

No. 26-_____

IN THE
Supreme Court of the United States

YESID AVILA-DIAZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether an unconditional guilty plea waives appellate review of a preserved claim that the prosecution was barred on the face of the charging record—a claim that goes to the Government’s authority to convict rather than to the defendant’s factual guilt.

2. Whether the courts of appeals are divided over whether an unconditional guilty plea waives a preserved claim that the government lacked authority to bring.

3. Whether the court of appeals applied the wrong unit of analysis to the statute-of-limitations claim by examining the Second Superseding Indictment in isolation, when the limitations bar appears on comparison of the successive indictments because the Second Superseding Indictment materially broadened the timely Superseding Indictment and cannot relate back.

PARTIES TO THE PROCEEDING

The parties to the proceedings in the Eleventh Circuit Court of Appeals include the Respondent, United States of America and Petitioner Yesid Avila-Diaz. There are no parties to the proceedings other than those named in this petition.

Pursuant to Rule 29, undersigned court-appointed counsel for Appellant Yesid Avila-Diaz certifies that no persons or entities have an interest in the outcome of this case.

RELATED PROCEEDINGS

The following proceedings are directly related to this Petition: *United States v. Yesid Avila-Diaz*, No. 25-12380, opinion granting the Government's Motion to Dismiss Appeal as barred by Defendant's plea and sentence waiver, *United States v. Yesid Avila-Diaz*, 2026 WL 699135 (11th Cir. March 12, 2026). On April 24, 2026 rehearing was denied, and mandate issued on May 5, 2026.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Yesid Avila-Diaz, respectfully petitions this Court for a writ of certiorari to review the *Opinion* rendered by the Eleventh Circuit Court of Appeals on March 12, 2026.

STATEMENT OF JURISDICTION

The Eleventh Circuit entered judgment on March 12, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The Eleventh Circuit Court of Appeals issued an opinion granting the government's motion to dismiss the appeal as barred by defendant's plea and sentence waiver. App. A. The mandate issued on May 5, 2026. This Court has jurisdiction to review the Eleventh Circuit's judgment under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitution's Fifth Amendment provides:

In relevant part: "No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb; . . . nor be deprived of life, liberty, or property, without due process of law[.]"

STATEMENT OF THE CASE

Petitioner Yesid Avila-Diaz respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

In 2017, a federal grand jury in the Southern District of Florida charged Santiago Alirio Gomez Rivera with conspiring to distribute cocaine, knowing and intending that it would be unlawfully imported into the United States, in violation of 21 U.S.C. §§ 959 and 963. The original indictment alleged a conspiracy lasting from March 1 through May 20, 2013. (DE:3).

In April 2018, the grand jury returned a Superseding Indictment that added codefendants, including Appellant Yesid Avila Diaz, to the charge against Rivera. The conspiracy period remained substantially the same: March through May 2013. (DE:7). That indictment was filed within the five-year statute of limitations.

Three months later, in July 2018, the grand jury returned a Second Superseding Indictment. The codefendants and the statutory charge remained the same, but the alleged conspiracy period was expanded to run from January 2008 through September 2013. (DE:11). The Second Superseding Indictment also contained no overt acts and no individualized allegations of when any defendant joined or withdrew from the conspiracy. By the time it was returned, the three-month conspiracy period alleged in the Superseding Indictment, ending in May 2013, had fallen outside the five-year limitations window.

Appellant was extradited from Colombia in November 2024 and pled guilty under an unconditional plea agreement on March 6, 2025. (DE:241; DE:243). He was sentenced to 108 months of imprisonment, the low end of his guidelines range. (DE:280).

On appeal, the government moved to dismiss before their brief was filed, arguing that Appellant’s unconditional guilty plea waived his statute-of-limitations challenge. The panel granted the motion in a per curiam order dated March 12, 2026, citing *United States v. Helmich*, 704 F.2d 547, 548 (11th Cir. 1983) for the proposition that a defendant who pleads guilty may challenge his prosecution as time-barred “only insofar as the indictment on its face shows that the limitations period expired.” The panel concluded that the Second Superseding Indictment does not make that showing, but failed to analyze the face of all of the successive indictments to so conclude.

