

No. 26-391

IN THE
Supreme Court of the United States

KYLE WAGNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**MOTION TO EXPEDITE CONSIDERATION OF
PETITION FOR A WRIT OF CERTIORARI**

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Pursuant to Supreme Court Rule 21, Petitioner Kyle Wagner respectfully seeks expedited consideration of his petition for certiorari. Expedited consideration will ensure that this Court can decide this case before it becomes moot.

Wagner’s petition for certiorari seeks the Court’s resolution of an acknowledged and entrenched circuit split regarding the standard of review for pretrial detention and release orders under the Bail Reform Act of 1984. Under the Act, a federal district court may detain a criminal defendant pending trial only where the government demonstrates, by clear and convincing evidence, that no conditions of release will reasonably assure the defendant’s appearance and the safety of the community. 18 U.S.C. § 3142(e), (f). The Act also permits “appeal from a release or detention order” if the detainee or the government disagrees with the district court’s judgment regarding pretrial detention. *Id.* § 3145(c). However, the courts of appeals disagree regarding whether the district court’s judgment merits deference.

Five circuits review the district court’s ultimate detention determination de novo. *See United States v. Cook*, 87 F.4th 920, 921 (8th Cir. 2023); *United States v. Santos-Flores*, 794 F.3d 1088, 1090 (9th Cir. 2015); *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010); *United States v. Cisneros*, 328 F.3d 610, 613 (10th Cir. 2003); *United States v. Quartermaine*, 913 F.2d 910, 915 (11th Cir. 1990). Four circuits review that determination only for clear error. *See United States v. Vane*, 117 F.4th 244, 249 (4th Cir. 2024); *United States v. Hale-Cusanelli*, 3 F.4th 449, 455 (D.C. Cir. 2021); *United States v. Moreno*, 857 F.3d 723, 725-726 (5th Cir. 2017); *United States v. Abuhamra*, 389 F.3d 309, 317 (2d Cir. 2004). And three circuits take an

intermediate approach, conducting an independent review tempered by deference to the district court's firsthand experience with the case. *See United States v. Wilks*, 15 F.4th 842, 847 (7th Cir. 2021); *United States v. Tortora*, 922 F.2d 880, 882-883 (1st Cir. 1990); *United States v. Delker*, 757 F.2d 1390, 1399-1400 (3d Cir. 1985).

This case presents an ideal—and rare—vehicle to resolve the long-standing split and bring national uniformity to an important phase of pretrial criminal procedure. The United States charged petitioner Kyle Wagner with one count of cyberstalking under 18 U.S.C. § 2261A(2), and one count of interstate communications involving threats, *id.* § 875(c), based on a contentious social media exchange with another influencer. The United States then sought Wagner's pretrial detention by pointing to statements Wagner had made online that were critical of government officials. The government claimed that Wagner's speech indicated dangerousness. Reviewing the totality of the other evidence before it—including the fact that Wagner has no violent criminal history, and Wagner's other social media posts counseling nonviolence—a district court determined that Wagner could be released pretrial subject to certain conditions, including limits on his movements and social media use. Yet, at the government's request, a divided Sixth Circuit panel reweighed the evidence *de novo* and ordered that Wagner be detained pending trial. Pet. App. 11a-22a.

The split on the standard of review for pretrial detention orders has consistently evaded this Court's review because of the temporary nature of the

problem. Pretrial detention orders expire when trial ends, so the matter of pretrial detention typically becomes moot before this Court can act.

The issue may soon become moot in Wagner's case, too. Wagner's trial is currently scheduled to begin on November 3, 2026. *United States v. Wagner*, No. 2:26-cr-20059-DPH-APP (E.D. Mich. Aug. 14, 2026), Dkt. No. 41. The parties have stipulated to a further 60-day extension on that start date, but the district court has not yet granted that request. At the conclusion of that trial, the Sixth Circuit's pretrial detention order will have run its course. To avoid mootness, Wagner respectfully requests that this Court grant certiorari and decide the question presented expeditiously, before the trial in Wagner's case concludes. Wagner respectfully submits that either of the following two options would allow the Court to review the important question presented before it becomes moot:

First, and preferably, the Court may construe Wagner's stay application as a petition for certiorari, grant certiorari, issue an expedited briefing schedule, and schedule the case for argument at the earliest opportunity. The Court took a similar approach in *Nken v. Holder*, 556 U.S. 418 (2009), a recent merits decision addressing a legal standard for an interim legal order. In *Nken*, the applicant filed a stay application seeking review of a circuit split on the appropriate legal standard for stays pending appeal and, as here, the issue presented would have been mooted by an interim ruling. The Court granted the stay application in *Nken*, treated that application as a petition for certiorari, granted certiorari, and set an expedited briefing schedule that allowed the case to be argued less than two months after the

stay application was granted. Were the Court to proceed similarly here, Wagner would dismiss his separately filed petition for certiorari and would be prepared to brief this case on whatever expedited timeline this Court deems appropriate.

Second, in the event the Court declines to treat the stay application as a petition for certiorari, Wagner respectfully requests that the Court grant the stay application and grant this motion to expedite consideration of the petition for certiorari. Wagner would propose that the Court set a certiorari-stage briefing schedule that would allow the Court to act on the petition expeditiously. In particular, Wagner requests that the government be directed to respond to the petition on or before October 19, 2026. That date represents the 30 days that respondents are ordinarily granted to respond to a petition under this Court's Rule 15.3, but would not permit extensions of that deadline. Any extension of the deadline would risk the possibility that Wagner's trial—and therefore pretrial detention—would conclude before this Court could resolve the petition. Wagner would also waive the 14-day waiting period for reply briefs under this Court's Rule 15.5, so that the petition and response could be distributed immediately. The Court would then be able to consider the petition and response at a conference prior to the conclusion of Wagner's trial. And if the petition is granted, Wagner respectfully requests a merits-stage briefing schedule that would allow the case to be argued as soon as possible.

CONCLUSION

This Court should treat the stay application as a petition for certiorari and grant certiorari. Alternatively, the Court may grant both the stay application and Wagner's motion to expedite consideration of its petition.

Respectfully submitted,

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