendants of one race are charged while similarly situated individuals of another race are spared.

Both requirements are satisfied here. In *United States v. O'Lear*, 93 F.4th 398 (6th Cir. 2024), the Northern District of Ohio and the Sixth Circuit rejected as implausible the theory that a subordinate could mastermind Medicaid fraud. Yet Petitioner—a Black, unlicensed Qualified Mental Health Specialist (QMHS) acquitted of conspiracy and lacking billing authority—was convicted on that very theory. The same district and the same appellate court reached opposite results on materially identical facts, exposing a racial disparity in charging decisions.

Racial discrimination in prosecution is not a mere trial error but a structural constitutional defect requiring automatic reversal. *Rose v. Mitchell*, 443 U.S. 545, 556 (1979); *Vasquez v. Hillery*, 474 U.S. 254, 263 (1986). Even if analyzed under Rule 52(b), the violation still satisfies *Olano*: clear, obvious, and outcome-determinative. Proceedings that shield a white subordinate while convicting a Black subordinate on materially identical facts destroy confidence in the fairness and integrity of the judicial process.

B. Disparate Treatment: Fletcher vs. Petitioner

In *O'Lear*, the defendant tried to shift blame to his subordinate, Brien Fletcher, claiming Fletcher orchestrated the Medicaid fraud. The district court rejected this as a "bald-faced

lie," stressing that Fletcher earned only $25,000 and did not benefit from the $2 million in false claims:

"He [O'Lear] blamed Mr. Fletcher for the whole scheme... So I've concluded that was a bald-faced lie and that's why I've applied the two-level enhancement." (Ex. A, Sentencing Transcript, R.87, PageID #784).

The Sixth Circuit affirmed, reasoning that a subordinate like Fletcher could not plausibly mastermind such a scheme. Fletcher, a licensed x-ray technician eligible to bill Medicaid, was never charged.

By contrast, Petitioner—a Black, QMHS—was cast as the mastermind despite lacking billing authority under Ohio Admin. Code §§ 5160-27-01 and 5122-29-30, being legally barred from independent billing or supervision, earning a similar or lower salary than Fletcher, and ultimately being acquitted of conspiracy.

This disparity was compounded by the government's treatment of Life Enhancement Services (LES). The government's only LES witness, Mr. Abubaker, testified that he never met Petitioner, had no knowledge of him fabricating notes, and confirmed that LES supervisors—not Petitioner—were responsible for reviewing QMHS documentation (Ex. B, Trial Tr. Vol. IV, July 28, 2023, p. 826). Yet while Petitioner was prosecuted based on clients tied to LES, the company itself and its supervisors were never investigated or charged.

Thus, the white subordinate who could bill was spared prosecution, while the Black subordinate who could not bill was convicted. This disparity meets both prongs of *Armstrong*, 517 U.S. 456, 465 (1996), and violates the equal protection principles applied to the federal government through *Bolling*, 347 U.S. 497, 500 (1954). The inconsistency underscores intra-circuit conflict warranting review under Supreme Court Rule 10(a) and (c).

C. Judicial Inconsistency and Structural Harm

The contradiction here is both judicial and prosecutorial. In *O'Lear*, the same district court and Sixth Circuit rejected as implausible the idea that a subordinate could mastermind fraud. In Petitioner's case, they embraced that very theory. The law cannot be both implausible for a white subordinate yet plausible for a Black subordinate on materially identical facts. Such a double standard is precisely the kind of "unequal hand" condemned in *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886), where neutral laws were applied "with an evil eye and an unequal hand."

As *Batson v. Kentucky*, 476 U.S. 79, 87 (1986), recognized, even the appearance of racial bias undermines confidence in justice. Here the disparity was outcome-determinative, rendering the trial structurally defective. Under Rule 10(a) and (c), such intra-circuit inconsistency and racial disparity demand this Court's review.

Conclusion to Section IV

The government declined to charge Fletcher—a white subordinate with billing eligibility—while prosecuting and convicting Petitioner, a Black subordinate legally barred from billing. These contradictory outcomes, arising in the same district and affirmed within the same circuit, expose a constitutional fracture that undermines confidence in the justice system. Such racially selective prosecution is a structural defect requiring reversal, not a matter of harmless error. This Court's review is necessary to restore consistency, prevent racially selective prosecution, and reaffirm that the Equal Protection guarantee applies with equal force to all defendants.

FINAL CONCLUSION

This petition presents four interrelated constitutional defects, each independently warranting review and reversal. First, the Sixth Circuit misapplied this Court's decision in *Dubin v. United States*, 599 U.S. 110 (2023), by affirming convictions where identity was not the means of fraud. Second, the indictment was structurally defective—amended without grand jury return, mischaracterizing Petitioner's role, and proceeding in violation of core constitutional safeguards. Third, Petitioner was denied counsel at every critical stage: trial counsel forged waivers, failed to object to fundamental errors, and abandoned his duties, while appellate counsel refused to brief, blocked pro se filings, and left the appeal without adversarial testing. Fourth, Petitioner was subjected to racially selective prosecution, as the same district and circuit excused a similarly situated white

subordinate in *O'Lear* while affirming Petitioner's conviction on materially indistinguishable facts.

Together, these errors represent structural breakdowns that defy harmless-error review. The Sixth Circuit's judgment entrenches trial-level violations, contradicts its own precedent, and left Petitioner wrongfully convicted of aggravated identity theft, health care fraud, and false statements on charges never properly returned by a grand jury.

For these reasons, Petitioner respectfully requests that the Court grant the writ of certiorari, reverse the judgment below, and reaffirm that due process, the right to counsel, and equal protection are constitutional guarantees owed equally to all defendants.

INDEX OF APPENDICES

Appendix A – Opinion of the United States Court of Appeals for the Sixth Circuit (May 19, 2025)

Appendix B – Order of the United States Court of Appeals for the Sixth Circuit Denying Rehearing En Banc (July 8, 2025)

Appendix C – Judgment of the United States District Court for the Northern District of Ohio (August 2, 2023)