REASONS FOR GRANTING THE PETITION

The decision below holds that a defendant who enters an unconditional guilty plea forfeits all appellate review of a claim that the Government had no authority to bring. The holding of the Eleventh Circuit deepens a recognized and intractable conflict among the courts of appeals over the most consequential question that follows a guilty plea: what such a plea gives up. The conflict reaches the majority of federal criminal judgments obtained by plea. The Federal Circuits do not have consistent law concerning whether or not a plea extinguishes a claim against the lawfulness of the conviction itself.

This petition does not ask the Court to correct one panel’s application of circuit precedent. It asks the Court to resolve a division it has twice engaged but never closed: whether, and how far, the rule, that a guilty plea admits the facts but does not concede the Government’s authority to convict, survives an unconditional plea on direct appeal. See *Menna v. New York*, 423 U.S. 61 (1975), and *Class v. United States*, 583 U.S. 174 (2018). The conflict has developed around claims that the admitted conduct is not a crime. Petitioner’s claim, that the prosecution was time-barred on the face of the successive charging instruments, provides the Court with the opportunity to resolve the circuit conflict. The petition should also be granted for the Court’s resolution of the question concerning the reach of federal courts.

I. THE COURTS OF APPEALS ARE DIVIDED OVER WHETHER AN UNCONDITIONAL GUILTY PLEA WAIVES A CLAIM THAT THE GOVERNMENT LACKED AUTHORITY TO BRING

A. This Court Distinguishes Claims of Factual Guilt, Which a Plea Concedes, From Claims That the Government Lacked Authority to Convict, Which Survive a Plea When They Can be Resolved on The Existing Record.

More than fifty years ago, this Court rejected the proposition that a counseled guilty plea waives every antecedent defect. A plea “simply renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt.” *Menna*, 423 U.S. at 62 n.2. But “where the claim is that the State may not convict petitioner no matter how validly his factual guilt is established,” the plea “does not bar the claim.” *Id.* at 62–63 n.2. The Court stated the principle: “a plea of guilty to a charge does not waive a claim that judged on its face the charge is one

which the State may not constitutionally prosecute.” *Id.* at 63 n.2. *Menna* itself involved a Double Jeopardy claim that was concededly non-jurisdictional, yet the claim survived the plea, because it attacked the sovereign’s power to bring the charge rather than the defendant’s guilt. The Court grounded that result in *Blackledge v. Perry*, 417 U.S. 21, 30 (1974), which it described as requiring that a conviction obtained on a charge the State was constitutionally precluded from bringing be set aside even after a counseled plea. *See Menna*, 423 U.S. at 62.

This Court refined the doctrine’s scope in *United States v. Broce*, 488 U.S. 563 (1989). *Broce* holds that the exception reaches only claims that can be adjudicated “on the basis of the existing record,” without venturing beyond it. *Id.* at 575. The defendants there pleaded guilty to two indictments charging two conspiracies and then asserted that there had been only one, in violation of the Double Jeopardy Clause; the Court refused to entertain the claim because the defendants “cannot prove their claim without contradicting those indictments” to which they had pleaded, and that opportunity was “foreclosed by the admissions inherent in” the plea. *Id.* at 575–76. *Menna* and *Blackledge*, by contrast, were claims that—“on the face of the record”—the court “had no power to enter the conviction or impose the sentence,” and could be resolved without disputing any admitted fact. *Id.* at 569; *see id.* at 575–76. The line *Broce* draws is therefore not between jurisdictional and non-jurisdictional claims, but between claims that require contradicting the plea’s admissions and claims that do not.

This Court reaffirmed that line, in a claim arising from a direct appeal to the circuit court after an unconditional plea, in *Class v. United States*, 583 U.S. 174 (2018) where the Court held that a guilty plea, by itself, does not bar a federal criminal defendant from challenging the constitutionality of his conviction on direct appeal. It expressly reaffirmed “the *Menna–Blackledge* doctrine,” *id.* at 178–80, and tied its limit to *Broce*: the claim survived because it did “not contradict the terms of the indictment or the written plea agreement” and could “be resolved ‘on the basis of the existing record,’”; it survived also because it challenged “the Government’s power to criminalize *Class*’ (admitted) conduct” and thereby called into question the Government’s power to “constitutionally prosecute” him. *Id.* at 181–82 (quoting *Broce*, 488 U.S. at 575, and *Menna*, 423 U.S. at 62–63 n.2). The right that survives an unconditional plea is thus not confined to jurisdictional defects: the Double Jeopardy claim in *Menna* and the constitutional claim in *Class* were each non-jurisdictional, and each survived. The Court instead will consider whether the claim can be decided on the existing record without contradicting the plea, and to what extent the Government’s authority to convict is implicated, rather than the factual guilt of the defendant.

A further decision illuminates the principle. In *Bousley v. United States*, 523 U.S. 614 (1998), the Court considered a claim that the admitted conduct was not in fact criminal as a claim of innocence; in *Bousley*, “actual innocence” meant “factual innocence”, not merely legal insufficiency, and the Court allowed the claim. *Id.* at 620–24. *Bousley* arose on collateral review, but it establishes the premise that carries

over here: a claim that admitted conduct is not criminal, and that the government therefore lacked authority to convict, is qualitatively different from a defense to factual guilt.

B. The Courts of Appeals Have Divided on Applying the Court's Precedent.

Several circuits have read the *Menna–Blackledge* exception narrowly and have treated defects in the charging instrument as non-jurisdictional and therefore relinquished. The leading statement is the District of Columbia Circuit's decision in *United States v. Delgado-Garcia*, 374 F.3d 1337 (D.C. Cir. 2004), which holds that knowing and voluntary unconditional pleas waive all claims of error, subject to only two exceptions. The first exception challenges the Federal Courts prerogative to hale the defendant into court at all, as for example, when the defendant would be placed under double jeopardy; the second exception challenges the subject-matter jurisdiction of the courts below. *Id.* at 1341–43. The Second Circuit reached the same result in *United States v. Rubin*, 743 F.3d 31 (2d Cir. 2014), holding that, “in light of *United States v. Cotton*, 535 U.S. 625 (2002),” a failure-to-state-an-offense defect “is non-jurisdictional in nature, and therefore could be, and was, waived” by an unconditional plea. *Id.* at 35–36. The Fourth Circuit followed last year in *United States v. Pittman*, 125 F.4th 527 (4th Cir. 2025): acknowledging this Court's statement in *Class* that “a guilty plea by itself does not bar” a later challenge, the court nonetheless held the defendant by his plea “either waived or forfeited” his assertion that his conduct did not violate the statute; the district court's subject-matter jurisdiction was therefore secure. *Id.* at 530–33. The Seventh Circuit's

decision in *Grzegorzcyk v. United States*, 997 F.3d 743 (7th Cir. 2021), points the same way, holding that an unconditional negotiated plea foreclosed a later challenge to a 18 U.S.C. § 924(c) conviction.

Other circuits hold that a plea admits the facts but not their legal sufficiency, so that a defendant may claim on appeal that the admitted conduct is not a crime, or that the Government otherwise lacked authority to convict. The First Circuit so held in *United States v. Rosa-Ortiz*, 348 F.3d 33 (1st Cir. 2003), concluding that an unconditional plea did not waive the defendant’s argument that the Federal Escape Act did not reach his conduct, and invoking *Menna*’s “judged on its face” principle. *Id.* at 36–38. The Eleventh Circuit, applying *Class* directly, held that an unconditional guilty plea did “not waive” the defendant’s constitutional challenge to his statute of conviction, even though that challenge was non-jurisdictional. *United States v. St. Hubert*, 909 F.3d 335, 345-46 (11th Cir. 2018). The division is thus not merely lateral but runs through the very circuit whose judgment is under review: the Eleventh Circuit recognizes, through *Class*, that a non-jurisdictional authority-to-convict claim can survive an unconditional plea.

The conflict is recurring. This Court has twice spoken to the doctrine, in *Broce* and in *Class*, yet the courts of appeals remain divided over how far the surviving category extends, and they decide materially identical claims in opposite ways depending only on the circuit in which the plea was entered. Only this Court can restore uniformity.

II. THE QUESTION IS IMPORTANT AND RECURS IN NUMEROUS FEDERAL CASES

The question presented governs the consequences of a most common event in the federal criminal system. Many federal convictions are obtained by guilty plea, and the unconditional plea is the default; the conditional plea that preserves appellate review under Federal Rule of Criminal Procedure 11(a)(2) is a rare exception. The rule adopted below therefore determines, for nearly every federal defendant, whether a claim that the Government lacked authority to convict may ever be heard on the merits.

The same defense that survives an unconditional plea in the First Circuit (*Rosa-Ortiz*) and the Eleventh (*St. Hubert*) is extinguished under the reasoning of the Second (*Rubin*) and the Fourth (*Pittman*).

III. THIS CASE IS A SUITABLE VEHICLE TO RESOLVE THE QUESTIONS PRESENTED; THE PETITION SHOULD BE GRANTED

A. The Decision Below Did Not Decide the Federal Question.

The order below did not ask whether petitioner’s claim falls within the *Menna–Blackledge* exception. It dismissed the appeal on the authority of *United States v. Sanfilippo*, 91 F.4th 1380 (11th Cir. 2024), which resolved a materially identical limitations claim by a single syllogism: an unconditional plea “waives all non-jurisdictional defects,” a statute-of-limitations defense is non-jurisdictional, and the claim is therefore waived. *Id.* at 1383 (relying on *United States v. Najjar*, 283 F.3d 1306, 1308 (11th Cir. 2002), and this Court’s decision in *Musacchio v. United States*,

577 U.S. 237, 248 (2016)). *Sanfilippo* never cited *Menna*, *Blackledge*, *Broce*, or *Class*. It did not ask whether a limitations bar apparent on the face of the charging record is a claim that the Government lacked authority to convict regardless of factual guilt. It treated “non-jurisdictional” as a synonym for “waived.”

The *Sanfilippo* holding cannot be reconciled with this Court’s decisions. The Double Jeopardy claim in *Menna*, the vindictive-prosecution claim in *Blackledge*, and the constitutional claim in *Class* were each non-jurisdictional, and each survived an unconditional plea. The surviving category is defined not by jurisdiction but by the *Broce* test: whether the challenge to the guilty plea can be resolved on the existing record without contradicting the plea’s admissions. The court below thus disposed of petitioner’s appeal on a rule that does not answer the federal question, and in doing so deepened the conflict described in Part I without engaging the framework that governs it.

The point is sharpened by what *Class* held about the very rule the panel treated as dispositive. *Sanfilippo* reasoned that, absent a conditional plea under Rule 11(a)(2), a non-jurisdictional claim is irretrievably waived. *See* 91 F.4th at 1383. But *Class* held that Rule 11(a)(2) “has no application” to the “kinds of constitutional objections” that may be raised under the *Menna–Blackledge* doctrine, and therefore “cannot resolve” such a case. 583 U.S. at 182–83 (quoting Advisory Committee’s Notes on 1983 Amendments to Fed. Rule Crim. Proc. 11). *Class* rejects *Sanfilippo*’s panel’s premise that the absence of a Rule 11(a)(2) reservation ends the inquiry into the Government’s authority to convict.

B. Petitioner's Claim Requires Contradicting No Admitted Fact.

Class does not require Petitioner to dispute that the limitations defense under 18 U.S.C. § 3282(a) is non-jurisdictional. Because the *Menna–Blackledge* exception is not confined to jurisdictional defects, the governing question is whether a limitations bar apparent on the face of the successive charging instruments is a claim that the Government may not convict “no matter how validly his factual guilt is established,” *Menna*, 423 U.S. at 62 n.2, and one that can be “resolved on the basis of the existing record” without contradicting the plea’s admissions, *Broce*, 488 U.S. at 575.

In the present case, Petitioner pleaded to the Second Superseding Indictment, admitting to a conspiracy continuing through September 2013. The date that made the charging instrument facially timely, because it was returned in July 2018, within five years. *See* 18 U.S.C. § 3282(a). Vindicating the claim requires no contradiction of that admission. Yet the Second Superseding Indictment, returned in July 2018, could allege a September 2013 end date only by materially broadening the earlier, timely Superseding Indictment, which charged a discrete conspiracy of roughly three months in 2013, into a conspiracy spanning nearly six years, adding years of conduct and defendants that the timely instrument never alleged. Whether the later instrument validly relates back to the earlier one is a pure question of law, decided by comparing two charging instruments already in the record. It does not ask when the conspiracy in fact ended; it asks whether the instrument that alleged the September 2013 date was a valid, timely charge. That is the record-based legal question *Broce* and *Class* permit, not the factual contradiction *Broce* forbids.

The Government may respond that crediting the earlier, shorter conspiracy contradicts the admission petitioner made when he pleaded to the later instrument, and that *Broce* therefore bars the claim. But the relation-back inquiry credits no competing factual account; rather, it tests the legal validity of the charging instrument on its own terms. A defendant who admits the allegations of an indictment does not thereby admit that the indictment was timely returned, any more than the defendant in *Class* admitted, by pleading guilty, that the statute he violated was constitutional. The admission determines and fixes the facts of the case; it does not validate the Government's authority to charge them when it did.

C. The Decision Below Does Not Foreclose This Analysis.

The order below invoked *United States v. Helmich*, 704 F.2d 547, 548 (11th Cir. 1983), for the proposition that a defendant who pleads guilty may challenge his prosecution as time-barred “only insofar as the indictment on its face shows that the limitations period expired,” and concluded that the Second Superseding Indictment makes no such facial showing. Pet. App. A. But the panel applied that standard to the later instrument in isolation, as though it stood independent of the indictment it superseded. The “face of the record” includes both successive instruments. Whether *Helmich*'s facial standard reaches a defect visible only on comparison of successive charging instruments is itself the unresolved question, and it collapses into the same inquiry *Broce* poses: whether the claim can be decided on the existing record without contradicting an admitted fact. The order below did not resolve that question against petitioner on the merits; it did not recognize that the question was presented.

IV. INDEPENDENTLY, CERTIORARI IS WARRANTED BECAUSE THE PANEL EVALUATED THE LIMITATIONS CLAIM UNDER THE WRONG UNIT OF ANALYSIS

Certiorari is warranted in this case to address the important issue of whether the government can expand the original charged conspiracy after the statute of limitations has run by simply tacking on new charges. A motion to dismiss, filed after defendant's brief but before the government was required to respond in full and before the defendant was permitted to file his reply, could not address the factual arguments necessary to be analyzed in this case. This Petition contends that the Eleventh Circuit panel applied *Helmich* to the wrong unit of analysis. Appellant's claim is not that the Second Superseding Indictment, read in isolation, discloses a time-bar on its face. It is that the Second Superseding Indictment cannot relate back to the timely Superseding Indictment because it materially broadened the original charge, expanding a three-month conspiracy to nearly six years. That determination requires comparing the successive indictments, both of which were part of the record below and which needed to be examined and analyzed. When these indictments are read together, the broadening that renders the Second Superseding Indictment time-barred under *United States v. Italiano*, 894 F.2d 1280 (11th Cir. 1990) and *United States v. Ratcliff*, 245 F.3d 1246 (11th Cir. 2001) is apparent on the face of the charging record.

The panel treated the inquiry as confined to the Second Superseding Indictment alone. But the defect inheres in the relationship between successive indictments – namely, a timely Superseding Indictment charging a three-month

conspiracy and an untimely Second Superseding Indictment expanding that charge to nearly six years with new defendants and new conduct. The panel should have considered the relationship between the timely and untimely indictments, and so applied the wrong unit of analysis. Had the panel considered the relationship among the various indictments, it would have seen that the change from the original, timely indictments to the ultimate indictment renders that Second Superseding Indictment time-barred under *Italiano* and *Ratcliff*; it would be apparent on the face of the charging record when the successive instruments are read together. The panel's contrary conclusion warrants certiorari because superseding indictments are common in federal criminal cases and this decision allows the government to extend the statute of limitations at will.

A. The Panel Applied the Wrong Unit of Analysis in Evaluating The Statute-of-Limitations Claim.

A statute-of-limitations defense, properly raised, challenges the government's authority to prosecute. A guilty plea does not waive a limitations defense when the charging instrument itself demonstrates that the charges are time-barred. *Helmich*, 704 F.2d at 548.

The panel concluded that the Second Superseding Indictment does not reveal a time-bar on its face, because it alleges a conspiracy extending through September 2013 and was filed within five years of that date. Read in isolation, the Second Superseding Indictment does not disclose the defect. But Appellant's claim does not rest on the Second Superseding Indictment read in isolation. The claim is that the Second Superseding Indictment cannot relate back to the timely Superseding

Indictment because it materially broadened the original charge. That determination requires comparing the two instruments, both of which comprise the “face of the record”.

Both indictments are part of the record before this Court. The Superseding Indictment, filed within the limitations period, charged a conspiracy spanning roughly three months: March through May 2013. (DE:7). The Second Superseding Indictment, filed three months later in July 2018, charged a conspiracy beginning in January 2008 and continuing until September 2013, added defendants not previously named, and alleged conduct not previously charged. (DE:11). Where, as here, the defect inheres in the relationship between successive charging instruments, the “face of the charging record” includes both. The broadening is visible on that record without resort to extrinsic evidence.

The panel erred in confining its analysis to a facial inquiry of the later instrument alone, treating the Second Superseding Indictment as though it existed independently of the indictment it purported to supersede. That framing assumes the answer to the question the claim poses: whether the Second Superseding Indictment validly relates back. By declining to compare the instruments, the panel foreclosed the very analysis that *Italiano* and *Ratcliff* require.

B. The Second Superseding Indictment Materially Broadened The Timely Superseding Indictment and Cannot Relate Back.

A superseding indictment filed after the statute of limitations has expired is valid only if the original indictment was timely, remains pending, and the superseding indictment “does not broaden or substantially amend the original

charges.” *Italiano*, 894 F.2d at 1282. When a superseding indictment materially broadens a timely indictment, it does not relate back, and the later charges are time-barred. *Ratcliff*, 245 F.3d at 1253.

In *Ratcliff*, the Eleventh Circuit held the relate-back doctrine inapplicable where “the differences in scope between the two sets of conspiracy charges [were] dramatic”, as the superseding indictment had expanded the conspiracy’s duration by years. 245 F.3d at 1253. The appellate court rejected the government’s contention that the later indictment merely clarified or corrected the earlier one.

The case at bar is much the same. The Superseding Indictment in the present case charged a discrete conspiracy lasting roughly three months. The Second Superseding Indictment transformed that charge into one spanning nearly six years, from January 2008 through September 2013, and added defendants and conduct that the timely indictment never alleged. This was not a clarification or correction of the original charge within the meaning of *Ratcliff*. The Second Superseding Indictment altered the factual core of the charge by reaching backward more than five years to allege conduct and participants far outside the scope of the original prosecution. Under *Italiano* and *Ratcliff*, that expansion cannot relate back.

The magnitude of the broadening is compounded by the character of the indictment itself. The Second Superseding Indictment charged a single § 963 conspiracy containing no overt acts and no individualized allegations of when any defendant joined or withdrew. (DE:11 at 1) It left unspecified what conduct the government relied on to satisfy the limitations period. The Superseding Indictment,

by contrast, at least confined the conspiracy to a discrete and identifiable period. The Second Superseding Indictment erased that specificity while adding years of uncharged conduct, making the broadening visible on the face of the successive instruments and reinforcing the conclusion that the later indictment cannot be treated as a continuation of the timely charge.

The panel cited *Helmich* for the proposition that a defendant who pleads guilty may challenge his prosecution as time-barred only insofar as the indictment on its face shows that the limitations period expired. *Helmich* supports Appellant's position, not the Eleventh Circuit panel's conclusion. In *Helmich*, the Court examined the indictment and found no facial time-bar because the conspiracy, despite beginning nearly twenty years earlier, was alleged to have continued through a date within the limitations period. 704 F.2d at 548. There was no claim that a later indictment had expanded an earlier one. Here, by contrast, the claim is that the Second Superseding Indictment obtained its alleged end-date by materially broadening the timely Superseding Indictment. The Eleventh Circuit in *Helmich* directed the court to the face of the charging record; it did not instruct the court to ignore the relation-back question that determines whether the charging instrument is valid in the first place.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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